LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-01-2021 to 15-01-2021)

A Summary of Latest Decisions by the superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
National Bank of Pakistan v. Zahoor Ahmed Mengal
Against the judgment dated 30.12.2019, passed by the High Court of Balochistan, Quetta in C.P.No.869 of 2016
https://www.supremecourt.gov.pk/downloads_judgements/c.a._681_2020.pdf

Facts: Respondent, a civil servant remained absent from duty hence; his service was terminated without conducting regular inquiry while treating period of absence as Extra Ordinary Leave without pay.

Issue: (i). Whether regular inquiry ought to have been conducted for absence from duty?
(ii).Whether treatment of absence period as Extra Ordinary Leave was a punishment and justified?

Analysis: In the face of such absence from duty of the respondent, which being admitted, there was no need to hold a regular enquiry because in the case of Federation of Pakistan through Secretary, Ministry of Law and Justice Division, Islamabad vs. Mamoon Ahmed Malik (2020 SCMR 1154), it has already been held that where the fact of absence from duty being admitted on the record, there was no need for holding of a regular enquiry for that there was no disputed fact involved to be enquired into.
The treatment of absence period as EOL without pay has already been dealt with in the case of NAB through its Chairman vs. Muhammad Shafique (2020 SCMR 425) and Kafyat Ullah Khan vs. Inspector General of Police, Islamabad and another (Civil Appeal No.1661 of 2019), where it was held that while imposing penalty on the employee in the case of unauthorized absence, the absence period treated as an EOL is not a punishment, rather is a treatment given to the absence period, which employer is entitled to do.

Conclusion: (i). In case of an admitted absence from duty, there is no need to hold a regular enquiry.
(ii). The absence period treated as an EOL is not a punishment, rather is a treatment given to the absence period, which employer is entitled to do.

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2. **Supreme Court of Pakistan**
Divisional Superintendent, Postal Services v. Muhammad Zafarullah
Civil Appeal No. 420 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._420_2020.pdf

Facts: Respondent was dismissed from service but the Federal Service Tribunal converted penalty of dismissal into compulsory retirement without recording any reasons.

Issue: (i) Whether the Tribunal can convert the penalty without recording the reasons?
(ii) What are the parameters for exercise of jurisdiction/power by courts/tribunals?

Analysis: The Tribunal could not convert the penalty without recording cogent reasons…There is no cavil to the proposition that a Court/Tribunal may exercise a power conferred upon it by law but such power is required to be exercised carefully, judiciously and after recording cogent reasons keeping in view the specific facts and circumstances of each case. All Courts/Tribunals seized of the matter before them are required to pass order strictly in accordance with the parameters of the Constitution, the law and the rules and the regulations framed under the law. No court has jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law.

Conclusion: (i) The tribunal can't convert the penalty without recording cogent reasons.
(ii) Court/Tribunal may exercise a power carefully, judiciously and after recording cogent reasons keeping in view the specific facts and circumstances of each case. All Courts/Tribunals seized of the matter before them are required to pass order strictly in accordance with the parameters of the Constitution, the law and the rules and the regulations framed under the law. No court has jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law.

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3. **Supreme Court of Pakistan**
Province of Punjab through Secretary Excise & Taxation Department v. Murree Brewery Company Ltd
Civil Petitions No.1369-L & 1370-L of 2019
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1369_l_2019.pdf

Facts: Chief Secretary, Government of Punjab through Secretary, Excise and Taxation Department, Government of Punjab filed intra court appeal which was dismissed being non-compliant with Article 174 of the Constitution, read with S.79 of the Code of Civil Procedure, 1908 (CPC), whereby it is stated that the case has to be filed in the name of the Federal or Provincial Government, as the case may be, and not through any of its functionaries.

Issue: (i).Whether S.79 of the CPC amounts to a mandatory or directory provision?
(ii). How it is to be determined that a provision is directory or mandatory?
(iii). Is there any exception, if the provision is found mandatory?

Analysis: The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that the usage of the word 'shall' generally carries the connotation that a provision is mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of noncompliance also serve as an instructive guide in deducing the nature of the provision.

Following are some major principles:-

a) “While determining whether a provision is mandatory or directory, somewhat on similar lines as afore noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;
e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;
f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.
g) The test to be applied is whether non-compliance with the provision would render the entire proceedings as invalid or not.
h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.
However, where the Government itself files the appeal, albeit with the wrong description, the provisions of S.79 of the CPC amount to mere nomenclature, which, if not followed, do not render the suit unmaintainable. The rationale being that, the object and purpose of S.79 of the CPC is for the Government to be properly represented and defended. The same purpose is still achieved where the Government themselves file an appeal, as in this case. While such mis-description is a contravention of S.79 of the CPC, it is not fatal to the case when it is indeed the Government filing the appeal themselves. where there is a matter of mis-description of parties, the Court may, either on its own accord, exercising suo-moto powers, or after an application being submitted to it, order that the name of any party improperly joined be struck out and the appropriate party whose presence is necessary to do complete justice be added to the suit under the powers conferred on it by S.153 and Order 1, Rule 10(2) of the CPC.

Conclusion: (i). S.79 of CPC is a mandatory provision.
(ii). See principles in analysis above.
(iii). Yes, a mis-description of parties only amounts to a mere technicality that cannot be allowed to stand in the way of justice, which should be corrected by the Courts.

4. **Lahore High Court**
Bismillah Agro, etc. v. Soneri Bank Ltd
2020 LHC 3327
FAO No.35 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3327.pdf

Facts: The respondent filed suit under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The appellants were served through publication in the newspapers who filed leave to defend in the office of High Court on the very next working day when court resumed to regular work after summer vacations. However the leave to defend was not placed before the court and suit was exparte decreed by the single judge holding that despite effective service the appellants had failed to submit application for leave to defend. Appellants then filed application for setting-aside of ex-parte decree, which was dismissed on two grounds firstly**,** that service was validly affected upon the appellants but no application for leave to defend was filed within stipulated time. And secondly, that the application for leave to defend, even in terms of notices/publication issued was beyond 30 days prescribed period of limitation.

Issue: Whether the application for leave to defend was to be treated within limitation when the same was filed on the second day after summer vacations of High Court and was beyond prescribed period of 30 days?

Analysis: Per Section 10(2) of the Ordinance, application for leave to defend is required to be filed within 30 days of the date of first service by any of the modes laid down in sub-section (5) of section 9 of the Ordinance. However, according to the proviso attached to section 10(2), where service has been validly affected only through publication, the court may extend the time for filing an application for leave to defend. In this case, as apparent from the record, valid and effective service was only affected through the publication – effective service through other modes remained obscured and unsubstantiated. Hence proviso to sub-section (2) of section 10 of the Ordinance is attracted. As regards the claim that court erroneously, overlooking the fact that service had already been effected on the appellants, passed the order on 24.05.2018 for repeating service of summons on the defendants, the court observed that financial institution has not objected to the order of fresh service, instead same was acted upon in letter and spirit and observation of erroneousness of order of 24.05.2018 is inappropriate and unwarranted. In the wake of the order, a right has been accrued to the appellants, which right cannot be denied by attributing error on the part of the court, and even if it was termed as 'inadvertent error' it should not prejudice the appellants being act of the court.

Conclusion: View of learned Single Judge in Chambers that 'summer vacations continued from 02.07.2018 to 01.09.2018 and leave application filed on 03.09.2018 was otherwise beyond limitation', was erroneous as on 02.09.2018 it was Sunday, hence, application filed on 03.09.2018 was in accordance with the mandate of

Section 4 of the Limitation Act, 1908. Application for leave to defend should be treated as validly filed and same be adjudicated upon on its own merits.

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5. **Lahore High Court**
Jabran Mustafa v. Judge Family Court etc.
2021 LHC 1
WP No. 69574 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC1.pdf

Facts The Court while executing a family decree, due to non-service of warrants upon the judgment debtor, issued warrant of arrest for the petitioner (brother and attorney of judgment debtor). Application of the petitioner for cancellation of his warrants was also dismissed by the executing Family Court and the petitioner assailed the same in writ jurisdiction of the High Court.

Issue: Whether writ is maintainable against an order of dismissal of application for cancellation of warrants of arrest passed by family court in execution proceedings?

Analysis: It is not a case wherein warrants of arrest have been simplicitor issued against the petitioner to be treated as an interlocutory order. Rather the executing court, by placing reliance on a judgment of the Supreme Court and application of its mind to the facts of the matter, has dismissed the petitioner's application for cancellation of his warrant of arrest and has refused to recall its earlier order. Said order is a "decision given" on the application/objection petition of the petitioner against execution of decree, hence, same amounts to a final decision; therefore said order is appealable before the appellate court in terms of Section 14 of the Family Courts Act, 1964.

Conclusion: Order of dismissal of petitioner's application for cancellation of his arrest warrants by the executing family court amounted to final decision; therefore it could not be challenged in writ jurisdiction of High Court since right of appeal was available under the relevant law.

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6. **Lahore High Court**
Mst. Shahnaz Begum v. Additional District Judge etc.
2020 LHC 3399
Writ Petition No. 16208 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3399.pdf

Facts: Wife and children (petitioners) of a martyred police official applied for grant of succession certificate to collect his service benefits. Alleged second wife and son of the deceased (respondent No.4 & 5) filed a separate application for succession certificate for their shares. The court consolidated both the applications and issued succession certificate in accordance with the request of the respondent No.4 & 5.

Appeal by the petitioners against the order was dismissed. Said order was challenged in constitutional jurisdiction of the High Court.

Issue: Whether under Succession Act, the court can decide intricate question of declaring someone as a legal heir of a person?

Analysis: The court held that since the petitioners had contested the claim of respondents No. 4 & 5 that they were widow and son of the deceased, therefore in view of the law, the controversy between the parties could only be decided by the civil court in a regular suit and not in summary proceedings under the Succession Act. The courts exceeded their jurisdiction in the matter. However the Hon'ble court disposed of the petition with following directions:

i) Succession certificate shall be issued to respondents No. 4 & 5 subject to their furnishing a bond with two sureties for a sum equal to the amount of the share to which they may be entitled to receive from the service benefits of the deceased;

ii) The finding of the learned courts that respondent No. 4 & 5 were the second widow and son respectively of the deceased are set aside. They shall immediately file a civil suit to establish their status as such.

iii) If respondents No. 4 & 5 succeed in getting a decree, they would be entitled to retain the money received by them under the Succession Certificate.

iv) If respondents No. 4 & 5 do not file a civil suit as aforesaid or if it is instituted but decided against them the petitioner may apply for revocation of Succession Certificate under clause (e) of section 383 of the Act.

Conclusion: Under the Succession Act, the court cannot decide intricate questions like declaring someone as a legal heir of a person.

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7. **Lahore High Court, Lahore**
Muhammad Saif Ullah v. Lahore Development Authorities & others
Review Application No.2005 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3437.pdf

Facts: Petitioner was aggrieved of an order passed by executing court. His appeal u/s 104 C.P.C against said order was dismissed by the lower appellate court. He preferred a revision petition in High Court but till that time an amendment in section 115 of the C.P.C (insertion of new sub-section 5) had already been effected by virtue of which revision was barred against an order passed by the District Court under Section 104 CPC. Hence, his revision was found to be not maintainable owing to said amendment. However, subsequently in another case of similar nature, High Court took a contrary view. Hence petitioner filed this review petition in view of divergence of opinions of High Court.

Issue: **(i)** Whether the newly added sub-section (5) in Section 115 CPC by the Code of Civil Procedure (Punjab Amendment) Act 2018 affected the pending cases/revisions or it will has retrospective effect?

Analysis: Revision is one of the remedies provided under the C.P.C. The Superior Courts have different views on the nature of this remedy. Some say it is the right of a litigant and other say it is his privilege. Keeping in view the prevailing view enunciated through Karamat Hussain's case (PLD 1987 SC 139) and the other cases cited as 1992 SCMR 2334 and PLD 2015 SC 137 revision is a vested right of an aggrieved person/litigant.

Under the Amendment Act, 2018 the second proviso of sub-section (1) of Section 115 CPC has been changed and at the same time sub-section (5) has been added within it. It is now well settled that where a section of a statute is amended, the original ceases to exist and the new section supersedes it and becomes a part of the law just as if the amendment had always been there. The general rule as to the effect of repeal of a statute follows the legal maxim "*nova constitution fututris forman imponere debet non prateritis*" i.e. a new law ought to regulate what is to follow, not the past. This maxim was statutorily recognized in Section 38 (2) of the Interpretation Act, 1889, which is on the same lines as Section 4 of the Punjab General Clauses Act, 1956 and it provides for the effect of repeal. In fact, when a lis commences, all rights and obligations of the parties get crystalized on that date. The mandate of Section 4 of the General Clauses Act is simply to leave the pending proceedings unaffected which commences under the un-repealed provisions unless the contrary intention is expressed. The principle enshrined under sec.4 was followed in the Colonial Sugar Refining Company Limited's case (1905 AC 369). Whenever the superior Courts of Pakistan or India have faced such a question like the one under discussion, they have invariably placed reliance on the principle settled in the case of Colonial Sugar Refining Company. Principles that emerge from the reading of judgments cited as PLD 1956 S.C.256, PLD 1957 SC (Ind.) 448, PLD 1965 SC 681, PLD 1967 SC 259, PLD 1969 SC 187, PLD 1969 SC 599, PLD 1981 SC 553, PLD 1985 SC 376, 1988 SCMR 526 are that:

(i) the legal pursuit of a remedy, appeal or second appeal or revision are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding,
(ii) the right of appeal or revision or second appeal is not a mere matter of procedure but is a substantive right,
(iii) the institution of the suit carries with it the implication that all rights of appeal or revision or second appeal then in force are preserved to the parties thereto till the rest of the career of the suit,
(iv) the right of appeal or revision or second appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date of the lis commences and although it may be actually exercised when the

adverse judgment is pronounced such right is to be governed by the law prevailing as the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal, and

(v) this vested right of appeal or revision or second appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

Whereas the Amendment Act, 2018 does not indicate that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when it was passed.

Conclusion: Addition of sub-section (5) in Section 115 CPC by the Code of Civil Procedure (Punjab Amendment) Act 2018 has no effect on the cases which had already commenced in the original Court before its enactment. As the proceedings in present case were instituted in suit much prior to amendment, hence the right of revision had vested in the parties thereto at that date.

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8. **Lahore High Court**
Syed Iftikhar Hussain Shah v. Muhammad Sharif
R.S.A.No.98 of 2011
https://sys.lhc.gov.pk/appjudgments/2020LHC3358.pdf

Facts: The appellant filed a suit for cancellation of mutations sanctioned in favour of respondent regarding his property on the basis of misrepresentation and fraud. The suit was decreed by learned trial court but the learned lower appellate court reversed the decision while setting aside the decree. Through this regular second appeal, the appellant has challenged the decision of learned lower appellate court.

Issues: How a mutation is to be proved as per law?

Analysis: The mutation proceedings are initiated primarily for fiscal purposes to collect the land revenue and are only meant for maintaining the record which by no stretch of imagination can be considered a judicial proceeding wherein right/title qua immoveable property is determined. Although these proceedings made u/s 42 of the Land Revenue Act, 1967 are admissible under Article 49 of the Qanun-e-Shahadat Order, 1984 and some presumption is also attached thereto, but it is always rebuttable. It is also well established by now that mutation per se is not deed of title and the party relying upon its entries is always bound to prove the transaction reflected therein.

As a matter of law, subject mutations containing sale transactions were documents pertaining to financial liability, thus required to be proved as per yardstick laid down in Article 79 of the Qanun-e-Shahadat Order, 1984. The examination of only one marginal witness, by the beneficiary was not enough to meet with the legal requirement. No doubt Rapats Roznamcha Waqiati were brought on record, but through the statement of counsel, the contents whereof were neither proved by

summoning its maker nor custodian of the record. Moreover, these entries were also not confronted to the plaintiff/alleged vendor, when he appeared in the witness box. There is no hesitation to hold that Rapat Roznamcha Waqiati is not per se admissible, whereas exhibition of document as well as proof of contents are two different aspects and the latter is more relevant and important, which was lacking here.

Conclusion: Mutation containing sale transaction is a document pertaining to financial liability, thus requires to be proved as per yardstick laid down in Article 79 of the Qanun-e-Shahadat Order, 1984.

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9. **Lahore High Court**
Ch. Muhammad Anwar v. Judge Accountability Court & others
W. P. No. 246/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC5.pdf

Fact: Petitioner has challenged the orders of trial and appellate court wherein the application under section 540 Cr.P.C filed by prosecution, for re-summoning of witnesses already recorded, was accepted for the purpose of exhibiting the documents which were part of record but could not be exhibited earlier inadvertently.

Issue. Whether the witnesses can be re-summoned if once examined for the purpose of exhibiting documents already available on record?

Analysis It is well settled principle of law that criminal justice system is not adversarial rather inquisitorial and Court has to reach at just decision of the case. Any piece of evidence which is essential for just decision of the case, has to be brought on record irrespective of the fact that either it favours one party or goes against other Any delay for filing any application for calling/recalling of witnesses or bringing any piece of evidence on record, is immaterial; similarly, filling lacuna in the case is also immaterial if said piece of evidence is otherwise necessary for securing ends of justice.

Rule 2, Chapter.1-E of the Volume III of Lahore High Court Rules deals with duty of Court to elucidate facts. Similarly Article 161 of the Qanun-e-Shahadat, 1984] should be judiciously utilized for this purpose when necessary.

Conclusion. When the "evidence" is not newly created rather already available and is otherwise relevant and necessary for just decision of the case then the witnesses may be re-summoned and documents can be exhibited. No prejudice will be caused to accused person particularly when accused party has been allowed to cross-examine the witness.

10. **Lahore High Court**
Nestle Pakistan Ltd & another v. Federation of Pakistan
2020 LHC 3369
W.P No. 4361 of 2017
https://sys.lhc.gov.pk/appjudgments/2020LHC3369.pdf

Facts: Petitioners challenged S.R.O. No. 115(I)/2015 dated 09.02.2015 issued by the Federal Board of Revenue whereby certain powers and functions were conferred on the officers of Directorate General of Intelligence and Investigation. Petitioners avowed inter alia, the impugned S.R.O. conferred powers on the said officers beyond remit of authority of such officers under the law. FBR by virtue of impugned S.R.O. had conferred on the designated officers of DG (I&I), jurisdiction to exercise powers and functions of Chief Commissioner (Inland Revenue) and also Commissioner (Inland Revenue) which was against mandate of S. 30(3) of the Sales Tax Act, 1990 and tantamount to setting up a parallel hierarchy of officers without laying out a statutory regime for exercise of such powers.

Issue: Whether a parallel hierarchy of officers could function in absence of any clearly defined statutory regime underpinning the array of powers and whether there can be conferment of powers without specifying functions and jurisdiction of the officers in terms of section 230 of the Income Tax Ordinance 2001?

Analysis: The court by applying the ratio of the case titled 2017 PTD 1875 where the Hon'ble Court observed that it was against the mandate of S. 30(3) of the Sales Tax Act, 1990 whereby FBR by virtue of impugned S.R.O. had conferred on the designated officers of DG (I&I), jurisdiction to exercise powers and functions of Chief Commissioner (Inland Revenue) and also of Commissioner (Inland Revenue). The court went a step ahead and opined inter alia that SRO 115 has been found deficient on a number of interwoven principles ranging from constitutional (due powers of law) to rule of law sources. The court observed that essence of the matter is that the periphery of powers of D.G (I&I) has not been defined in either the law itself or in any statutory rules framed under the Ordinance, 2001. Hence a genuine, concern is that no rules have been enacted to regulate and structure the powers of officers of D.G (I&I) to distinguish them from the other officers of Inland Revenue. This makes their powers unregulated and is a reasonable ground for holding that any powers exercised by the officers of D.G (I&I) are based on whims and unstructured discretion which cannot be countenanced and is an affront to the rule of law……

Conclusion: A proper construction of section 230 sub-section (2) ineluctably leads to the conclusion that there cannot be a conferment of powers without specifying functions and jurisdiction of the officers….notification regarding the functions and jurisdiction has to precede the notification conferring powers, and not the other wary round. SRO 115 and the impugned notices were set aside being without lawful authority and of no legal effect. FBR was directed to initiate the

process of specifying the functions and jurisdiction of the Officers of D.G (I&I) and to complete it within two months. Thereafter FBR may confer powers on officers of D.G (I&I) compatibly with their functions.

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11. **Lahore High Court Lahore**
Muhammad Asif v. Amjad Ali, etc.
Criminal Revision No.57092 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3347.pdf

Facts: The complainant was examined on 10.12.2018, however, on 07.03.2020, during the cross-examination, he had not supported the prosecution story, thus, on the same day, the application was filed by the petitioner, not a party to these proceedings, forwarded by the learned Deputy District Public Prosecutor seeking permission to declare the witness i.e. complainant as hostile so that he could be cross-examined by the petitioner. The petitioner assailed the said order whereby the application filed by the petitioner seeking permission to cross examine complainant as witness during trial of case, was dismissed.

Issue: (i). Whether the petitioner being real nephew of the deceased was within his rights to move the application for declaring a witness as 'Hostile'?
(ii). Whether the prosecution is allowed to cross examine the witness after cross-examination by defence?

Analysis: The application was not filed at an appropriate stage and no request was made by the complainant or any legal heir of the deceased. The petitioner in this case is only a witness. He is not amongst the legal heirs and thus had no locus standi to file application for such declaration.
The Court may permit re-examination of a witness if considered proper and necessary on a material question which has been omitted by the prosecution to bring on record in his examination-in-chief but the prosecution is not allowed to cross examine the witness after cross-examination of defence in respect of the facts narrated by him either in his examination-in-chief or cross examination. If a witness is allowed to be cross-examined by the prosecution after the cross-examination by the defence, the purpose of right of cross-examination would be defeated and provision of Article 133 and 151 of Qanun-e-Shahadat, 1984 relating to the examination and cross-examination of a witness would be negated. The credibility of a statement of witness may be permitted to be impeached by the prosecution of its own witness, if, his statement in examination-in-chief is in deviation to his previous statement or the statements is adverse to the interest of prosecution but no such permission can be granted to the prosecution on the basis of averment of the statement of witness in cross examination by defence.

Conclusion: (i). Petitioner is not amongst the legal heirs and only a witness and thus had no locus standi to file application for such declaration.

(ii). The prosecution is not allowed to cross examine the witness after cross-examination by the defence side in respect of the facts narrated by him either in his examination-in-chief or cross examination.

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12. **Lahore High Court**
Sadaf Aziz etc v. Federation of Pakistan etc.
W. P. No. 13537/2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3407.pdf

Fact: That the Surgeon Medico Legal Punjab issued the 2015 General Instructions for conducting the medico-legal examination of victims of rape or sexual abuse. The SOPs have been replaced by the 2020 Guidelines. The 2015 Guidelines refer to digital examination while 2020 Guidelines require bimanual traction. The two finger test is part of the digital examination and bilateral digital traction is done to determine the status of the hymen. Therefore, as per the admitted position, digital examination and bilateral digital traction are terms used for virginity testing. Petitioners have challenged the use and conduct of virginity tests specifically being the two finger test and hymen examination in cases of rape or sexual abuse and seek permanent restraint against the use, conduct or facilitation of virginity tests.

Issue. Whether the two finger test and the hymen test (virginity test) carried out for the purposes of ascertaining the virginity of a female victim of rape or sexual abuse has any relevance for establishing the offence of rape or sexual abuse?

Analysis The inspection of the hymen cannot give conclusive evidence of vaginal penetration or any other sexual history. While examination of the hymen may, in very limited contexts, be useful in the diagnosis of sexual assault in prepubescent females, it is not an indicator of sexual intercourse or habituation. The belief that absence of the hymen confirms that there has been penetration of the vagina is incorrect; equally false is the notion that the presence of a ‘normal’ or ‘intact’ hymen means that penetration has not occurred.

Further, it is demeaning to the status of a woman to be forced by orders of Court to carry out test of virginity of woman and must be taken as a grave threat to privacy, a cherished fundamental right. It also violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent. No presumption of consent could be drawn ipso facto on the strength of an affirmative report based on the unwarranted two fingers test. Even if it is admitted that she was a girl of an easy virtue, no blanket authority can be given to rape her by anyone who wishes to do so. Consequently, carrying out virginity testing not only for being discriminatory but also for having harmful consequences

Conclusion. That two finger test and the hymen test (virginity test) carried out for the purposes of ascertaining the virginity of a female victim of rape or sexual abuse is

unscientific having no medical basis, illegal and against the Constitution. Federation and Provincial Government should take necessary steps to ensure that virginity tests are not carried out in medico legal examination of the victims of rape and sexual abuse.

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13. **Sindh High Court**
Salman Bariv.Mst. Samia Khan & Another
Constitutional Petition No. S–02 of 2021
2021 SHC 6
https://eastlaw.pk/cases/Salman-BariVSMst. Samia.Mzk3Mjcw

Facts: Learned Family Judge issued non-bailable warrants (NBWs) against the petitioner to enforce its decision in execution petition of judgment and decree passed in a Family suit. According to the petitioner the learned trial Court erroneously issued his warrants of arrest under Section 51, C.P.C i.e. to effect this appearance in court, as he had already paid partial maintenance allowance.

Issue: What are pre-requisites for issuance of non-bailable warrants in an execution petition of Judgment and decree passed in a Family Suit?

Analysis: Pre-conditions for issuance of NBWs as enunciated under Section 51 of C.P.C are that the judgment-debtor should be proved to have attempted to leave the limits of the Court, to obstruct the decree or execution thereof or dishonestly transferred the property after the institution of the suit to avoid the decree or that he has means to pay the decree but neglected to do the same. Without the satisfaction of these pre-conditions, no mechanical order for detention in prison can be passed. It is only after the conclusion of the inquiry the Court can order for detention of judgment-debtor in prison. In the present case, the petitioner had already paid a partial payment to the respondent and undertook to pay the remaining amount within a reasonable time as per his financial position; hence the operation of NBWs issued against him by the learned trial Court was converted into BWs, enabling him to furnish security / appropriate bond equivalent to the remaining amount before the learned trial Court.

Conclusion: Before issuing non-bailable warrants Court must ensure that the Judgment debtor attempted to leave the limits of the Court in order to obstruct the decree or execution thereof or dishonestly transferred the property after the institution of the suit to avoid the decree; or that he has means to pay the decree but neglected to do the same.

14. **Sindh High Court**
Sami Pharmaceuticals (Pvt) Ltd v. Province of Sindh &Ors
C. P. No. D-5220 / 2017, C. P. No.D-5222 /5222 of 2017 C. P. No.D-5273 / 2017 etc.
2021 SHC 2
https://eastlaw.pk/cases/Sami-Pharmaceuticals-Pvt-VSProvince-Of-Sindh.Mzk3MjYz

Facts: Petitioners are engaged in the business to provide services of supply of labour, manpower and to acquire services from various service providers by out sourcing different jobs including the job of cleaning, maintenance and other requirements as defined under Section 2(55A) of the Sindh Sales Tax on Services Act, 2011. Being aggrieved by a notification issued by Sindh Revenue Board **(SRB)** pursuant to which, proviso to Rule 42(E) of the Sindh Sales Tax Rules, 2011 **(2011 Rules)** was deleted/omitted, and as a consequence thereof, petitioners were asked to pay Sales Tax on such services on the gross amount of receipts, including the amounts which were reimbursed to the service providers in lieu of salaries and wages etc. According to the petitioners act of SRB is in violation of Article 18, 77, 127, 129 and 130 of the Constitution and beyond the mandate of the legislature as through special procedure or rules, no tax can be imposed; so deletion of proviso is otherwise discriminatory.

Issue: Whether the provincial Government is empowered to charge sales tax on the entire gross amount of service invoiced or billed to the service recipient?

Analysis: After 18th amendment federal government has exclusive power to make laws with respect to any matter in the federal legislative list and the matters not mentioned in the federal legislative list are within the legislative powers of the Provinces. Whereas the levy of sales tax on services and the enactment of any Act is concerned, the power to do so is derived from addition of the exception to entry 49 of federal legislative list, whereby it has been categorically provided that in any circumstances the federation will not have any authority to make laws for levy and collection of any sales tax on services. Insofar as the authority to levy tax on service is concerned, though the same now rests with the Province pursuant to the exception to entry 49 (ibid); but it needs to be appreciated that such authority to impose tax is only on *services* and not on goods or otherwise. It is only the quantum of service rendered or supplied which can be taxed by Province. By no stretch of imagination either by rules or otherwise, it can be extended to any other goods or amount which is not falling within services. It is settled law that by a rule making power no tax could be imposed or levied as it is only the charging provision of the Act which can do so. If any service provider who issues an invoice which includes both the amounts; that of his services and any other reimbursement or charges paid by or on behalf of the service recipient, would not ipso facto render the entire invoice amount to be taxed. If that be so, then it would go beyond the mandate of the Province to levy tax only on *service* and would

transgress into the domain of the federation. Merely for the reason that the service recipient is engaging service providers and is also paying for the salaries of employees engaged by the service provider, would that render such payments liable to sales tax. The answer is a big no. Findings of Indian Supreme Court reported as (AIR 2018 SC 3754) squarely apply to the present case.

Conclusion: Provincial Government is not empowered to charge sales tax on the entire gross amount of service invoiced or billed to the service recipient. Impugned action and interpretation arrived at by SRB is contrary to the Act itself. It is only the quantum and value of service which is taxable and not the amount being reimbursed by the service recipient.

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15. **Supreme Court of India**
Civil Appeal No.7469 of 2008
M/s. Padia Timber Company (P) Ltd. v. The Board of Trustees of Visakhapatnam Port Trust Through its Secretary
https://main.sci.gov.in/supremecourt/2007/5298/5298_2007_35_1501_25342_Judgement_05-Jan-2021.pdf

Facts:

- Respondent-Port Trust floated a tender for supply of Wooden Sleepers with the condition that the purchaser will not pay separately for transit insurance and the supplier will be responsible till the entire stores contracted for arrive in good condition at destination. Appellant submitted its offer with a specific condition that inspection of the Sleepers would have to be conducted only at the depot of the Appellant. In accordance with the terms and conditions of the tender, the Appellant deposited Rs.75,000/- towards earnest deposit, along with its quotation.
- By a letter dated 11.10.1990, the Appellant agreed to supply wooden sleepers with the condition that Respondent could inspect the goods to be supplied, at the factory site of the Appellant, otherwise the Appellant would charge 25% above the rate quoted.
- By a letter dated 29.10.1990, the Respondent-Port Trust accepted the offer of the Appellant to inspect the Wooden Sleepers at the site of the Appellant but that the final inspection would be made at the General Stores of the Respondent-Port Trust and also requested to extend the delivery period of the sleepers until 15.11.1990.
- By a letter dated 30.10.1990 appellant did not accept the terms and conditions stipulated in the letter dated 29.10.1990 and also declined to extend the validity of its offer and requested to return the earnest money.
- It appears that on the same day, i.e.t 30.10.1990, the Controller of Stores of the Respondent-Port Trust put up an Office Note, seeking sanction of the Chairman to place orders on the Appellant for supply of requisite Sleepers for which a Letter of intent cum purchase order dated 29.10.1990

had been issued by the Respondent-Port Trust. A purchase order No. G 101126 90-91 dated 31.10.1990 was issued to the Appellant.

- The Letter of intent and the purchase order were followed by a letter dated 12.11.1990, written in response to the letter dated 30.10.1990 of the Appellant to request the Appellant to supply the materials ordered as per the purchase order, inter alia, contending that the purchase order had duly been placed on the Appellant within the period of validity of the price quoted by the Appellant, after issuing a letter of intent to the Appellant, accepting its offer with a warning that if supply was not made as per the purchase order, risk purchase would be made at the cost of the Appellant and the Earnest Deposit of Rs.75,000 would be forfeited.
- By another letter dated 19.11.1990, the Respondent-Port Trust requested the Appellant to commence supply of materials. In response to the said letter, the Appellant wrote a letter dated 27.11.1990 to the Respondent-Port Trust, contending that that there was no concluded contract between the parties and once again requested to refund the earnest money.
- On or about 03.9.1991, that is, after ten months, the Respondent-Port Trust placed an order on M/s. Chhawohharia Machine Tools Corporation, for supply of wooden sleepers at a much higher rate.
- On or about 10.4.1992, the Respondent-Port Trust filed the suit, seeking damages for breach of contract and on or about June, 1994, the Appellant filed the suit claiming refund of earnest money deposited along with interest @ 24% per annum from 24.4.1991 to 23.4.1993, costs and other consequential reliefs.
- Suit of Respondent-Company was decreed while suit of Appellant was dismissed and same was the fate of Appeals of the Appellant in the High Court.

Issue: Whether the acceptance of a conditional offer with a further condition results in a concluded contract, irrespective of whether the offerer accepts the further condition proposed by the acceptor?

Analysis: Supreme Court held that:

- It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute. It can give no room for doubt. The offer and acceptance must be based or founded on three components, that is, certainty, commitment and communication.
- However, when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition. An acceptance with a variation is no acceptance. It is, in effect and substance, simply a counter proposal which must be accepted fully by the original proposer, before a contract is made.

- Acceptance of an offer may be either absolute or conditional. If the acceptance is conditional, offer can be withdrawn at any moment until absolute acceptance has taken place.
- Section 7 of the Contract Act acceptance of the offer must be absolute and unqualified and it cannot be conditional. However, in the facts and circumstances of that case, on a reading of the letter of acceptance as a whole, the Appellant's argument that the letter was intended to make a substantial variation in the contract, by making the deposit of security a condition precedent instead of a condition subsequent, was not accepted.
- In the response to the tender floated by the Respondent-Port Trust, the Appellant had submitted its offer conditionally subject to inspection being held at the Depot of the Appellant. This condition was not accepted by the Respondent-Port Trust unconditionally.

Conclusion: Supreme Court, in view of above discussion, held that it could not, therefore, be said that there was a concluded contract. There being no concluded contract, there could be no question of any breach on the part of the Appellant or of damages or any risk purchase at the cost of the Appellant. The earnest deposit of the Appellant is liable to be refunded within four weeks with interest @ 6% per annum from the date of institution of suit No.450 of 1994 till the date of refund thereof.

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16. **Supreme Court of the United States**
Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S__ (2020)
https://scholar.google.com.pk/scholar_case?case=14557349188638541514&q=seila+law+llc+v.+consumer+financial+protection+bureau&hl=en&as_sdt=2006&as_vis=1;https://ballotpedia.org/Seila_Law_v._Consumer_Financial_Protection_Bureau

Facts: It is a case that examined the extent of the U.S President's appointment and removal powers. The Consumer Financial Protection Bureau (CFPB) issued a civil investigative demand to the California-based firm, Seila Law. Seila Law refused to comply, so the agency petitioned the U.S. District Court for the Central District of California, asking the court to enforce the demand. Seila Law responded by arguing that the CFPB violated the U.S. Constitution's separation of powers doctrine. The district court rejected Seila Law's argument and ordered the law firm to comply. Seila Law appealed to the 9th Circuit, which affirmed the district court's order.

Issue: Whether the vesting of substantial executive authority in the Consumer Financial Protection Bureau, an independent agency led by a single director, violates the separation of powers. If the Consumer Financial Protection Bureau is found unconstitutional on the basis of the separation of powers, can 12 U.S.C. §5491(c)(3) be severed from the Dodd-Frank Act?

Analysis: In a 5-4 decision, the court ruled that the structure of the Consumer Financial Protection Bureau, an independent agency that exercised executive powers and had a director protected from at-will termination by the president, was unconstitutional. The majority held that restrictions on the president's ability to remove such agency leaders violated separation of powers principles by limiting presidential control of executive power. The decision only affected part of the agency's structure without eliminating the agency altogether by striking down the Dodd-Frank Act, the 2010 law that created the agency. Chief Justice John Roberts delivered the majority opinion by opining inter alia,*"while we have previously upheld limits on the President's removal authority in certain contexts, we decline to do so when it comes to principal officers who, acting alone, wield significant executive power."*

Conclusion: The court nullified the judgment of the 9th Circuit and sent the case back for further proceedings to see whether Seila Law will have to obey a CFPB document request.

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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2021 to 31-01-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

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1. Supreme Court of Pakistan
Mst. Sakina Ramzan v. The State
Criminal Appeal No.184 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._184_2020.pdf

Facts: The custom officers intercepted a vehicle and recovered 45 Kgs (gross) of charas hidden in the body frames of certain items being transported.

Issue: Whether it is necessary for the prosecution to prove the chain of custody or safe custody and safe transmission of narcotic drug to Chemical Examiner?

Analysis: The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

Conclusion: The prosecution has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

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2. Supreme Court of Pakistan
Director General Federal Directorate v. Tanveer Muhammad
Civil Petition No.692 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.p._692_2020.pdf

Facts: The respondent, a chowkidar, was alleged to have physically assaulted the Aya of school, used abusive language and threatened her in various ways. The competent authority after inquiry imposed major penalty of dismissal from the service but the Federal Service Tribunal while partly allowing the appeal of respondent converted it into withholding of increment for a period of five years with the observation that the penalty was harsh and did not commensurate with the charge.

Issue:
i) Whether the acquittal in criminal proceedings shall have any bearing upon the departmental proceedings?
ii) Whether physical assault and violence on a female worker of the school constitutes an act of gross misconduct?
iii) Whether a finding must be supported by reasons?

Analysis: i) The fact that the Respondent was acquitted by the Court of Judicial Magistrate, is inconsequential in view of the fact that the departmental proceedings which were independently undertaken are separate and distinct proceedings and have a different standard of proof.

ii) Respondent had physically assaulted and tortured a female worker of the school. Such violence was perpetrated within the school premises which violated the sanctity of an educational Institution. In our opinion this constitutes an act of gross misconduct.

iii) It has been repeatedly held that where the Tribunal exercises jurisdiction under Section 5 of the Service Tribunals Act, 1974, legally sustainable reasons must be recorded. Merely and casually making an observation that the penalty imposed does not commensurate with the gravity of the offence is not enough and constitutes arbitrary capricious and unstructured exercise of jurisdiction. The order must show that the Tribunal has applied its mind to the facts and circumstances of the case and exercised its discretion in a structured, lawful and regulated manner keeping in view the dicta of superior Courts in the matter.

Conclusion: i) Acquittal in criminal proceedings does not have any bearing upon departmental proceedings since both are separate and distinct proceedings and have different standard of proof.

ii) The physical assault or violence on a female co-worker in a school constitutes an act of gross misconduct.

iii) Legally sustainable reasons must be recorded for a finding. Casual observation without reasons constitutes arbitrary capricious and unstructured exercise of jurisdiction.

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3. **Supreme Court of Pakistan**
Sardar Muhammad v. Imam Bakhsh (decd) thr. LRs
Civil Appeal No. 346 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._3 46_2020.pdf

Facts: On the appeal of "**A**", Deputy District Officer (Revenue) cancelled the sale mutation effected in favour of the appellants on the ground that it was procured through misrepresentation and fraud and by holding that "**A**" was an old and sick man from whom lying was not expected and, therefore, his contention that the mutation was obtained through misrepresentation and fraud is to be given due weight. Thereafter "**A**", through registered sale deed, conveyed the same property to respondents. The challenge by the appellant before the Executive District Officer (Revenue) remained failed. Appellant filed a suit against the respondents which was decreed and appeal also failed. However, the High Court in revision set aside the concurrent findings of facts and dismissed the suit.

Issue: i) Whether the DDO (R) had the power to strike off a sale mutation carried out in a Jalsa-e-Aam in the presence of witnesses on the ground that such sale was procured through misrepresentation and fraud?

ii) If the answer is in the negative, whether the subsequent sale deed in the peculiar circumstances of this case would fall to the ground?

Analysis: i) The law itself provides that the proceedings before the Revenue Officer or before the Revenue Courts are summary in nature and, therefore, complicated questions of law and disputed question of fact are not to be adjudicated in the hierarchy. The determination of complicated questions of law and disputed questions of fact fall within the sole domain of the Civil Court. The plea of the respondents that the mutation entry was procured through fraud, in our opinion, could not have been decided in proceedings which are summary in nature as such controversy requires adjudication by allowing the parties to adduce evidence in support of their respective claims. Section 172 only empowers Revenue authorities to exercise administrative powers; the raison d'etre for the same is that the proceedings conducted by a Revenue Officer or a Revenue Court are summary in nature; they possess a limited scope of enquiry and do not possess the characteristics of a civil suit that necessitates framing of the issues or recording evidence of the parties, as such matters fall within the sole domain of the civil courts. Besides, Section 172(2)(xvi) of the Act, 1967 leaves the adjudication of plea of fraud to the competence of the civil courts.

ii) Once the appellants have successfully proved that the sale mutation in their favour was struck off by DDO (R) illegally without jurisdiction and that the respondents had notice of such fact, then the sale deed in their favour automatically has to give way to the subject mutation.

Conclusion: i) The DDO (R) had no power to strike off a sale mutation carried out in a Jalsa-e-Aam in the presence of witnesses on the ground that such sale was procured through misrepresentation and fraud.

ii) Once it is successfully proved that the sale mutation was struck off by DDO (R) illegally without jurisdiction and that the respondents had notice of such fact, then the sale deed in their favour automatically has to give way to the subject mutation.

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4. **Supreme Court of Pakistan**
Khawaja Bashir Ahmed v. M/s Martrade Shipping & Transport
Civil Appeal No.782 of 2014
https://www.supremecourt.gov.pk/downloads_judgements/c.a._782_2014.pdf

Facts: Appellant filed a suit against two respondents. He filed an application for withdrawal of suit against respondent No. 2 while praying permission to initiate proceedings in accordance with law afresh, when the necessity so arises. The court dismissed the suit as withdrawn against respondent No.2 but it disallowed the filing of fresh suit against him. Appellant contended that as per the view of august Supreme Court as reported in 1970 SCMR 141 and 2013 SCMR 464 the two requests/prayers were indivisible. The court could either accept or reject the application in toto. If the suit was to be dismissed then the permission should

have ensued otherwise, the suit should not have been dismissed to the extent of respondent No.2

Issue: Whether dismissal of the suit to the extent of respondent No. 2 as withdrawn without granting permission to file a fresh one was contrary to law as laid down in 1970 SCMR 141 and 2013 SCMR 464 wherein it was held that such an application making two prayers was indivisible and it ought to have been accepted or rejected as a whole?

Analysis: Clause (a) of Rule 2 allows permission to be granted to file a fresh suit if the court is satisfied that the "suit must fail by reason of some formal defect". Clause (b) allows for such permission if "there are other sufficient grounds". We are of course concerned with the latter provision. In our view, for the provision to be at all applicable it is necessary that the facts disclosed in the application seeking permission must, in law, amount to a "ground". It is only then that the provision becomes applicable, requiring the court to satisfy itself as to the sufficiency (or lack) of the stated ground. The observations of this Court in the cited decision are necessarily premised on this. However, if what is stated in the application is not a "ground" at all then obviously no question would arise of the court having to consider whether there is any sufficiency or lack thereof. When the application in the present case is considered all it stated was that the appellant "for the time being doesn't want to proceed further against" the second respondent, and that the appellant "reserves its rights to sue the said defendant whenever the necessity so arises". This is, in law, no ground at all. A plaintiff cannot be allowed to file his suit and then, at his sweet will and pleasure, exit the litigation only to enter the arena again as and when he pleases. If this is permissible under Rule 2(b) then that effectively puts paid to the consequences envisaged by Rule 3. And, it must be remembered, there would be nothing, in principle, preventing a plaintiff from doing this ad nauseam. This cannot be the true meaning and scope of Rule 2(b). It is only when the facts disclose what can, in law, be regarded as a "ground" that it becomes necessary for the court to consider the sufficiency (or lack) thereof. Here, there was no such thing. The application itself, on the face of it, purported to have been moved under Rule 1. Nothing was said before the learned trial Court as would have required it to conclude otherwise, nor was any attempt made then or later to withdraw the same. The order made by the Court was unexceptionable and in accordance with law.

Conclusion: Application for withdrawal of suit with permission to file fresh one if filed under clause (a) or (b) of sub-rule 2 of Rule 1 of O. XXIII C.P.C by mentioning either a formal defect or any other sufficient ground, then such an application is indivisible but if there was no mention of any such ground at all, as that is the situation with the case in hand, then such an application cannot be considered under sub-rule 2 of Rule 1 of O. XXIII of C.P.C but under its sub-rule 1 of Rule 1 ibid and same can be accepted and suit be dismissed as withdrawn simplicitor without giving permission to file fresh one.

5. **Supreme Court of Pakistan**
Zulfiqar @ Zulfa v. The State
Jail Petition No. 657 of 2016
https://www.supremecourt.gov.pk/downloads_judgements/j.p._657_2016.pdf

Facts: Accused was apprehended with a sack full of bhukki/poast.

Issue: What actually the poast and poppy straw are?

Analysis: 'Poast' is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant. In some parts of this country this natural pouch of the poppy plant is also known as Doda. The plant can reach the height of about 1-5 meters (3-16 feet). Poppy straw is derived from the plant Papaver somniferum, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds. The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc. Every Post/Doda is a part of a poppy straw but all poppy straw may not necessarily be Poast/Doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.

Conclusion: Poast is a basket, sack or pouch and it contains the seeds of such plant. Poppy straw is derived from the plant Papaver somniferum. Every Post/Doda is a part of a poppy straw but all poppy straw may not necessarily be Poast/Doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.

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6. **Lahore High Court**
Ambreen Moazzam Ali v. Ahmad Zia Ch. etc
Case No. RFA No.58154/2019
https://sys.lhc.gov.pk/appjudgments/2021LHC55.pdf

Facts: The appellant filed suit for specific performance on the basis of agreement to sell. The total consideration amount was of Rs.7,50,00,000/- out of which, Rs.1,50,00,000/- was paid. The learned trail Court directed the appellant/plaintiff to deposit remaining balance amount of Rs.6,00,00,000/- within a period of two months along with court fee of Rs.15000/-. Despite this direction, neither balance amount was deposited nor court fee was submitted, hence suit of the appellant was dismissed through impugned order/decree.

Issue: Whether the non-compliance of order of the learned trial court disentitled the plaintiff to the discretionary relief of specific performance?

Analysis: The law settled is that when the time fixed in the agreement to sell, the plaintiff/appellant should be ready, and show his bona fide by depositing the total sale consideration in the Court to demonstrate his readiness and willingness for performance of the sale agreement and any contumacious omission in this regard would entail dismissal of the suit for specific performance being an equitable relief. In the present case, admittedly, learned trial Court specifically directed the

appellant to deposit balance consideration amount of Rs.6,00,00,000/- along with proper court fee as per valuation of the suit within a period of two months, but neither balance amount was paid nor court fee was affixed by the appellant. The conduct of the appellant shows that he was not serious in performing his agreed part of the contract or in pursuing his remedy of specific performance. When this conduct of the appellant adjudged on the law settled and the touch stone of equitable principle on the subject, the same disentitles the appellant of equitable relief of specific performance.

Conclusion: The conduct of the appellant showed that he was not serious in performing his agreed part of the contract or in pursuing his remedy of specific performance. When this conduct of the appellant adjudged on the law settled and the touch stone of equitable principle on the subject, the same disentitled the appellant of equitable relief of specific performance.

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7. **Lahore High Court**
Doctor Manzoor Hussain Malik v. The State and another
Writ Petition. No.1655/ Q/ of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC30.pdf

Facts: The petitioner was rendering his services for the purposes of transplantation of human kidneys without authority, performed the illegal transplants of kidneys of two persons and after the operations, both the said patients died due to post kidney transplant rejection. Consequently, case was registered at Police Station FIA Anti-Corruption Circle, Islamabad. The petitioner seeks for quashment of F.I.R.

Issue: i) Whether the F.I.R could not be registered under section 14(2) of the Transplantation of Human Organs and Tissues Act, 2010 as amended by the Punjab Transplantation of Human Organs and Tissues (Amendment) Act 2012?
(ii).Whether the Federal Investigation Agency (FIA) had no authority to conduct the investigation of the case?

Analysis: i) The provisions of section 14(2) of the Transplantation of Human Organs and Tissues Act, 2010 as amended by the Punjab Transplantation of Human Organs and Tissues (Amendment) Act 2012 only deals with taking of cognizance of an offence by a court and the same do not place any embargo upon reporting such an alleged offence to the police authorities, registration of an F.I.R. in that regard or conducting of an investigation in respect of such an allegation.
ii) The Ministry of Interior, Government of Pakistan issued a Statutory Notification(S.R.O.) No.353(1)/2017 on 31st of March,2017, making an amendment in the Schedule of Federal Investigation Agency Act, 1974 (VIII of 1975) and placing the Transplantation Human Organ and Tissue Act 2010 in the schedule of the Federal Investigation Agency Act, 1974 (VIII of 1975) . By virtue of section 3 of the Federal Investigation Agency Act, 1974 (VIII of 1975) the Federal Investigation Agency can validly inquire into and investigate the offences

made punishable under the Transplantation Human Organ and Tissue Act 2010, including an attempt or conspiracy to commit, and abetment of any such offence.

Conclusion: i) F.I.R could be registered under section 14(2) of the Transplantation of Human Organs and Tissues Act, 2010 as the provisions of the Act do not place any embargo upon reporting such an alleged offence to the police authorities, registration of an F.I.R. in that regard or conducting of an investigation in respect of such an allegation.

ii) Federal Investigation Agency can validly inquire into and investigate the offences made punishable under the Transplantation Human Organ and Tissue Act 2010.

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8. **Lahore High Court, Lahore**
New College Publications v. Government of Punjab etc.
Intra Court Appeal No. 1695/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC80.pdf

Facts: The appellant filed writ petition in which interim stay was granted. However, on application for clarification of order filed by some respondents, the stay order was modified to the effect that the respondents, subject to final outcome of writ petition, were allowed to complete the tender process. The appellant being aggrieved has filed this intra court appeal.

Issue: Whether intra court appeal, in view of bar contained in section 3(3) of the Law Reforms Ordinance, 1972 (Ordinance), is maintainable against the impugned interlocutory order?

Analysis: Where order does not decide the matter finally and the proceedings still remain to be conducted and the rights of the parties in disputes are yet to be determined finally, the order cannot be termed as final order but the same will be "interlocutory order" in nature against which appeal under Section 3(3) of the Ordinance will not be competent. The above definition of word "interlocutory order" when applied to the impugned order, would show that only application for clarification of order was disposed of, whereby respondents were allowed to complete tender process but said tender process shall remain subject to final outcome of writ petition. The impugned order itself clarifies that main lis is yet to be decided. This demonstrates that the substantial proceedings and rights of the parties in main writ petition are yet to be decided on merits.

Conclusion: Intra court appeal is not maintainable against interlocutory order.

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9. **Lahore High Court, Lahore**
Muhammad Ismail v. Muhammad Adil
E.F.A.No.01 of 2018/BWP
https://sys.lhc.gov.pk/appjudgments/2021LHC85.pdf

Facts: Appellant seeks to set-aside order passed by the Judge Banking Court, being the Executing Court whereby execution petition was consigned to record room.

Issue: Whether the Banking Court being the Executing Court cannot go beyond the decree as it has to execute the decree as it is?

Analysis: The answer of this query has already been discussed and elaborated by the Hon'ble Supreme Court of Pakistan in "Habib Bank Limited v. Mst. Parveen Qasim Jan and others" (2014 SCMR 322) in the following manner: "There is no cavil with the proposition that a Court executing a decree ordinarily is not supposed to travel beyond its terms as held in number of judgments pronounced by superior Courts, but simultaneously the executing Court while exercising jurisdiction under section 47, C.P.C. can question the executability of a decree if it is satisfied that the decree is a nullity in the eye of law or it has been passed by a Court having no jurisdiction or the execution of the decree would not infringe the legal rights of the decree holder if refused to be executed or the decree has been passed in violation of any provision of law."

Conclusion: A Court executing a decree ordinarily is not supposed to travel beyond its terms as held in number of judgments pronounced by superior Courts, but simultaneously the executing Court while exercising jurisdiction under section 47, C.P.C. can question the executability of a decree if it is satisfied that the decree is a nullity in the eye of law or it has been passed by a Court having no jurisdiction or the execution of the decree would not infringe the legal rights of the decree holder if refused to be executed or the decree has been passed in violation of any provision of law.

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10. **Lahore High Court**
Muhammad Saee Khan. v. Judge Banking Court
2021 LHC 36
https://sys.lhc.gov.pk/appjudgments/2021LHC36.pdf

Facts: The respondent bank filed recovery suits under Financial Institutions (Recovery of Finances) Ordinance, 2001 against the petitioner and his wife, in which their applications for leave to defend were still to be decided. It was the stance of the petitioner that the matter in issue of the suits had already been finally decided by the Banking Mohtasib, Pakistan, therefore, the same could not be re-agitated by the respondent bank before the Banking Court and plaint merited forthwith rejection. The constitutional petition was filed on the premise that the Banking Court had orally refused to receive and entertain the applications for rejection of plaints/dismissal of the recovery suit.

Issue: Whether in a recovery suit under Financial Institutions (Recovery of Finances) Ordinance 2001, before the decision of application for leave to defend, an application for rejection of plaint is entertainable by the banking court?

Analysis: Relevant judgments on the subject suggest that a plaint in a recovery suit in terms of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance 2001 (the Ordinance) is required to disclose cause of action and failure to do the needful may lead to rejection of the plaint, which may also be rejected on the grounds if the plaint fails to conform to the mandatory requirements of the Ordinance or is otherwise found to be barred by law on the basis of averments of

the plaint, irrespective of the fact that whether leave to defend has been obtained by the defendant or not and such power can also be exercised by the Court suo motu. However, if the plaint is sought to be rejected on the grounds other than the averments of the plaint, i.e. on the ground of defence taken by the defendant or other material, the defendant is required to obtain leave to defend before his plea for rejection of plaint, such as, plaint being barred by res-judicata or limitation, matter having been earlier finally decided by some other competent authority (as in the present case by the Banking Mohtasib, Pakistan), on the basis of said facts, is considered. Nevertheless the full bench of Lahore High Court in Abdul Qadoos Case (2018 CLD 88) has held that application for restoration of the application for leave to defend can be filed before the Banking Court despite the accepted position that interlocutory applications cannot be filed during the pendency of recovery suit till the decision of application of leave to defend. Meaning thereby the bar on entertaining interlocutory applications during pendency of application for leave to defend is not absolute, as in exceptional circumstances a need may arise for filing such applications in a Banking suit, which the said Court may entertain and pass necessary orders. Moreover under Section 7 of the Ordinance a banking court is empowered with the powers vested in a Court by Code of Civil Procedure, 1908 and can exercise the same when there is no express provision to deal with the particular situation and there is no express bar in following the said procedure; therefore such court would have inherent powers to pass any appropriate orders in the given circumstances of the case.

Conclusion: Application for rejection of plaint can be filed at any stage of the proceedings as it is an application different from other interlocutory applications that generally cannot be filed by the defendant or entertained prior to decision of the application for leave to defend.

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11. **Lahore High Court**
Muhammad Sohail Sheikh v. The State etc
2020 LHC 3480
Criminal Revision No.199 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3480.pdf

Facts: After registration of a criminal case under Sections 4,5,8,23 of Foreign Exchange Regulation Act, 1947 (the Act of 1947) against the petitioner—a shoe exporter—Deputy Director FIA issued a letter (the impugned letter) for seizure of 29-bank accounts, including that of the petitioner. Petitioner's application for de-freezing of his account was dismissed by the Tribunal constituted under the Act of 1947. The petitioner in the revisional jurisdiction of High Court has challenged the order of tribunal and vires of the impugned letter.

Issue: i) Whether during investigation of a case FIA is competent to pass order for seizure of any property?

ii) What legal requirements FIA is bound to observe on and after of seizure of the property?

iii) Whether the letter by Deputy Director FIA for seizure of bank accounts was validly issued?

Analysis: i) According to Section 5 (5) of the Federal Investigation Agency Act, 1974 (the Act of 1974) members of Federal Investigation Agency have powers to issue an order in writing for placing an embargo upon the removal, transfer or otherwise disposing of a property which is subject matter of an ongoing investigation. However these powers being stringent in nature are to be frugally used only in those instances as are mentioned in said provision, when the member of FIA is of the opinion that process of investigation is likely to be thwarted by removing, transferring or disposing of subject matter property.

ii) The opinion concerning seizure of property formed by the member of Agency is to be expressed in writing along with the reasoning and should be incorporated in the case diary. Similarly, an FIA official is under obligation to mention the grounds which persuaded him to draw an opinion in terms of Section 5 (5). Moreover member of FIA can directly pass a seizure order only if he apprehends that the property will be removed or disposed of. In absence of such a fear, seizure order should be obtained from the "appropriate authority". According to Section 19 (3) of the Act of 1947, regarding the offences mentioned therein, the seizure order is to be obtained from a district magistrate or sub-divisional magistrate or a magistrate of the first class and that too through a representation in writing along with a statement on oath by a person authorized in this behalf by the Federal Government or the State Bank. Lastly per latter part of Section 5 (5) of the Act of 1974, the seizure order is subject to confirmation by the court having jurisdiction to try the offence.

iii) Since in this case FIR was registered one day prior to the issuance of the impugned letter. Inevitably, the Investigating Officer had ample opportunity to approach the appropriate authority under Section 19 (3) of the Act of 1947 for getting the seizure order but he opted against it. Likewise, nothing as such is available on record which may insinuate that the Deputy Director concerned was authorized by the Federal Government or the State Bank to move a representation for seizure of property in consonance with Section 19 (3). In the given circumstances, the impugned seizure letter by the Deputy Director FIA is a transgression of authority, thus is nullity in the eye of law.

Conclusion: i) During investigation of a case FIA has the power to order seizure of a property.

ii) The opinion which led to seizure of property should be expressed in writing along with the reasoning containing grounds which persuaded the member of FIA to draw such opinion and the opinion should be incorporated in the case diary. If there is no fear of removal/disposal of property then order of seizure should be obtained from the appropriate authority. Lastly the seizure order should be confirmed by the court having jurisdiction to try the offence.

iii) The impugned letter was a transgression of authority, thus nullity in the eye of law.

12. **Lahore High Court**
Yasir Imran Butt v. Chief Officer
Case No. W.P.No.10596/2017
https://sys.lhc.gov.pk/appjudgments/2021LHC92.pdf

Facts: Petitioner was appointed as daily wager (a Baildar) in October, 1999 and since then, he is in the employment of the respondent, however, services of the petitioner has not been regularized. The petitioner being aggrieved filed representation which was declined through the impugned order.

Issue: Whether a daily wager of a project, if it continues for more than 9 months, who has worked for 90 days could be considered for regularization?

Analysis: Petitioner was hired or performing duties which are not of casual nature but of permanent nature and petitioner continued his duties against said posts for almost 22 years. Under Para 1(b) of the Schedule attached to The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (Standing Orders Ordinance), if a project on which employee appointed on daily wages, continue beyond 9 months, the said employee attains the status of a permanent workman after satisfactory completion of work for 90 days against post of permanent nature. The petitioner, who is admittedly doing manual and clerical work against a permanent post with Local Government for almost 22 years as daily wager, has indeed attained the status of a permanent employee under the Standing Orders Ordinance.

Conclusion: A daily wager of a project, if it continues for more than 9 months, on completion of work for 90 days becomes a permanent workman and is entitled to regularization.

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13. **Lahore High Court**
Government of Punjab v. Muhammad Kamran Bashir
2020 LHC 3515
I.C.A. No. 168 of 2017
sys.lhc.gov.pk/appjudgments/2020LHC3515.pdf

Facts: Appellant No.3 invited applications for appointment against various vacancies in the Primary and Secondary Healthcare Centers. Respondent No.1 applied for the post of Health Technician and was interviewed. However, the recruitment process was stalled due to certain injunctive orders by the High Court. Meanwhile, the Government through notification (the notification) prescribed a new mechanism for hiring of staff managed by the Primary and Secondary Healthcare Department. Under the new regime all recruitments were to be made through written tests conducted by the National Testing Service (NTS). Thereafter appellant No.3 re-advertised the posts inviting fresh applications. Respondent No.1 prayed for appointment as Health Technician contending that he had acquired a vested right to it after his aforementioned interview which could not be taken away by the notification. Hids prayers remained unanswered so he filed a writ which was

allowed by the learned Single Judge through impugned order. Hence, Intra-Court Appeal was filled. Nevertheless during hearing of the ICA the division bench observed that the impugned order was in conflict with the judgment of another Division Bench so it was appropriate that the matter should be placed before a Full Bench of high court; resultantly full bench was constituted for hearing of the matter.

Issue: Whether appearance for interview for a government job creates a vested right which could be enforced through writ of mandamus?

Analysis: Considering the meaning of term 'right' and on the touchstone of the principles discussed in the case law on the subject it is deduced that an interview does not create vested right in favour of a candidate because it is never the finale of the requirement process. The candidates may be required to fulfill certain other recruitment like, for example, medical examination, furnishing of bond and verification of testimonials, before their appointments are notified. In the instant case, Respondent No.1 was interviewed by the designated committee but further proceedings were stalled. The Appellants neither displayed any merit list nor issued appointment letter to him after it. There is no evidence that he was even selected in that interview. Hence, he cannot claim any vested right for appointment to the post he applied for.

Conclusion: Mere appearance in interview does not create an enforceable right in favour of candidate for which he could seek an order in the nature of mandamus.

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14. **Lahore High Court**
ABWA Knowledge Pvt Ltd and another v Federation of Pakistan and another
Writ Petition No.54112 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3491.pdf

Facts: The petitioner, a private medical college, challenged the vires of Pakistan Medical Commission Admission Regulation 2020-2021, regarding mandatory requirement of undergoing MDCAT examination for admission in a Medical College and its applicability on the private medical college being contrary to proviso of section 18 of the Pakistan Medical Commission Act, 2020, which, according to the petitioner, provides that the same will be applicable to session 2021 and from onward and thus session 2020-2021 is exempted from this mandatory requirement with respect to private medical colleges as the same is applicable to public medical colleges only. The petitioner also questioned the regulations, which bound private medical colleges to submit its fee structure to PMC being in contravention to section 19(7) of the Act.

Issue: i). Whether private medical colleges are exempted from requirement of mandatory MDCAT examination for admission in the session 2020-2021 according to proviso of section 18 of Pakistan Medical Commission Act, 2020?

ii). Whether PMC Admission Regulations 24 and 27 of the Amended Regulations are in conflict with Section 19 (7) of Pakistan Medical Commission Act, 2020

Analysis: (i). The preamble of the Act provides for establishment of a uniform minimum standard of basic and higher medical education. The function of the PMC under the Act is of a Regulator, which is being regulated by (i) Council (ii) Authority and (iii) Board. So, the word 'uniform' clearly shows the intent and purpose of the regulator i.e. PMC which can regulate the admissions to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT.

Section 18(1) of the Act makes it quite obvious that mandatory requirement of MDCAT is imposed on those students who intend to seek admission to medical or dental under-graduate program anywhere in Pakistan while Section 18(2) of the Act put a rigid restriction of passing MDCAT before taking admission in any medical or dental college in Pakistan which is also a precondition to grant a license to qualified doctors by the PMC. Meaning thereby, for taking admission in a public or private medical college, students from all over the country have to undertake and get through the necessary requirement of MDCAT test. Section 18(2) of the Act further creates a mandatory restriction for a student who does not fulfill the requirement of Section 18(1) of the Act will not be awarded degree, which is clearly suggestive of the fact that requirement of MDCAT test is mandatory requirement for admission into medical colleges as well as for the awarding of degree.

ii) Section 19(7) of the Act deals with the fee (breakdown of fee of entire program of study for the students who are seeking enrollment/admission in those medical colleges). This Section also bars the medical colleges from enhancing the fee during the entire program. It is also imperative for all the medical colleges prior to initiating annual admission process to publicly declare the fixed tuition and all ancillary fee structure for the entire program of study.

Conclusion: i) The passing of the MDCAT test is a mandatory requirement for all students of public or private college seeking admission to Medical or Dental under graduate program.

ii) Regulations No.24 to 27 are in continuation and explanation of Section 19(7)(8) of the Act as these Regulations bind the medical colleges to give justification of fee fixed by them to PMC. These regulations are not in conflict with section 19(7) of the Act.

15. **Peshawar High Court**
Muhammad Hussain v. The State etc.
Cr.Misc.BA No. 3743-P/2020
https://www.peshawarhighcourt.gov.pk/PHCCMS//judgments/BA3743-2020-J.pdf

Facts: The petitioner, who was accused in FIR registered for offenses under section 302/324/34 P.P.C sought post arrest bail on medical grounds.

Issue: Whether bail can be granted to an accused involved in heinous offenses on medical grounds who, according to opinion of Standing Medical Board cannot be treated within the premises of jail?

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

Conclusion: Where the court is satisfied about the sickness of the accused and such disease cannot be properly treated in custody, then gravity of the disease would outshine the gravity of the offense and bail could be granted to such an accused.

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16. **Sindh High Court**
Ayub Khan v. The Learned Member Sindh Labor Appellate Tribunal and 03 others
Constitutional Petition No. D –6031 of 2017
2021 SHC 36
https://eastlaw.pk/cases/Ayub-KhanVSThe-learned-Member.Mzk3MzU2

Facts: The petitioner filed grievance petition before the Sindh Labour Court (SLT) and contended that after his retirement from Karachi Dock Labour Board (Board) his son was entitled for employment on the basis of 'son quota' as agreed between the Board and the Collective Bargaining Agent (CBA). The SLT held him entitled for the relief claimed. On appeal Sindh Labour Appellate Tribunal (SLAT) set aside the judgment of SLT and held that he was a permanent worker in the Board and during the service had used to get remuneration in lieu of non-employment of his son; hence not entitled for the relief claimed by him. The petitioner through constitutional petition has impugned the order of SLAT.

Issue: Whether the petitioner at the time of filing his grievance application before the learned Sindh Labour Appellate Tribunal, was not a worker as defined under Section 2(xxix) of the Industrial Relations Act, and therefore he was rightly non-suited by the learned SLAT?

Analysis: Industrial dispute can be raised by both the CBA or the employer/government and not by any retired worker before the Labour Court. The Petitioner stood retired from service in the year 2005 in the normal course and was not removed from service in connection with or in consequence of any industrial dispute, nor had his removal led to such dispute. As per the memorandum of settlement, it was made clear that in case of retirement if the dockworker does not want his son to be

recruited he be also remunerated in lieu of the son quota and the petitioner was also so remunerated. So far as the implementation of a settlement is concerned, the learned Labour Court is competent to enquire into and adjudicate any matter relating to the implementation or violation of a settlement.

Conclusion: Dispute between the parties was not an industrial dispute as defined under the Industrial Relations Act, 2008. Since at the time of filing the grievance application, the petitioner was not a worker, therefore grievance application filed by him before learned SLC was not maintainable in law.

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17. **Sindh High Court**
Anis Haroon & Others v. Federation of Pakistan and the Secretary, Ministry of Foreign Affairs
Constitutional Petition No. D-6948 of 2019 2021 SHC 52
https://eastlaw.pk/cases/Anis-Haroon-VSFederation-of-Pakistan.Mzk3Mzcz

Facts: Respondent No.3 was appointed as an officer in the Foreign Service cadre in the year 1969. He attained the age of superannuation in the year 2008 and after retirement from service he was reemployed / appointed as Ambassador/Permanent Representative of Pakistan to the United Nations, New York against Section 14(I) of the Civil Servants Act, 1973 ("the Act, 1973"). Petitioners questioned his appointment on the touch stone of Article 199(1)(b)(ii) of the Constitution, 1973 and sought direction of the Hon'ble High Court to ask him to vacate the office.

Issues: i) Whether the post of Permanent Representative of Pakistan to the United Nations is to be filled amongst the career foreign service officers or eminent personalities from business, media, law, and other areas on a contract basis?

ii) Whether the Prime Minister of Pakistan is the competent authority under Rule 15(1)(g)(h) of the Rules of Business, 1973 or the Federal Cabinet under Article 90 of the Constitution of Pakistan to make such an appointment?

Analysis: i) Issues raised in the instant Constitutional petition are relatable to matters of Foreign Policy, Diplomatic Missions and security of the country. Such issues are neither justiciable nor they fall within the judicial domain for interference under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as held in case cited 2014 SCMR 111. Permanent Representative of Pakistan to the United Nations is the diplomatic position representing Pakistan on all platforms of the United Nations (UN) in New York City. Apart from the Pakistan Mission to the UN in New York, there is another Pakistan Mission based at the UNO office in Geneva, Switzerland; and, the mission is usually headed by a career foreign service officer, but has historically been led by eminent personalities from business, media, law and other areas. Services of the respondent No.3 were hired on contract, based on his experience and expertise in foreign services, by utilizing the available quota of non-career Head of Missions. Admittedly, respondent no.3

is not a Civil Servant as defined under Section 2(1)(b)(ii) of Civil Servants Act 1973, but a simple contract employee in terms of his contract letter.

ii) Assertion of the petitioners that instead of the Prime Minister, the Federal Cabinet is competent to make an appointment for the subject post is wholly misconceived for the reason that under Rule 15(1) (g)(h) of the Rules of Business, 1973, and Article 90 of the Constitution of Pakistan, the Prime Minister is also the competent authority. The cases reported as P L D 2016 Supreme Court 808 *(*Mustafa Impex case) and P L D 2020 Peshawar 52 (Jurists Foundation V/S Federal Government) are distinguishable on the premise that the case of Mustafa Impex was related to Rule 16 of the Rules of Business 1973 and the Hon'ble Supreme Court declared Rule 16(2) as ultra vires but made no reference to other relevant Rules of Business or Rules related to the instant case. In addition to the above, Rules of Business 1973 are framed under Article 90 and 99 of the Constitution of Pakistan. In Rule 15(I)(g)(h) and Schedule V-A of Rules of Business, it is the discretion of the competent authority / Prime Minister based on the summary placed after deliberation as per Rule 15(2) of the Rules of Business 1973. Furthermore, in the case of Mustafa Impex, neither did the Hon'ble Supreme Court strike down Rule 15 of the Rules of Business 1973 nor have the petitioners challenged Rule 15 of the Rules of Business being ultra vires to the Constitution of Pakistan, 1973. Moreover, the issue in the case of Mustafa Impex was concerning the non-issuance of notification by the Federal Government. The case of Jurists Foundation is also distinguishable on the ground that it was a constitutional appointment, which required amendment in the Army Act, 1952, hence, required legislation which falls in the business of the Cabinet under Rule 16(a) of Rule of Business, 1973.

Conclusion: i) Respondent No.3 is not a Civil Servant as defined under Section 2(1)(b)(ii) of Civil Servants Act 1973, but a simple contract employee in terms of his contract letter. Appointment of respondent No.3 cannot be termed as reemployment against a promotional vacancy, as it has not caused any prejudice or damage to promotion prospects of the career of FSP officers.

ii) In the instant case, it is not the Federal Government but the Prime Minister, who is the competent authority. While holding that matter in question is a policy decision the Petition was dismissed.

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18. **Supreme Court of India**
Contempt Petition (Civil) No. 92 of 2008
Rama Narang v. Ramesh Narang and others

https://main.sci.gov.in/supremecourt/2008/13067/13067_2008_35_1501_25460_Judgement_19-Jan-2021.pdf

Facts:

- The present contempt petition arises out of a family dispute between a father on one hand and his two sons from his first wife on the other hand. Due to business disputes, parties approached the Court and a consent order

was passed by the Supreme Court that all businesses will be run by both the parties with mutual consent and accounts will be operated with the signatures of petitioner at one hand and one of his one from other side.

- Respondents issued cheques without obtaining the signatures of petitioner on the pretext that he was creating hindrances in the smooth running of the business by wrongly using his veto power and a contempt petition was filed by the present petitioner and respondents were convicted by the Supreme Court on 15th March 2007 and were sentenced to undergo two months of rigorous imprisonment but execution of that sentence was suspended and parties were directed to meticulously comply with the undertakings given by them to this Court. It was held by the court that in case similar violation of the undertakings given to this Court is brought to the notice of the Court, in that event, the respondents shall be sent to jail forthwith to serve out the sentence imposed in that case.
- Later, contending that on account of non-cooperation by the Petitioner in signing the cheques, the functioning of the Company had come to a standstill, Respondents/Sons filed Company Petition before the Company Law Board, New Delhi (hereinafter referred to as 'CLB'). The CLB noticed, that due to differences among the Directors, many operational issues like payment of salaries/wages, payment to supplier etc. were pending, leading to agitation by employees and irregularities in supply. The CLB found it appropriate, that till the petition was disposed of, as an interim measure, in the interests of the Company and more than 3000 employees/workers, there should be a mechanism by which the day-to-day operations of the Company were carried on without any hitch and passed an interim order of appointing a facilitator with the responsibility to bring about a consensus among the directors on matters which are urgent and essential to ensure that the business of the Company is carried on smoothly and in case a consensus is not possible, taking into consideration the views of the three Directors, he will take a final decision which will be binding on the Directors and the Company.
- Petitioner filed instant contempt petition by alleging that the said interim order passed by CLB was violative of the order of this Court dated 15th March 2007 as same was passed without jurisdiction by the CBL and objection with regard to the its lack of jurisdiction was already taken by the petitioner.

Issue: Whether CBL had any jurisdiction to pass any interim order when challenge to his jurisdiction was made by the petitioner and whether passing of interim order by the CBL amounts to violation of Supreme Court's above-said order dated 15th March, 2007?

Analysis: Supreme Court held that:

- The contempt proceedings are quasi-criminal in nature and the standard of proof required is in the same manner as in the other criminal cases. The alleged contemnor is entitled to the protection of all

safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally, to bring the matter within the ambit of the said provision.

- Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority
- Where an objection is taken to the jurisdiction to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance. However, that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. It has been held, that a mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It has been held, that it can yet pass appropriate orders. Though, this Court has observed, that the question of jurisdiction should be decided at the earliest possible time, the interim orders so passed are orders within jurisdiction, when passed and effective till the court decides that it has no jurisdiction, to entertain the suit.
- It has been held, that those interim orders would undoubtedly come to an end with the decision that the Court had no jurisdiction. This Court has held, that if the Court holds that it has no jurisdiction, it is open to it to modify the orders. However, it has been held, that while in force, the interim orders passed by such Court have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff, provided violation is committed before the decision of the Court on the question of jurisdiction.

Conclusion: Supreme Court, in view of above discussion, held that pending the decision on the question of jurisdiction, the Court has jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case and the petitioner has failed to make out a case of willful, deliberate and intentional disobedience of any of the directions given by this Court or acting in breach of an undertaking given to this Court.

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19. **Supreme Court of the United States**
June Medical Services v. Russo, 591 U.S__ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1323_c07d.pdf

Facts: June Medical Services, a clinic in Shreveport, Louisiana, challenged the Louisiana Act 620 which required doctors performing abortions to have admitting privileges at a local hospital within 30 miles of the facility where the abortion was to be performed. The federal district court issued a preliminary injunction. On appeal, the 5th Circuit lifted the injunction. While June Medical Services' lawsuit was ongoing, the U.S. Supreme Court held in Whole Woman's Health v. Hellerstedt that a Texas law similar to Act 620 was unconstitutional. On remand, the district court held Act 620 was unconstitutional. On appeal, the 5th Circuit

reversed the district court's ruling and hence the matter came up to the US Supreme Court.

Issue: Whether the 5th Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with the U.S. Supreme Court's binding precedent in *Whole Woman's Health v. Hellerstedt* (*WWH* 2016)?

Analysis: This law would have limited abortions to one single doctor in the state as other doctors had not yet gained admission privileges or were outside the given range. The Texas law was declared unconstitutional in WWH in 2016 on the basis that limiting clinic availability was an undue burden on women seeking legal abortions, a constitutional right as determined by the landmark ruling Roe v. Wade (1973). The Louisiana law, however, had survived its challenge on appeal to the United States Court of Appeals for the Fifth Circuit, which ruled the law had fundamental differences from the Texas law based on the WWH ruling. The Court ruled that a Louisiana state law placing hospital-admission requirements on abortion clinics doctors was unconstitutional.

Conclusion: The august Supreme Court ruled in a 5–4 decision that the Louisiana law was unconstitutional, reversing the Fifth Circuit's decision. Chief Justice John Roberts opined, "*The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana's law cannot stand under our precedents*".

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LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(15-04-2021 to 30-04-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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1. **Lahore High Court**
Mst. Parveen Akhtar, etc. v Noor Muhammad, etc.
Civil Revision No.21651 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC926.pdf

Facts: Petitioners, the legal heirs of one of the respondents against whom decree in a suit for possession was passed by first appellate court, filed application under section 12(2) CPC on the ground that their father/respondent died during pendency of appeal but they were not impleaded as party thereafter, so decree be set aside. However, the application was dismissed.

Issue: Whether a decree can be set aside under section 12(2) CPC on the ground that during pendency of appeal, one of the respondents died but the present respondents did not bring this fact into attention of the court present petitioners were not made party to the appeal?

Analysis: Order XXII of the Code of Civil Procedure (CPC) deals with the death, marriage and insolvency of parties pending proceedings. Rule 4 provides the procedure in case of death of one or several defendants or sole defendant. By virtue of Rule 11, Order XXII has been made applicable to the appeals mutatis mutandis. From the analysis of the above referred provisions of law it becomes crystal clear that in case of death of one of the respondents in the appeal, if the right to sue survives against the surviving respondents, non-implement of legal representative of deceased respondent would have no adverse bearing on the merits of the appeal.

Application under Section 12(2) of CPC was highly misconceived and ill-founded, even at the face of it as it does not come within the purview of Section 12(2) of CPC. The petitioners should have availed remedy under Order XXII Rule 9(2)of CPC but even then if we treat the application of the petitioners under the said provision of law that too was not maintainable

Conclusion: In case of death of one of the respondents in the appeal, if the right to sue survives against the surviving respondents, non-implement of legal representative of deceased respondent would have no adverse bearing on the merits of the appeal and a decree cannot be set aside under section 12(2) CPC on that ground.

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2. **Lahore High Court**
Abdul Waheed v Additional District Judge
Writ Petition No. 1854 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC901.pdf

Facts: The Petitioner who was awarded a contract for running the Sarai (hostelry) at the Nishtar Hospital, Multan invoked doctrine of frustration pleading commercial impracticability of contract and claimed compensation by way of remission of monthly charges i.e. for the lockdown period during Covid-19 or for extension of contract for a proportionate time.

Issue: (i) Interplay between the principles of force majeure and the doctrine of frustration?

(ii) What is distinction between License and Lease?
(iii) Whether section 56 of the Contract Act 1872 or principles of Force Majeure are applicable on special laws i.e. Easement Act 1882 and Transfer of Property Act 1882?

Analysis: The provisions relevant to the principle of force majeure and the doctrine of frustration in Pakistan are sections 32 and 56 of the Contract Act, 1872. Section 32 is applicable where the contract itself contains an express or implied force majeure clause for contingencies on whose happening the contract cannot be carried out and prescribes its consequences. If there was no such provision in the contract/agreement or it did not apply, then the party could have recourse to section 56 which laid the doctrine of Frustration. Moreover it was also eloquently put that commercial impracticability or frustration should not provide a means of escape from a contract less profitable than anticipated. Moving on the court while deciphering the nuance between lease (Transfer of Property Act) and license (Easement Act) observed that the relationship between the parties is determined from the contents of their agreement rather than the phraseology used. The most important factor that distinguishes a lease from a license was that in the former there was a transfer of interest in immovable property while in the latter such element was excluded albeit the right to exclusive possession was an important consideration. In the case in hand it was held that as it was not a lease, section 62(f) of the Easements Act rather than section 108(e) of the TPA would apply. Being a special law it also excluded section 56 of the Contract Act.

Conclusion: The party could only have recourse to sec.56 i.e. doctrine of frustration where there is an express provision regarding force majeure.
In lease there is a transfer of interest in immovable property, while in lease it is not the sole consideration.
Petitioner's case does not fall in the ambit of 'lease' but is a license and for him to invoke 'frustration' recourse could only lie under sec. 62(f) of the Easements Act instead of sec.108 (e) of TPA and being a special law it also excluded section 56 of the Contract Act.

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3. **Supreme Court of the United States**
Barton v. Barr, 590 U.S. __ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-725_f2bh.pdf
https://ballotpedia.org/

Facts: Andre Barton, a Jamaican national, entered the U.S. in 1989 and became a lawful permanent resident in 1992. In 1996, Barton was convicted of several criminal charges. In 2007 and 2008, he was convicted of additional criminal charges. The U.S. Department of Homeland Security charged Barton as deportable. Barton challenged the charges for removal. The U.S. government argued Barton's crimes made him "inadmissible" under s. 1182(a)(2). Barton argued that as an already-admitted lawful permanent resident, he could not be rendered inadmissible. An immigration judge ruled in favor of the government. On appeal, the Board of Immigration Appeals agreed with the immigration judge. On further appeal, the

11th Circuit upheld the immigration judge and the Board of Immigration Appeals' rulings.

Issue: Whether a lawfully admitted permanent resident who is not seeking admission to the United States can be "rendered inadmissible" for the purposes of the stop-time rule, 8 U.S.C. s. 1229b(d)(l)?

Analysis: The ruling upheld a decision by the Eleventh Circuit Court of Appeals that green card holders could be rendered "*inadmissible*" to the United States for an offense after the initial seven years of residence under the Reed Amendment. Justice Brett Kavanaugh, writing the majority opinion, ruled that DHS could deport Barton stating "*the immigration laws enacted by Congress do not allow cancellation of removal when a lawful permanent resident has amassed a criminal record of this kind.*" Further opining that "*Removal of a lawful permanent resident from the United States is a wrenching process, especially in light of the consequences for family members. Removal is particularly difficult when it involves someone such as Barton who has spent most of his life in the United States. Congress made a choice, however, to authorize removal of noncitizens even lawful permanent residents, who have committed certain serious crimes. And Congress also made a choice to categorically preclude cancellation of removal for noncitizens who have substantial criminal records. Congress may of course amend the law at any time. In the meantime, the Court is constrained to apply the law as enacted by Congress".* In a dissenting opinion, Justice Sonia Sotomayor argued that as Barton had already been admitted, the Government must prove he is deportable rather than just inadmissible.

Conclusion: In a 5-4 ruling, the court affirmed the decision of the United States Court of Appeals for the 11th Circuit, holding that for purposes of cancellation-of-removal eligibility, s. 1182(a)(2) offense committed during the initial seven years of residence does not need to be one of the offenses of removal.

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4. **Lahore High Court**
Sikandar Mahmood v. LDA
W.P. No. 187944/2018
Mr. JusticeAsim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC881.pdf

Facts: Petitioner through the constitutional petition challenged commercialization fee assessed on his property by LDA.

Issue: Whether commercialization fee under the LDA rules is to be calculated on the basis of commercial value of land without valuing the structure/building constructed upon it?

Analysis: Submissions that commercialization fee has to be computed at prescribed rate on the basis of commercial value of the land exclusively, without valuing the structure or building are bordering absurdity. It is evidently clear upon reading of rule 31(1) of Rules, 2014 that temporary commercialization is allowable, subject to fulfilment of conditions, both qua the land and property – the reference to expression property in this case is meaningful. Buildings/structures raised upon

the land underneath, forms an integral part of the land when examined in terms of the definition of land in section 3(o) of the Lahore Development Authority Act, 1975. Moreover the term 'immovable property' is defined in section 2 (31) of the General Clauses Act 1956, which defines that immovable property shall include land, benefits to arise out of land, and things attached to the earth. That definition is by and large similar to the definition of Land in LDA Act, 1975, which suggests that structure raised / building constructed formed part of the land, which cumulatively constitute an immovable property. Hence, it's legal to ascertain commercial value of the land, in totality, inclusive of any structure / building thereupon.

Conclusion: The value of the land, inclusive of any structure / building thereupon, is to be considered for the calculation of commercialization fee commercial.

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5. **Supreme Court of Pakistan**
M/s. Lung Fung Chinese Restaurant v Punjab Food Authority, C.P.1331-L/2017
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1331_l_2017.pdf

Facts: Allegedly invoking powers under section 13 (1) (c) of the Punjab Food Authority Act, 2011(the Act) Food Safety Officer (FSO)sealed a restaurant. Later on the said restaurant was de-sealed and it was served with an improvement notice under section 16 of the Act.

Issue: Whether the powers of FSO under section 13 (1) (c) of the Act are ultra vires to the Constitution?

Analysis: No ground or any other legislative guideline has been given under section 13(1) (c) of the Act that permits or empowers the FSO to exercise his discretion and invoke the power of sealing. Section 13(1) (c) simply states that FSO can seal any premises where he believes any food is prepared etc. Section 13(1) (c) does not provide when the sealing powers can be invoked. Further, the act of "sealing" is not supported by a remedial mechanism as in the case of seizure of food. Therefore, there is no legal remedy available to a food operator or food business after the premises have been sealed. There is also no provision for de-sealing under the Act…The power of sealing in the hands of the FSO can easily be applied arbitrarily which cannot be permitted under our constitutional scheme, as any such act would offend fundamental rights under Articles 18, 23 and 25 of the Constitution. The power of sealing of premises by the FSO, in its present form, is therefore ex facie discriminatory.

Conclusion: The power of the FSO to "seal any premises" under section 13(1) (c) is unconstitutional and illegal, hence struck down.

6. **Lahore High Court**
Saqib Ramzan v. The State
Criminal Appeal No.485 of 2016
Mr. Justice Ch. Abdul Aziz, Mr. Justice Muhammad Sajid Mehmood Sethi,
https://sys.lhc.gov.pk/appjudgments/2021LHC872.pdf

Facts: Appellant was convicted and sentenced for getting 504 grams of *Charas* recovered from his house.

Issue: Under what circumstances ingress into a building for recovery of narcotics without a search warrant can be made by the investigating officer?

Analysis: The language of section 21 of CNSA is explicit and leaves no room for discussion that as general rule to the effect that ingress into a building is to be made for the recovery of narcotics after obtaining a search warrant, more importantly by a police officer not below the rank of Sub-Inspector. The requirement of obtaining search warrant can only be relaxed if there is an apprehension that afflux of time in having recourse to the court will provide an opportunity of escape and removal of narcotics to accused.

Conclusion: Apprehension of escape of accused and removal of narcotics are the only circumstances when requirement of getting a search warrant before entering a building can be relaxed.

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7. **Lahore High Court**
Rehan Shehzad v The State
Crl. Misc. No.356-B of 2021
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC868.pdf

Facts: Petitioner seeks post arrest bail in a case involving charges of domestic violence whereby he allegedly beat his wife and caused fracture on the cheekbone below.

Issue: What material is to be considered by the court at a time of grant of post arrest bail?

Analysis: In offences that fall within the prohibitory clause, the concession of post arrest bail is to be withheld, if reasonable grounds exist for believing that the accused has been guilty of such an offence. In order to ascertain the presence of reasonable grounds, the court has to make tentative assessment from the following material:-

(i) nature of accusation embodied in FIR;
(ii) statements of the witnesses recorded u/s 161 CrPC;
(iii) medical evidence; &
(iv) other incriminating material collected during the course of investigation.

Conclusion: Accusations of FIR, statements of witnesses, medical evidence and other incriminating material collected during investigation are to be considered for tentative assessment by the court at the time of grant of post arrest bail. Petition was finally dismissed.

8. **Sindh High Court**
Collector, MCC Hyderabad vs. Faiz Muhammad & Another
SCRA 11 of 2020 and CP D 296 of 2020
Muhammad Junaid Ghaffar, J. Agha Faisal, J.
http://43.245.130.98:8056/caselaw/view-file/MTUwOTA4Y2Ztcy1kYzgz

Facts: A bus was intercepted on the highway and a search thereof led to the discovery of a specially designed concealed cavity, containing foreign origin smuggled cigarettes ("Contraband"). Pursuant to a show-cause notice, Contraband and the Bus were confiscated. While recording the admission of the appellant that the Bus did in fact have a concealed cavity wherefrom the Contraband was recovered, the Collector Appeals rejected the appeal. However, in appeal, learned appellate tribunal while relying on SRO 499(I)/2009 dated 13.06.2009 orderedfor release of the Bus against payment of fine equal to twenty percent of ascertained customs value. The present reference application has assailed the Impugned Judgment; whereas, the petition seeks implementation thereof.

Issue: Whether in the present facts and circumstances the Bus could be released per the SRO?

Analysis: learned Appellate Tribunal did not consider the import of the admitted existence of a concealed cavity in the Bus wherefrom the Contraband was recovered; did not weigh the factum that the tampering of the chassis of the Bus could not be dispelled by the claimant of the Bus either in the original adjudication proceedings or the proceedings before the Collector Appeals; and proceeded to predicate its decision on the absence of reference to the forensic report in the show cause notice. SRO expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein. In view of the admitted factum that the Bus was found carrying smuggled Contraband in false / concealed cavities, no case has been made out before us to justify the extension of the benefit of the SRO in the said facts.

Conclusion: Question framed above was answered in the negative. Impugned Judgment held in dissonance with the law. The reference application was allowed.

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9. **Lahore High Court**
Shafique Ahmad v The State etc.
Criminal Appeal No.1308 of 2013 [2021 LHC 672]
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2021LHC672.pdf

Facts: During the course of patrolling, complainant (Inspector) and his squad saw six terrorists riding on three motorcycles, who attacked the contingent deployed at the bay with automatic weapons raising slogans of Allah-o-Akbar. As a result of their indiscriminate firing, four police officials were killed at the spot while one miraculously escaped. On seeing the police patrol vehicle, the terrorists sped away. Two accused persons were challaned. Through their respective statements recorded under section 342 Cr.P.Cthe accused persons professed innocence and maintained that it was

a high profile case and the real culprits were not traceable; hence the Complainant and his colleagues falsely implicated them to show their efficiency. On conclusion of the trial, the learned Judge Anti-Terrorism Court acquitted one accused but convicted and sentenced the other (appellant) on the basis of his extra-judicial confession; hence this appeal under section 25 of the Anti-Terrorism Act, 1997.

Issue: Whether an accused may be convicted on the sole basis of extra-judicial confession; without evidence to prove that why he preferred to ventilate his suffocating conscience?

Analysis: The extra-judicial confession must be received with utmost caution. There are three essentials to believe an extra-judicial confession: firstly, that the extra-judicial confession was in fact made; secondly, that it was made voluntarily; and thirdly, that it was truly made. While referring plethora of case law, the Hon'ble Court has mentioned as many as thirteen principles laid down in different times by the Hon'ble Courts in Pakistan about appraisal of evidence based on extra-Judicial confession. Few of them are referred here in a very brief manner:

- It can be used against an accused only when it comes from unimpeachable sources.
- It must be corroborated in material particulars through trustworthy evidence.
- Conviction on capital charge cannot be recorded in its basis alone.
- No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it has to be visualized and appreciated purely consequent upon a human conduct.
- The status of the person before whom the extra judicial confession is made must be kept in view.
- Evidence of witnesses before whom accused made extra-judicial confession would not be worth reliance when witnesses exhibited unnatural and inhuman conduct after accused had made confession to them.
- The Court should also look at the time lag between the occurrence and the confession and determine whether the confession was at all necessary.
- Joint confession cannot be used against either of them.
- Confession made to a police officer is to be ignored even if it was made in the immediate presence of a Magistrate.
- The Hon'ble Court also referred case cited as AIR 2012 SC 2435 of Indian Supreme Court, wherein after thorough analysis of various judgments following principles were laid down:
    - (i) It should be made voluntarily and should be truthful.
    - (ii) It should inspire confidence.

(iii) It attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(iv) It should not suffer from any material discrepancies and inherent improbabilities.

(v) It has to be proved like any other fact and in accordance with law.

In present case if the appellant confessed his guilt five days earlier to the recording of supplementary statement by the complainant, then why the complainant was not aware about this very fact? Apparently there was no palpable reason for the appellant to make an extra-judicial confession before prosecution witnesses. There is no evidence that the accused approached them to ventilate his suffocating conscience or was in a morass and needed their help. More importantly acquittal of co-accused had also not been challenged. The Appellant could not be convicted on the same evidence.

Conclusion: Appeal was allowed and the appellant was acquitted for not proving of charge based on extra-judicial confession.

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10. **Lahore High Court**
Abid Ali V. State
Crl. Appeal No.312-J of 2019
Mr. Jusice Muhammad Waheed Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC751.pdf

Fact: This is an appeal against judgment of conviction in case registered under Section 9 (c) of the Control of Narcotic Substances Act, 1997. During the trial examination-in-chief of complainant was recorded and his cross-examination was reserved but subsequently he did not make himself available for cross-examination though efforts were made to procure his attendance.

Issue: i) Whether the examination in chief of witness without cross examination, due to his non availability, acquires status of a "legal statement"?

ii) Whether accused can be convicted without proving "safe custody" of case property?

Analysis: i) The statements of witnesses would include examination-in-chief, the cross-examination, if the accused intends to do so or re-examination if the prosecution wants to avail that opportunity. In the present case, the appellants wanted to cross-examine the witness but he did not appear before the Court therefore, in such circumstances without cross examination, the statements of witness cannot be regarded as complete statements within the meaning of Article 133 of Qanun-e-Shahadat Order, therefore, the said statements, without cross-examination, cannot be termed as legal statements.

ii) It is well settled that if safe custody of allegedly recovered substance/ case property has not been proved in narcotic cases, there is no need to discuss other merits of the case and it straightaway leads to the acquittal of the accused.

Conclusion: i) The examination in chief of witness without cross examination, due to his non availability, does not acquire status of a "legal statement.

ii) The accused cannot be convicted without proving "safe custody" of case property.

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11. **Supreme Court of Pakistan**
Secretary Elementary & Secondary Education Department, Government of KPK v Noor-ul-Amin,
CIVIL APPEAL NO. 985 OF 2020
Mr. Justice Gulzar Ahmed, C.J. Mr. Justice Ijazul Ahsan Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._985_2020.pdf

Facts: Respondent was granted ex-Pakistan leave. As the respondent did not report to the duty on expiry of his ex-Pakistan leave, he was issued show-cause notice. He did not report for duty despite issuance of notice in the newspaper, therefore, he was removed from service.

Issue: Whether holding of regular inquiry is necessary in view of admitted absence from duty?

Analysis: So far as the question of regular inquiry is concerned, we note that the very fact of respondent remaining absent is not a disputed fact and thus there was no occasion for holding a regular inquiry in the matter.

Conclusion: Holding of regular inquiry is not necessary in view of admitted absence from duty.

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12. **Sindh High Court**
Ghulam MurtazaAbbasi vs. National Bank of Pakistan
Constitutional Petition No. D –5657 of 2019 [2021 SHC 304]
Mr. Justice Muhammad Shafi Siddiqui, Mr. Justice Adnan-ul-Karim Memon
https://eastlaw.pk/cases/Ghulam-Murtaza-AbbasiVSNational-Bank-of.Mzk4MjIy

Facts: Petitioner, the employee of a Bank was prosecuted in an inquiry and his services were dispensed with on the ground of misconduct by treating the period of his suspension from service as a punishment. He sought reinstatement of his service with all back benefits.

Issue: Whether in the absence of specific assertion of having remained un-employed, the petitioner was entitled to the back benefits?

Analysis: About the back benefits, there are two basic principles; (a) that back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and (b) as regards the matter of onus of proof in cases where a workman 'is entitled to receive the back benefits it lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto, subject to the proviso that

the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. The reason is that back benefits are to be paid to the workman, not as a punishment to the employer for illegally removing him but to compensate him for his remaining jobless on account of being illegally removing him from service.

Conclusion: In the absence of specific assertion of having remained un-employed, the petitioner was not entitled to the back benefits.

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13. **Lahore High Court**
Misbahud Din Zaigham& others v Federal Investigation Agency & others
W.P No.68772 of 2019
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC941.pdf

Facts: The financial institutions in their complaints alleged the commission of an offence envisaged by section 2(g) (i) of willful default as defined in the Financial Institution (Recovery of Finances) Ordinance, 2001 whereupon F.I.A issued notice to petitioners. A Full Bench of Lahore High Court has already held in its judgment reported as Mian Ayaz Anwar and others v. State Bank of Pakistan and others (2019 CLD 375) that the determination of default as a civil liability must precede a notice regarding the commission of the offence of willful default under Section 2(g)(i) as this related to civil liability of default and must be determined by a court of competent jurisdiction which would conclude that there was an obligation to pay the amount in default and would trigger the offence of willful default in such cases.

Issue: Whether determination of the civil liability would include a determination to be made by the appellate court as well?

Analysis: The intention of the Hon'ble Judges as expressed in Mian Ayaz Anwar case has to be ascertained by considering the precedent's words, context and purpose and on this basis interpretative role will be assumed by this Court…Although, the learned Judge, speaking for the Full Bench did not elaborate (since the issue did not arise squarely before the Court),…. laying down the rule regarding pre-determination of civil liability of default in Mian Ayaz Anwar the learned Judges clearly meant that not only the determination must be made by court of first instance but by one appellate court as well…The view that the appellate procedure must conceivably be part of the determination of civil liability is based on two principles entrenched in our jurisprudence. The first is drawn from an established line of respectable authority that an appeal is a continuation of the original suit and opens up the case for rehearing on error and facts, both. And the second is the critical importance of constitutional criminal law which protects and preserves the right of a person to due process of law in all criminal prosecutions.

Conclusion: In laying down the rule regarding pre-determination of civil liability of default in Mian Ayaz Anwar case the Hon'ble Judges clearly meant that not only the

determination of the civil liability must be made by court of first instance but by appellate court as well.

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14. **Lahore High Court**
Mohammad Wajid Murshid and another v Silk Bank Limited
Execution First Appeal No.11 of 2019
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC977.pdf

Facts: Property of one of the appellants'/judgment debtors in a Banking suit, which was not specifically mortgaged in favor of the financial institution, was also included and put into auction by the Banking Court, while executing the decree and application for correction of properties under execution to this extent, was also dismissed.

Issue: Whether a property belonging to judgment debtor but was not actually mortgaged in favor of the Bank for availing financial facilities, can be put to auction for satisfaction of the Banking Court decree under Financial Institutions Recovery of Finance Ordinance, 2001?

Analysis: Under the Ordinance, in a case where execution of decree is not undertaken by the financial institution itself and sought its execution through the intervention of the Court, the Court which passed the decree is transformed into a Court of execution fully equipped and empowered to adopt any mode for the purposes of execution as provided under Section 19 of the Ordinance with the sole purpose and object to get the decree fully satisfied. An equitable mortgage stand created despite lapse of codified formalities, if the essential ingredients are met with i.e., existence of debt, delivery of title, intention that the same be accepted and retained as security for the debt so secured. In the instant case, all three requirements are in affirmative and perusal of impugned order also reflects that the learned Banking Court dismissed the application of the Appellants for correction of while giving considerable weightage to the point of execution of equitable mortgage in favor of Respondent and mere evasive denial to said assertion by the Appellants in their leave to defend.

Conclusion: The Banking Court, while executing the decree, which has attained finality up to the High Court, was competent to take measures for complete satisfaction of the decree including auction of property of a judgment debtor which was not actually mortgaged.

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15. **Lahore High Court**
Yasir Chaudhry v Faisalabad Development Authority
FAONO.74 of 2015
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC920.pdf

Facts: The appellant purchased a plot advertised by the respondent and paid considerable amount in installment as consideration to them but the respondent failed to provide necessary facilities at the site. The appellant brought the claim before

Consumer Court under section 25 of the Punjab Consumer Protection Act, 2005, however, the same was dismissed by the court on account of lack of jurisdiction.

Issue: Whether Consumer Court has got jurisdiction to entertain claim against the development authority for non-provision of necessary facilities at a housing scheme?

Analysis: The term "product" defined in Section 2(j) of the Act is mainly derived from movable property and land is specifically excluded from the "goods" under the Sale of Goods Act, 1930. Though word "immovable" also finds reference in Section 2(j) of the "Act, 2005" but it is clearly restricted to "product". The joint analysis of Section 2(j) of "Act, 2005" and Section 2(7) of the Sale of Goods Act, 1930 leads to an irresistible conclusion that land cannot be termed as a "product".

The appellant has never hired any services for a consideration rather he had purchased plots from the respondents in lieu of a consideration. The term and conditions of allotment/purchase matured into an agreement inter se appellant and respondents. Thus in case of violation of contract the appellant may ask for specific performance of contract or damages if there is breach of contract on the part of respondents through a suit before the Civil Court.

Conclusion: Consumer Court is not vested with the jurisdiction to entertain the claim regarding non provision of necessary facilities in a housing scheme since land cannot be termed as product and the Consumer Court is also bereft of any jurisdiction to pass a direction in the form of mandamus.

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16. **Lahore High Court**
Majeed Fabrics (Pvt) Ltd, etc. v. Federation of Pakistan through Ministry of Energy, etc.
Intra Court Appeal No.33117/2020.
Mr. Jusice Shahid Jamil Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC961.pdf

Fact: Appellants are taxpayers, who claim that being registered with the Sales Tax as exporters or manufacturers in one of the industrial sectors identified under clause 66, they are exempted from the applicability of section 235 of the Income Tax Ordinance.

Issue: i) Whether the exemption from the operations of section 235 of the Ordinance is available, per-se?

ii) Whether exemption certificate is required to be procured on monthly basis or once granted same shall be valid unless such registration is suspended or cancelled?

iii) Whether appellants are exempted from the operation of section 235 without exemption certificate?

Analysis: i) It is clearly discernible that exemption from the operations of section 235 of the Ordinance is not available per-se merely by operation of law but claimable only upon compliance of conditions specified in clause 66. It is essential that such compliant status is verifiable, at all material times. It goes without saying that registration with the sales tax as exporter or manufacturer, in one of the industries

specified in clause 66, is condition-precedent for claiming exemption from operability of clause 66

ii) Under Sub-section (2) of section 159 used expression 'unless there is in force a certificate issued under sub-section (1) of section 159 relating to the collection or deduction of such tax', which rationally convey that as long as certificate is in force, DISCO's are obligated to act comply with the mandate of the Certificate. Hence, certificate procured under sub-section (1) of section 159 of the Ordinance shall remain valid / in force, unless factum of inactive status, suspension or cancellation of registration, as the case may be, is communicated by the Commissioner concerned to the relevant DISCO's.

iii) The appellants are exempted from the operation of section 235 of the Ordinance upon fulfillment of the conditions prescribed in terms of clause 66, provided such fulfillment is evidenced / affirmed by certificate, issued in terms of sub-section (1) of section 159 of the Ordinance, and not otherwise.

Conclusion: i) The exemption from the operations of section 235 of the Ordinance is not per-se available.

ii) The exemption certificate is not required to be produced on monthly basis and the same shall be valid unless such registration is suspended or cancelled.

iii) The appellants are not exempted from the operation of section 235 without exemption certificate.

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17. Supreme Court of India
Civil Appeal No 1155 of 2021
M/s Radha Krishan Industries v. State of Himachal Pradesh &Ors.
https://main.sci.gov.in/supremecourt/2021/1775/1775_2021_36_1502_27668_Judgement_20-Apr-2021.pdf

Facts: Appellant has challenged the orders of Joint Commission by which property of appellant was attached u/s 83 of the Himachal Pradesh Goods and Service Tax Act, 2017and Rule 159 of Himachal Pradesh Goods and Service Tax Rules, 2017. His Writ was dismissed by HC being not maintainable in the presence of alternate remedy of appeal.

Issue: Whether Joint Commissioner had fulfilled all the pre-requisites of passing such punitive order and was justified to order provisional attachment of property?

Analysis: The language of the statute has to be interpreted bearing in mind that it is a taxing statute which comes up for interpretation. The provision must be construed on its plain terms.

The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute is integral to a valid exercise of power.

By utilizing the expression "it is necessary so to do" the legislature has evinced intent that an attachment is authorized not merely because it is expedient to do so (or profitable or practicable for the revenue to do so) but because it is **necessary** to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the revenue can be protected **only** by a provisional attachment without which the interest of the revenue would stand defeated.

Such provisions are not intended to authorize Joint Commissioners to make preemptive strikes on the property of the assessee, merely because property is available for being attached.

These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality. Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure.

Rule 159(5) contemplates two safeguards to the person whose property is attached. Firstly, it permits such a person to submit objections to the order of attachment on the ground that the property was or is not liable for attachment. Secondly, Rule 159(5) posits an opportunity of being heard. Both requirements are cumulative. The Commissioner's understanding that an opportunity of being heard was at the discretion of the Commissioner is therefore flawed and contrary to the provisions of Rule 159(5). There has, hence, been a fundamental breach of the principles of natural justice.

Conclusion: Order passed by the Joint Commissioner does not indicate any basis for formation of the opinion that the levy of a provisional attachment was necessary to protect the interest of the government revenue and procedure adopted by him was also against the statutory requirement. Appeal was allowed and order of provision attachment was set aside.

LIST OF ARTICLES

1. **MANUPATRA**

https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Jurisprudence

Right to die with dignity: an evolution of Indian Jurisprudence by K.Ramakanth Reddy

The Hon'ble Supreme Court has recently in Common Cause v. Union of India and another1 held that right to die with dignity is a fundamental right which has led to legalizing passive euthanasia and a living will. Though, guidelines have also been framed by the apex court in this regard. The Chief Justice of India who headed the constitutional bench has set a new evolution in Indian Jurisprudence which has ruled to give right to an individual to die in his terminally ill condition. It is a new evolution in context of Indian. Jurisprudence as it also permits to smooth the process of the death when there is no hope of recovery and the person is in consistent vegetative condition.

2. **BANGLADESH JOURNAL OF LAW**
http://www.biliabd.org/article%20law/Vol-15/Jobair%20Alam.pdf
Rethinking Post-Divorce Maintenance: An alternative for the empowerment of muslim women in Bangladesh by Md. Jobairalam* toufiqul Islam

The current scholastic understanding and dominant judicial articulations-based on the classical interpretation of Islamic law demonstrate that women are only entitled to three months of spousal support during their religiously prescribed waiting period. The apex court of Bangladesh long back in 1999 in the famous Hefzur Rahman case not only provided its verdict in the same tune but also made a distinction between maintenance and Maa'ta, where the latter was settled as a consolatory gift. However, apart from the religious aspects, the issues of post-divorce maintenance and Maa'ta have a broader socio-political and economic connotation. Thus, the objective of this study is to examine whether the post-divorce maintenance and the support may work as an alternative for the empowerment of Muslim Women in Bangladesh.

3. **INTERNATIONAL JOURNAL OF LAW**
http://www.lawjournals.org/archives/2021/vol7/issue1
Analysis of lie detector tests in criminal law by Akashdeep Singh

In order to overcome this problem, in the criminal justice system, there are lie detector tests that can be used. These tests are of three types-Polygraph, Narcoanalysis, Brain-Mapping (BEAP). Each of these tests uses a different mechanism to evaluate different aspects of the human body to tell dishonesty from honesty. Lie detector tests have been particularly helpful as they help in limiting or eradicating third degree methods in investigations and protecting the human rights of all citizens. Unfortunately, these tests have not managed to garner too much support due to certain technical issues and admissibility problems but researchers and scholars have ascertained a 95-98% success rate of these tests. This paper seeks to analyse the use of lie detectors in criminal law.

4. **GEORGETOWN LAW JOURNAL**
https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/01/Nielson_Walker_Qualified-Immunity-and-Federalism.pdf
Qualified Immunity and Federalism
Aaron Nielson & Christopher J. Walker

Qualified immunity is increasingly controversial. But the debate about it is also surprisingly incomplete. For too long, both qualified immunity's critics and defenders have overlooked the doctrine's federalism dimensions. Yet federalism is at the core of qualified immunity in at least three respects. First, many of the reasons the U.S. Supreme Court has proffered for qualified immunity best sound in protecting the states'

sovereign interests in recruiting competent officers and providing incentives for those officers to faithfully enforce state law. Second, the states have embraced indemnification policies premised on the existence of federal qualified immunity. Third, working against the backdrop of federal qualified immunity, state and local governments are engaged in robust policy experimentation about the optimal balance between deterrence and overdeterrence in their state law liability schemes, thus exhibiting the "laboratories of democracy" benefits of federalism.

5. **LSE LAW REVIEW**
https://lawreview.lse.ac.uk/articles/abstract/79/
How Can the Methodology of Feminist Judgment Writing Improve Gender-Sensitivity in International Criminal Law? by Kathryn Gooding

This paper seeks to demonstrate the utility of the application of feminist judging methodologies to judgments and decisions from international criminal law mechanisms, with a specific focus on sexual and gender-based crimes, as a means to improve gender-sensitivity in international criminal judicial decision-making. Through an analysis of feminist judgments and feminist dissenting opinions from the UK, US and International Criminal Court, the main hallmarks of feminist judging are identified. The author uses the hallmarks of feminist judging to create her own Feminist Judgment based on a decision from the Prosecutor v Ongwen case before the International Criminal Court, to display the indeterminacy of judicial decision-making in international criminal law and to demonstrate how greater gender-sensitivity can be achieved at the International Criminal Court through feminist judicial reasoning.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2021 to 28-02-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

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1. Supreme Court of Pakistan
Mst. Safia Bano v. Home Department
Civil Review Petition No. 420 of 2016 in Civil Petition No. 2990 of 2016 etc
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._420_2016.pdf

Facts: An eight year old girl was raped and murdered in an unseen occurrence. Case was based on circumstantial evidence of wajtakkar, extra judicial confession, medical evidence and D.N.A.

Issue: i) How should the trial Court deal with the plea of an accused that he/she was suffering from mental illness at the time of commission of offence?

ii) How should the trial Court deal with the claim by an accused that he is incapable of making his/her defence due to mental illness?

iii) Whether the trial Court can form a prima facie subjective view concerning the incapability of the accused to make his/her defence without seeking the opinion of the medical expert?

iv) Whether a mentally ill condemned prisoner should be executed?

Analysis: i) Whenever the plea is raised regarding the state of mind of accused at the time of commission of offence, the onus will be on the defence (accused) to prove such a plea as contemplated in Article 121 of the Qanun-e-Shahadat Order, 1984 (QSO). As per Article 121 of QSO, the onus is on the accused to prove that when the alleged act was committed, he/she was suffering from a mental illness which made him/her incapable of knowing the nature of the act or that what he/she was doing was either wrong or contrary to law. In the case of a special plea under section 84 PPC, the Courts should keep the following principles in view:-

(i) It is the basic duty of the prosecution to prove its case against the accused beyond reasonable doubt and the prosecution will not be absolved of this duty if the accused is unsuccessful in proving a plea raised on his/her behalf.

(ii) Where the accused raises any specific plea, permissible under the law, including a plea under section 84 PPC, the onus to prove such plea is on the accused. However, while proving such plea, the accused may get benefit from any material, oral or documentary, produced/relied upon by the prosecution.

ii) Section 464 Cr.P.C. is relevant for trial of an accused before a Magistrate, whereas section 465 Cr. P.C. deals with the trial of accused before a Court of Sessions or High Court. It is clear from the provision of section 464 Cr.P.C. that if a Magistrate holding an inquiry or a trial, has reason to believe that the accused is suffering from mental illness and is consequently incapable of making his/her defence, he shall inquire into the fact of such mental illness, and shall also cause such person to be examined by a Civil Surgeon of the District or such other medical officer as the Provincial Government directs. Thereafter, he shall examine such Surgeon or other officer as a witness and also shall reduce the examination in writing. Under the provision of section 465, Cr.P.C. if any person before a Court of Session or a High Court appears to the Court to be suffering

from mental illness and is consequently incapable of making his/her defence, the Court shall, in the first instance, try the fact of such mental illness and resulting incapacity. If the Court is satisfied of this fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

iii) Whenever the trial Court is put to notice, either by express claim made on behalf of the accused or through Court's own observations, regarding the issue of incapability of accused to understand the proceedings of trial and to make his/her defence, the same shall be taken seriously while keeping in mind the importance of procedural fairness and due process guaranteed under the Constitution and the law. The terms "reason to believe" and "appears to the Court" in the context of sections 464 and 465 Cr.P.C are to be interpreted as a prima facie tentative opinion of the Court, which is not a subjective view based on impressions but one which is based on an objective assessment of the material and information placed before the Court or already available on record in the police file and case file. While forming a prima facie tentative opinion, the Court may give due consideration to its own observations in relation to the conduct and demeanor of an accused person. Failure of the parties to raise such a claim, during trial, does not debar the Court from forming an opinion on its own regarding the capability of an accused person to face the proceedings of trial. In such a situation, the Court may rely on its own observations regarding the demeanor and conduct of the accused either before or at the time of taking a plea against the charge or at any later stage. The Court may take note whether he/she is being represented by Counsel or not and consider the material (if any) available on record which may persuade it to enquire into the capability of the accused to face trial. The Court may assess the mental health condition of an accused by asking him/her questions such as why he/she is attending the Court; whether he/she is able to understand the proceedings which are being conducted (trial); whether he/she is able to understand the role of people who are a part of the trial; the basic procedure may be explained to him/her to assess whether he/she is able to understand such procedure and whether he/she is able to retain information imparted to him/her; whether the accused is able to understand the act committed by him/her and what the witnesses are deposing about his/her act; and whether he/she is able to understand the evidence being produced by the prosecution against him/her. However, we would like to clarify that a prima facie tentative opinion cannot be formed by the Court only on the basis of such questions posed to the accused. The Court is required to objectively consider all the material available before it, including the material placed/relied upon by the prosecution.
Once the Court has formed a prima facie tentative opinion that the accused may be incapable of understanding the proceedings of trial or make his/her defence, it becomes obligatory upon the Court to embark upon conducting an inquiry to decide the issue of incapacity of the accused to face trial due to mental illness. Medical opinion is sine qua non in such an inquiry. For this purpose, the Court must get the accused examined by a Medical Board, to be notified by the Provincial Government, consisting of qualified medical experts in the field of

mental health, to examine the accused person and opine whether accused is capable or otherwise to understand the proceedings of trial and make his/her defence. The report/opinion of the Medical Board must not be a mere diagnosis of a mental illness or absence thereof. It must be a detailed and structured report with specific reference to psychopathology (if any) in the mental functions of consciousness, intellect, thinking, mood, emotions, perceptions, cognition, judgment and insight. The head of the Medical Board shall then be examined as Court witness and such examination shall be reduced in writing. Both the prosecution and defence should be given an opportunity to cross examine him in support of their respective stance. Thereafter, if the accused wishes to adduce any evidence in support of his/her claim, then he/she should be allowed to produce such evidence, including expert opinion with the prosecution given an opportunity to cross examine. Similarly, the prosecution may also be allowed to produce evidence which it deems relevant to this preliminary issue with opportunity given to the defence to cross examine. It is upon the consideration of this evidence procured and adduced before the Court that a finding on this question of fact i.e. the capability of the accused to face trial within the contemplation of sections 464 and 465 Cr.P.C. shall be recorded by the Court.

iv) If a condemned prisoner, due to mental illness, is found to be unable to comprehend the rationale and reason behind his/her punishment, then carrying out the death sentence will not meet the ends of justice. However, it is clarified that not every mental illness shall automatically qualify for an exemption from carrying out the death sentence. This exemption will be applicable only in that case where a Medical Board consisting of mental health professionals, certifies after a thorough examination and evaluation that the condemned prisoner no longer has the higher mental functions to appreciate the rationale and reasons behind the sentence of death awarded to him/her. To determine whether a condemned prisoner suffers from such a mental illness, the Federal Government (for Islamabad Capital Territory) and each Provincial Government shall constitute and notify, a Medical Board comprising of qualified Psychiatrists and Psychologists from public sector hospitals.

Conclusion: i) Whenever the plea is raised regarding the state of mind of accused at the time of commission of offence, the onus will be on the defence (accused) to prove such a plea as contemplated in Article 121 of the Qanun-e-Shahadat Order, 1984 (QSO) like all other exceptions in Chapter IV of PPC.

ii) The court of Magistrate shall inquire into the fact of such mental illness, and shall also cause such person to be examined by a Civil Surgeon of the District or such other medical officer as the Provincial Government directs. Thereafter, he shall examine such Surgeon or other officer as a witness and also shall reduce the examination in writing. If the person is before a Court of Session or a High Court, the Court shall, in the first instance, try the fact of such mental illness and resulting incapacity. If the Court is satisfied of this fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

iii) The terms “reason to believe” and “appears to the Court” in the context of sections 464 and 465 Cr.P.C are to be interpreted as a prima facie tentative opinion of the Court, which is not a subjective view based on impressions but one which is based on an objective assessment of the material and information placed before the Court or already available on record in the police file and case file. Once the Court has formed a prima facie tentative opinion that the accused may be incapable of understanding the proceedings of trial or make his/her defence, it becomes obligatory upon the Court to embark upon conducting an inquiry to decide the issue of incapacity of the accused to face trial due to mental illness. Medical opinion is sine qua non in such an inquiry.

iv) If a condemned prisoner, due to mental illness, is found to be unable to comprehend the rationale and reason behind his/her punishment, then carrying out the death sentence will not meet the ends of justice.

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2. **Supreme Court of Pakistan**
Justice Qazi Faez Isa etc v. The President of Pakistan
Civil Review Petition No.296 of 2020 a/w C. M. A. NO. 7084 OF 2020 etc
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._7084_2020.pdf

Facts: The review petitions against the majority judgment in Justice Qazi Faez Isa Vs. President of Pakistan and others (Const. P 17/2019) and connected petitions were initially posted before a Bench comprising the seven learned Judges who had passed the majority judgment. A number of miscellaneous applications have been filed seeking reconstitution of the Bench hearing said review petitions with a prayer that review petitions be heard by the same bench including three learned judges who had passed minority judgments.

Issue: What should be the numerical strength and composition of the review Bench?

Analysis: The answer to this question depends upon two considerations: the judgment sought to be reviewed and matters of practicability. These are the primary factors taken into account by the HCJ (in exercise of his power under Order XI), along with the relevant provisions of the Constitution, the Supreme Court Rules, 1980, the practice of the Court and the law laid down by it, to guide him in constituting a review Bench…… Rule 8 of Order XXVI of the SCR is germane to the subject. It links the constitution of a review Bench with the judgment that is sought to be reviewed….. For purposes of Rule 8 one has to look at the judgment that was delivered, and the Judges who actually gave that decision. It is those Judges who (subject to what is said below) can be considered the authors of the judgment and therefore ‘the same Bench’ which ‘delivered the judgment’ under review….. Rule 8 makes it abundantly clear that practicability is the dominating factor in the constitution of review Benches….. By subjecting the constitution and therefore composition of a review Bench to what is practicable, Rule 8 by its own terms lays down directory criteria. The HCJ therefore has power to take into consideration such conditions and circumstances that can affect the formation of a

review Bench. Therefore, Order XXVI, Rule 8 requires a substantial, rather than strict, compliance with its terms….. So even though the HCJ may constitute a Bench of his choice in a review matter, the exercise of his discretion ought to be guided by two criteria: firstly, the review Bench (at the minimum) should bear the numerical strength of the original Bench. By convention, this practice is followed even in cases where only the majority judgment is under review.

Conclusion: For the purposes of Order XXVI, Rule 8, the minimum numerical strength of the Bench that delivered the judgment or order under review is the numerical strength of the Bench which heard and decided the original matter, regardless of whether the judgment under review was passed unanimously or by majority.

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3. Lahore High Court
M/s Ghani Global Glass Ltd. v. Federal Board of Revenue etc.
W.P.No.50298/2019
https://sys.lhc.gov.pk/appjudgments/2021LHC286.pdf

Facts: Petitioner deposited excessive amount of tax inadvertently. He claimed refund by filing application in a wrong wing of the department of Respondent No. 2 which kept the application pending disposal and did not return it timely and let the limitation period expired. Respondent No.2 declined the application merely on the premise of non submission of application within stipulated time as envisaged by Section 66 of the Sales Tax Act, 1990.

Issue: Whether the petitioner's claim for refund was time barred as envisaged by Section 66 of the Sales Tax Act, 1990 despite of this fact that he filed the same within time though in a wrong wing of same department?

Analysis: The Hon'ble Court held that it is manifestly evident from the record and even not controverted by the respondents that the petitioner moved first application for the refund of excessive amount within the stipulated time to wrong wing of the same department. Had the application been considered and decided by that wing with due promptness, the petitioner would have been in a position to approach the relevant authority for the refund of its undisputed excessive amount, therefore, inaction of the one wing of the same department to keep the application pending so as to let the period stipulated in law for filing the application elapsed/run out; could not be allowed to defeat the right of the petitioner who resorted to the remedy well within time irrespective of the fact that it was before the wrong wing in the same department…… It was contributory negligence from both side and constitutes a sufficient cause to exercise the power provided under the law to condone the delay.

Conclusion: The claim of petitioner was not time barred as the petitioner filed the application in time though before wrong wing of same department. It was contributory negligence from both sidesa which constitutes a sufficient cause to exercise the power provided under the law to condone the delay.

4. **Lahore High Court**
Umer Atta-ur-Rehman Khan v. Ministry of Energy, etc
Writ Petition No.110187/2017
https://sys.lhc.gov.pk/appjudgments/2021LHC370.pdf

Facts: Petitioner file writ petition to the effect that he was appointed as Administrative Officer with National Engineering Services Pakistan Pvt. Ltd. (NESPAK) on contract. Subsequently, the he was issued show cause notice and inquiry initiated on the ground that petitioner mis-represented and concealed information by submitting forged transcript during recruitment process. The petitioner was finally dismissed from service. The departmental appeal of the petitioner was also dismissed.

Issue: Whether rules of NESPAK are statutory for the purpose of maintainability of this constitution petition?

Analysis: NESPAK is a private limited Company and its Rules namely Employees (Efficiency & Discipline) Rules, 1974 (Rules) are framed by the Board of Directors of the company under the power conferred on them through Articles of Association of NESPAK. Neither these rules are framed by the Federal Government nor were approved by the Federal Government nor these rules are made under any statute, therefore, said rules cannot be termed as statutory rules.

Conclusion: Said rules cannot be termed as statutory rules.

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5. **Lahore High Court**
Mst. Shahnaz Bibi v. Siraj Din etc.
W.P. No. 6807/2016
https://sys.lhc.gov.pk/appjudgments/2020LHC3537.pdf

Facts: The respondent No. 1 secured a six marla house from petitioner through a mortgage deed for five years in lieu of one lac rupees as consideration. The petitioner was, however, entitled to redeem the house after the payment of one lac rupees. The mortgage was usufructuary as the possession of the house was to remain with the petitioner and she had to pay the monthly rent for the use of the house during said period. For this arrangement, the parties inserted an additional clause in the mortgage deed. The petitioner made default in payment of rent upon which the respondent No. 1 filed the ejectment petition which was accepted and the learned rent controller passed the order of ejectment against petitioner. The petitioner assailed the said order through instant writ petition.

Issue: Whether there exists a relationship of Landlord and Tenant between the respondent No. 1 and the petitioner respectively?

Analysis: It would be important to dilate upon the said mortgage deed in view of the judgment passed in case titled Asif Raza Mir versus Muhammad Khurshid Khan (2011 SCMR 1917), in which it was held that it is not the title but the contents of the document which will determine its nature and that the true intention of the

parties must be given effect. Admittedly, the title is (گروی)اقرار نامہ رہن which was written on a stamp paper issued in the name of the petitioner. It was not registered either as a mortgage deed or as Rent Agreement, until the learned Special Judge (Rent) ordered the respondent to deposit fine equivalent to 10% of the annual value of rent in terms of Section 9(b) of the Punjab Rented Premises Act, 2009 where after the notices were issued to the petitioner. The court, therefore, acknowledged the status of document as a rent agreement which was not challenged by the petitioner. Besides, the petitioner had admitted the execution of the said document which also contains the condition for the payment of rent @ 6000/- per month by the petitioner which was enhanced to Rs.8000/- per month after receiving Rs.30,000/- as additional mortgage money by the petitioner; and was also written on the back of the stamp paper, showing the intention of the parties to operate as rent agreement.

Conclusion: Neither the petitioner had filed any suit for redemption nor respondent No.1 filed suit for recovery of amount on the basis of the usufruct mortgage, therefore, the irresistible conclusion is that for all intents and purposes it was a rent agreement and the relationship of landlord and tenant existed, notwithstanding the title and terms of mortgage deed with regard to possession.

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6. **Lahore High Court**
Mst. Kaneez Mai v. Judge, Anti-Terrorism Court, etc.
Writ Petition No.716 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC376.pdf

Facts: Petitioner's complaint under Sections 364-A, 365-A PPC read with Section: 7 of Anti-Terrorism Act, 1997 against respondents No.2, 3 and two unknown accused persons with the allegation of abduction of her two minor paternal granddaughters was dismissed by learned Judge, Anti-Terrorism Court, Dera Ghazi Khan after hearing preliminary arguments and without examining her.

Issue: Whether the learned judge Anti-Terrorism court could dismiss complaint after hearing preliminary arguments and without examining complaint?

Analysis: Proper course to be adopted for learned Judge, Anti- Terrorism Court after receipt of complaint was to at once examine the complainant upon oath under section 200 Cr.P.C. and then to proceed further in accordance with law but learned Judge, Anti-Terrorism Court, Dera Ghazi Khan has adopted novel method after receipt of complaint by dismissing the same just after hearing preliminary arguments of the learned counsel.

Conclusion: Anti-Terrorism court cannot dismiss complaint just after hearing preliminary arguments and without recording statement of complainant.

7. **Lahore High Court**
Al Abbas Mini Travel Service v. Govt. of Punjab
2021 LHC 246
W.P.No.1430/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC246.pdf

Facts: Petitioners were transporters and were aggrieved of shifting their bus stands to a new location. They sought direction from the Court to the respondents not to interfere in their lawful business set up on their personal property.

Issue: Whether in writ jurisdiction the High Court is competent to interfere in the order of shifting of bus stand set up on a personal property by the Government?

Analysis: The shifting of buses and wagons stands to a particular place such as General Bus Stand falls within the policy making domain of the Government and such policy decision cannot be interfered with by this Court in its constitutional jurisdiction unless it is shown to be against some provision of law, based on illegality, arbitrariness or established mala fides as was held by Supreme Court in Dossani Travels case (PLD 2014 Supreme Court 01)…….In Haji Zar Ali Khan case (PLD 2000 Peshawar 14) matter before the division bench of Peshawar High Court was similar as the bus stand was situated on the personal property. The Court held that when the petitioner's establishment was subject to control exercised by the authority, it would become altogether meaningless whether bus stand was established on one's personal property or on a rented property. Personal property with reference to establishment of bus stand has no significance as bus stand could not be established beyond the provisions of law……Moreover the demand of shifting the Wagon Stand of the petitioner to General Bus Stand due to administrative issues relating to traffic flow in the city etc. would not be contrary to the right of the petitioners under Article 18 of the constitution providing freedom of business, trade or profession as the respondents were not stopping the petitioners to carry on their business as transporters but were only shifting the premises for regulating the same for smooth functioning of the same in the public interest.

Conclusion: The shifting of buses stands falls within the policy making domain of the Government. and such policy decision cannot be interfered with by this Court in its constitutional jurisdiction unless it is shown to be against some provision of law, based on illegality, arbitrariness or established mala fides.

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8. **Lahore High Court**
Muhammad Shakir v. The State etc
2021 LHC 271
W.P.No.1430/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC271.pdf

Facts: A criminal case u/s 295-B PPC was registered against the petitioner for burying copy of Quran in his house.

Issue: Whether the act of burial of Holy Quran ipso facto amounts to its defilement?

Analysis: There is a consensus among lawyers and religious scholars that subject to certain conditions Shariah recognizes burial as one of the modes to dispose of old and unusable copies of the Quran. If one goes by the contents of the FIR, in the instant case the petitioner did not comply with those conditions. The learned Deputy Prosecutor General candidly admitted that there has never been any complaint against him that he was irreligious. Hence, the question as to whether he violated the prescribed conditions intentionally or due to ignorance must be left for the trial court.

Conclusion: Motive and intention are important factors to be considered for determining whether or not defilement of a Holy Scripture has taken place by its burial.

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9. **Lahore High Court**
Tariq Mehmood etc. v. Siraj ud Din etc
2021 LHC 380
Writ Petition No.716 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC380.pdf

Facts: Petitioner directly filed a revision petition in High Court against an interlocutory/interim order qua his suit for specific performance having a value of Rs. 4,50,000/-, to which office raised an objection.

Issue: Whether after the promulgation of Civil Procedure Code (Punjab amendment) Ordinance 2021 every revision petition is to be filed in High Court?

Analysis: By amendment in Section 159 of Code of Civil Procedure, 1908 ("Code") vide the same ordinance, proceedings instituted prior to enactment of the amendment Ordinance are to be proceeded and dealt in accordance with the provisions of the Code, which existed prior to the said amendment Ordinance; therefore, revision against order of the learned Trial Court in the present case where the suit was filed prior to the said amendment shall lie before the relevant District Judge and not before this Court.

Conclusion: Proceedings instituted prior to enactment of Amendment Ordinance are to be proceeded and dealt in accordance with the provisions of the Code, which existed prior to the said Amendment Ordinance; therefore every revision petition is not competent in High Court.

10. **Lahore High Court**
Alam Sher v. Yasir Nawaz and another
Civil Revision No.4636-P/2019
https://sys.lhc.gov.pk/appjudgments/2021LHC235.pdf

Facts: Suit for enforcement of oral agreement to sell allegedly executed between the petitioner and father of the owner (who was a minor) was dismissed on the ground of his failure to establish the claim.

Issue: i) Whether father of a minor can enter into an agreement to sell property on his behalf?
ii) Whether an agreement to sell can be oral?

Analysis: i) In terms of Section 11 of the Contract Act, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. Though it appears from the cursory glance of the above provision of law that minor is debarred to enter into a contract but at the same time Section 11 would not impair the rights and interest of the minor from acquiring title to anything valuable and he being beneficiary of agreement.

Paragraph No.362 of the Principles of Muhammadan Law by D.F. Mulla's also creates an exception to the principle embodied in Section 11 of the Contract Act, 1872, and provides that the father is entitled to be guardian of the property of a minor.

ii) Adverting to the aspect of oral sale, there is no cavil that the same is recognized under the law but it had to be proved through credible and unimpeachable evidence.

Conclusion: i) A father being natural guardian can validly enter into an agreement to sell on behalf of his minor child unless the same is found adversarial to the interest of the minor.

ii) There is no cavil that the oral sale is recognized under the law but it had to be proved through credible and unimpeachable evidence.

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11. **Lahore High Court**
Muhammad Ehsan v. Additional District Judge, Chishtian, District Bahawalnagar and another
Writ Petition No. 8094 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3545.pdf

Facts: The right of petitioner, being defendant, to produce evidence in the suit for recovery instituted under Order XXXVII of CPC was closed after failure to produce the same despite availing opportunities due to consecutive strike of local bar association.

Issue: Whether petitioner's failure to produce evidence despite given opportunities on the plea that local bar was on strike is justified and does not warrant the applicability of penal provisions contained in Order XVII Rule 3 of the CPC?

Analysis: It appears that the legislature, while inserting the penal provisions in the form of Order XVII Rule 3 of "CPC" was quite cognizant of the fact that litigants may abuse the process of court by using the un-called for delaying tactics in order to achieve their illegal designs. Such penal provisions are neither illusory nor ineffective, rather the same will come into play automatically with full force and rigours depending upon the facts and circumstances of each case in order to save the ends of justice from being defeated in the hands of chronic litigants.

Every professional pursuit and calling is subservient to law and so is the legal practice. A counsel is bound to appear in the Court when a matter is called so as to represent his paymaster and in the event of default, the Court may proceed with the case regardless of the consequences befalling upon the unrepresented client, who may sue the counsel for any injury or loss on account of failure to provide him legal assistance.It is also noteworthy to mention here that the lawyers have no right to strike i.e. to abstain from appearing in Court in cases in which they hold power of attorney (Wakalatnama) for the parties, even if it is in response to or in compliance with a decision of any association or body of lawyers. In exercise of the right to protest, a lawyer may refuse to accept new engagements and may even refuse to appear in a case in which he had already been engaged, if he has been duly discharged from the case. But so long as a lawyer holds the power of attorney for his client and has not been duly discharged, he has no right to abstain from appearing in Court even on the ground of a strike called by the Bar Association or any other body or lawyers. If he so abstains, he commits a professional misconduct, a breach of professional duty, a breach of contract and also a breach of trust and he will be liable to suffer all the consequences thereof.

Conclusion: A counsel is bound to appear in the Court when a matter is called so as to represent his paymaster and in the event of default, the Court may proceed with the case regardless of the consequences befalling upon the unrepresented client, who may sue the counsel for any injury or loss on account of failure to provide him legal assistance. Every litigant has an inalienable right to be provided an opportunity of fair trial but the penal provisions inserted in "CPC" are not illusory in nature and the same will come into play with full rigours when a party defaults in discharging its duty in the light of relevant provisions.

12. **Lahore High Court**
Nazir Ahmad and others V/S Additional District Judge and others
Civil Revision No.790 of 2012/BWP
https://sys.lhc.gov.pk/appjudgments/2021LHC221.pdf

Facts: Petitioners/vendee filed an application to make the award of the arbitrator as "rule of court" which was announced in view of alleged oral arbitration agreement. The vendor got recorded his conceding statement but learned trial Court, dismissed the said application and an appeal preferred was accepted whereby the order of lower court was set aside and the award was made as rule of court.

Issue: Whether there can be any oral arbitration agreement, for the appointment of an arbitrator between parties; if so, whether it could have been made the rule of the court by the Civil Court under the Arbitration Act, 1940?

Analysis: It is crystal clear that law only recognizes the arbitration agreement which is in written form and in the instant case admittedly there was oral arbitration agreement. The counsel of the petitioners neither filed any written arbitration agreement nor relied on any written document to show that the parties have mutually agreed in writing to appoint an arbitrator. When the petitioner filed application under Section 14 of the Act to make the award as rule of court, both Courts dismissed on this point that there was no written agreement.

Conclusion: The arbitrator cannot be appointed through an oral arbitration agreement.

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13. **Lahore High Court**
Deputy Director, Anti Money Laundering, Intelligence and Investigation, Inland Revenue, Lahore v. Learned Special Judge, Customs, Taxation and Anti-Smuggling, Lahore, etc.
Criminal Appeal No.52336 of 2017
https://sys.lhc.gov.pk/appjudgments/2021LHC382.pdf

Facts: An application of the appellant under Section 8 of the Anti-Money Laundering Act, 2010 (AMLA) for obtaining the permission to provisionally attach the property mentioned therein has been dismissed by the learned Special Judge (Customs, Taxation and Anti-Smuggling), Lahore on the ground of having no jurisdiction because Generally inly a Court of Session established under Cr.P.C has jurisdiction to deal with such matter and proviso (a) to this section confers jurisdiction relating to trial of offence of Anti Money Laundering Act, 2010 and all matters connected therewith or incidental thereto, upon the court where matter relating to any predicate offence is pending adjudication. Respondent /court held that as at the moment no cases/proceedings are pending in the court with regard to any predicate offence, hence said court has hardly any jurisdiction to pass an order under the provision of section (8) (1) of Anti Money Laundering Act, 2010.

Issue: Whether Special Judge, Customs, Taxation and Anti-Smuggling, Lahore has the jurisdiction to allow the application of the appellant to provisionally attach the property of the accused?

Analysis: Succinct reading of proviso (a) of section 8(1) abundantly makes it comprehensible that if the predicate offence is triable by any Court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence.

Prosecution of Predicate offences involved in this case i.e. false statement in verification, concealment of income and abetment, where tax sought to be evaded is ten million rupees or more, and all matters connected therewith or incidental thereto are exclusively triable by learned Special Judge (Customs, Taxation and Anti-Smuggling).

Section 39 of the "AMLA" has also got overriding effect and the learned Special Judge (Customs, Taxation and Anti-Smuggling) has exclusive jurisdiction to try the offences of the "AMLA" i.e. predicate offences (scheduled offences of the AMLA), relating to tax evasion, all matters connected therewith or incidental thereto, like matter in issue

Conclusion: High Court has held that Special Judge (Customs, Taxation and Anti-Smuggling), Lahore has jurisdiction to allow an application under section 8 of Anti Money Laundering Act, 2010 to grant the permission to provisionally attach the property.

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14. **Sindh High Court**
K.E.S.C. Labour Union and others v. Federation of Pakistan and others
Const. Petition No.D-1511/2005, 3775, 3776/2012, 3767, 3818/2015
2021 SHC 118
https://eastlaw.pk/cases/k.e.sVSfederation-of-pakistan.Mzk3NTU5

Facts: In 2005, the government, which initially had 98% of KESC's shares, sold 71% of its shares to a business consortium and the company was converted from state-owned to a foreign owned and managed corporation. The petitioners (KESC Labour Union, administration Officer of KESC, a shareholder in the KESC and a local businessman) sought declaration to the effect that privatization process in respect of the sale of shares and management control in KESC was illegal, arbitrary, irrational and without any lawful authority.

Issues: i) Whether the Petitioners have locus standi to challenge KESC's privatization?

ii) Whether the petition is barred due to the alternate remedy provided under the Privatization Commission Ordinance, 2000?

iii) Whether KESC could at all be transferred out of State ownership/control under the scheme of Constitution?

Analysis: i) The right to electricity has been recognized by the Supreme Court as a fundamental right guaranteed by Article 9 of the Constitution. All citizens of Karachi can be termed, therefore, as "aggrieved persons" as per the definition of the term adopted by the Supreme Court. The Petitioners have a closer and substantial interest in the affairs of KESC than ordinary citizens of Karachi; hence have the locus standi.

ii) While discussing about Privatization Commission Ordinance, 2000 (the Ordinance) august Supreme Court held in the Steel Mills case (PLD 2006 S.C 695), that sec. 28 of the Ordinance applies only to matters relating to "the rights and obligations of the parties who are the subject of the Ordinance. As far as pro bono publico cases are concerned, those shall not be covered…" Petitioners herein have filed the instant petition pro bono publico.

iii) The subject of electricity falls within Part II of the Federal Legislative List. Naturally, the CCI can only exercise effective supervision and control over such institutions if they remain under ownership of the State. Though the State must personally perform all functions pertaining to the provision of fundamental rights to the people, however in some cases, it may be more beneficial to delegate such functions to the private sector provided that the State maintains sufficient safeguards and regulatory control to ensure that such delegation does not – in any manner or form – impair or curtail the peoples' realization of Fundamental Rights. This assessment of whether any particular state function can be delegated or not has to be made by the courts in each country in light of their own constitutional ethos and history. Different judiciaries have chosen to draw the line differently. Privatization of KESC was the result of policy making decision by the executive authority and once the competent authority in the government has taken a decision, which is backed by law, rules and regulations and does not suffer from any malafide, then it would not be in consonance with the well-established norms of judicial review to interfere in policy making decision of the executive authority.

Conclusion: i) Yes, being the citizen of Pakistan; having closer and substantial interest in the affairs of KESC; the petitioners' had the locus standi.

ii) The Privatization Commission Ordinance, 2000 does not bar the filing of petitions of pro bono public; hence the instant petition being that of pro bono public was hit by the Ordinance, 2000.

iii) Electricity being an essential service cannot be privatized; therefore plea of the petitioners stands rebutted.

15. **Supreme Court of India**
Asha John Divianathan v. Vikram Malhotra & Ors.
Civil Appeal No. 9546 of 2010
https://main.sci.gov.in/supremecourt/2009/33958/33958_2009_35_1501_26504_Judgement_26-Feb-2021.pdf

Facts: Section 31 of the Foreign Exchange Regulation Act, 1973 debars a foreigner to acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India, except with the previous general or special permission of the Reserve Bank of India (RBI). A foreigner who was the owner of the property in question, gifted it to respondent no.1, without obtaining requisite prior permission. A challenge was made to the transaction but suit was dismissed and in appeal High Court also concurred with the trial court by holding that lack of permission under Section 31 of the1973 Act does not render the subject gift deeds as void much less illegal and unenforceable

Issue: Whether transaction with respect to any immovable property by a foreigner without requisite prior permission of Reserve Bank of India under Section 31 of the Foreign Exchange Regulation Act, 1973, is void or only voidable; and if so, at whose instance?

Analysis: It is true that the consequences of failure to seek such previous permission has not been explicitly specified in the same provision or elsewhere in the Act, but then the purport of Section 31 must be understood in the context of intent with which it has been enacted, the general policy not to allow foreign investment in landed property/buildings constructed by foreigners or to allow them to enter into real estate business to eschew capital repatriation, including the purport of other provisions of the Act, such as Sections 47, 50 and 63.

A contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition.

In every case where a statute imposes a penalty for doing an act, though, the act not prohibited, yet the thing is unlawful because it is not intended that a statute would impose a penalty for a lawful act. When penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty if imposed is not enforceable.

Merely because no provision in the Act makes the transaction void or says that no title in the property passes to the purchaser in case there is contravention of the provisions of Section 31, will be of no avail. That does not validate the transfer referred to in Section 31, which is not backed by "previous" permission of the RBI.

The sale or gift could be given effect and taken forward only after such permission is accorded by the RBI. There is no possibility of *ex post facto* permission being granted by the RBI under Section 31 of the 1973 Act

Conclusion: Supreme Court held that the condition predicated in Section 31 of the 1973 Act is mandatory. Until such permission is accorded, in law, the transfer cannot be given effect to.

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16. **United Kingdom Supreme Court**
Uber BV and others v. Aslam and others
[2021] UKSC 5
https://www.bailii.org/uk/cases/UKSC/2021/5.html

Facts: Appellant through the instant appeal has challenged the decision of employment tribunal which held that the respondents were "workers" as defined by section 230(3) of the Employment Rights Act 1996. Who, although not employed under contracts of employment, worked for Uber London under "workers' contracts.

Issue: Whether an Employment Tribunal was entitled to find that drivers whose work is arranged through Uber's smartphone application ("the Uber app") work for Uber under workers' contracts and so qualify for the national minimum wage, paid annual leave and other workers' rights?

Analysis: The UK Employment law distinguishes between three types of people: those employed under a contract of employment; those self-employed people who are in business on their own account and undertake work for their clients or customers; and an intermediate class of workers who are self-employed but who provide their services as part of a profession or business undertaking carried on by someone else. Some statutory rights, such as the right not to be unfairly dismissed, are limited to those employed under a contract of employment; but other rights, including those claimed in these proceedings, apply to all "workers"

The Services Agreement (like the Partner Terms before it) was drafted by Uber's lawyers and presented to drivers as containing terms which they had to accept in order to use, or continue to use, the Uber app. It is unlikely that many drivers ever read these terms or, even if they did, understood their intended legal significance. In any case there was no practical possibility of negotiating any different terms. In these circumstances to treat the way in which the relationships between Uber, drivers and passengers are characterised by the terms of the Services Agreement as the starting point in classifying the parties' relationship, and as conclusive if the facts are consistent with more than one possible legal classification, would in effect be to accord Uber power to determine for itself whether or not the legislation designed to protect workers will apply to its drivers.

Conclusion: The Employment Tribunal was entitled to find that the claimant drivers were "workers" who worked for Uber London under "worker's contracts" within the meaning of the statutory definition. It follows that the Employment Tribunal was entitled to conclude that, by logging onto the Uber app in London, a claimant driver came within the definition of a "worker" by entering into a contract with Uber London whereby he undertook to perform driving services for Uber London. So, he qualifies for the national minimum wage, paid annual leave and other workers' rights.

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17. **Supreme Court of the United States**
United States v. Briggs, 592 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/20pdf/19-108_8njq.pdf

Facts: This case is considered notable due to its impact and implications on the issue of sexual assault in the United States military and the military's ability to address these types of cases. Michael Briggs was found guilty of rape in 2014 in a general court-martial for an act that occurred in 2005. On appeal, Briggs asserted that the statute of limitations had expired. The United States Air Force Criminal Court of Appeals (CAAF) affirmed the court-martial's decision. On appeal, the Court of Appeals for the Armed Forces affirmed in part and denied review in part. On appeal, the Supreme Court granted a petition for a writ of certiorari, vacated the Court of Appeals for the Armed Forces' judgment, and remanded the case. The Court of Appeals for the Armed Forces reversed the Air Force Criminal Court of Appeals' decision and dismissed the charge against the respondent. Subsequently the United States of America filed a petition for a writ of certiorari with the Supreme Court.

Issue: Whether the Court of Appeals for the Armed Forces erred in concluding contrary to its own longstanding precedent-that the Uniform Code of Military Justice allows prosecution of a rape that occurred between 1986 and 2006 only if it was discovered and charged within five years?

Analysis: The Court, with the exception of Justice Amy Coney Barrett who did not participate on the case, ruled unanimously that under the Uniform Code, such crimes that are "punishable by death" under the Code do not have a statute of limitations unlike similar civilian crimes. Justice Neil Gorsuch filed a concurring opinion and opined that "*I continue to think this Court lacks jurisdiction to hear appeals directly from the CAAF but a majority of the Court believes we have jurisdiction, and I agree with the Court's decision on the merits. I therefore join the Court's opinion*".

Conclusion: In a unanimous ruling, the court reversed the judgment of the U.S. Court of Appeals for the Armed Forces and remanded the case for further proceedings,

holding that the respondents' prosecutions for rape were timely held under the Uniform Code of Military Justice.

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FORTNIGHTLYCASE LAW BULLETIN

(01-03-2021 to 15-03-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
University of Malakand v. Dr. Alam Zeb etc.
Civil Appeals Nos. 902 and 903 OF 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._902_2020.pdf

Facts: Respondents, contract employees subsequently regularized, applied for study leave which was granted without pay. On return, their request that their leave without pay might be treated as leave with full pay was rejected.

Issue: After availing the study leave without pay, whether the respondents are not estopped by their conduct to claim the said study leave with full pay?

Analysis: It is now well settled that no estoppel exists against law, therefore, one wrong of the respondents of not claiming their right earlier cannot be acted upon as a precedent when it comes to give effect to the express words of a statute. If a person has been bestowed some legal right by law/statute and he omits to claim such legal right for a certain period of time, it does not mean that he has waived his legal right and subsequently he cannot claim such right. Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute. When the statute clearly provided that study leave on full pay may be granted to an employee who has put in at least three years' service, the appellant authority ought not to have refused the respondents their right guaranteed under the statute.

Conclusion: Respondents are not estopped to claim the study leave with full pay because when a person has been bestowed some legal right by law/statute and he omits to claim such legal right for a certain period of time, it does not mean that he has waived his legal right and subsequently he cannot claim such right. Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute.

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2. **Supreme Court of Pakistan**
Province of Punjab v. M/s Bloom Pharmaceuticals (Pvt.) Limited
C.P.1692-L/2020, C.P.1792-L/2020 and C.P.5-L/2021
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1692_l_2020.pdf

Facts: The question that requires determination revolves around the interpretation of section 22 sub-sections (4) and (5) of the Drugs Act, 1976 as to whether the Provincial Quality Control Board ("Board"), etc. enjoys the "discretion" under section 22(5) of the Act to either allow or reject the request of the accused or the complainant for re-testing of the drug.

Issue: Whether the Provincial Quality Control Board ("Board"), etc. enjoys the "discretion" under section 22(5) of the Act to either allow or reject the request of the accused or the complainant for re-testing of the drug?

Analysis: Once the complaint is filed against the Report by the accused within ten days as required by section 22(4), the Board or any other authority, before whom such a complaint against the Report is pending, can on its own motion or in its discretion on the request of the accused or the complainant may allow re-testing of the drug from the Federal Drug Laboratory, etc. Other than the suo-motu power enjoyed by the Board, etc. to send the drug for retesting, the Board, etc. also enjoys the

discretion to allow or disallow the request for re-testing by the accused or the complainant….On the whole, the Board, etc. enjoys independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in this regard.

Conclusion: The Board, etc. enjoys independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in this regard.

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3. **Supreme Court of Pakistan**
Mst. Kulsoom Rasheed v. Noman Aslam
CMA NO. 284 OF 2021
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._284_281.pdf

Facts: The applicant prays for transfer of the family execution petition from Judge Family Court Islamabad West to the court of competent jurisdiction i.e. Judge Family Court, Karachi (Sindh) in terms of Section 25-A (2-B) of the Family Courts Act, 1964.

Issue: Whether Supreme Court can transfer a case from one province to another province without notice to other party?

Analysis: Bare perusal of the relevant provision reveals that this Court may order the transfer of proceedings pending from one jurisdiction to another more particularly from one Province to another either at the motion of the parties or on its own motion without notice….it would be cumbersome to issue notice to the respondent, who is resident of Karachi. Even otherwise, it will burden the respondent with heavy cost on travelling or contesting the matter here. In order to protect the rights and interest of the parties and to ensure that right as conferred by Article 10A of the Constitution "fair trial" is protected, this Court can always make an order of transfer and the transferee court may take further proceedings from where it is left by the Court from which matter is transferred, only after due service of notice on the respondent.

Conclusion: The Supreme Court can transfer a case from one province to another province without notice to other party.

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4. **Supreme Court of Pakistan**
PESCO v. Ishfaq Khan and others
Civil Appeal NO. 900 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._900_2020.pdf

Facts: The respondent Nos. 1-10 are working as regular Upper Technical Subordinate (UTS) in the appellant department. They filed appeal before the appellant PESCO for their promotion to the post of Junior Engineers/Assistant Managers (BPS-17) against 5% quota reserved for UTS graduate engineers. They filed a Grievance Petition before the Labour Court, Peshawar. The learned Labour Court allowed

the Grievance Petition by directing to adopt rules of Wapda. Appellant failed up to the High Court.

Issue: i) Whether the Labour Court can strike down a policy or notification?

ii) Whether it can direct a statutory body to adopt the rules/policies of another statutory body?

Analysis: It is now established without any reservation that for striking down a policy, notification or an executive order if it infringes the rights of an individual or group of individuals or if it is found to be arbitrary, unreasonable or violative of law or Constitution, the power exclusively rests with the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, and a challenge could be thrown to such a policy, notification or the executive order by way of filing a Constitutional Petition. The Labour Court is not seized with such jurisdiction.

PESCO is a distinct entity, which has its own statutory rules. The law does not permit that a statutory body, who has its own rules, be compelled to adopt the rules of another separate entity. The Labour Court only had the authority to interpret and deal with the respondents under the policy of PESCO, which clearly says that the 5% quota is for induction/direct recruitment and not for promotion….the learned Labour Court had no power to direct the appellant company to adopt the rules of WAPDA or similar constituent companies.

Conclusion: i) The Labour Court cannot strike down a policy or notification.

ii) The Labour Court cannot direct a statutory body to adopt the rules/policies of another statutory body.

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5. **Supreme Court of Pakistan**
Saddaruddin (since decd) thr. LRs v. Sultan Khan (since decd) thr.LRs etc.
Civil Appeal No.960 of 2017
https://www.supremecourt.gov.pk/downloads_judgements/c.a._960_2017.pdf

Facts: Appellant filed a suit for specific performance by asserting oral sale, prolonged possession of suit property coupled with ownership documents of the defendant.

Issue: i) Whether the detail of oral sale is necessary to be mentioned in the plaint?

ii) Whether prolonged possession coupled with ownership document establishes the sale?

Analysis: i) In cases where the sale is pleaded through oral agreement then the terms and conditions which were orally agreed are to be stated in detail in the pleadings and are to be established through evidence. In such like cases, the plaintiff beside detailing subject matter of the sale, the consideration, detail of striking of the bargain, name of the witnesses in whose presence the said oral agreement to sale was arrived at between the parties and other necessary detail for proving the sale agreement as if it would have been executed in writing.

ii) Mere prolonged possession even coupled with title document of defendant by itself does not establish the claim of ownership unless the sale is established.

Conclusion: i) Detail of oral sale is necessary to be mentioned in the plaint.

ii) The phenomenon of prolonged possession and mere production of title document of defendant by itself does not establish the claim of ownership unless the sale is established.

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6. **Supreme Court of Pakistan**
Mian Irfan Bashir v. The Deputy Commissioner (D.C.), Lahore
C.P.446-L/2019
https://www.supremecourt.gov.pk/downloads_judgements/c.p._446_l_2019.pdf

Facts: While seized with dispute of the removal of signboards and advertisements from the Mall Road, the High Court while exercising its power under Article 199 of the Constitution also discussed and passed directions on to a totally different issue, which was not even before the Court, regarding wearing of helmets by motorcyclists plying their bikes on the Mall Road.

Issue: Whether High Court has any suo-motu jurisdiction under Article 199 of the Constitution?

Analysis: "On the application of an aggrieved party" is an essential pre-requisite to invoke the constitutional jurisdiction of the High Court under Article 199 of the Constitution. There must be an application and an applicant to invoke the jurisdiction of judicial review as the High Court does not enjoy *suo-motu* jurisdiction under Article 199.Judicial review is the genus and judicial activism or judicial restraint is its subspecies. While exercising judicial review, there comes a point when the decision rests on judicial subjectivity; which is not the personal view of a judge but his judicial approach. One judge may accord greater significance to the need for change, while the other may accord greater significance to the need for certainty and status quo. Both types of judges act within the zone of law; neither invalidates the decision of another branch of the Government unless it deviates from law and is unconstitutional. Activist judges (or judicial activism) are less influenced by considerations of security, preserving the status quo, and the institutional constraints. On the other hand, self-restrained judges (or judicial restraint) give significant weight to security, preserving the status quo and the institutional constraints.

Judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law. When courts exercise power outside the Constitution and the law and encroach upon the domain of the Legislature or the Executive, the courts commit *judicial overreach*…Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as "judicial adventurism"

or "judicial imperialism." A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects.

Conclusion: High Court does not have any suo-motu jurisdiction under Article 199 of the Constitution.

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7. **Supreme Court of Pakistan**
Munawar Ahmed Chief Editor Daily Sama v. Muhammad Ashraf and others
Civil Petition No.2580 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2580_2020.pdf

Facts: Suit of respondents for damages to the tune of Rs.1,50,00,000/- for defamation was decreed ex parte as prayed for due to publication of defamatory news item.

Issue: How the quantum of special damages and general damages to be assessed?

Analysis: Special damages are defined as the actual but not necessarily the result of the injury complained of. While awarding special damages, it is to be kept in mind that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation.

General damages normally pertain to mental torture and agony sustained through derogatory/defamatory statements. Since there is no yardstick to gauge such damages in monetary terms, therefore, while assessing damages on account of such inconvenience, the Courts apply a rule of thumb by exercising its inherent jurisdiction for granting general damages on a case to case basis…While awarding general damages on account of mental torture/nervous shock is that damages for such suffering are purely compensatory to vindicate the honour or esteem of the sufferer, therefore such damage should not be exemplary or punitive as the sufferer should not be allowed to make profit of his reputation.

Conclusion: Special damages have to be proved by establishing each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation.

General damage should not be exemplary or punitive as the sufferer should not be allowed to make profit of his reputation. The Courts apply a rule of thumb by exercising its inherent jurisdiction for granting general damages on a case to case basis.

8. **Supreme Court of Pakistan**
Muhammad Idress v.The State, etc
Crl. Petition 742-L of 2019 and Crl. Petition 629-L of 2019
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._742_l_2019.pdf

Facts: While disposing of appeals in a murder case, the High Court placed reliance on the contents of the police diary and the opinion of the investigating Police Officer.

Issue: What is the meaning of phrase, "and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial as envisaged under section 172 Cr.P.C"?

Analysis: The object to require recording of the details in the police dairy appears to be to enable the courts to check the method and manner of investigation undertaken by the investigating officer….The expression "to aid it in such inquiry or trial" indicates that it can be used by the Court for the purpose of enabling itself to have a better understanding of the evidence brought on the record of the case by the prosecution. Inspection of the police diaries can reveal sources of further inquiry, viz, the pointation of some important witnesses that the court can summon, or how the evidence produced was collected to better understand the links between the evidence on the record. The Court can thus use the police dairies for resolving obscurities in evidence through questioning the relevant witnesses or for bringing relevant facts on record to secure the ends of justice through legally admissible evidence, e.g., by summoning as witness those persons who are though referred to in the police diary but not sent up as witnesses by the investigating officer and whose testimony appears to be relevant in the inquiry or trial, or by calling production of some document that appears to be relevant to the matter under inquiry or trial. The Court, however, cannot take the facts and statements recorded in police dairies as material or evidence for reaching a finding of fact: these diaries by themselves cannot be used either as substantive or corroborative evidence. It is important to underline that the police diary is itself not the evidence and therefore inadmissible for having no evidentiary value; it is, however, just a source to help understand the undiscovered or misunderstood aspects of the evidence existing on the record, if any, and introduce new dimensions to the case, leading to discovery and production of new evidence, if required to meet the ends of justice. Whatever the court infers from a police diary must translate into admissible evidence in accordance with law, and the court cannot simply rely on, and adjudicate upon the charge on the basis of, statements made in the police dairy.

Conclusion: See analysis.

9. **Supreme Court of Pakistan**
Saeeda Sultan v Liaqat Ali Orakzai and others
Crl. M.A 62-P/2018in Crl O.P.82/2010
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._62_p_2018.pdf

Facts: Petitioner filed criminal miscellaneous application seeking initiation of contempt proceedings for non-compliance of the order of the Supreme Court.

Issue: Whether an order of the Supreme Court can be implemented through execution proceedings as provided under the law or through proceedings in contempt?

Analysis: Civil contempt proceedings cannot be initiated to have a judgment, decree or order of the Supreme Court executed. These proceedings are quasi criminal in nature, as is evident from the penal consequences from the Contempt of Court Ordinance, 2003 and are therefore not warranted in each and every case or cases where the appropriate remedy lies elsewhere such as execution proceedings in this case….It is noted that tool of contempt is often and rampantly misused as a substitute for execution and implementation of the final order, judgment and decree of the trial court as may be upheld, reversed, modified or varied by the apex Court. Where it is a case for implementation of order judgment and decree of the court below simplicitor, the course available is to seek execution in the manner provided for exhaustively in the Code of Civil Procedure and not by way of contempt.

Conclusion: Civil contempt proceedings cannot be initiated to have a judgment, decree or order of the Supreme Court executed.

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10. **Supreme Court of Pakistan**
Syed Iqbal Hussain Shah Gillani v. Pakistan Bar Council
CPLA No. 3171 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._6786_2020.pdf

Facts: Petitioner was disqualified from contesting in the election for the seat of Vice President of Supreme Court Bar Association by the Executive Committee of Pakistan Bar Council.

Issue: Whether the Executive Committee of Pakistan Bar Council falls within the definition "person" and writ petition against it is maintainable?

Analysis: Nothing in the Legal Practitioner and Bar Councils Act, 1973 suggests any administrative control being exercised by the Federal or the Provincial Governments over the affairs of the PBC. The PBC is entirely an autonomous body which has independent elections and generates its own funding without any Government control. Thus, the State does not have any financial or other interests in the affairs of the PBC nor does it perform any function in connection with the affairs of Federation, a Province or Local Authority. Thus, neither the PBC nor any of its committee can be regarded as person performing functions in connection with the affairs of Federation, a Province or Local Authority within

the contemplation of Article 199 of the Constitution. Accordingly, it is not amenable to writ jurisdiction.

Conclusion: The Executive Committee of Pakistan Bar Council does not fall within the definition "person" and writ petition against it is not maintainable.

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11. **Lahore High Court**
Superior College for Girls v. Government of Punjab through Chief Secretary etc.
Writ Petition No. 54008/2020
https://sys.lhc.gov.pk/appjudgments/2021LHC417.pdf

Fact: The petitioner college applied for extension of its registration and addition of subjects before Registering Authority. After the inspection the petitioner's college was recommended for registration and Hope Certificate was issued accordingly. Later on, Higher Education Department issued a letter claiming the Petitioner's application for registration was time barred, hence it could not be granted any affiliation or registration. It also directed Registering Authority to stop entertaining registration of Petitioner College. The contention of the Higher Education Department is that since Secretary Higher Education Department is the Administrative Secretary of the department, hence he can interfere in the registration process.

Issue. Whether the Higher Education Department can interfere in registration process of private colleges before Registering Authority and has any administrative role in this regard?

Analysis The Ordinance provides under Section 3 that all institutions are to be registered and under Section 5 the government shall, by notification, constitute one or more District Committees in each district consisting of at least five members to perform its functions related to registration under the Ordinance. The application for registration is to be moved before the registering authority which is an officer or committee as notified under Section 6 of the Ordinance. This means that the registering authority has been notified by the Government to carry out the registration process. Higher Education Department has no jurisdiction with respect to the registration of an institution under the Ordinance. The contention that Higher Education Department is misconceived as it can help devise policy on the matter but since it has no role under the Ordinance and the Rules, it cannot interfere in the working of Registering Authority.

Conclusion. The Higher Education Department cannot interfere with registration process of private colleges before Registering Authority and it has no administrative role in this regard.

12. **Lahore High Court**
Mirza Arshad Mehmood v. The State.
Criminal Revision No. 53210 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC473.pdf

Facts: The petitioner was convicted and sentenced. He challenged his conviction and sentence, by way of an appeal, but it was dismissed due to non-prosecution.

Issue: Whether, after admission, an appeal can be dismissed due to non-prosecution. If so, what remedy is available to the petitioner against this dismissal?

Analysis: It is a settled legal principle that after admission of a criminal appeal, it cannot be dismissed without adverting to the merits thereof and non-appearance of appellant or his counsel is not a ground for dismissal unless all the raised questions are determined and factual and legal aspects are thrashed as contemplated under section 423, Cr.P.C. Despite all the above mentioned, as per law laid down by the august Supreme Court of Pakistan in case titled "IKRAMULLAH and others versus The STATE" reported as 2015 SCMR 1002, the petitioner may surrender himself before the learned appellate Court and seek resurrection of his appeal.

Conclusion: An appeal preferred by the appellant against his conviction and sentence by the High Court cannot be dismissed for non-prosecution after admission. However, in case of dismissal, the petitioner can surrender himself before the learned Appellate Court and seek resurrection of his appeal.

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13. **Lahore High Court**
The Chief Administrator Auqaf v. Syed Abid Hussain (Deceased) Through Lrs., Etc
F.A.O.No. 152 of 2005.
https://sys.lhc.gov.pk/appjudgments/2021LHC462.pdf

Facts: The Appellant, Waqf Authority, through notification under The Punjab Waqf Properties Ordinance, 1979, took over the shrine and possession of some agricultural and residential lands of respondents. The respondents assailed the actions of the appellant through institution of petition under Section 11 of the Ordinance before District Judge, which was entrusted to the Additional District Judge, who allowed the same.

Issue: Whether an Additional District Judge can be termed as District Court as per contemplation of Section 11 of the Ordinance?

Analysis: In terms of Section 11 of the "Ordinance" any person claiming any interest, in any waqf property in respect of which a notification under Section 7 has been issued, can bring a petition within thirty days of the publication of such notification before the District Court within whose jurisdiction the waqf property or any part thereof is situated seeking a declaration "District Court" is nowhere defined in the "Ordinance" itself. Section 2(21) of the West Pakistan General Clauses Act, 1956 however defines the terms "District Court" as *the principal Civil Court of original civil jurisdiction of a district; but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction".*

It is thus apparent from the above that a "District Judge" is the Judge of a Principal Civil Court of original jurisdiction, but Section 2(20) does not include the "Additional District Judge" as a Judge of Principal civil court of original jurisdiction alongwith District Judge. This omission seems to be meaningful and purpose oriented when Section 2(17) defines the "Commissioner" and includes Additional Commissioner in it as well. The inclusion of "Additional Commissioner" in the realm of "Commissioner" and simultaneously exclusion of "Additional District Judge" from the definition of "District Judge" under Section 2(20) seems to be intentional on the part of legislature.

Section 3 of Punjab Civil Court Ordinance, 1962 also draws a distinction between the Court of "District Judge" and the "Additional District Judge". Though by virtue of sub-section (2) of Section 6, an Additional District Judge shall discharge such functions of a District Judge as the District Judge may assign to him and in the discharge of those functions, he shall exercise the same powers as the District Judge, but it does not mean that in this way an Additional District Judge can assume the status of "District Court" as per contemplation of Section 11 of the "Ordinance". This view is further strengthened from Section 24 of "C.P.C", wherein the Courts of Additional and Assistant Judges have been deemed to be subordinate to the District Court.

Conclusion: The term "District Court" used in Section 11 of the "Ordinance" is only relatable to "District Judge". An "Additional District Judge" is alien to the provisions contained in the "Ordinance" and as such powers and functions vested under Section 11 of the "Ordinance" of a "District Court" cannot be bestowed upon him. It is only the "District Judge", who is competent to adjudicate upon the petition under Section 11 of the "Ordinance" and the impugned judgments have been passed without any lawful authority and jurisdiction.

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14. **Lahore High Court**
Muhammad Hanif v. The State
2021 LHC 386
Criminal Appeal No. 280-J of 2019
Murder Reference No.82 of 2015
https://sys.lhc.gov.pk/appjudgments/2021LHC386.pdf

Facts: Appellant was awarded death sentence u/s 302-b PPC for committing Qatl-i-amd.

Issue: What is the effect of delay in post mortem examination of the deceased in a case punishable u/s 302 PPC?

Analysis: The post mortem examination report of the deceased persons reveals that the time between death and post mortem examination is 24 hours. This clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant while armed escaping from the place of occurrence were not present at the time of occurrence and the delay in the post mortem examinations was caused in order to procure their attendance and formulate a false account of the incident

after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan (2012 SCMR 327, 2019 SCMR 956, 2019 SCMR 1068) that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

Conclusion: Delay in post mortem examination is fatal for the prosecution as it reflects absence of eye witnesses from the crime scene and implies that their presence there has been dishonestly claimed to build a false narrative to involve any person.

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15. Lahore High Court
Ms. Unaiza Ahmed and another v. Federation of Pakistan
2021 LHC 425
W.P. No.8105/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC425.pdf

Facts: On the complaint of a whistle-blower, the initiation officer, under section 22 of the Benami Transactions (Prohibition) Act, 2017 (the Act) issued notice to the petitioners with the allegation that petitioner No.1 was a benamidar of her father (petitioner No.2). The notice was challenged on the ground that a whistle-blower can only file a complaint/information if property that is subject matter of allegations of benami is held in relation to the offences listed under section 2(31) of the Act.

Issue: Whether the initiation officer, on a complaint by a whistle-blower, can only issue notice under section 22 of the benami Transactions (Prohibition) Act, 2017 (the Act) to a benamidar if the property is held by him in relation to the offences listed under section 2(31) of the Act?

Analysis: Section 22 of the Act entitles an initiating officer to issue notice, subject to having material in possession and reason to believe that some person is a benamidar of other person. Exercise of jurisdiction by the initiating officer is not subject to or dependent upon the gist/context of the complaint filed or information supplied. It would be an extreme absurdity to hold that initiating officer would first determine the factum of offences committed, under relevant statutes and thereafter – subject to the requirement of grant of approval under section 21 – issue notice. It is for the first petitioner to establish that property held was not as benamidar of second petitioner, during the course of which proceedings status of the property – accounts – would be determined. And if it is found that property is held as benamidar of second petitioner, law will take its course. By no stretch of imagination or upon invoking any principle of statutory interpretation, section 2(31) of the Act can be held to control and regulate section 21 and 22 of the Act – conferring jurisdiction accordingly. Second fatal defect in the argument is that it implies that whistle-blower shall first make self-determination to ascertain that whether property alleged as benami, bears some relation to any of the offences

mentioned and thereafter file complaint or provide information, which clearly defeats the purpose of the Act.

Conclusion: For issuance of notice u/s 22 of the Act by the initiating officer it is not necessary that the property, that is subject matter of the allegation of benami, is held by benamidar in relation to offences specified in section 2 (31) of the Act even if the notice is issued in response to the complaint by a whistle-blower.

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16. **Lahore High Court**
Ejaz Ahmad v. The State
2021 LHC 443
Criminal Revision No.57 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC443.pdf

Facts: A prosecution witness was partly cross-examined by the defence when the court accepted application by the prosecution for his re-examination.

Issue: Whether in criminal trial permission for re-examination of a witness can be granted prior to completion of cross-examination on that witness?

Analysis: Article 133 of the Qanun-e-Shahadat, 1984 prescribes the order in which the witness is to be examined; first examination-in-chief, then cross-examination, and then (if the party calling him so desires) re-examination. The aforesaid provision, therefore, lays down a procedure as to how a witness called on behalf of a party is to be dealt with at the trial and the order in which the witness has to be examined by each party (prosecution and accused) during the trial. The term "already examined" as used in section 540 of the Code of Criminal Procedure, 1898 can be easily construed to mean that a witness stands already examined when the order in which the witness is to be examined prescribed by the Article 133 of the Qanun-e-Shahadat, 1984 has been followed and the examination of the said witness has been completed. The essential requirement is that the witness sought to be recalled and re-examined under the provisions of 540 of the Code of Criminal Procedure, 1898 must have been already examined. In this case, the learned trial Court fell in error as it proceeded to allow the application filed by the prosecution under section 540 of the Code of Criminal Procedure, 1898 seeking the recall and re-examine a witness even prior to the conclusion of the cross- examination on behalf of the accused on the said prosecution witness.

Conclusion: In criminal trials a witness cannot be permitted to be re-examined before conclusion of cross-examination on him.

17. **Lahore High Court**
Muhammad Arif Ameen etc Versus The Province of Punjab etc
ICA No.33280/2020
https://sys.lhc.gov.pk/appjudgments/2021LHC484.pdf

Facts: Appellants are ex-Army Personnel who were recruited by the Punjab Police on contract basis. They filed constitutional petitions seeking regularization of their service. Their matter was considered by the Scrutiny Committee, which held that appellants failed to qualify the eligibility criteria for regularization, hence not only their services were not regularized but they were also served with one month notice after which, their contract services will deemed to be terminated. The appellants being aggrieved filed constitutional petitions. Those petitions were dismissed, hence these Intra Court Appeals.

Issue: Whether, Intra Court Appeals, under the proviso to subsection 2 of section 3 of the Law Reforms Ordinance, 1972 (Ordinance), are maintainable if the constitutional petition brought before the High Court arises out of any proceeding, in which, the law applicable provide for at-least one appeal or one revision or one review to any court, tribunal or authority against the original order?

Analysis: The notices for termination of services which were impugned in the constitutional petitions decided by learned Single Bench, indeed arose out of the proceeding under the provision of the Act, against which, remedy of appeal being available under section 12 of the Act, these ICAs are not maintainable in view of aforesaid provision of the Ordinance.

Conclusion: Where a statute under which the impugned order is passed, itself provides the remedy of appeal, ICAs are not maintainable.

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18. **Lahore High Court**
Suraj Cotton Mills Limited etc. v. Federation of Pakistan etc.
2021 LHC 449
WP No.35089/2020
https://sys.lhc.gov.pk/appjudgments/2021LHC449.pdf

Facts: SNGPL applied to OGRA for determination of its revenue requirements for the financial year. Under Section 8(1) of the Oil and Gas Regulatory Authority Ordinance, 2002, OGRA fixed the provisional tariff at the rate of Rs.464.94 MMBTU and forwarded the tariff to Federal Government for advice. The Federal Government, though was required to render its advice within 40 days, gave the advice after a gap of 14 months. OGRA then notified the sale price of the natural gas through the impugned notification @ Rs.600 MMBTU.

Issue: i)How and by whom the ‘prescribed price’ and the ‘sale price’ of natural gas are determined under the Oil and Gas Regulatory Authority Ordinance, 2002 (Ordinance) and Natural Gas Tariff Rules, 2002 (Rules)?
ii)Whether the petitioners, on the failure of the Federal Government and OGRA of fixing the sale price within the time period given in the Ordinance, could be given

the benefit of paying gas tariff @ of Rs.464.94 MMBTU instead of the notified tariff @ Rs.600 MMBTU?

Analysis: i)As per provisions of the Ordinance and the Rules, OGRA makes a determination of the estimated revenue required by a licensee for natural gas and issues the prescribed price for each licensee for a given fiscal year. The prescribed price is the amount determined which represents the amount a licensee is entitled to receive from each category of its retail consumer of natural gas in order to achieve its total revenue requirements. OGRA is then required, not later than three days of each determination, to seek advice from the Federal Government with reference to the sale price for each category of retail consumer of natural gas. The sale price is the price notified under Section 8 which a licensee for natural gas is entitled to recover against each category of retail consumer. Hence important to note is that OGRA issues the prescribed price while the Federal Government notifies the sale price. In the event of failure of the Government to advise the Authority within the stipulated time and the prescribed price for each category of retail consumer is higher than the most recently notified sale price for that category, then OGRA is required to notify the prescribed price as determined by the Authority under Section 8(1)(2) of the Ordinance to be the sale price for the said category. Hence Section 8 casts an obligation on the Federal Government to issue its advice within 40 days on the sale price and it also casts an obligation on OGRA to make a determination and issue a notification where the Federal Government does not issue its advice in 40 days.

ii) The Petitioners do not get any benefit on account of the fact that they did not challenge the prescribed price issued by OGRA on 03.7.2014, the final price issued by OGRA on 27.11.2015 and the next notification by OGRA on 30.12.2016. After a considerable delay, they filed writ petitions before the Lahore High Court, Multan Bench and originally obtained interim orders, restraining them from paying the notified price as per the impugned Notification dated 31.8.2015 and then sought a direction to treat their petitions as reviews before OGRA for the purposes of the notified sale price in the impugned Notification dated 31.8.2015. Until the filing of the writ petitions, the Petitioners, without any objection, continued to pay at the notified rate of Rs.600 MMBTU as per the impugned Notification dated 31.8.2015. After the decision of the Hon'ble Sindh High Court at Karachi on 6.5.2016, they challenged the impugned Notification and stopped making payments. They then appeared before OGRA in the form of a review which remedy they never availed during the time it was available to them. Nonetheless they were heard and the reviews were dismissed. The Petitioners have no right to decide what the tariff should be for any particular fiscal year on the basis of which they can file constitutional petitions. Tariff determination is a lengthy process which requires many factors to be considered. If at all they were aggrieved during the process of determination of the prescribed price, remedy in form of review was available to them under the Ordinance. Moreover the Petitioners want to pay at the rate of Rs.464.94 MMBTU as opposed to the notified rate of Rs.600 MMBTU. They were unable to explain why they should be required to pay at the rate of Rs.464.94 MMBTU when they were paying at the rate of Rs.488.23 MMBTU as notified on 1.1.2013. Furthermore the final tariff for

the year 2014-15 was Rs.528.19 MMBTU as determined by OGRA. Hence there is no logic in seeking to pay Rs.464.94 MMBTU

Conclusion: i) OGRA is to fix the prescribed price and in not later than three days, is to seek advice from the Federal Government for notifying the sale price. The Federal Government is to render its advice within 40 days, and OGRA notifies the sale price. Where the Federal Government fails to render the advice and the prescribed price is higher than the most recently notified sale price, OGRA is required to notify the prescribed price to be the sale price for the concerned category.

ii) The Petitioners were held not entitled to any relief since:

i. They did not challenge prescribed price dated 03.7.2014, the final price dated 27.11.2015 and next notification dated 30.12.2016;
ii. They accepted the impugned notification by continuing to pay gas tariff at the rate fixed by it;
iii. They challenged the impugned notification after a considerable delay, that too only after a favourable decision by the Sindh High court;
iv. They did not timely avail the remedy of review against the impugned notification that was available to them under the ordinance;
v. They have no right to decide the amount of gas tariff they want to pay in a fiscal year;
vi. There is no logic behind the request of the petitioners of making payment @ Rs. 464.94 MMBTU when per notification dated 01.01.2013 they had been making payment @ Rs.488.23 MMBTU and the final tariff for the year 2014-15 was fixed @Rs.528.19 MMBTU.

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19. **Peshawar High Court**
Sardar Attique ur Rehman v. The State & 05 others
Writ Petition No. 510-N2019
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-510-OF-2019..15022021125906.pdf

Facts: Police cancelled an FIR on the ground that complainant failed to provide evidence against the named accused and Judicial Magistrate agreed with the opinion of the police without recording any reason of his own and without providing any opportunity of hearing to the complainant.

Issue: Whether Magistrate is bound to give his own reasons while accepting opinion of police for cancellation of an FIR and whether it was essential to provide complainant an opportunity of hearing ?

Analysis: The learned Judicial Magistrate simply agreed with the opinion of the police officer and failed to record his own reasons for agreeing with the police. While exercising power under section 173 (3) Cr.P.C, the learned Magistrates are not to act as pawns in the hands of the police and pass mechanical orders without

application of their conscious mind to the facts and material placed before them because the opinion expressed by the police is not binding upon them.

The learned Magistrate must be made to realize that the power to cancel a police case is of wide amplitude which has the effect of bringing a halt the criminal prosecution which otherwise would entail a detailed process. Such a power, therefore, by its very nature, cannot be designed to be exercised on mere ipse dixit of the police otherwise, the very purpose for conferring this power on the Magistrate on responsible level in supervisory capacity would stand defeated.

One of the basic concepts of Sharia in the administration of justice (adl) is the hearing of both the parties by the Qazi or Judge passing the order. This is known as the principles of natural justice.

In all proceedings by whatsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting "the person or property or other right of the parties concerned" this rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.

Conclusion: The power of Magistrate to cancel F.I.R is supervisory in nature and he cannot act on the *ipsi dixit* of the police. He is required to pass speaking order by recording his own reasons while cancelling F.I.R and that too after providing an opportunity of hearing to the complainant.

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20. **Sindh High Court**
Karachi Golf Club (Private) Limited vs. Province of Sindh & Others
CPD Nos. 7042 of 2018, 7409 of 2018 and 8302 of 2019
http://43.245.130.98:8056/caselaw/view-file/MTUwMDIyY2Ztcy1kYzgz

Facts: Under the Sindh Sales Tax on Services Act 2011 ("Act") clubs are required to collect / pay sales tax in respect of services being rendered to their members. Petitioners contended that private members clubs, engaged in private recreational activity, fell outside the scope and ambit of the Act, read in conjunction with the doctrine of mutuality; hence, membership fees and subscription charges could not be considered taxable services.

Issue: Whether membership / entrance fees and subscription charges (monthly and / or annual), received by members' clubs, from their members, fall within the purview of sales tax?

Analysis: Broadly speaking a club may be classified as a members' club or a proprietary club. The basic difference between a members' club and a proprietary club is that the former is characterized by a contractual relationship between the members inter se, whereas the latter is characterized by a contractual relationship between each member and the proprietor.

The doctrine of mutuality is the principle which obligates an association of persons who are agreed inter se, not to derive profits or gains but to achieve, through their mutual contributions, a purpose or benefit in which all members should participate or would be entitled to do so. The essence of this doctrine, in nexus with taxation matters, denotes that receipts that fall within the purview thereof are exempt from taxation since monies derived from oneself cannot be subjected to taxation. The structure of the doctrine rests upon three primary pillars, in the light of judicial interpretation from time to time, being: the absence of commerciality; presence of complete identity between the contributor and the participant; and impossibility for the contributors to derive profit from activity, where they are the contributors as well as the recipients of the funds.

Section 333 of the Act defines taxable services inter alia as services provided in the course of an economic activity. Economic activity has been defined in Section 434 of the Act and specifically excludes private recreational pursuits. In order to reconcile the doctrine of mutuality with the Act, a service may only be considered taxable if it is rendered in the course of economic activity and the statutory definition of economic activity does not encompass rendering of services to oneself. In the context of income tax the doctrine is inter alia applied when there is complete identity between the contributor and the participant; whereas, in the analogous context of sales tax on services the doctrine may apply when there is a confluence of identity between the provider and the recipient of the service; generating the very income that is excluded from the purview of tax pursuant to the doctrine of mutuality.

Charging section of the Act, read with the doctrine of mutuality, does not encumber services, rendered by a members' club to its members, within the ambit of taxable services, hence, a tariff heading, originating per the definition clause, could not override the charging section of the Act itself. It is in the same context that the definition of club, per section 2(22)40 of the Act has to be considered.

Rule 42(2)(a) of the Sindh Sales Tax on Services Rules 2011 ("Rules") also envisages the inclusion of membership fee and subscription charges within the ambit of taxable services; however, but said rule has to be read to exclude the same in the instance that the same are received by members' clubs from their members. Since the Act in itself has been interpreted to exclude the taxability of membership fee and subscription charges, in the context of members' clubs, therefore, no interpretation can be given to the subordinate rules exceeding the remit of the statute itself.

The subscription charge, monthly or annual, is an aggregate fee paid periodically to encompass entitlement to the facility of indistinct benefits. This amount is payable irrespective of whether the respective facilities are availed or otherwise. The said fee is paid at the time that a person is inducted as a member of a club and in any event exclusive of any services that may be rendered as a consequence of membership. Entrance fees paid by the members for obtaining membership of a members' club could not be said to be received out of any profit motive; hence, the doctrine of mutuality was attracted. Therefore, this fee cannot be considered

taxable within meaning of the Act. Membership / entrance fees and subscription charges, obtained by members' clubs from their members, do not constitute monies generated from economic activity and do not accrue out of rendering of any taxable service, per the interpretation of the relevant provisions of the Act; hence, fall outside the purview of the Act.

Conclusion: Membership / entrance fees and subscriptions charges (monthly and / or annual), obtained by members' clubs from their members, do not fall within the purview of sales tax, as per reading of the Act synchronized with the doctrine of mutuality.

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21. **Sindh High Court**
Collector of Customs vs. Super Star Company
SCRAs 311 to 313 of 2020
http://43.245.130.98:8056/caselaw/view-file/MTUwMDI1Y2Ztcy1kYzgz

Facts: Consignments of arms and ammunition imported by the respondent were subjected to show cause notices and the respondent was asked to answer as to why the consignments ought not to be confiscated since they had remained un-cleared at the port since 2016. Confiscation of the consignment was ordered on the premise that the consignment arrived after the cut-off date, as the Ministry of Commerce vide memorandum No. 17(I)/2016-Imp-I dated 14.09.2017 has allowed for release of those delayed shipments of Arms and Ammunition imported in contravention of SRO 1112(I)/2014 dated 16.12.2014, which arrived up to 20.10.2015. Confiscation order was set aside in appeal by the learned Tribunal, while holding that estoppel shall operate against the department as SRO could not override the right which has been acquired to the appellants.

Issue: Whether a beneficial notification issued during the pendency of adjudication proceedings can be given retrospective effect?

Analysis: Show cause notice/s to the respondents were issued in 2018, post the clearance timeframe enunciated in SRO 1112; however, the respondents were required to demonstrate as to why the relevant import documentation had not been submitted till that date. The ostensible reasons for the delay in seeking clearance, per the respondent, was belated arrival due to supplier issues and the change in the nature of authorization from value based to quantity based. However, the relevant consignments did in fact arrive post the cut-off date provided in SRO 1112. During the pendency of the adjudication proceedings, before the Additional Collector Adjudication, SRO 772(I)/2018 ("SRO 772") was issued on 14.06.2018 and therein SRO 1112 was repealed. The adjudicating officer did not appreciate the aforementioned SRO in its proper perspective and proceeded to order the outright confiscation of the consignments, pursuant to a notification admittedly repealed during the pendency of proceedings there before. No case has been set forth to disentitle the respondent to the retrospective beneficial effect of SRO 772; especially in view of the admitted factum that even in respect of the tenancy of the repealed SRO 1112, waivers were granted from the prescription of timelines therein contained.

Conclusion: The beneficial notification issued during the pendency of adjudication proceedings can be given retrospective effect.

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22. **Sindh High Court**
Advocate Sikandar Ali. V. Provincial Selection Board High Court of Sindh, Karachi & others
Constitutional Petition No. D-281 of 2020
http://43.245.130.98:8056/caselaw/view-file/MTUwMDUxY2Ztcy1kYzgz

Facts: The Petitioner questioned the scrutiny of the Provincial Selection Board (the "Board"), alleging that there was an omission on its part to properly examine and verify the character and integrity of Respondent No.2. According to the petitioner, Respondent No.2 who has been selected as the additional District & sessions Judge is involved in forgery and malpractices. Petitioner submitted that the Board had not properly scrutinized such antecedents when making its recommendation in the matter, hence the recommendation ought to be held in abeyance until a comprehensive inquiry was conducted.

Issue: Whether the process of the Provincial Selection Board admits scrutiny under Article 199 of the Constitution?

Analysis: After examining the scope of Article 199 of the Constitution, particularly sub-article (5), as well as Articles 176 and 192, through seminal judgment august Supreme Court in the case of Gul Taiz Khan (CA 353-355/2010) held that executive, administrative or consultative actions of the Chief Justices or Judges of a High Court were amenable to the constitutional jurisdiction of a High Court. The aforementioned binding precedent removes all doubt that the present petition is not maintainable to the extent that it seeks to assail the process and proceedings of the Board. It also merits consideration that the petitioner has come forward against what is merely a recommendation, with the Respondent No.2 not yet having been appointed to any post. Even otherwise, it is axiomatic that any such determination has to necessarily be predicated on findings of fact based on evidence.

As the Petitioner has miserably failed to establish infringement of any of his fundamental rights; hence has no locus standi to get any relief under Article 199 of the Constitution.

Conclusion: The Hon'ble Court held that neither the petition was maintainable nor the petitioner could establish his locus standi; hence while observing that the respondents Nos. 3 and 4 are at liberty to conduct a proper inquiry into the matter, and the findings may be placed before the competent authority, dismissed the petition.

23. **Sindh High Court**
MA No.8156/2020
CR. APPEAL NO.371/2020
http://43.245.130.98:8056/caselaw/view-file/MTQ5OTE4Y2Ztcy1kYzgz

Facts: Appellant, who is transgender, was attacked by other prisoners when he was confined in Landhi Jail. He brought the matter before the Court in pending appeal and contended that action was negation of Sindh Prisons Rules and Correction Services Act 2019 as well failure of the Jail Incharge in adhering to the relevant rules. Senior Superintendent, Central Prison contended that there was a capacity issue hence it was not possible to provide separate barrack for transgenders, however a separate room with all facilities was provided to appellant.

Issue: Whether a separate barrack for transgender(s) was to be allocated in the Prison?

Analysis: None can deny that 'transgender', being citizen of Pakistan, always had all the privileges and guarantees available to any other gender because such guarantees and privileges are never confined to a particular 'gender' but to the 'person'. The definition of 'person' always includes the 'transgender'. Such rights and privileges shall always be available to a transgender even while undergoing punishment as 'prisoner' or 'under trial prisoner'. It is an undeniable position that the appellant was attacked by other prisoners when he was confined in Landhi Jail which, prima facie, was negation of referred rules as well failure of the Jail incharge in adhering to the relevant rule.

The capacity issue is not a sufficient excuse when it comes to a question of fundamental rights. The Senior Superintendent, Central Prison, Karachi, however, appears to be no aware of the 'Transgender Persons (Protection of Rights) Act, 2018.

The failure of the Government in discharging its defined obligations is not worth appreciating but this alone cannot be an excuse for the jail authorities in not keeping the transgender persons separate from male and female prisoners particularly when the Rule 38 of above referred rules requires so as mandatory obligation.

All the jail authorities shall ensure compliance of such mandatory rule till the time the government discharges its obligation, as detailed above. The jail authorities shall not come forward with an excuse of capacity issue rather shall ensure satisfaction of the spirit of the rule which is 'transgender shall be kept separate'. Under these circumstances, judicial propriety demands notice to Advocate General Sindh and Home Secretary, Government of Sindh, who on next date of hearing, shall place on record the initiatives of the government towards discharge of its obligation(s), as per the said Act.

Conclusion: Under the Rule 38 of Sindh Prisons Rules and Correction Services Act 2019 all the jail authorities shall ensure compliance of mandatory rule of keeping convicted or under trial transgender in separate barrack. An excuse of capacity issue should not come in the way to the compliance of the rule.

24. **Sindh High Court**
Waste Busters Limited vs. Province of Sindh & Others
CPD 4633 of 2017
http://43.245.130.98:8056/caselaw/view-file/MTQ5OTcyY2Ztcy1kYzgz

Facts: Petitioner challenged deduction of sales tax rested on a private commercial invoice, a copy of a cheque and an unsigned breakup of amounts, pursuant to a contract between two parties.

Issue: Whether any contractual dispute of which there remains no corroboration on record can be questioned in Constitutional jurisdiction of the High Courts?

Analysis: Primary grievance appears to be a private contractual matter, between parties to the contract, and the official respondents seem to have been impleaded to seek the adjudication of the grievance before this court, in the exercise of its writ jurisdiction. Masquerade of pleadings to invoke the Constitutional jurisdiction of the court is undesirable.

Conclusion: Contractual disputes do not merit adjudication vide recourse to writ jurisdiction.

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25. **Supreme Court of the United States**
FNU Tanzin v. Tanvir
https://www.supremecourt.gov/opinions/20pdf/19-71_qol1.pdf/

Facts: Three Muslim men born outside of the U.S. but living lawfully inside the country, were approached by FBI agents and asked to act as informants. Citing their religious beliefs, the three men declined. FBI agents then retaliated against their refusal to act as informants by placing them on the national "No Fly List." They sued the agents in their official and individual capacities in U.S. federal court under the First Amendment, the Fifth Amendment, and the Administrative Procedure Act. The U.S. District Court dismissed the claims against the agents in their individual capacity. The three men appealed to the 2nd Circuit Court, which reversed the lower court's ruling. FBI Special Agent moved for the circuit court to rehear the case. The circuit court also denied the motion. Then one of the men petitioned the U.S. Supreme Court for a hearing.

Issue: Whether the provision in RFRA (RELIGIOUS FREEDOM RESTORATION ACT) allowing litigants to 'obtain appropriate relief against government,' authorizes an award of money damages against federal employees sued in their individual capacities.

Analysis: The court affirmed the 2nd Circuit's decision in an 8-0 ruling, holding that under the RFRA, individuals may sue government officials in their individual capacities and obtain monetary damages. Justice Clarence Thomas delivered the opinion of the court. In his opinion, he wrote that, based on the RFRA's text, litigants may sue government employees in their personal capacity. He also wrote that "appropriate relief" under the RFRA depended on the context. In this case's context, the court held that "appropriate relief" included money damages. Justice Amy Coney Barrett did not take part in the case's opinion.

Conclusion: It was concluded that the RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities. The judgment of the United States Court of Appeals for the Second Circuit was affirmed.

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26. **United Kingdom Supreme Court**
T W Logistics Ltd v. Essex County Council[2021] UKSC 4
https://www.bailii.org/uk/cases/UKSC/2021/4.html

Facts: This case was about the law relating to the registration of a town or village green ("TVG") under the Commons Act 2006. The use of the phrase "town or village green", particularly the word "green", conjures up an image of the archetypal village green with its area of grass where local inhabitants can walk and play. But the TVG in issue, as registered by the defendant/respondent, Essex County Council ("the Council"), was an area of concrete of some 200 square meters (which shall be referred to as "the Land") on, or close to, the water's edge in a working port and across which port vehicles, including heavy goods vehicles ("HGVs"), are driven.

Issue: Whether the registration of the Land as a TVG would have the consequence that the continuation of the pre-existing commercial activities of the land owner namely TW Logistic (TWL) would be criminalised under the Victorian statutes?

Analysis: The conclusion regarding the true meaning and effect of the Victorian statutes which we have reached, is a consequence of the application of ordinary principles of statutory interpretation. The criminal law is often formulated by reference to general standards of behaviour, e.g. in relation to the offences of careless and inconsiderate driving and gross negligence manslaughter and the use of the standard of being "reasonably practicable" in the offences under the health and safety legislation. A court is not entitled to depart from the meaning of a statutory provision arrived at on the basis of ordinary principles of interpretation, on the grounds that it might have preferred greater precision in the formulation of an offence. Indeed, there is a long-standing principle of statutory interpretation, designed to avoid cases of doubtful penalisation, which precisely deals with any problems which might arise from a lack of precision in the formulation of an offence (see *Tuck & Sons v Priester* (1887) 19 QBD 629, 638 per Lord Esher MR; *Craies on Legislation*, 12th ed (2020), para 19.1.14).

Interpreting the Victorian statutes in this way leads to a sensible and readily comprehensible result in the present case, which is consistent with the overall legislative scheme in relation to TVGs. Here, TWL has the legal right in the period after the registration of the Land as a TVG to carry on with what it has been doing previously on the Land, its activities are "warranted by law". TWL would therefore not be committing an offence under the Victorian statutes in continuing its pre-existing commercial activities. The same is true in relation to

the common law offence of public nuisance, which continues to be relevant in this context.

Conclusion: The commercial activities would not be criminalised by the Victorian statutes where those activities are "warranted by law". This underlying feature of the Victorian statutes is reflected in the words "without lawful authority" in section 12 of the 1857 Act.

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27. **Supreme Court of the Australian Capital Territory**
Benning v. Richardson [2021] ACTSC 34
http://www.austlii.edu.au/cgibin/viewdoc/au/cases/act/ACTSC//2021/34.html

Facts: The plaintiff was injured in a motor vehicle accident. She was an intoxicated passenger in a vehicle driven by an intoxicated driver (defendant). The plaintiff claimed that the accident was caused by the negligence of the defendant therefore sought damages as a result of that negligence. The defendant admitted the breach of duty of care owed to the plaintiff by driving while intoxicated. But he took the defence plea that there should be a substantial finding of contributory negligence because the plaintiff voluntarily departed in the vehicle when she knew or ought reasonably to have known that the driver was intoxicated. In addition, she was not wearing a seatbelt.

Issue: Whether the contributory negligence arises from the fact that plaintiff voluntarily departed in the vehicle of a drunken driver(defendant) and she was also not wearing a seat belt?

Analysis: As for as the entering of the vehicle with an intoxicated driver is concerned, the plaintiff took the plea that if she was so drunk that she could not appreciate the danger then there should not be a finding of contributory negligence. The court held that the issue is not whether a reasonable person in the intoxicated passenger's condition would realize the risk of injury in accepting the lift. It is whether an ordinary reasonable person - a sober person - would have foreseen that accepting a lift from the intoxicated driver was exposing him or her to a risk of injury by reason of the driver's intoxication. If a reasonable person would know that he or she was exposed to a risk of injury in accepting a lift from an intoxicated driver, an intoxicated passenger who is sober enough to enter the car voluntarily is guilty of contributory negligence. In addition, she was aware that there were other taxis present and the option to get home by a safe means was available. Taking these factors into account, the plaintiff, as a reasonable person, would have foreseen that, entering as a passenger in a car driven by the intoxicated defendant, would expose her to a risk of serious injury.

It was clear both from the blood analysis and from the CCTV footage of the hotel that the plaintiff was well intoxicated when departing. In such a condition that she may not have considered wearing the seatbelt. Moreover, it was visible from the snap taken after the accident, the seatbelt was in its clasp, the plaintiff's head had been striking with the windscreen, was sufficient for court to conclude that the

defendants have established that the plaintiff was not wearing a seatbelt when the collision occurred.

Conclusion: The contributory negligence arises from the plaintiff's travelling in the vehicle with an intoxicated driver. Moreover, not wearing a seatbelt was also a contributory negligence on the part of the plaintiff. As a result an overall 35% concession is granted to defendant from the total amount of damages assessed against.

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28. **Supreme Court of India**
Civil Appeal No 821 of 2021
Union Public Service Commission v. Bibhu Prasad Sarangi and others
https://main.sci.gov.in/supremecourt/2020/9660/9660_2020_36_5_26705_Judgement_05-Mar-2021.pdf

Facts: The appellant moved before the High Court in proceedings under Article 226 of the Constitution for challenging an order of the Central Administrative Tribunal. The High Court upheld the decision of Tribunal by holding that Tribunal has not committed any jurisdictional error and no interference is warranted however there has been no independent application of mind to the controversy by the High Court and paragraphs from the judgment of Tribunal were reproduced by the High Court.

Issue: Whether mode/manner of decision adopted by High Court without discussing the rival merits of parties and reproducing paragraphs of Tribunal's decision, is justified?

Analysis: Supreme Court held that:

Cutting, copying and pasting from the judgment of the Tribunal, which is placed in issue before the High Court, may add to the volume of the judgment. The size of judicial output does not necessarily correlate to a reasoned analysis of the core issues in a case.

Technology enables judges to bring speed, efficiency and accuracy to judicial work. But a prolific use of the 'cut-copy-paste' function should not become a substitute for substantive reasoning which, in the ultimate analysis, is the defining feature of the judicial process. Judges are indeed hard pressed for time, faced with burgeoning vacancies and large case-loads.

Crisp reasoning is perhaps the answer. Doing what the High Court has done in the present case presents a veneer of judicial reasoning, bereft of the substance which constitutes the heart of the judicial process. Reasons constitute the soul of a judicial decision. Without them one is left with a shell. The shell provides neither solace nor satisfaction to the litigant.

How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary.

Conclusion: Supreme Court held that the High Court having not carried out the exercise, we set aside the impugned judgment and order of the High Court. The writ petition under Article 226 shall stand restored to the file of the High Court.

LIST OF ARTICLES:-

1. **MANUPATRA**
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   COVID-19, Leases & Rent: The Legal Viability of Frustration by Force Majeure in Lease Agreements by *Raghav Kacker& Ruchi Chaudhury*

2. **HARVARD LAW REVIEW**
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   The Morality of Administrative Law by *Cass R. Sunstein & Adrian Vermeule*

3. **COURTING THE LAW**
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   No More Dignity Trials by *Laiba Qayyum*

4. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12457
   Reason-Giving in Administrative Law: Where are We and Why have the Courts not Embraced the ‘General Common Law Duty to Give Reasons’? by *Joanna Bell*

LAHORE HIGH COURT

BULLETIN

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(16-03-2021 to 31-03-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Sheikh Muhammad Muneer v Mst. Feezan
Civil Petition No. 962 of 2016
Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._962_2016%20.pdf

Facts: Petitioner filed a suit for specific performance alleging execution of agreement which was witnessed by three witnesses. He produced only one witness and scribe.

Issue: Whether a scribe can be termed as witness?

Analysis: A scribe may be an attesting witness provided the agreement itself mentions/nominates him as such. The agreement mentioned three attesting witnesses by name and the scribe (Muhammad Iqbal) was not one of them…As regards the scribe he was not shown or described as a witness in the said agreement, therefore, he could not be categorised as an attesting witness. The cited verse of the Holy Qur'an mentions three times the word scribe (katib) and five times the witness/es (shahid) but does not use these words interchangeably, instead separately and distinctively. Therefore, a scribe and a witness cannot be the same.

Conclusion: A scribe cannot be regarded as an attesting witness unless he attests the agreement in capacity of witness too.

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2. **Lahore High Court**
Syed Ibn-e-Ali Shah etc v Sarwar Khatoon (deceased) through LRs etc
C.R. No.3752/2011
Mr. Justice Muhammad Ameer Bhatti
https://sys.lhc.gov.pk/appjudgments/2021LHC541.pdf

Facts: The predecessor-in-interest of the respondents, a pardanashin illiterate lady, filed a suit seeking declaration to the effect that her owned land was got transferred by the petitioners by means of fraud and misrepresentation.

Issue: Whether independent advice to parda observing illiterate lady by her relatives having no adverse interest with that of lady is essential for sale transaction?

Analysis: The predecessor-in-interest of the respondents/plaintiffs was an illiterate pardah observing lady who filed declaratory suit alleging therein that she did not appear before the Revenue Officer rather she had even no knowledge of the transaction in question nor she received any consideration amount in this regard. In the presence of this stance of the female owner of land, the first and foremost responsibility of the defendants/petitioners/beneficiaries of the transaction was to produce overwhelming evidence to prove that the execution of mutation was carried into effect in the presence of the lady who had the independent advice of her relatives such as husband or son with no adverse interest on their part….The

absence of her relatives for independent advice in the alike cases, such as husband and son, is fatal and enough to fizzle out the validity of the transaction.

Conclusion: The absence of relatives of parda observing lady for independent advice such as husband and son with no adverse interest, is fatal.

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3. Lahore High Court
Syed Yasir Hassan v. Home Secretary etc.
W.P. No. 2051/2019
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2021LHC581.pdf

Facts: Petitioner No.1 entered into partnership agreement with petitioner No.2 whereby the later transferred his license of the business in the name of "Sports Arms" to the petitioner No.1 while retaining the rights of only 1% of the profit. In the year 2014, The Punjab Arms License Rules, 2014 were promulgated and in view whereof, the petitioner filed application for the transfer of license in his name. He pleaded that since he had applied for the transfer of arms license under The Punjab Arms Rules, 2014, therefore, his case should be dealt with under the old Rules but respondent No.8 observed that under new Rules the license could not be transferred in his name since he is not the "prospective legal heir" of petitioner No.2.

Issue: Whether a sui juris and legally competent person can transfer or attorn the license during his lifetime to some other person other than the "prospective legal heir"?

Analysis: Under Rule 22 of The Punjab Arms Rules, 2014, arms licenses are transferable, in case of death or incapacitation of the licensee or "on account of other compelling circumstances", the transfer of license was possible through a No Objection Certificate by the prospective legal heirs. However, under part "C" titled "Transfer of license or place of business" in The Punjab Arms Rules, 2017 it has been provided under Rule 45 that transfer of the business arms license in cases other than death is possible only if a transferee has a legal heir and that too after fulfilling the requirements and eligibility criteria prescribed in Rule 35 of the 2017 Rules. Under Sub Rule 4 of Rule 45 of Rules of 2017, the original licensee shall remain responsible for compliance of the provisions of the Ordinance and Rules, terms of the license and instructions issued by the Government from time to time and shall also be held responsible for any violation thereof. Interestingly, under Rule 44 of the Rules of 2017, in case of death of licensee, a license can be transferred to a legal heir if an affidavit is submitted subject to fulfilment of the criteria under Rule 35 of The Punjab Arms License Rules, 2017. The present writ petition has been jointly filed by the actual licensee and the major partner who had applied for transfer of arms license in his name, therefore, respondent No.1 could not possibly refuse the transfer of license and was required to grant it of course within the parameters of the Rules.

Conclusion: The argument that a sui juris and legally competent person cannot transfer or attorn during his lifetime to some other person, would be a false argument.

Prospective legal heirs are nothing but an heir in the waiting who may enjoy some rights with the contingency of the death of predecessor.

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4. **Lahore High Court**
Muhammad Yaqoob deceased through L.Rs v Land Acquisition Collector
R.F.A No.781 of 2014
Mr. Justice Shahid Waheed
https://sys.lhc.gov.pk/appjudgments/2021LHC611.pdf

Facts: The appellants, dissatisfied with the compensation determined by the award delivered in consequence of acquisition of their land, filed references under Land Acquisition Act. During pendency of references they withdrew the deposited compensation without protest. They submitted certain mutations in the statement of their counsel to prove the market value of their land.

Issue: i) Whether the withdrawal of compensation without protest during pendency of references amounted to waiver?

ii) What is the evidentiary value of mutations tendered in the statement of counsel to prove market value of acquired land?

iii) Whether the proceedings for the mutation are judicial in nature?

Analysis: i) Underlined wisdom of the provisions of Section 18 read with Section 31 of the Act is that the concept of consent and protest cannot go together, and thus, it is essential, that whenever a person feels dissatisfied with the amount of compensation determined in the award, it ought to first raise its protest either by making an application before the Collector asking him to send reference to the Court for determination of his objections or in the alternative receive the amount of compensation under protest, otherwise, it shall be precluded to make any grouse and taking out any proceeding. This principle furnishes a basis for determining the present issue. The appellants at first while not accepting the award had raised their objections to it and also stated the grounds for the objection. They had asserted their right to require a reference under Section 18 of the Act for determination by the Court. The applications were competently entertained and lawfully forwarded. The appellants had clearly expressed their dissatisfaction and disapproved the Collector's award and then claimed more compensation. In such a set of circumstances, the entire conduct of the appellants cannot even by implication be inferred to amount to consent, acceptance of award or conscious waiver of their existing rights….Receiving of compensation amount by the appellants would be deemed to be under protest and the absence of a mention of the same in the cash register or Qabzul Wasool was mere inadvertence.

ii) It is clear that before the three mutations could be relied upon by the Reference Court, it was the duty of the appellants (land-owners) to prove mutations by adducing evidence either of vendor or vendee or the witnesses of passing of the consideration under the mutations, to prove that the sale transactions are genuine transactions between the willing vendor and willing vendee; that the consideration had in fact been passed, represent the prevailing

market value; and also the lands under acquisition and the lands concerning the sale are similarly situated and possessed of same or similar nature, advantages, etc.

iii) It is an error to suppose that proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

Conclusion: i) The withdrawal of compensation without protest during pendency of reference does not amount to waiver.

ii) Mere tendering of mutations in the statement of counsel without adducing evidence either of vendor or vendee or the witnesses of passing of the consideration under the mutations, to prove that the sale transactions are genuine transactions between the willing vendor and willing vendee and that the consideration had in fact been passed and represent the prevailing market value; does not prove the market value of acquired property as claimed by a party.

iii) The mutation proceedings are not judicial proceedings.

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5. **Lahore High Court**
M/s. Sharif Construction Company. Vs. Civil Judge 1st Class,
Diary No. 4857-W-21
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC508.pdf

Facts: In a suit for injunction filed on 10.02.2021, the petitioner filed revision petition before District Judge against the order passed u/s 94 CPC by the civil judge but same was rejected being not maintainable. He then invoked revisional jurisdiction of High Court. However the office raised objection to the maintainability of the petition.

Issue: Whether, after the enforcement of Civil Procedure Code (Punjab) amendment Act 2021 (the Act), a civil revision is maintainable in High Court or district court where civil court has passed an order u/s 94 CPC?

Analysis: The present suit was filed by the respondents on 10.02.2021 and on the same date, through the Act, the right of filing civil revision under Section 115 CPC was taken away by substituting the existing section with a new one. The perusal of the amended section clearly indicates that in suits filed on or after the date amendment has taken effect, civil revisions can be entertained only against orders passed by the district court in an appeal decided under section 104 of the CPC against an interlocutory order passed by a civil judge and in no other case. Hence, this Court and the district courts are no longer vested with the jurisdiction to entertain civil revisions against the impugned interlocutory order; therefore, the office objection to the extent of non-maintainability of revision before this Court is upheld.

Conclusion: Civil revision is not competent in High Court or district court against an order passed u/s 94 CPC as after the latest amendment in section 115 CPC, civil revisions can be entertained only against orders passed by the district court in an appeal decided under section 104 of the CPC against an interlocutory order passed by a civil judge and in no other case.

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6. **Lahore High Court**
Writ Petition No.56759/2020
Muhammad Jahan Zaib Khan. v. Muhammad Rafique Khan, etc.
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2021LHC630.pdf

Facts: Petitioner brought suit for specific performance of agreement to sell along with possession as well as permanent injunction against respondent No.1/defendant who executed the agreement to sell for a consideration of Rs.3,20,00,000/- and received Rs.80,00,000/-. Petitioner was directed to deposit remaining sale consideration and said order was unsuccessfully assailed through revision before District Judge.

Issue: Whether trial court was justified to order the deposit of remaining sale consideration?

Analysis: The judgment of august Supreme Court i.e. Messrs Kuwait National Real Estate Company (Pvt.) Ltd and others **(2020 SCMR 171)** relied upon by the learned Trial Court to order the deposit of remaining sale consideration, is not applicable to the present case because subject matter involving that *lis* was not the immovable property, whereas vendor therein straightaway admitted the transaction as well as execution of sale agreement, besides to propose that if remaining sale price would be paid, then suit might be decreed. After having such fair attitude on the part of vendor, the apex Court required the vendee to make good the balance sale consideration. Thus, the rule so laid down might be for the cases where execution of contract was admitted and in its due compliance the vendor consented to transfer subject property as well.

The said canon cannot be applied where the transaction as well as execution of document entailing terms/conditions of alleged deal is questioned from its inception.

In the current case subject property is immovable one, possession of which never delivered to the plaintiff and the vendor also specifically asserted sale agreement to be fabricated, deceptive & concocted one. Besides he has already created third party's charge by transferring title & possession of subject area to him. The alleged agreement to sell is bilateral document and its genuineness or otherwise as well as ascertainment who is at fault to perform his part besides to search readiness and willingness of either party is, indeed, a fact, which could only be determined after collecting evidence.

Conclusion: In peculiar distinguished circumstances of the case, the trial court is not justified to order for deposit of remaining amount.

7. **Lahore High Court**
C. R No. 105/2010.
Muhammad Inayat Vs. Zaigham Nawaz, etc
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2021LHC668.pdf

Facts: Respondent's father was murdered by his real paternal nephew, who was son of the petitioner/plaintiff. Father of deceased, who was also father of petitioner, alienated his land in the name of minor son of his deceased son i.e. respondent. Petitioner/plaintiff challenged the oral gift mutation but withdrew the suit without obtaining formal permission to file fresh suit. Petitioner filed second suit, which was dismissed but issue regarding competency of suit was decided in favor of the petitioner.

Issue: Whether, second suit of the petitioner/plaintiff was competent when first suit was withdrawn by him without obtaining permission to file fresh suit?

Analysis: The plain reading of Rule 1 of Order XVIII shows that sub-rule (1) contemplates withdrawal of suit, which is optional to the plaintiff and can tender request to that effect at any stage of the proceedings, however, per sub-rule (2) the plaintiff while showing formal/inherent defect in the plaint or asserting some other sufficient reasons may withdraw his suit with liberty to institute fresh one. Where he does not intend to institute a fresh suit or he simply withdraws a suit without seeking permission to file new one, then according to sub-rule (3), the plaintiff is precluded to institute second suit qua subject matter of the earlier lis. The object of last principle is to prevent a plaintiff from re-opening of another round of litigation, which he already has dropped, otherwise, there would be no end to the litigation.

Moreover, section 12 of the said Code provides that where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to bring a suit in respect thereof in any court to which this enactment applies. The main object of these provisions is to prevent endless litigations and to save the precious time of the Courts.

Conclusion: Second suit was not competent.

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8. **Lahore High Court**
Writ Petition No.1869 of 2018
Mst. Naseem Sajjad. v. Additional District Judge etc
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2020LHC3566.pdf

Facts: Petitioner sought dismissal of execution petition of respondent no. 3 on the pretext that suit land was sold by the respondent no.4 to his father and her father did tamleek in her favour. She contended that as she was not party to the suit between respondent no.3 and 5, so decree in suit for specific performance to contract is not binding on her.

Issue: i) Whether subsequent purchaser during pendency of suit was required to be impleaded necessary party and such subsequent sale deed was required to be challenged compulsorily?

ii) Whether in a suit for specific performance of contract, respondent no.3/plaintiff was required to pray for possession also?

Analysis: i) Transferor pendente lite is not a necessary party to the suit and if it is decided without impleading him he would be bound by the decree.

The mere fact that plaintiff/respondent No.3 has not instituted any legal proceedings for cancellation of subsequent Sale Deed and Tamleek Nama would not hinder execution of decree passed in his favor.

ii) In a suit for specific performance of contract, relief of delivery of possession is incidental to the main relief and the Executing Court may grant it even if the plaintiff/decree holder has not prayed therefor in the plaint and there is no mention about it in the decree.

Conclusion: i) Neither a purchaser of suit property during the pendency of suit is necessary party nor plaintiff is bound to challenge any such subsequent sale deed due to application of doctrine of *lis pendence* .

ii) There is no compulsion to seek possession in suit for specific performance as it is incidental to main relief.

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9. **Lahore High Court**
Irfan Akbar Khan v. The State, etc.
Writ Petition No. 3119 of 2020
Mr. Justice Muhammad Tariq Abbasi
https://sys.lhc.gov.pk/appjudgments/2021LHC569.pdf

Facts: The police recommended cancellation of F.I.R, which was agreed by the Magistrate.

Issue: What are the grounds of cancellation of a criminal case and what is meant by application of judicial mind?

Analysis: Grounds, where a move for cancellation of a registered case can be made are:- **a**. Information is maliciously false, **b.** false owing to mistake of law, **c**. false owing to mistake of fact **d**. offence reported is found to be non-cognizable **e**. matter fit for a civil suit.

The Magistrate while acting fairly, justly, honestly and applying his mind to the material before him and duly considering all the aspects of the matter should pass a speaking and well-reasoned order, rather putting his signatures in an unjustified manner, whichever is placed before him by the police. His order should indicate as how and on the basis of which material, he finds himself in agreement with the cancellation report.

Conclusion: See grounds above.

10. **Supreme Court of the Australian Capital Territory**
R v. Walker [2021] ACTSC 42
Mr. Justice Mossop
http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACTSC//2021/42.html

Facts: The accused was a colleague and friend of the victim. He was allegedly facing paranoid delusions recently. He used to say that people were coming to get him ("Commandos") and that he wanted to kill himself. The accused was allegedly hearing voices, crying and was unable to sleep. Once he was involuntarily detained pursuant to section 85 of the Mental Health Act 2015. On the eventful day, the accused invited the victim on dinner and critically injured him while stabbing him with knife at his chest.

Issue: Whether the accused has proven on the balance of probabilities that he was suffering from a mental impairment as defined u/s 27 of the Criminal code so as to relieve him of criminal responsibility.

Analysis: Section 28(1) of the Criminal Code provides that a person is not criminally responsible for an offence, when he was suffering from a "mental impairment" and that mental impairment had one of the following effects:

(a) the person did not know the nature and quality of the conduct;
(b) the person did not know that the conduct was wrong; or
(c) the person could not control the conduct.

Mental impairment is defined in Section 27 of the Criminal Code which means that the ***"****mental impairment"* includes senility, intellectual disability, mental illness, brain damage and severe personality disorder. For the purposes of that definition, *"mental illness"* means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition (a reactive condition) resulting from the reaction of a healthy mind to extraordinary external stimuli.

The evidence on this issue was provided in reports by forensic psychiatrists Dr Richard Furst and Dr Stephen Allnutt. These reports were admitted as part of the Crown case and the doctors did not give oral evidence and were not cross-examined. As per their reports the accused was suffering from acute 'schizophrenia'. Immediately prior to the stabbing the accused was acting irrationally and making irrational accusations. After the stabbing he immediately desisted and tried in a confused way to summon assistance. The statements that he made in his 000 call do not make a lot of sense and are consistent with disordered thinking. The incoherent behaviour of the accused is not explained by the ingestion of illicit substances. While there is some evidence that he used heroin four days prior to the stabbing and methamphetamine five days prior and some other general references to the possibility of him having used drugs in the days prior to the offence, there is no probative evidence that drugs were still affecting his behaviour. His history of discharge from the Canberra Hospital and travel to the Bonython residence would also not support any inference that he was drug affected at the time.

Conclusion: The accused had successfully proved on the balance of probabilities that at the time of the stabbing he was suffering from a mental impairment within the meaning of s 28 of the Criminal Code. As a consequence, he was not held criminally responsible for the offence of intentionally inflicting grievous bodily harm to the victim.

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11. **Lahore High Court**
Sajjad Hussain v. ADJ
Writ Petition No.17374 of 2018
Mr. Justice Ch. Muhammad iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC527.pdf

Facts: Family court held the respondent entitled to 04-Kanals land as dower or Rs.5,00,000/- as its alternate price. During execution proceedings the executing court made instalment of decretal amount directing the petitioner/judgment debtor to pay Rs.50,000/- as first instalment and remaining according to schedule of other payments. Decree holder requested the executing court for transfer of 4 Kanal land of the petitioner in her name but her request was rejected.

Issue: Whether an executing court, against the wishes of the decree holder, is justified to direct satisfaction of a decree through payment of price instead of giving him the property decreed?

Analysis: The judgment and decree of family court has attained finality in which the respondent was held entitled to 04-Kanals land as dower or Rs.5,00,000/- as its alternate price. As per law the executing Court cannot go beyond the scope of the decree and has to execute the decree in its letter and spirit. The command of the decree is as mentioned above wherein it is manifestly jotted down the entitlement of the plaintiff which constitute that it is exclusive choice of decree holder lady either to have property or the price whereof whereas the judgment debtor is precluded to adopt the course of his own choosing regarding the satisfaction of the decree rather the avenue given in the decree shall prevail unless expressly modified by the competent forum. As per available record the petitioner/judgment debtor is owner of land measuring 04-Kanals; thus it was incumbent upon the executing Court to effectively satisfy the decree firstly by giving land to the decree holder but if some insurmountable impediment exist or land is found deficient or not available or property partly available or impartition-able then the alternate mode may be resorted to by the executing court directing the judgment debtor to pay the alternate price.

Conclusion: The executing court cannot direct satisfaction of decree through payment of price instead of giving him the decreed property against the wishes of decree holder.

12. **Lahore High Court**
Mst. Raees Begum v. Addl. District Judge
W.P. No.1795 of 2020
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2020LHC162.pdf

Facts: After divorce between parents, minors were raised by their mother. When they were over 10 years of age, paternal grandmother of the minors moved application for the custody of the minors on the ground of remarriage by the mother.

Issue: Whether second marriage of the mother in itself a sufficient ground for depriving her of the custody of her child?

Analysis: In the matter of custody of the minors, mere entitlement or disentitlement of a parent to have the custody may not be such a significant factor; instead it is the welfare of the minors that needs to be accorded paramount consideration. While determining this aspect, the courts always lean in favour of allowing custody to the person with whom the custody of minor lies and in the cases second marriage of the wife after divorce, the mother is not denuded of her capacity simply because of remarriage unless the factum of second marriage was established to have impinged upon the welfare of the minors.

Conclusion: In the matters of custody welfare of the minor is the paramount consideration. Mere remarriage of the mother is not sufficient to deprive her of the custody unless it is established that the remarriage compromises welfare of the minor.

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13. **Lahore High Court**
Regular First Appeal No. 3953/2020
State Life Insurance Corporation, etc. Vs. Mst. Syeda Muzhara Fatima
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2021LHC635.pdf

Facts: The appellants insured the husband of the respondent/plaintiff, who unfortunately died, his widow/respondent preferred claim before insurer about three months thereafter, but insurance policy was repudiated by insurer who concluded that the proposal form was based on fraud and misrepresentation. Widow/respondent struggled hard to have the secured claim by approaching Wafaqi Mohtasib, President of Pakistan, Insurance Tribunal and finally concerned learned District Court by filing suit in hand which was decreed in her favor.

Issue:
i) Whether insurer was justified to repudiate the policy contract?
ii) Whether suit of plaintiff/respondent was time barred?

Analysis: The insurer has a limited authority to reprobate its act/contract that too within two years of the effectiveness of the policy, which can be exercised where either the insured avoided its obligation in exposing the required particulars or he acted with fraud or misrepresentation. In instant case, the insurer at the most within two years could repudiate the same, but despite that claim was submitted within time, it was declined when the provided period stood already elapsed.

Widow even within her iddat period tendered the claim before the insurer. Had it been awarded at that moment, then there was no fun to approach the Authority/Tribunal or the Court. Indeed, it is act of repudiation, which caused accrual of limitation to the claimant, otherwise, the Insurance Companies can defeat object of the provision ibid by retaining claim for more than three years.
The judicial system is aimed to promote justice and when it is proved on record that the repudiation was not justified on law as well as merit, then to me in such like situation the principle of recurring cause of action fully applies, thus whenever a demand for disbursement of claim is denied, fresh cause of action accrues to the claimant to approach the Court within three years of last denial, because an illegal, without jurisdiction, unfounded and based on mala fide act has no pedestal to be perpetuated even behind the shield of limitation.

Conclusion: Neither repudiation of contract by insurer was justified nor claim of respondent/plaintiff was time barred.

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14. **Supreme Court of Pakistan**
Regional Operation Chief NBP v. Mst. Nusrat Perveen, etc.
C.P.2717-L of 2015
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2717_l_2015.pdf

Facts: Deceased in his life was departmentally proceeded against and was awarded major penalty. He challenged imposition of the penalty but died during the pendency of his appeal before the Tribunal. The Tribunal allowed legal heirs of the deceased to be impleaded as party in the appeal.

Issue: Whether a service appeal filed by a civil servant in the Service Tribunal would abate on his death?

Analysis: Service disputes are not always attached merely with the person of a civil servant as an individual but more often than not with some benefits which could potentially be enjoyed by the successors of the civil servant in accordance with law which are contingent on the adjudication of the controversy….The question whether after the death of the plaintiff or the petitioner proceedings would abate would primarily depend on the nature of cause of action16 and the relief claimed in the peculiar facts of each case17. Service benefits may be enjoyed by the successors of the deceased civil servant. Some of those are inheritable which form part of the estate of the deceased while others are grants to be distributed among his family members according to law.18 The respondents in the instant petition would receive some benefits in case they are able to vindicate their stand before the Tribunal. Such a claim does not extinguish with the death of civil servant….A claim by a civil servant for his promotion or better terms and conditions or for reinstatement in service, is survivable claim and passes on in the shape of pecuniary and pensionary benefits to his legal heirs. Such a claim may arise under the service laws but also enjoys constitutional underpinning. "The right to

employment and to earn a living free from undue molestation is a property right affecting the estate of plaintiff. Such right does not abate upon his death."25 Abatement of appeal on the death of the decedent would impinge upon the property rights of the respondents. Also, shutting eyes to their potential property rights would hurt their right to dignity.

Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial. Fundamental right to life including right to livelihood ensures the security of the terms and conditions of service; 27 fundamental right to property ensures security of the pecuniary and pensionary benefits attached to the service; 28 fundamental right to dignity ensures that the reputation of the civil servant is not sullied or discredited through wrongful dismissal, termination or reversion etc; 29 and fundamental right to fair trial and due process, inter alia, safeguards and protects the survivable interest and ensures continuity of the legal proceedings even after the death of the civil servant, equipping the legal heirs to purse the claim30. Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs. It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one's reputation is also a survivable right and flows down to the legal heirs to pursue and take to its logical conclusion. Any slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honour of his family.

Conclusion: In certain cases, a service appeal filed by a civil servant in the Service Tribunal would not abate on his death and his legal heirs can pursue the same.

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15. **Supreme Court of Pakistan**
The Province of Punjab v Kanwal Rashid
C.P.883-L/2020 and C.P.1791-L/2020
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._883_l_2020.pdf

Facts: Respondent was continuously drawing the family pension after the passing away of her parents till she was informed by the Accountant General, Punjab, that she could not draw the pension of both the parents simultaneously and could only draw the pension of one parent.

Issue: Whether an unmarried daughter of deceased civil servant parents can draw the pension of both her parents simultaneously or instead, entitled to draw the pension of only one of her parents

Analysis: The Finance Department has no authority under the law to clarify, interpret, abridge or extend the right of pension provided under Section 18(2) of the Punjab Civil Servants Act, 1974 and further regulated by the Punjab Civil Services

Pension Rules, 1963 promulgated by the Governor. The impugned clarification issued by the Finance Department dated 11.09.2015 has usurped the rule making power of the Governor by interpreting, clarifying and modifying Rule 4.10. Finance Department has also encroached upon the legislative power under section 18 of the Act which entitles the family of the deceased civil servant to pension in the manner prescribed…"Acquiring a regular source of income" under the Rules means that the unmarried daughter on her own, irrespective of the source of pension, has acquired a regular source of income…Acquire signifies gain by one's own effort. Entitlement to family pension by virtue of the death of the parents does not constitute acquisition of a regular source of income. It is also not "regular" as the unmarried daughter is disentitled to receive family pension the minute she is married. Both these conditions must be met by her own self irrespective of the pension. She must acquire a regular income of her own expertise and efforts. The disqualification mentioned in the amendment brought about in the Rules, must be independent of the family pension and pension itself cannot constitute a ground for disqualification.

Conclusion: An unmarried daughter of deceased civil servant parents is entitled to draw the pension of both her parents simultaneously.

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16. **Lahore High Court**
Samina Farooq v Govt. of Punjab etc
W.P. No.168241/2018
Mr. Justice Muhammad Ameer Bhatti
https://sys.lhc.gov.pk/appjudgments/2021LHC157.pdf

Facts: Petitioner claims advance increments, in pursuance of notifications issued from time to time, on the premise of attaining additional qualification over and above the minimum prescribed qualification. These notifications were eventually declared redundant and practice to grant increment was discontinued.

Issue: Whether a leave refusing order, in spite of an authoritative judgment of apex court holding otherwise, is binding?

Analysis: There is no other view than the one that Hon'ble Supreme Court of Pakistan has diligently, equitably and justly approved the effect of notifications, in its judgment reported as Government of the Punjab through Secretary Education & others vs. Faqir Hussain and 5-others [2004 PLC (C.S.) 491] and thereby unequivocally directed discontinuation of the practice of granting increments as such…. Since the leave refusing order referred by the learned counsel for the petitioner had been rendered without referring to the authoritative principle flowing from the said given judgment of Hon'ble Supreme Court, therefore, mere factum of leave refusing order can hardly be characterized to have a binding force as against the spirit of the finding of the apex court recorded in the afore-referred judgment because adjudication was conclusive and equitable; hence judgment in rem.

Conclusion: Leave refusing order rendered without referring to the authoritative principle flowing from the earlier judgment of Hon'ble Supreme Court on the subject does

not have any binding force as against the spirit of the finding of the apex court recorded in the earlier judgment because adjudication was conclusive and equitable.

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17. **Lahore High Court**
Bushra Khushi Muhammad v. Punjab Public Service Commission through Chairman, etc.
Writ Petition No.116118/2017
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC535.pdf

Facts: The posts of Sub-Inspector in service quota were advertised. The petitioner, who is Head Constable, cleared the written test, however, was not recommended for appointment against post of Sub-Inspector on the premise that the petitioner did not fulfill the required three years' service experience. The petitioner being aggrieved has filed this Constitutional petition.

Issue: Whether three years' experience prescribed in the advertisement for the post of Sub-Inspector based on rules is against or beyond the provisions of the Act?

Analysis: When Section 2(3)(c) of the Act itself says that same is subject to Rules, it cannot be said that experience prescribed in the Rules is beyond the scope of the Act. By rendering provision of the Act subject to rules, the legislature in its wisdom, left certain details to be decided by the rule making authority and if any additional criteria is prescribed in rules, it cannot be said that same is beyond the scope of the Act.

Conclusion: Where the Act itself gives precedence to the Rules framed under the Act, the same cannot be held ultra-vires the Act, if some additional qualifications are prescribed therein.

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18. **Supreme Court of India**
Civil Appeal No.3894 of 2020
The State of Rajasthan & Ors. V. Love Kush Meena
https://main.sci.gov.in/supremecourt/2019/46786/46786_2019_38_1501_27192_Judgement_24-Mar-2021.pdf

Facts: Respondent was involved in a case under section 302,323,341/34 IPC with a role of inflicting knife injuries to the witnesses. A compromise was effected between the parties to the effect of compoundable offences while to the extent of non-compoundable offences, witnesses turned hostile and all the accused person were acquitted by giving them benefit of doubt. Respondent applied for a post of Constable but was denied the post due to the reason that he could not win clean/honorable acquittal from trial court. A circular was also issued to the effect, inter alia, that a person acquitted due to the benefit of doubt can be employed in service. Plea of candidate/respondent was accepted by the lower courts.

Issue: i) Whether a benefit of doubt resulting in acquittal of the respondent in a case charged under Sections 302,323,341/34 of the Indian Penal Code [IPC] can

create an opportunity for the respondent to join as a constable in the Rajasthan Police service?

ii) Whether a circular can take precedence over decisions of Supreme Court?

Analysis: Acquittal in a criminal case was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents. Thus, unless it is an honourable acquittal, the candidate cannot claim the benefit of the case.

It is difficult to define precisely what is meant by the expression "honourable acquittal", an accused who is acquitted after full consideration of the prosecution evidence and prosecution has miserably failed to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In this context, it has been specifically noticed by this Court that entry into the police service required a candidate to be of good character, integrity and clean antecedents.

Even after the disclosure is made by a candidate, the employer is entitled to take into account the job profile for which the selection is undertaken, the severity of the charge leveled against the candidate and whether acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt as a result of composition. There is also the absence of any suggestion that the decision was actuated by malafide or suffered on other accounts except the issue raised of the subsequent circular applicable.

This is a clear case where the endeavour was to settle the dispute, albeit not with the job in mind. This is obvious from the recital in the judgment of the Trial Court that the compoundable offences were first compounded during trial but since the offence under Section 302/34 IPC could not be compounded, the Trial Court continued and qua those offences the witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

ii) Circular is undoubtedly very wide and gives the benefit to candidates including those acquitted by the Court by giving benefit of doubt. However, such circular has to be read in the context of the judicial pronouncements and when this Court has repeatedly opined that giving benefit of doubt would not entitle candidate for appointment. Despite the circular, the impugned decision of the competent authority cannot be said to suffer from infirmity as being in violation of the circular when it is in conformity with the law laid down by this Court.

Conclusion: i) Acquittal was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents.

ii) A Circular cannot take precedence over judicial pronouncements.

19. **Lahore High Court**
Commissioner of Income Tax, Large Taxpayers Unit, Legal Division, Lahore v. M/s Service Industries Limited, Main Gulberg, Lahore
PTR No. 225 of 2008
Mrs. Justice Ayesha A. Malik
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2021LHC592.pdf

Facts: The assessing officer made an addition of Rs.96,177,786/- while passing the assessment order for the tax year 1999-2000 on account of sale of syringe division of the respondent to M/s Becton Dickinson Services (Pvt.) Limited. The respondent challenged the assessment order by filing an appeal before the Commissioner of Income Tax who dismissed the same. The respondent then filed an appeal before the Income Tax Appellate Tribunal (ITAT) which was allowed and the sale transaction was declared as a 'slump transaction' consequently the addition made by the assessing officer was deleted.

Issue: Whether the ITAT was justified to hold that sale/transfer of 51% shares by the taxpayer to M/s BD Limited was a 'slump transaction'

Analysis: The concept of slump sale is alien to the erstwhile Income Tax Ordinance, 1979 or the Income Tax Ordinance, 2001 which do not contain any provision in this regard. The principles of taxation laid down in the Indian Income Tax Act, 1961 relating to slump transaction shall have no applicability to the transfer of the Syringe division of the respondent in favour of the joint venture company. It can be seen that the transaction in question is squarely covered by Clause 7 read with Clause 8 of the Third Schedule to the Income Tax Ordinance, 1979. The exemption from payment of tax could only be sought with reference to the Second Schedule of the said Act. The respondent, however, could not pinpoint to any provision therein granting it exemption from payment of tax on sale of its syringe division.

The term 'Income' is defined in section 2 (24) of the erstwhile Income Tax Ordinance, 1979 which includes "(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Ordinance under any head specified in section 15; (b) any loss of such income, profit or gains; and". Section 15 specifically mentioned "Capital gains" under head of 'Income". It is thus apparent that capital gains form part of income of a person and is liable to tax.

Even if the concept of slump transaction is deemed applicable to our jurisdiction on the terms as it has been enunciated by the Indian judgments, the transaction in question would not qualify as a transfer of an undertaking. In order to qualify as a slump transaction, it needs to be proved that the undertaking of a business as a whole is transferred as a going concern along with its goodwill, assets, liabilities etc. A simple sale of assets shall not suffice. From the record, it is not apparent that apart from the plant, machinery and building the transfer also included the intangible assets including the liabilities, if any. The Income Tax Appellate Tribunal did refer to some of the stipulations of the Master Agreement which do

not demonstrate that the necessary ingredients of slump sale were met with. The basic question is whether the transaction in question was in fact a sale in the commercial sense between two different entities. The answer is in affirmative. As per the ratio of B.M. Kharwar, it is open to Revenue to unravel the device and to determine the true character of the relationship if the parties chose to conceal their legal relation in the contract. As noted above, Clauses 7 and 8(5) of the Third Schedule of the Income Tax Ordinance, 1979 were squarely applicable to the facts of the present case.

Conclusion: The transaction in question was not a 'slump sale'.

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20. **Supreme Court of the United States**
Ford Motor Company v. Montana Eighth Judicial District Court
https://www.supremecourt.gov/opinions/20pdf/19-368_febh.pdf

Facts: It is a case involving personal jurisdiction of a state court in product liability lawsuits. The case, consolidated with Ford Motor Co. v. Bandemer, involved two product liability lawsuits brought against the Ford Motor Company at the state level related to two drivers' injuries in separate accidents. In both cases, Ford vehicles were driven in car accidents. In one case based in Minnesota, a passenger sustained a severe brain injury and filed a claim against Ford Motor Company for vehicle defect alleging that the passenger-side airbag failed to deploy. In the second case based in Montana, one of the vehicle tires experienced a tread/belt separation, the car lost stability and rolled into a ditch, and the driver perished at the scene. A personal representative filed claims against Ford for liability and negligence. Ford Motor Company moved to dismiss both claims in state district court, citing a lack of personal jurisdiction. In both cases, Ford's motions were denied. On appeal in both cases, the state courts of appeal affirmed the rulings of the district courts. Ford appealed the cases to the state supreme courts which affirmed the rulings of the courts of appeal.

Issue: Whether the "*arise out of or relate to*" requirement of the Fourteenth Amendment's due process clause permits a state court to exercise specific personal jurisdiction over a nonresident defendant?

Analysis: Ford challenged the lawsuits as the vehicles in question were manufactured elsewhere so the states did not have personal jurisdiction over that conduct. The Supreme Court ruled in a 8–0 decision that because under the Due Process Clause, the claims "arise out of or relate to" Ford's business and marketing activities, those activities gave sufficient claim for the states to assert personal jurisdiction over the liability lawsuits. Justice Elena Kagan wrote the majority opinion and was joined by Chief Justice John Roberts and Justices Stephen Breyer, Sonia Sotomayor, and Brett Kavanaugh. Kagan wrote that "*By every means imaginable — among them, billboards, TV and radio spots, print ads and direct mail — Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias*", and among other numerous business activities, Ford "*encourage[s] Montanans and*

Minnesotans to become lifelong Ford drivers." Thus, the states had ample reason to find that the claim made "arise out of or relate to" Ford's activities, as established by the Due Process Clause.

Conclusion: In a unanimous ruling, the court affirmed the decisions, holding that Ford's contacts and activities within the states were sufficient to give Montana's and Minnesota's courts specific jurisdiction over Ford.

LIST OF ARTICLES

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   Contempt of Court: Are the decisions of the Court unchallengeable and can there be a fair criticism of Court Decisions by Jitendra Mahapatra

   > *It must be made sure that the judiciary must work independently without any hindrance if courts are being obstructed by the people by producing unreasonable criticisms then the court will be left with no other option than to punish such person for committing contempt of court. But if the criticisms so produced before the court are fair/positive then the court must accept the same because such criticisms help the judiciary to develop and also maintains a sense of trust within the people, by positive criticisms people keep a check upon the powers of the judiciary and thus they are not forced to blindly accept anything that is laid before them by the court even if it is wrong. Till the criticisms are fair the court may not misuse its power to punish such criticisms for contempt of court.*

2. **STANFORD LAW REVIEW**
   https://review.law.stanford.edu/wp-content/uploads/sites/3/2020/07/73-Stan.-L.-Rev.-Online-Schwartz.pdf

   Contracts and COVID-19 by Andrew A. Schwartz

   > *Part I of this Essay will describe the legal doctrines of Impossibility and Restitution and how they might apply to a contract undermined by the COVID19 pandemic. Part II will explain how a Force Majeure clause alters those background doctrines to give—or withhold—relief to a party whose performance has been thwarted by the pandemic. Finally, Subpart II.C will peer into the future and predict that many parties will likely revise their Force Majeure clauses to ensure they cover a pandemic like this.*

3. **COURTING THE LAW**
   https://courtingthelaw.com/2021/03/16/commentary/legal-and-technological-approaches-to-tackle-online-child-abuse/

   Legal and Technological Approaches to Tackle Online Child Abuse by Co Authored

Online child abuse is a novel way of committing criminal abuse against children and can have harmful repercussions for young individuals. It enables perpetrators to carry out abusive acts from behind their computer screens while maintaining anonymity. Despite recent legislative enactments and the use of new technological tools, Pakistan still has long way to go in its efforts to curb online child abuse. While borrowing from the most effective practices of other jurisdictions, our government must also recognize that the new and emerging methods of committing crimes can only be tackled by a well-oiled collaboration between lawmakers, enforcement agencies and cutting-edge technologies.

4. THE IN-HOUSE LAWYER

https://www.inhouselawyer.co.uk/legal-briefing/recent-shifts-in-indias-anti-bribery-and-anti-corruption-strategy/

Recent shifts in India's anti-bribery and anti-corruption strategy by Legal Briefing

It is an undeniable truth that the regulatory framework and law in relation to anti-corruption in India has undergone a significant change in the last couple of years. Considerable amendments have been made that have tightened disclosure requirements in the light of swelling number of financial frauds in India. To that end, the government of India in 2020 continued to remodel the anti-corruption regulatory landscape. We have analysed below the two most crucial developments in recent times.

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BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-04-2021 to 15-04-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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01. **Lahore High Court**
Abwa Knowledge Village (Pvt.) Ltd. V. Federation of Pakistan
Intra-Court Appeal No.5251 of 2021
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2021LHC796.pdf

Fact: The appellant seeks enforcement of various provisions of Pakistan Medical Commission Act, 2020 and declaration of invalidity against certain regulations of the Admissions Regulations (Amended) 2020-2021 ("Regulations 2021"), labeling them, being ultra-vires the provisions of Act of 2020.

Issue. i) Whether requirement of passing MDCAT examination is applicable for admissions for the year 2021 and thereafter?

ii) Whether the Regulations 13 and 14 of Regulations 2021, on the premise of being contrary to the scope and mandate of Act of 2020?

iii) Whether the independence of private colleges to settle, claim and charge tuition fees has been curtailed through Regulations 24 and 27 of Regulation 2021?

iv) Whether settlement and terms thereof, even if endorsed by this Court, would assume or acquire the status of a legislative instrument?

Analysis i) No exemption can be claimed from compliance of mandatory requirement of a single admission test for all the students seeking admission to medical and dental under-graduate programs anywhere in Pakistan under section 18 (1) of Act of 2020 and there is no exception created by way of any proviso thereto.

ii) The authority of the Council qua framing of Regulations 2021, under section 8 of Act of 2020 is neither disputed nor under challenge. Regulations 13 and 14 of Regulations 2021 are in accordance with the powers extended in terms of I.C.A. # 5251/2021 14 section 8 of Act of 2020. The objection of discriminatory treatment is misconceived, when the factum of availability of admission criteria in the colleges specified in Regulation 13 of the Regulations 2021, is undisputedly available, to the exclusion of other private medical and dental colleges. The rational of Regulation 14 of Regulations 2021 is to bring uniformity in the admission for session 2020-2021.

iii) The purpose is to curb financial exploitation, rationalize disproportionate fee claimed in the context of available infrastructural facilities, to check and regiment, otherwise an unconscionable bargaining position and to ensure equal academic opportunities, despite acute financial disparities in the society.

iv) Courts, even as a consequence of settlement between the stakeholders, cannot legislate, indirectly upon passing orders to that effect, potentially discharging legislative functions. The notion that settlement order is precursor to the amendments in the Regulations 2021 would set a dangerous precedent, suggesting conferment of legislative powers unto the Courts exercising constitutional jurisdiction.

Conclusion. i) The requirement of passing MDCAT examination was held to be applicable for admissions for the year 2021 and thereafter.

ii) The Regulations 13 and 14 of Regulations 2021 is not contrary to the scope and mandate of the Pakistan Medical Commission Act, 2020

iii) The independence of the private colleges to settle, claim and charge tuition fees has not been curtailed through Regulations 24 and 27 of Regulation 2021?

iv) The settlement and terms thereof, even if endorsed by this Court, will not assume or acquire the status of a legislative instrument.

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02. **Lahore High Court**
M.C.R (Pvt) Ltd. franchisee of Pizza Hutt v
Multan Development Authority & others
Writ Petition No. 2761 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC731.pdf

Facts: The petitioner, a franchisee of foreign Restaurant Chain Company impugned the notice of auction through writ petition, issued by the respondent government authority about the land given to the petitioner on 20 years lease term. A civil suit was already pending in the civil court regarding a dispute about the term of that lease.

Issue: i) Whether petition under Article 199 of the Constitution is competent during pendency of civil suit?

ii) Considering the commercial nature of dispute, whether the pending civil case should have been expeditiously decided as a commercial case?

Analysis: If the Civil Court being the court of first instance is vested with definite jurisdiction regarding the *lis* of the parties and is also competent to grant adequate and ultimate relief, available under the law, then in such a case, passing round such forum with the aim and goal to take grasp of the extra-ordinary jurisdiction of this court under Article 199 of the Constitution must be discouraged.

It is, however, in no manner to suggest that in every case where civil suit is pending, writ petition under Article 199 must always be failed because the most essential ingredient to determine the question of maintainability of such petition is not only the availability of '*alternate remedy*' but the most vital and determining factor is that such alternate remedy must also be '*adequate and efficacious*'. The Commercial Courts, which are established by the Lahore High Court in Lahore, Multan and Faisalabad for the time being, are meant to secure expeditious disposal of cases of commercial nature within the scope of Article 202 and 203 of the Constitution with the object to establish orderly, honorable, upright and impartial and legally correct administration of justice. Therefore, the Commercial Court, which is seized with the matter in hand is required to seek guidance from Rule 10 & 11, Chapter 1-K, Volume I of the Lahore High Court Rules and Order which provides for expeditious disposal of cases of commercial nature.

Conclusion: i) During pendency of civil suit before a court of competent jurisdiction to adjudicate and to grant ultimate relief, a writ petition is not maintainable but if the Court lacks jurisdictional competence to hear or grant adequate and efficacious ultimate relief and and such failure tantamount to infringement of fundamental rights, then the High Court can interfere in the matter under Article 199 of the Constitution.

ii) Commercial Court seized with the matter is required to follow Rule 10 & 11, Chapter 1-K, Volume I of Lahore High Court Rules & Orders to decide cases of commercial nature with preferential expeditiousness on day to day basis.

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03. **Supreme Court of the United States**
Google LLC v. Oracle America, Inc, 593 U.S. ___
https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf

Facts: It is a case related to the nature of computer code and copyright law. The dispute centered on the use of parts of the Java programming language's application programming interfaces (APIs), which are owned by Oracle (through subsidiary, Oracle America, Inc., originating from Sun Microsystems), within early versions of the Android operating system by Google. Google has admitted to using the APIs, and has since transitioned Android to a copyright-unburdened engine, but argued their original use of the APIs was within fair use. Oracle filed suit against Google for copyright and patent infringement. The case was brought to the United States District Court for the Northern District of California twice and appealed to the United States Court of Appeals for the Federal Circuit twice. In the first trial and appeal, the district court jury found that Google infringed on Oracle's copyrights and was deadlocked on the question of fair use. After the verdict, the district court dismissed Oracle's claim. The appellate court reversed the district court's determination and remanded with instructions to reinstate the jury's verdict. In the second trial and appeal, the district court denied Oracle's motions for judgment as a matter of law and entered final judgment in favor of Google. The appellate court reversed the district court's decisions, remanded the case back to the district court for a trial on damages, and dismissed Google's cross-appeal filing asserting fair use.

Issue: i) Whether copyright protection extends to a software interface?
ii) Whether, as the jury found, petitioner's use of a software interface in the context of creating a new computer program constitutes fair use?

Analysis: The case has been of significant interest within the tech and software industries, as numerous computer programs and software libraries, particularly in open source, are developed by recreating the functionality of APIs from commercial or competing products to aid developers in interoperability between different systems or platforms**.** In a 6-2 opinion, the court reversed the United States Court of Appeals for the Federal Circuit's ruling and remanded the case for further proceedings, holding that Google's use of the Java SE Application Programming Interface's (API) lines of code in order to allow programmers to work in a

transformative program constituted a fair use of that material under copyright law. Justice Stephen Breyer delivered the majority opinion of the court and concluded by opining that "*we hold that the copying here at issue nonetheless constituted a fair use. Hence, Google's copying did not violate the copyright law*." Justice Clarence Thomas filed a dissenting opinion, joined by Justice Samuel Alito.

Conclusion: The U.S. Supreme court reversed the U.S. Court of Appeals for the Federal Circuit's ruling and remanded the case for further proceedings by holding that Google's use of the Java SE Application Programming Interface's (API) lines of code in order to allow programmers to work in a transformative program constituted a fair use of that material under copyright law.

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04. **Supreme Court of India**
Civil Appeal Nos. 1517-1518 OF 2021
M/S Utkal Suppliers. v. M/S Maa Kanak Durga Enterprises & Ors.
https://main.sci.gov.in/supremecourt/2021/6309/6309_2021_33_1501_27427_Judgement_09-Apr-2021.pdf

Facts: Tenders were invited from eligible registered diet preparation and catering firms/suppliers etc. Respondent no.1 was disqualified for not submitting requisite valid contract labour license and non-completion of three years of required experience and tender/contract was awarded to appellant. High Court set aside this contract and ordered to grant it to Respondent no.1.

Issue: To what extent judicial review of decision of authority granting the tender is permissible and how the terms of a tender notice are to be interpreted?

Analysis: Court reiterated following principles that:

i. Court should exercise restraint and caution in such matters unless there is need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities.
ii. The courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority.
iii. Authority’s interpretation of its own TCN cannot be second-guessed unless it is arbitrary, perverse or mala fide because judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.
iv. The writ court does not have the expertise to correct such decisions by substituting its own decision for the decision of the authority. What is reviewed is not the decision itself but the manner in which it was made.
v. The decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

Conclusion: Judicial review in these matters is equivalent to judicial restraint because only manner of decision is under review and not the decision itself and the Court does not sit like court of appeal over the appropriate authority. Authority having authored these documents is better placed to appreciate their requirements and interpret them and if two interpretations are possible then the interpretation of the author must be accepted.

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05. **Supreme Court of Pakistan**
Atif Zareef, etc v The State
Criminal Appeal No.251/2020 & Criminal Petition No.667/2020
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._251_2020.pdf

Facts: The defence by asking question regarding two finger test in cross examination tried to build a case that the complainant/victim was a woman of immoral character for having illicit relations.

Issue: Whether recording sexual history of the victim by carrying out “two-finger test” (TFT) or the “virginity test” has any scientific justification or evidentiary relevance to determine the commission of the sexual assault of rape?

Analysis: The hymen has no biological function; it has been made into a symbol of virginity around the world. These inaccuracies are largely rooted in misogyny. Medical jurisprudence textbooks had previously prescribed certain tests of medical evaluation to determine prior virginity of an alleged rape victim … Today modern forensic science shuns the virginity test as being totally irrelevant to the sexual assault… “Virginity testing, also referred to as hymen, two-finger or pre vaginal examination has no scientific merit or clinical indication” and “the appearance of a hymen is not a reliable indication of intercourse and there is no known examination that can prove a history of vaginal intercourse.”… Modern forensic science thus shows that the two finger test must not be conducted for establishing rape-sexual violence, and the size of the vaginal introitus has no bearing on a case of sexual violence. The status of hymen is also irrelevant because hymen can be torn due to several reasons such as cycling, riding among other things. An intact hymen does not rule out sexual violence and a torn hymen does not prove previous sexual intercourse… The only statement that can be made by the medical officer is whether there is evidence of recent sexual activity and about injuries noticed in and around the private parts…

Reporting sexual history of a rape survivor amounts to discrediting her independence, identity, autonomy and free choice thereby degrading her human worth and offending her right to dignity guaranteed under Article 14 of the Constitution which Right to dignity under Article 14 of the Constitution is an absolute right and not subject to law… If the victim of rape is accustomed to sexual intercourse, it is not determinative in a rape case; the real fact-in-issue is whether or not the accused committed rape on her. If the victim had lost her virginity earlier, it does not give to anyone the right to rape her. In a criminal trial

relating to rape, it is the accused who is on trial and not the victim… The omission of Article 151(4) of the QSO implies prohibition on putting questions to a rape victim in cross-examination, and leading any other evidence, about her alleged "general immoral character" for the purpose of impeaching her credibility.

Conclusion: Recording sexual history of the victim by carrying out "two-finger test" (TFT) or the "virginity test" has no scientific justification or evidentiary relevance to determine the commission of sexual assault for rape.

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06. **Supreme Court of Pakistan**
Naveed Asghar etc v The State
Jail Petition No. 147 of 2016
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/j.p._147_2016.pdf

Facts: Five persons were mercilessly murdered in their house by slitting their throats. Case of the prosecution rests on circumstantial evidence. Trial court convicted the accused persons and High Court maintained their convictions. Petitioners alleged insufficiency of evidence to connect them with the commission of offence.

Issue: i) What is the nature, scope and extent of reappraisal of evidence by the High Court while hearing an appeal and a reference sent by the trial court for confirmation of the death sentence?

ii) What is standard of care required for relying on circumstantial evidence?

iii) Whether recovery of the alleged weapons of offence, viz, bloodstained knives, without a positive forensic report as to matching the bloodstains found thereon with the blood of any of the deceased persons could connect the accused with the commission?

iv) What is the nature of medical evidence?

v) What is the standard of proof required in criminal case?

Analysis: i) It is incumbent upon the High Courts, in discharge of their statutory duty under sections 375 and 376 of the Code of Criminal Procedure, 1898 ("CrPC"), to read and appraise each and every piece of evidence, and to examine also whether any evidence has been improperly admitted or excluded, or has been misread or non-read by the trial court. Even non-filing of appeal or withdrawal of appeal by the convicted person, or any concessional statement by the state counsel does not relieve the High Court from performing its duty of reappraising the whole evidence available on record…. The proceedings are a reappraisal and reassessment of the entire facts of the case and of the law applicable. This extensive power actually casts an onerous duty on the High Court to ensure safe administration of criminal justice by considering in the reference proceedings all aspects of the case and coming to an independent conclusion, apart from the view expressed by the Court of Session. The High Court has to decide on reappraisal of the whole evidence whether the conviction is justified and, having regard to the circumstances of the case, whether the sentence of death is appropriate.

ii) In cases which rest entirely on circumstantial evidence, it is of the utmost importance that the circumstances should be ascertained with minute care and caution, before any conclusion or inference adverse to the accused person is drawn. The process of inference and deduction involved in such cases is of a delicate and perplexing character, liable to numerous causes of fallacy. This danger points the need for great caution in accepting proof of the facts and circumstances, before they are held to be established for the purpose of drawing inferences therefrom. A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, can create a specious appearance, leading to fallacious inferences. Hence, it is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well-established. A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused person is to be drawn.

iii) As in absence of a positive report of Forensic Science Laboratory as to matching of crime empty with the allegedly recovered firearm from an accused person, the recovery of alleged weapon of offence cannot be considered as the corroborative piece of evidence against that accused person, so is the legal position regarding recovery of a bloodstained alleged weapon of offence without a positive forensic report matching the blood found thereon with that of the deceased. It can also be not used as a substantive or corroborative piece of evidence against an accused person to connect him with the commission of offence.

iv) Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.

v) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or nonexistence of a fact to prove the guilt of a person, the golden rule

of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession.

Conclusion: i) It is incumbent upon the High Court to read and appraise each and every piece of evidence, and to examine also whether any evidence has been improperly admitted or excluded, or has been misread or non-read by the trial court. The High Court has to decide on reappraisal of the whole evidence whether the conviction is justified and, having regard to the circumstances of the case, whether the sentence of death is appropriate.

ii) It is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well-established. A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused is to be drawn.

iii) A positive forensic report without matching the blood found on the weapon with that of the deceased cannot be used as a substantive or corroborative piece of evidence against an accused to connect him with the commission of offence.

iv) Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not “corroborative evidence”.

v) The finding as regards guilt of accused should restsurely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot substitute the proof.

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07. **Supreme Court of Pakistan**
Shahzada Qaiser Arfat v The State
Crl. Petition No.801-L of 2020
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._801_1_2020.pdf

Facts: Petitioner is nominated in the F.I.R as an abettor in a murder case. His pre-arrest bail was dismissed by Sessions Court as well as High Court.

Issue: Whether the traditional view that pre-arrest bail can only be granted on three recognized grounds is correct after insertion of Article 10-A in the Constitution?

Analysis: Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing malafide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct, especially after recognition of the right to fair trial as a fundamental right under Article 10-A of Constitution of Pakistan, 1973….. The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail, and vice versa. … Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the malafide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove malafide on their part.

Conclusion: The non-availability of incriminating material against the accused or non-existence of a sufficient ground or a valid purpose for making arrest of the accused are also grounds for admitting him to pre-arrest bail.

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08. **Lahore High Court**
Abdul Ghafoor v The State
Criminal Appeal No.814/2019
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC789.pdf

Facts: Appellant was arrested by C.I.A Police and convicted for an offence u/s 9(c) of CNSA.

Issue: Whether the C.I.A Police may arrest a person involved in commission of cognizable offence?

Analysis: Section 54 Cr.P.C empowers a police officer to arrest a person in following circumstances:- a) The person is involved in a cognizable offence; b) There is a reasonable complaint that he is concerned in a cognizable offence; c) The police officer has received a credible information he is involved in a cognizable offence; and d) There is a reasonable suspicion that the said person is involved in a cognizable offence.

Conclusion: The C.I.A Police may arrest a person in afore-referred circumstances.

09. **Lahore High Court**
Muhammad Abbas v The State
Cr. Appeal No.328 of 2018/BWP
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC770.pdf

Facts: Husband/appellant was alleged to have killed his wife by strangulation; however, he asserted that victim committed suicide.

Issue: How to differentiate between a case of suicide and strangulation?

Analysis: If a ligature has been used a mark will, save in very exceptional cases, be found on the neck. This usually, but not invariably, differs from a hanging mark, in being truly transverse in direction, low on the neck, and continuous, i.e. completely encircling the neck. In exceptional cases of strangulation, especially if the body has been dragged by the ligature, the mark may be found high on the neck, and oblique in direction, like a hanging mark. Again, in exceptional cases of hanging, the mark may be found low down on the neck, and, if the cord has been tightly applied, the mark left by it may be more or less transverse in direction, but unlike the mark of strangulation, the sides tend to run upwards to the mark of the knot which is on a higher level. The hard, brown, parchmentised appearance of the skin in the course of the mark is more seldom met with. Whether the mark will be parchmentised or - not depends entirely on the nature of the ligature. If this is hard and rough such a mark will result. In strangulation, more frequently than in hanging, the ligature employed is a soft one, such as a handkerchief or other piece of cloth, this is the reason for the frequent absence of the parchmentised mark.

Conclusion: The court while discussing "a ligature mark on the neck", "suicidal cases by ligature", "homicidal cases", "strangulation by ligature" and "strangulation by manual pressure" as elaborated in Medical Jurisprudence coupled with the opinion of the doctor came to the conclusion that victim committed suicide.

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10. **Lahore High Court**
Muhammad Khalid vs. Magistrate Ist Class & 2 others
W.P. No. 13208/2019
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2019LHC4763.pdf

Facts: Mehvish Bibi contracted marriage with the Petitioner without the blessings of her family. Respondent contended that Mehvish Bibi is a minor so her marriage is invalid in view of the restrictions imposed by the Child Marriage Restraint Act, 1929. F I R was lodged. Mehvish moved an application for sending her to Dar-ul-Aman which was accepted. A week later, she moved another application for her release from Dar-ul-Aman. The Magistrate directed the Superintendent, Dar-ul Aman, to hand over the girl's custody to the natural guardian or the guardian appointed by the Court and, if she refused to go with him, keep her in Dar-ul-Aman.

Issue: i) Whether marriage of a minor girl is invalid in view of the restrictions imposed by the Child Marriage Restraint Act, 1929?

ii) Whether a girl could be kept in Dar-ul-Aman against her will?

Analysis: i) The marriage between the Petitioner and Mehvish Bibi is not disputed. The contention that the marriage between the Petitioner and Mehvish Bibi being in violation of the Child Marriage Restraint Act, 1929, has no force because Mst.Mehvish has attained the age of puberty and she had married with her own free will. Such a marriage is valid under the Muhammadan Law.

ii) Mehvish Bibi cannot be kept in Dar-ul-Aman against her will. She is ordered to be released and is allowed to go wherever she likes.

Conclusion: i) Such marriage is not invalid because Muhammadan Law recognize such marriage

ii) A girl could be kept in Dar-ul-Aman against her will.

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11. **Lahore High Court**
Muhammad Shakir v The State
Crl. Misc. No.3742/B/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC271.pdf

Facts: Petitioner sought post arrest bail in case wherein he was alleged to have desecrated the Holy Quran by burying it in his house.

Issue: i) Whether an F.I.R under section 295-B PPC can be registered without authorization of competent authority?

ii) Whether burial is one of the modes to dispose of old and unusable copies of the Quran?

Analysis: i) Section 196 Cr.P.C. does not bar registration of FIR. It only restrains the Court from taking cognizance of the offence unless there is a complaint by the Federal or the Provincial Government. Registration of FIR and taking cognizance of a case are two distinct concepts in criminal law.

ii) There is a consensus among lawyers and religious scholars that subject to certain conditions Shariah recognizes burial as one of the modes to dispose of old and unusable copies of the Quran.

Conclusion: i) An F.I.R under section 295-B PPC may be registered without authorization of competent authority.

ii) Subject to certain conditions Shariah recognizes burial as one of the modes to dispose of old and unusable copies of the Quran.

12. **Lahore High Court**
Dr. Muhammad Yousaf v The State
Writ Petition No. 8936 of 2019/BWP
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC815.pdf

Facts: The Petitioner, a doctor assailed the order of Justice of Peace in which direction for registration of F.I.R was issued against him despite of the fact that earlier matter was referred by police to Healthcare Commission, which imposed a fine of fifty thousand rupees on the petitioner for allegedly not being able to satisfy the Commission that death of newborn niece of the complainant was not caused by the petitioner while administering her a drip.

Issue: Whether Justice of Peace can pass an order for registration of F.I.R against a healthcare practitioner?

Analysis: The Punjab Healthcare Commission Act, 2010 has been brought for improvement of quality of healthcare services and to ban quackery in all its forms and manifestations. Section 4 of the Act deals with the functions and powers of the Commission and Section 2(e) of the Act provides that the Commission shall enquire and investigate into maladministration, malpractice and failures in the provision of healthcare services and issue consequential advice and orders, so there is no denial of the proposition that all the complaints against the medical practitioners exclusively come within the domain of the Commission. Section 19 highlights the medical negligence and procedure of investigation has been given in Section 23 and 26 of the Act. Section 29 of the Act provides immunity clause and barred any other form of prosecution or legal proceeding against the healthcare service provider except under this Act.

Conclusion: Local police has got no authority to lodge a criminal case against a healthcare provider and Justice of Peace also could not issue such directions on the application of aggrieved party; however, Healthcare Commission under Section 26 of the Act is empowered to refer the matter to any law enforcement agencies for appropriate action under relevant laws.

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13. **Lahore High Court**
Faqeer Muhammad v. The State
W.P No. 7529/2020
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC829.pdf

Facts: Through this writ petition, the petitioner has sought the quashment of the FIR registered against him under section 420, 468, 471, 109 PPC & 5(2) 47 of PCA on the ground that civil litigation between the parties has culminated into an amicable settlement.

Issue: Whether the FIR against the petitioner is liable to be quashed particularly when the report u/s 173 Cr.PC had already been submitted while declaring him as ‘guilty’?

Analysis: The question of guilt and innocence of the accused persons nominated in the FIR could not be decided by the High Court in exercise of constitutional jurisdiction as such functions fell within the jurisdictional domain of the court concerned, by whom the entire evidence was to be scrutinized, which could not be done in the exercise of constitutional jurisdiction. The petitioner is nominated in the FIR and has been found involved in the alleged occurrence by the investigation agency as per report submitted u/s 173 Cr.PC and it is the concerned court to decide the guilt or innocence of the petitioner. Moreover, the alternate remedy in the form of application under section 249 Cr.PC is also available to the petitioner.

Conclusion: The FIR against the petitioner is not liable to be quashed when the report u/s 173 Cr.PC has already been submitted by the police in court with the findings as to petitioner's involvement in the alleged occurrence.

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14. **Lahore High Court**
Muhammad Umar v The State
Criminal Misc No. 4603/B/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC600.pdf

Facts: The Case concerned a post arrest bail of a juvenile on the basis of section 6(5) of the Juvenile Act 2018 (statutory right to bail on basis of delay for offences under sections 302, 324, 337-F(iii), 34 PPC).

Issue: Whether the time spent by the accused in obtaining a declaration that he was a juvenile could be termed as delay caused in the trial by the accused?

Analysis: It was opined that the time spent by the accused in obtaining a declaration that he was a juvenile could not be counted to his disadvantage. Hence the Petitioner's case squarely fell within the ambit of section 6(5) of the Juvenile Act. He has been detained for a continuous period exceeding six months, the trial has not been concluded and the delay is not attributable to him. His Lordship referred to California's Supreme Court case of Re William M to quote, "It is difficult for an adult who has not been through the experience to realize the terror that engulfs a youngster the first time he loses his liberty and has to spend the night or several days or weeks in a cold, impersonal cell or room away from home or family". It was opined that some countries impose blanket limit on the time for which the children may be kept in pre-trial detention. On the other hand, there are States that prescribe crime-based limits depending on the type or gravity of the offence or the sentence likely to be handed down. Section 6 of the Juvenile Act follows the latter model. However, the policy that—pre-trial detention is only permitted as a measure of last resort and for the shortest appropriate period of time permeates the section. His Lordship extensively discussed international literature on the rights of Children for instance the UN Convention on the Rights of the Child, UN Guidelines for the Prevention of Juvenile Delinquency and International Covenant on Civil and Political Rights ICCPR (1966).

Conclusion: Time spent by the juvenile accused in obtaining a declaration that he was a juvenile could not be termed as delay caused in the trial by the accused.

15. **Supreme Court of India**
Criminal Appeal No. 407 of 2021
State of Rajasthan. v. Ashok Kumar Kashyap.
https://main.sci.gov.in/supremecourt/2020/8524/8524_2020_36_1501_27516_Judgement_13-Apr-2021.pdf

Facts: Charge was framed against the accused/respondent under Anti-Corruption law but revisional court, after exhaustively discussing the material on record, discharged the accused by holding that from bare reading of the transcript offence under Prevention of Corruption Act would not be made out against the accused. State preferred appeal against that order.

.Issue: Whether HC, while exercising the revisional jurisdiction, was justified to evaluate the transcript/evidence on merits at the stage of considering the application for discharge?

Analysis: Court reiterated the following principles:

i. The High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

ii. At the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

iii. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused.

iv. While exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

Conclusion: The High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. by evaluating the transcript/evidence on merits and in virtually holding a mini trial at the stage of discharge application.

16. **Supreme Court of Pakistan**
Province of Punjab v Dr. Javed Iqbal etc
C.P.2210-L/2020 to C.P.2239-L/2020 and CMA 489-L/2021
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2210_l_2020.pdf

Facts: Respondents were appointed on contract basis during the years 2004 to 2009. Their services were subsequently regularized by the Government with immediate effect in 2011. The grievance of the respondents was that they ought to have been regularized from the date of their initial appointment on contractual basis rather than the date of regularization of their service.

Issue: Whether the date of regularization of contract employees is the date of their initial appointment on contract basis or the date of their regularization under the Regularization Policy?

Analysis: Regularization of a contract employee is a fresh appointment into the stream of regular appointment. A contractual employee for the first time becomes a civil servant. Contractual employees enjoy no vested right to regularization much less to be regularized from any particular date. The benefit of regularization extended to them under the Regularization Policy is prospective in nature and there is no legal justification to give it a retrospective application. Any such step would totally negate the purpose and significance of Contract Appointment Policy and leave no distinction between a contractual and a regular employee.

Conclusion: Date of regularization of contract employees is the date of their initial appointment and not the date of appointment on contract basis.

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17. **Supreme Court of Pakistan**
Chief Executive Officer v Muhammad Ilyas, etc
Crl. P. 713-L/2020
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._713_l_2020.pdf

Facts: Respondent No.1 challenged MEPCO's failure to select and appoint him to the post when he secured 50 marks in written examination while the last candidate who was selected for interview had a score of 66 marks. High Court directed for issuance of appointment letter.

Issue: Whether the High Court could direct for issuance of appointment letter?

Analysis: Judicial review is the power of the court to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the Constitution and the law. Actions judged inconsistent are declared unconstitutional or unlawful and, therefore, rendered null and void. The court entrusted with the power to judicially review an executive action can only declare it to be right or wrong but cannot take over the

functions that belong to another organ of the State. Under the Constitution, the Legislature, Executive, and Judiciary all have their own broad spheres of operation. It is not permissible for any one of these three organs to encroach upon the domain of another….by assuming the role of the Executive the judge disregarded his core function of adjudication, in accordance with law. Ignoring the constitutional boundaries of separation of powers can easily equip a judge with a false sense of power and authority. This is a dangerous tendency and must be guarded against to ensure that the judicial role continues to remain within its constitutional limits…When judiciary encroaches upon the domain of the Executive it is said to commit judicial overreach – which occurs when a court acts beyond its jurisdiction and interferes in areas which fall within the Executive and/or the Legislature's mandate. Through such interference the court violates the doctrine of separation of powers by taking on the executive functions upon itself.

Conclusion: The High Court cannot direct for issuance of appointment letter by disregarding the eligibility criteria and the recruitment policy of the Executive Authority.

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18. **Sindh High Court**
Anjum Badar v Province of Sindh and 2 others
Constitutional Petition No. D – 6241 of 2016 and connected matters
Mr. Justice Nadeem Akhtar, Mr. Justice Adnan-ul-Karim Memon
http://43.245.130.98:8056/caselaw/view-file/MTUwNzQ3Y2Ztcy1kYzgz

Facts: Petitioners the contractual employees appointed under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 have contended that by virtue of Section 3 of said Act, they have acquired vested right for being regularized as a regular / permanent employee and they should be deemed to have been validly appointed on regular basis.

Issues: i) Whether temporary employees appointed on contract can be deemed to have been validly appointed on regular basis, without going through the competitive process of selection through the Sindh Public Service Commission, merely in view of Section 3 of the Act of 2013?

ii) Whether the mandatory requirement of competitive process of selection to the posts in BS 16 to 22 only through the Sindh Public Service Commission can be waived, relaxed, done away with, exempted and or bypassed in view of Section 3 of the Act of 2013?

iii) Whether the petitioners have any vested right to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of their grievance relating to regularization?

Analysis: i) The petitioners had voluntarily applied for appointment on contract and after fully understanding the implications and consequences of a contractual appointment, had voluntarily accepted the same. Now their contention that it would be discriminatory if they are not regularized after serving for a considerable period or they will not be able to get another job at this stage if they are relieved, has no force. They cannot turn around at this stage and claim regularization of their contractual appointments which was neither part and parcel

of the terms and conditions of their contracts nor is permissible in law. In fact, it would be discriminatory against the serving civil servants if contractual employees are granted the status of a civil servant without having gone through the mandatory competitive process prescribed for the selection and appointment of a civil servant. As far as the contractual period of service of the petitioners is concerned, suffice it to say the entire such period will be added to their resume as their experience which will certainly help them in seeking fresh employment, if they so desire. In any event, mere continuance of employment of a temporary employee for two years or more in service does not ipso facto convert the appointment into a permanent one.

ii) The mandatory requirement of initial appointments to the posts in BS 16 to 22 only through the Commission, being the command of the Constitution and direction of the Hon'ble Supreme Court (2015 SCMR 456), cannot be ignored, waived, relaxed, done away with, exempted and or bypassed on any ground whatsoever. There is no cavil to the proposition that contractual employees are not civil servants and the above mandatory requirement of appointment through the Commission does not apply to them.

iii) Admittedly petitioners are contractual employees and thus their status and relationship is regulated and governed by the principle of "master and servant". Such employees do not acquire any vested right for regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of their grievance relating to regularization.

Conclusion: i) Mere continuance of employment of a temporary employee for two years or more in service does not ipso facto convert the appointment into a permanent one; hence without going through the process of competitive examination, they can't be held entitled to be regularized in their respective posts.

ii) Mandatory requirement of initial appointments to the posts in BS 16 to 22 only through the Commission, being the command of the Constitution and direction of the Hon'ble Supreme Court cannot be ignored, waived, relaxed, done away with, exempted and or bypassed on any ground whatsoever. Any violation of this mandate will be ultra vires to the constitution.

iii) No corresponding legal duty was/is cast on the Government of Sindh to appoint them on regular basis, and thus writ of mandamus, as prayed for by the petitioners, cannot be granted.

LIST OF ARTICLES:-

1. **MANUPATRA**
https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
SC: A Power-of-Attorney Holder Can Depose before the Courts in Civil and Criminal Cases. The evidentiary value of the deposition is dependent on the facts and circumstances by Jayanth Balakrishna

Until the Supreme Court settled the law, various High Courts had passed conflicting judgments regarding the validity of permitting a power-of-attorney (POA) holder to depose on behalf of his or her party principal. The Supreme Court has drawn a distinction between a POA holder deposing for acts done by him or her under the authority of the POA, and personal knowledge of facts known to the party-principal for whom the instrument holder may not be entitled to depose. Nevertheless, the Apex Court and the High Courts have carved out exceptions, by permitting a POA holder to depose on behalf of his or her party-principal, leaving the opposing lawyer to cull out the evidentiary value of the testimony provided by a POA holder claiming to have personal knowledge of facts pertaining to the principal.

2. **Harvard Environmental Law Review**
https://harvardelr.com/
Nature's Personhood and Property's Virtues by Laura Spitz* and Eduardo M. Pe ˜nalver
This Article evaluates the strategy of claiming personhood for natural objects as a way to advance environmental goals in the United States. Using the Colorado River Ecosystem v. Colorado litigation as the focus, we explore the normative foundation of the claim—elements of nature are legal persons…

3. **COURTING THE LAW**
https://courtingthelaw.com/2021/01/30/commentary/law-of-enforced-disappearances-in-pakistan-discrepancies-and-comparison-with-international-law/
Law of Enforced Disappearances in Pakistan: Discrepancies and Comparison with International Law by Ahrar Jawaid
This article aims to highlight the obscurities in the law of enforced disappearances in Pakistan along with the statutory ambiguity in the regulation of affairs by the Commission of Inquiry on Enforced Disappearances (CIED). In the prologue, a distinction will be drawn between the various types of disappearances including abduction, kidnapping and forced disappearance. Following that, the broadness of the definition of "enforced disappearance" given by the CIED will be juxtaposed with the definition laid down in the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)

4. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12423
Constitutional Directives: Morally-Committed Political Constitutionalism by Tarunabh Khaitan

About 37 state constitutions around the world feature non-justiciable thick moral commitments ('constitutional directives'). These directives typically oblige the state to redistribute income and wealth, guarantee social minimums, or forge a religious or secular identity for the state. They have largely been ignored in a constitutional scholarship defined by its obsession with the legitimacy of judicial review and hostility to constitutionalising thick moral commitments other than basic rights. This article presents constitutional directives as obligatory telic norms, addressed primarily to the political state, which constitutionalise thick moral objectives.

LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(15-04-2021 to 30-04-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Lahore High Court**
Mst. Parveen Akhtar, etc. v Noor Muhammad, etc.
Civil Revision No.21651 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC926.pdf

Facts: Petitioners, the legal heirs of one of the respondents against whom decree in a suit for possession was passed by first appellate court, filed application under section 12(2) CPC on the ground that their father/respondent died during pendency of appeal but they were not impleaded as party thereafter, so decree be set aside. However, the application was dismissed.

Issue: Whether a decree can be set aside under section 12(2) CPC on the ground that during pendency of appeal, one of the respondents died but the present respondents did not bring this fact into attention of the court present petitioners were not made party to the appeal?

Analysis: Order XXII of the Code of Civil Procedure (CPC) deals with the death, marriage and insolvency of parties pending proceedings. Rule 4 provides the procedure in case of death of one or several defendants or sole defendant. By virtue of Rule 11, Order XXII has been made applicable to the appeals mutatis mutandis. From the analysis of the above referred provisions of law it becomes crystal clear that in case of death of one of the respondents in the appeal, if the right to sue survives against the surviving respondents, non-implement of legal representative of deceased respondent would have no adverse bearing on the merits of the appeal.
Application under Section 12(2) of CPC was highly misconceived and ill-founded, even at the face of it as it does not come within the purview of Section 12(2) of CPC. The petitioners should have availed remedy under Order XXII Rule 9(2)of CPC but even then if we treat the application of the petitioners under the said provision of law that too was not maintainable

Conclusion: In case of death of one of the respondents in the appeal, if the right to sue survives against the surviving respondents, non-implement of legal representative of deceased respondent would have no adverse bearing on the merits of the appeal and a decree cannot be set aside under section 12(2) CPC on that ground.

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2. **Lahore High Court**
Abdul Waheed v Additional District Judge
Writ Petition No. 1854 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC901.pdf

Facts: The Petitioner who was awarded a contract for running the Sarai (hostelry) at the Nishtar Hospital, Multan invoked doctrine of frustration pleading commercial impracticability of contract and claimed compensation by way of remission of monthly charges i.e. for the lockdown period during Covid-19 or for extension of contract for a proportionate time.

Issue: (i) Interplay between the principles of force majeure and the doctrine of frustration?

	(ii) What is distinction between License and Lease?
	(iii) Whether section 56 of the Contract Act 1872 or principles of Force Majeure are applicable on special laws i.e. Easement Act 1882 and Transfer of Property Act 1882?
Analysis:	The provisions relevant to the principle of force majeure and the doctrine of frustration in Pakistan are sections 32 and 56 of the Contract Act, 1872. Section 32 is applicable where the contract itself contains an express or implied force majeure clause for contingencies on whose happening the contract cannot be carried out and prescribes its consequences. If there was no such provision in the contract/agreement or it did not apply, then the party could have recourse to section 56 which laid the doctrine of Frustration. Moreover it was also eloquently put that commercial impracticability or frustration should not provide a means of escape from a contract less profitable than anticipated. Moving on the court while deciphering the nuance between lease (Transfer of Property Act) and license (Easement Act) observed that the relationship between the parties is determined from the contents of their agreement rather than the phraseology used. The most important factor that distinguishes a lease from a license was that in the former there was a transfer of interest in immovable property while in the latter such element was excluded albeit the right to exclusive possession was an important consideration. In the case in hand it was held that as it was not a lease, section 62(f) of the Easements Act rather than section 108(e) of the TPA would apply. Being a special law it also excluded section 56 of the Contract Act.
Conclusion:	The party could only have recourse to sec.56 i.e. doctrine of frustration where there is an express provision regarding force majeure. In lease there is a transfer of interest in immovable property, while in lease it is not the sole consideration. Petitioner's case does not fall in the ambit of 'lease' but is a license and for him to invoke 'frustration' recourse could only lie under sec. 62(f) of the Easements Act instead of sec.108 (e) of TPA and being a special law it also excluded section 56 of the Contract Act.

3.	**Supreme Court of the United States** **Barton v. Barr, 590 U.S. __ (2020)** https://www.supremecourt.gov/opinions/19pdf/18-725_f2bh.pdf https://ballotpedia.org/
Facts:	Andre Barton, a Jamaican national, entered the U.S. in 1989 and became a lawful permanent resident in 1992. In 1996, Barton was convicted of several criminal charges. In 2007 and 2008, he was convicted of additional criminal charges. The U.S. Department of Homeland Security charged Barton as deportable. Barton challenged the charges for removal. The U.S. government argued Barton's crimes made him "inadmissible" under s. 1182(a)(2). Barton argued that as an already-admitted lawful permanent resident, he could not be rendered inadmissible. An immigration judge ruled in favor of the government. On appeal, the Board of Immigration Appeals agreed with the immigration judge. On further appeal, the

11th Circuit upheld the immigration judge and the Board of Immigration Appeals' rulings.

Issue: Whether a lawfully admitted permanent resident who is not seeking admission to the United States can be "rendered inadmissible" for the purposes of the stop-time rule, 8 U.S.C. s. 1229b(d)(l)?

Analysis: The ruling upheld a decision by the Eleventh Circuit Court of Appeals that green card holders could be rendered "*inadmissible*" to the United States for an offense after the initial seven years of residence under the Reed Amendment. Justice Brett Kavanaugh, writing the majority opinion, ruled that DHS could deport Barton stating "*the immigration laws enacted by Congress do not allow cancellation of removal when a lawful permanent resident has amassed a criminal record of this kind.*" Further opining that "*Removal of a lawful permanent resident from the United States is a wrenching process, especially in light of the consequences for family members. Removal is particularly difficult when it involves someone such as Barton who has spent most of his life in the United States. Congress made a choice, however, to authorize removal of noncitizens even lawful permanent residents, who have committed certain serious crimes. And Congress also made a choice to categorically preclude cancellation of removal for noncitizens who have substantial criminal records. Congress may of course amend the law at any time. In the meantime, the Court is constrained to apply the law as enacted by Congress".* In a dissenting opinion, Justice Sonia Sotomayor argued that as Barton had already been admitted, the Government must prove he is deportable rather than just inadmissible.

Conclusion: In a 5-4 ruling, the court affirmed the decision of the United States Court of Appeals for the 11th Circuit, holding that for purposes of cancellation-of-removal eligibility, s. 1182(a)(2) offense committed during the initial seven years of residence does not need to be one of the offenses of removal.

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4. **Lahore High Court**
Sikandar Mahmood v. LDA
W.P. No. 187944/2018
Mr. JusticeAsim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC881.pdf

Facts: Petitioner through the constitutional petition challenged commercialization fee assessed on his property by LDA.

Issue: Whether commercialization fee under the LDA rules is to be calculated on the basis of commercial value of land without valuing the structure/building constructed upon it?

Analysis: Submissions that commercialization fee has to be computed at prescribed rate on the basis of commercial value of the land exclusively, without valuing the structure or building are bordering absurdity. It is evidently clear upon reading of rule 31(1) of Rules, 2014 that temporary commercialization is allowable, subject to fulfilment of conditions, both qua the land and property – the reference to expression property in this case is meaningful. Buildings/structures raised upon

the land underneath, forms an integral part of the land when examined in terms of the definition of land in section 3(o) of the Lahore Development Authority Act, 1975. Moreover the term 'immovable property' is defined in section 2 (31) of the General Clauses Act 1956, which defines that immovable property shall include land, benefits to arise out of land, and things attached to the earth. That definition is by and large similar to the definition of Land in LDA Act, 1975, which suggests that structure raised / building constructed formed part of the land, which cumulatively constitute an immovable property. Hence, it's legal to ascertain commercial value of the land, in totality, inclusive of any structure / building thereupon.

Conclusion: The value of the land, inclusive of any structure / building thereupon, is to be considered for the calculation of commercialization fee commercial.

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5. Supreme Court of Pakistan
M/s. Lung Fung Chinese Restaurant v Punjab Food Authority,
C.P.1331-L/2017
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1331_l_2017.pdf

Facts: Allegedly invoking powers under section 13 (1) (c) of the Punjab Food Authority Act, 2011(the Act) Food Safety Officer (FSO)sealed a restaurant. Later on the said restaurant was de-sealed and it was served with an improvement notice under section 16 of the Act.

Issue: Whether the powers of FSO under section 13 (1) (c) of the Act are ultra vires to the Constitution?

Analysis: No ground or any other legislative guideline has been given under section 13(1) (c) of the Act that permits or empowers the FSO to exercise his discretion and invoke the power of sealing. Section 13(1) (c) simply states that FSO can seal any premises where he believes any food is prepared etc. Section 13(1) (c) does not provide when the sealing powers can be invoked. Further, the act of "sealing" is not supported by a remedial mechanism as in the case of seizure of food. Therefore, there is no legal remedy available to a food operator or food business after the premises have been sealed. There is also no provision for de-sealing under the Act…The power of sealing in the hands of the FSO can easily be applied arbitrarily which cannot be permitted under our constitutional scheme, as any such act would offend fundamental rights under Articles 18, 23 and 25 of the Constitution. The power of sealing of premises by the FSO, in its present form, is therefore ex facie discriminatory.

Conclusion: The power of the FSO to "seal any premises" under section 13(1) (c) is unconstitutional and illegal, hence struck down.

6. **Lahore High Court**
Saqib Ramzan v. The State
Criminal Appeal No.485 of 2016
Mr. Justice Ch. Abdul Aziz, Mr. Justice Muhammad Sajid Mehmood Sethi,
https://sys.lhc.gov.pk/appjudgments/2021LHC872.pdf

Facts: Appellant was convicted and sentenced for getting 504 grams of *Charas* recovered from his house.

Issue: Under what circumstances ingress into a building for recovery of narcotics without a search warrant can be made by the investigating officer?

Analysis: The language of section 21 of CNSA is explicit and leaves no room for discussion that as general rule to the effect that ingress into a building is to be made for the recovery of narcotics after obtaining a search warrant, more importantly by a police officer not below the rank of Sub-Inspector. The requirement of obtaining search warrant can only be relaxed if there is an apprehension that afflux of time in having recourse to the court will provide an opportunity of escape and removal of narcotics to accused.

Conclusion: Apprehension of escape of accused and removal of narcotics are the only circumstances when requirement of getting a search warrant before entering a building can be relaxed.

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7. **Lahore High Court**
Rehan Shehzad v The State
Crl. Misc. No.356-B of 2021
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC868.pdf

Facts: Petitioner seeks post arrest bail in a case involving charges of domestic violence whereby he allegedly beat his wife and caused fracture on the cheekbone below.

Issue: What material is to be considered by the court at a time of grant of post arrest bail?

Analysis: In offences that fall within the prohibitory clause, the concession of post arrest bail is to be withheld, if reasonable grounds exist for believing that the accused has been guilty of such an offence. In order to ascertain the presence of reasonable grounds, the court has to make tentative assessment from the following material:-

(i) nature of accusation embodied in FIR;
(ii) statements of the witnesses recorded u/s 161 CrPC;
(iii) medical evidence; &
(iv) other incriminating material collected during the course of investigation.

Conclusion: Accusations of FIR, statements of witnesses, medical evidence and other incriminating material collected during investigation are to be considered for tentative assessment by the court at the time of grant of post arrest bail. Petition was finally dismissed.

8. **Sindh High Court**
Collector, MCC Hyderabad vs. Faiz Muhammad & Another
SCRA 11 of 2020 and CP D 296 of 2020
Muhammad Junaid Ghaffar, J. Agha Faisal, J.
http://43.245.130.98:8056/caselaw/view-file/MTUwOTA4Y2Ztcy1kYzgz

Facts: A bus was intercepted on the highway and a search thereof led to the discovery of a specially designed concealed cavity, containing foreign origin smuggled cigarettes ("Contraband"). Pursuant to a show-cause notice, Contraband and the Bus were confiscated. While recording the admission of the appellant that the Bus did in fact have a concealed cavity wherefrom the Contraband was recovered, the Collector Appeals rejected the appeal. However, in appeal, learned appellate tribunal while relying on SRO 499(I)/2009 dated 13.06.2009 orderedfor release of the Bus against payment of fine equal to twenty percent of ascertained customs value. The present reference application has assailed the Impugned Judgment; whereas, the petition seeks implementation thereof.

Issue: Whether in the present facts and circumstances the Bus could be released per the SRO?

Analysis: learned Appellate Tribunal did not consider the import of the admitted existence of a concealed cavity in the Bus wherefrom the Contraband was recovered; did not weigh the factum that the tampering of the chassis of the Bus could not be dispelled by the claimant of the Bus either in the original adjudication proceedings or the proceedings before the Collector Appeals; and proceeded to predicate its decision on the absence of reference to the forensic report in the show cause notice. SRO expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein. In view of the admitted factum that the Bus was found carrying smuggled Contraband in false / concealed cavities, no case has been made out before us to justify the extension of the benefit of the SRO in the said facts.

Conclusion: Question framed above was answered in the negative. Impugned Judgment held in dissonance with the law. The reference application was allowed.

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9. **Lahore High Court**
Shafique Ahmad v The State etc.
Criminal Appeal No.1308 of 2013 [2021 LHC 672]
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2021LHC672.pdf

Facts: During the course of patrolling, complainant (Inspector) and his squad saw six terrorists riding on three motorcycles, who attacked the contingent deployed at the bay with automatic weapons raising slogans of Allah-o-Akbar. As a result of their indiscriminate firing, four police officials were killed at the spot while one miraculously escaped. On seeing the police patrol vehicle, the terrorists sped away. Two accused persons were challaned. Through their respective statements recorded under section 342 Cr.P.Cthe accused persons professed innocence and maintained that it was

a high profile case and the real culprits were not traceable; hence the Complainant and his colleagues falsely implicated them to show their efficiency. On conclusion of the trial, the learned Judge Anti-Terrorism Court acquitted one accused but convicted and sentenced the other (appellant) on the basis of his extra-judicial confession; hence this appeal under section 25 of the Anti-Terrorism Act, 1997.

Issue: Whether an accused may be convicted on the sole basis of extra-judicial confession; without evidence to prove that why he preferred to ventilate his suffocating conscience?

Analysis: The extra-judicial confession must be received with utmost caution. There are three essentials to believe an extra-judicial confession: firstly, that the extra-judicial confession was in fact made; secondly, that it was made voluntarily; and thirdly, that it was truly made. While referring plethora of case law, the Hon'ble Court has mentioned as many as thirteen principles laid down in different times by the Hon'ble Courts in Pakistan about appraisal of evidence based on extra-Judicial confession. Few of them are referred here in a very brief manner:

- It can be used against an accused only when it comes from unimpeachable sources.
- It must be corroborated in material particulars through trustworthy evidence.
- Conviction on capital charge cannot be recorded in its basis alone.
- No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it has to be visualized and appreciated purely consequent upon a human conduct.
- The status of the person before whom the extra judicial confession is made must be kept in view.
- Evidence of witnesses before whom accused made extra-judicial confession would not be worth reliance when witnesses exhibited unnatural and inhuman conduct after accused had made confession to them.
- The Court should also look at the time lag between the occurrence and the confession and determine whether the confession was at all necessary.
- Joint confession cannot be used against either of them.
- Confession made to a police officer is to be ignored even if it was made in the immediate presence of a Magistrate.
- The Hon'ble Court also referred case cited as AIR 2012 SC 2435 of Indian Supreme Court, wherein after thorough analysis of various judgments following principles were laid down:
    - (i) It should be made voluntarily and should be truthful.
    - (ii) It should inspire confidence.

(iii) It attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(iv) It should not suffer from any material discrepancies and inherent improbabilities.

(v) It has to be proved like any other fact and in accordance with law.

In present case if the appellant confessed his guilt five days earlier to the recording of supplementary statement by the complainant, then why the complainant was not aware about this very fact? Apparently there was no palpable reason for the appellant to make an extra-judicial confession before prosecution witnesses. There is no evidence that the accused approached them to ventilate his suffocating conscience or was in a morass and needed their help. More importantly acquittal of co-accused had also not been challenged. The Appellant could not be convicted on the same evidence.

Conclusion: Appeal was allowed and the appellant was acquitted for not proving of charge based on extra-judicial confession.

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10. **Lahore High Court**
Abid Ali V. State
Crl. Appeal No.312-J of 2019
Mr. Jusice Muhammad Waheed Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC751.pdf

Fact: This is an appeal against judgment of conviction in case registered under Section 9 (c) of the Control of Narcotic Substances Act, 1997. During the trial examination-in-chief of complainant was recorded and his cross-examination was reserved but subsequently he did not make himself available for cross-examination though efforts were made to procure his attendance.

Issue: i) Whether the examination in chief of witness without cross examination, due to his non availability, acquires status of a "legal statement"?

ii) Whether accused can be convicted without proving "safe custody" of case property?

Analysis: i) The statements of witnesses would include examination-in-chief, the cross-examination, if the accused intends to do so or re-examination if the prosecution wants to avail that opportunity. In the present case, the appellants wanted to cross-examine the witness but he did not appear before the Court therefore, in such circumstances without cross examination, the statements of witness cannot be regarded as complete statements within the meaning of Article 133 of Qanun-e-Shahadat Order, therefore, the said statements, without cross-examination, cannot be termed as legal statements.

ii) It is well settled that if safe custody of allegedly recovered substance/ case property has not been proved in narcotic cases, there is no need to discuss other merits of the case and it straightaway leads to the acquittal of the accused.

Conclusion: i) The examination in chief of witness without cross examination, due to his non availability, does not acquire status of a "legal statement.

ii) The accused cannot be convicted without proving "safe custody" of case property.

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11. **Supreme Court of Pakistan**

Secretary Elementary & Secondary Education Department, Government of KPK v Noor-ul-Amin,

CIVIL APPEAL NO. 985 OF 2020

Mr. Justice Gulzar Ahmed, C.J. Mr. Justice Ijazul Ahsan Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

https://www.supremecourt.gov.pk/downloads_judgements/c.a._985_2020.pdf

Facts: Respondent was granted ex-Pakistan leave. As the respondent did not report to the duty on expiry of his ex-Pakistan leave, he was issued show-cause notice. He did not report for duty despite issuance of notice in the newspaper, therefore, he was removed from service.

Issue: Whether holding of regular inquiry is necessary in view of admitted absence from duty?

Analysis: So far as the question of regular inquiry is concerned, we note that the very fact of respondent remaining absent is not a disputed fact and thus there was no occasion for holding a regular inquiry in the matter.

Conclusion: Holding of regular inquiry is not necessary in view of admitted absence from duty.

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12. **Sindh High Court**

Ghulam MurtazaAbbasi vs. National Bank of Pakistan

Constitutional Petition No. D –5657 of 2019 [2021 SHC 304]

Mr. Justice Muhammad Shafi Siddiqui, Mr. Justice Adnan-ul-Karim Memon

https://eastlaw.pk/cases/Ghulam-Murtaza-AbbasiVSNational-Bank-of.Mzk4MjIy

Facts: Petitioner, the employee of a Bank was prosecuted in an inquiry and his services were dispensed with on the ground of misconduct by treating the period of his suspension from service as a punishment. He sought reinstatement of his service with all back benefits.

Issue: Whether in the absence of specific assertion of having remained un-employed, the petitioner was entitled to the back benefits?

Analysis: About the back benefits, there are two basic principles; (a) that back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and (b) as regards the matter of onus of proof in cases where a workman 'is entitled to receive the back benefits it lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto, subject to the proviso that

the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. The reason is that back benefits are to be paid to the workman, not as a punishment to the employer for illegally removing him but to compensate him for his remaining jobless on account of being illegally removing him from service.

Conclusion: In the absence of specific assertion of having remained un-employed, the petitioner was not entitled to the back benefits.

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13. **Lahore High Court**
Misbahud Din Zaigham& others v Federal Investigation Agency & others
W.P No.68772 of 2019
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC941.pdf

Facts: The financial institutions in their complaints alleged the commission of an offence envisaged by section 2(g) (i) of willful default as defined in the Financial Institution (Recovery of Finances) Ordinance, 2001 whereupon F.I.A issued notice to petitioners. A Full Bench of Lahore High Court has already held in its judgment reported as Mian Ayaz Anwar and others v. State Bank of Pakistan and others (2019 CLD 375) that the determination of default as a civil liability must precede a notice regarding the commission of the offence of willful default under Section 2(g)(i) as this related to civil liability of default and must be determined by a court of competent jurisdiction which would conclude that there was an obligation to pay the amount in default and would trigger the offence of willful default in such cases.

Issue: Whether determination of the civil liability would include a determination to be made by the appellate court as well?

Analysis: The intention of the Hon'ble Judges as expressed in Mian Ayaz Anwar case has to be ascertained by considering the precedent's words, context and purpose and on this basis interpretative role will be assumed by this Court…Although, the learned Judge, speaking for the Full Bench did not elaborate (since the issue did not arise squarely before the Court),…. laying down the rule regarding pre-determination of civil liability of default in Mian Ayaz Anwar the learned Judges clearly meant that not only the determination must be made by court of first instance but by one appellate court as well…The view that the appellate procedure must conceivably be part of the determination of civil liability is based on two principles entrenched in our jurisprudence. The first is drawn from an established line of respectable authority that an appeal is a continuation of the original suit and opens up the case for rehearing on error and facts, both. And the second is the critical importance of constitutional criminal law which protects and preserves the right of a person to due process of law in all criminal prosecutions.

Conclusion: In laying down the rule regarding pre-determination of civil liability of default in Mian Ayaz Anwar case the Hon'ble Judges clearly meant that not only the

determination of the civil liability must be made by court of first instance but by appellate court as well.

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14. **Lahore High Court**
Mohammad Wajid Murshid and another v Silk Bank Limited
Execution First Appeal No.11 of 2019
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC977.pdf

Facts: Property of one of the appellants'/judgment debtors in a Banking suit, which was not specifically mortgaged in favor of the financial institution, was also included and put into auction by the Banking Court, while executing the decree and application for correction of properties under execution to this extent, was also dismissed.

Issue: Whether a property belonging to judgment debtor but was not actually mortgaged in favor of the Bank for availing financial facilities, can be put to auction for satisfaction of the Banking Court decree under Financial Institutions Recovery of Finance Ordinance, 2001?

Analysis: Under the Ordinance, in a case where execution of decree is not undertaken by the financial institution itself and sought its execution through the intervention of the Court, the Court which passed the decree is transformed into a Court of execution fully equipped and empowered to adopt any mode for the purposes of execution as provided under Section 19 of the Ordinance with the sole purpose and object to get the decree fully satisfied. An equitable mortgage stand created despite lapse of codified formalities, if the essential ingredients are met with i.e., existence of debt, delivery of title, intention that the same be accepted and retained as security for the debt so secured. In the instant case, all three requirements are in affirmative and perusal of impugned order also reflects that the learned Banking Court dismissed the application of the Appellants for correction of while giving considerable weightage to the point of execution of equitable mortgage in favor of Respondent and mere evasive denial to said assertion by the Appellants in their leave to defend.

Conclusion: The Banking Court, while executing the decree, which has attained finality up to the High Court, was competent to take measures for complete satisfaction of the decree including auction of property of a judgment debtor which was not actually mortgaged.

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15. **Lahore High Court**
Yasir Chaudhry v Faisalabad Development Authority
FAONO.74 of 2015
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC920.pdf

Facts: The appellant purchased a plot advertised by the respondent and paid considerable amount in installment as consideration to them but the respondent failed to provide necessary facilities at the site. The appellant brought the claim before

	Consumer Court under section 25 of the Punjab Consumer Protection Act, 2005, however, the same was dismissed by the court on account of lack of jurisdiction.
Issue:	Whether Consumer Court has got jurisdiction to entertain claim against the development authority for non-provision of necessary facilities at a housing scheme?
Analysis:	The term "product" defined in Section 2(j) of the Act is mainly derived from movable property and land is specifically excluded from the "goods" under the Sale of Goods Act, 1930. Though word "immovable" also finds reference in Section 2(j) of the "Act, 2005" but it is clearly restricted to "product". The joint analysis of Section 2(j) of "Act, 2005" and Section 2(7) of the Sale of Goods Act, 1930 leads to an irresistible conclusion that land cannot be termed as a "product". The appellant has never hired any services for a consideration rather he had purchased plots from the respondents in lieu of a consideration. The term and conditions of allotment/purchase matured into an agreement inter se appellant and respondents. Thus in case of violation of contract the appellant may ask for specific performance of contract or damages if there is breach of contract on the part of respondents through a suit before the Civil Court.
Conclusion:	Consumer Court is not vested with the jurisdiction to entertain the claim regarding non provision of necessary facilities in a housing scheme since land cannot be termed as product and the Consumer Court is also bereft of any jurisdiction to pass a direction in the form of mandamus.

16.	**Lahore High Court** **Majeed Fabrics (Pvt) Ltd, etc. v. Federation of Pakistan through Ministry of Energy, etc.** **Intra Court Appeal No.33117/2020.** **Mr. Jusice Shahid Jamil Khan, Mr. Justice Asim Hafeez** https://sys.lhc.gov.pk/appjudgments/2021LHC961.pdf
Fact:	Appellants are taxpayers, who claim that being registered with the Sales Tax as exporters or manufacturers in one of the industrial sectors identified under clause 66, they are exempted from the applicability of section 235 of the Income Tax Ordinance.
Issue:	i) Whether the exemption from the operations of section 235 of the Ordinance is available, per-se? ii) Whether exemption certificate is required to be procured on monthly basis or once granted same shall be valid unless such registration is suspended or cancelled? iii) Whether appellants are exempted from the operation of section 235 without exemption certificate?
Analysis:	i) It is clearly discernible that exemption from the operations of section 235 of the Ordinance is not available per-se merely by operation of law but claimable only upon compliance of conditions specified in clause 66. It is essential that such compliant status is verifiable, at all material times. It goes without saying that registration with the sales tax as exporter or manufacturer, in one of the industries

specified in clause 66, is condition-precedent for claiming exemption from operability of clause 66

ii) Under Sub-section (2) of section 159 used expression 'unless there is in force a certificate issued under sub-section (1) of section 159 relating to the collection or deduction of such tax', which rationally convey that as long as certificate is in force, DISCO's are obligated to act comply with the mandate of the Certificate. Hence, certificate procured under sub-section (1) of section 159 of the Ordinance shall remain valid / in force, unless factum of inactive status, suspension or cancellation of registration, as the case may be, is communicated by the Commissioner concerned to the relevant DISCO's.

iii) The appellants are exempted from the operation of section 235 of the Ordinance upon fulfillment of the conditions prescribed in terms of clause 66, provided such fulfillment is evidenced / affirmed by certificate, issued in terms of sub-section (1) of section 159 of the Ordinance, and not otherwise.

Conclusion: i) The exemption from the operations of section 235 of the Ordinance is not per-se available.

ii) The exemption certificate is not required to be produced on monthly basis and the same shall be valid unless such registration is suspended or cancelled.

iii) The appellants are not exempted from the operation of section 235 without exemption certificate.

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17. **Supreme Court of India**
Civil Appeal No 1155 of 2021
M/s Radha Krishan Industries v. State of Himachal Pradesh &Ors.
https://main.sci.gov.in/supremecourt/2021/1775/1775_2021_36_1502_27668_Judgement_20-Apr-2021.pdf

Facts: Appellant has challenged the orders of Joint Commission by which property of appellant was attached u/s 83 of the Himachal Pradesh Goods and Service Tax Act, 2017and Rule 159 of Himachal Pradesh Goods and Service Tax Rules, 2017. His Writ was dismissed by HC being not maintainable in the presence of alternate remedy of appeal.

Issue: Whether Joint Commissioner had fulfilled all the pre-requisites of passing such punitive order and was justified to order provisional attachment of property?

Analysis: The language of the statute has to be interpreted bearing in mind that it is a taxing statute which comes up for interpretation. The provision must be construed on its plain terms.

The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute is integral to a valid exercise of power.

By utilizing the expression "it is necessary so to do" the legislature has evinced intent that an attachment is authorized not merely because it is expedient to do so (or profitable or practicable for the revenue to do so) but because it is **necessary** to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the revenue can be protected **only** by a provisional attachment without which the interest of the revenue would stand defeated.

Such provisions are not intended to authorize Joint Commissioners to make preemptive strikes on the property of the assessee, merely because property is available for being attached.

These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality. Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure.

Rule 159(5) contemplates two safeguards to the person whose property is attached. Firstly, it permits such a person to submit objections to the order of attachment on the ground that the property was or is not liable for attachment. Secondly, Rule 159(5) posits an opportunity of being heard. Both requirements are cumulative. The Commissioner's understanding that an opportunity of being heard was at the discretion of the Commissioner is therefore flawed and contrary to the provisions of Rule 159(5). There has, hence, been a fundamental breach of the principles of natural justice.

Conclusion: Order passed by the Joint Commissioner does not indicate any basis for formation of the opinion that the levy of a provisional attachment was necessary to protect the interest of the government revenue and procedure adopted by him was also against the statutory requirement. Appeal was allowed and order of provision attachment was set aside.

LIST OF ARTICLES

1. **MANUPATRA**

   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Jurisprudence

   Right to die with dignity: an evolution of Indian Jurisprudence by K.Ramakanth Reddy

   The Hon'ble Supreme Court has recently in Common Cause v. Union of India and another1 held that right to die with dignity is a fundamental right which has led to legalizing passive euthanasia and a living will. Though, guidelines have also been framed by the apex court in this regard. The Chief Justice of India who headed the constitutional bench has set a new evolution in Indian Jurisprudence which has ruled to give right to an individual to die in his terminally ill condition. It is a new evolution in context of Indian. Jurisprudence as it also permits to smooth the process of the death when there is no hope of recovery and the person is in consistent vegetative condition.

2. **BANGLADESH JOURNAL OF LAW**
   http://www.biliabd.org/article%20law/Vol-15/Jobair%20Alam.pdf
   Rethinking Post-Divorce Maintenance: An alternative for the empowerment of muslim women in Bangladesh by Md. Jobairalam* toufiqul Islam

   The current scholastic understanding and dominant judicial articulations-based on the classical interpretation of Islamic law demonstrate that women are only entitled to three months of spousal support during their religiously prescribed waiting period. The apex court of Bangladesh long back in 1999 in the famous Hefzur Rahman case not only provided its verdict in the same tune but also made a distinction between maintenance and Maa'ta, where the latter was settled as a consolatory gift. However, apart from the religious aspects, the issues of post-divorce maintenance and Maa'ta have a broader socio-political and economic connotation. Thus, the objective of this study is to examine whether the post-divorce maintenance and the support may work as an alternative for the empowerment of Muslim Women in Bangladesh.

3. **INTERNATIONAL JOURNAL OF LAW**
   http://www.lawjournals.org/archives/2021/vol7/issue1
   Analysis of lie detector tests in criminal law by Akashdeep Singh

   In order to overcome this problem, in the criminal justice system, there are lie detector tests that can be used. These tests are of three types-Polygraph, Narcoanalysis, Brain-Mapping (BEAP). Each of these tests uses a different mechanism to evaluate different aspects of the human body to tell dishonesty from honesty. Lie detector tests have been particularly helpful as they help in limiting or eradicating third degree methods in investigations and protecting the human rights of all citizens. Unfortunately, these tests have not managed to garner too much support due to certain technical issues and admissibility problems but researchers and scholars have ascertained a 95-98% success rate of these tests. This paper seeks to analyse the use of lie detectors in criminal law.

4. **GEORGETOWN LAW JOURNAL**
   https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/01/Nielson_Walker_Qualified-Immunity-and-Federalism.pdf
   Qualified Immunity and Federalism
   Aaron Nielson & Christopher J. Walker

   Qualified immunity is increasingly controversial. But the debate about it is also surprisingly incomplete. For too long, both qualified immunity's critics and defenders have overlooked the doctrine's federalism dimensions. Yet federalism is at the core of qualified immunity in at least three respects. First, many of the reasons the U.S. Supreme Court has proffered for qualified immunity best sound in protecting the states'

sovereign interests in recruiting competent officers and providing incentives for those officers to faithfully enforce state law. Second, the states have embraced indemnification policies premised on the existence of federal qualified immunity. Third, working against the backdrop of federal qualified immunity, state and local governments are engaged in robust policy experimentation about the optimal balance between deterrence and overdeterrence in their state law liability schemes, thus exhibiting the "laboratories of democracy" benefits of federalism.

5. **LSE LAW REVIEW**
   https://lawreview.lse.ac.uk/articles/abstract/79/
   How Can the Methodology of Feminist Judgment Writing Improve Gender-Sensitivity in International Criminal Law? by Kathryn Gooding

This paper seeks to demonstrate the utility of the application of feminist judging methodologies to judgments and decisions from international criminal law mechanisms, with a specific focus on sexual and gender-based crimes, as a means to improve gender-sensitivity in international criminal judicial decision-making. Through an analysis of feminist judgments and feminist dissenting opinions from the UK, US and International Criminal Court, the main hallmarks of feminist judging are identified. The author uses the hallmarks of feminist judging to create her own Feminist Judgment based on a decision from the Prosecutor v Ongwen case before the International Criminal Court, to display the indeterminacy of judicial decision-making in international criminal law and to demonstrate how greater gender-sensitivity can be achieved at the International Criminal Court through feminist judicial reasoning.

LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update *Online Edition*

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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2021 to 15-05-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. Peshawar High Court
Maqbool Islam etc. v. Assistant Commissioner Banda Daud Shah
Review Petition No. 514-B of 2017 in WP No.826-B of 2017
Mr. Justice Muhammad Naeem Anwar
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Review-Petition-514-B-2017-in-WP-826-B-2017-judgment-.dt-21.4.2021.pdf

Facts: The petitioner sought review of the judgment rendered by High Court in its writ jurisdiction, wherein his petition against the order of Tribunal constituted under KPK Public Property (Removal of Encroachment) Act, 1977 was dismissed.

Issue: Whether High Court can review its judgment on the alleged ground of its being perverse, fanciful and against the law and fact?

Analysis: It is settled proposition of law that the review is not meant for re-hearing of the matter. Scope of the review is always very limited and confined to the basic aspect of the case, which was considered in judgment but if the grounds taken in support of the petition were considered in the judgment and decided on merits, the same would not be available for review in the form of re-examination of the case on merits under Section 114 and Order XLVII of CPC.

The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and absence of any such error, finality is attached to the judgment/order, which cannot be disturbed. It is beyond any doubt or dispute that the review court does not sit as a court of appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. In nutshell, the power of review can be exercised for correction of a mistake and not to substitute a view.

There is no cavil with the proposition that if the Court has taken a conscious and deliberate decision on a point of law or fact and disposed of the matter pending before it, review of such order cannot be obtained on the premise that the Court took an erroneous view or that another view on reconsideration is possible. More-so, review also cannot be allowed on the ground of discovery of some new material, if such material was available at the time of hearing but not produced.

Conclusion: High Court has the power to review its judgment/order provided the same suffers from arithmetical/clerical errors but this scope cannot be enlarged to declare the order as illegal or against the law.

2. **Lahore High Court**
Aqib Javed & another v. Higher Education Commission of Pakistan
W.P.No.14339 of 2020
Mr. Jusice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC987.pdf

Facts: The examination paper of "Law GAT" conducted by "HEC" contained 05-marks portion relating to Private International Law. The petitioners contended that this was neither prescribed in course outline nor taught in LL.B classes; hence the same being beyond the scope of studies could not form part of the afore-referred examination of Law GAT.

Issue: i) Whether the questions can be asked in Law GAT from a subject not taught in LLB Course?
ii) Whether the petitioners are entitled for grace or compensatory marks for beyond syllabus questions asked in examination?

Analysis: ii) The purpose of prescribing courses and curriculum is that candidates are to be taught from the course and curriculum which is prescribed and by implication candidates can be subjected to examination only from within and not beyond of curriculum/syllabus prescribed.
ii) The grace marks are always awarded to an individual while compensatory marks are awarded to class of individuals with a view to offset the effect of a paper which admittedly was not from within the course.

Conclusion: i) The questions cannot be asked in Law GAT from a subject not taught in LLB Course.
ii) The petitioners are entitled for compensatory marks for beyond syllabus questions asked in examination.

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3. **Supreme Court of the United States**
Kahler v. Kansas, **589 U.S. ___ (2020)**
https://supreme.justia.com/cases/federal/us/589/18-6135/case.pdf

Facts: James Kahler was convicted of capital murder and sentenced to death. On appeal, Kahler argued the prosecution violated his right to a fair trial. The Kansas Supreme Court rejected Kahler's argument, affirming his conviction and sentence. Kahler appealed to the U.S. Supreme Court, arguing Kansas law violates his constitutional rights under the Eighth and 14th Amendments.

Issue: Do the Eighth (14) and the Fourteenth (14th) Amendments permit a state to abolish the insanity defense?

Analysis: Kahler's argument is that the M'Naghten rule represents the codification of a legal concept that goes back all the way to Medieval common law and should be considered part of the due process of law. His argument asserts that, for centuries,

defendants were held culpable only when they were able to distinguish between right and wrong and that people who were legally insane did not have the capacity to do so. The State's argument emphasized the importance of federalism, allowing states the autonomy to make their own laws within the framework of the state and federal constitutions. The state also noted that the definition of insanity has varied in different ways throughout history and that one version (the M'Naghten rule) should not be viewed as an inherent aspect of due process. Justice Elena Kagan wrote the majority opinion which upheld Kansas's state law. In the opinion, Kagan wrote that the Kansas law did not violate Kahler's fundamental right to due process, noting that definitions of legal culpability and mental illness have been traditionally reserved for the states. Kagan noted that, contrary to Kahler's argument before the court, Kansas had not in fact abolished the insanity defense but had instead simply modified it, which the Constitution has generally permitted. The opinion points out that Kahler could have still presented a mental illness defense at trial and could also have presented evidence during his sentencing hearing. Justice Stephen Breyer dissented from the majority opinion, joined by Justices Ruth Bader Ginsburg and Sonia Sotomayor. Breyer conceded that states do have broad leeway to define state crimes and criminal procedures, including the definitions and standards of the insanity defense. However, he argued that Kansas's law did not simply modify the insanity defense but had removed the core requirement of whether or not the defendant could distinguish from right and wrong. Breyer's dissent was rooted in the centuries of tradition behind the original M'naghten Rule and noted that only a handful of states had modified it in the way that Kansas had.

Conclusion: The court affirmed the decision of the Kansas Supreme Court in a 6-3 ruling, holding that due process does not require Kansas to adopt an insanity test that is dependent on a defendant's ability to recognize that their crime was morally wrong. Justice Elena Kagan delivered the opinion of the court. It was observed that the Eighth and Fourteenth Amendments of the United States Constitution do not require that states adopt the insanity defense in criminal cases that are based on the defendant's ability to recognize right from wrong.

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4. **Supreme Court of India**
Civil Appeal No. 1767 of 2021
The Chief Election Commissioner of India v. M.R Vijayabhaskar & Ors.
https://main.sci.gov.in/supremecourt/2021/11474/11474_2021_35_1502_27915_Judgement_06-May-2021.pdf

Facts: The Madras High Court entertained a writ petition to ensure that COVID-related protocols are followed in the polling booths and during the course of the hearing, orally observed that the Election Commission (EC) is "the institution that is singularly responsible for the second wave of COVID-19" and that the EC "should be put up for murder charges". These remarks, though not part of the order of the High Court, were reported in the print, electronic and tele media and

EC has prayed to expunge these oral remarks and to restrain the media from printing the oral observations of Courts.

Issue: Whether HC was justified while making such harsh remarks about EC and whether such oral remarks can be expunged and what is nature of oral observation/remarks by the courts?

Analysis: Prayer of the EC strikes at two fundamental principles guaranteed under the Constitution, open court proceedings; and the fundamental right to the freedom of speech and expression.

Courts must be open both in the physical and metaphorical sense except in exceptional cases like child abuse etc. Cases before the courts are vital sources of public information about the activities of the legislature and the executive. The court becomes a platform for citizens to know how the practical application of the law impacts upon their rights.

The Constitution guarantees the media the freedom to inform, to distill and convey information and to express ideas and opinions on all matters of interest. Freedom of speech and expression extends to reporting the proceedings of judicial institutions as well.

It would do us no good to prevent the new forms of media from reporting on our work. Acceptance of a new reality is the surest way of adapting to it. Our public constitutional institutions must find better responses than to complain.

Observations during the course of a hearing do not constitute a judgment or binding decision. They are at best tentative points of view, on which rival perspectives of parties in conflict enable the judge to decide on an ultimate outcome.

The duty to preserve the independence of the judiciary and to allow freedom of expression of the judges in court is one end of the spectrum. The other end of the spectrum, which is equally important, is that the power of judges must not be unbridled and judicial restraint must be exercised, before using strong and scathing language to criticize any individual or institution.

Language, both on the Bench and in judgments, must comport with judicial propriety. Language is an important instrument of a judicial process which is sensitive to constitutional values. Judicial language is a window to a conscience sensitive to constitutional ethos.

It is trite to say that a formal opinion of a judicial institution is reflected through its judgments and orders, and not its oral observations during the hearing. Hence, in view of the above discussion, we find no substance in the prayer of the EC for restraining the media from reporting on court proceedings.

Conclusion: The remarks of the High Court were harsh and we must emphasize the need for judges to exercise caution in off-the-cuff remarks in open court, which may be susceptible to misinterpretation. These oral remarks are not a part of the official judicial record, and therefore, the question of expunging them does not arise.

Observations during the course of a hearing do not constitute a judgment or binding decision. They are at best tentative points of view.

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5. **Sindh High Court**
Abdul Ghaffar vs. The State & Habib ur Rehman Sub-Inspector, FIA/ACC/Karachi
Cr. Misc. Appn. No. 263 of 2021
Mr. Justice Arshad Hussain Khan
http://43.245.130.98:8056/caselaw/view-file/MTUxMjk1Y2Ztcy1kYzgz

Facts: Allegedly in the capacity of Deputy Director/Forensics Expert the accused/applicant misused his position and extended undue benefit in an enquiry against receipt of illegal remuneration/bribe amounting to Rs.14 million. FIR was registered at FIA Anti-Corruption Circle, against the accused under Sections 161/165/165-A/109 PPC read with Section 5(2) PCA-II Act, 1947 and 04 days' physical remand was allowed. During investigation it transpired that amount Rs.4 million received in person by the applicant, while Rs. 10 million was transferred through a contact person at Lahore. Order for grant of physical remand was impugned before the High Court. According to the applicant the remand order could not be passed as he was already granted bail before arrest by High Court in another FIR under Sections 161,165, 165-A, 109 PPC read with Section 5(2) PCA-II, 1947, PS FIA ACC, therefore, on the same subject no second FIR under Sections 3&4 of Anti Money laundering Act (AMLA) could not be registered.

Issue: Whether arrest and grant of physical remand of the applicant in second case on the same subject is against the law and procedure?

Analysis: After registration of a criminal case, the Investigating Agency has a statutory duty and obligation to investigate a cognizable offence and any order, at this stage, would amount to throttling the investigation process, which is not permissible under the law and if such process is scrutinized under 561-A Cr.P.C, then it would amount to interference in the investigation of a criminal case. In the present case, a proper FIR has been registered against the applicant regarding a cognizable offence, therefore, he cannot be allowed, at this stage, to avoid ordinary course of investigation. Since the question urged before this Court being contentious, therefore, at this stage, this Court would not like to interfere with the investigation of the case and that, too, when the Applicant has available adequate remedies under the law.

Conclusion: See above.

6. **Supreme Court of Pakistan**
Secretary Elementary & Secondary Education Department, Government of KPK, Peshawar and others v. Noor-ul-Amin
Civil Appeal No. 985 of 2020
Mr. Justice Gulzar Ahmed, C.J. Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._985_2020.pdf

Facts: The respondent did not report to duty on expiry of his ex-Pakistan leave; he was issued show-cause notice but he did not report for duty; so he was removed from service. He filed service appeal before the KPK Service Tribunal which was partly allowed by converting the major penalty of removal from service into a major penalty of compulsory retirement with effect from the date of his absence and the absence period was treated as unauthorized absence.

Issue: Whether the decision of KPK Service Tribunal converting the major penalty of removal from service into a major penalty of compulsory retirement on the ground that respondent had ten year service, is in accordance with law?

Analysis: The status of being an employee for ten years did not give any authority to the respondent on the basis of which he could stay away from job continuously for years altogether and thus such ground could not have been pressed for modifying the penalty imposed by the department upon the respondent giving premium to him on this misconduct.

Conclusion: The modification of penalty by the Tribunal on the basis that respondent had ten years service was not in accordance with law.

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7. **Supreme Court of Pakistan**
Muhammad Sharif etc v. Inspector General of Police, Punjab, Lahore, etc.
C.P. Nos.517-L, 1019-L, 1062-L & 1232-L of 2016 and 1929-L/2017
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._517_l_2016.pdf

Facts: These are a few petitions having questions concerning scope of entitlement of a civil servant to the back benefits on his reinstatement in service after his wrongful removal or dismissal has been set-aside and he being restored to his post. The treatment of the period spent by a civil servant away from duty (due to dismissal from service or absence from duty, etc.) and the purpose and meaning of the terms leave without pay or leave of the kind due granted to a civil servant were also considered in these petitions.

Issue: i) What is scope of entitlement of a civil servant to back benefits on his reinstatement in service?
ii) What is scope of leave without pay or leave of the kind due?

Analysis: i) A civil servant on unconditional reinstatement in service is to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period. In case, the dismissal/removal of a civil servant is declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry is conducted in the matter finally determining the fault of the civil servant. In case, where there is some fault of the civil servant, including a situation where concession of reinstatement is extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty is modified but not wiped off in a way that the civil servant is restored to his position, the back benefits will be paid as determined by the authority/court in the manner discussed above.

ii) In case back benefits as of right are not awarded to the civil servant and he is served with any other penalty after reinstatement in service, the intervening period has to be counted for, otherwise the interruption in the service of a civil servant may entail forfeiture of his service, therefore, the intervening period has to be regularized by treating it as an extra ordinary leave without pay or leave of the kind due or leave without pay, as the case may be.

Conclusion: See above.

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8. **Supreme Court of Pakistan**
Member (Administration), Federal Board of Revenue etc. v. Mian Khan
Civil Petition No. 1033 of 2020
Mr. Justice Gulzar Ahmed, CJ Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1033_2020.pdf

Facts: Respondent was dismissed from service while dispensing with regular inquiry when he was caught through camera/CCTV while taking bribe.

Issue: Whether CCTV footage can be considered a legal basis for proceeding against a person?

Analysis: CCTV footage was never sent to the office of Forensic Science Laboratory for its authenticity. In the absence of any forensic report qua the authenticity of the CCTV footage, the same cannot be considered a legal basis for proceeding against a person. In the case of Ishtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675) the Court has held that with the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained that whether an audio tape or a video is genuine or not and as such examination, audit or test can also reasonably establish if such audio tape or video has been edited, doctored or tampered with or not because advancement of science and technology

has also made it very convenient and easy to edit, doctor, superimpose or photoshop a voice or picture in an audio tape or video, therefore, without a forensic examination, audit or test, it is becoming more and more unsafe to rely upon the same as a piece of evidence in a court of law.

Conclusion: In the absence of any forensic report qua the authenticity of the CCTV footage, the same cannot be considered a legal basis for proceeding against a person. Mere producing of CCTV footage as a piece of evidence without any forensic test is not sufficient to be relied upon unless and until corroborated and proved to be genuine.

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9. **Lahore High Court**
Qari Muhammad Arif v. Secretary Home Department etc
Writ Petition No. 1735 of 2020
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaarul Haq Pannun,
https://sys.lhc.gov.pk/appjudgments/2020LHC3741.pdf

Facts: The Secretary, Home Department, Punjab notified name of petitioner for inclusion in the list maintained under the Fourth Schedule of the Anti-Terrorism Act, 1997 for three years. The Petitioner‘s case is that Home Department has no jurisdiction to notify anybody‘s name for the purposes of the Fourth Schedule as that power vests exclusively in the Federal Government. He also contended that his name is included in the list without any reasonable ground?

Issue: i) Whether the Provincial Home Department has jurisdiction to notify name of the petitioner in the list maintained under the Fourth Schedule of the Anti-Terrorism Act, 1997?
ii) Whether the writ petition is maintainable during pendency of review petition before Proscription Review Committee?
iii) Whether the decision of authority to proscribe a person is purely administrative or quasi judicial order?
iv) What is distinction between “reasonable suspicion” and “reasonable ground”

Analysis: i) Section 33 of Anti-Terrorism Act, 1997 authorizes Federal Government to delegate the power to such authority as it may deem fit. In exercise of the above-mentioned powers, vide SRO dated 29th October 2014, the Federal Government delegated the powers and functions under section 11-EE of the Act to respective Provincial Home Secretaries and the Chief Commissioner, Islamabad. Through another notification dated 24th August 2020 it authorized these functionaries, inter alia, to constitute Proscription Review Committees contemplated in the Act within their respective jurisdictions.
ii) The petitioner filed an application before the Proscription Review Committee but it did not decide it. He could not be left without a remedy and was competent to approach this Court. Further, in cases involving enforcement of

fundamental rights courts do not insist on strict adherence to the principle of alternate statutory remedy.

iii) Where the statute itself requires the administrative authority to act judicially, there would be no doubt that its function is quasi-judicial. The decision to proscribe a person depends on determination of the facts mentioned in sub-section (1) of section 11-EE and imposes obligations affecting his fundamental rights. The provision for review against a proscription order by sub-section (3) of section 11-EE fortifies the aforesaid view. The mere fact that there is no lis or two contending parties would not take this case out of the realm of quasi-judicial functions as he had the duty to act judicially.

iv) In “reasonable suspicion”, it suffices if the concerned person thinks that there is a possibility, which is, more than fanciful, that the relevant facts exist. While the standards applicable to reasonable grounds to believe has both an objective and subjective facet. The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds.

Conclusion: i) The Provincial Home Department has jurisdiction to notify name of petitioner in the list maintained under the Fourth Schedule of the Anti-Terrorism Act, 1997.

ii) The writ petition is maintainable during pendency of review petition before Proscription Review Committee if not decided within a reasonable time.

iii) The decision of authority to proscribe a person is quasi-judicial order.

iv) In “reasonable suspicion”, it suffices if the concerned person thinks that there is a possibility, which is, more than fanciful, that the relevant facts exist. While the standards applicable to reasonable grounds to believe has both an objective and subjective facet. The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds.

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10. **Supreme Court of Pakistan**
Shamona Badshah Qaisarani v. Election Tribunal, Multan
Civil Appeal No.1399 OF 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1399_2019.pdf

Facts: On failure of the appellant to disclose her assets, her election victory for a provincial assembly seat was de-notified by the Election Tribunal Bahawalpur. During the by-elections, Election Tribunal Multan, while relying upon the decision of Election Tribunal Bahawalpur permanently disqualified her from contesting elections.

Issue: Whether mere non-disclosure of assets by a candidate in his/her nomination papers is sufficient enough to disqualify him/her permanently from contesting election?

Analysis: It is now a well settled principle that every non-disclosure or mis-declaration would not be sufficient enough to permanently disqualify a member of the Parliament or a candidate. The purpose and intention needs to be seen behind the non-disclosure or mis-declaration. The returned candidate would be disqualified only when if he/she has dishonestly acquired assets and is hiding them to derive certain benefits. If the non-disclosure or mis-declaration is such that it gives an illegal advantage to a candidate, it would lead to termination of his candidature.

Conclusion: Mere non-disclosure or mis-declaration of assets by a candidate is not sufficient to disqualify him/her from contesting elections. Such a disqualification can only be made if he/she had dishonestly acquired the assets and had concealed them to derive an illegal advantage.

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11. **Lahore High Court**
Adnan v. Superintendent Jail, Gujrat
W.P.No.22688/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC995.pdf

Facts: In family execution petition, the petitioner was sent to civil prison due to his refusal to pay maintenance. He filed constitutional petition submitting that under section 13(3) of the Family Courts Act, 1964 (Act), the amount could only be recovered as arrears of land revenue and under section 82(5) of the Land Revenue Act, 1967 the civil imprisonment could not exceed 30 days.

Issue: Whether under section 13 of the Act ibid, the Family Court for the payment of decretal amount is bound to follow the procedure prescribed under the Land Revenue Act or it may follow the procedure of CPC for execution of decree?

Analysis: Under section 13(3) of the Act, the special procedure prescribed under Land Revenue Act can be followed by the family Court through a specific order and in absence of such order, the ordinary mode for execution prescribed under CPC shall be applicable. Perusal of impugned order and subsequent orders passed by learned Executing Court show that no specific order was passed by the learned Executing Court to follow the procedure provided under the Land Revenue Act, therefore, term of civil imprisonment of petitioner will not be governed under section 82 of the Land Revenue Act rather under section 55 read with Order XXI of CPC, under which, civil imprisonment for failure to pay the decretal amount may be up to one year.

Conclusion: The special procedure for recovery of maintenance as arrears of land revenue can be followed by the Family Court through a specific order and in absence of such order, the ordinary mode for execution prescribed under CPC shall be applicable.

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12. **Lahore High Court**
Nusrat Bibi etc v. Zeeshan Ahmad etc.
W.P. No 964 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4767.pdf

Facts: The petitioner filed the suit for the recovery of maintenance allowance for herself and her minor son along with delivery expenses and dowery articles. The suit was contested by the defendant who denied the paternity of the minor. The learned trial court without fixing the interim allowance of the minor adjourned the matter for pretrial reconciliation proceedings. The petitioner filed separate application for the fixation of interim allowance which was dismissed by the trial court. The said order was assailed through the instant petition.

Issue: Whether the impugned order is of the nature of interlocutory order or amounts to 'decision given' in terms of section 14 of the Act making the same amenable to the jurisdiction of appellate court by way of filing an appeal?

Analysis: Appeal under section 14 of the Act is not barred against every interlocutory order and remedy of appeal, if not specifically precluded, would be available against a decision relating to a right or remedy provided under the law subject to the condition that finality is attached to such an order and nothing remain to be further decided between the parties on said issue. In this case, it is observed that dismissal of application filed by the petitioner for fixing interim maintenance allowance under section 17-A of the Act tantamounts to decline the relief of interim allowance permissible to minor during the pendency of suit, which amounts to final determination of claim to that extent and hence cannot be treated as merely an interlocutory order. Thus, the said order would amount to 'decision given' in terms of section 14 of the Act. Consequently, an appeal would be available before the appellate court in case minor is aggrieved of the same on any available ground.

Conclusion: The dismissal of petitioner's application for fixation of maintenance allowance of the minor by the trial court would amount to 'decision given' in terms of section 14 of the Act. Consequently, the filing of an appeal would be the proper remedy instead of constitutional petition under Article 199.

13. **Lahore High Court**
Muhammad Ashraf v. Addl. District Judge
W.P.No. 1395 of 2021
Mr. Justice Muzamil Akhtar Shabir,
https://sys.lhc.gov.pk/appjudgments/2021LHC992.pdf

Facts: The appellate court reversed the decision of the family court and fixed interim maintenance for the wife.

Issue: Whether the order for dismissal of the application for fixation of interim maintenance allowance can be challenged in appeal?

Analysis: When application for fixing interim maintenance allowance is dismissed/declined, the same attains finality at least to the extent of the claim of interim maintenance allowance during the pendency of the suit. Consequently, the affected party, may in appropriate circumstances where impugned order is not based on any sound reasoning, agitate the matter before the appellate authority by filing an appeal against the decision given on his/her application in terms of Section 14 of the Family Courts Act, 1964 which appeal was rightly entertained by the learned Addl. District Judge and the order passed by him could not be stated to be without lawful authority in the given circumstances of the case on the ground of non-availability of the appeal.

Conclusion: Yes, it can be challenged in appeal.

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14. **Lahore High Court**
Dilawar Khan v. SHO, Police Station FIA/CC, Multan Circle, and others
Writ Petition No. 3102 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2020LHC3721.pdf

Facts: FIR was registered against the petitioner at Police Station FIA/CC for offences under sections 60, 66A, 67C of the Copyright Ordinance, 1962, read with sections 109, 420, 468, 471 PPC accusing of infringing the registered copyright ‘Triple Five (555)’ and selling counterfeit tobacco snuff (Naswar). The Federal Investigating Agency (FIA) after obtaining search warrants from the Senior Civil Judge, raided at Petitioner ‘s factory and seized a huge quantity of the counterfeit product, raw materials, packaging and some machines. Some of the accused persons arrested from the spot were admitted to post arrest bail by the learned Presiding Officer, Intellectual Property Tribunal, Lahore, while the others were granted pre-arrest bail. While challenging the jurisdiction of FIA to register FIR under the Copyright Ordinance, 1962 the petitioner sought quashment of FIR.

Issue: i) Whether all matters and complaints related to offences under the Copyright Ordinance are to be dealt with under the Intellectual Property

Organization of Pakistan Act, 2012 (IPO-Pakistan Act), as being the special law and eventually FIR in question was liable to be quashed?

ii) Whether local police and the FIA have concurrent power to investigate copyright offences and the IPO Pakistan may refer the complaint to either of them?

iii) Whether infringement of copyrights of private parties is beyond the sway of FIA and it can only entertain cases in which there is violation of some copyright of the government?

Analysis: i) Intellectual Property Organization Pakistan (IPO-Pakistan) is a specialized body having expertise and the requisite data to verify whether there is actually a case of infringement of intellectual property rights under the applicable law. IPO-Pakistan Act is a special law and Section 13 (xix) read with section 39 confers exclusive jurisdiction on the Organization to initiate and conduct inquiries, investigations and proceedings related to offences under the laws specified in the Schedule. The organization is a bulwark against frivolous complaints and undue harassment. Thus, any person alleging infringement of his copyright must approach the Organization. FIA cannot entertain any complaint directly and register FIR. If respondents had any complaint against the Petitioner regarding infringement of copyright, it was incumbent on them to approach the Organization in the first instance.

ii) For two reasons local police and the FIA have not concurrent power to investigate copyright offences: (i) Section 13(xviii) of the IPO-Pakistan Act ordains that the Organization shall initiate and monitor the enforcement and protection of intellectual property rights through designated law enforcement agencies of the federal or provincial government. The inclusion of the Copyright Ordinance in the Schedule of the FIA Act has the effect of designating the FIA for enforcement in terms of the aforesaid clause. (ii) It cannot be left to an officer of the Organization to choose between two agencies.

iii) Copyright is a matter concerning the Federal Government; hence no distinction can be drawn on the basis whether it is owned by the government or an individual. While distinguishing the judgment cited as 2016 SCMR 447, the Hon'ble held that FIA's jurisdiction is attracted if two conditions are satisfied: first, the offence is included in the Schedule of the FIA Act, and secondly, the offence must be in connection with matters concerning the Federal Government. The offences under the Copyright Ordinance fulfil both of them. While arriving to the conclusion about second condition, the Hon'ble Court laid as many as five six (iv) reasons, which are worth reading through detailed judgment.

According to preamble of FIA Act, FIA was constituted for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith. In any matter which is of some interest or importance to the Federal Government falls within its ambit. FIA is empowered to inquire into or investigate the offences specified in the Schedule of the FIA Act. Even in absence of direct property interest, statutory and

administrative control of the Federal Government over an institution or an organization may be sufficient to bring the matter in the amplitude of the provision. Importantly, during the last five decades what consensuses has been developed about the jurisdiction of FIA Act, is summarized by the Hon'ble Court in five points.

While concluding the judgment, the Hon'ble Court directed the Organization to frame rules within six months positively in terms of section 34 of the IPO-Pakistan Act for exercise of powers and functions under section 13 thereof, particularly clauses (xix) and (xx) and till framing of the Organization shall ensure that proper orders are passed on every complaint made to it within minimal time which shall not in any case exceed seven days. The Hon'ble Court also directed the Organization to develop an online portal for filing of complaints and provide unique identification numbers to them. Similarly, the complaints that are filed manually be also assigned such number. Moreover, status of all the complaints, on-line as well as manual, be accessible through the said portal and their record be maintained from the date of filing till the time the matter is resolved or closed.

Conclusion: i) All matters and complaints related to the offences under the Copyright Ordinance are to be dealt with under the IPO-Pakistan Act. Consequently, the FIR in question being filed beyond due process of law was quashed.

ii) Local police and FIA do not have concurrent power to investigate copyright offences.

iii) Copyright is a matter concerning the Federal Government; hence no distinction can be drawn based on its ownership by the government or an individual.

LIST OF ARTICLES: -

1. **MANUPATRA**
https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=&subject=Constitution

MAINTAINABILITY OF WRIT JURISDICTION UNDER ARTICLE 226/227 OF THE INDIAN CONSTITUTION WHEN THERE IS AN ARBITRATION CLAUSE by Harita Kansara

The High Court, as one of the most important pillars in upholding the rule of law, must have the authority to determine whether or not to exercise writ jurisdiction. As a result, since writ jurisdiction is the last resort for obtaining justice and maintaining the rule of law, it cannot be refused based on a private arrangement between the parties. Furthermore, the court considers the essence of the injustice and a holistic view of the facts of each case to determine that the writ should be maintainable or not. Since this has been the legal situation in several past precedents, the Court has affirmed and preserved the essence of writ jurisdiction. However, the courts can exercise their writ jurisdiction only in certain exceptional circumstances in order to keep the spirit of alternate dispute resolution mechanism.

2. **STANFORD LAW REVIEW**
   https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/04/Coglianese-et-al.-73-Stan.-L.-Rev.-885.pdf

   UNRULES by Cary Coglianese, Gabriel Scheffler & Daniel E. Walters

   At the center of contemporary debates over public law lies administrative agencies' discretion to impose rules. Yet for every one of these rules, there are also unrules nearby. Often overlooked and sometimes barely visible, unrules are the decisions that regulators make to lift or limit the scope of a regulatory obligation through, for instance, waivers, exemptions, or exceptions. In some cases, unrules enable regulators to reduce burdens on regulated entities or to conserve valuable government resources in ways that make law more efficient. However, too much discretion to create unrules can facilitate undue business influence over the law, weaken regulatory schemes, and even undermine the rule of law.

3. **YALE LAW REVIEW**
   https://www.yalelawjournal.org/pdf/Wurman_d4111w2k.pdf

   NONDELEGATION AT THE FOUNDING by Ilan Wurman

   In recent articles, a number of scholars have cast doubt on the originalist enterprise of reviving the non-delegation doctrine. In the most provocative of these, Julian Mortenson and Nicholas Bagley challenge the conventional wisdom that, as an originalist matter, Congress cannot delegate its legislative power. The question, they say, is not even close. The Founding generation recognized that power is nonexclusive, and so long as Congress did not "alienate" its power by giving up the ability to reclaim any exercise of power, it could delegate as broadly as it wanted to the Executive. In an article focusing on the direct-tax legislation of 1798, Nicholas Parrillo argues in this volume of the Yale Law Journal that although there may have been a non-delegation doctrine at the Founding, it appears to have allowed for broad discretion to regulate even private rights. And in a third article, Christine Kexel Chabot argues that early borrowing and patent legislation demonstrates that Congress routinely delegated important policy questions to the Executive.

4. **BANGLADESH JOURNAL OF LAW**
   http://www.biliabd.org/article%20law/Vol15/M.%20Mustakimur%20Rahman.pdf

   'MARITAL RAPE' IN MARRIAGE: THE NEED FOR REFORM IN BANGLADESH by Md Mustakimur Rahman

   The notion of marital rape is not new and came from Hale's theory. Although it is an old concept, but still some of the state parties of the United Nations are using this option as immunity. However, there are quite a few modern justifications that can actually defeat the Hale's theory. Hence, the notion of Hale's theory is not valid anymore in the 21st century. Currently, more than 100 countries have incorporated 'marital rape' as a criminal offence and punishing the offenders. Unfortunately, marital rape is not an offence under the Penal Law of Bangladesh unless the wife is under 13 years old. This article analysed the current Bangladeshi laws regarding

rape, which is substandard to protect the marital rape victims. In addition, it also argues how current law is violating several international laws and the rights guaranteed under the Constitution of Bangladesh. The existing laws of rape under the Penal Law of Bangladesh are outdated and therefore, reform is the demand of time.

5. **COURTING THE LAW**
https://courtingthelaw.com/2021/04/29/laws-judgments-2/punjab-commercial-courts-ordinance-2021-a-new-frontier/

PUNJAB COMMERCIAL COURTS ORDINANCE 2021: A NEW FRONTIER
by Nudra B Majeed Mian

Whatever their shape and structure, commercial courts are now an indispensable feature of commercial dispute resolution. They have the ability, by virtue of public jurisprudence and precedent, to direct the content and evolution of commercial law. They provide an effective route for the capacity building of the legal community and also have an ability to utilise and optimise modern technology as seen in the development of artificial intelligence applications in international arbitration.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(15-05-2021 to 31-05-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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1. **Lahore High Court**
Muhammad Javed Azmi v. Javed Arshad
Case No. Civil Revision No.31217/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1101.pdf

Facts: Petitioner filed leave to appear and defend the suit based on cheque in which he asserted that he issued a blank cheque as guarantee in 2017. Respondent filed an application for summoning record of the bank which was accepted and summoned record revealed that cheque book was issued in 2018. Finding the stance of petitioner incorrect, the trial court rejected application for leave to appear and defend.

Issue: i) Whether the plaintiff may file a miscellaneous application before decision on leave to appear and defend a suit filed under O. XXXVII CPC?
ii) Whether a court may make an inquiry before decision on leave to appear and defend in a suit filed under O. XXXVII CPC to satisfy itself as to the genuineness and plausibility of the defence of the defendant?

Analysis: i) There is no restriction imposed upon the plaintiff in a suit under Order XXXVII, CPC, to file an application, to bring forth such facts in the notice of the trial court which can enable the trial court to satisfy itself as to genuineness or otherwise plausibility of the defence taken by the defendant in an application for leave to appear and defend the suit before decision on the said application for leave to defend.
ii) In order to satisfy itself to the contents of leave to appear and defend, the court is required not to act in a mechanical manner. Instead the trial court has to apply its judicial mind to the contents of the application for leave to appear and defend. The trial court is not debarred to probe and conduct such an inquiry so as to satisfy itself as to the genuineness and plausibility of the defence of the defendant. For this purpose the plaintiff in such suits is not debarred to move an application for summoning a document in custody of any person, which prima facie establishes before the court that the defence taken in the application for leave to appear in the summary suit is sham and illusory, which is precisely the case in the matter in hand.

Conclusion: i) Plaintiff may file a miscellaneous application before decision on application for leave to appear and defend in a suit filed under O. XXXVII CPC to bring forth such facts in the notice of the trial court which can enable the trial court to satisfy itself as to genuineness or otherwise plausibility of the defence taken by the defendant in an application for leave to appear and defend the suit.
ii) The trial court is not debarred to probe and conduct an inquiry to satisfy itself as to the genuineness and plausibility of the defence of the defendant.

2. **Lahore High Court**
Yaqoob Ali (Deceased) through His Legal Heirs and others v. Muhammad Ayub and others
W.P No.1447 of 2017
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC1046.pdf

Facts: An ex-parte decree was set aside on the application u/s 12(2) of the respondents on one of the grounds that proper and due service was not effected on the respondents.

Issue: Whether flaw in the service of Summons is a sufficient ground to set aside ex-parte judgment under section 12(2) CPC?

Analysis: The main object of service of summons is that defendant should have notice of case against him and the court in which he has to appear. The defendant should be given requisite information at a time when he is able to appear and defend the suit. In order to ensure due service all that is required is that there should be substantial compliance with the provisions relating to service of summons. Due service is the first fundamental right of a person, who has to defend his cause before court of law which is even duly recognized by the principles of natural justice. Due service of summons is not a formality but a matter of such importance that courts are obliged that before deciding the service to be sufficient must be satisfied that all requirements of law have been strictly complied with. This becomes more inevitable when the service is not personal but substituted. Though Rule 20 provides the mechanism of substituted service but before resorting to said provision of law it is incumbent upon the Court to ensure the compliance of Rules 16, 18 & 19 of Order V.

Conclusion: Non-adherence to the mandatory provisions would render the process invalid and the edifice built thereon would automatically fall down. Glaring flaws in the mode of service when floating on the surface of record are sufficient to erode the validity of ex-parte judgment and decree.

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3. **Lahore High Court**
Ameer Hussain v. The Govt of Punjab
Writ Petition No.31145/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1226.pdf

Facts: The Petitioner challenged his detention, under section 3 of the Punjab Maintenance of Public Order Ordinance, 1960, (Ordinance) through Constitutional Petition.

Issue: i) Whether a representation under section 3(6) of the Ordinance can be considered to be an "adequate remedy" within the meaning of Article 199 of the Constitution so as to bar a person from filing a constitutional petition?

ii) Whether preventive detention makes an inroad on the personal liberty of a citizen without the safeguards of a formal trial before a judicial tribunal?

Analysis: It was observed that when the order of an executive authority regarding detention of a particular person is challenged under Article 199 of the Constitution, the High Court has limited jurisdiction because the remedy of judicial review cannot be treated as appeal or revision. The Court cannot substitute its discretion for that of the administrative authority. It can only see whether the order of detention is reasonable and objective. Moreover with regard to preventive detention, it was opined that the Court has further to be satisfied, in cases of preventive detention, that the order of detention was made by the authority prescribed in the law relating to preventive detention and that every requirement, of the law relating to preventive detention had been strictly complied with. The edifice of satisfaction is to be built on the foundation of evidence because conjectural presumption cannot be equated with satisfaction; it is subjective assessment and there can be no objective satisfaction. Moreover, the grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detenue to make representation against his detention to the authority, prescribed by law.

Conclusion: (i) The Hon'ble Court while relying on the case reported as PLD 2003 SC 442 held that the right of a person to a petition for habeas corpus could not be syncopated.

(ii) It was observed while keeping in the view the principles enunciated in the august Supreme Court case cited (supra) that preventive detention must conform to the following criteria in order keep it within the bounds fixed by the Constitution and the relevant law inter alia: i.e. (i) the Court must be satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention; (ii) the satisfaction should be established with regard to each of the grounds of detention, and, if one of the grounds is shown to be bad, non-existent or irrelevant, the whole order of detention would be rendered invalid.

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4. Lahore High Court
Writ Petition No.30787/2021
Khushnood Bano v. R.P.O. Faisalabad & another
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC1086.pdf

Facts: Petitioner approached the Court through constitution petition to get the information from the respondents police authorities about the exact number of criminal cases registered against her son by pleading that respondent police authorities have involved her son in number of criminal cases due to the grudge of filing of a habeas petition against respondent/RPO Faisalabad, for recovery of her

son and his liberty is compromised due to lack of number of cases registered against him.

Issue: Whether any other efficacious remedy is available to the petitioner to get this information and if yes, then whether petitioner is entitled to any relief by invoking extraordinary constitutional jurisdiction of this Court?

Analysis: The Right to Information Act 2013 has been enacted by the Punjab Government which has its roots in Article 19-A of the Constitution and this law has become one of the most effective means to make an informed citizenry. This fruitful legislation was enacted to curb the unfortunate practice of public bodies, where it was very hard for the general public to get any information from these bodies even of a general nature.

Section 7 makes it mandatory for every public body to designate and notify public information officer(s) in all administrative units or offices, who shall provide information to an applicant. Section 10(8) also prescribe a mechanism that where the public information officer decides not to provide the information, he shall intimate to the applicant the reasons for such decision along with a statement that the applicant may file an internal review under section 12 with the head of the public body or may a file a complaint with the Commission who will deal with the same under section 6 of the information Act 2013.

Section 16 treats it as an offence, if any person obstructs access to information which is the subject of an application, internal review or complaint, with the intention of preventing its disclosure under this Act.

This alternate remedy with respect to nature, extent of relief, point of time of availability of relief and the conditions on which that relief would be available particularly the conditions relating to the expense and inconvenience involved in obtaining it, is most efficacious and adequate remedy because under this legislation information, where life and liberty is involved, is to be provided within 2 working days and that too without any cost, except cost of reproduction and sending of information.

Conclusion: Petitioner has an adequate and efficacious remedy under the Punjab Transparency and Right to Information Act 2013 to obtain requisite information from the respondents by exercising her right to information (RTI).

So, in presence of availability of alternate adequate, petitioner is not entitled to any relief by invoking writ jurisdiction under Article 199 of the Constitution.

5. **Lahore High Court**
Riaz Khalid v. Additional District Judge
Writ Petition No. 30825 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1063.pdf

Facts: Petitioner instituted a suit for declaration with permanent injunction praying that allotment letter and sale deed be declared illegal. Local commission was appointed. Subsequently the petitioner filed an objection petition against the said report. The objections pertained to delay, allegedly reckless conduct of the Local Commission and the non-availability of halqa patwari at the spot. The learned Additional District Judge observed that the trial was yet to commence and any aggrieved party could summon the Local Commission for the purpose of cross examination as provided under Order XXVI, Rule 10 C.P.C.

Issue: Whether in the presence of an acknowledged alternative remedy, a constitutional petition would lie?

Analysis: The court observed that the petition is not maintainable because it does not agitate the acknowledged grounds of judicial review i.e. illegality, irrationality, procedural impropriety or proportionality. Moreover the matter in issue is rooted in factual controversy and for the resolution of which Constitutional jurisdiction is not the appropriate remedy. Constitutional jurisdiction is equitable and discretionary in nature and cannot be invoked to defeat the provisions of a validly enacted statutory provision (in the present matter Order XXVI, Rule 10, C.P.C.)

Conclusion: It was opined that as an adequate alternative remedy is available hence, the present petition is not maintainable. Rule 10 of Order XXVI, C.P.C. provides sufficient safeguards for the rights of the parties so as for them to utilize or challenge any such report of the Local Commission taken as evidence.

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6. **Lahore High Court**
Khalid Imran v Station House Officer
Writ Petition No. 31566-Q of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1078.pdf

Facts: Petitioner sought quashing of FIR for offences under sections 25-D Telegraph Act, 1885 and 354, 506, 337-H(2) and 34 PPC as no offence was made out.

Issue: Whether the controversies that require resolution of disputed questions of fact be adjudicated upon in constitutional jurisdiction under Article 199 of the Constitution?

Analysis: The Court observed that the Constitutional remedy afforded by Article 199 is a sword in the hands of the citizens against executive excesses, Article 199 itself as also the jurisprudence developed on the basis thereof reveals that as against a sword, the jurisdiction contemplated in terms of Article 199 offers many shields as well in the form of conditions and riders. Remedy afforded by the said Article is primarily discretionary in nature and that factual controversies or disputed questions requiring recording of evidence cannot be resolved in constitutional jurisdiction. Court cannot indulge in a fact finding exercise. Needless to mention here that since the criminal reports in question are under investigation, any interference at this stage would mean preempting the powers of the Investigation Officers and the trial courts and such a course of action has never been approved by the Superior Courts.

Conclusion: Held that remedy afforded by the Article 199 of the Constitution is primarily discretionary in nature and that factual controversy or disputed questions requiring recording of evidence cannot be resolved in constitutional jurisdiction. Furthermore held that writ jurisdiction can only be invoked as a last resort when all other remedies have already been exhausted or are not available.

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7. **Lahore High Court**
Muhammad Tayyab Nazir v Province of Punjab
ICA No. 1046 of 2015
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1169.pdf

Facts: Writ in the nature of Quo Warranto was filed against the respondents on the ground that their reinstatement by the Punjab Text Book Board was illegal, void and without jurisdiction. This judgment was challenged before the Hon'ble Supreme Court of Pakistan by means of C.P.No.2259-L of 2001 which, too, was dismissed. Even after the order passed by the Hon'ble Supreme Court of Pakistan, the then Chief Minister issued directives for reinstatement.

Issue: Whether ICA was maintainable against the original order which emanated from proceedings in which the law applicable had provided a right of appeal?

Analysis: The Hon'ble court aptly observed while discussing the rationale behind the insertion of the proviso to Section 3(2) of the Law Reforms Ordinance 1972 that whether an appeal was availed or not is immaterial and as long as an appeal against the original order is provided by law then an Intra Court Appeal shall not be competent.

Conclusion: In terms of the first proviso to Section 3 of the Law Reforms Ordinance 1972, an Intra Court Appeal shall not be competent if the writ petition before the High

Court under Article 199 of the Constitution arises out of any proceedings in which the law applicable provides for at least one appeal against the original order.

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8. **Supreme Court of Pakistan**
Muhammad Sarfraz Ansari v. The State
Criminal Petition No.435 of 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._435_2021.pdf

Facts: Petitioner was implicated on the basis of confessional statement of co-accused in case under section 420, 468, 471, 409 and 109 of the Pakistan Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947. His post arrest bail was dismissed by High Court. He filed leave to appeal and requested for grant of bail.

Issue: What is the significance of the confessional statement of co-accused at the bail stage?

Analysis: No doubt, as per Article 43 of the Qanun-e-Shahadat Order 1984 when more persons than one is being jointly tried for the same offence and a confession made by one of such persons admitting that the offence was committed by them jointly, is proved, the court may take into consideration the confessional statement of that co-accused as circumstantial evidence against the other co-accused(s). However, this Court has, in several cases, held that conviction of a co-accused cannot be recorded solely on the basis of confessional statement of one accused unless there is also some other independent evidence corroborating such confessional statement. The principle ingrained in Article 43 of the Qanun-e-Shahadat is applied at the bail stage and the confessional statement of an accused can lead the court to form a tentative view about prima facie involvement of his co-accused in the commission of the alleged offence; but as in the trial, at the bail stage also, the prima facie involvement of the co-accused cannot be determined merely on the basis of confessional statement of other accused without any other independent incriminating material corroborating the confessional statement.

Conclusion: For bail matters**,** the Court can form a tentative view based on the confessional statement of the co-accused pertaining to prima facie involvement of an accused in the alleged offence but like trial at bail stage as well, the uncorroborated confessional statement of a co-accused is not a determining factor for his involvement in the alleged crime.

9. **Lahore High Court**
Mian Muhammad Shahbaz Sharif v. NAB, etc.
Case No. W.P. No.20793/2021
Mr. Justice Ali Baqar Najafi, Mr. Justice Syed Shahbaz Ali Rizvi,
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC1006.pdf

Facts: Through this Constitutional petition, petitioner seeks bail after arrest. The prosecution case is simply that petitioner being the public office holder has amassed money and had built up the assets in the name of his close relatives and the dependents as Beanamidars through fraudulent FTTs whereas the petitioner was the main beneficiary.

Issue: Whether the petitioner is entitled to the grant of post arrest bail in a reference on the allegation of assets beyond means for earning assets beyond known source of income to the petitioner through Fictitious Telegraphic Transfer (FTT) in the name of the co-accused family members and Benamidars and others?

Analysis: The allegation is that petitioner had assets worth 269.301 Million in his name but its proof was not enclosed with the reference. No investigation was conducted to dig out the source of income of the petitioner. The NAB has categorically admitted that petitioner is not alleged to have received any kickbacks or any such ill-gotten money in return to a favour extended to someone to build up the assets in the name of his family. It is now law that transaction in the income tax return carries the presumption of truthfulness. In the absence of any property purchased or owned in the personal name of the petitioner and in the absence of direct proof that his family members were his dependents or vice versa and in the absence of direct proof that the money came through FTTs in his account as some crime proceed or money laundering, we cannot accept the prosecution case as a gospel truth. The prosecution has yet to establish its case before the trial court on the basis of 110 witnesses. There is a possibility that the petitioner may be convicted and equal is the chance that he may be acquitted. In the event of acquittal the retribution of the time he spent behind the bar will not be possible.

Conclusion: Resultantly, Post arrest bail is allowed.

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10. **Lahore High Court**
Muhammad Azhar Iqbal v. The State & another
Crl. Misc. No.22547/B/2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC1214.pdf

Facts: Petitioner sought post arrest bail in case registered under Section 489-F of Pakistan Penal Code, 1860 whereby it is not clear that whether cheque was issued against a liability or not.

Issue: Whether a cheque issued without satisfying the pre-requisites mentioned in section 489-F PPC constitutes the offence?

Analysis: To constitute an offence punishable under Section 489-F of Pakistan Penal Code, 1860, requirement of law is issuance of cheque with dishonest intention and that too towards repayment of a loan or fulfillment of an obligation. This makes it clear that mere issuance of cheque by one person to other without satisfying the supra mentioned pre-requisites, does not constitute the alleged offence.

Conclusion: Mere issuance of cheque by one person to other without satisfying the pre-requisites of section 489-F PPC does not constitute the offence.

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11. **Lahore High Court**
Maqbool Ahmad v. The State
Crl. Appeal No.969/J/2016
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1189.pdf

Facts: The Petitioner filed Criminal Appeal and while the said appeal was still pending he moved Crl. Misc. for suspension of his sentence which was accepted by the court and he was directed to be released on bail. Subsequently through application under section 561-A Cr.P.C. the Petitioner seeks reduction of the amount of his bond.

Issue: i) The principles of right to a reasonable bail is closely related to the right of fair trial.
ii) Whether surety amount can be reduced at a subsequent stage once the sentence of the convict is suspended but due to excessive amount of bond he is unable benefit from it?

Analysis: In Pakistan, the powers of the police/court to take bond from a person accused of bailable/non-bailable offences is covered by Chapter XXXIX (sections 496-502) of the Code of Criminal Procedure, 1898. Section 498 of our Code is similar to section 440 of the Indian Criminal Procedure Code of 1973. Our jurisprudence is consistent that while stipulating the amount of surety bond the court must always take into consideration the financial position of the accused. The right to a reasonable bail is now considered to be closely related to the right of fair trial

Conclusion: The right to a reasonable bail inter alia means that- (i) the court should fix the amount of the bond having due regard to the circumstances of the case, including the nature of the offence charged, the weight of evidence against him, the financial capacity of the accused and his character/criminal history; (ii) the amount of the bail bond should not be excessive, harsh or unreasonable but should be such as in the judgment of the court would ensure presence of the accused; (iii)

if there are more than one accused in a case, the court may stipulate different amounts for their bail bonds because each one of them stands before the bar of justice as an individual; and (iv) in a case where the Government's only interest is in preventing flight, the court must set the bail at a sum designed to ensure that goal.

The court observed that the principles discussed with reference to pretrial and under trial persons would equally apply to cases where a convict's sentence is suspended and he is released on bail as section 426(1) Cr.P.C. does not make any distinction in respect of the bond. An accused must not be allowed to languish indefinitely in jail but must be given a speedy trial. Involved with this issue are the rights to a reasonable bail and prohibitions against being detained for more than a specified time without bail. The Hon'ble court following the above referred principles allowed the application and reduced the amount of bond.

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12. **Lahore High Court**
Saif-ur-Rehman v. The State and Another
Crl. Misc. No.20613-B/2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1154.pdf

Facts: The petitioner sought pre-arrest bail in offences punishable under section 302/109/148/149 PPC, having role of hatching abetment of the alleged crime.

Issue: Whether while deciding pre-arrest bail, merits can be touched?

Analysis: The allegations of hatching abetment/conspiracy against petitioner and others at an open place, that was Courts' compound, in presence of their rivals, appears to be unnatural. FIR is silent about time, mode, and manners of conspiracy. Further, when presence of two principal accused was not established on crime scene and they were found in Saudi Arabia and Karachi, the story of abetment/consultations also came under serious doubt as these two were also alleged to be present at the time of said conspiracy. Hence, while deciding the pre-arrest bail Courts are not precluded to examine the merits of the case.

Conclusion: While deciding pre-arrest bail, merits can also be touched.

13. **Lahore High Court**
Mumtaz alias Bhutto v. The State and Another
Criminal Miscellaneous No.30606 of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1144.pdf

Facts: The petitioner sought pre-arrest bail in bailable offences punishable under section 337-F(i) 354 PPC earlier denied by the learned Additional Sessions Judge, Sheikhupura.

Issue: Whether the discretion lies with the court to refuse (pre or post-arrest) bail in bailable offences?

Analysis: A Judge in is under obligation in all circumstances to decide a case in accordance with law. Emotion, sympathy, empathy, and kindness are aliens during the dispensation of justice as it must be realized regardless of consequences. The combined reading of the sections (496, 497 and 498 of Crpc) leaves no uncertainty that while deciding an application, may it be for bail after arrest or pre-arrest, in bailable offence the Court is left with no discretion to refuse the concession to an accused as in such eventuality the grant of bail is a right. Moreover, the order of grant of bail in bailable offences cannot be recalled.

Conclusion: In bailable offence no discretion lies with the Court to refuse the concession of bail may it be pre-arrest or after arrest.

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14. **Lahore High Court**
Rizwan Ahmad & 3 others vs. The State & another
Criminal Revision No.14158 of 2019
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1133.pdf

Facts: The petitioners were convicted in offences punishable under sections 324/337-A(i)/353/186/148/149 Pakistan Penal Code, PPC by the learned Magistrate. They unsuccessfully challenged the conviction before the learned appellate court and finally assailed both judgments through a criminal revision.

Issue: Can conviction be based on the testimony of sole inimical injured witness and what presumption can be attached to such witness?

Analysis: By now it is a settled principle that conviction can be based upon the sole testimony of injured witness, but certainly subject to fulfillment of criteria on the touchstone of appreciation of evidence. The presumption about presence of injured witness, too, is a settled proposition that his/her presence at place of occurrence cannot be disputed or doubted because of injuries on his body.

In this case conviction was also recorded on the testimony of sole inimical injured witness which needed corroboration as per settled law. However, the witness made material improvements to bring his evidence in line with medical evidence. It is a settled proposition that no reliance can be made on the testimony of a witness who deliberately introduces improvements in his statement so as to cover the lacunas or to bring his testimony in line with other pieces of evidence. Further, the principle of "falsus in uno, falsus in omnibus" was held applicable about the uncorroborated testimony of the sole injured witness.

Conclusion: See above.

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15. **Lahore High Court**
Criminal Appeal No. 87338-J of 2017, Criminal Appeal No. 87339-J of 2017, Murder Reference No.478 of 2017
Alam Khan v. The State etc.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC1241.pdf

Facts: The two criminal appeals and a murder reference were filed relating to the judgment of learned trial court wherein the petitioners were awarded death penalty and life imprisonment respectively in offences punishable under section 302, 392 and 34 PPC.

Issue: What is the impact of discrepancies in the statements of witnesses, identification parade and recoveries?

Analysis: Among various infirmities noticed by the Court in the prosecution case, the few glaring one were as follows: Firstly, no source of light was given by the prosecution neither in the F.I.R nor during investigation, and nor during testimonies of witnesses. Secondly, the ocular witnesses not only found to be chance witnesses having close relationship with the deceased but also failed to justify their presence at the alleged place of occurrence. Thirdly, a joint identification was conducted against the settled norms of criminal law. Further, the identification report was devoid of any detail about the ages and features of dummies and there was also an un-initialed overwriting at the material part of the report. Fourthly, there was certain blatant improvements in the statements of prosecution witnesses. Fifthly, the recovery of alleged weapon of offence was disbelieved on account of unexplained delay in sending it to the PFSA.

Conclusion: The supra mentioned discrepancies and shortcomings in the prosecution case led to the conclusion that the prosecution had failed to establish the case beyond reasonable doubt, hence, the convictions were set aside accordingly.

16. **Lahore High Court**
Writ Petition No.30742 of 2021
National Bank of Pakistan & another v. The State & others
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC1217.pdf

Facts: The petitioners filed constitution petition to challenge the vires of inquiry conducted by Federal Investigating Agency on the allegations of illegal issuance of loans and money laundering. Primarily it was prayed that F.I.A. authorities be directed to drop the inquiry against the petitioner bank and its employees on the ground of excess committed by the respondent investigating agency.

Issue: Whether F.I.A. authorities falls within the definition of "police authorities" used in section 22-A(6) Cr.P.C. and ex-officio justice of peace can issue directions to F.I.A. authorities?

Analysis: Section 4(2) of the Act of 1974 provides that the administration of the Agency shall vest in the Director General who shall exercise powers of an Inspector General of Police under the Police Act, 1861. While Section 5(1 provides that the members of the Agency shall have such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of Provincial Police have in relation to the investigation of offences under the Cr.P.C. or any other law for the time being in force. Section 5(2), for the purpose of any inquiry, empowers a member of the agency, who is not below the rank of a Sub-Inspector to exercise any of the powers of an officer-in-charge of a Police Station.

The term 'police authorities' used in section 22- A(6) Cr.P.C. is wide enough to include FIA officials and does not only connote provincial police authorities especially when FIA authorities can use all the powers of a police officer of provincial police under the Cr.P.C.

Conclusion: Since status, functions, rights, privileges and liabilities of officials of F.I.A. are same as that of Provincial Police officers under the Cr.P.C. therefore, they would be considered 'police authorities' as per section 22-A Cr.P.C. Consequently, an ex-officio justice of peace was competent to issue directions to the respondents.

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17. **Lahore High Court**
The State v. Rizwan Akhtar *alias* Razi Bawa& another
Murder Reference No.290 of 2015
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1163.pdf

Facts: The accused, who were implicated in the case on the basis of supplementary statement and were convicted and sentenced to death and rigorous imprisonment by the trial court, challenged the same on the ground that it was based on

unconvincing last seen and circumstantial evidence whereas confirmation of the death sentence was sought on behalf of the State.

Issue: What is the value of res gestae evidence and what are the parameters/requirements to prove circumstantial evidence?

Analysis: Though Article 19 of Qanun-e-Shahadat Order, 1984 supports the admissibility of circumstantial evidence as *Res gestae*, a form of an exception to hearsay; *Res gestae* means 'part of the matter' and has evolved as an umbrella term referring, in general terms, to statements which are so bound up with a particular transaction as to form an important part of that transaction. In other words, the evidence must have such obvious relevance in relation to other evidence that it needs to be admitted in order to 'complete the picture'. This vague concept or type of inadmissible evidence has found its place in the law of evidence in the form of admissible evidence only if it qualifies the following characteristics;
Spontaneous exclamation, which means, person involved, whether a victim or a witness, says something instinctively which is seen as intrinsic to the event in question. Contemporaneous physical condition; which means person victim of assault or in a condition has personally present and informed the witness about tragedy or misdeeds committed by the alleged accused. Present intention; if the victim before the occurrence has posted the intention of accused to the witness about the conduct of the alleged accused. Statement accompanying an act; a statement is also admissible as part of the *res gestae* if it contemporaneously accompanies and explains the act of person making it. The act and statement must be inextricably linked.

Conclusion: The value of circumstantial evidence has to be assessed on consideration that it must be such as not to admit of more than one conclusion, and, in order to find the guilt of a person accused of criminal charge, the facts proved must be incompatible with his innocence and incapable of any explanation upon any other reasonable hypotheses than that of any of his guilt.

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18. **Lahore High Court**
Hamid Hayat v. D.G. Excise and Taxation etc
Writ Petition No.31653/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1256.pdf

Facts: Through constitutional petition, the petitioner, a civil servant, has assailed the order of competent authority which declined the application of the petitioner for transfer of inquiry/change of inquiry officer.

Issue: Whether the order of the competent authority to allow or disallow the appointment and/or change of an inquiry officer or otherwise transfer of an

inquiry falls within terms and conditions of service attracting the bar contained under article 212 of the Constitution of Pakistan?

Analysis: Any step in disciplinary proceedings formulates the proverbial rung of the ladder of these proceedings and to carve out any step out of those proceedings such as appointment of inquiry officer or change/transfer of inquiry on the pretext that it is an executive/administrative action falling outside the jurisdictional tentacles of Service Tribunal is clearly an unwarranted notional stretch…..Therefore, it is misconception to assert that the appointment and/or change of inquiry officer is a separate and independent administrative and executive action not falling within the scope of disciplinary proceedings and hence out of the purview of the bar contained under Article 212.

Conclusion: The order of the competent authority to allow or disallow the appointment and/or change of an inquiry officer or otherwise transfer of an inquiry falls within terms and conditions of service attracting the bar contained under article 212 of the Constitution of Pakistan.

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19. **Sindh High Court**
Shehnaz Zaidi v. Federation of Pakistan etc.
Constitutional Petition No. D – 3603 of 2016
Mr. Justice Irfan Saadat Khan and Mr. Justice Adnan-ul-Karim Memon
http://43.245.130.98:8056/caselaw/view-file/MTUxNTQxY2Ztcy1kYzgz

Facts: The petitioner, through the constitution petition, sought actualization of her promotion as Librarian (BPS-16) in the Directorate of Training & Research (Customs Excise & Sales Tax), Karachi with effect from the date of recommendation of the Departmental Promotion Committee (DPC) vide minutes of the meeting after her superannuation.

Issue: Whether the petitioner superannuating after the recommendations of the Departmental Promotion Committee, for promotion in higher rank, was entitled to profarma promotion?

Analysis: Essentially in service jurisprudence, appointment, promotion is of utmost importance. If these are made on merit under definite rules, instructions, etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil/government servant, therefore, the petitioner could not be precluded to ask for the actualization of her promotion as Assistant Librarian / Librarian as per the recommendation of the DPC held on 12.02.1985. The record does not reflect that the aforesaid minutes of the meeting were cancelled by the respondent department at any moment and in absence of this the aforesaid minutes were/are required to be actualized.
A civil servant is entitled to proforma promotion, once during his/her service, approved by the Competent Authority and in the meanwhile, if he/she

superannuates, he/she is entitled to all benefits as admissible under the law. We are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Iftikharullah Malih v. Chief Secretary and others (1998 SCMR 736)* and *Askari Hasnain v. Secretary Establishment and others (2016 SCMR 871).*

The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his/her legitimate turn due to any reason but not a fault of his/her own then in such a situation, the monetary loss and loss of rank is remedied through proforma promotion. Even otherwise petitioner had met the criteria being eligible to be considered by the appointing authority in respect of the benefits of proforma promotion as discussed supra.

Conclusion: The petitioner was entitled to proforma promotion after her superannuation as per recommendation of DPC.

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20. **Lahore High Court**
M/s Obaid Associates and another v. United Bank Limited.
Regular First Appeal No.1673 of 2014
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1074.pdf

Facts: The respondent/plaintiff-Bank filed a suit for recovery against the appellants/defendants. In the suit, unconditional leave was granted in respect of Letter of Credit facility and amount of markup in the suit, however, interim decree was passed regarding principal amount under the Cash Finance facility. The appellants/defendants being aggrieved have filed this appeal.

Issue: Whether filing of additional documents regarding cash finance facility by the respondent-Bank itself create a ground to grant leave to defend?

Analysis: The filing of additional documents and Statement of Account by respondent-Bank itself constitutes a ground for grant of leave to defend the suit. Since, the appellants/defendants had no opportunity to rebut, controvert or comment on these additional documents in the petition for leave to defend, therefore, these additional documents are to be proved in evidence, which entitle the appellants/defendants to grant of leave to defend the suit.

Conclusion: See Above.

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21. **Lahore High Court**
Misbah ud Din Zaigham & others v. Federal Investigation Agency & others
W.P No.68772 of 2019
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC941.pdf

Facts: The petitioners challenged show-cause notice issued by the FIA u/s 20(7) of the FIO, 2001 pursuant to a complaint filed by the authorized officers of the financial

institutions in each case despite of the fact that appeal of the petitioners were pending before the Division Bench of High Court against the judgment and decree of Banking Court regarding determination of their civil liability, which is held to be a mandatory requirement for determining the factum of 'willful default' by full bench of High Court in Mian Ayaz Anwar's case (2019 CLD 375).

Issue: In order to ascertain the offence of willful default under FIO, 2001, whether determination of the civil liability would include a determination to be made by the appellate court as well or not?

Analysis: The words "become due" used in the definition of willful default under Section 2(g)(i) have been interpreted in *Mian Ayaz Anwar* to mean that there has to be determination made of the sum due, which is primarily a civil liability by a court which has been established under the law for doing so. There is no doubt that in laying down the rule regarding pre-determination of civil liability of default in *Mian Ayaz Anwar* the learned Judges clearly meant that not only the determination must be made by court of first instance but doubtless by one appellate court as well.

The view that the appellate procedure must conceivably be part of the determination of civil liability is based on two principles entrenched in our jurisprudence. The first is drawn from an established line of respectable authority that an appeal is a continuation of the original suit and opens up the case for rehearing on error and facts, both. And the second is the critical importance of constitutional criminal law which protects and preserves the right of a person to due process of law in all criminal prosecutions. In essence, a right to one appeal is a constitutional right. If one right of appeal is a fundamental and basic right, it follows ineluctably that a person"s civil liability would necessarily hinge upon a determination not only to be made by the court of original jurisdiction but also by at least one appellate court. If the financial institution were permitted to initiate criminal proceedings and to proceed to file a criminal complaint in terms of section 20(7) of the Ordinance, 2001 and even before the appeal is finally decided, that complaint may have been concluded and punishments inflicted on the persons accused of that offence.

Of the fundamental rights guaranteed by Articles 9 to 28, almost 16 belong to criminal procedure and may as well (like the American Bill of Rights) be described as a mini-code of criminal procedure. Access to justice is part of the right to life under Article 9. Read in conjunction with the constitutional right to one appeal, access to justice would mean an interwoven set of rights which includes a proper trial as well as an appellate procedure. And no man should be subjected to any detriments, especially in criminal law, unless willful default has been established by the court of appeal.

The probable cause in the present context of the offence of willful default has a linkage to the determination of civil liability by the Banking Court (and one appellate court, by extension). The filing of a complaint would give rise to an

imminent threat of seizure of person and his arrest and this cannot be countenanced unless probable cause exists which has a reference to prior determination of civil liability.

Conclusion: The offence of willful default under Section 2(g)(i) can only arise once not only the proceedings before the court of original jurisdiction but also before the appellate court in any appeal filed under FIO by the petitioners have concluded.

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22. **Supreme Court of the United States**
Comcast Corp. v. National Association of African American-Owned Media
589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1171_4425.pdf,
https://ballotpedia.org/

Facts: The case related to protections against racial discrimination in the Civil Rights Act of 1866. The case relates to whether cable television operator Comcast engaged in racial discrimination in refusing to carry channels from Entertainment Studios.

Issue: Does a claim of race discrimination under 42 U.S.C. § 1981 fail in the absence of but-for causation?

Analysis: In torts law, a plaintiff must prove that his or her injury would not have occurred but for the defendant's illegal conduct. In his opinion, Justice Gorsuch wrote that 42 U. S. C. §1981 does not provide an exception to the but-for legal principle. In his opinion, Justice Gorsuch wrote, "*Taken collectively, clues from the statute's text, its history, and our precedent persuade us that §1981 follows the general rule. Here, a plaintiff bears the burden of showing that race was a but-for cause of its injury. And, while the materials the plaintiff can rely on to show causation may change as a lawsuit progresses from filing to judgment, the burden itself remains constant*". Justice Ginsburg filed a concurring opinion.

Conclusion: In a 9-0 opinion, the court vacated and remanded the 9th Circuit's decision in a unanimous ruling, holding that 42 U.S.C. § 1981 does not provide an exception to the but-for legal principle, in which a plaintiff must prove that his or her injury would not have occurred but for the defendant's illegal conduct. In other words, African American-owned television network operator Entertainment Studios must plead and prove that Comcast Corporation would have acted differently if Entertainment Studios were not owned by African-Americans. However, the parties reached a settlement after the Court's decision.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4

   Spectrum of 'Inherent Powers of High Court' under Cr.P.C. by Gargi Singh & Abhinav Singh

   Article 227 of our Indian Constitution provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The criminal procedure code further provides that every High Court shall so exercise superintendence over subordinate courts so as to ensure proper disposal of cases buy such courts. The 'Code' has entrusted every High Court with several powers and duties for providing fair justice in the society.
   The Allahabad High Court, in one of its Judgment's while dealing with the section 482, has observed that 'The section is a sort of reminder to the High Courts that they are not merely courts in law, but also courts of justice and possess inherent powers to remove injustice.

2. **STANFORD LAW REVIEW**
   https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/04/Elengold-Glater-73-Stan.-L.-Rev.-969.pdf

   The Sovereign Shield by Kate Sablosky Elengold & Jonathan D. Glater
   This Article untangles the doctrines that extend the sovereign shield to private actors and exposes the alliance that such extension enables between the executive branch and businesses. We explain how this alliance shifts the balance of power in three ways: in favor of the federal government at the expense of the states, in favor of the executive branch at the expense of the legislature, and in favor of private enterprise at the expense of consumers

3. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12602

   The 'Chimera' of Parenthood by Brian Sloan

   In apparently the first reported instance of a paternity test being 'fooled' by a 'human chimera', a man 'failed' a paternity test because the genetic material in his saliva was shown to be different from that in his sperm. Such a chimera has extra genes, here absorbed from a twin lost in early pregnancy. The result was that the 'true' genetic father of the man's son was the twin, who had never been born. Chimeras present a challenge to legal systems, given the frequent emphasis on genetics in determining parenthood.

4. **COURTING THE LAW**
https://courtingthelaw.com/2021/05/25/commentary/who-is-authorized-to-exercise-legal-control-over-sugar-price-fixation-in-pakistan/

Who is Authorized to Exercise Legal Control Over Sugar Price Fixation in Pakistan? by Ramsha Shahid

> *"[P]resently there is a loose check on the profiteers and hoarders and the same is only possible by adopting a mechanism by the respective Provincial Governments by taking stringent steps otherwise it would be beyond the capacity of an ordinary laborer to provide bread to his family including children and old persons".*

5. **PAKISTAN LAW DIGEST**
http://www.plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J15

International Investment Arbitration & The Role of National Courts by Usama Malik

> *This research essay elaborates upon the nature, purpose and structure of international arbitration, along with exploring the relationship between national courts (particularly national courts at the seat of arbitration) and arbitral tribunals. The essay will delve into a critical analysis of the extent of justifiable involvement of national courts in arbitral proceedings and what can be considered to be unjust interference of national courts at the seat of arbitration. This analysis will take into account certain legal limitations that have been placed on national courts to curb their intervention in arbitration. Furthermore, the research essay will also deliberate upon the supportive role of the national courts in bolstering the practice of international arbitration. Lastly, the author will elaborate upon mechanisms that can counter the authoritarian attitude of national courts seeking to infringe the powers of the arbitration tribunal.*

Lahore High Court

BULLETIN

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FORTNIGHTLYCASE LAW BULLETIN

(01-06-2021 to15-06-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Muhammd Jamil v.Muhammad Arif
Civil Petition No.852 of 2020
Mr. Justice MushirAlam, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._852_2020.pdf

Facts: Plaintiff/vendee entered into an agreement to sell in respect of immovable property wherein consideration was to be paid in foreign currency. Earnest money was paid and balance consideration was agreed to be paid at the time of execution of sale deed. Plaintiff pleading about refusal of defendant to receive balance consideration filed suit for specific performance before cut off date. Plaintiff was directed to deposit balance consideration in the court which the plaintiff did not comply and filed the second suit for same cause of action in another court wherein no direction was issued for deposit of balance consideration. However, on appeal the appellate court made that direction which was also not complied with; however, on the direction of revisional court ultimately the plaintiff deposited balance consideration in Pakistani currency. Suit was decreed subject to payment of balance consideration in foreign currency but plaintiff did not pay the same. Appeal and revision of defendant were dismissed but the plaintiff did not pay the balance consideration nevertheless giving impression that he was all the time ready to make balance payment.

Issue: What is readiness and willingness to perform the contract by vendee i.e. payment of consideration?

Analysis: Foremost requirement to seek specific performance, for a vendee is to demonstrate his readiness and willingness to perform the agreement. A vendee cannot seek enforcement of reciprocal obligation unless he demonstrates that he not only has the financial capacity but he was and is always willing and ready to meet the same. The vendor need not to perform his part of contract unless the vendee is ready and willing to perform his part of the contract…In the first place, willingness to perform one's contract in respect of purchase of property implies the capacity to pay the requisite sale consideration within the reasonable time. In the second place, even if he has the capacity to pay the sale consideration, the question still remains whether he has intention to purchase the property…It is mandatory for such party that on first appearance before the court or on the date of institution of the suit, it shall apply to the court for permission to deposit the balance amount. Any omission in this regard would entail the dismissal of the suit. It is now well settled that a party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration in the court. By making such deposit, the plaintiff demonstrates it capacity, readiness and willingness to perform its part of contract. Mere plea of readiness and willingness is not sufficient, it has to be proved. The amount must be of necessity to be proved to be available.

Conclusion: Willingness to perform one's contract in respect of purchase of property implies the capacity to pay the requisite sale consideration within the reasonable time. Even if he has the capacity to pay the sale consideration, the question still remains whether he has intention to purchase the property. A party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration in the court. By making such deposit, the plaintiff demonstrates it capacity, readiness and willingness to perform its part of contract.

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2. **Supreme Court of Pakistan**
Muhammad Arshad Anjum v. Mst. Khurshid Begum & others
Civil Petition No.1530 of 2019
Mr. Justice Mushir Alam, Mr. Justice Yahya Afridi, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1530_2019.pdf

Facts: "A" was owner of property who sold it to "B". Petitioners purchased the suit property from "B" and thereafter he came to know that the wife of "A" got a decree from the family court in respect of property on the basis of her dower claim. He filed an application under section 12(2) of the C.P.C which was dismissed.

Issue: Whether exclusion of the provisions of the Code of Civil Procedure, 1908 barring sections 10 and 11 thereof, stand as impediment to petitioner's approach to the Family Court for re-examination of the judgment within the contemplation of section 12 (2) of the Code?

Analysis: The exclusion of normal rules of procedure and proof, applicable in civil plenary jurisdiction for adjudication of disputes in proceedings before a Family Court, is essentially designed to circumvent delays in disposal of sustenance claims by the vulnerable; this does not derogate its status as a Court nor takes away its inherent jurisdiction to protect its orders and decrees from the taints of fraud and misrepresentation as such powers must vest in every tribunal to ensure that stream of justice runs pure and clean; such intendment is important yet for another reason, as at times, adjudications by a Family Court may involve decisions with far reaching implications/consequences for a spouse or a sibling and, thus, there must exist a mechanism to recall or rectify outcome of any sinister or oblique manipulation, therefore, we find no clog on the authority of a Family Court to reexamine its earlier decision with a view to secure the ends of justice and prevent abuse of its jurisdiction and for the said purpose, in the absence of any express prohibition in the Act, it can borrow the procedure from available avenues, chartered by law.

Conclusion: Family Court can re-examine the judgment within the contemplation of section 12 (2) of the Code of Civil Procedure.

3. **Supreme Court of Pakistan**
Muhammad Sharif etc.v.The MCB etc.
Civil Petition No.2014-K of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2014_1_2019.pdf

Facts: Petitioners filed objection petition for setting aside the sale made in execution of the decree claiming that auction proceedings were void.

Issue: Whether limitation runs against a void order?

Analysis: The law is by now settled that limitation against a void order would run from the date of knowledge which has to be explicitly pleaded.

Conclusion: Limitation runs against a void order from the date of knowledge of order.

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4. **Supreme Court of Pakistan**
Muhammad Rafique v.Syed Warand Ali Shah
CivilAppeal No.1295 of 2019
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1295_2019.pdf

Facts: Plaintiff filed suit through special attorney for declaration, cancellation of mutation, possession and permanent injunction pleading that he purchased suit property from his mother and alleged transfer in favour of defendants was void. His attorney appeared in evidence as his witness.

Issue: Whether a party should give evidence himself when facts were in his knowledge and there was also no justification to appoint an Attorney?

Analysis: It is plaintiff's duty to prove the case through valid and reliable evidence. The plaintiff himself opted not to appear before the court and to make his statement on oath as required by law for appearance of a witness to take oath before the court for making a correct statement. He appointed his attorney to appear before the court for which an inference is drawn that when without any justifiable reasons the plaintiff opts not to appear as his own witness and the case pleaded requires his personal statement to substantiate the facts in his own knowledge i.e for making a statement that his mother never appeared before the revenue officials for making a statement of suit land and that she never received the consideration when admittedly she never disputed the sale in favour of predecessor of defendants No. 1 and 2 in her lifetime who survived long after the sale.. Further his own claim is on the basis of registered sale deed from his mother in his favour that transaction when the plaintiff presses for grant of a declaration in his favour, he was required to make a statement himself by appearing in the witness box

otherwise when without any justification the plaintiff opted not to appear in the court in such like situation the inference can be drawn against the said plaintiff

Conclusion: A party should give evidence himself when facts were in his knowledge and there was also no justification to appoint an attorney.

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5. **Lahore High Court**
Vice Chairman Punjab Bar Council & others v. Govt. of the Punjab & others
W.P No.19469 of 2021
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC1427.pdf

Facts: The Code of Civil Procedure (Punjab Amendment) Ordinance, 2021 was promulgated and published in the Punjab Gazette on 10.02.2021. The petitioners contend that the Ordinance is ultra vires the Constitution of Islamic Republic of Pakistan, 1973 as it offends the provisions of the Constitution and thus the promulgation is caught by the vice of unconstitutionality.

Issue: i) What the Ordinance making power of the Governor may be judged by the test applicable to determine the validity of executive acts?
ii) Whether Prime Minister can issue a direction to provincial government to make law; and the Ordinance suffers from the vice of dictation?
iii) What is the nature of rule-making power of High Court in CPC?

Analysis: i) Although the Ordinance making power is legislative but it must not be forgotten that the power vests in the political executive. Therefore it should be judged by the tests applicable to determine the validity of executive acts. The challenge to the Amendment Ordinance is therefore bifurcated into various grounds, the first of which entails that since the Ordinance is an executive act and so its legality or otherwise must be considered on the touchstone of the principles of administrative law relating to executive acts such as illegality, irrationality and procedural impropriety.

ii) The executive authority of the federation extends to the giving of such direction to a province as may appear to the Federal Government to be necessary, namely, the executive authority of a province is being exercised to impede or prejudice the exercise of the executive authority of the federation. Clauses 3 and 4 of Article 149 enumerate circumstances under which directions may be issued to the provinces. In none of these are comprised the circumstances under which a direction to make a law may be given by the Federal Government. To reiterate, the direction may only relate to the exercise of the executive authority of the federation and in no other case. The direction of the Prime Minister (to make law to a province) offends the mandate of Article 149 and is unconstitutional….Not only that the direction contravened the express provisions of the Constitution, it

also threatened the republican form of government and the Federal-Provincial balance of power. Ordinance suffers from the vice of dictation.

iii) Part X of CPC relates to power of rule-making which are contained in the First Schedule. This division of CPC delegates power on a High Court to make rules regulating its own procedure and the procedure of the civil courts and also has power to annul, alter or add to all or any of the rules in the First Schedule. This is a unique power the significance of which can neither be belittled nor disregarded…. The High Courts have been conferred the constitutional power regarding rules of procedure which may not only regulate the practice and procedure of a High Court but also any court subordinate to it. In exercise of this power, LHC has made rules entitled "High Court Rules & Orders" which contain an elaborate procedure to be followed by the courts subordinate to it in matters relating to adjudication of cases before civil courts. Thus, not only has the High Court been delegated the power of making and amending rules in the First Schedule by the Code itself but also by the Constitution by virtue of Article 202…. It also by implication follows that the exercise of rule making power is constitutional which resides in a High Court and, therefore, if such power has already been exercised, it emerges as an unwritten rule to be followed in all such matters that it is of utmost importance that consultation be held between a High Court and the government of province. It is not only essential for the administration of justice but also to preserve the independence of judiciary that in a unique situation where judicial legislation is permissible, Punjab should act conformably with LHC's rule making process… The provisions of the Amendment Ordinance are largely unworkable but also that they breed inconsistency with LHC amendments… These amendments disregard the previously enacted LHC amendments which too not only had statutory but constitutional basis and were the result of thoughtful and inclusive consultative process. They are liable to be struck down also on the ground that there was no prior consultation with the Lahore High Court in order to streamline and reconcile the amendments made through the Amendment Ordinance with LHC amendments which had their source in the Constitution.

Conclusion: i) Ordinance making power of the Governor may be adjudged by the test applicable to determine the validity of executive acts.

ii) Prime Minister cannot issue a direction to provincial government to make law; and the Ordinance suffers from the vice of dictation.

iii) The exercise of rule making power is constitutional which rest with the High Court.

6. **Lahore High Court**
Faysal Bank Limited v. National Electric Company Pakistan & others
FAO No.191715 of 2018
Mr. Justice Muhammad SajidMehmoodSethi, Mr. Justice Abid Hussain Chatta
https://sys.lhc.gov.pk/appjudgments/2021LHC1717.pdf

Facts: Case was fixed for arguments on leave to appear and defend when it was dismissed for non-prosecution.

Issue: Whether a suit can be dismissed for non-prosecution on a date which is not fixed for hearing of the suit?

Analysis: Court dismissed appellant's suit for non-prosecution, when the case was fixed for submission of power of attorney and arguments on leave application. Under the law, when case is fixed for arguments on leave application, neither the Court can dismiss the leave application for non-prosecution nor decide the suit or dismiss the suit unless leave application is decided… Since the date was not fixed for hearing of the suit, therefore, order of dismissal of suit for non-prosecution was legally not sustainable. Date on which suit was dismissed, was not a date of hearing within the contemplation of law, therefore, except on a date of hearing, action to dismiss a suit in default could not be taken against plaintiff.

Conclusion: A suit cannot be dismissed for non-prosecution on a date which is not fixed for hearing of the suit.

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7. **Lahore High Court**
Province of Punjab and others v.Atta Rasool and another
Civil Revision No.195/2013
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1596.pdf

Facts: Respondent filed a suit for declaration and permanent injunction against the Province of Punjab and others with the averments that the land is owned by the Provincial Government, which was allotted to him under Grow More Food Scheme and is in his possession. Trial court dismissed the suit while appellate court decreed it.

Issue: Whether Civil Court can entertain and adjudicate upon the suit wherein its jurisdiction is barred?

Analysis: The matter pertains to allotment of government land, which falls under the exclusive domain of revenue hierarchy and jurisdiction of civil court is barred. However, in certain cases, the Hon'ble Supreme Court of Pakistan has carved out the situations where the civil court has jurisdiction to look into the matter even if the jurisdiction of civil court is otherwise ousted under any enactment. Such

situations, inter alia, include a case when the order and action has been taken in a mala fide and malicious manner; the order has been passed and the authority has been exercised in excess of jurisdiction or without jurisdiction; and the aggrieved person has been left without any remedy or where the statutory provisions have not been complied with.

Conclusion: See above.

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8. **Lahore High Court**
Mian Rehan Arshad v. Saba Gul & others
W.P. No.26960 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1317.pdf

Facts: A family court, relying upon the provisions of sec 39 read with order XX rule 5 of the Code of Civil Procedure, 1908 (CPC), directly transferred a family decree for execution to the Senior Civil Judge of another district.

Issue: i) Whether under the Family Court Act, 1964, family courts are competent to make inter district transfer of family decrees?

ii) Whether the term 'proceeding' mentioned in section 25-A of the Act, include execution proceedings?

iii) Whether general principles of CPC can be invoked by a family court?

Analysis: i) The provision of Section 25-A of the Act manifestly states that High Court, on application of any party or suo motu has jurisdiction to transfer (i) any suit or proceeding from one Family Court to another Family Court in the same district or from a Family Court of one district to a Family Court of another district; and (ii) any appeal or proceeding from the District Court of one district to the District Court of another district. Whereas, a District Judge is empowered to transfer any suit or proceeding under this Act from one Family Court to another Family Court in a district or to itself and dispose it of as a Family Court. Similar powers are also available to the Hon'ble Supreme Court to transfer any suit, appeal or other proceedings pending before a Court in one Province to a Court in another Province, competent to try or dispose of the same. In the presence of such explicit provisions of law, a Family Court, acting as an executing Court, is not authorized to make an order to directly transfer an execution petition to any other Court of competent jurisdiction not only in the same district but also to other district. In presence of comprehensive procedure for transfer of decree available in the Act, provisions of Section 39 and Order XXI Rule 5 of CPC, could not have been invoked.

ii) Though there is no definition of the term "proceeding" given in the Act but it has elaborately been defined by Edwin Eustace Braynt in his book "*The*

Law of Pleading under the Codes of Civil Procedure" and includes the execution petitions in it. Similarly according to per Hon'ble Supreme Court of Pakistan (**2001 SCMR 1461**) proceeding include all possible steps in an action from its commencement to the execution of the judgment. So it is evident that execution proceedings / execution petition squarely come within the expression "proceeding" appearing in Section 25-A of the Act.

iii) General principles of C.P.C can be invoked by a Family Court for due determination of justice only when no procedure is provided in the Act and there is no conflict between the provisions of C.P.C and the Act.

Conclusion: i) Family Courts are not empowered to make inter district transfer of family decrees.

ii) The term 'proceeding' appearing in section 25-A of the Act include execution proceedings.

iii) General principles of C.P.C can only be invoked by family courts when no procedure is provided in the Act and there is no conflict between the provision of CPC and the Act.

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9. **Lahore High Court**
Haji Bashir Ahmad Ch. v. Bashir Ahmad Deceased through L.Rs
C.R.No.30839/2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC1380.pdf

Facts: Applicant filed an application u/s 12(2) which was accepted by the Additional District & Sessions Judge. Petitioner filed a time barred revision petition against this order on ground of medical treatment and prayed for condonation of delay or suo motu exercise revisional jurisdiction.

Issue: i) Whether a court may condone the delay where limitation period has been prescribed by statute itself and section 5 of the Limitation Act has not been made applicable?
ii) Whether delay can be condoned on the ground of medical treatment without any supporting document?
iii) Whether the High Court can suo motu exercise jurisdiction, conferred under Section 115 CPC, in a time barred case to circumvent the issue of limitation?

Analysis: i) If the statute governing the proceedings does not prescribe the period of limitation, the proceedings are governed by the Limitation Act as a whole but where proceedings have been prescribed in the statute itself, such as in Section 115 of the CPC, the benefit of Section 5 of the Limitation Act is not available unless it has been made applicable as per Section 29(2) of the Limitation Act. But notwithstanding the same, discretion to condone delay is wide enough in a Court

depending upon a variety of factors, particularly, sufficient cause shown by a party to the satisfaction of the Court. This is particularly so since the revisional jurisdiction is always discretionary and equitable in nature.

ii) No medical certificate was appended with application for condonation of delay and in absence of medical certificate plea of being indisposed cannot be entertained…. Medical ground is not overwhelming ground to condone delay unless each and every day of delay is sufficiently explained to the satisfaction of Court.

iii) The jurisdiction could be exercised by the High Court or the District Court in a case where a Revision Petition has been filed after the prescribed period of limitation depending on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Suo motu jurisdiction can be exercised, if the conditions for its exercise are satisfied. Revisional jurisdiction is preeminently and in essence, corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a Revision Petition, exercises its suo motu jurisdiction to correct the errors of jurisdiction committed by a subordinate Court.

Conclusion: i) Discretion to condone delay is wide enough in a Court depending upon a variety of factors, particularly, sufficient cause shown by a party to the satisfaction of the Court. This is particularly so since the revisional jurisdiction is always discretionary and equitable in nature.

ii) Delay cannot be condoned on the ground of medical treatment without any supporting document.

iii) In a time barred case suo motu jurisdiction can be exercised, if the conditions for its exercise are satisfied to circumvent the issue of limitation.

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10. **Lahore High Court**
Zia Ullah etc. v. Liaqat Ali Zia etc.
Civil Revision No. 2122 of 2010
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC1374.pdf

Facts: Petitioner claimed that respondent was not owner of specific property and transfer in favour of respondent and his possession over specific property in joint khata was illegal.

Issue: Whether a co-owner has a right to transfer possession of specific property which is in his possession in joint khata and vendee has right to be in possession of said specific un-partitioned property?

Analysis: The entries of a joint owner in possession of specific khasra numbers in the column of cultivation have legal sanctity and preference over other co-shares.As such, co-owner in exclusive possession of specific field number can transfer entire field provided area of said field is not more than his entitlement in the joint khata. Since, it was admitted that Respondent No. 1 is a co-sharer in the joint khata,

therefore, he rightly occupied the subject property that was previously occupied by his predecessor.

Conclusion: Co-owner in exclusive possession of specific field number can transfer entire field provided area of said field is not more than his entitlement in the joint khata. Vendee has a right to occupy the specific property that was previously occupied by his predecessor.

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11. **Lahore High Court**
Mst. Ghulam Sakina v. The Deputy Commissioner Sargodha etc.
Writ Petition No.20421/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC1069.pdf

Facts: Through the constitutional petition, the petitioner had challenged the legality of order passed by Deputy Commissioner, Sargodha, whereby her husband was directed to be arrested and detained for a period of thirty days with immediate effect in the interest of peace and tranquility.

Issue: Whether a petitioner can invoke the constitutional jurisdiction of High Court to challenge an order which is patently illegal even without having recourse to alternate remedy?

Analysis: Freedom and liberty of every citizen is a fundamental right guaranteed under Articles 4 & 9 of the Constitution of Islamic Republic of Pakistan, 1973 and its infringement tantamount to violation of fundamental rights enshrined under Article 2-A, 3, 4, 9, 14 & 18 of the Constitution. When a person is detained without any just cause, he may invoke the jurisdiction of High Court directly under Article 199 of the Constitution, if an order is illegal, without having course to alternate remedy.

Conclusion: A petitioner can invoke the constitutional jurisdiction of High Court under Article 199 of the Constitution even without first availing alternate remedy when impugned order of detention is patently illegal.

---

12. **Sindh High Court**
Nasir Kamal v. Federation of Pakistan,
Constitutional Petition No. D – 1497 of 2020
Mr. Justice Nadeem Akhtar
http://43.245.130.98:8056/caselaw/view-file/MTUxNjkwY2Ztcy1kYzgz

Facts: Petitioner was appointed by Pakistan National Shipping Corporation (PNSC) as a typist and he retired therefrom as a Manager after serving for forty-one years upon attainting the age of superannuation. However, four days before his age of superannuation he was served a show cause notice and thereafter, an inquiry was initiated against him, but before such disciplinary proceedings could be finalized,

he retired from the service. Meanwhile, PNSC filed suit against him before the learned Civil Court for recovery of Rs. 5,869,553.00, which is still pending. PNSC also lodged FIR against the petitioner, wherein he was acquitted by the learned Special Judge (Central) at Karachi. After his said acquittal, the petitioner approached the competent authority of PNSC for the release of his outstanding post-retirement benefits, but the same were not paid to him on the ground that disciplinary proceedings were still pending against him. In the above background, he was constrained to file the present petition.

Issue:

i) Whether constitutional petition against PNSC is maintainable?

ii) Whether the post-retirement benefits of the petitioner could be withheld by PNSC on account of mere pendency of disciplinary / criminal / civil proceedings against him?

iii) Whether the departmental enquiry / disciplinary proceedings, initiated against the petitioner while he was in service, could continue after his retirement?

Analysis:

i) PNSC is a national flag carrier and is fully owned and controlled by the Government of Pakistan and due to this reason it certainly falls within the definition of person or authority performing functions in connection with the affairs of the Federation. As the "Function Test" prescribed by the Hon'ble Supreme Court in Abdul Wahab and others V/S HBL and others, 2013 SCMR 1383 is fully met against the PNS; hence this petition is maintainable. Even otherwise, the question of payment of pension, being purely a matter pertaining to fundamental rights of the petitioner, can be looked into in the Constitutional jurisdiction of this Court irrespective of the fact whether the service rules of PNSC are statutory or not.

ii) Like salary, pension is a regular source of livelihood, and thus is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution.

iii) It is well-settled that any type of disciplinary proceedings, including an inquiry, against an employee or public servant cannot continue after his retirement from service, and if the disciplinary proceedings are not finalized before his retirement, such proceedings stand abated upon his retirement. On attaining the age of superannuation disciplinary proceedings, which have not been completed, automatically abate and the civil servant is entitled to receive all pensionary benefits.

Conclusion:

i) The constitutional petition against PNSC is maintainable.

ii) Post-retirement benefits of the petitioner could not be withheld by PNSC on account of mere pendency of disciplinary/criminal/civil proceedings against him.

iii) On attaining the age of superannuation disciplinary proceedings against a civil servant stand automatically abated and he is entitled to receive all pensionary benefits.

13. **Lahore High Court**
Muzaffar Ahmad v. The State
Writ Petition No. 50883 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1388.pdf

Facts: Through this petition under Article 199, the Petitioner has assailed the discharge order of the Learned Magistrate qua offence 489 F PPC.

Issue: i) Whether the Magistrate can discharge an accused even suo moto when he is produced before him for remand under section 167 Cr.P.C?

ii) Whether security cheques/guarantee cheques are beyond the scope of section 489-F PPC?

Analysis: i) The question as to whether the Magistrate can discharge an accused when he is produced before him for remand under section 167 Cr.P.C. remains contentious. Some authorities hold that he can pass such an order if there is not sufficient incriminating evidence against him while the other view is that sections 63 and 169 Cr.P.C. must be read in tandem. A Magistrate may discharge an accused person during investigation but he can do so only on the report of the police and not on his own. The power of the Magistrate to discharge an accused must be examined in the constitutional context of liberty, dignity, due process and fair trial. The aforesaid power is in the nature of a check on malicious prosecution. If there is no incriminating material against an accused, he must not be detained. Subject to Rule 6 of Volume-III Chapter 11 Part-B of the Rules and Orders of the Lahore High Court, the view that the Magistrate can discharge an accused even suo moto when he is produced before him for remand under section 167 Cr.P.C. must be preferred.

ii) The question as to whether cheques given as security if dishonoured would attract section 489-F PPC has generated a lot of debate. The proposition that all security cheques are beyond the scope of section 489-F PPC is too broad to be accepted. Every transaction must be minutely examined in the light of the jurisprudence discussed to determine whether section 489-F PPC is attracted.

Conclusion: i) The Magistrate can discharge an accused even suo moto when he is produced before him for remand under section 167 Cr.P.C.

ii) Security cheques are not strictly beyond the scope of section 489-F PPC but every transaction must be minutely examined to see if the ingredients i.e. Repayment of a loan or fulfilment of an obligation is fulfilled or not.

14. **Lahore High Court**
Shahbaz Ahmad v.The State etc.
Criminal Revision No.19771/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1560.pdf

Facts: The revision petition is directed against the order of learned Additional Sessions Judge whereby the petitioner was not admitted to bail but was sent to the Punjab Institute of Mental Health under section 466 Cr.P.C.

Issue: Requisites of Section 465 and 466 Cr.P.C (insanity defence)

Analysis: The insanity defence, also known as the mental disorder defence, is an affirmative defence in a criminal case whereby the accused claims exemption from criminal liability for his act on episodic or persistent psychiatric disease. The insanity defence is recognized by section 84 of the Pakistan Penal Code which was enacted as far back as 1860. Chapter XXXIV (sections 464 to 475) of the Criminal Procedure Code, 1898, provides protection to the accused suffering from mental disorder at the time of trial. Under sub-section (2) of section 465 Cr.P.C. the trial of the fact of the unsoundness of mind and incapacity of the accused prisoner is part of his trial before the court. Further proceedings in the case must be postponed if the court comes to the conclusion after following the said procedure that he is mentally unfit. The provisions of section 465 Cr.P.C. are mandatory.

Conclusion: See above.

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15. **Lahore High Court**
Khalil Akhtar v. Magistrate 1st Class etc.
Writ Petition No. 28118 of 2021
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC1651.pdf

Facts: The petitioner/accused challenged the order of Magistrate wherein direction was issued for re-examination of injured through constitution of second medical board as the first medical board opined that possibility of fabrication cannot be ruled out.

Issue: Whether Magistrate can pass order for constitution of second medical board for further re-examination of injured?

Analysis: The Magistrate has not ordered for constitution of the Provincial Medical Board rather he ordered M.S DHQ hospital, Rawalpindi to reconstitute District Standing Medical Board for examination of the injured. This order is not sustainable in the eye of law due to the reasons: (i) that the offence was allegedly committed within the territorial limits of Police Station District Mianwali whereas the Magistrate

had ordered the M.S DHQ hospital, Rawalpindi for constitution of Medical Board, hence by doing so the Magistrate has issued a direction to the forum which falls outside his territorial jurisdiction, and (ii) there was no point to reconstitute the second Medical Board as earlier the injured had already been re-examined by the Medical Board.

Even otherwise, declaring the injury by Medical Board as "*possibility of fabrication cannot be ruled out"* was also of not much significance. As there is no denial with the proposition that the first medical examination was protected by statutory presumption of being genuine under Article 129 (e) of The Qanun-e-Shahadat Order 1984 QSO) as well as under Article 150 of The Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: Issuing direction for constitution of the Medical Board for second time is alien to the Criminal Justice System prevailing in the country.

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16. **Lahore High Court**
Zulfiqar Ali v. ASJ etc.
W.P No.1200 of 2015
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1300.pdf

Facts: The order of the Additional Sessions Judge was assailed wherein CCPO was directed to register FIR by himself or through SHO and also to proceed against the SHO for non-compliance of the orders of the ex officio justice of peace under the Police Order, 2002.

Issue: Whether non-compliance of direction issued by ex-officio Justice of Peace made a police officer liable for offence under Section 155-C Police Order, 2002 and whether such offence is cognizable or not?

Analysis: Earlier, it was held that an ex-officio Justice of the Peace in Pakistan does not perform or discharge any judicial function rather his duty is of administrative and ministerial nature; therefore, the law relating to Contempt of Court is inapplicable to an alleged non-compliance of any direction issued by him under section 22-A (6), Cr.P.C. However, a direction issued by him under section 22-A (6), Cr.P.C. is grounded in lawful authority conferred upon him by the said legal provision and by virtue of the provisions of Article 4(1)(m) of the Police Order, 2002 every police officer is under a duty to obey and promptly execute all lawful orders. As per section 22-A Cr.P.C, direction of Ex-Officio Justice of the Peace is termed as direction issued by a competent authority; order of a competent authority to the Police to act in accordance with law or to follow direction of law cannot be deflected in any way; therefore, any violation or disobedience on the part of police would render them liable to penal action. Such penal action is couched as offences under Article 155 (1)(C) & D of Police Order, 2002 and Section 166 of PPC.

Offence under Article 155 Police Order, 2002 is punishable with three years; therefore, as per second schedule of Cr.P.C under the head "Offences against other laws" it is reflected that an offence punishable with three years shall be cognizable. Similarly, Section 166 PPC being a scheduled offence can validly be investigated by Anti-corruption establishment. Therefore, FIR under Article 155 of Police Order, 2002 is not barred; even powers to prosecute under any other law is not affected as guaranteed through Article 183 of Police Order, 2002; therefore, delinquent police officers can be prosecuted under other laws for their derelictions or misdemeanors.

Conclusion: Ex-Officio Justice of the Peace is authorized to deal with violations or disobedience to their orders at their own level by issuing appropriate direction to the higher police officers. On receipt of information and after inquiry, if he finds that an offence has been committed or any wrong persists or is repeated, he can order for registration of FIR under Article 155 (1) (C) of Police Order which is a cognizable offence now.

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17. **Lahore High Court**
Muhammad Tariq v. Fazal Abbas & others
Criminal Appeal No. 1054 of 2011
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC1400.pdf

Facts: During the bail proceedings, appellant/complainant tendered an affidavit and stated before the Magistrate that he had no objection if accused be admitted to post-arrest bail. On the same date, during remand proceedings of remaining respondents, appellant made a statement before the learned Magistrate that he had effected compromise with the respondents and he had no objection if they be enlarged on bail or acquitted from this case. After submission of report under section 173, trial court distributed copies thereafter an application under section 249-A Cr.P.C. was filed by the respondents, which without issuing notice to the appellant, was accepted by the trial court while relying upon the statements of the complainant at bail and remand stage.

Issue: i) Whether the accused can be acquitted solely relying upon the statement/affidavit tendered at bail stage or on the basis of statement recorded at remand stage, in cases falling under sub-section (2) of section 345 Cr.P.C?
ii) Whether, a person can be acquitted in non-compoundable offence on the ground of compromise?

Analysis: i) When statements of complainant were not made by complainant before the court where prosecution was pending, the trial court was not justified to give any credence to the statements of complainant given at bail and remand stage, for offence u/s 337-A(i) PPC, enlisted under section 345(2) Cr.P.C. and that too, without issuing any notice to the appellant during trial because trial court had no

occasion and chance to evaluate the credibility, validity, genuineness and voluntariness of alleged compromise entered into between the parties at bail and remand stage.

(ii) It is established law that compromise can only be effected qua the offences which are made compoundable by Schedule II of Cr.P.C. As section 452 PPC is not made compoundable, even a valid compromise effected between the parties to the extent of allied compoundable offence, cannot be made basis to acquit the accused from such non-compoundable offence, although such compromise can be considered for the purpose of quantum of sentence.

Conclusion: i) The accused cannot be acquitted solely relying upon the statement/affidavit tendered at bail stage or on the basis of statement recorded at remand stage, in cases falling under sub-section (2) of section 345 Cr.P.C.

ii) A person cannot be acquitted in non-compoundable offence on the ground of compromise, although such compromise can be considered for the purpose of quantum of sentence.

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18. **Lahore High Court**
Muhammad Atif Saeed v. Addl. District Judge etc
Writ Petition No. 4719 of 2021/BWP
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1587.pdf

Facts: The petitions call in question orders passed by Justice of Peace whereby, despite the presence of applications disclosing the commission of a cognizable offence, Justice of Peace proceeded to dismiss the applications filed by the petitioners on the premise that the accused is in the custody of National Accountability Bureau (NAB), and since a reference is pending against him, only NAB can initiate any other proceedings.

Issue: i) Whether during pendency of a reference before National Accountability Bureau (NAB), FIR under section 489-F PPC could be lodged and investigated separately?

ii) Whether section 154 Cr.P.C. envisages any hearing for an accused before registration of a criminal case?

Analysis: i) Both are under different enactments of law having different procedure and forum for initiating proceedings thereunder although both the sets of offences have been committed by the accused in one go that is to say that the accused-petitioner acted in such a manner which constituted offences punishable under two separate and distinct laws. Both are different and distinct pieces of legislation, therefore, acts and omissions of the petitioner committed by him cannot be said to be same offences. It was opined by the court that since the applications before the learned Justice of Peace did reveal the commission of a cognizable offence, it was

incumbent on the learned Justice of Peace to have ordered for the registration of criminal cases.

ii) Section 154 Cr.P.C pertains only to the information so provided and do not pertain to actual commission of a cognizable offence. The information so supplied, as long as it is in respect of a cognizable offence, irrespective of its veracity, has to be accepted as gospel by the Station House Officer, in terms of his statutory obligation under section 154 Cr.P.C so at the time of the First Information Report accused persons named in the complaint have no right of hearing.

Conclusion: i) The offence under section 489-F PPC is distinct and separate from the offence of cheating the public at large (section 9(a)(ix) of NAO,1999 which is under trial. Two different sets of evidence are required to prove these distinct offences. And both offences are provided under different statues with different attendant procedural nuances. Moreover, it was incumbent on the Justice of Peace to have ordered for the registration of criminal cases.

ii) At the time of the First Information Report accused persons named in the complaint have no right of hearing.

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19. **Lahore High Court**
ShehzadanMayi v. Area Magistrate
Writ Petition No. 30913 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1262.pdf

Facts: Petitioner instituted a constitutional petition challenging the order of the learned Magistrate whereby he agreed with the discharge report and cancelled the case.

Issue: i) Whether order of discharge resulting in cancellation of report is an administrative and executive order against which a revision is not maintainable?

ii) Fate of concurrence accorded to cancellation report where first change of investigation had already been ordered.

Analysis: i) Order of discharge resulting in cancellation of a crime report is an administrative and executive order against which a revision is not maintainable but a constitutional petition lies.

ii) When the Magistrate was kept in the dark about the status of investigation and since he had deliberately not been informed about the first change of investigation his order cannot be sustained on account of being based on incorrect facts… After an illegal cancellation order of an FIR the only course available is to set aside the order of cancellation of the FIR and apprise the Magistrate through agency of the Police about the development earlier hidden from the Area Magistrate so that he may direct a reinvestigation. It is the police that has to

approach the learned Area Magistrate with the request for re-investigation. The complainant of a crime report is at least entitled to be informed about the developments occurring with respect to the crime report that he has lodged

Conclusion: i) An order of discharge resulting in cancellation of report is an administrative and executive order against which a revision is not maintainable and only remedy is constitutional petition.

ii) When the Magistrate was kept in the dark about the status of investigation and since he had deliberately not been informed about the first change of investigation, his order cannot be sustained on account of being based on incorrect facts.

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20. **Supreme Court of Pakistan**
Divisional Superintendent, Postal Services v. Muhammad Arif Butt
Civil Appeal No.1385 of 2019
Mr. Justice Gulzar Ahmed CJP, Mr. Justice Ijaz Ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1385_2019.pdf

Facts: Respondent a postman was held guilty of misappropriation of Rs. 36,400/- in regular inquiry and dismissed from service. Service Tribunal considering his 27 years' service took lenient view and imposed minor penalty while reinstating him in service.

Issue: Whether a lenient view can be taken when misappropriation of public money/dishonesty stands proved?

Analysis: A government servant who is found to have misappropriated public money, notwithstanding its amount, breaches the trust and confidence reposed in him who is charged with the responsibility of handling public money. Misappropriation of the same whether temporary or permanent and irrespective of amount constitutes dishonesty and misconduct. Such an employee has no place in government service because he breaks the trust and proves himself to be unworthy of confidence that State reposes in him.

Conclusion: A lenient view cannot be taken when misappropriation of public money/dishonesty stands proved.

21. **Lahore High Court**
Mulazim Hussain v. Govt. of the Punjab & others
W.P. No.3717 of 2019 / BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1712.pdf

Facts: Show Cause Notice (SCN) was issued to petitioner under Rule 1.8(a) of the Punjab Civil Services Pension Rules, confronting various allegations mentioned therein after three years of retirement.

Issue: Whether after a lapse of more than one year from the date of petitioner's retirement, SCN / de novo inquiry could be initiated against him?

Analysis: Proceedings under PEEDA may be initiated against a retired employee of government provided the same are: (i) initiated against him during his service or within one year of his retirement; and (ii) finalized not later than two years of his retirement…It is clearly mentioned in the proviso to Rule 1.8(b) of the Punjab Civil Services Pension Rules that no such departmental proceedings shall be instituted after more than a year from the date of retirement of the government pensioner…SCN was issued after a lapse of almost 03-years & 02-months from retirement, clearly much beyond the period of one year, thus violation of Section 1(4)(iii) of PEEDA Act, is manifest.

Conclusion: SCN / de novo inquiry could not be initiated after lapse of more than one year from date of retirement.

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22. **Lahore High Court**
Masood Khan etc. v. Federation of Pakistan etc.
Writ Petition No.125479/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1512.pdf

Facts: Retired petitioners have sought proforma promotion by contending that during 15 years of service of the petitioners as Supervisors, meeting of Departmental Promotion Committee was never convened on administrative grounds without no fault on their part.

Issue: Whether retired employees are entitled to proforma promotion?

Analysis: There is no denial that the petitioners remained in service for fifteen years as Supervisors, which is fairly a long period during which admittedly no DPC meeting was held for no fault on the part of the petitioners. Similarly, seniority of the petitioners during their service is also admitted. The eligibility of the petitioners during the currency of their service with respondent department has neither been refuted nor denied…where the right of a civil servant to be considered for promotion gets frustrated during the service, the Constitutional

Courts have recognized the right of such civil servants to be considered for grant of pro forma promotion even after their superannuation. Denial is contrary to the doctrine of legitimate expectancy and on the basis of same, pro forma promotion can be claimed even after the retirement.

Conclusion: Pro forma promotion can be claimed by the employees even after their retirement from service.

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23. **Lahore High Court**
Muhammad Nawaz v. Director General Rescue 1122
W.P. No.5614/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1555.pdf

Facts: Petitioner was found overage by five days on closing date of the applications, given in advertisement regarding appointment against the post of Driver (BPS-4) in Rescue 1122, Government of the Punjab. He contended that at the time of filing application for the post, he was within age and prayed that his eligibility be considered from the date of submission of application.

Issue: Whether the date of submission of application or closing date as mentioned in the advertisement shall be based for calculating age limit?

Analysis: A cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment…If a candidate does not fulfill the eligibility criteria mentioned therein as on the said cut-off date, he is not entitled to be considered for appointment.

Conclusion: Closing date or cut off date as mentioned in the advertisement shall be a base for calculating age limit.

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24. **Lahore High Court**
Asif Mushtaq v. Government of the Punjab, etc.
Writ Petition No.2477/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1574.pdf

Facts: Petitioner was employed on ad hoc basis for a period of one year. However, the services of the petitioner were terminated on the basis of allegations. Petitioner approached Punjab Service Tribunal by filing an appeal and prayed that stigma be removed and he be reinstated in service. Appeal was partly allowed and stigma was removed. Now petitioner has sought regularization in service.

Issue: Whether the order/judgment of the PST could be sought to be set aside through writ jurisdiction?

Analysis: Words forming part of the termination order stigmatizing the petitioner were deleted; his termination was never set aside and remained in field till date. The judgment of the learned PST attained finality as it is admitted fact that the same was not challenged before the honorable Apex Court under Article 212(3) of the Constitution. The petitioner, instead of taking the proceedings in the learned PST, initiated by r himself to their logical conclusion through the judicial hierarchy, turned towards this Court. The petitioner through the instant petition intends to nibble away the order of the PST in an indirect manner whereas order of the PST could only be assailed under Article 212(3). This is evident from the fact that the PST has maintained the termination; the regularization cannot be directed without reinstatement, which would otherwise imply this Court sitting as an appellate forum of the PST which the Constitution debars.

Conclusion: The order/judgment of the PST cannot be set aside through writ jurisdiction.

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25. **Lahore High Court**
Muhammad Ijaz v. Government of Punjab
Writ Petition No. 4396 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1492.pdf

Facts: The petitioners challenge action of two administrative departments of the Province of Punjab whereby the petitioners have been denied the facility and benefit of Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.

Issue: (i) Whether administrative instructions/notifications being subservient to laws and rules can dilute the facility or benefit afforded by Rule 17-A by declaring that those persons incapacitated or invalidated from government service in medical category 'B' cannot be given the benefit of Rule 17-A?

(ii) Whether administrative instructions or notifications can operate retrospectively?

Analysis: i) The most stark and conspicuous highlight of this Rule is that it does not in any manner create any divisions or classes of incapacitation or invalidation. Scope of the Rule has been considerably and consciously widened so as to reflect a much more beneficial intent, which is in line with the original rationale for introducing such a beneficial Rule. There can be no justification for the existence of categorization of incapacity and invalidation and its consequential effect on the extension of the benefit contemplated by Rule 17- A. Moreover, the entire purpose of the Rule is defeated by creation of categories at an administrative level.

ii) Administrative instructions or rules cannot operate retrospectively so as to take away vested rights.

Conclusion: i) Administrative instructions are neither laws nor rules and these can only be subservient to laws and rules and, therefore, cannot be allowed to dilute the facility or benefit afforded by Rule 17-A.

ii) Administrative instructions or notifications which are not even delegated legislation in the strict sense cannot possibly be allowed to operate retrospectively so as to impair already accrued rights and benefits.

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26. Lahore High Court
Habib Bank Limited v. Saqib Mahmood and another
I.C.A. No. 287 of 2008
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1538.pdf

Facts: Intra Court Appeal has been filed against the judgment passed in Writ Petition whereby writ petition was allowed and respondent was ordered to be reinstated in service.

Issue: i) Whether the Service Tribunal has the jurisdiction or authority to pass a time-line for the conduct and completion of inquiry proceedings?

ii) Whether a constitutional petition is maintainable where the relationship between the employee and employer is not governed by any statutory rules of service?

Analysis: While the Federal Service Tribunal has the power to set-aside, confirm, vary or modify the order appealed against, it does not have any jurisdiction to supervise, manage or control administrative inquiry proceedings by issuance of a continuous Mandamus since it does not possess any extra ordinary jurisdiction such as the one conferred by Article 199 and Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973. What it can do is to vary or modify the order imposing penalty but it cannot go behind the order and control or supervise inquiry proceedings at an administrative level.
Rules of service can only be relied and invoked in constitutional jurisdiction if these are statutory and not otherwise. It is trite that unless there is a statutory intervention available to an employee of a government corporation, attached department, autonomous body writ cannot be filed. An employee can only do so if he is able to show some dereliction of Statute. The employees whose terms of service are governed by non-statutory dispensation remain in an incessant master and servant relationship with the employer.

Conclusion: i) There is no jurisdiction vested in the Federal Service Tribunal that authorizes it to give a timeline within which an inquiry has to be conducted and completed. Directions for the performance of official duties within a particular

time were generally construed as directory and not mandatory. Hence the direction of the Federal Service Tribunal can only be considered to be directory and not mandatory.

ii) The respondent whose terms and conditions were governed by non statutory rules and who had been dismissed from service under such rules could not invoke the remedy afforded by Article199 of the Constitution of the Islamic Republic of Pakistan, 1973 since his relationship with the appellant was governed by the rule of master and servant.

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27. **Lahore High Court**
Rafi Ahmad v. Province of Punjab
Writ Petition No. 4351 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1409.pdf

Facts: The petitioner, a contractual employee employed by the Punjab Information Technology Board, invoked the Constitutional jurisdiction seeking reinstatement.

Issue: Whether a contractual employee can invoke Constitutional jurisdiction seeking reinstatement or the same may be sent as representation to a competent forum?

Analysis: A contractual employee is governed by the principle of master and servant, therefore, has no right for seeking reinstatement and even in the event of arbitrary dismissal or unwarranted termination such employee can only sue for damages. The petitioner cannot, under any circumstances be treated at par with his colleagues who are regular employees. A contractual employee serves at the absolute and unfettered pleasure of his master.At the same time, it must be pointed out that it is indeed permissible for Constitutional Courts to convert and treat one type of proceedings into another and to remit a lis to a forum or authority of competent jurisdiction for decision on merits but while issuing directions for deciding representations, this Court must have due regard to the rights of such other persons in particular who may be the direct affectees of such directions.

Conclusion: A person who has been a contractual employee but whose period of contractual service has come to an end, has no right whatsoever to invoke Constitutional jurisdiction of a High Court neither can his representation be countenanced.

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28. **Supreme Court of the United States**
Allen v. Cooper140 S. Ct. 994 (2020)
https://www.supremecourt.gov/opinions/19pdf/18-877_dc8f.pdf

Facts: Frederick Allen, a videographer, sued North Carolina for copyright infringement. Allen also asked the court to declare a state law unconstitutional, claiming the law was passed in bad faith. The U.S. District Court for the Eastern District of North

Carolina rejected the state's motion to dismiss, and the U.S. Court of Appeals for the 4th Circuit reversed and remanded the district court's ruling.

Issue: Does Congress have authority to abrogate the States' immunity from copyright infringement suits in the Copyright Remedy Clarification Act of 1990 (CRCA)?

Analysis: Justice Kagan remarked, "*Education Expense Board v. College Savings Bank (1999) "precluded Congress from using its Article I powers—including its authority over copyrights—to deprive States of sovereign immunity.Property Clause could not provide the basis for an abrogation of sovereign immunity. And it held that Section 5 of the Fourteenth Amendment could not support an abrogation on a legislative record like the one here. For both those reasons, we affirm the judgment below*". The Court held that under United States Supreme Court precedent the Intellectual Property Clause could not provide the basis for an abrogation of sovereign immunity under the Patent and Plant Variety Protection Clarification Act, the Copyright Remedy Clarification Act of 1990 (CRCA) as it failed the "congruence and proportionality" test. The CRCA aimed to provide a uniform remedy for statutory infringement, rather than redress or prevent unconstitutional conduct, and so, the law was invalid. The power to secure an intellectual property owner's "exclusive right" under the Intellectual Properly Clause stopped when it ran into sovereign immunity.

Conclusion: No. The court affirmed the 4th Circuit's decision in a 9-0 ruling, holding Congress did not have the authority to abrogate or take away state sovereign immunity from copyright infringement suits under the Copyright Remedy Clarification Act.

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29. **Lahore High Court**
Commissioner of Inland Revenue v. M/s Naila Kareem
PTR No.389 of 2009
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1732.pdf

Facts: The respondent/assessee filed Wealth-Tax returns for a few years. For finalization of assessment, notices under Section 16(2) of the Wealth Tax Act 1963 were regularly issued to the assessee, but no compliance was made. Consequently, assessing officer u/s 16(5) of the Act finalized the assessments ex-parte at much higher rate. However, appeals of the assessee against the order of assessment were accepted. Said order was challenged by the department before High Court.

Issue: Whether issuance of notice under section 16(4) of the Wealth Tax Act, 1963 to the assessee, indicating the intention regarding proposed valuation of the impugned assessment, is mandatory before making assessment and determining liability of wealth-tax under section 16(5) of the Act?

Analysis: Section 16 (4) of the Act does not straight away authorize the Wealth Tax Officer to make an opinion/assessment on the basis of information gathered, rather he is required to issue notice to the assessee seeking explanation with documentary

evidence, after confronting the information collected. After said notice and failure on the part of assessee to offer satisfactory response, assessment determining liability of wealth-tax or amount refundable to him could be made. From a bare perusal of aforesaid provision of law, it can simply be inferred that for an explanation to be offered by an assessee, he must have been issued a notice, within the contemplation of Section 16(4) of the Act, without which the assessee would not be able to offer explanation/defence. Although the word "may" has been used in subsection (4), but it has to be read in conjunction with subsection (5) ibid, which suggests that issuance of notice under section 16(4) was mandatory in nature, therefore, its strict compliance was imperative and was to be strictly construed. It is a principle of long standing that whenever adverse action is being contemplated against a person, a notice and/or opportunity of hearing is to be given to such person. It is settled law that if private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact pre-emptory or mandatory as a general rule.

Conclusion: Issuance of notice under section 16(4) of the Wealth Tax Act, 1963 is mandatory before making assessment under section 16 (5) of the Act.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Evidence+Law

   E-EVIDENCE - MANAGING THE CHALLENGES by Neeraj Aarora

   These various forms of Electronic Evidence/ Digital Evidence are increasingly being used in the judicial proceedings. At the stage of trial, Judges are often asked to rule on the admissibility of electronic evidence and it substantially impacts the outcome of civil law suit or conviction/acquittal of the accused. The Court continue to grapple with this new electronic frontier as the unique nature of e-evidence, as well as the ease with which it can be fabricated or falsified, creates hurdle to admissibility not faced with the other evidences. The various categories of electronic evidence such as CD, DVD, hard disk/ memory card data, website data, social network communication, e-mail, instant chat messages, SMS/MMS and computer generated documents poses unique problem and challenges for proper authentication and subject to a different set of views.

2. **BANGLADESH JOURNAL OF LAW**
   http://www.biliabd.org/article%20law/Vol7%20special%20issue/Dr.%20Ridwanul%20Hoque.pdf

   CRIMINAL LAW AND THE CONSTITUTION: THE RELATIONSHIP REVISITED by Ridwanul Hoque

   The adherence to basic constitutional norms and principles can nowhere be more important than in the area of criminal process, because criminalizing and punishing invariably bear upon a person's right to life and liberty. For ages, it has remained a daunting challenge for human societies to minimize the "evils" of, or to ensure the protection of human rights in, the criminal justice process.1 As back as in 1972, the Constitution of the People's Republic of Bangladesh incorporated certain most fundamental, universally practiced principles of criminal justice, which are of mandatory nature. Three decades after the Constitution's coming into force, however, the impact of these constitutional norms on the country's criminal law generally, and in the litigation process in particular, has been frustratingly minimal. Apart from the Constitution, a number of international human rights instruments have cast obligations upon Bangladesh to ensure a fair, effective, accessible, and just criminal justice system.

3. **CONSTITUTIONAL COURT REVIEW**
   https://journals.co.za/doi/pdf/10.2989/CCR.2019.0001

   PUSHING THE BOUNDARIES: JUDICIAL REVIEW OF LEGISLATIVE PROCEDURES IN SOUTH AFRICA by Stephen Gardbaum

   The article begins with a brief discussion of the background norm of non-intervention in legislative procedures from which the Court has progressively and so notably departed. It then charts the three steps by which this departure has come about, showing how each of them marks a new stage in the degree of judicial supervision. The heart of the article explores whether the Court was justified in taking these steps or was guilty of overreaching. It argues that, although a certain general tension between the separation of powers and rule of law underlies the background norm of judicial non-intervention, in the specific contexts in which these cases were decided, these two values increasingly came together. Indeed, far from violating separation of powers, the Court promoted it when overly concentrated legislative-executive power threatened impunity.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(15-06-2021 to 30-06-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Lahore High Court**
Government of the Punjab & others v. M/s Muhammad Asad & Co.
FAO No.2885 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1853.pdf

Facts: The application moved by the appellants u/s 34 of the Arbitration Act, 1940 for staying the proceedings of respondent's suit and referring the matter/dispute to the Arbitrator for decision as per arbitration agreement, was dismissed by the civil court.

Issue: At what stage the application for stay of proceedings u/s 34 of Arbitration Act, 1940 (the Act) is required to be made?

Analysis: The Legislature has, of course, clearly implied in the language used in Section 34 of the Act, that the arbitration clause should be respected, but has also made it abundantly clear that the party seeking to avail of the provision of stay under this section must clarify its position at the earliest possible opportunity, so as to leave no manner of doubt that it wishes to have resort to arbitration proceedings. If it hesitates in this regard, or allows the suit to proceed in any manner, that conduct would indicate that such party has abdicated its claim to have the dispute decided under the arbitration clause, and thereby had forfeited its right to claim stay of the proceedings in the Court. Even if the matter has been adjourned by the Court in routine for filing of a written statement, the defendants, if they want to opt for the dispute resolution mechanism contained in the contract, can take corrective steps and inform the Court, without any delay, about their intention to seek stay of the suit. Since the appellants have not taken up the issue of sending the matter to the arbitrator at the earliest, thus, relinquished/waived their right for such request.

Conclusion: The party which intends to get a suit stayed u/s 34 of the Act must, at the earliest, inform the court about their desire for the resolution of the matter through Arbitration as contained in their agreement with the opposite party.

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2. **Lahore High Court**
Raja Azhar Hayat v. Additional District Judge/ Gas Utility Court & others
W.P. No.19738 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1872.pdf

Facts: In a civil suit for recovery by SNGPL, the civil court proceeded ex-parte against the petitioner and recorded evidence. Subsequently, the matter was transferred to the Additional District Judge/Gas Utility Court, who ex parte decreed the suit. Thereafter, the application moved by the petitioner for setting aside ex parte proceedings and decree, was dismissed.

Issue: i) Whether it is necessary to examine the process server before making the order for substituted service?

ii) Whether the transferee court is required to issue notice to a party against whom ex parte proceedings were already made by the transferor court?

Analysis: i) In terms of Order V Rule 19 C.P.C., the Court was required to examine the Process Server on oath, make further inquiry in the matter and declare that the summons were duly served, but it is not discernible from record that any such exercise was undertaken by learned Trial Court, rather it straightaway ordered publication in the newspaper. Therefore, it was not a proper service within contemplation of Order V Rules 19 & 20, C.P.C.

ii) On transfer, Gas Utility Court did not issue any fresh process for appearance of the petitioner and did not record evidence by itself, rather proceeded to pass decree on the basis of proceedings undertaken and evidence recorded by the Civil Court. Needless to say that Gas Utility Court was obliged under the law to issue process/notice to petitioner to impart him information that the case had been transferred to it and in absence of such notice, petitioner was well within his rights to plead lack of knowledge regarding Court in which he had to appear. The ex parte proceedings already made against petitioner do not deprive him of a right to receive notice on transfer of suit.

Conclusion: i) Examination of the process server is compulsory before making order for substituted service or further proceedings.

ii) Transferee Court should issue notice to a party even against whom ex parte proceedings have already been made to give that party intimation that the case has been transferred to it.

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3. **Lahore High Court**
Board of Intermediate and Secondary Education Multan & another v. Muhammad Ans, etc.
Review Application No.34 of 2019
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC2107.pdf

Facts: The petitioner sought review of consolidated judgment passed in intra-court appeal.

Issue: Whether review of a judgment is permissible to ascertain further questions of law?

Analysis: One of the most essential requirements for invoking review jurisdiction of a Court is that important evidence having a material bearing upon the merits of the case and decision thereof was subsequently discovered, which was neither in the possession nor in the knowledge of the aggrieved party before passing of the judgment/order sought to be reviewed and further that the important evidence referred to was in existence when the judgment/order was made. The power of review can only be exercised when an error or mistake is manifestly shown to float on the surface of record, which is so patent that if it allowed to remain intact, would perpetuate illegality and gross injustice. Categorical findings recorded after careful and conscious appreciation of all pros and cons of the matter and cannot be re-opened

with a view to re-appraising the same and for taking a contrary view, which otherwise did not suffer from misconstruction or mis-appreciation of the law applicable to the facts of the case. Review jurisdiction cannot be invoked as a routine matter or to re-hear a case which has already been decided.

Conclusion: The points already raised and considered cannot be re-agitated in review jurisdiction and the review cannot be made a pretext for re-arguing whole case and matter cannot be re-opened under the garb of review application.

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4. **Lahore High Court**
Shahbaz v. Fakhira Bibi
W.P No.31627 of 2021
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC1994.pdf

Facts: The appellant filed an Intra Court Appeal under section 19 of the Contempt of Court Ordinance, 2003 against the order of a single judge whereby his criminal original was disposed of on the ground that the order of the Court was complied with by the respondent authority.

Issue: Whether intra court appeal is maintainable against the order of Single Judge, wherein contempt proceedings were not initiated against the contemnor and case was disposed of?

Analysis: In the order passed by single judge no contempt proceedings were initiated against the contemnor and the disposal of the criminal original does not amount to an order which is appealable under section 19 of the Contempt of Court Ordinance, 2003. Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 conferred jurisdiction to the Superior Courts of the country to punish those persons who committed violence or deny complying with order of the Superior Courts. In this regard The Contempt of Court Ordinance, 2003 was promulgated wherein jurisdiction has been provided under section 5 of the provisions of the Ordinance ibid to the Superior Courts to convict and punish the contemnor in contempt of court. Section 19 of the Ordinance ibid provides a remedy of appeal. The conjoint reading of definition of the word “order” or “orders” provided in section 2(14) of C.P.C. and in Order XLIII, C.P.C. it can be said that the word “order” means “the formal expression of any final decision” and any order which is not founded on any decision is devoid of attaining the status of an order. The challenge of each and every interim procedural kind of order will over-flood the litigation and would make the very litigation as well as the proceedings where under as unending. This liberty would practically negate the spirit and intent behind the legislation of Article 204 of the Constitution the entire proceedings conducted in original jurisdiction of the superior court (High Court) would become virtually in executable and worthless. Only such orders, decisions, judgments which finally terminate the contempt proceedings against the contemnor are appealable.

Conclusion: The word "order passed in contempt" means the order only awarding punishment and it is the said order which can be assailed in Intra Court Appeal, whereas the interlocutory, interim or procedural orders do not fall within the ambit of the 'order' passed in contempt of Court, therefore, order disposing of petition being not an order inflicting punishment is not appealable.

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5. **Lahore High Court**
Muhammad Shafeeq v. United Bank Limited
Execution First Appeal No. 30756 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC2193.pdf

Facts: Court, at the request of decree holder bank issued non-bailable warrants of arrest against the Appellant to satisfy the decree despite of the fact that the decree holder bank did not file any application under Order XXI Rule 37 CPC.

Issue: Under what circumstances, a judgment debtor can be arrested in execution proceedings?

Analysis: The detention of the judgment debtor can be ordered in accordance with Section 51 read with Order XXI, Rule 37 to Rule 40 of the Code of Civil Procedure, 1908…. Request on the basis of bald allegations without reference to any material evidence or fact merely to procure a coercive order, without adequate efforts to satisfy the decree by adopting the other modes provided in law is highly unjustified. No mechanical order for detention or arrest can be passed. The precondition for issuing of warrants of arrests should be proved to have satisfied and the Courts should ensure that the debtor is likely to leave the limits of the Court to frustrate the decree or execution thereof or debtor has dishonestly transferred the property to avoid the decree or he has means to pay the decree and neglecting to do the same must be reflected from the record before adopting such coercive measures.

Conclusion: See above

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6. **Lahore High Court**
Shahbaz v. Fakhira Bibi
W.P No.31627 of 2021
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC1942.pdf

Facts: The petitioner challenged the judgment and decree of Family Court wherein dissolution of marriage was decreed against him on the ground that he was not given sufficient time for reconciliation.

Issue: Whether wife is entitled to claim Khula as a matter of right, despite unwillingness of the husband to release her from the matrimonial tie?

Analysis: The decree passed on the basis of *Khula* has been declared as non-appealable in terms of section 14(2) of the Family Court Act, 1964 seemingly for the reasons that wife cannot be compelled to live with the husband against her wishes and secondly to protect *wife* from costly and prolonged litigation.

Conclusion: Not only according to the Injunctions of Islam but also according to Family Court Act, 1964, the wife cannot be compelled to live with her husband against her wishes; hence always entitled to seek dissolution of marriage through 'Khula'.

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7. **Lahore High Court**
Ahmad Khan v. Muhammad Azam
Civil Revision No.123 of 2013
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC2160.pdf

Facts: The respondent claimed that the suit property was purchased by him vide oral agreement and mutation was sanctioned in this regard.

Issue: How a mutation is to be sanctioned?

Analysis: Unless the mutation is of inheritance or it is followed by a registered deed or it is under an order of the Court, the same is required to be in presence of that person whose right has been acquired and it is necessary that such person is identified by two responsible persons preferably Lambardar, Member Union Committee, Union Council or Town Committee. The signatures or thumb impressions of the aforesaid two persons should be obtained by the Revenue Officer. In the absence of fulfillment of the aforesaid requirement of law, the factum of entry in the record cannot carry any presumption of truth.

Conclusion: See above.

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8. **Supreme Court of Pakistan**
Muhammad Siddique v. Senior Executive Vice President, PTCL
Civil Appeal No. 1477 of 2019
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1477_2019.pdf

Facts: The pay of petitioner was Rs. 8070/- but in oral evidence he stated it to be 7605/-.

Issue: Which piece of evidence will be given preference, whether oral or documentary?

Analysis: There is a well-known dicta that 'a man can tell a lie but a document cannot'. If a person has or has been bestowed some legal right and he omitted to claim such legal right through oral assertion but the best documentary evidence of which the case in

its nature is susceptible is found in his favour then the documentary evidence in favour of a person should be given credence.

Conclusion: Documentary evidence shall be given credence over the oral account of a witness.

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9. **Supreme Court of Pakistan**
Muhammad Asif Awan v. Dawood Khan
Civil Appeal No. 1767 of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah,
Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1767_2019.pdf

Facts: The appellant filed a suit for specific performance. The respondent denied the execution of agreement to sell and claimed it to be forged and fictitious. On the application of the respondent, the appellant was directed to deposit entire sale consideration, deeming it mandatory. Trial court extended the time to deposit the sale consideration. Revision against this order was dismissed by District Court but High Court set aside the revisional order and non-suited the appellant.

Issue: i) Whether it is mandatory for the vendee to apply for deposit of balance sale consideration in all situations in the light of Hamood Mehmood case 2017 SCMR 2022?
ii) Whether court may extend time to deposit balance sale consideration?

Analysis: i) There is no provision in the Specific Relief Act which, upon filing of the suit seeking specific performance of an agreement in respect of an immovable property, casts any duty on the court or requires the vendee to first deposit the balance sale consideration, however, since the law of Specific Relief is based on the principles of equity and that the relief of specific performance is discretionary and cannot be claimed as a matter of right; therefore, the court in order to ensure the bona fide of the vendee at any stage of the proceedings may put him to terms…..The vendee while seeking specific performance must state that either he has performed all the conditions which, under the contract, he was bound to perform and/or that at all times right from the date of the agreement down to the date of filing the suit, he has been ready and willing to perform/fulfill his part of the deal. He is not only supposed to narrate in the plaint his readiness and willingness at all material time to fulfill his part of the agreement but also is bound to demonstrate through supporting evidence such as pay orders, Bank statement or other material, his ability to fulfill his part of the deal leaving no doubt in the mind of the court that the proceedings seeking specific performance have been initiated to cover up his default or to gain time to generate resources or create ability to fulfill his part of the deal. It is in that pursuit that the court to weigh his capacity to perform and intention to purchase may direct the vendee to deposit the balance sale consideration. The readiness and willingness on the part of the vendee to perform his part of obligation also prima facie demonstrate that the non-completion of the contract was not the

fault of the vendee and the contract would have been completed, if it has not been renounced by the vendor…..Case of Hamood Mehmood (2017 SCMR 2022) is a leave refusing order and cannot be held to be an enunciation of law by this court as it has been settled by this court in a number of cases that an order granting and /or refusing leave is not a judgment which decides a question of law and therefore, it should not be followed necessarily and imperatively.

ii) Non-compliance of the directions of the court by a vendee to deposit the balance sale price while keeping the lis of specific performance alive has totally different consequences… In this case, the court does not lose its jurisdiction to review its order by extending time for depositing the balance sale price for the simple reason that the vendee on the face of denial or plea of termination of agreement has only to establish his bona fide/seriousness to standby his part of the commitment… However, in cases where the court while directing the balance price terminates the lis or where direction to deposit the balance sale price is issued at the instance of the vendor, who has shown his readiness to perform his part of the contract, the court ordinarily becomes functus officio and loses its authority on the lis and consequently has no jurisdiction to extend time for the deposit of the balance sale price.

Conclusion: i) It is not mandatory for the vendee to apply for deposit of balance sale consideration in all situations in the light of Hamood Mehmood case 2017 SCMR 2022.

ii) Court may extend time to deposit balance sale consideration where the suit is alive.

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10. **Lahore High Court**
Muhammad Ashraf Iqbal, etc. v. Abid Hussain, etc.
W.P No.2939 of 2016
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC2088.pdf

Facts: The petitioner assailed the judgment of trial Court and order passed in Revision by the first appellate Court wherein his suit for recovery of possession under Section 9 of Specific Relief Act was dismissed concurrently.

Issue: What are the requirements to file a suit for recovery of possession under Section 9 of Specific Relief Act?

Analysis: The plaintiff was bound to prove that he was in possession of the suit property and had been dispossessed by the defendant other than in due course of law. Mere recital in the sale deed regarding boundaries of the plot and delivery of possession is not enough to succeed. The petitioner miserably failed to prove that they were in possession of the suit property and the respondents/defendants have forcibly occupied their land without adopting due course of law.

Conclusion: It is necessary to prove specific possession upon the suit property through strong and un-impeachable evidence prior to dispossession and thereafter dispossession from the defendants' side without due course of law.

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11. **Lahore High Court**
Allah Wasai (deceased) through L.Rs. v. Khuda Bukhsh, etc.
Civil Revision No. 964-D of 2003
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC1988.pdf

Facts: The petitioner challenged a gift mutation that was sanctioned in favour of the respondents by depriving her right of inheritance on the grounds of being entered into without any jurisdiction and legality.

Issue: What are the requirements of proving a gift made by a donor, who was suffering from serious illness leading to his death at the time of making gift?

Analysis: The deceased father of the parties was admittedly suffering from some serious diseases before his death and even P.W.2 admitted that he was paralyzed about 3/4 days before his death. Meaning thereby deceased was incapable of getting his statement recorded and even to understand the events of alleged gift, entered in the revenue record, in favour of the respondents/sons, by depriving the present petitioner/daughter.

In this case the petitioner was deprived of her share in inheritance through purported gift deeds, which were not proved by the respondents as per requirement of law, because the basic ingredients for gift i.e. offer, acceptance and delivery of possession are missing in the plaint, as the plaintiffs could not plead as to when, where and in whose presence the deceased Ghulam Ali made offer for gifting out the property, which was accepted in presence of such and such witnesses, whereafter possession was delivered to the respondents/sons as entering the mutation of gift a subsequent event and when the respondents failed to prove the prior event, entering of mutation and alleged Roznamcha are not helpful to them.

Moreover, it was incumbent upon the respondents, being beneficiaries to bring on record cogent and plausible evidence showing that the deceased was enjoying good health and was in good senses when he gifted out the property to them; as against them it has come on record that he was suffering from some serious diseases and was paralyzed about 3/4 days before his death, so in such an eventuality any transaction, allegedly made by him, cannot be said to be with an independent mind; thus, when the revenue officer/AC-II found unable to make statement, he had rightly cancelled the alleged gift mutations.

Conclusion: See above.

12. **Lahore High Court**
The State through Prosecutor General Punjab Vs. Duty Magistrate etc
Writ Petition No. 22107 of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2020LHC3796.pdf

Fact: The request of the Investigating Officer in offence under section 9(c) of the Control of Narcotic Substances Act, 1997 for judicial remand was turned down and the accused was discharged from the abovementioned case on the ground that name of informer is not mentioned in FIR

Issue: i) Whether the name of informer is necessary to mention in FIR?
ii) What is status of police witnesses in narcotics cases?
iii) Whether complainant police officer can be investigating officer in narcotics cases?
iv) Whether previous acquittal of accused justifies his discharge in subsequent cases?

Analysis: i) Article 8 of Qanun-e-Shahadat Order, 1984 clearly states that no Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence. Therefore the complainant is legally not bound to mention the name of informer (spy) in the FIR and he had legal protection to keep secret the name of informer (spy).
ii) That association of private witnesses at the time of recovery of narcotics or recording the statement of any person of the locality to ascertain that as to whether or not, an accused runs the business of narcotic substances was not mandatory in the case in hand. Moreover, it is by now well settled that in the cases registered under the Act ibid, the police officials are as good witnesses as private/public witnesses.
iii) There is no legal bar that a complainant of the case registered under the Act, 1997, cannot be the Investigating Officer of the said case. It is by now well settled that functioning of a police officer in a case of Narcotic, in his dual capacity as a complainant and as an Investigating Officer is neither illegal nor unlawful, so long as it does not prejudice the case of the accused person.
iv) Every criminal case has to be decided on the basis of its own peculiar facts and acquittal of an accused in an earlier case does not mean that he has to be discharged in all subsequent cases, irrespective of the merits of the said cases.

Conclusion: i) The name of informer is not necessary to mention in FIR.
ii) The police witnesses are as good as private witnesses in narcotics cases.
iii) The complainant police officer can be investigating officer in narcotics cases.
iv) Previous acquittal of accused does not justify his discharge in subsequent cases.

13. **Lahore High Court**
Crl.Misc.No.25040-B of 2021
Da Yong Wu v. The State & another.
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC2171.pdf

Facts: A Chinese national was arrested from whose possession 5100 grams of Ketamine was recovered. A criminal case was registered against him under section 9(c) of CNSA, 1997. He has applied his post arrest bail.

Issue: Whether the recovered substance falls within the ambit of narcotic drug or psychotropic or controlled substance and whether registration of case under section 9 of CNS Act, 1997 was justified?

Analysis: The mischief of section 9 of CNS Act, 1997, attracts if a person is found to have contravened the provision of sections 6, 7 and 8 of the Act ibid. For entailing consequences of section 9 of CNS Act, 1997 the recovered substance must be declared as narcotic drug, psychotropic or controlled substance. Under section 7 (2) of CNS Act,1997, Federal Government can make rules to permit and regulate the import, export and transshipment of narcotic drugs, psychotropic or controlled substance under a license or permit, needless to mention here for the purposes of medical, scientific or industrial purposes. Under section 2(za) of CNS Act, 1997, a substance can be declared as psychotropic substance by notifying it in official gazette.

Ketamine hydrochloride was declared as psychotropic substance vide SRO No.446 (1)/2020 dated 06.04.2020 issued by Government of Pakistan Ministry of Narcotics Control. The Ketamine is generally used for medical purposes and even on occasions as an anesthesia medicine thus probably was felt that it comes within the exceptions mentioned in section 6 of CNS Act, 1997. As a necessary consequence, the SRO No.446 (1)/2020 was later withdrawn on 21.08.2020 vide Notification No.13-20/14 Police-I.

Conclusion: After withdrawal of SRO No.446 (1)/2020, Ketamine is not a psychotropic substance. Its recovery in no manner entails consequences of a criminal case registered under section 9 of CNS Act, 1997. Bail application was allowed.

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14. **Lahore High Court**
The State v. Zahid Latif & another
Criminal Appeal No. 2030 of 2010
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1900.pdf

Facts: The State filed appeal against the order of acquittal of respondents in a case registered under Section 9-C CNSA, 1997.

Issue: Whether injection manufactured by a pharmaceutical company and labeled as Buepron but actually containing Buprenorphine (Buepron) comes within the ambit of Special Court under CNSA or in the domain of Drug Court?

Analysis: Buprenorphine is a Psychotropic Substance and is mentioned in schedule issued under section 2(za) of CNSA, 1997 at serial No. 7, whatever the name a substance is labelled by a manufacturing company on the injection, tablets or syrup is matter for the purpose of trading and copy rights protection; therefore, it does not eject such substance from the definition of Psychotropic Substance. On de-sealing of case property when instead of Buprenorphine, the name Buepron printed on injection was found, it does not change its status unless it is proved that both are different drugs. Buprenorphine Injections and Tablets and opium concentrated Syrup are regarded in the Act as manufactured drugs as per section 2(q) of the Act and all manufactured drugs fall within the definition of Narcotic Drug which is defined in Section 2 (s) of the Act. In order to determine whether the recovered material was psychotropic substance or manufactured drugs, it would only be determined by the Government Analyst appointed in Federal or Provincial Narcotics Testing Labs as per Section 35 & 36 of CNSA, 1997 and his report shall be admissible in evidence of the facts stated therein without formal proof and such evidence shall, unless rebutted, be conclusive.

Conclusion: Injection labeled as Buepron but actually containing Buprenorphine (Buepron) comes within the scope of psychotropic substance; hence triable under special court under CNSA, 1997.

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15. **Lahore High Court**
Muhammad Ashraf v. The State
Crl. Misc. No. 33182-B of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2020LHC3793.pdf

Fact: Petitioner seek post arrest bail in offences under sections 324/148/149/337A(ii)/ 337F(i)/337F(iii)/337L(ii) PPC. The petitioner has been assigned the role of making a fire shot at the chest of PW-1 and inflicted butt blow of rifle on the head of PW.

Issue: Whether the petitioner is entitled to grant of bail in matter of cross version?

Analysis: This is case of cross version and accused has also sustained injuries. His MLC is not challenged by complainant party. Although it is argued that the injuries of the petitioner were simple in nature, whereas the injuries sustained by the complainant party are grievous but it is by now well settled that nature of injuries is not relevant at bail stage, in a case of cross versions. It will be determined by the learned trial Court after recording of evidence that as to who was the aggressor and who was aggressed upon.

Conclusion: The petitioner is entitled to grant of bail.

16. **Lahore High Court**
Mst. Zainab Bibi alias Gudo v. The State
Criminal Appeal No. 05 of 2021
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2013.pdf

Facts: The Appellant was convicted and sentenced for commission of offence punishable u/s 9 (c) of CNSA, 1997.

Issue: i) What is the importance of examination of accused u/s 342 CrPC in a criminal trial?

ii) What will be the effect of not putting any piece of evidence to an accused in her/his examination u/s 342 CrPC?

Analysis: i) Under Section 342 of the Code of Criminal Procedure, 1898, it is the duty of trial Court to examine the accused. Power to examine an accused under the settled principles of law is not mere a formality but a mandate to enable the accused to explain any circumstance appearing against him in evidence. During this exercise every piece of evidence which can be used against the accused for the purpose of conviction is required to be put to him, so he may be in a position to respond thereto. Every piece of evidence certainly includes the documentary evidence also. Said examination of accused is based on the principle involved in maxim "Audi Alteram Partem" that means, no one should be condemned unheard". These circumstances to be put to accused are also called 'incriminating pieces of evidence'. The word incriminating means "a material that has harmful effect". Therefore, deviation from said duty shall render the conviction invalid.

ii) We have perused the examination of the accused recorded by learned Trial Court u/s 342 CrPC. Where though in question No. 5 only there is mention of sending the sample to PFSA yet report of PFSA (PE) was never put to the accused through any question for enabling her to explain that piece of evidence. Such omission is not curable under the law and has caused miscarriage of justice.

Conclusion: i) Examination of accused u/s 342 CrPC is mandatory to enable the accused to explain any circumstance appearing against him in evidence.

ii) Failure of putting any piece of evidence to the accused in her/his examination u/s 342 Cr.P.C is an incurable mistake and causes miscarriage of justice.

17. **Lahore High Court**
Dawood Abdul Ghafoor v. Justice of Peace etc.
W.P. No.9086 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1916.pdf

Facts: The petitioner filed this petition against the order passed by a Justice of Peace, whereby, on the basis of an application disclosing the commission of a cognizable offence, he proceeded to direct the S.H.O. to register a criminal case under section 489-F PPC.

Issue: i) What is the rationale and ethos of section 154 Cr.P.C?
ii) Whether registration of FIR is an adverse action and that the person against whom the FIR is being registered should, therefore, be heard before its registration?
iii) Registration of FIR and arrest of accused person are two different concepts under the law.

Analysis: i) It is clear from a reading of Section 154 Cr.P.C. that the word 'shall' which carries a mandatory connotation has been used and is clearly indicative of the intent of the legislature. There is no subjective or even objective discretion left to the police officer by this section. The strict statutory prescription makes this provision a self-executory mechanism. Furthermore, the term 'information' appearing in section 154 Cr.P.C. is not qualified or conditioned upon any prefixed terms such as reasonable, credible, believable, truthful etc. It is also evident that what is required and necessary is only that the information given to the police must disclose commission of a cognizable offence.
ii) Section 154 Cr.P.C. is clear and unambiguous and it would be legally impermissible to allow the police to read the term 'preliminary inquiry' or 'prior hearing' into the provision before registering an FIR. The reliability, genuineness, credibility, reasonableness, veracity and any opinion pertaining to the information so received has never remained a relevant precedent fact for registering a case under section 154 Cr.P.C. Mere registration of FIR could bring no harm to a person against whom it has been recorded. Section 154 Cr.P.C. does not envisage a right of hearing in the provision itself.
iii) Arrest of a person accused in an FIR is not a natural or obvious consequence of registration of FIR. While registration of FIR may be mandatory, arrest of accused immediately after registration of FIR is not at all mandatory.

Conclusion: See above.

18. **Lahore High Court**
Muhammad Mukhtiar & another v. The State
Crl. Appeal No.44 of 2018
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1953.pdf

Facts: Allegedly the accused was caught making adulterated carbonated drinks of famous brands.

Issue: Whether the question of chain of safe custody is applicable only in cases of recovery of Narcotics or does it also apply to other cases where prosecution relies upon the report of an expert?

Analysis: The argument that the question of chain of safe custody is applicable only in case of recovery of Narcotics is devoid of force. For safe administration of justice, in every case where prosecution relies on the report of an expert and demands conviction on the basis thereof, it cannot deviate from the duty to establish the chain of safe custody which means safe transmission of the alleged material from spot of recovery till its receipt by the Government Analyst. Therefore prosecution must prove that: -

i) Parcels were made at crime scene in accordance with the procedure prescribed by the law.
ii) Before dispatch of parcels of samples to the Government Analyst, those were kept in safe custody by an authorized officer.
iii) Those were deposited by an official in the office of Government Analyst.

Conclusion: Question of chain of safe custody is not only applicable in the cases of recovery of Narcotics but in every case where the prosecution relies upon the report of expert and seeks conviction on its basis.

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19. **Lahore High Court**
Shafqat Masih etc v. The State etc.
Criminal Appeal No. 769/2014
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC2033.pdf

Facts: The appellant filed appeal against his conviction in offences punishable under section 295-B, 295-C, 201 of PPC and section 25-D of the Telegraph Act, 1885.

Issue: Whether ‘SMS’ delivered through a Mobile Phone is admissible in evidence, if yes, what is the mode of proving it in the Court?

Analysis: Article 164 of the QSO may be termed as the enabling provision. The procedure to prove the evidence collected through modern techniques is laid down in Articles 46-A and 78-A thereof and the Electronic Transactions Ordinance, 2002. In Ishtiaq

Ahmed Mirza and 2 others v. Federation of Pakistan and others (PLD 2019 SC 675) the Hon'ble Supreme Court held that this has "smoothened the procedure to receive such evidence." SMS, "is one of the most deliverable forms of communication worldwide." Research shows that it has a delivery rate of 99.9% and 90% of the text messages are opened within three minutes of receipt. SMS is covered by Article 164 of the QSO and is admissible to prove a fact subject to the following three conditions:

i) the fact sought to be proved is relevant, i.e. it must be "of consequence to the determination of the case";
ii) the text is not a hearsay; and
iii) its authenticity is duly established at the trial.

Conclusion: SMS through a Mobile Phone is admissible in evidence as per Article 164 and it shall be proved in court subject to the procedure laid down under Articles 46-A and 78-A of QSO 1984.

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20. **Lahore High Court**
Raja Fahad v. The State, etc.
Murder Reference No.79 of 2019
Mr. Justice Ch. Abdul Aziz, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC1741.pdf

Facts: The complainant of the case claimed to be present at the crime scene and witnessed the occurrence alongwith the others when the assailants, nominated in the FIR, assaulted on his brother (deceased) and another (injured). During examination u/s 342 Cr.P.C accused/present appellant denied all the allegations; however he neither appeared as his own witness u/s 340(2) Cr.P.C. nor produced any evidence in his defence. He was convicted and awarded death sentence as Ta'zir and further to pay compensation u/s 544-A Cr.P.C.

Issue: Whether, without examination of the doctor/para medical staff who conducted CT Scan and prepared a report accordingly, any probative value can be attached to it where the CT Scan and other documents were considered by the Medical officer to form his opinion about death of the deceased?

Analysis: Medical Officer had given his opinion regarding the cause of death while going through the documents produced before him by the Medical Superintendent, which included notes by Surgical Unit doctors and Ward files, including notes by Neurosurgery Unit and death slip and the treatment documents suggested that he was labeled as a case of head injury. Although CT Scan Film and X-rays were not produced before him, however, the death slip indicated CT Scan findings, which was consistent with head injury. But during the course of trial, the prosecution has produced only the Medical Officer, who conducted medical and postmortem examination of the deceased but the Technician and doctor/radiologist, who got

conducted the CT Scan had not been adduced as prosecution witnesses before the leaned trial court. Even both of them were not associated by the investigating agency during the course of investigation……. The law is very clear that only report of Chemical Examiner or Serologist etc., are per se admissible under section 510 of the Code of Criminal Procedure, 1898 (Cr.P.C.) and the CT Scan report submitted by the Radiologist was not covered under the said provision of law and it was incumbent upon the prosecution to produce the said witness, who got conducted the CT Scan as a witness.

Conclusion: No probative value can be attached with the CT scan report or other documents on the basis of which opinion about cause of death is made out, unless the scribers of such documents/reports are examined as a witness before the Court.

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21. **Lahore High Court**
Tahir Naqash v. The State etc.
Criminal Appeal No. 70487 of 2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1896.pdf

Facts: Through appeal, judgment of conviction passed against the appellant, in a narcotics case, was assailed on the grounds of lapse in the chain of custody.

Issue: Whether the police can claim privilege regarding Register No. 19; and if not how it is to be proved?

Analysis: If Register No. 19, has been summoned by the court then court should look into its relevancy and admissibility first and then allow the defence to prove it through primary evidence as mentioned in Article 161 of the Qanun-e-Shahadat Order, 1984. Though public documents are proved through certified copies yet they should be in the form as required u/a 87 of the Qanun-e-Shahadat Order, 1984. Any person when applying for such document can face question of any privilege claimed on it. It is the court which would decide whether the claimed privilege sustains or not. In the present case, register No. 19 was not duly proved; therefore, any page/part of register bringing on record without formal proof would amount to improper admission of evidence. It is trite law that if such practice is allowed to continue then every junior ranked police official, while bringing on record any register and claiming it as genuine, real and true without the knowledge of senior officers in the hierarchy of police station or the department, can thwart the sanctuary of the prosecution case.

Conclusion: Police usually claim privilege against unpublished official record for its production before the court as mentioned in Rule 27.24 of Police Rules, 1934, wherein certain documents are under absolute privilege though other not, yet police can also claim privilege on it; therefore, it is the court which after summoning and examining the document without showing it to the parties would decide whether it is privileged document or not; if court declares it as not privileged, then would ask the party to

prove the document through primary evidence with any exception as highlighted in Article 161 of Qanun-e-Shahadat Order, 1984 and not in any other manner. .

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22. **Lahore High Court**
Mst. Aziz Mai v. The State etc.
Criminal Appeal No. 271-J of 2010
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1936.pdf

Facts: The appellant assailed her conviction under section 302(b) PPC and sentence of imprisonment for life on the allegation of killing a seven month old baby with blow of iron pipe.

Issue: What is the legal effect of inconsistency between oral and medical evidence as to an injury with iron pipe causing a simultaneous fracture of temporal, frontal and occipital bones?

Analysis: The injury observed by the doctor during Post mortem is subjacent to the area of impact and not perfectly opposite to it; therefore, it can be regarded as coup injury and not a contre coup; but confusion still persists that an injury with iron blow pipe can cause a simultaneous fracture of temporal, frontal and occipital bones; obviously not. Now if it was caused by falling then there must be a contre coup injury which is missing in this case; it was probably due to the reason that bones of child of this age are soft and elastic and injuries usually cause greenstick fractures; therefore, there must be depressed fracture in this case but doctor observed otherwise. Thus, it is clear that injury probably was sustained when head struck against a hard surface, i.e., by falling, yet from a considerable height. Investigating officer didn't appear as witness to prove that there was hard surface at the place of occurrence.

Conclusion: Hitting of iron blow pipe with force cannot cause simultaneous fracture of temporal, frontal and occipital bones; therefore, medical evidence contradicts with ocular which makes the story of prosecution doubtful.

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23. **Supreme Court of Pakistan**
Secretary Agriculture, Livestock & Cooperation Department, v. Anees Ahmad
Civil Appeal No.40 of 2021
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._40_2021.pdf

Facts: The respondent was not considered for promotion by DPC due to his retirement.

Issue: Whether despite retirement, an employee has right to be considered for promotion, when his case for promotion stood mature and working paper was placed before DPC prior to his retirement?

Analysis: Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice to respondent.

Conclusion: Despite retirement, employee has a right to be considered for promotion, when his case for promotion stood mature and working paper was placed before DPC prior to his retirement.

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24. **Lahore High Court**
Mst. Ashi. v. Province of Punjab
Writ Petition No.12022 of 2021
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2202.pdf

Facts: The petitioners were appointed in the Board of Revenue, against the post of Assistant Director Land Records, pursuant to an advertisement, got published by the Punjab Public Service Commission (PPSC) in the National Press on the requisition of the Board of Revenue (BOR). Thereafter they were transferred to Punjab Land Records Authority. They are aggrieved of their non-regularization.

Issue: Whether the government employees, transferred to a body corporate, are competent to file writ petition in respect of regularization when they are no more civil servants?

Analysis: Prior to their transfer to PLRA the terms and conditions of service of the petitioners were governed under the Punjab Directorate of Land Records Posts Service Rules, 2010 (the Rules 2010) which were further amended in the year 2016 and the same having been framed under the statutory provision of section 23 of the Punjab Civil Servants Act, 1974, cannot be termed as non-statutory….The petitioners were adjusted in PLRA in the light of section 31(f) of the Act, 2017. Since the petitioners have sought enforcement of the terms and conditions of service while serving in BOR, in terms of section 31(f) ibid, their request cannot be considered as non-maintainable as enforcement of a statutory provision can be sought from this Court.

Conclusion: The government employees transferred to a body corporate may file writ petition.

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25. **Lahore High Court**
Muhammad Muazam, etc v. Govt. of the Punjab, etc
Intra Court Appeal No.56-2021
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC1636.pdf

Facts: Through this Intra Court Appeal, under Section 3 of the Law Reforms Ordinance, 1972, the appellants have challenged the judgment passed by the learned Single

Judge dismissing the writ petition filed by the appellants regarding the extension of their service contract.

Issue: Whether the appellants being contract employees have a vested right to claim extension of contract through constitutional jurisdiction of the Court under Article 199 of the Constitution?

Analysis: Admittedly, the appellants duly agreed and accepted the terms and conditions contained in the job offer letter. In terms of clause 3 upon completion of the initial contracts period of 1½ year, the appellants' contracts of service were further extended to four months through. Subsequently, the performance of the appellants was not found satisfactory and consequently their contracts were not extended further accordingly.

The extension of contracts cannot be granted to the appellants as of law as well as of right, firstly, because on the day when the appellants invoked the Constitutional jurisdiction of the Court their status was of an employee whose contracts had expired and the Court under its constitutional jurisdiction through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which had already expired. Secondly, in the Intra Court Appeal the Court cannot embark on a factual inquiry i.e. whether the performance of the appellants was satisfactory or not. Thirdly, it is not the case of the appellants that non-extension of their contracts suffers from mala-fide in law as neither the Contract Policy, 2004 has been challenged nor any statutory instrument or order has been assailed. The nature of challenge put forward by the appellants at maximum can be termed as mala-fide in fact, which this Court in exercise of its constitutional jurisdiction cannot entertain, as such kind of allegations require strict factual proof.

Conclusion: The appellants being contract employees do not have a vested right to seek extension of their contracts through constitutional jurisdiction.

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26. **Lahore High Court**
Muhammad Waris v. Director General, Punjab Emergency Services, Lahore & others
Writ Petition No. 39812 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC2152.pdf

Facts: The petitioner was a driver of Rescue-1122. While responding to an emergency call, allegedly under the influence of sleep, he struck his ambulance with a trolley and caused huge damage to that. The authority served him with show cause notice and finding his reply unsatisfactory, ordered his removal from service. His appeal was also got dismissed.

Issue: i) Under which law disciplinary proceedings against the employees of Rescue-1122 are taken?

ii) When major penalty can be passed after dispensing with a regular inquiry?

Analysis: i) The services of employees of Rescue-1122 are governed by the Punjab Emergency Service Act, 2006 (IV of 2006). In exercise of powers conferred under Section 26 of the Act ibid, the Punjab Emergency Service Leave, Efficiency and Discipline Rules, 2007 have been framed. According to rule 7 of said rules proceedings against an official of Rescue-1122 are to be conducted in accordance with Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (XII of 2006).

ii) Removal from service is a major penalty as contemplated in Section 4(b)(v) of PEEDA Act. Section 9 deals with procedure of inquiry to be followed by competent authority. The spirit of law is that major punitive action against an employee should be taken after an inquiry within contemplation of law. The competent authority may, in exercise of the powers under PEEDA Act, 2006, by dispensing with the requirement of regular inquiry, follow the summary procedure, but this power must be exercised in exceptional cases, in which either there is no factual controversy or the facts are admitted. The competent authority may, without holding a regular inquiry, pass the final order, if the charge is not based on disputed questions of facts, otherwise dispensation of regular inquiry would amount to depriving of a person from right of defence and fair opportunity of hearing.

Conclusion: i) Disciplinary proceedings against the employees of Rescur-1122 are governed by the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (XII of 2006).

ii) The competent authority, without holding a regular inquiry, may pass a major penalty if the charge is not based on disputed questions of facts.

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27. **Lahore High Court**
Muhammad Irshad v. Government of Punjab, etc.
I.C.A.No.160 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC748.pdf

Facts: The appellant sought modification of his retirement order issued on the basis of superannuation instead of retirement on the basis of medical invalidation.

Issue: Whether notification of retirement, once issued, can be modified with retrospective effect or not?

Analysis: It is settled position of law that once an order of retirement from service of a civil servant is issued, the same cannot be re-opened in ordinary circumstances being past and closed transaction to which finality is attached. For retirement of the appellant on medical ground basis, order to that effect by the competent authority was required to be passed by application of mind to the facts and circumstances of

the case, which order had not been passed till the date of superannuation as the report of Medical Superintendent to provide information of countersign/confirming it by Director General, Health Services, Punjab, Lahore, was awaited and same was received on 21.12.2019 after appellant already stood retired on superannuation. By the said time, the competent authority had become *functus officio*.

Conclusion: Retirement order with retrospective effect could not be passed on the basis of medical invalidation when the appellant earlier stood retired on the basis of superannuation.

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28. **Lahore High Court**
Muhammad Shahid v Secretary Food, etc.
W.P. No.8943 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1801.pdf

Facts: The petitioner has challenged the Order passed by Secretary, Government of Punjab, Food Department whereby his deputation period of three years has been cut short by six months and he has been surrendered to his parent department.

Issue: Does a deputationist has any vested right to remain at the post of deputation indefinitely or even for a stipulated period?

Analysis: The term ‘deputation’ has not been defined either in the Punjab Civil Servants Act, 1974 or in the Rules made thereunder. The Superior Courts including the Hon’ble Supreme Court of Pakistan have judicially interpreted the term deputation in a number of judgments while taking into account Chapter IX of the Establishment Manual Volume-I**.** Deputation is made purely on account of administrative exigencies and for the purpose of administrative convenience. As and when a particular department is faced with a shortfall of technically savvy personnel trained in a particular field, it can seek the services of technically qualified persons in that field from some other department of the same government or even from another government of the country. It is for the borrowing department to decide as to when a deputationist is no more required. A deputationist, therefore, cannot be thrust upon an unwilling department. This would compromise the autonomy of the department besides heightening and accentuating a non-existent vested right which is alien to trite and established law. Deputation is in the nature of a three way contract and can be continued only if all the parties want it to continue. The moment this tripartite agreement is repudiated by means of non-adherence by the departments, the employee has no legally enforceable right to continue to complete the agreed period of his deputation. It is also well settled that a deputationist does not have any vested right to remain at the post of deputation indefinitely or even for a stipulated period. He can be repatriated to his parent department at any time.

Conclusion: A deputationist has no vested right to remain at the post of deputation indefinitely or even for a stipulated period. .

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29. **Lahore High Court**
Mohammad Umer Khalid v. Government of Punjab etc.
Writ Petition No. 9010 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2096.pdf

Facts: The petitioner seeks reinstatement in contractual service and also submits that since he had completed three years in service, therefore, he was eligible and qualified to be considered for regularization in terms of the Regularization of Service Act 2018.

Issue: Whether a contractual employee can seek extension in contractual service or for that matter reinstatement in service?

Analysis: In the garb of seeking regularization, the petitioner wants this Court to first reinstate him in service. This is not possible because the Hon'ble Supreme Court of Pakistan has held that a contractual employee, even in the event of his arbitrary dismissal, can only seek damages from the Civil Court since his relationship with his employer is governed by the principle of master and servant. It may also be noted that the provisions of the Act of 2018 are more in the nature of self-executory provisions inasmuch as these are not dependent on any further legislative action outside of the Act of 2018. The considerations for being regularized, the eligibility thereof, the posts against which such regularization is permissible, the posts against which such regularization is not permissible, the qualifying criteria and factors, are all provided in the Act of 2018 itself and the Act does not require the crutches of any other rules, bye-laws, policy or notifications for being brought into force.

Conclusion: It is trite and established that a contractual employee cannot seek extension in contractual service or for that matter reinstatement in service.

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30. **Lahore High Court**
M/s Colony Textile Mills Limited and another v. First Punjab Modaraba
Regular First Appeal No. 214624 of 2018
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC1774.pdf

Fact: This appeal is filed against judgment passed by the Banking Court wherein the suit for recovery under Financial Institutions (Recovery of Finances) Ordinance, 2001 was decreed with cost of suit and cost of fund after rejecting leave to appear and defend the suit. The appellants assert that before passing final judgment, the Banking Court should have decided the three applications filed by them: (i) the application to produce some original documents; (ii) the application for referring documents to a handwriting expert; (iii) The application for seeking appointment of Chartered Accountant as Amicus-Curiae.

Issue: Whether miscellaneous applications are maintainable before grant of petition for leave to defend?

Analysis: i) The miscellaneous applications were not maintainable before the Banking Court before the grant of the PLA. In fact, such pleas could have been taken in the PLA itself.
ii) Under Section 22(3) of the Ordinance, the High Court shall, at the stage of admission of the Appeal, decide by means of a reasoned order whether the Appeal is to be admitted in part or in whole. Also under Order XLI, Rule 11 of the CPC, the appellate court has power to dismiss Appeal without sending notice to the lower Court. This appeal is at limine stage and in view of the afore discussion, it is a fit case to apply doctrine of "Limine Control".

Conclusion: The miscellaneous applications are not maintainable before grant of petition for leave to defend.

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31. **Lahore High Court**
The Bank of Punjab v. Mr. Manzoor Qadir and another
Regular First Appeal No. 300 of 2016
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC2234.pdf

Fact: The appellant filed suit for recovery under the Financial Institutions (Recovery of Finances) Ordinance, 2001. The respondents were summoned and they filed an application for leave to defend (PLA). During the pendency of the PLA, certain amounts were paid by the respondents and some amount was deposited in the Court. When the PLA was taken up for decision by the Banking Court, the respondents contended that they have paid back their entire liability. The Banking Court held that nothing was recoverable at the time of decision of PLA and that cost of suit and cost of funds could only be awarded if a decree of some amount already outstanding was to be passed. The Banking Court straightaway dismissed the suit

Issue: i) Whether the Banking Court was justified to dismiss the suit without first accepting or rejecting the PLA?
ii) Whether the refusal to pass the decree with reference to cost of funds was in accordance with law on the ground that amount was paid during pendency of suit and nothing was outstanding at the time of decision?

Analysis: i) The Banking Court is well within its legal right to reject or return a plaint by invoking any provision under the CPC before summoning the defendant or before fixing a specific date of hearing of the PLA. However, once a date of hearing of the PLA has been fixed, it ceases to take any further step under the provisions of the CPC without first deciding the PLA. The Banking Court is duty bound to, first, grant or reject the PLA before taking any other step towards the progress and continuation of the suit. After doing so, the provisions of the CPC are again

available to the Banking Court as the facts and circumstances of the case may warrant.
ii) Section 17 of the Ordinance provides that the final decree shall be passed with respect to payment from the date of default of the amounts determined to be payable by the Banking Court on account of default in fulfillment of the obligation and for costs including in the case of a suit filed by a financial institution cost of funds. Where no amount is payable by the borrower or even excess amount has been paid by the borrower, the Banking Court can and should pass a decree regarding the cost of funds subject to offsetting the excess amount, if any, which can be determined at the stage of execution.

Conclusion: i) The banking court was not justified to dismiss the suit without first accepting or rejecting the PLA.
ii) The Banking Court can and should pass a decree regarding the cost of funds. .

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32. **Lahore High Court**
Nasir Ali v. Govt. of Punjab and another
Writ Petition No. 8666 of 2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC2175.pdf

Fact: The petitioner claims to be an owner of "Dredger Machines" and contends that the respondent has illegally registered these machines. The petitioner sought the cancellation of registration of "Dredger Machines" before the Motor Registration Authority with assertion that these do not fall within the parameter of section 2(23) of the West Pakistan Motor Vehicles Ordinance, 1965. Registration was accordingly cancelled. The respondent filed appeal before Director Excise and Taxation who restored the registration.

Issue: i) Whether the ownership and possession of "Dredger machines" can be determined by High Court in its constitutional jurisdiction?
ii) Whether the registration of "Dredger Machines" was in accordance with the law?

Analysis: i) The matter regarding ownership and possession pertains to factual inquiry and recording of evidence, therefore the same cannot be decided in exercise of extra ordinary and discretionary jurisdiction of the High Court.
ii) The facts and circumstances of the case clearly suggest that the Registration Authority did not physically examine the Dredger Machines before registering the same as was required under section 27 of the Ordinance to satisfy the requirements of section 73 read with Section 2(23) of the Ordinance. The vital aspects of the definition of "Motor Vehicle" as contemplated by section 2(23) of the Ordinance were also not taken into consideration.

Conclusion: i) The High Court cannot decide the question of ownership and possession of D.M in its constitutional jurisdiction as factual inquiry is required for that purpose.

ii) The registration of "Dredger Machines" was not in accordance with law; therefore, Registration Authority was directed to decide the question of registration after physical examination of machine.

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33. **Lahore High Court**
Commissioner of Income Tax, Large Taxpayers Unit, Legal Division, Lahore v. M/s Service Industries Limited, Services House, Main Gulberg, Lahore
PTR No. 225 of 2008
Mrs. Justice Ayesha A. Malik, Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2021LHC592.pdf

Facts: The assessing officer made an addition of Rs.96,177,786/- while passing the assessment order for the tax year 1999-2000 on account of sale of syringe division of the respondent to M/s Becton Dickinson Services (Pvt.) Limited. A challenge was made by the respondent to the assessment order by filing an appeal before the Commissioner of Income Tax (Appeals) who dismissed the same. The respondent filed an appeal before the Income Tax Appellate Tribunal which was allowed by declaring the transaction of sale as a slump transaction and by deleting the addition made by the assessing officer.

Issue: Whether in present case Income Tax Appellate Tribunal (ITAT) was justified to hold that sale/transfer of 51% shares by the taxpayer is a slump transaction?

Analysis: Concept of slump sale is derived from section 2(42C) of Indian Income Tax Act 1961 according to which 'slump sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. The idea of a slump sale is the transfer of an undertaking as a whole. In case where liabilities have not been transferred, it cannot be said that the 'undertaking' has been transferred as a whole and consequently the provisions of slump sale shall have no applicability to such a transfer. The concept of slump sale, however, is alien to the erstwhile Income Tax Ordinance, 1979 or the Income Tax Ordinance, 2001. The Indian Income Tax Act, 1961 relating to slump transaction shall have no applicability to the transfer of the Syringe division of the respondent in favour of the joint venture company. Even if the concept of slump transaction is deemed applicable to our jurisdiction on the terms as it has been enunciated by the Indian judgments, the transaction in question would not qualify as a transfer of an undertaking. Transaction in question is squarely covered by Clause 7 read with Clause 8 of the Third Schedule to the Income Tax Ordinance, 1979. The exemption from payment of tax could only be sought with reference to the Second Schedule of the said Act. In order to qualify as a slump transaction, it needs to be proved that the undertaking of a business as a whole is transferred as a going concern along with its goodwill, assets, liabilities etc. A simple sale of assets shall not suffice. The Income Tax Appellate Tribunal did refer to some of the stipulations of the Master Agreement which do not demonstrate that the necessary ingredients of slump sale

were met with. Clauses 7 and 8(5) of the Third Schedule of the Income Tax Ordinance, 1979 were squarely applicable to the facts of the present case. The assessing officer was right in making the addition whereas the Income Tax Appellate Tribunal did not take into account the relevant provisions of the Income Tax Ordinance, 1979 in allowing the appeal of the respondent.

Conclusion: Transaction in question by the taxpayer was not a slump sale transaction; hence the decision rendered by Income Tax Appellate Tribunal was set aside.

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34. **Lahore High Court**
Commissioner Inland Revenue, Lahore v. M/s Kamal Steel Re-Rolling Mills Limited, Lahore
PTR No.400 of 2010
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad Raza Qureshi,
https://sys.lhc.gov.pk/appjudgments/2021LHC2140.pdf

Facts: The respondent-taxpayer filed income tax return for tax year 2004, which was treated as assessment order in terms of Section 120 of the Ordinance of 2001. Later on, the Taxation Officer observed that respondent-taxpayer was a manufacturer, thus, liable to pay Workers Welfare Fund ("WWF") under Section 4 of the Workers Welfare Fund Ordinance, 1971. Therefore, in 2008 after issuance of notice under Section 221 of the Ordinance, order for amended assessment was passed against the respondent. The respondent successfully challenged that order in appeal. The order by the appellate forum was later on upheld by the appellate tribunal.

Issue: When a change in a substantive law, that adversely affects the rights of the parties, would come into operation retrospectively?

Analysis: Change in substantive law, which divested and adversely affected the vested rights of the parties should always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication such law had been made applicable retrospectively. Substituted section cannot obliterate accrued rights. It is well-settled that the Courts lean against giving retrospective operation where no vested rights or past transactions prejudicially affect or exist. Legislation does not operate retrospectively if it touches a right in existence at time of passing of legislation. Rights of parties are to be decided according to law existing when action began unless provision made to contrary. Where statute itself does not make its operation retrospective, it would not be reasonable to claim that by necessary implication it has retrospective operation.

Conclusion: A change in substantive law that adversely affects the rights of the parties always applies prospectively.

35. Lahore High Court
Ramzan Sugar Mills Limited v. Federal Board of Revenue etc.
W.P No.39256 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC1961.pdf

Facts: The petitioner assailed the notice issued by the Respondent under Section 122(9) read with Section 122(4) of the Income Tax Ordinance 2001 wherein he was asked to furnish some documents to amend the assessment.

Issue: Whether Commissioner Income Tax is authorized to issue notice to a taxpayer and ask for documents to further amend an already submitted assessment?

Analysis: Sub-Section (4) of Section 122 of the Ordinance, provide that the Commissioner, which is defined in Section 2(13) of the Ordinance as the Commissioner Inland Revenue, may further amend, as many times as may be necessary, the original "assessment" order within five years from the end of the financial year in which he has issued or is treated as having issued the amended assessment order to the taxpayer as per Section or otherwise one year from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer. Section 122(4) of the Ordinance states that the assessment order, which is defined under Section 2(5) of the Ordinance, means an assessment which includes the (i) provisional assessment; (ii) re-assessment and (iii) amended assessment while cognate expressions shall be construed accordingly and the Commissioner may further amend, as many times, the original assessment within the time prescribed in Sub-Sections (a) and (b) of Section 122(4) of the Ordinance. The matter of seeking record and information under various Sub-Sections of Section 122 of the Ordinance, squarely falls within domain of the FBR as well as the government officers appointed under the Ordinance and such matters need no interference by this Court as required in the Constitutional jurisdiction.

Conclusion: Commissioner Income Tax is empowered under Section 122(4) of the Ordinance to further, amend the original assessment order, as many times, as he deems fit if read with all Sub-Sections of Section 122 of the Ordinance.

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36. Lahore High Court
Salman Shahid v. University of Management and Technology.
I.C.A.No.454/2016
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2058.pdf

Facts: The appellant is a student of University of Management and Technology, Lahore (UMT). According to the appellant, he completed thirty credit hours required for the award of degree of MS/M. Phil, but the requirement of submission of thesis equivalent to six credit hours by UMT is not justified. The Constitutional petition

filed by the appellant in this regard was dismissed as being not maintainable, hence this appeal.

Issue: Whether constitutional petition filed by the appellant against UMT was maintainable under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973?

Analysis: The test to determine whether UMT is a "person" amenable to judicial review can be ascertained firstly from the functions performed by UMT, and secondly the status of administrative and financial control of the government with respect to UMT. The Courts generally classified it as "functional test". According to Abdul Wahab case (**2013 SCMR 1383**) as a functional test, two factors are the most relevant i.e. the extent of financial interest of the state in an institution and dominance in the controlling affair thereof. Under Section 14 of the University of Management and Technology Act, the administration and management of the UMT vests in the Board, wherein the majority members are private individuals. Funds of UMT are also generated from private source including fee etc. and government has no direct financial control on the UMT. Holistic reading of the Act shows that functions of the UMT being a private sector University is also for private gains and profits and not exclusively for the benefit of public without any profits. Considering the above factors, it cannot be said that UMT is a "person" performing functions in connection with the affairs of Federation, Government or Local Authority for the purpose of judicial review under Article 199 of the Constitution. Mere fact that UMT has been established under a statute will itself not be sufficient to treat UMT as a "person" for the purpose of Article 199(5) of the Constitution.

Conclusion: UMT is a private sector university and does not perform functions in connection with the affairs of Federal or Provincial Government or Local Authority in terms of Article 199(1)(a) of the Constitution; hence not amenable to judicial review.

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37. **Lahore High Court**
Hamza Bashir etc. v. Pakistan Medical Commission through its president etc.
WP No.30346/2021
Mrs. Justice Ayesha A Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC1832.pdf

Fact: The petitioners have passed the Medical and Dental Colleges Admission Test ("MDCAT") and the interview. They were admitted in the respective colleges and have commenced their education in terms thereof. The petitioners have challenged the advertisement issued by the Examination Department, Pakistan Medical Commission, Islamabad ("PMC") wherein the process of re-admission is to take place in said colleges. The respondents raised preliminary objection regarding maintainability of the petitions on the ground that remedy of appeal under Section 37 of the Pakistan Medical Commission Act, 2020 ("PMC Act") is available to

petitioners and the re-admission is directed due to violations of the admission regulation.

Issue: i) Whether the High Court is competent to grant a relief in its constitutional jurisdiction if alternate remedy of appeal is available to a person?
ii) Whether PMC is justified to decide a number of complaints through a general order instead of deciding each complaint separately?
iii) Whether re-admission process is justified after completion of admission process?

Analysis: i) The general rule is that where there is a statutory remedy available, then writ jurisdiction should not be invoked; however there are exceptions to this rule. If the remedy is not adequate and efficacious to redress the grievance appropriately, then High Court can exercise constitutional jurisdiction. Furthermore, High Court can always review the decision making process in order to ensure that the competent authority has acted in accordance with law, maintained the principles of natural justice and due process and has not in any manner abused its authority.
ii) On the basis of the 2021 Regulations, PMC can decide a complaint and it can declare the admission of a candidate illegal or irregular thereby cancelling it subject to granting the college and the affected students a right of hearing. This procedure was not adopted and there is no clear and specific order on a complaint made before the PMC rather an omnibus order has been passed with respect to all the colleges. Although it was argued that the 2021 Regulations came in June 2021 and the impugned orders and advertisement were issued before the 2021 Regulations, yet PMC is obligated to follow the principles of due process, justice and to avoid vague and generalized enforcement as it affects the requirements of predictability and stability leaving potential for unfair surprises in their decision making. Even though the 2021 Regulations were notified in June 2021, this is the PMC's own doing and there is nothing in the 2020 Regulations or the PMC Act which permits PMC to pass a general order on all complaints. This by itself is a violation of the mandate under the PMC Act and the Medical Tribunal Act, 2020 ("MT Act").
iii) The change in law and admission processes should never be made at the last moment, before the MDCAT exam or during an academic session so as to disturb the preparation that candidates have made in anticipation of the MDCAT exam. The re-admission process has created disruption by placing the petitioners and other admitted candidates in a state of flux. The manner in which the PMC is attempting to resolve the problem is in contravention to its own 2020 and 2021 Regulations and in negation to the authority it can exercise under the PMC Act.

Conclusion: i) The High Court has jurisdiction under article 199 of the Constitution if alternate remedy is not adequate or efficacious.
ii) PMC cannot decide a number of complaints through a general order. PMC is obligated to follow principles of due process on each complaint and pass a clear and specific order

iii) Once the admission process has completed, the advertisement for re-admission is not legally justified.

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38. **Supreme Court of the United States**
Guerrero-Lasprilla v. Barr 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-776_8759.pdf
https://ballotpedia.org/

Facts: It is a case concerning the authority of courts to review agency decisions in deportation cases involving people convicted of crimes. In 1998, Pedro Pablo Guerrero-Lasprilla, a Colombian national living in the United States, was deported after being convicted of aggravated felonies. In 2016, Guerrero-Lasprilla petitioned to reopen his removal proceedings. An immigration judge denied the petition on the grounds it was untimely. The Board of Immigration Appeals and the 5th Circuit Court of Appeals also dismissed the petition.

Issue: Is a request for equitable tolling (i.e. tolling is a legal doctrine that allows for the pausing or delaying of the running of the period of time set forth by a statute of limitations) as it applies to statutory motions to reopen, judicially reviewable as a question of law?

Analysis: The decision gave people convicted of crimes more opportunities to challenge agency decisions to deport them by allowing courts to decide whether to reopen those deportation cases beyond the normal 90-day time limit. In 2005, Congress limited judicial review in those cases to questions of law and the court concluded that whether courts should extend the time limit for immigrants to challenge their removal from the United States fell within the definition of a question of law

Conclusion: The court ruled 7-2 that lower courts may review whether immigration agencies properly applied relevant laws to a given set of facts in such cases. Justice Breyer opined that the request for equitable tolling was judicially reviewable as a question of law the court vacated and remanded the case.

LIST OF ARTICLES:-

1. **MANUPATRA**
https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
COURT'S DISCRETION IN GRANTING SANCTIONS: CONSECUTIVE OR CONCURRENT RUNNING OF SENTENCES by Abhishek Goyal

In its function, the power to punish is not essentially different from that of curing or educating…… Indian Courts have unswervingly recognized that a decision which is presented at the stage of sentencing is enormously complex, as the consequences of a sentence are of the 'highest order'. In fact, the Hon'ble Apex Court in this regard, in Dilbag Singh v. State of Punjab has quoted with affirmation that a sanction, "[i]f too short or of the wrong type, it can deprive the law of its effectiveness… If too severe or improperly conceived, it can reinforce the criminal

tendencies of the defendant." Therefore, it is quite understandable that the Hon'ble Apex Court has consistently cautioned that an undue sympathy, to impose inadequate sentence, "would do more harm to the justice system to undermine the public confidence in the efficacy of law." However, at the same time, Courts are not unmindful of the fact that, "many a times crimes are committed in the "heat of passion" or even categorised as "hate crimes". Emotions like anger, compassion, mercy, vengeance, hatred get entries in criminal trials….most of these emotions may become relevant only at the stage of punishment or sentencing….. The aforesaid factors, then, become either mitigating/ extenuating circumstances or aggravating circumstances." Therefore, a Judge's task in determining the type and quantum of a sanction involves; ensuring a balanc5 between the rights of victim and State to seek redressal of their grievances, on one hand, and adopting a certain degree of humanitarian and compassionate approach towards the convict, on the other.

2. **THE NORTHERN UNIVERSITY JOURNAL OF LAW**
   https://doi.org/10.3329/nujl.v4i0.25942

   A CONTEXTUAL ANALYSIS OF THE MEDICAL NEGLIGENCE IN BANGLADESH: LAWS AND PRACTICES by Khandakar Kohinur Akter

   Medical negligence is a clear violation of right to health by a professional group who are actually on duty to protect when emergency strikes and the health rights are under threat. Medical negligence is lately a popular topic of attention and discussion in many developed states and consequently many of them have enacted and established separate Acts and courts to strengthen health care laws. However in Bangladesh there is no specific and comprehensive legislation to prevent medical negligence though many legal provisions are there under different statutes which are not precisely codified. This article in this background has made an effort to define medical negligence, present laws concerning medical negligence of Bangladesh with their major loopholes and lastly recommends some actions to come on strong preventing such violation of health-care rights.

3. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12536

   "THIS CASE IS ABOUT YOU AND YOUR FUTURE": TOWARDS JUDGMENTS FOR CHILDREN by Helen Stalford and Kathryn Hollingsworth

   A handful of 'child-friendly' judgments have emerged in the UK in recent years, attempting to adopt a child-centred approach to the decision-making stage of the legal process. Most notable is Sir Peter Jackson's judgment in Re A: Letter to a Young Person which, in taking the form of a letter to the child, has been applauded as a model of how to achieve 'child friendly justice'. This article examines how and why the form and presentation of judicial decisions is an important aspect of children's access to justice, considering not just the potential but the duty of judges to enhance children's status and capacities as legal citizens through judgment writing. We identify four potential functions of judgments written for children

(communicative, developmental, instructive and legally transformative), and call for a radical reappraisal of the way in which judgments are constructed and conveyed with a view to promoting children's access to justice.

4. COLUMBIA LAW REVIEW

https://live-columbia-law-review.pantheonsite.io/content/delegation-at-the-founding/

DELEGATION AT THE FOUNDING by Julian Davis Mortenson & Nicholas Bagley

This Article refutes the claim that the Constitution was originally understood to contain a nondelegation doctrine. The Founding generation didn't share anything remotely approaching a belief that the constitutional settlement imposed restrictions on the delegation of legislative power—let alone by empowering the judiciary to police legalized limits. To the contrary, the Founders saw nothing wrong with delegations as a matter of legal theory. The formal account just wasn't that complicated: Any particular use of coercive rulemaking authority could readily be characterized as the exercise of either executive or legislative power, and was thus formally valid regardless of the institution from which it issued.

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FORTNIGHTLY CASE LAW BULLETIN

(01-07-2021 to 15-07-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Lahore High Court**
Ijaz Ali v. Robina Kausar, etc.
W.P. No.26235 of 2017
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC2503.pdf

Fact: After recording evidence of both parties, a miscellaneous application was filed by the petitioner for permission to submit receipts of dowry articles and filling of schedule of witnesses in order to produce additional witness. This application was dismissed.

Issue: Whether the application for submission of documentary evidence and filing of schedule of witnesses can be allowed at later stage?

Analysis: In the matter of grant of permission to produce documents which were not relied upon, one of the important factors which is kept in view is that as to whether the document was a public document admissible per se and that there was no possibility of its fabrication and that it was coming from safe custody. This was not the situation in the present case. It is settled rule that where a document is neither relied upon nor produced at the earlier stage, the order of the learned Trial Court rejecting the prayer to receive it at a belated stage is deemed to be just, fair and in accordance with law and such order could not be claimed to be illegal or unreasonable.

Conclusion: The application for submission of documentary evidence and filing of schedule of witnesses may be allowed at later stage if sufficient cause is shown to the satisfaction of court.

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2. **Lahore High Court**
Ayesha v. Additional Sessions Judge, etc
W.P. No.42051 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2290.pdf

Facts: The petitioner has challenged the revisional court's order which allowed amendment in plaint under Order VI, Rule 17 C.P.C.

Issue: When an amendment in the plaint may be allowed?

Analysis: All rules of the Civil Procedure Code are geared towards securing proper administration of justice and should always be interpreted with this aim and purpose. Order VI, Rule 17 confers a discretionary power on a Court which a Court only exercises in consonance with and in the light of judicial principles contained in judicial precedents. It was further observed that incorporation of additional fact in the pleadings without changing nature of the suit or its underlying basis could not be treated as a change of cause of action which alters

the nature of the suit. Whenever an amendment was aimed at elaborating and amplifying an existing cause of action which neither changed its nature nor introduced a new cause of action different to the one originally pleaded in the suit it could be termed as inherent to and connected with the original cause of action pleaded in the suit. The Court went on to hold that such change would instead highlight the real controversy between the parties and promote fair adjudication of the dispute…. An amendment in pleadings may be allowed where multiplicity of suits will be avoided, where the amendment does not alter the subject matter or the cause of action of the suit, where it does not take away any accrued right, where the plaintiff becomes entitled to further relief by reason of events subsequent to the filing of the suit, where the cause of action needs amplification, where the interests of safe and accurate administration of justice so require, where on account of a plaintiffs' evidence a new statutory line of defence gets triggered, where no injustice will be caused, where a relief has inadvertently been left out – the list is not exhaustive but just an attempt at cataloguing instances where it will be in line with trite and established law to allow amendment in pleadings under Order VI, Rule 17 C.P.C.

Conclusion: See above.

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3. **Lahore High Court**
Security 2000 (Pvt) Ltd. V. Muhammad Iqbal, etc
W.P. No.30576 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2719.pdf

Facts: By virtue of the judgment and orders passed by the forums below, respondent No.1 has been held entitled to receive dues for overtime (read unpaid wages) for four hours daily for a period of 16 months amounting to Rs.1,76,000/-; while gratuity and encashment of annual leave have also been allowed. The petitioner security company has laid a challenge to the grant of overtime dues. In an earlier round, writ petition was filed by the petitioner claiming the same relief as he seeks now, in the present matter. This petition was withdrawn. However, the Order whereby the petition was allowed to be withdrawn is silent about the permission to file a petition again as envisages by Order 23 Rule 1 C.P.C.

Issue: What is effect of order allowing application for permission to withdraw and file a fresh petition without recording any reason?

Analysis: Problem arose because the application for permission to withdraw and file a fresh petition was allowed without recording any reason. For such an eventuality guidance can be sought from a judgment of the Hon'ble Supreme Court of Pakistan reported as Muhammad Yar (2013 SCMR 464), according to which, in such a situation it should be implied and deemed that the court has found it to be a fit case for permission and has granted the permission to file a fresh suit because

this is a safer course which should be followed in the interest and promotion of justice, otherwise serious prejudice shall be caused to the plaintiff/petitioner who shall have to face the bar of sub-rule 3 and shall be left in a quandary.

Conclusion: In such a situation it should be implied and deemed that the court has found it to be a fit case for permission and has granted the permission to file a fresh suit because this is a safer course.

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4. **Lahore High Court**
Yaqoob Ali and others v. Muhammad Ayub and others
WP No. 1447 of 2017
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC1046.pdf

Facts: The "respondents" were proceeded against ex-parte by the Civil Court after resorting to mode of substituted service and finally suit was decreed ex-parte.

Issue: When notice by substituted service can be ordered?

Analysis: The respondents had made no attempt to avoid acceptance of service in ordinary way. The Trial Court by ordering substitutive service without justifying the legal position had proceeded against the petitioner ex parte. Notice of a proceedings is a basic right of party and notice by substituted service cannot be ordered unless Court comes to the conclusion that party was avoiding service of notice or personal service was not reasonably practicable upon all defendants. A glimpse of record made it abundantly clear that proper procedure was not observed in effecting service upon the "respondents". No active or concrete effort was made for their personal service. The resort to the substituted service in the circumstances was not only highly unwarranted but sketchy.

Conclusion: Notice of a proceedings is a basic right of party and notice by substituted service cannot be ordered unless Court comes to the conclusion that party was avoiding service of notice or personal service was not reasonably practicable upon all defendants.

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5. **Lahore High Court**
Anwar Hussain v. The State, etc.
Crl. Revision No.72278 of 2019
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC2420.pdf

Facts: Petitioner was convicted in private complaint under Section 6(5)(b) of the Muslim Family Laws Ordinance, 1961 and sentenced to simple imprisonment for one year with fine of Rs.5,00,000/-.

Issue: Whether the sentence of fine imposed against the petitioner can be reduced?

Analysis: The legislature through Punjab Muslim Family Laws (amendment) Act, 2015 substituted sub clause (b) sub section (5) of Section 6 of the Muslim Family Laws Ordinance, 1961 and has withdrawn the discretion of Court with regard to quantum of fine to be imposed and imposition of fine itself which very clearly transpires intention of the legislature. The case in hand when viewed in the context of the substitution/amendment mentioned supra leads the Court to conclude that imposition of fine of Rs.500,000/- to a convict under Section 6(5)(b) of Punjab Muslim Family Laws (amendment) Act, 2015 (Act No.XIII of 2015), is mandatory.

Conclusion: The sentence of fine imposed against the petitioner cannot be reduced.

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6. **Lahore High Court**
Muhammad Qayyum Anjum v. Additional District Judge etc.
W.P. No.12103/2014
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC2341.pdf

Facts: The suit for recovery of dower etc was decreed against the petitioner. Petitioner contended that since the term and condition of their marriage relating to transfer of house is envisaged in column No. 16, the same is in the nature of deferred dower and the marriage of the parties is still intact, therefore, the respondent is not entitled to receive the same during subsistence of the marriage.

Issue: What is the nature of entries in column No. 13 to 16 of Nikahnama; and if time and mode of payment of dower is not specified, then what will be its effect?

Analysis: Entries in columns No.13 to 16 together become ‘dower overall’. Thus, entry in column No. 13 of the nikahnama is to contain the amount of dower, entry 14 envisages the break-up of such amount of dower spelled out by the parties by virtue of entry under column No. 13 into prompt and deferred whereas entry in column No. 15 may contain anything given or paid out of the amount envisaged under entry 13 or in addition thereto forming as part of the dower overall. In the same strain, entry under column No.16 is to also form part of the dower overall in addition to the amount/cash which may be stipulated by way of entry under column No.13 and also in addition to anything else given by way of entry under column No. 15. Entries under columns No. 13 to 16 of the nikahnama envisage reflection and manifestation of the parties as to amount/Raqm and other articles and/or property given or to be given by husband to wife as the dower overall.
If no detail about the mode of payment of the dower is specified in the nikahnama, Section 10 of the Muslim Family Laws Ordinance, 1961 comes into play…Perusal of Section 10 of the Ordinance brings forth the legislative fiat that where no details about the mode of payment of dower has been spelled out by the parties to confer certainty to it under the marital contract, the omission or failure

of the parties to fill in and/or reflect their intention in a perspicuous manner, the legislature has stepped in to fill in such omission of the parties through Section 10 of the Ordinance which clearly states that, in such like situations, the entire amount of the dower shall be presumed to be payable on demand. The statutory presumption embodied under Section 10 of the Ordinance is rebuttable; however, the same has to be rebutted through positive evidence.

Conclusion: Entries in columns No.13 to 16 together become 'dower overall'. If no detail about the mode of payment of the dower is specified in the nikahnama, the entire amount of the dower shall be presumed to be payable on demand.

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7. **Lahore High Court**
Muhammad Azeem v. Addl. District Judge, etc.
W.P. No.83217 of 2017
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC2442.pdf

Fact: The petitioner father claimed the custody of minor daughter.

Issue: Whether petitioner/father is entitled for custody of minor daughter?

Analysis: The petitioner never appeared personally and his father as Special Attorney had been pursuing the matter throughout who was involved in criminal cases. The petitioner had remarried, was settled abroad and that it was not in the welfare of the minor girl that her custody be disturbed by placing her at the mercy of the stepmother in the absence of her Dubai living father. Further to it, only after passing of decree for maintenance, the petitioner has filed custody petition. Even the second marriage of mother is no ground to claim custody as the maternal grandmother had a preferential right of custody. He is also disentitled on account of his conduct.

Conclusion: The petitioner/father is not entitled for custody of minor daughter.

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8. **Lahore High Court**
Qamar Shahzad v. Judge Family Court etc.
W.P. No.32340/2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC2595.pdf

Facts: Respondents filed a suit for recovery of maintenance, dower and dowry articles which was decreed ex parte. The petitioner filed an application for setting aside the ex parte proceedings/order and decree, which was accepted and the ex parte proceedings/order and decree were set aside, subject to payment of costs of Rs.2000/-. However, on failure of the petitioner to submit written statement and to pay costs, his right to file written statement was closed.

Issue: Whether there is no provision in the Family Courts Act, 1964, empowering the Family Court to pass an order of closing the right of filing written statement?

Analysis: From the perusal of Section 10 of the Family Courts Act, 1964 it is clear that the Court shall examine the plaint, written statement, if any, and evidence, meaning thereby that filing of written statement in family cases is not essential. It must be remembered that the Family Courts Act has been enacted with the object of expeditious disposal of the disputes relating to the family affairs. Thus, for the orderly dispensation of justice under the Act, in the case of a contumacious default of a defendant to file the written statement, the Family Court will be well within its authority to make any order, in the nature of one envisaged by Order VIII, rule 10, C.P.C. and deprive him of his right to file the written statement. It is further observed that the petitioner not only failed to file written statement in spite of getting so many opportunities but he also did not comply with the order of the Court regarding payment of costs of Rs.2000/-, which was imposed while setting aside the ex parte proceedings.

Conclusion: In the case of a contumacious default of a defendant to file the written statement, the Family Court will be well within its authority to make any order, in the nature of one envisaged by Order VIII, rule 10, C.P.C. and deprive him of his right to file the written statement.

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9. **Supreme Court of Pakistan**
Abdul Latif v. Noor Zaman
Criminal Petition No.126-P/2011
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._126_p_2011.pdf

Facts: In a murder case, complainant cited in the crime report one Z as well as deceased's aunt as witnesses of the crime, swapped by her maternal uncle and mother to drive home the charge.

Issue: What is the effect of replacement of witnesses initially cited in F.I.R?

Analysis: Replacement of the witnesses previously named in the crime report with those, lacking reference therein, would inevitably tremor the whole edifice as the transposition reasonably hypothesizes their absence at the scene.

Conclusion: See above.

10. **Lahore High Court**
Nazim Ali etc v. The State etc.
Cr. Appeal No.2137 of 2014
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2019LHC4923.pdf

Facts: Appellants were convicted and sentenced for offence of murder.

Issue: Whether a single circumstance creating reasonable doubt is sufficient for the acquittal of accused?

Analysis: For giving benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of the accused makes him entitled to its benefit not as a matter of grace and concession but as a matter of right.

Conclusion: A single circumstance creating reasonable doubt is sufficient for the acquittal of accused.

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11. **Lahore High Court**
Ghaffar alias Kali v. The State
Criminal Appeal No.615-J of 2014
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2330.pdf

Fact: This is appeal against conviction and sentence under sections 496-A and 376 PPC.

Issue: What procedure should be adopted by trial court, if accused failed to hire his counsel for cross examination of witness?

Analysis: A court cannot come to just and fair decision of the case unless the credibility of a witness is tested on the touchstone of cross-examination. Cross-examination of the prosecution witnesses is very valuable right of the accused. If the accused is unable to hire the services of a counsel in Sessions trial or counsel appointed by him refused to represent him or to cross-examine the prosecution witnesses on his behalf, or if the counsel engaged by the appellant sought too many adjournments then it was duty of the Court to provide him a counsel at the State expenses.

Conclusion: The trial court shall provide opportunity to the appellant to hire the services of a private counsel of his own choice and in case of refusal of the appellant to hire a private counsel then the appellant shall be given the choice to choose a defence counsel from the list of defence counsel maintained by the learned Sessions Judge.

12. **Lahore High Court**
Azhar v. Dost Muhammad and another
Criminal Appeal No. 820 of 2016
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2300.pdf

Fact: This is appeal against conviction in murder case filed by accused wherein he is sentenced under section 302(b) to imprisonment for life.

Issue: i) What is evidentiary value of injured witness?
ii) Whether prosecution evidence which has been disbelieved against co-accused can be believed against other accused persons?
iii) Whether abscondance of accused corroborates the prosecution case?

Analysis: i) The injuries on P.W. are only indication of his presence at the spot but is not informative prove of his credibility and truth.
ii) If prosecution evidence is disbelieved qua one accused or one set of accused, then the same evidence cannot be believed against the other accused or other set of accused, without independent corroboration.
iii) Mere absconsion is not conclusive proof of guilt of an accused person. It is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions. The same cannot take the place of proof.

Conclusion: i) The injuries on the body of a witness do not mean that he is telling the truth.
ii) Prosecution evidence which has been disbelieved against co-accused cannot be believed against other accused persons without independent corroboration.
iii) The abscondance of accused does not corroborate the prosecution case.

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13. **Lahore High Court**
Zadan Bibi v. The State and another
Criminal Appeal No. 102-J of 2018
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC2645.pdf

Facts: The convict lodged the instant Criminal Appeal through jail assailing his conviction and sentence. Zadan Bibi, the complainant of the case, filed Criminal Revision seeking the enhancement of the sentence of the convict.

Issue: i) Whether sole statement of the victim can be taken into account to maintain the conviction and sentence of the appellant under the charge of rape?
ii) What is impact of Art 151 QSO 1984 on improvement in previous statement by a witness?
iii) What is worth of DNA Test

iv) What is worth of late recording of 161, Cr.P.C?

Analysis: i) The rule pertaining to sole statement of the victim is applicable only when the same is found to be confidence inspiring and trustworthy. The self-contradictory statement of the victim is neither trustworthy nor confidence inspiring and, thus, the same is not worthy of any reliance.

ii) It is also settled law that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. Reliance was made on the following august Court precedents; 2019 SCMR 631 and 2018 SCMR 772.

iii) DNA is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis if there is no primary piece of evidence, like oral evidence. In our legal framework DNA evidence is evaluated on the strength of Articles 59 and 164 of the Qanun-e-Shahadat, 1984 (QSO). The former provision states that expert opinion on matters such as science and art falls within the ambit of 'relevant evidence'. On the other hand, the latter provision provides that the Court may allow reception of any evidence that may become available because of modern devices and techniques. In every case the prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the said chain or lapse in the control of the sample would make the DNA test report unreliable. It was also observed that it is trite that medical evidence is a confirmatory piece of evidence and cannot be a substitute for primary evidence. Under this regime the technician who conducts experiment to scrutinize DNA evidence is regarded as an expert whose opinion is admissible in Court. Further reference was made to subsection (3) of Section 9 of the Punjab Forensic Science Agency Act, 2007, which reaffirms this legal position. A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding DNA is per se admissible in evidence under Section 510, Cr.P.C.

iv) It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation. Reference was made to the following cases reported as 1996 SCMR 1553, 1998 SCMR 570 and 1993 SCMR 550.

Conclusion: i) Sole statement of the victim can be relied only when the same is found to be confidence inspiring and trustworthy.

ii) Testimony with improvements is not worthy of credence.

iii) DNA is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration.

iv) Credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation.

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14. **Lahore High Court**
Nasir Abbas and another v. The State
Criminal Appeal No. 257189-J of 2018
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2312.pdf

Fact: This is appeal against conviction in murder case filed by accused persons wherein they are sentenced under section 302(b) to imprisonment for life.

Issue:
i) What is evidentiary value of medical evidence?
ii) What inference can be drawn from a delayed postmortem?

Analysis: i) Medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant.
ii) The delay in conducting the postmortem examination on the dead body is suggestive of the fact that no eye-witness was present at the spot at the relevant time and the abovementioned delay has been consumed in procuring the attendance of fake eye witnesses.

Conclusion: i) Medical evidence is a type of supporting evidence.
ii) The inference from delayed postmortem is that time has been consumed in procuring the attendance of fake witnesses.

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15. **Lahore High Court**
Abid Hussain v. The State, etc.
W.P. No.5777 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2737.pdf

Facts: The petitioner has challenged the third change of investigation order on the ground that since challan had been submitted and charge had been framed in the matter against him, the impugned order could not have been passed.

Issue: Scope of reinvestigation after submission of challan and framing of charge qua Article 18-A of the Police Order, 2002 in view of the judgments of the Apex Court reported as 2014 SCMR 1499 (three member bench) postulating a bar to reinvestigation and 2014 SCMR 474 (two member bench) envisaging no bar to the reinvestigation?

Analysis: It is noteworthy that the earlier judgments on the subject Muhammad Akbar's case 1972 SCMR 335 (four member bench), Muhammad Ashfaq's case 2004

SCMR 1924 (three member bench) and Bahadur's case 2006 SCMR 373 (three member bench) were not brought to the notice of the Hon'ble Court in the earlier cases and, therefore, the law enunciated in earlier judgments could not be commented upon and discussed.

Law on the point of stare decisis is well settled. It has been held by Hon'ble Apex Court that in case of conflict between judgments of Supreme Court, the judgment of larger bench prevails. Therefore, the four member bench judgment i.e. 1972 S.C.M.R. 335 prevails.

Since the prime consideration for further investigation, reinvestigation or change of investigation is to arrive at the truth (Section 156 Cr.P.C. read with Section 202 thereof), the hands of an investigating agency for any further investigation should not be tied on the ground of mere delay or that would prolong the trial. It is, therefore, clear that there is no embargo on the power of the police to further investigate or reinvestigate the matter after filing of challan and the absence of such embargo has to be interpreted as an allowance wherever such an allowance fulfills the purpose of investigation as mandated in sections 156 and 202 of Cr.P.C.
The object and purpose of investigation, further investigation or even reinvestigation is to probe and find evidence and place all such material before a court of competent jurisdiction, any material that would help the court in arriving at a just conclusion. The only rider placed by the Hon'ble Supreme Court of Pakistan is that the power of reinvestigation or further investigation is not available after trial court has disposed of the case.

It has been unequivocally ruled that channel of reinvestigation is available upto and during the course of trial. This is clearly indicative of the availability of the facility of reinvestigation or further investigation even after framing of charge.

In this view of the matter, it is clear that reinvestigation, further investigation or transfer of investigation is permissible even after submission of challan or for that matter framing of charge and till the time the trial is concluded. However, this, at the same time, does not mean that change of investigation or further investigation can be ordered as par for the course. There are certain postulates that have to be met before an order for further investigation or reinvestigation or transfer thereof can be passed. Such an order may be passed if some new event or incident is discovered warranting reinvestigation or further investigation. Such an order can also be made if some new evidence is discovered. Such an order can also be passed if the previous investigations have been conducted unilaterally without associating the actual culprit involved and without trying to identify and ascertain the person responsible for committing the crime. The police do not have an unfettered power in this respect and reinvestigation or further investigation may

only be carried out if some further material relating to the case is required or if the previous investigation is malafide or in excess of jurisdiction.

Conclusion: See above.

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16. **Lahore High Court**
The State v Muhammad Ahmad alias Baggi
Murder Reference No.33 of 2017,
Criminal Appeal No. 485-J of 2017
Muhammad Ahmad alias Baggi v. The State
Criminal Appeal No. 486-J of 2017
Muhammad Sabir v. The State
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC2601.pdf

Facts: The convicts lodged Criminal Appeals through jail assailing their conviction and sentence. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to one of the appellants.

Issue:
i) What is evidentiary value of a chance witness?
ii) What is legal effect of dishonest improvements?
iii) What will be legal consequence if contradictions are found in the ocular account and medical evidence?
iv) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of the appellants can be believed against the appellants?
v) What is evidentiary value of the recovery made in violation of section 103 CrPC?
vi) What is evidentiary value of motive?
vii) What is evidentiary value of abscondence?

Analysis: i) It was observed by the Hon'ble Cour that witnesses were under a duty to prove as to why they had come to the place of occurrence, just prior to the occurrence, when they had no business to be there in the normal course of their routine. If the ocular account of the incident had been furnished by chance witnesses then they had to state reasons for presence around the occurrence at the time of incident in issue. If it had not been established through any independent evidence then it is not worthy of reliance. The august Supreme Court of Pakistan has repeatedly held that in a scenario where the motivation was against the complainant or the witnesses but the accused did not cause any harm to them, notwithstanding being within the range of their firing, would reveal that the said witnesses were not present at the place of occurrence.

ii) Moreover once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place

reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence, reference was made to the case precedents reported as 2018 SCMR 772 and 2019 SCMR 631.

iii) When the ocular testimony is in conflict with the medical evidence then the benefit is to be extended to the accused.

iv) The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has recently held in PLD 2019 Supreme Court 527 that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case.

v) It was observed that where in recovery of weapons the prosecution had failed to associate any independent witness of the locality then the mandatory provisions of section 103, Cr.P.C. would be violated in that regard. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

vi) It is settled law that motive is a double-edge weapon, which can cut either way; if it is the reason for the appellants to murder the deceased, it equally is a ground for the complainant to falsely implicate them in this case. Hence, motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction.

vii) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence. Both corroborative and ocular evidence are to be read together and not in isolation. Abscondence is only a suspicious circumstance. Abscondence itself has no value in the absence of any other evidence. Thus abscondence of the accused can never remedy the defects in the prosecution case. It per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. Conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone.

Conclusion: See above.

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17. **Lahore High Court**
Aqil Zaman alias Aqeel v. The State & another
Crl. Appeal No. 430 of 2020
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2247.pdf

Facts: Appellant was convicted for commission of offence punishable u/s 302 PPC and was sentenced to life imprisonment. However his co-accused on identical charges was acquitted by the trial court and his acquittal was also maintained by the High Court.

Issue: What will be the effect when evidence of the prosecution is disbelieved to the extent of some of the accused?

Analysis: In this case co-accused of the appellant was assigned the same role of fire on deceased that is also attributed to appellant that he too made a fire on deceased. Appellant is therefore placed in similar position where his co-accused was. When to his extent both the eyewitnesses have already been disbelieved, how they can be believed qua appellant. Having the similar role, it cannot be said that the co-accused was acquitted on the principle of 'sifting the grain from chef' which too is no more applicable in Courts of Pakistan on the strength of PLD 2019 SC 527 where it was declared that "Rule falsus in uno, falsus in omnibus" shall henceforth be an integral part of our jurisprudence in criminal cases.

Conclusion: Benefit of the principal of falsus in uno, falsus in omnibus shall be given to the accused where evidence of the prosecution is disbelieved to the extent of any other accused person.

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18. **Lahore High Court**
Dr. Shamim Akhtar v. Principal Secretary to Chief Minister Punjab etc.
ICA No.145/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC2679.pdf

Facts: In response to an advertisement made by respondent No.3 i.e., Secretary, Higher Education Department, the appellant, who was working in the School Education Department, applied for the post of Chairman, Board of Intermediate and Secondary Education, Multan (hereinafter called "the Board") through proper channel. After due process, the appellant was selected and appointed as Chairperson of the Board, on deputation basis for a period of three years.

Issue: Whether a civil servant working for the Province of Punjab when serves on deputation, in an autonomous body loses the status of being civil servant?

Analysis: The argument that the appellant was no more a civil servant during the period of her deputation is totally baseless. In the instant case, admittedly, the advertisement for the post of Chairman/Chairperson of the Board contemplates that both civil servant as well as private persons could apply for the said post. The appellant, in her capacity as a civil servant, made application for grant of an NOC to apply for the said post through proper channel. Meaning thereby, it was her status of a civil servant that entitled her to compete and get selected as Chairperson of the Board.

Conclusion: Appellant was a civil servant during the period of her deputation.

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19. **Islamabad High Court**
Sajid Iqbal v. Pakistan Software Export Limited, etc.
Writ Petition No. 73 of 2021
Mr. Justice Athar Minallah, CJ
https://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-73-2021%20|%20Citation%20Awaited&cseTle=Sajid%20Iqbal-%20VS%20-Pakistan%20Software%20Export%20Board%20&%20others&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Athar%20Minallah&jgmnt=/attachments/judgements/125111/1/Sajid_Iqbal_v_Pakistan_Software_Export_Board_Limited_etc_WP_No_73_of_2021_637612724243530660.pdf

Fact: The petitioner has assailed his dismissal from service through this constitutional petition.

Issue: i) What is nature of employment of petitioner?
ii) What is relief for person wrongfully removed in relation of Master and Servant?

Analysis: i) It is noted that Pakistan Software Export Board Limited has not been established through a statute promulgated by the Majlis-e-Shoora (Parliament). The terms and conditions of employees of the respondent Company are not governed under statutory rules. The relationship of an employee and the respondent Company is in the nature of 'master and servant.
ii) When the relationship is in the nature of master and servant, then reinstatement cannot be sought as a relief. The only relief that an employee can seek in case of wrongful removal from service is by way of seeking damages.

Conclusion: see above.

20. **Supreme Court of Pakistan**
Rana Basit Rice Mills Private Limited v. Shaheen Insurance Company
Civil Appeal No. 45-L of 2018
Mr. Justice Mushir Alam, Mr. Justice Qazi Faiz Isa, Mr. Justice Sajjad Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._45_l_2018.pdf

Facts: The appellant invoked the jurisdiction of the Insurance Tribunal Punjab, Lahore and claimed loss.

Issue: Whether the lack of a Board Resolution authorizing the attorney to file a suit invalidates the institution of the suit?

Analysis: The lack of a board resolution authorizing the attorney does not invalidate the institution of the suit so long as the Articles of Association confer upon the person/persons power to institute the suit in the company's behalf. Even otherwise such a defect can always be cured by placing on record a Board Resolution issued even at a subsequent date, which would put the matter to rest.

Conclusion: The lack of a Board Resolution authorizing the attorney does not invalidate the institution of the suit so long as the Articles of Association confer upon the person/persons power to institute the suit in the company's behalf.

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21. **Lahore High Court**
Summit Bank Ltd. v. Tanveer Cotton Mills (Pvt.) Ltd.
Civil Original No. 28 of 2013
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC2366.pdf

Facts: The petitioner/creditors sought winding up of companies on the sole ground that the companies are unable to pay their debts and their operations are unsustainable.

Issue: What is the difference between unwillingness to pay debt and inability to pay debt?

Analysis: Unwillingness to pay debts is not to be equated with inability to pay debts. If a company puts forth a good faith defence and disputes the amount to be due on substantial questions of law and fact, a winding up petition cannot be used as a tool for the recovery of an amount for which a normal remedy available to the petitioner would be the filing of a suit for recovery and the provisions of the Companies Act, 2017 cannot be used as an engine of coercive measures to extract an amount regarding which a dispute is shown to exist.
The term 'unable to pay its debts' is a term of art and will not be interpreted within the narrow confines of a bilateral dispute brought by a petitioner in a particular case but will have to be looked at in its proper perspective to encompass

the inability of a company to pay its debts generally and to conclude that it would be just and expedient to wind up a company owing to the fact that looking at the statements of accounts, the financial statements and the auditors' reports it can safely be concluded that a company is not a going concern and thus is a commercially unviable corporate entity. Clause (b) of sub-section (1) of section 302 states that a company shall be deemed to be unable to pay its debts if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part. Therefore, the law presumes that in order for a court to deem that a company is unable to pay its debts it must await the result of a process issued on an execution for the satisfaction of a decretal debt and mere fact that a decree has been passed by a court of original jurisdiction will not compel the High Court to wind up the companies. However, clause (c) of sub-section (1) of section 302 empowers the High Court to presume that a company is unable to pay its debts if otherwise it is proved to the satisfaction of the court that the company is unable to pay its debts by taking into account the contingent and prospective liabilities of the company.

Conclusion: Unwillingness to pay debts is not to be equated with inability to pay debts. Inability to pay debts is an independent cause of action and must be predicated on the material brought on record which would show that the company is commercially insolvent and its future financial viability is in serious doubt. However, unwillingness to pay debts will take the case in the realm of *bona fide* dispute which the company sought to be liquidated has raised on substantial grounds.

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22. **Lahore High Court**
Mst. Zahida Parveen v. Lamrey Ceramics (Pvt.) Limited etc.
Civil Original No. 58 of 2006
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC2766.pdf

Facts: The petitioner sought rectification of register of debenture-holders of the Company under Section 152 of the Companies Ordinance, 1984. Her earlier petition was dismissed due to non-prosecution and she took plea of pardanasheen lady as a sufficient cause which prevented her to approach the court within the period of limitation.

Issue: i) Whether provisions of Limitation Act 1908 & Civil Procedure Code are applicable on proceedings under Companies Ordinance, 1984?
ii) Whether plea of pardanasheen lady amounts to sufficient cause u/s 5 of Limitation Act, 1908; if so, whether petitioner is a pardanasheen lady?

Analysis: i) Section 152 of the *Ordinance* did not prescribe any time limit for filing of an application for rectification of register of members or register of debenture-holders of a Company. So, said provision remained under consistent judicial

scrutiny. Article 181 of Limitation Act applies to all applications filed under any statute and is not confined in any manner to merely the applications filed under the C.P.C. Under section 152 of the Ordinance an application is to be filed before the Company Bench of this Court and there appears to be no reason to deal with such an application differently than the application filed under Section 20 of the Arbitration Act. The Rule 7 of The Companies (Court) Rules, 1997 specifically states that the provisions of the Code of Civil Procedure, 1908, so far as applicable shall apply to all proceedings under the *Ordinance*.

ii) "Pardanasheen lady" is not a term of art. It has legal purport, impact and significance, which encapsulates certain defences in favour of a woman taking and establishing such plea, which are not available to other persons under the law. It is a bulwark, which offers legal immunity from certain ordinary binding legal principles especially a valid legal justification to substantiate the plea for condonation of delay on the touchstone of being unaware or uninformed. It offers a legitimate defence to agitate a cause of action which is otherwise barred by flux of time under the applicable limitation criteria.

Conclusion: i) Law of limitation as well as provision of the CPC are fully applicable to the petition filed under Section 152 of the *Ordinance*.

ii) The valid excuse of being a pardanasheen lady offers a strong ground and a reasonable consideration for exercising discretion in favour of a time barred application, as it is, if established, be taken as a sufficient cause within the contemplation of Section 5 of the Limitation Act, 1908 to condone the delay.

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23. **Supreme Court of Pakistan**
Nadia Naz v. The President of Islamic Republic of Pakistan
Civil Petition No.4570 of 2019
Mr. Justice Mushir Alam, Mr. Justice Yahya Afridi, Mr. Justice Qazi Muhammad Amin Ahmad
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4570_2019.pdf

Facts: Petitioner filed a complaint alleging workplace harassment under the "Protection against Harassment of Women at Workplace Act, 2010" before the Federal Ombudsman against respondents No 4 & 5. During the pendency of complaint before the Federal Ombudsman, the petitioner was proceeded against departmentally, charge-sheeted, show-caused, and consequently terminated from service. The learned Federal Ombudsman, treated action and proceedings in the departmental enquiry against petitioner as harassment. Respondents No.4 and 5 were ordered to be proceeded against and "the penalty of withholding of promotion was imposed on them for a period of two years. The departmental disciplinary proceedings against the petitioner were set-aside and she was reinstated into service.

Issue: i) Whether the actionable "harassment", as defined in section 2(h) of the Act, 2010, is of restricted application or applies to all manifestations of harassment?

ii) Whether the Federal Ombudsman has the jurisdiction and/or authority to reinstate the petitioner into service under the provisions of the "Protection Against Harassment of Women at Workplace Act, 2010"?

Analysis: i) Harassment, in all forms and manifestations, may it be based on race, gender, religion, disability, sexual orientation, age-related, an arrangement of quid pro quo, and/or sexual harassment etc affects and violates the dignity of a person, as guaranteed under the Constitution of Pakistan, 1973… The Act, 2010, rather than addressing issue of harassment in all its manifestation, as noted above, in a holistic manner, is a myopic piece of legislation that focused only on a minute faction of harassment. The Act, 2010 confines or limits its application to sexualized forms, including orientation of unwanted or unwelcome behavior, or conduct displayed by an accused person towards a victim in any organization… Any misdemeanor, behavior, or conduct unbecoming of an employee, or employer at the workplace towards a fellow employee or employer, in any organization, may it be generically classifiable harassment, is not actionable per-se under the Act, 2010 unless such behavior or conduct is shown to be inherently demonstrable of its 'sexual' nature. Any other demeaning attitude, behavior, or conduct which may amount to harassment in the generic sense of the word, as it is ordinarily understood, howsoever grave and devastating it may be on the victim, is not made actionable within the contemplation of actionable definition of "harassment" under section 2 (h) of the Act, 2010. The harassment made actionable under the Act, 2010 is confined to the manifestation of harassment that is inherently demonstrable of sexual orientation as defined in section 2(h) read with Explanations, as reproduced above, which is part of the Schedule of the Act, 2010.

ii) The powers of the Ombudsman are given under Sections 8 and 10 respectively. None of the provisions of the Act, 2010 empowers the Federal Ombudsman to reinstate an aggrieved person back into service.

Conclusion: i) The harassment made actionable under the Act, 2010 is confined to the manifestation of harassment that is inherently demonstrable of sexual orientation as defined in section 2(h) read with Explanations, as reproduced above, which is part of the Schedule of the Act, 2010.

ii) Federal Ombudsman has no power to reinstate an aggrieved person back into service.

24. **Lahore High Court**
Muhammad Wajid etc v. The State
Crl. Misc. No. 3971-B, 3972-B, 3973-B, 33182-B of 2020
Mr. Justice Sardar Ahmed Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC2427.pdf

Fact: Petitioner seeks post arrest bail in offences under sections 409, 420, 468, 471, P.P.C. read with section 5 (2) of the Prevention of Corruption Act, 1947.

Issue: Whether the bail must be granted in matters of corruption which do not fall within prohibitory clause?

Analysis: The economic offences constituted a class apart and need to be visited with a different approach in the matter of bail. The bail in such like cases even can be denied which do not fall under the prohibitory clause of section 497, Cr.P.C. Moral element in such like crime is absent and it must not be forgotten that white collar crimes are of such nature which affect the whole society, even though they may not have any immediate victims. In such like cases pragmatic approach should be adopted by the Courts at the investigation as well as bail stage and that no leniency should be shown to the people involved in such like cases because then it would be impossible to successfully investigate and help bring the culprit to book or check the ever increasing cancer of corruption.

Conclusion: In matters of corruption, the bail may be denied in those offences which do not fall under the prohibitory clause of section 497 Cr.PC.

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25. **Lahore High Court**
Aqib Javed & 3 others v. The State
Criminal Appeal No. 952 of 2019
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2707.pdf

Facts: Appellants were convicted for commission of offences punishable u/s Section 365-A PPC and Section 7-E of the Anti-Terrorism Act, 1997.

Issue: What is the mode of conducting identification parade of more than one accused?

Analysis: Appellants were three in numbers and the identification parade had to be in one go. The learned Magistrate was under obligation to arrange three queues. In each line one appellant had to stand at a number of his choice and thereafter witnesses were to be invited one by one. Every witness had to identify the accused from each line.

Conclusion: See above.

26. **Lahore High Court**
National Bank of Pakistan v. M/S Kohinoor Spinning Mills and others.
Civil Original suit No. 103757 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC2821.pdf

Facts: The plaintiff, a financial institution, sought recovery of loan availed by the defendant alongwith mark-up, cost of funds, charges and cost of suit.

Issue: Whether the refusal of leave to defend the suit amounts to violation of Article 10-A and due process clause of the Constitution?

Analysis: Right of fair trial is subject to fulfilling the precondition prescribed by law for bringing up action before the Court. Article 10-A is to be read with Article 4 of the Constitution and if fair trial is dependent upon a pre-condition or pre-qualification, then such condition or pre-qualification must be met with before proceeding further with the matter. The mandatory provisions of the Financial Institutions Recovery of Finance Ordinance, cannot be bypassed or otherwise rendered redundant or ineffective merely on the plea of fair trial and due process because if mandatory requirement of filing leave to defend is rejected or the suit is decreed in the absence of such application, the aggrieved person would be at liberty to seek redressal in accordance with available provisions of law including Section 22 of the *Ordinance*. Fair trial does not mean a trial where neither any question of law nor a fact was established. It was further observed that Article 10-A of the Constitution also provides for determination of civil right and obligation and under the Ordinance, the defendant is also required to establish the question of fact and law for determination of civil rights and obligations, thus the same is not contrary to Article 10-A.

Conclusion: Article 10-A must be read with Article 4 of the Constitution, which stipulates that no action, detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. The requirement of filing an application for leave to defend under section 10 of the *Ordinance* does not negate or run contrary to the concept of fair trial and due process as provided under Article 10-A of the Constitution.

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27. **Lahore High Court**
Muhammad Arif Ice Factory & others v Federation of Pakistan etc
Writ Petition No.30936 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC2788.pdf

Facts: It is case of the petitioners that they do not make any taxable supplies under section 2(41) of the Sales Tax Act 1990 (Act) but only exempt supplies, therefore,

they are not obligated to obtain sales tax registration under the Act. When they are not required by law to be registered, they are also not liable to pay "further tax" and “extra tax” levied on supplies of electricity and gas which are taxable supplies.

Issue: i) Whether or not a person who is involved in the making of only exempt supplies is liable to be registered under the Sales Tax Act, 1990?

ii) Whether any person, who makes “exempt supplies” and is not liable to be registered under the Act, has been burdened with payment of “further tax” and “extra tax” for non-registration?

Analysis: i) When seen in light of the provisions of section 2(25) of the Act, it is apparent that the person has an obligation to be registered under the law. Further as per section 14(2) of the Act, although petitioners are very much involved in the making of exempt supplies of “ice” under section 13 read with Item No. 27 of the Sixth Schedule to the Act yet none of the above scenarios is applicable requiring them to register. Firstly, the petitioners herein are engaged in making of exempt supplies of “ice” locally and import or export thereof is out of question. Secondly, there is no provision of the Act that requires petitioners to be registered. The petitioners are not required by any other Federal law to be registered under the Act. Therefore, registration of the petitioners is not warranted even under section 14(2) of the Act.

ii) “Further tax” under section 3(1A) of the Act is not intended to apply to and penalize those who make only exempt supplies and are not liable to be registered under the Act, otherwise the same would defeat the very intent, object and purpose of the levy. Words used in section 13(1) of the Act are very specific and provide for exemption from any taxable import or taxable supply of any goods from the whole or any part of the sales tax chargeable under the Act and not merely under Section 3(1) of the Act. This would mean that the provision of section 13(1) of the Act has an overriding effect on the chargeability of tax including “further tax” and “extra tax” under sections 3(1A) and 3(5) of the Act read with Notification No. SRO 509(I)/2013 dated 12.06.2013. As the supplies produced by the Petitioners have been exempted and they are under no legal obligation to obtain registration under the Act or to appear on the active taxpayers list maintained by the FBR, therefore, they are not liable to the payment of “further tax” and “extra tax”. Burdening those with imposition of “further tax” and “extra tax” who are not liable to be registered under the Act results in violation of the fundamental rights to property, as guaranteed by Articles 23 and 24 of the Constitution.

Conclusion: See above.

28. **Lahore High Court**
Khawaja Muhammad Asif v. The NAB etc
WP No. 20976 of 2021
Mr. Justice Syed Shahbaz Ali Rizvi, Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC2686.pdf

Facts: The allegation against the petitioner is that he has amassed assets disproportionate to his known sources of income. He failed to provide the evidence regarding receipt of salary income in his bank account, and also income from ZEN Restaurant. He being a public office holder engaged himself in foreign employment contract/Iqama and concealed receiving of Rs.16,00,000/- salary per month and income from restaurant business and thereby has committed an offence of money laundering.

Issue: Whether prima facie case is established to entitle the accused for grant of bail?

Analysis: Both learned counsels admitted that the omitted amount of salary and income from business, if added, there would be no disproportionate assets qua the petitioner. Still NAB has not finalized the outcome of the assets acquired by the petitioner under the head of immovable assets. Neither there is any tangible material, nor even any circumstantial material to prima facie conclude that remittance of Rs.107 Million was generation of the proceeds of crime. The foreign remittance declared in income tax return carries the presumption of truthfulness. Reliance is placed upon Brig. (R) Imtiaz Ahmad versus The State (PLD 2017 Lahore 23). Even the FBR record regarding the petitioner's claim has supplemented his claim qua the properties, income gained by him and foreign remittance. It is admitted position that the petitioner did not cause any loss to the government exchequer. The prosecution has yet to establish its case before the trial court. Taking these and all other facts and circumstances including the duration of non-submission of reference till date before the trial court into consideration the petitioner in our considered view is entitled to be granted bail.

Conclusion: The prosecution has yet to establish its case before the trial court. Taking these and all other facts and circumstances including the duration of non-submission of reference till date before the trial court into consideration the petitioner in our considered view is entitled to be granted bail.

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29. **Supreme Court of the United States**
Shular v. United States, 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-6662_c0ne.pdf
https://ballotpedia.org/

Facts: Eddie Shular pleaded guilty to charges of possession of a firearm by a convicted felon and to controlled substances possession. Shular was classified as an armed career criminal because of six previous drug convictions in Florida. He objected to the classification in court, arguing his previous convictions were not "serious

drug offenses" under the Armed Career Criminal Act (ACCA). The Northern District of Florida overruled the objection and sentenced Shular to concurrent terms of 15 years in prison on each count. On appeal, the 11th Circuit Court affirmed the district court's ruling. Shular appealed to the U.S. Supreme Court, arguing the 11th Circuit was wrong not to have used a categorical approach to interpret "serious drug offenses" under the ACCA and pointing to a circuit split regarding the determination of serious drug offenses under the ACCA.

Issue: Whether the determination of a "serious drug offense" under the Armed Career Criminal Act requires the same categorical approach used in the determination of a "violent felony" under the Act?

Analysis: Justice Ruth Bader Ginsburg noted that, unlike in the other provisions referenced by Shular that involve the categorical approach, the provision in question relating to "serious drug offenses" used the term 'involving' which should be interpreted to mean that "serious drug offenses" includes any crime that 'involves' the enumerated acts (distribution, manufacture, and possession of drugs). The opinion also noted that the rule of lenity, which would ordinarily require the court to interpret ambiguous phrases in a law in the manner most favorable to the defendant, was not applicable here since the terms being used were not genuinely ambiguous. Justice Brett Kavanaugh wrote a concurring opinion. He described the process for when the rule of lenity should be used: 1.) Courts must first attempt traditional methods of statutory interpretation and, if that fails, 2.) they may only resort to the rule of lenity when the terms being used are so grievously ambiguous that the court can only guess at what the legislature intended.

Conclusion: The court affirmed the 11th Circuit's decision in a unanimous ruling. The Court held that, under the Armed Career Criminal Act of 1984, the definition of “serious drug offense” requires only that the state offense involves the conduct specified in the statute. Unlike other provisions of the ACCA, it does not require that state courts develop “generic” version of a crime, describing the elements of the offense as they are commonly understood and then compare the crime being charged to that "generic" version to determine whether or not they qualify under the ACCA for purposes of penalty enhancement.

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30. **Lahore High Court**
Shahzana Kazmi v. Federation of Pakistan, etc.
Writ Petition No.59484/2020
Mr. Justice Muhammad Qasim Khan, C.J
https://sys.lhc.gov.pk/appjudgments/2021LHC2064.pdf

Facts: Cabinet Division issued notice for auction of different articles available in Tosha Khana through which only the Officers of Federal Government and Armed Forces were held entitled to join auction proceedings depriving the general public to participate in auction proceedings.

Issue: Whether notification No.8/5/2017-TK dated 18th December, 2018 entitling the Officers of Federal Government and Armed Forces to join auction proceedings for auction of different articles available in Tosha Khana depriving the general public to participate in auction proceedings is ultra vires the Constitution?

Analysis: Prima facie the criteria to participate in auction proceedings set by Cabinet Division is not only hypothetical but also against the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan. There appears no nexus between the criteria and the object sought to be achieved through the auction, hence, it is a case of "suspect classification"… 'Auction' means only a public sale as distinguished from sale by private negotiation. Transparency and fairness are always an essence of governance. But in this case, the Federal Government has not only deprived the general public to participate in auction proceedings, but even as compared to Federal Officers and the Officers of Armed forces, has also excluded other public functionaries and the members of civil society; i.e. Officers of Provincial Administrative Service, Officers of Semi Government Departments and Local Governments, lawyers, doctors, engineers, persons from academia and literature etc. This discrimination amongst the Public Servants and viz-a-viz other segments of society is sheer violation of constitutional guarantees provided in terms of rule of law (Article 4), dignity of man (Article 14), freedom of business (Article 18), right to information (Article 19-A), equality of citizens and protection against discrimination and exploitation (Article 25).

Conclusion: Notification No.8/5/2017-TK dated 18th December, 2018 entitling the Officers of Federal Government and Armed Forces to join auction proceedings for auction of different articles available in Tosha Khana depriving the general public to participate in auction proceedings is ultra vires the Constitution.

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31. **Ghulam Yasin Bhatti v. Federation of Pakistan**
I.C.A.No.23200 of 2021
Mr. Justice Abid Aziz Sheikh, Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC1038.pdf

Facts: The appellant prayed that Rule 3(2) of the Judicial Commission Rules, 2010 which provides for nomination to the posts of judges of the High Courts is violative of Article 25, 2-A, 193(2)(a) and all appointments made without calling for applications, without written examination and interview is wholly arbitrary and nepotistic based on personal likes and dislikes of the Chief Justice hence void in view of Article 8 of the Constitution being inconsistent with Fundamental Right enshrined in Article 25 of the Constitution. That all appointments to be made in future be not made without inviting applications, written examination and interview and as they do in Central Superior Services examinations.

Issue: Whether nomination to the posts of judges of the High Courts is violative of Article 25, 2-A, 193(2)(a) and all appointments made without calling for applications, without written examination and interview are wholly arbitrary?

Analysis: Article 175A of the "Constitution" provides a mechanism for appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court. In order to regulate its procedure, the Judicial Commission made the Judicial Commission of Pakistan Rules, 2010 in exercise of powers conferred by Clause (4) of Article 175A of the "Constitution". Rule 3 of the "Rules 2010" provides the procedure for nominations for appointments. In addition to the above, Rule 5 of the "Rules 2010" provides the manner of proceedings of the Commission. It is though one of the contentions of the appellant that Rule 3(2) is ultra vires to the "Constitution", but despite all his earnest efforts, he has failed to substantiate his argument to this effect. Sub-clause (8) of Article 175A of the "Constitution" prescribes that the Commission by majority of its total membership shall nominate to the Parliamentary Committee one person for each vacancy of a Judge in the superior judiciary; where after the Parliamentary Committee shall also delve and ponder upon the issue in terms of sub-clauses (12) and (13) of Article 175A of the "Constitution". The process or mode suggested by the appellant for filling up the vacancy of a Judge in the superior judiciary is clearly alien to Article 175A of the "Constitution". Any procedure, which is not recognized by Article 175A of the "Constitution", cannot be pressed into service for the said purpose, as it will amount to intrude the constitutional mandate.

Conclusion: The process or mode suggested by the appellant for filling up the vacancy of a Judge in the superior judiciary is clearly alien to Article 175A of the Constitution. Any procedure, which is not recognized by Article 175A of the "Constitution", cannot be pressed into service for the said purpose, as it will amount to intrude the constitutional mandate.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/articleSearch.aspx

   INTERPRETATION OF TAXATION STATUTES by Debatree Banerjee

   This article aims to answer the question: Which non-statutory principle of interpretation is applicable for interpreting the Tax Statutes? And what are the other aids which Courts can take into account while interpreting the Tax Statues?

   With the diversifying activities covered under the ambit of taxation laws, the rules of interpretation are gradually gaining practical importance in the taxing enactments.

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/06/28/commentary/modification-of-visitation-schedule-to-facilitate-minors-affected-by-custody-litigation/

MODIFICATION OF VISITATION SCHEDULE TO FACILITATE MINORS AFFECTED BY CUSTODY LITIGATION by Fahad Ahmad Siddiqi

> *It is submitted that both parents can have equal access to minor children in custody cases. In 1970, the no-fault divorce made its first appearance in the United States (in California), highlighting that both parents had an equal right to have access to their children. Forty years later, in 2010, New York became the last state to adopt the no-fault divorce. Will it take another 40 years for children to be heard and have their rights routinely ignored?*

3. **PAKISTAN LAW DIGEST**
http://www.plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J14

AN OVERVIEW ON PASSING OFF AND TRADEMARK by Muhammad Ayub

> *In summary, it is a very flexible right which can be used to protect goodwill in a wide-range of situations. It also can be advantageous in relation to trademark to bring passing off claims alongside infringement claims. Although there have been instances where trade mark claims have failed but passing off claims became successful, this is not common and passing off should form part of a wider IP enforcement strategy. This is because it is primarily an 'offensive' trade mark right and does not have the same deterrent effect as other registered IP rights. In a nutshell, there should be a provision on "passing off' in the present law. In the game-play of passing-off, it is not only essential to prove presumption of misrepresentation among the general public, but also to show deception of the public and damage / injury to goodwill.*

4. **NOTRE DAME LAW REVIEW**
https://www.law.gmu.edu/assets/files/publications/working_papers/1120ThreeConcepts.pdf

THREE CONCEPTS OF DIGNITY IN CONSTITUTIONAL LAW by Neomi Rao

> *The U.S. Supreme Court and constitutional courts around the world regularly use the term human dignity when deciding cases about freedom of speech, reproductive rights, racial equality, gay marriage, and bioethics. Judges and scholars treat dignity as an important legal value, but they usually do not explain what it means and often imply that it has one obvious core meaning. A close review of constitutional decisions, however, demonstrates that courts do not have a singular conception of dignity, but rather different conceptions based on how they balance*

individual rights with the demands of social policy and community values. Using the insights of political theory and philosophy, this Article identifies three concepts of dignity used by constitutional courts and demonstrates how these concepts are fundamentally different in ways that matter for constitutional law. In contentious cases, the concepts of dignity will often conflict. If constitutional courts continue to rely on human dignity, judges must choose between different understandings of dignity. This Article provides the groundwork for making these choices and defending a concept of dignity consistent with American constitutional traditions.

Lahore High Court

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-07-2021 to 31-07-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Lahore High Court**
Syed Aakif Ali Shah v. Muhammad Ijaz, etc.
Civil Revision No.13840 of 2021
Mr. Justice Shahid Waheed
https://sys.lhc.gov.pk/appjudgments/2021LHC2809.pdf

Fact: During the proceedings of the suit, two persons filed an application to become a party to the suit. The said application was allowed and the petitioner/plaintiff was directed to file an amended plaint by making them as defendants. The petitioner challenged the said order before revisional court. As the interim relief was not granted in the revisional application, the Trial Court continued its proceedings. The petitioner did not file amended plaint and took adjournments. Ultimately his revision petition was also dismissed and the next day, the Trial Court without going into the merits of the suit, dismissed the same under Order XVII Rule 3 CPC on the ground of non-compliance of its order and non-filing of amended plaint.

Issue: i) What is difference in nature of amendments filed under order VI Rule 17 CPC & amendments filed under Order I Rule 10 CPC?
ii) What are consequences of not filling amended plaint under Order VI Rule 17 CPC within time granted by court?
iii) Whether plaint can be rejected under Order VII Rule 11 CPC for not filing amended plaint?
iv) Whether suit can be dismissed under Order XVII Rule 3 CPC for not filling amended plaint?
v) What procedure should be adopted if a plaintiff fails to file amended plaint after acceptance of application under order I Rule 10 CPC directing the plaintiff to add new parties as defendants?

Analysis: i) During the trial of any suit the necessity for making amendment in the plaint arises on two occasions. First, when the plaintiff wants to amend his pleadings, he may accordingly amend the plaint but, of course, after getting leave of the Court. This type of amendment is allowed to be made under Order VI Rule 17 CPC and it is called voluntary amendment. Second occasion for amendment arises when the Court orders any person to be added as a defendant. In such eventuality the plaint, unless the Court otherwise directs, is compulsorily amended under sub-rule (4) of rule 10 of Order 1 CPC in such manner as may be necessary. It necessarily implies that it will not be sufficient to amend the cause title, but all consequential amendments in the body of the plaint should also be made so as to show the nature of claim made against the newly added defendant.
ii) If the plaintiff after obtaining leave to amend his plaint under Order VI Rule 17, fails to amend it within such time, he shall not be permitted to amend it afterwards, but the failure does not render the suit liable to dismissal. The consequence of failure to amend the plaint, therefore, is that the case will go to trial on the original pleadings, but the suit cannot be dismissed.

iii) Under section 54 of the old Civil Procedure Code (Act XIV of 1882) there was a special provision for rejection of the plaint on failure to amend the plaint, but there is no such provision in the present Code of Civil Procedure (Act V of 1908). Though the grounds for rejection mentioned in Order VII Rule 11 are not exhaustive, and the plaint can still be rejected under the inherent powers of the Court, but then, defect for which it is rejected should not be such as is curable by amendment and nothing more than an error of procedure. Therefore failure to amend the plaint after order was not a fatal defect constituting a ground for rejection of plaint and, at the most, it was a mere irregularity, and did not affect the jurisdiction of the Court, and could be cured by the Court exercising its suo moto powers.

iv) These words of Rule 3 suggest that the case must be one where inspite of the default of a party it must have been possible for the Court to come to a decision of the suit. The words "decide the suit" cannot be taken as tantamount to dismissing the suit for default. It can only mean decide the suit on merits on the material available before the Court. But in the present case the suit was in the very preliminary stage, therefore, there was no question of deciding the suit forthwith on merits.

v) The Court by exercising its inherent and suo moto powers should have itself added the names of the subsequent purchasers in the cause-title and proceeded further in the matter treating the petitioner's reply, which he had submitted to the application under Order 1 Rule 10 CPC, as part of the plaint.

Conclusion: See above.

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2. **Lahore High Court**
Abdul Majeed, etc. v. Hussain Bibi, etc.
Writ Petition No. 70606 of 2019
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC3397.pdf

Facts: One of the legal heirs of deceased filed suit for possession after partition of the property left by the deceased along with a relief of permanent injunction. The suit was ex-parte decreed and after going through various stages, the auction sale of the property in favour of respondent No.12 got confirmed by the court. Meanwhile application filed by the petitioners u/s 12(2) CPC was dismissed by the trial court; said order was also affirmed by the revisional court.

Issue: i) Whether a suit could legally be filed against a dead person?
ii) What are the pre-requisites before passing an order for substituted service under order V rule 20 CPC?

Analysis: i) Admittedly, the suit was filed by impleading the predecessor of the petitioners as defendant No.1. The petitioners produced copy of death certificate of the predecessor of the petitioners, which was not denied by any of the parties. From

perusal of the death certificate, it appears that the predecessor of the petitioners had died on 07.06.2003 and factum of his death was reported on 23.06.2003 only after sixteen days of his death. This fact shows that when the suit was instituted, the predecessor of the petitioners was not alive and the suit was instituted against a dead person thus the same was defective in nature. Admittedly, the suit was filed by real sister of the deceased and it cannot be believed that she remained unaware of the death of her brother for such a long period of six years. It clearly suggests that suit was deliberately filed against a dead person for some ulterior motive.

ii) Substituted process is in the nature of a proceeding of last resort and cannot be opted for except when all procedural requirements have been met and the pre-conditions for a substituted service as required by Code of Civil Procedure, 1908 may not be strictly made applicable i.e., the defendant cannot be served personally or by post or he is avoiding service. There is no cavil with the proposition that unless all efforts to effect service in the ordinary manner are verified to have failed substituted service cannot be resorted.

Conclusion: i) Suit cannot legally be filed against a dead person and such a suit is defective in nature.

ii) Substituted service cannot be ordered unless the court is satisfied that the defendant cannot be served personally or by post or he is avoiding service.

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3. **Lahore High Court**
Muhammad Ali v. Wali Muhammad, etc.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC3564.pdf

Facts: Respondent No.1/plaintiff, for the satisfaction of the decree, filed an execution petition before the learned trial Court (Addl. District Judge, Burewala) which was entrusted to Civil Judge Ist Class, for further process. During proceeding of the execution petition, the learned executing issued non-bailable warrant of arrest of the judgment-debtor for the satisfaction of the decree.

Issue: i) Whether the Additional District Judge was competent to transfer the execution petition to the court of civil judge?

ii) Whether the Executing Court may issue non-bailable warrant against the judgment debtor?

Analysis: i) The decree of the Court of last instance is to be executed, as the decree of the Court of first instance merged into the decree of last instance. The Court of first instance who passed the decree has jurisdiction to execute it himself or transfer it to a competent Court. A decree may be executed either by the Court which passed it as defined in section 37 of the C.P.C. or by the Court which it is sent for execution under section 39 of C.P.C. It may also be executed by the Court to whom the proceedings were transferred under section 24 or section 150 of C.P.C… Section 39 of the C.P.C. deals with the transfer of decree. There are two

parts of Section 39 of the C.P.C. Subsection (1) of Section 39 of the C.P.C. deals with transfer of a decree on the application of decree-holder and Subsection (2) of Section 39 of the C.P.C. empowers the court passing decree to send it for execution to any subordinate Court of competent jurisdiction. In subsection (1) of Section 39 of the C.P.C. four described eventualities, have been explained in (a), (b), (c), and (d) when the decree-holder can apply for the transfer of decree. In subsection (2) of Section 39 of the C.P.C. the Court, who passed the decree, is competent to send it for execution to any subordinate Court of competent jurisdiction. The words "Subordinate Court" and "Competent Jurisdiction" are significant. Necessary conditions for sending a decree for execution to another Court are that it shall be a Court of subordinate to the Court which passed the decree and secondly that it shall be a Court of competent jurisdiction. The jurisdiction may be territorial and pecuniary and competent jurisdiction may be that the Court has power to try the suit and jurisdiction to execute the decree. Keeping in view the legal proposition as described in Sections 37, 38 and 39 of the C.P.C., the learned Additional District Judge has jurisdiction to send the decree/execution petition for its execution and further proceedings to the subordinate Court, who is also a competent Court as has possessed the territorial and pecuniary jurisdiction.

ii) There may be two types of proceedings before the executing Court. Firstly, for making presence of the judgment debtor before the Court and secondly, for sending him to the jail for the satisfaction of the decree… For the satisfaction of a decree, the executing Court, after institution of the execution petition, issues a notice to the judgment-debtor for a day to be specified in the notice and asks him why he is not paying the decretal amount and warn him, if he will not pay the decretal amount, he should be detained in prison. If he fails to appear in response to that notice, then the Court is empowered to issue a warrant of arrest.

Conclusion: i) The Additional District Judge was competent to transfer the execution petition to the court of civil judge.

ii) If the judgment debtor fails to appear in response to that notice, then the Court is empowered to issue a warrant of arrest.

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4. **Lahore High Court**
Saleem Khan v. Mst. Zeenat, etc.
Civil Revision No.1078-D of 2019.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC2994.pdf

Facts: The plaintiffs/respondents (Pardanasheen ladies) challenged the alleged gift made in favour of the defendant/petitioner asserting that defendant fraudulently transferred the inherited property of the plaintiffs in his favour. The suit of the plaintiffs/respondents was dismissed by the trial court but decreed by the appellate court. The petitioner/defendant filed a revision petition on the premise, *inter alia*, that the suit of the plaintiffs/respondents was time-barred.

Issues: i) Whether section 5 of the Limitation Act 1908 applies to Civil Revision under section 115 of the Code of Civil Procedure, 1908?
ii) What are the essential constituents of a valid oral gift mutation?
iii) What are the predominant conditions regarding the transaction with Pardanasheen ladies?
iv) Whether limitation runs against void transactions?

Analysis: i) Section 5 of the Limitation Act, 1908 is not applicable in the light of Section 29(2) of said Act to the Civil Revision under Section 115 of C.P.C. as the Code itself prescribes 90 days for filing a revision petition. Therefore, provision of section 5 of the Limitation Act is not available for condonation of delay or extension of time in case of a Civil Revision.
ii) In order to constitute a valid oral gift under law, it must be shown that it was made voluntarily, without duress, and with all senses; that the donee accepted the same, and that the possession was delivered to him towards completion of that transaction. If any of the ingredients/components is missing, the claim of the donor would be rejected outrightly. It is also "sine qua non" for the donee to prove that donors approached revenue officials for the entry and attestation of mutation in the assembly convened for this purpose and they made their submission to acknowledge the oral transaction of gift in presence of two respectable of the vicinity.
iii) In case of a gift, particularly, when the donor is some illiterate and Pardanasheen lady, disputing the very genuineness of the gift, the Court must look at the surrounding circumstances and ascertain the true intent behind the gift. In present case, the respondents are folk, Pardanasheen, illiterate, advanced age, simpleton village ladies, and their valuable rights in the suit property were going to be transferred, and in that eventuality, extra-ordinary precautions and special care be taken to safeguard the rights of a weaker limb of the society.
iv) It is a well-settled principle of law that fraud vitiates even the most solemn transaction. So, any transaction based on fraud would be void. Moreover, the limitation does not run against the void transactions. Mere efflux of time does not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate.

Conclusion: i) Section 5 of the Limitation Act 1908 does not apply to the proceedings of Civil Revision under section 115 of C.P.C.
ii) The essential ingredients of a valid oral gift mutation are the offer, acceptance, delivery of possession, and the entry of such gift in the revenue record in presence of two respectable of the localities.
iii) Extra-ordinary pre-caution and special care to be taken where valuable rights of Pardanasheen ladies are being transferred.
iv) The limitation does not run against void transactions.

5. **Lahore High Court**
Muhammad Hanif etc., v. Additional District Judge etc.
Writ Petition No.14539/2013
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC3049.pdf

Fact: Civil Revision was filed against decree for possession under section 9 of Specific Relief Act by petitioners. During pendency of civil revision, the plaintiff/respondents filed application under Order VI Rule 17 CPC for the amendment of the plaint to the extent of description of the suit property. The revisional court allowed the application of the amendment and dismissed the revision petition.

Issue: Whether the revisional court was justified in allowing the application for amendment of the plaint paving the way for the amendment of the decree which altogether altered the description of the suit property?

Analysis: After about 1½ years of institution of the suit, the respondent/plaintiff adduced evidence wherein he stated that his suit is regarding property falling in khasra No.14/1. So he cannot summarily be allowed to amend the plaint proposing to incorporate a different description of suit property. Being so, even if amendment in the plaint was to be allowed, the same could not be made basis of corresponding amendment of decree without allowing both the parties to lead their respective evidence after framing of issue, if so needed, in view of the amended plaint as the parties come up with their defence on the basis of the pleadings and evidence is to be led within and not beyond the pleadings. Therefore, the revisional court erred to this extent as well by jumping on to the amendment of decree on the basis of amendment of plaint.

Conclusion: The revisional court was not justified in allowing the application for amendment of the plaint paving the way for the amendment of the decree which altogether altered the description of the suit property.

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6. **Lahore High Court**
Muhammad Razzaq v. Surayya Bibi, etc.
W.P. No.41097 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2978.pdf

Facts: The petitioner has challenged the order passed by a learned Additional District Judge whereby he dismissed the application filed along with an appeal under Order XLIII C.P.C. against the acceptance of an application by the trial court under Order XXXIX, Rules 1 and 2 C.P.C for interim relief.

Issue: Why the reasons are required to be given in an order/judgment?

Analysis: It is trite and settled that a judicial order has to contain reasons so as to allow the reader to understand and comprehend the grounds/reasons prevailing with the court or tribunal, as the case may be, in arriving at a conclusion. Any reasonable judicial discourse or exercise on the judicial side that attempts to identify and address an issue must contain reasons for reaching a conclusion. The reasons given for a decision or an order explain the justification or logic for such a decision or order.

The reasons give satisfaction to the person against whom a decision has been given about the decision not being arbitrary, whimsical and take the matter out of the realm of subjectivity. Reasons enable an affected party to gauge, consider and examine whether an appeal or any further challenge is in order. The requirement of giving reasons, therefore, operates as an important check on abuse of powers. It may be added here that the provision of reasons in an order or a decision is an essential attribute thereof and the chain between conclusion and fact in a decision is broken if there are no reasons provided to support the conclusion.

Furthermore, reasons have a direct and rational nexus with procedural fairness. A reasoned order may be said to be an absolutely desirable condition associated with judicial dispensation. Reasons substitute subjectivity with objectivity and failure to give reasons amounts to denial of justice. Reasons enable a court or a tribunal to decide whether there are any legitimate grounds for it to interfere with the decision. Reasons can be said to be the heartbeat of every conclusion since these introduce clarity, regularity, reasonableness and rationality in a decision and a decision indeed becomes lifeless without such reasons. It is equally established that a speaking order means an order that speaks for itself and an order can only speak through the reasons rendered in support thereof. While no particular form of recording or provision of reasons is required, it suffices if the adjudicating authority records reasons which are proper, relevant, germane, intelligible and proportionate.

Conclusion: See above.

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7. **Lahore High Court**
Muhammad Siddique v. Nasir Iqbal, etc
F.A.O No.80 of 2018
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC3131.pdf

Facts: Appellant filed an ejectment petition under Section 17 of the Cantonment Rent Restriction Act, 1963 seeking eviction of the "respondent No.1" for his personal use from rented commercial property.

Issue: Whether the personal need of landlord also includes need of the member of family?

Analysis: Section 17 (4) (b) of the "Act, 1963" does not recognize the need of the children of the landlord as a valid ground for eviction of tenant and it is restricted to personal bonafide need of the landlord/landlady.

Conclusion: The personal need of landlord does not include need of the member of family.

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8. **Lahore High Court**
Maqbool Ahmad v. Manzoor Hussain & others
W.P. No.8228/2017
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC2934.pdf

Fact: During the execution proceedings of ejectment order, two persons filed an objection petition claiming that they are also living in the same house. The Rent Controller accepted the objection petition with the observation that warrant of possession be issued only against respondent No.1 Appeal against said order was also dismissed. The petitioner has now assailed both said orders.

Issue: Whether any person whose name is not mentioned in ejectment petition can be ejected during execution proceedings?

Analysis: The petitioner filed ejectment petition only against respondent No.1. During the proceedings of objection petition, the petitioner failed to negate the fact that objectors were also residing in a portion of the same house. Any person under possession of such portion will not be subject to the eviction order. Nobody can be condemned unheard. Law has given its ways to exercise against such person. But the status of that person regarding his possession has to be defined/specified by the claimant/owner.

Conclusion: Any person whose name is not mentioned in ejectment petition cannot be ejected during execution proceedings It was incumbent upon the petitioner to have impleaded all persons in whose absence the ejectment order would not be executable.

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9. **Lahore High Court**
Ana Liaqat v. Addl. District Judge etc.
W.P. No.10090 of 2011
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC3247.pdf

Facts: Petitioner sought dissolution of marriage on the basis of non payment of maintenance and cruelty but the Family Court decreed the suit on the basis of Khula.

Issue: Whether the suit can be decreed on the basis of Khula when the grounds of non payment of maintenance and cruelty have been asserted?

Analysis: Under the provisions of Section 2(ii) and (viii) of Dissolution of Muslim Marriages Act, 1939, the marriage cannot be dissolved on the basis of pleadings of the parties and on the failure of reconciliation between the parties. The point of hatred and cruelty, if agitated, can only be decided by the trial Court after recording the evidence.

Conclusion: The suit cannot be decreed on the basis of Khula when the grounds of non payment of maintenance and cruelty have been asserted.

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10. **Lahore High Court**
Muhammad Boota v. Khalid Zia.
C.R. No.1918 of 2013
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC3231.pdf

Facts: Original plaintiff filed suit for pre-emption. During pendency of suit, he died and his legal heirs were impleaded in the suit. All the legal heirs withdrew the suit in favour of one legal heir.

Issue: Whether the legal heir of the deceased pre-emptor can be said to have right of pre-emption at the time of sale?

Analysis: On account of death of original pre-emptor the present plaintiff stepped into his shoes and became pre-emptor. It is important for pre-emptor to have superior right on three stages of pre-emption, at the time of sale, at the time of filing of the suit and at the time of decree. Certainly this aspect goes against the respondent/plaintiff.

Conclusion: Legal heir of the deceased pre-emptor cannot be said to have right of pre-emption at the time of sale.

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11. **Lahore High Court**
Muhammad Naeem Shafi v. Mst. Shamim Akhtar and another
Regular Second Appeal No.121 of 2011 etc
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC3304.pdf

Facts: Suit of the appellant for specific performance was dismissed.

Issue: Whether it is necessary for the plaintiff in suit for specific performance of contract to show his readiness, willingness as well as capacity to perform agreement?

Analysis: To seek the discretionary and equitable relief of specific performance it is incumbent upon the Appellant to show his readiness, willingness as well as capacity to perform Agreements.

Conclusion: It is necessary for the plaintiff in suit for specific performance of contract to show his readiness, willingness as well as capacity to perform agreement.

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12. **Lahore High Court**
Bashir Ahmad v. Khadim Hussain etc
C.R. No.2025 of 2013
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC3267.pdf

Facts: Suit of respondent for specific performance was concurrently decreed by both the courts below.

Issue: Whether mere presence of a document regarding agreement to sell proves it?

Analysis: Mere presence of a document regarding agreement to sell does not mean that it is a proved document.

Conclusion: Mere presence of a document regarding agreement to sell does not mean that it is a proved document.

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13. **Supreme Court of Pakistan**
Iftikhar Ahmad v. The State
Criminal Petition No.529 of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._529_2021.pdf

Facts: Complainant had rented out a property to the petitioner, who while being a tenant allegedly prepared a forged sale deed of the property in his favour and started claiming to be the owner of the said property. Hence a case under section 420, 468 and 471, PPC.

Issue: Whether bail may be dismissed in a case not falling under prohibitory clause of section 497(2) of CrPC?

Analysis: All the offences alleged against the petitioner do not fall within the prohibitory clause of subsection (1) of Section 497 CrPC and thus attract the principle that grant of bail in such offences is a rule and refusal an exception…The main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society, if there is an apprehension of repetition of offence or commission of any other untoward act by the accused. Therefore, in order to make the case of an accused person fall under the exception to the rule of grant of bail in offences not covered by the prohibitory clause of Section 497(1) CrPC, the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused

person is released on bail… Those circumstances are: (a) his abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged… The court may decline to exercise the discretion of granting bail to him in such offence only when it finds any of the above noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle.

Conclusion: Bail can only be dismissed in a case not falling under prohibitory clause of section 497(2) of CrPC where there are exceptional circumstances for refusal. Otherwise, grant of bail in such cases is a rule.

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14. **Lahore High Court**
Muhammad Rashid Yasin v. The State etc.
Crl. Misc. No.2255-B/2021
Mr. Justice Ahmad Nadeem Arshad & Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3546.pdf

Facts: Petitioner had sought pre-arrest bail in cases involving allegations that he along with others while protesting against the arrest of the leader of Tahreek-e-Labbaik Pakistan, had forcibly blocked a road, disrupted the flow of traffic, raised provocative slogans, brandished weapons and attacked & injured the members of the police force.

Issue: i) Could there be any cause sufficient enough to justify disruption of the normal civic life or questioning the writ of the state?
ii) Whether attacking member of the police force is to be treated similar to an ordinary offence?

Analysis: i) It is evident from a perusal of these precedents that no cause howsoever devotional, exalted or even noble can be made an excuse to disrupt normal civic life and bring it to a standstill, or for that matter, question the writ of the State. There are certain boundaries that should never be crossed. The petitioner through his action and conduct has not only tried to thwart the writ of the State but has also crossed the Rubicon.
ii) Attacking a member of the police and that too during the discharge of his duty is not an ordinary attack but is an attempt to diffuse State muscle which is the only shield available to the public at large…Treating such offences as similar to regular offences against private individuals would cause a large pierce through the shield and will leave the citizens unprotected and in consequence tarnish the purpose of existence of the State itself.

Conclusion: i) No cause can be so noble to cause disruption of normal civic life or questioning the writ of the state.
ii) Attacking member of the police force during discharge of his duties is much more serious than an ordinary offence.

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15. **Lahore High Court**
Iftikhar Ahmad v. The State & Other
Criminal Misc. No. 1577-B-2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC3583.pdf

Facts: Pre-arrest bail application by the petitioner for offences punishable u/s 302/324/148/149 PPC.

Issue: Whether merits of the case can be considered while deciding a pre-arrest bail?

Analysis: As held by Khair Muhammad & another vs. The State (2021 SCMR 130) & Khalil Ahmed Soomro vs. The State (PLD 2017 SC 730), this principle is settled by now that while deciding the pre-arrest bail, the Court is not precluded to examine the merits of the case.

Conclusion: Merits of the case can be considered at the time of deciding pre-arrest bail.

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16. **Lahore High Court**
Mst. Shahida Chaudhary v. Regional Police Officer & 6 others
Writ Petition No. 1984 of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2939.pdf

Facts: The petitioner had challenged the order of ex-officio justice of peace u/s 22-A/22-B CrPC through which her request for registration of FIR regarding the alleged murder of her husband in a fake police encounter and robbery by the police officials, was dismissed. Prior to the impugned order, during the course of proceedings, on the request of the concerned CPO, the learned Sessions Judge had directed a Magistrate to hold a judicial inquiry to probe into the facts of the occurrence which led to the death of the husband of the petitioner.

Issue: i) What is the ultimate object for holding an inquest or inquiry under section 174 or 176 of the Code of Criminal Procedure, 1898 by a magistrate?
ii) Whether the law permits any police officer to make a request for a fact finding inquiry by a magistrate?

Analysis: i) The purpose of an inquest/inquiry by a Magistrate is to gather the evidence that may be used by the police in their exploration of a violent or suspicious death and the subsequent prosecution of a person if death ensued from a criminal act. An

inquest is not a trial but criminal proceeding of a preliminary, investigatory nature. While holding an inquest/inquiry under Section 174 or 176 Cr.P.C a Magistrate is confined to find out the cause of death only if it is unnatural like, homicidal or accidental or suicidal. He by no stretch of imagination can declare that who is responsible for the death. He is also under no jurisdiction to proceed for facts finding.

ii) From the words used in the letter by the CPO to the Sessions Judge, it is clear that the CPO had desired a fact finding inquiry through the Magistrate. This is absolutely beyond the scope of Section 176 Cr.P.C and the powers assigned to the Magistrate. "To discover the real cause of death" is completely different from "to probe into the facts of the occurrence". Neither CPO could make such request, nor could learned Sessions Judge entertain it. Even if entrusted to the Magistrate, he is under no authority to probe into the facts of the occurrence. Probing into the facts of the occurrence can only be under the Punjab Tribunals of Inquiries Ordinance, 1969, which, under Section 3, empowers the Provincial Government to appoint a Tribunal, Commission or Committee for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification and a Tribunal, Commission or Committee so appointed shall make the inquiry and perform function accordingly. If according to the CPO, it was a definite matter of public importance, he at the most could make a request to the Government and thereafter it was for the Provincial Government to appoint or not to appoint any Tribunal, Commission or Committee of inquiry…In view of above, the request made by CPO to the learned Sessions Judge, for probing into the facts of the occurrence, entertaining said application by the learned Sessions Judge and its entrustment to the Magistrate are declared as illegal and without lawful authority with following directions that in future:-

i) If an application is moved by a police officer to a Sessions Judge or to a Magistrate (in case it is directly submitted), it will be his primary duty to examine that the request has been made within the parameters of Section 176 Cr.PC and it relates to cause of death only. If it is so, the application shall be entertained otherwise it may be turned down or returned to the concerned police officer as the case may be.

ii) The Magistrate holding the inquest/inquiry under Section 176 Cr.P.C under no circumstance can travel beyond his jurisdiction that is limited to determination of cause of death of the person and not the person who has caused the death.

iii) A Magistrate has no power to record a finding regarding guilt or innocence of an accused while holding the inquest.

iv) The powers in conducting the inquest which a Magistrate would have in holding an inquiry into an offence shall also be limited to determination of cause of death.

Conclusion: i) The object of inquest u/s 174 or 176 CrPC is limited to find out whether the death is natural or unnatural; such powers cannot be used to trace the person responsible for a death.
ii) The law does not permit the police officers to request for a fact finding inquiry to probe into facts of an occurrence by a magistrate.

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17. **Lahore High Court**
Muhammad Akhtar v. Ex-Officio Justice of Peace, etc.
Writ Petition No. 10416 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3365.pdf

Facts: Father of an accused challenged the order of the ex-officio Justice of Peace through which he directed the police to record the statement of the aggrieved u/s 154 CrPC, and proceed further as per law.

Issue: Whether the father of an accused, against whom an order for registration of an FIR is passed, falls within the category of an "aggrieved party" or "aggrieved person" and has he any locus standi to challenge the order on behalf of his son?

Analysis: The petitioner being father of the proposed accused cannot be termed as an "aggrieved party or aggrieved person" and by no stretch of imagination it can be said that any of his fundamental rights is infringed or he has suffered any loss. Record further depicts that the petitioner has no power-of-attorney of his son; the proposed accused. It has been ordained in the last address of Holy Prophet Hazrat Muhammad (p.b.u.h) known as "Khutba Hajjatul Wida" that father is not responsible for the deeds of his son, as well as, son is not responsible for the act of his father, therefore, taking guidance from the supra mentioned quotation of law by last prophet Hazrat Muhammad (p.b.u.h), this Court is of the view, that the father is not responsible for the wrongdoing of his son. Hence, there is no occasion to hold that the petitioner is "aggrieved person or aggrieved party" and has no locus standi to challenge the impugned order through Constitutional jurisdiction.

Conclusion: Father cannot be termed as an aggrieved person to file writ against the order for registration of an FIR against his son.

18. **Lahore High Court**
Saeed v.The State
Crl. Appeal No. 984 of 2016
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3290.pdf

Facts: The Appellant was, inter alia, convicted under section 302 (b) PPC and was sentenced to life imprisonment.

Issue: i) What will be the effect where FIR is not registered at the police station?
ii) What inference could be drawn where post-mortem examination is conducted after considerable delay?

Analysis: i) In this case FIR was not lodged at the police Station rather the complainant got recorded his statement at Civil Hospital. None of the witnesses of ocular account ever proceeded to report the matter at the police station. This has left no doubt that the witnesses were not present at the place of occurrence at the relevant time, thus the FIR was chalked out with due deliberations and consultations, after preliminary investigation.
ii) Post-mortem examination on the dead body of the deceased was conducted with the delay of 06 hours. It was a case of delayed post-mortem, which casts serious doubt that the FIR was got recorded with promptitude, but the inference can be drawn that the intervening period was consumed in fabricating the prosecution story, planting the PWs; otherwise there was no justification for conducting post-mortem examination with such a considerable delay.

Conclusion: i) If FIR of a case is not registered at the police station, it gives the impression that the witnesses were not present at the crime scene and the FIR was registered after due deliberations and preliminary investigation.
ii) Inference for a delayed post-mortem examination is that the intervening period is consumed by the prosecution in fabricating a story, planting the witnesses and conducting preliminary investigation.

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19. **Lahore High Court**
Muhammad Hassan alias Aamir v. The State etc
Criminal Appeal No. 383-J of 2016
Criminal Revision No. 630 of 2016
Criminal PSLA No. 204 of 2016
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC3380.pdf

Fact: Appellant and nine others were tried in a private complaint for offence of commission of murder. On conclusion of trial, nine co-accused were acquitted, whereas, appellant was convicted and sentenced to imprisonment for life. Appellate has challenged his conviction while complainant of case has challenged the acquittal of nine accused persons and filed Crl. Revision for enhancement of sentence of the appellant.

Issue: What is principle of “sure guilt”?

Analysis: For corroboration, confirmation of all circumstances of the crime is unnecessary; it suffices if there is confirmation as to a material circumstance of the crime and of the identity of the accused. Prosecution usually put a prima facie case known as 51% case or a case with realistic prospect of conviction before the court, yet standard of proof for evidence before the court is bit higher than one set by the prosecution. The standard of proof required before a criminal court is proof beyond reasonable doubt, yet it also goes side by side with new formulation of standard, internationally followed in some jurisdictions i.e. “Sure of guilt” keeping in view the circumstances of the case. Jurists have introduced a new concept of standard of proof that is known as “floating standard”, which means every piece of evidence shall not be evaluated on the touchstone of standard of proof beyond reasonable doubt. Probability varies low or high on different types of evidences produced before the court. e.g. standard of proof required for ocular account may vary from standard of proof for medical evidence and so on for other types of evidence in a case, yet it is the totality of circumstances and the combined or cumulative effect of all types of evidence produced before the court which prove the charge beyond reasonable doubt or at least equip the court that it must be sure of guilt of accused. “Standard of proof styled as proof beyond reasonable doubt” and formulation known as “Sure of guilt” are part of our criminal justice system which is reflected from the Article 2(4) of Qanun-e-Shahadat Order, 1984 which ordains how a fact is to be proved; said Article runs as under; “A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists”. The above formulation shows that either fact is so certain that court believes of its existence or it is so probable that court could suppose existence of such fact. This supposition by the court leads to formulation known as “Sure of guilt”. The court can reconstruct the story while inferring it from prosecution case theory and the counter defence version.

Conclusion: See above.

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20. **Lahore High Court**
Safdar Hayat v. Ex-Officio Justice of Peace, etc
W.P. No.46741 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3320.pdf

Facts: The petitioner challenged the order passed by an Ex-Officio Justice of Peace whereby an application filed by respondent for registration of a criminal case on account of an allegation of rape was allowed by Justice of Peace and the Station House Officer concerned was directed to register a criminal case under section

154 Cr.P.C. On the basis of the application submitted by respondent despite negative comments-cum-report filed by the District Complaint Officer as Justice of Peace was not bound by such report.

Issue: Whether the comments-cum-report filed by a District Complaint Officer/police in answer to a petition under section 22-A and 22-B Cr.P.C. before an Ex Officio Justice of Peace holding full length preliminary inquiry before registration of a crime report is legally permissible when seen in the light of section 154 Cr.P.C?

Analysis: The initial and original reason for encouraging and perpetuating such reports was to see whether the persons who knocked at the doors of an Ex-Officio Justices of Peace had approached the police hierarchy in the first instance before making their way to an Ex Officio Justice of Peace and whether if the applications preferred by such persons revealed commission of cognizable offences then why the inaction and whether such inaction was an omission? While such reports ought to have been confined only to the relaying of such information and only this information, instead, a trend has surfaced (like the present case) whereby before registration of a criminal case the police opines and comments on the merits of the case, undertakes a full length inquiry and, therefore, investigates the case before registering it. This was, evidently, never the intention behind bestowing such quasi-judicial powers on ExOfficio Justices of Peace…Furthermore, precedent cases on the issue also highlight the fact that such a report containing comments of the police can only be with reference to two queries: whether the aggrieved person has approached the police hierarchy with an application that discloses the commission of a cognizable offence and if the answer is in the affirmative then why was an F.I.R. not registered?

Furthermore, a police report containing comments of the police, summoned by an Ex-Officio Justice of Peace, shall only not offend the governing law as also the jurisprudence developed on the basis thereof if it contains comments with reference to only two aspects and nothing beyond. Of course, the first being whether the aggrieved person has approached the police hierarchy on the administrative side and satisfied the avenues available to him before seeking resort to the facility provided by sections 22-A and 22-B Cr.P.C. The second being as to why in the presence of an application revealing the alleged commission of a cognizable offence a criminal case has not been registered.…Police cannot be given any latitude to inquire and investigate into, and discuss and opine on, the merits of the application by way of the report as this was never the intent behind insertion of sections 22-A and 22- B Cr.P.C.

Section 154 Cr.P.C. does not admit or allow any prior inquiry or precedent investigation before registration of an F.I.R. Section 154 Cr.P.C., is clear and unambiguous it would be legally impermissible to allow the police to read the term ‘preliminary inquiry’ or ‘prior hearing’ into the provision before registering an FIR. The condition that is sine qua non for recording an FIR under section 154

Cr.P.C. is that there must be information and that information must disclose commission of a cognizable offence.

Conclusion: See above.

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21. **Lahore High Court**
Dr. Nafeesa Saleem etc. v. Justice of Peace etc.
Writ Petition No. 16562/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC3421.pdf

Fact: The petitioner doctors were booked in complaint to Punjab Healthcare Commission for medical negligence. The Commission held an inquiry and found that the allegations were correct and imposed fine and made a reference to the Pakistan Medical and Dental Council (PMDC) for taking action against Petitioner No.2 in accordance with law. The victim approached SHO for registration of FIR against the petitioners but SHO refused to lodge FIR. Thereupon he moved an application under section 22-A Cr.P.C. before the Justice of Peace, Multan, who accepted it and directed the SHO to proceed under section 154 Cr.P.C.

Issue: i) What are national and international laws relating to rights of health?
ii) What are essentials to prosecute a doctor under the criminal law?
iii) What is scope of immunity against criminal liability under Section 29 of the PHC?

Analysis: i) Article 9 of the Constitution of Pakistan (1973); The Constitution of the World Health Organization; Article 25 of the Universal Declaration of Human Rights; Article 12 of The International Covenant on Economic, Social and Cultural Rights (1966); General Comment No. 14 (2000) issued by the United Nations' Committee on Economic, Social and Cultural Rights; and the treaty bodies, conferences and declarations (such as the Declaration of Alma-Ata and the United Nations Millennium Declaration and Millennium Development Goals) "have discussed various aspects of public health relevant to the right to health and have reaffirmed commitments to its realization.
ii) To prosecute the petitioners under the criminal law, there should be prima facie evidence in the form of credible opinion of another competent doctor to support the charge of negligence. Cause of death in cases of medical negligence could only be determined through postmortem examination. Clause (xxii) of section 2 of the PHC Act makes autopsy report mandatory to establish medical negligence.
iii) Section 29 of the PHC Act is perspicuous. It expressly declares that a healthcare service provider can be held accountable under the Act. It follows that the Commission has exclusive jurisdiction to adjudicate the complaints relating to provision of healthcare services and, subject to section 26(2), all other legal proceedings, civil or criminal, in respect thereof are barred. Therefore, the Justice

of Peace was not competent to entertain the application of respondent No.3 under section 22-A Cr.P.C.
Nevertheless, the said bar is subject to section 26(2) which lays down that where it appears to the Commission that the circumstances of a case warrant action under any other law, it may refer the matter to the concerned governmental authorities or law enforcement agencies for appropriate action under the relevant laws. Section 26(2) should be widely construed. It confers sufficient authority on the Commission to prosecute a healthcare service provider under the criminal law, if the circumstances are grave, for medical negligence, maladministration and malpractice.

Conclusion: See above.

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22. **Lahore High Court**
Riaz Ahmad v. Justice of Peace etc
W.P. No.9343 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC2975.pdf

Facts: Complainant alleged that his daughter died due to negligence of doctor. Ex-Officio Justice of Peace directed the SHO concerned to record version of the complainant as required under Section 154 Cr.P.C. and proceed further strictly in accordance with law.

Issue: Whether criminal proceedings could be initiated against a doctor for medical negligence?

Analysis: The Punjab Healthcare Commission Act, 2010 says that if there is any negligence on the part of any person relating to the health, will be dealt with under this Act. In the interrogatory of this Act under Section 1, it is clearly mentioned that it shall apply to all healthcare establishments, public or private hospitals, non-profit organizations, charitable hospitals, trust hospitals, semi-government and autonomous healthcare organizations. Under Section 19(b) of the Act, “medical negligence” means a case where a patient sustains injury or dies as a result of improper treatment in a healthcare establishment and, in case of death, determined on the basis of medical autopsy report. Therefore, this Act bars to prosecute any person on the allegation of negligence.

Conclusion: No criminal proceedings could be initiated in presence of the special law to deal with the negligence of the practitioners being available, without exhausting the said remedy.

23. **Lahore High Court**
Sheraz Khan v. The State, etc.
Crl.Misc.No.44216-B/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC3627.pdf

Facts: Petitioner seeks post arrest bail in case under sections 13, 14, 16 of The Prevention of Electronic Crimes Act, 2016 (PECA, 2016) read with sections 109, 419, 420, 468 and 471 PPC registered at FIA, Cyber Crimes (Circle).

Issue: Whether offences under any other laws if being committed in relation to or through the use of an information system would be investigated and tried under Prevention of Electronic Crimes Act, 2016 (PECA)?

Analysis: The main object of PECA, 2016 as reflected from the preamble is to prevent unauthorized acts with respect to information system; in the light of definition clauses, the recitation and examination of relevant provisions of PECA, which are Sections 27, 28, 30, 36 (3) (b & C), 44 & 50, makes it clear that offences under PPC or any other laws cannot be tried jointly with any coordinate offence under PECA, 2016, even if it is committed in the same transaction.

Conclusion: Offences under any other laws if being committed in relation to or through the use of an information system would not be investigated and tried under Prevention of Electronic Crimes Act, 2016 (PECA).

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24. **Supreme Court of Pakistan**
Divisional Superintendent Postal Services Jhang v. Siddique Ahmed
Civil Appeal Nos. 1499 & 1500 of 2019
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1499_2019.pdf

Facts: Respondents, Postmen, were dismissed from service due to admitted misappropriation of money orders of meager amount. The Federal Service Tribunal converted the major penalty into minor one of withholding increment for two years.

Issue: Whether misappropriation of meager amount by a government servant may entail major penalty of dismissal from service?

Analysis: A Government servant who is found to have misappropriated public money, notwithstanding its amount, breaches the trust and confidence reposed in a Government servant who is charged with the responsibility of handling public money. Misappropriation of the same, whether temporary or permanent and irrespective of the amount constitutes dishonesty and misconduct. Such an employee/individual has no place in Government Service because he breaks the

trust and proves himself to be unworthy of the confidence that the State reposes in him…Any leniency in this regard is not warranted in law because misappropriation of the amount either meager or huge results in breach of trust which is reposed in a Government servant and the delinquent has no right to be retained in service.

Conclusion: Misappropriation of any amount whether meager or huge by a government servant entails major penalty of dismissal from service. Such an employee/individual has no place in Government Service because he breaks the trust and proves himself to be unworthy of the confidence that the State reposes in him.

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25. **Supreme Court of Pakistan**
Chief Secretary Govt. of the Punjab, Lahore, etc. v. Ms. Shamim Usman
Civil Petition No.1097-L of 2020.
Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1097_l_2020.pdf

Facts: Authority declined the case of proforma promotion of the respondent. The respondent instead of challenging the said order before the Punjab Service Tribunal invoked the constitutional jurisdiction of the High Court wherein through the impugned order direction was issued to the petitioner department "to grant proforma promotion to the petitioner to Grade-20".

Issue: Whether the jurisdiction of High Court in service matters is barred under Article 212 of the Constitution?

Analysis: Non-obstante clauses of Articles 212(1) and (2) begin with "notwithstanding anything hereinbefore contained," thus overriding, inter alia, the constitutional jurisdiction of the High Court under Article 199, which is already "subject to the Constitution." Article 212(1)(a) provides that a Tribunal established under the law will enjoy exclusive jurisdiction in the matters relating to terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. The term "terms and conditions" is clearly spelt out in Chapter II of the Punjab Civil Servants Act, 1974 and the rules thereunder. Article 212(2) in unambiguous terms states that no other Court can grant injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends. Scope of jurisdiction and powers of the Tribunal are provided in sections 4 and 5 of the Act. The High Court, therefore, has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon by the Tribunal under the Act.

Conclusion: The jurisdiction of High Court in service matters is clearly barred under Article 212 of the Constitution.

26. **Lahore High Court**
Malik Gull Zaman v. Deputy Commissioner, etc.
Writ Petition No. 4808 of 2021/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC3341.pdf

Facts: The petitioner had constructed some shops and a Chobara upon his land on road. He claimed to have constructed the shops after submission of site plan/map and deposit of requisite fee in Tehsil Municipal Committee, but before the site plan could be approved and handed over to him, record of his case was got destroyed in the riots transpired after the death of a political leader. Thereafter, respondents sealed the shops and chobara of the petitioner. The petitioner challenged the act of sealing of his shops and chobara in writ jurisdiction.

Issue: Does the Local Government Act, 2019 empower the inspector/enforcement officer to seal a building that is erected without approval of building plan?

Analysis: Now the question arises whether erection or re-erection of a building without approval of building plan gave power to the authority to seal that building. In this regard it is noted that the provision of Section 284 of the Punjab Local Government Act, 2019, which empowers the Inspector and Enforcement Officer to seal the premises. But before doing this he will have to consider whether this action is warranted in the interest of public health, safety, convenience or welfare, or to avoid danger to life or property. Meaning thereby, such power can only be exercised in case of any serious threat to the public health, safety, welfare or danger to life and property. The power to seal the shops is not to be exercised automatically where the construction is against the approved plan and the plan was not got approved but the authority regardless of the legal status of the shops should be satisfied that the sealing of the shops is necessary to avoid any serious threat to the public health, safety, welfare or danger to life and property.

Conclusion: The Punjab Local Government Act, 2019, does not empower the inspector/enforcement officer to seal a building only because it was constructed without an approved plan unless that building poses serious threat to the public health, safety, welfare or danger to life and property.

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27. **Lahore High Court**
Sheikh Shahid Jamal v. National Accountability Bureau etc.
Crl. Appeal No. 416/2020
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2020LHC3841.pdf

Facts: The appeal has been filed under section 13(c) of the National Accountability Ordinance, 1999 which is directed against the freezing order which was confirmed and appointment of receiver was upheld.

Issue: i) What is the significance of Freezing Orders with reference to National Accountability Ordinance 1999?

ii) What is the distinction between the terms belief and suspicion?

iii) How to distinguish between reasonable suspicion and reasonable grounds to believe?

iv) Whether the appointment of receiver is mandatory under clause (c) (ii) of section 12 of the NAO when a freezing order is made?

Analysis: i) Freezing order is now a common practice in many countries in both civil and criminal cases. In England, in civil matters it is often referred to as Mareva injunction and is issued to prevent a debtor from disposing of his assets or removing them from the country before the conclusion of the trial with a view to defeat his creditor‘s claim. On the other hand, in criminal cases the freezing order is issued as an interim measure to preserve the property while the proceedings are pending so that it is available if the court makes a confiscation order at the end.

The powers conferred on the Chairman NAB and the Accountability Court by section 12 are not unfettered. They can make a freezing order only if there appear reasonable grounds for believing that the accused has committed an offence under the NAO. True, the NAO does not define this expression but section 26 PPC gives us a cue about what it connotes.

ii) It is thus evident that law recognizes the distinction between belief and suspicion which is also understood in the English language. The former connotes conviction of the truth of some statement or the reality of some being or phenomenon especially when based on examination of evidence. In contrast, suspicion means the act or an instance of suspecting something wrong without proof or on slight evidence.

iii) The importance of distinguishing between reasonable suspicion and reasonable grounds to believe lies in the fact that they set different standards for judicial assessment of whether a legal threshold has been met in a particular case. In the former it suffices if the concerned person thinks that there is a possibility, which is, more than fanciful, that the relevant facts exist. On the other hand, the standard applicable to reasonable grounds to believe has both an objective and subjective facet. The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds.

iv) The object of freezing is to keep the assets available to satisfy the final order of confiscation if one is made. The NAO defines the term freezing quite expansively and it includes holding, controlling and managing any property through a receiver or otherwise. Inasmuch as appointment of receiver is an extremely harsh step, the Legislature could not have intended that the Chairman NAB and the Accountability Court should invoke clause (c) (ii) of section 12 of the NAO in routine. Instead, it wanted them to act judiciously and balance the competing interests of the society and the accused in every case. Hence, the

aforesaid provision must be taken as permissive or enabling rather than being mandatory. The Court was persuaded to draw this conclusion also from two other factors: first, clause (b) of section 12 of the NAO does not make appointment of receiver compulsory where the property ordered to be frozen is a debt or other movable property. Secondly, clause (e) of section 12 uses the words *"receiver, if any, appointed under the section"* while describing the powers, duties and liabilities of a receiver. A wade through section 12 of the NAO shows that it only describes the powers, duties and liabilities of a receiver but does not specify the conditions under which he may be appointed. In the absence of any guidelines the above-mentioned principles which are based on equity and good conscience can be legitimately followed. Guidance from Order XL CPC as section 12 of the NAO has adopted a part thereof by legislative reference. Rule 1 of the said Order stipulates that a court should appoint a receiver when it appears to it just and convenient.

Conclusion: See above.

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28. **Lahore High Court**
Muhammad Sadiq Raja v. The State
Criminal Appeal No. 1809-E of 2010
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2796.pdf

Facts: The appellant (accused), a public servant, who remained absconder, was charged for possessing assets beyond means and was convicted and sentenced under section 9 (a) (v), 10 and 31-A of the National Accountability, Ordinance, 1999 (Ordinance) by the Accountability Court. The appellant preferred an appeal, challenging the impugned judgment, on the premise that there was no evidence of malpractice against the accused and that the prosecution failed to prove the allegations leveled against the appellant.

Issues: i) Whether the appellant (accused), under the presumption enshrined therein section 14 (c) of the Ordinance, in all circumstances, is to account for the assets acquired by him?
ii) What are the pre-requisites to declare an accused an 'absconder' under section 31-A of the Ordinance?
iii) Whether the conviction awarded in absence of evidence of investigating officer could sustain?

Analysis: i) Under criminal law, fundamentally, the prosecution is under heavy burden to prove a case against the accused beyond any shadow of doubt. Nevertheless, the accused may only be required to offer explanation of the prosecution evidence and, if found reasonable, the benefit of this could be extended to the accused. Even in a case instituted under section 9(a)(vi)(vii) of the Ordinance, the prosecution is burdened to establish a case against the accused and if the

prosecution succeeds in doing so, the burden is deemed to be discharged and it then shifts to the accused to rebut the presumption of guilt. Therefore, despite the presumption contained in section 14(c) of the Ordinance, it is the basic duty of prosecution to prove its case and once this liability is discharged successfully, the accused is made to prove his innocence.
ii) Absconding under section 31-A of the Ordinance entails penal consequences, therefore, the prosecution is under liability to prove that the process was issued, a serious effort was made to execute the warrant, the statement of process server was recorded by the court; the Court thereafter was satisfied and it issued the proclamations in terms of Section 87 Cr.P.C and finally that the proclamations so issued were duly executed and in this context statement of process server was also recoded and then the Court being satisfied had declared the accused as a Proclaimed Offender. Prosecution in this case did not produce the officer to whom any proclamation was entrusted. In these circumstances, we are compelled to hold that the absconding of appellant in this case has not been proved by the prosecution and at the most before us, we can say, it was a long disappearance on the part of appellant. But said disappearance was not unlawful as it has been established from prosecution's evidence that appellant was abroad pursuant to approval of Ex-Pakistan leave for three years by the competent Authority.
iii) An investigating officer is a material witness of a case. In the case in hand, the investigating officer was given up by the prosecution on the score that he had died. However, neither the factum of his death was brought on record, nor any secondary evidence was adduced to testify the documents prepared by said investigating officer. Therefore, the conviction of the appellant could not sustain in the event of non-production of said witness.

Conclusion: i) In spite of the presumption contained in section 14(c) of the Ordinance, initially, it is the duty of prosecution to prove the allegations levelled against the accused and once this burden is discharged, the accused is made to rebut the presumption of guilt.
ii) See above.
iii) The conviction could not sustain in absence of evidence of an investigating officer.

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29. **Supreme Court of Pakistan**
Province of Punjab, etc. v. Hafiz Muhammad Ahmad
C.P.1274-L/2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1274_l_2013.pdf

Facts: The High Court relied on a series of case law, referred to in the impugned order by reproducing the headnotes of the law reports.

Issue: Whether the headnotes preceding the judgment of a court are a part of that judgment and should be referred in the judgment?

Analysis: The headnotes preceding the judgment of a court are not a part of that judgment but are the notes prepared by the editors of the law-reports, highlighting the key law points discussed in the judgment and are supplied just to facilitate the reader with a summarized version of the salient features of the case which helps in quickly scanning through the law reports. It is a matter of common knowledge that the headnotes are at times misleading and contrary to the text of the judgment. Headnotes by the editors of the law-reports cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported, hence they should not be cited as such. Therefore, it is neither safe nor desirable to cite a dictum by reference to the headnotes.

Conclusion: The headnotes preceding the judgment of a court are not a part of that judgment. These cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported.

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30. **Lahore High Court**
Learning Alliance (Private) Limited etc. Versus Province of Punjab etc
WP No.18066/2014
Mrs. Justice Ayesha A. Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC3588.pdf

Fact: Through this petition, the vires of provisions of the Lahore Development Authority Act, 1975 (“LDA Act”) as well as provisions of the Lahore Development Authority Land Use Rules, 2014 (“2014 Rules”) are challenged and consequently prayed that notifications seeking payment of commercialization/conversion fee be set aside.

Issue: i) Whether the LDA can levy a conversion fee in areas which are declared to be commercial?
ii) Whether each individual property is required to be converted even though it is located on a road or segment of roads declared commercial?
iii) What is criteria to determine conversion fee and what are its permissible uses?
iv) Whether provisions of section 4, 6, 13, 14, 14A, 18, 19, 28 and 37 of the LDA Act are ultra vires?

Analysis: i) Essentially there was no conversion of land use, but the exercise of re-classification became the basis of the demand for the one time fee. Interestingly LDA is charging a one time conversion fee even though the status of land use has not changed by way of the reclassification scheme. Hence LDA is charging conversion fee on roads that have been declared commercial that is where the land use is declared as commercial. This logic totally defies the concept of land use plan and land use classification as the only objective of land use classification and land use plan is to declare areas within which classified usage can take place.

Hence there appears to be no logic in requiring the owner to pay for conversion of land use, as the land use has not been converted.

ii) The said roads were declared commercial because the usage on that road was primarily commercial, hence the road was declared permanently commercial. This means that the land use for the area is commercial. Since the land usage was declared on the basis of existing usage of the land, the requirement of individual property owners to convert the land usage of property has no basis as their property stands converted with the declaration made by the LDA. The declaration of a road as commercial is based on the usage of the property around that road and not per se the actual road itself. Hence there is no justification to demand a conversion fee on properties facing roads or segment of roads as named in List A. The entire concept of land use conversion is based on changing the use of land from the one provided in the scheme or master plan or land use plan. Hence where there is no conversion in land use, a conversion fee cannot be levied.

iii) Section 28 of the LDA Act requires LDA to charge a fee for conversion of land use to meet the cost of classification or re-classification and conversion. This means that LDA can charge a fee to recover the cost it has incurred to develop an area as per its land use. In terms of Section 28 of the LDA Act, LDA must declare its costs for the conversion, classification or reclassification and can then seek to recover its costs through a conversion fee, where the land use is converted. Accordingly the requirement is that LDA declares its planning, development and expansion plans with the expected costs on an annual or bi-annual basis not only to meet the requirements of good governance and transparency but also to justify the adequacy of the costs incurred and its nexus with the fee sought to be recovered.

iv) The vires of sections challenged before this Court being 4, 6, 13, 14, 14A, 18, 19, 28 and 37 of the LDA Act have already been upheld by the august Supreme Court of Pakistan in the Imrana Tiwana Case, hence to this extent prayer of the Petitioners cannot be granted.

Conclusion: i) The LDA cannot levy a conversion fee in areas which are declared to be commercial.

ii) Each individual property is not required to be converted as it is located on a road or segment of roads declared commercial.

iii) See above.

iv) Provisions of section 4, 6, 13, 14, 14A, 18, 19, 28 and 37 of the LDA Act are not ultra vires.

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31. **Lahore High Court**
Muhammad Waqas etc v. Govt. of Punjab etc
Writ petition No.10365 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC3263.pdf

Facts: Petitioners deposited the admission fee/requisite dues being the regular students, with administration of the college, on the instructions of respondent No.5 within

time and respondent No.5/ Administration of the college was responsible for the clearance of the petitioners/ students for the up-coming examination but their Roll number slips were not issued till yet by College Administration and the Board/ respondent No.3, rather, the respondents demanded from the petitioners/ students to deposit the fee/dues at the rate of Rs. 50,000/- as late admission fee.

Issue: Whether the petitioners can be penalized for the negligence of college administration?

Analysis: Petitioners are the regular students of the college and as per their version, they have already deposited requisite fee in the office of the clerk of the college administration on the instructions of respondent No.1 within the prescribed time and it was the duty of the college administration to forward the applications /admission forms alongwith fee to the Board/ respondent No.3 and there was no fault on the part of the students for not depositing the requisite examination fee. The petitioners are the students of the college and they cannot be penalized for the negligence if committed by the college administration.

Conclusion: Petitioners cannot be penalized for the negligence if committed by the college administration.

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32. **Lahore High Court**
Nasir Ali v. Govt of Punjab & others
W.P. No.8666/2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC2175.pdf

Fact: The respondent registered three Drag Flow/Dredger Machines of which the petitioner claims to be owner. The petitioner seeks cancellation of registration of these machines on the ground that these do not fall within the parameter of Section 2(23) of the West Pakistan Motor Vehicles Ordinance, 1965.

Issue: i) Whether High court can decide question of ownership of machines?
ii) What are salient aspects of definition of motor vehicle?

Analysis: i) Matter of ownership pertains to factual controversy therefore the same cannot be decided in exercise of extra ordinary and discretionary constitutional jurisdiction.
ii) The following conclusions are arrived at with respect to the definition of "Motor Vehicle" under section 2(23) of the Ordinance

i. Any mechanically propelled vehicle adapted for use upon road is a "Motor Vehicle";
ii. Any mechanically propelled Vehicle not adapted for use upon road but running upon fixed rails is not a "Motor Vehicle";

iii. Any mechanically propelled vehicle adapted or not adapted for use on roads but used solely upon premises of the owner is not a "Motor Vehicle";

iv. Adapted for use upon roads is sine qua non for any Machine to qualify in the definition of "Motor Vehicle"; and

v. Construction and earth moving Machine which can be mechanically propelled and adapted for use upon roads can qualify to be registered as "Motor Vehicle" subject to physical examination of the Machine by the Registration Authority to his satisfaction.

Conclusion: See above.

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33. **Lahore High Court**
Farah Mazhar and three others v. The Federation of Pakistan, through Secretary, Ministry
W. P. No. 14226 / 2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC3187.pdf

Fact: The husband/father of the petitioners is accused of embezzlement of funds as CEO of the Company who fled the country and took refuge in the United Kingdom. The petitioners through the memorandum issued by the Ministry of Interior, Government of Pakistan were informed that their names were placed on the Exit Control List (the "ECL"). The petitioners filed the representation seeking exclusion of their names from the ECL but that was dismissed.

Issue: i) Whether the names of family members of fugitive accused person can be placed in Exit Control List?
ii) What is scope of right of freedom of movement?

Analysis: i) The names of the petitioners were placed on the ECL without notice and hearing and without considering that the petitioners were not associated with the Company in any capacity, such as director or shareholder or in any other capacity. Even if the allegation of acquiring movable or immovable properties as benamidar of the CEO is accepted, the respondents could have invoked laws regarding attachment and protection of such properties instead of clogging their right to liberty by placing them on the ECL. It is importantly stated that none of the petitioners has been arrayed in that Reference nor any role in the occurrence has been attributed to any of the petitioners in any manner whatsoever. Accountability Reference had been filed only against the CEO of the Company. The properties in the names of the petitioners have been frozen by the competent authority.
ii) Article 15 of the Constitution of Pakistan, Privileges and Immunities Clause of the United States Constitution , Clause 42 of Magna Carta Libertatum, Article 3 & 13 of the Universal Declaration of Human Rights, Article 12 of International

Covenant on Civil and Political Rights, Article 18(1) of the Convention on Rights of Person with Disability, Articles 5(d)(i)&(ii) of the International Convention on the Elimination of all Forms of Racial Discrimination, Article 15(4) of the Convention on the Elimination of all Forms of Discrimination Against Women, Article 12(1)&(2) of the African Charter on Human and Peoples' Rights, Article 10(1)&(2) of the Convention on the Rights of the Child, Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families deal with right of movement and liberty.

The right to movement is a fundamental right subject to restrictions imposed by law in the public interest. This right is not limited to movement within Pakistan but extends and includes the right to leave and enter Pakistan. Right to movement is an inseparable part of right to life.

Conclusion: i) The names of family members of fugitive accused person cannot be placed in Exit Control List.

ii) See above.

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34. **Supreme Court of the United States**

Apple Inc. v. Pepper, 587 U.S. ___ (2019)

https://www.supremecourt.gov/opinions/18pdf/17-204_bq7d.pdf

Facts: The case is pertaining to antitrust laws related to third-party resellers. Robert Pepper and other plaintiffs filed an antitrust lawsuit against Apple Inc., alleging Apple was monopolizing the market for iPhone apps. Apple controls which apps can be sold through its App Store and keeps 30 percent of sales from apps developed by third-party developers that are sold in the App Store. The district court dismissed the case, ruling consumers of iPhone apps are purchasing directly from app developers, not Apple, and therefore could not sue for antitrust violations according to precedent from a 1977 U.S. Supreme Court ruling (Illinois Brick Co. v. Illinois- which determined that indirect consumers of products lack Article III standing to bring antitrust charges against producers of those products). The Ninth Circuit Court reversed the dismissal, ruling consumers are purchasing from Apple, not the app developers.

Issue: Whether consumers may sue, for antitrust damages, anyone who delivers goods to them, even where they seek damages based on prices set by third parties who would be the immediate victims of the alleged offense?

Analysis: The Court affirmed the Ninth Circuit's decision that consumers were "direct purchasers" of apps from Apple's store and had standing under Illinois Brick case to sue Apple for antitrust practices. Justice Brett Kavanaugh, writing for the majority, stated that under the test of Illinois Brick, consumers were directly affected by Apple's fee and were not secondary purchasers; that consumers could sue Apple directly since it was Apple's fee that affected the prices of the apps; and that while the structure for any damages that consumers may win in the

continuing suit may be complicated, that is not a factor to determine the standing of the suit. The Court stated that Apple's interpretation of Illinois Brick "did not make a lot of sense" and served only to "gerrymander Apple out of this and similar lawsuits." Disagreeing with Apple's reasoning, the Court explained that if adopted, it would "directly contradict the longstanding goal of effective private enforcement and consumer protection in antitrust cases." Kavanaugh was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan**.**

Conclusion: In its 5–4 decision, the Supreme Court ruled that since consumers purchased apps directly through Apple, that they have standing under Illinois Brick case (supra) to seek antitrust charges against Apple.

LIST OF ARTICLES:-

1. **MANUPATRA**
https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4

RESIDUAL DOUBT IN DEATH PENALTY CASES by Puneet Pathak and Dhananjai Shekhawat

Human judgment has historically proven to be a construct not without its own flaws. It is to counteract these flaws that the concept of 'due process' was created. Due process was conceived and refined over the years through judicial examination. The criminal justice system has always demanded a rigorous standard of proof due to the nature of the penalties it imposes. In the eyes of law, every person is innocent until proven guilty beyond reasonable doubt, however, in criminal law there is no place for absolute certainty. While proof beyond reasonable doubt has been the accepted standard, it falls under scrutiny in cases of death penalty due to the finality of sanction. In line with what Lafayette said, there has been demand for a stricter standard of proof for death sentence. Although, a significant number of nations have either imposed a complete ban, or a moratorium on capital punishment, other jurisdictions still continue to practise it. As mentioned, death penalty finds its root in the deterrent theory of punishment, and is predicated on the fact that there exists a class of criminals for whom reformation is impossible. While the merits, efficacy, and validity of death penalty is another debate altogether, it has been indubitably held that "for awarding the death sentence, the Court, while applying the rarest of rare case doctrine, is duty bound to equally consider both aggravating and mitigating circumstances and then arrive at its conclusion".

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/06/22/commentary/data-collection-and-consent-does-yes-really-mean-yes/

DATA COLLECTION AND CONSENT: DOES YES REALLY MEAN YES? by Semra Islam

It is proposed that where the provisions on consent under the Contract Act 1872 form a good starting point for curtailing the scope of data

collection by technology companies, it is better to adopt extensive data protection legislation. In this regard, the General Data Protection Regulation is a progressive step towards ensuring the rights of users. The GDPR attempts to resolve some significant data protection issues. For instance, it does not regard consent as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment. Moreover, it requires separate consent for each processing operation, with the request for consent to be presented in a manner clearly distinguishable from other matters. It is apparent that these provisions cater to and resolve many issues pertaining to consensual data collection by big technology companies and can prevent the occurrence of fraud, misrepresentation and undue influence. While Pakistan has other legislation which can be used to protect data, such as consumer protection laws or the Prevention of Electronic Crimes Act 2016, comprehensive legislation which solely pertains to regulating the scope of data collection by technology giants and is based on progressive international standards of privacy is the need of time.

3. **NOTRE DAME LAW REVIEW**
https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4980&context=ndlr

A DUAL SYSTEM OF JUSTICE: FINANCIAL INSTITUTIONS AND WHITE-COLLAR CRIMINAL ENFORCEMENT by Sebastian Bellm

Proposing more severe punishment for white-collar criminals is not a new concept. While many argue for the increased prison time of white-collar offenders, others provide "a counter-perspective on the use of prison sentences." Other areas of academic publication support the convergence of sentencing guidelines for white-collar and drug-related criminals, particularly in light of utilitarian and retributivist principles. Rather than simply recommending that white-collar criminals should be punished more, this Note proposes two distinct structural solutions that reevaluate the current policies directing the punishment of white-collar criminal conduct. Specifically, this Note argues that the Department of Justice (DOJ) should reconsider the practice of levying large fines against corporate entities that, through their public structure, pass the fines on to innocent shareholders.

After evaluating how and why the current approaches to the enforcement of white-collar laws are insufficient and fail to meet the fundamental principles of punishment, this Note proposes two solutions. First, the government organization tasked with combatting financial crimes and money laundering, should develop a more thorough and holistic approach to the reporting requirements of financial institutions. Second, judges should become more involved in the approval of Deferred Prosecution Agreements (DPAs). Rather than viewing DPAs as only bilateral agreements between prosecutors and defendants, judges should serve as

the representatives of public interest, similar to their role in plea agreements. These two proposals would strengthen the overall response to corporate white-collar crime by deterring future criminal activity.

4. **YALE LAW REVIEW**
https://www.yalelawjournal.org/forum/equal-supreme-court-access-for-military-personnel

EQUAL SUPREME COURT ACCESS FOR MILITARY PERSONNEL: AN OVERDUE REFORM by Eugene R. Fidell, Brenner M. Fissell & Philip D. Cave

Federal law currently provides for direct Supreme Court review of criminal convictions from almost all American jurisdictions, but not of most court-martial convictions. For them, an Article I court can veto access to the Supreme Court. This Essay argues for elimination of that veto.

5. **HARVARD LAW REVIEW**
https://harvardlawreview.org/2018/05/music-as-a-matter-of-law/

MUSIC AS A MATTER OF LAW by Joseph P. Fishman

What is a musical work? Philosophers debate it, but for judges the answer has long been simple: music means melody. Though few recognize it today, that answer goes all the way back to the birth of music copyright litigation in the nineteenth century. Courts adopted the era's dominant aesthetic view identifying melody as the site of originality and, consequently, the litmus test for similarity. Surprisingly, music's single-element test has persisted as an anomaly within the modern copyright system, where multiple features of eligible subject matter typically are eligible for protection.

Yet things are now changing. Recent judicial decisions are beginning to break down the old definitional wall around melody, looking elsewhere within the work to find protected expression. Many have called this increasing scope problematic. This Article agrees — but not for the reason that most people think. The problem is not, as is commonly alleged, that these decisions are unfaithful to bedrock copyright doctrine. A closer inspection reveals that, if anything, they are in fact more faithful than their predecessors. The problem is instead that the bedrock doctrine itself is flawed. Copyright law, unlike patent law, has never shown any interest in trying to increase the predictability of its infringement test, leaving second comers to speculate as to what might or might not be allowed. But the history of music copyright offers a valuable look at a path not taken, an accidental experiment where predictability was unwittingly achieved by consistently emphasizing a single element out of a multi-element work. As a factual matter, the notion that melody is the primary locus of music's

value is a fiction. As a policy matter, however, that fiction has turned out to be useful. While its original, culturally myopic rationale should be discarded, music's unidimensional test still offers underappreciated advantages over the "everything counts" analysis that the rest of the copyright system long ago chose.

6. **BANGLADESH LAW JOURNAL**
http://www.biliabd.org/article%20law/Vol13/Ummey%20Sharaban%20Tahura.pdf
CASE MANAGEMENT: A MAGIC LAMP IN REDUCING CASE BACKLOGS by Ummey Sharaban Tahura

Delay in disposing cases hinders justice. Case management can be a way to reduce delay. The case flow management or case management is the conceptual heart of court management in general. In this article, the role of case management in reducing case backlogs will be priorities in the historical background how it emerged and spread on USA, UK, Australia, and New Zealand. The Aim of my research is to study the impact of case management in reducing case backlogs and why it is necessary in the trial court. To do so, I will try to address two key questions, what the purpose of case management should be and how it could be successful in reducing backlogs. Research shows that there are some common features of case management but at the same time it also to be recalled that all features may not be applicable for all courts or even it may not be possible to apply all those features at the same time in one court. It would rather be more flexible to get an effective result. The successes of the case management also depend on the case managers who will apply the case management technique. There is a great debate of who should perform the role of case managers. I have also highlighted on what features can make case management more effective and what would be their future approach. Over the last two decades, the judiciary of developed country has widely accepted the role of case management with respect to reduce the caseload, and they have gotten extraordinary positive result in reducing caseload. The area of this research is limited to the civil courts only. So in Doctrinal Approach, this article will consider how case management is applied in the civil court proceedings, how it works and how it can be a successful tool in reducing backlogs in the light of Australian civil courts.

7. **GLOBAL VILLAGE SPACE**
https://www.globalvillagespace.com/judges-use-of-social-media-ethical-or-unethical/
JUDGES' USE OF SOCIAL MEDIA: ETHICAL OR UNETHICAL? by Barrister Ahmed Pansota

Recently, an increased number of judges are embracing social media, and use it just like everyone else. However, according to author, there are

certain ethical codes that every judge should follow while engaging with the public through social media. Such codes of conduct ensure that Judges remain unbiased and free from social manipulation.

Lahore High Court

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(1-08-2021 to 15-08-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Khallid Hussain, etc. v. Nazir Ahmad, etc.
Civil Petition No. 2144-L of 2011 and Civil Appeal No. 1-L of 2012
Mr. Justice Ijaz ul Ahsan, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2144_l_2011.pdf

Facts: The petitioners claim that after the death of their father when they approached the revenue authorities to sanction the inheritance mutation regarding the disputed property, they were informed that through a Tamleeq Nama the disputed property had been transferred to the respondents.

Issue: What are the circumstances when a suit for declaration and a suit for cancellation of document can be filed?

Analysis: There is a marked yet subtle distinction between a suit for cancellation of a document under section 39 of the Act of 1877, and a suit for declaration of a document under section 42 of the Act of 1877. The crucial feature determining which remedy the aggrieved person is to adopt, is: whether the document is void or voidable. In case of a voidable document, for instance, where the document is admitted to have been executed by the executant, but is challenged for his consent having been obtained by coercion, fraud, misrepresentation or undue influence, then the person aggrieved only has the remedy of instituting a suit for cancellation of that document under section 39 of the Act of 1877, and a suit for declaration regarding the said document under section 42 is not maintainable. On the other hand, in respect of a void document, for instance, when the execution of the document is denied as being forged or procured through deceit about the very nature of the document, then the person aggrieved has the option to institute a suit, either for cancellation of that instrument under section 39 of the Act of 1877, or for declaration of his right not to be affected by that document under section 42 of the Act of 1877; it is not necessary for him to file a suit for cancellation of the void document.

Conclusion: See above.

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2. **Supreme Court of Pakistan**
Atif Mehmood Kiyani and another v. MIs SukhChayn Private Limited
Civil Petition Nos. 3209 and 3359 of 2020
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3209_2020.pdf

Facts: An application for grant of temporary injunction restraining respondent No. I from encashment of insurance guarantee was allowed by the trial court but dismissed by the High Court. In second petition, prayer was made for the stay of subsequent suit.

Issue: i) What are the essential considerations for grant of temporary injunction?
ii) Where some of the matters in issue in the subsequent suits are same and some are not, then whether proceedings of that suit can be stayed under Section 10, CPC?

Analysis: i) The well-settled considerations for the grant or refusal of temporary injunction, as stated by a four-member larger Bench of this Court in "Muhammad Umar v. Sultan Mahmood" (PLD 1970 SC 139), are to see: firstly, whether the plaintiff has a prima fade good case; secondly, whether the balance of convenience lies in favour of the grant of injunction; and thirdly, whether the plaintiff would suffer irreparable loss if the injunction is refused.
ii) For attracting the application of the provisions of Section 10 of the Code of Civil Procedure 1980 ("CPC"), the matter in issue or all the matters in issue, if there are more than one, must be directly and substantially the same. Where some of the matters in issue in the subsequent suits are same and some are not, then proceedings of that suit cannot be stayed under Section 10, CPC; however, in order to avoid any conflicting finding on the issues that are common in both the suits, the proceedings of both the suits may be consolidated.

Conclusion: i) See above.
ii) Where some of the matters in issue in the subsequent suits are same and some are not, then proceedings of that suit cannot be stayed under Section 10, CPC.

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3. **Supreme Court of Pakistan**
Province of Punjab, etc. v. Hafiz Muhammad Ahmad
C.P.1274-L/2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1274_l_2013.pdf

Facts: The headnotes of the law reports were relied by the High Court.

Issue: Whether the headnotes of the law-reports can be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported?

Analysis: The headnotes preceding the judgment of a court are not a part of that judgment but are the notes prepared by the editors of the law-reports, highlighting the key law points discussed in the judgment and are supplied just to facilitate the reader with a summarized version of the salient features of the case which helps in quickly scanning through the law reports. It is a matter of common knowledge that the headnotes are at times misleading and contrary to the text of the judgment. Headnotes by the editors of the law-reports cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported, hence they should not be cited as such. Therefore, it is neither safe nor desirable to cite a dictum by reference to the headnotes.

Conclusion: Headnotes by the editors of the law-reports cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported, hence they should not be cited as such.

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4. **Lahore High Court**
Amar Jeet Singh v. Sant Singh
C.R. No. 22983 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC3832.pdf

Facts: The petitioner assailed the order of Additional District Judge, wherein his leave to appear and defend the suit under Order XXXVII was dismissed on account of his failure to file the same within the limitation period computed from the day when he was brought before the Court from Jail wherein he was imprisoned after conviction by criminal court under section 489-F PPC against the same cheque.

Issue: i) Whether appearance of respondent before Court without summons fulfill the requirement of service of summons to compute limitation period for filing leave to defend in a suit under Order XXXVII CPC?
ii) Whether the act of Court to call a respondent from jail to give him opportunity to defend such suit fulfills the requirement of fair trial?
iii) Whether service of summons in the form 4, which is in English language, fulfills the purpose of summons?

Analysis: i) The objects of service of summons in the prescribed Form 4 in Appendix B is to warn the defendant in a suit under Order XXXVII C.P.C. about the consequences of his default to apply for the leave to appear and defend within the prescribed period of limitation. Service of summons in the Form 4 is a mandatory requirement of law and the period of limitation of ten days prescribed for filing the application for leave to appear and defend the suit under Order XXXVII starts from the date of service of such summons and failure to serve summons in the prescribed manner signifies that the mandatory requirement of law stipulated in rule 2(1) of Order XXXVII C.P.C. has not been complied with in this case.
ii) The requirement of fairness imposed under the said Article applies to civil and criminal litigation taken as a whole including access to justice and is not confined to fair trial once litigation is underway. The right to fair trial is not a qualified right but an absolute one which is neither required to be balanced against rights of other individuals or public interest nor the same is subject to any qualification such as those provided in some other fundamental rights embodied in Chapter I of Part II of the Constitution. Fairness of the procedural safeguards, *stricto senso*, the equality of arms is one of the hallmarks of such right. The principle of equality of arms, which is a judicial construct adopted by the European Court of Human Rights, means giving each party a reasonable possibility to present its cause in such conditions as would not put one party in disadvantage to its opponent. In

other words, there must be a fair balance between the opportunities afforded to the parties involved in litigation.
iii) A summons in the Form 4 assumes that the defendant served is able to read English or that he has assistance available to him to convey the content of the same, which is questionable as majority of the people in our society are unable to read English or may not have such assistance available to them. Resultantly, the purpose of the summon currently prescribed runs an obvious risk of being defeated. The notion that this type of summons satisfies the requirements of fair trial right is more of a fiction, which is permissible only if actual summons in a language that the recipient can understand is not feasible.

Conclusion: i) When neither a summons in the prescribed Form 4 is served nor a copy of the plaint in the suit is delivered to a defendant, the question of computing limitation under Article 159 of the Limitation Act, 1908 does not arise.
ii) It is trite law that the opportunity to defend necessitates that a party should be provided access to counsel and an opportunity to answer the case against him, which is not fulfilled in this case.
iii) Since service of the summons in prescribed Form is a mandatory requirement of law, it would only be in consonance with the object, letter and spirit of rule 2 of Order XXXVII C.P.C. as also in conformity with Articles 10A, 28 and 251 of the Constitution that the summons under the said rule is prescribed in bilingual form i.e. English and Urdu.

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5. **Supreme Court of Pakistan**
Haji Muhammad Latif v. Muhammad Sharif & another
Civil Petitions Nos. 805-L To 812-L and 814-L of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._805_l_2019.pdf

Facts: The Rent Controller declined to grant leave to contest the ejectment petitions and directed the petitioner to adduce evidence and granted respondents' right to cross examine.

Issue: Whether after declining the leave to contest, the Rent Controller can direct the landlord to adduce evidence and grant respondent right to cross examine?

Analysis: In the instant case what escaped from the notice of the High Court was as to whether the Rent Controller after declining leave to the tenant to contest the ejectment application could direct the land-lord to adduce evidence and allow the tenant to cross examine the land-lord specially when the provision of sub-Section 6 of Section 22 of the Act, 2009 specifically provide that in case where the leave to contest is refused or the respondent has failed to file application for leave to contest within the stipulated time, the rent Tribunal shall pass the final order. This being a mandatory provision with the consequences spelled leaves no option for

the Rent Controller but to pass final order. However, it is to be noted that the language employed in Section 22(6) by using the words “final order" instead of "ejectment order", leaves room for the Rent Controller to apply his judicial mind before passing a final order as required under the circumstances of each case may it be ejectment of a tenant or otherwise.

Conclusion: After declining the leave to contest, the Rent Controller cannot direct the landlord to adduce evidence and grant respondent right to cross examine.

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6. **Lahore High Court**
Muhammad Nawazish Ali v. Family Judge etc.
Writ Petition No. 6694 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC3750.pdf

Fact: The respondents filed suit for recovery of maintenance etc against petitioner’s son (the former husband and father of respondents respectively). The suit was decreed but son of petitioner failed to satisfy the decree because he was continually avoiding the process of law. Therefore property of petitioner (grandfather) was attached for satisfaction of decree. The petitioner has challenged said order of attachment of his property.

Issue: i) Under what circumstances, a grandfather may be liable to pay maintenance to minors?
ii) Whether grandfather is obliged to pay maintenance to his grandchildren without being party to suit if the father is unable to do so?

Analysis: i) Apparently Mulla’s book does not address the situation where the father goes into hiding to avoid execution of a decree for maintenance or, as in the instant case, immigrates and is beyond the reach of the courts of his home country. Law can never allow the children of such a man to be left in the lurch. Despite all the reverence that it receives from the courts, Mulla’s formulations are not a legislative dispensation so the rules of interpretation of statutes do not strictly apply to it. Consequently, this Court is competent to read into section 370 and hold that the grandfather is obligated to provide maintenance of grandchildren if he is in easy circumstances and the father is dead or not traceable or is residing abroad or is impecunious or infirm and the mother is also down-and-out.
ii) “Fair trial and due process” in civil lawsuits/proceedings contemplates notice and opportunity to be heard before judgment is rendered. Since a person who is not a party to the suit does not have the opportunity to present his case, two principles have developed: (a) decree cannot be executed against such a person, and (b) the executing court cannot go behind the decree. The impugned orders are liable to be struck down also on the ground that respondent No.3 has not established that the conditions exist on which the petitioner may become liable for

her maintenance. This is a question of fact which cannot be determined without recording evidence.

Conclusion: i) The grandfather is obligated to provide maintenance of grandchildren if he is in easy circumstances and the father is dead or not traceable or is residing abroad or is impecunious or infirm and the mother is also down-and-out.
ii) Grandfather is not obliged to pay maintenance to his grandchildren without being party to suit if the father is unable to do so.

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7. **Lahore High Court**
Muhammad Bashir v. Irshad Begum and two others
C. R. No. 3687 / 2011
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC3778.pdf

Fact: The petitioner asserted that his brother died issueless while respondents no. 1 & 2 fraudulently sanctioned the mutation in their favour by showing them as wife & daughter of deceased. In fact the petitioner and respondent no.3, being siblings of deceased are only legal heirs and entitled to inheritance.

Issue: i) Whether self-contradictory documentary evidence can prevail over oral evidence?
ii) Whether revenue officials are necessary party in every case wherein mutation has been challenged

Analysis: i) Although it is well established principle of law that documentary evidence always prevails over oral evidence; but if the contents of the documents are self-contradictory to each other and also in negation to the oral stance of party, who produced these documents, the same could not be relied upon in order to reach a just and fair decision of the case. Documents cannot be relied upon by ignoring the oral evidence and without analyzing and comparing the contents of the documents with each other.
ii) It is not a rule of thumb to implead revenue officials in every case in which mutation has been challenged. It will be decided by the court as per the facts and circumstances of each and every case

Conclusion: i) Self-contradictory documentary evidence cannot prevail over well-proved oral evidence
ii) Revenue official are not necessary party of each case in which mutation is challenged.

8. **Lahore High Court**
Mian Khurram Saeed v. Muhammad Khalid
Civil Revision No. 31615 of 2021.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC3692.pdf

Facts: The plaintiff/respondent filed a suit for malicious prosecution by claiming damages on the ground that the defendant/petitioner lodged a false case against the plaintiff/respondent and the criminal proceedings have culminated in favour of the respondent. Initially, the suit was dismissed by the trial court but was decreed by the appellate court. Being aggrieved, the petitioner assailed the decision of the appellate court through the Civil Revision on the premise, *inter alia*, that the respondent failed to prove the ingredients necessary to award damages.

Issues: i) What are the elements of malicious prosecution?
ii) Whether the proof of the element of "malice' is dependent upon the outcome of proving 'reasonable and probable cause'?
iii) What is a standard of proving 'malice' in order to establish malicious prosecution?

Analysis: i) To succeed in a suit of malicious prosecution, the plaintiff is required to prove the following essential constituents:

i) the plaintiff was prosecuted by the defendant,
ii) the prosecution ended up in favour of the plaintiff,
iii) the defendant acted without "reasonable and probable cause,
iv) the defendant has acted maliciously and
v) the plaintiff has suffered damages.

ii) In a case of malicious prosecution, the plaintiff is bound to prove the ingredients of 'reasonable and probable cause' and 'malice' independently. Therefore, when the issue of "reasonable and probable cause" is not established, the question of "malice" becomes irrelevant and even otherwise, the Courts may not be required to probe further because of the failure of the claimant to cross one hurdle. Nevertheless, when "reasonable and probable cause" is established, the Court should carefully examine the element of "malice" on the part of the defendant.
iii) In the present case, the element of 'malice' has been implied to the lodging and cancellation of FIR instead of independently proving it. Moreover, the learned first Appellant Court has drawn presumption of "malice" from the report of police filed under Section 173 Cr.P.C., without even examining the maker of the report to unearth as to the reason of discharge and that how the Investigation Officer found the respondent/plaintiff innocent, during "face to face" discussion. Furthermore, it was incumbent upon the respondent/plaintiff to produce the possible evidence to prove entire ingredients of "malicious prosecution" and it was the duty of the learned Court to secure all the possible evidence as to the elements of the "malicious prosecution" before awarding damages. Finding of

"malice" on the basis of the report under Section 173 Cr.P.C., without examining the maker of the statement/report, is unsafe, leaving no option with this Court apart from making an order of remand for procuring the evidence of concerned police official(s) and careful examination as to the ingredients of "malicious prosecution.

Conclusion: i) See above.
ii) Both, 'reasonable and probable cause 'and 'malice' are required to be proved independently. Therefore, before establishing malice, it is essential for the plaintiff to prove 'reasonable and probable cause'.
iii) See above.

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9. **Supreme Court of Pakistan**
Province of Punjab v. Khadim Hussain Abbasi
Civil Appeal No.20 1 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Ijaz ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._201_2020.pdf

Facts: Respondent was proceeded against departmentally and was found guilty of the charges. Major penalty was imposed upon him. In appeal he produced an acquittal judgment from a Criminal Court.

Issue: Whether acquittal in criminal proceedings affects the outcome of the departmental proceeding?

Analysis: The Supreme Court has repeatedly held that departmental proceedings and criminal prosecution are not mutually exclusive. Those can be proceeded independently and acquittal in criminal proceedings does not affect the outcome of the departmental proceedings. It may be noted that departmental proceedings are undertaken under a different set of laws, are subject to different procedural requirements, are based upon different evidentiary principles and a different threshold of proof is to be met. Criminal proceedings on the other hand are undertaken under a different set of laws, have different standards of proof, are subject to different procedural requirements and different thresholds of proof are required to be met. Therefore, acquittal in criminal proceedings cannot and does not automatically knock off the outcome of the departmental proceedings if all legal and procedural formalities and due process have been followed independently.

Conclusion: Acquittal in criminal proceedings does not affect the outcome of the departmental proceedings.

10. **Supreme Court of Pakistan**
Muhammad Nawaz v. The State, etc
Crl.P.1050-L/2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1050_l_2020.pdf

Facts: Petitioner filed a petition seeking leave to appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973, against order passed by the High Court whereby his pre-arrest bail petition filed, under Section 497/498 of the Code of Criminal Procedure, 1898, has been dismissed as withdrawn.

Issue: i) What is the nature of appellate jurisdiction of Supreme Court while dealing with the bail petitions?
ii) Under what provisions of law the Session Court and High Court entertain and decide pre-arrest and post arrest bail petitions?

Analysis: i) The essential criterion of appellate jurisdiction is that it examines and if required corrects the errors, if any, of a lower forum. That being the nature of appellate jurisdiction, this Court examines the legality of the orders passed by the High Court in bail matters and corrects those orders in appellate jurisdiction under Article 185 (3) of the Constitution only when it finds that the High Court has exercised the discretion in granting or declining bail arbitrarily, perversely or contrary to the settled principles of law, regulating bail matters.
ii) Section 498, CrPC confers original and concurrent jurisdiction on the High Court and Court of Session to grant bail, by stating that "the High Court or Court of Session may in any case…direct that any person be admitted to bail". That is why when a trial court, for instance, a Court of Magistrate, declines to grant post arrest bail under Section 497, CrPC to a person accused of having committed a nonbailable offence, the accused files a fresh petition under Section 498, CrPC in the Court of Session and, in case of failure to obtain the relief once again approaches the High Court. The Court of Session and the High Court have original jurisdiction to grant bail and they make their own independent orders on the said petitions without commenting upon and setting aside the order of the trial court. The power of the High Court and the Court of Session, under Section 498 CrPC, to grant post arrest bail is thus co-extensive and concurrent with that of the trial court under Section 497 CrPC, while the power to grant pre-arrest bail under the said Section is exclusive to them.

Conclusion: i) See above.
ii) Session Court and the High Court entertain and decide pre-arrest and post arrest bail petitions under section 498 Cr.P.C.

11. **Supreme Court of Pakistan**
Shazaib, etc v. The State, etc.
Crl.P.1075-L/2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1075_l_2020.pdf

Facts: Petitioners sought leave to appeal against the order passed by the Lahore High Court whereby the pre-arrest bail petition of the petitioners has been dismissed for non-prosecution, as well as, on merits.

Issue: i) Whether a pre-arrest bail may be dismissed due to non-prosecution as well as on merits when accused does not appear on adjourned date of hearing?
ii) What is the course available to the accused who files a second petition for pre-arrest bail after dismissal of his first petition for non-prosecution?

Analysis: i) The Court cannot, in the absence of the personal appearance of the petitioner, travel further into the case and examine the merits of the case. In fact the examination of the merits of the case in the absence of the accused totally defeats the intent and purpose of the aforementioned statutory provision. This is because once the Court proceeds to examine the merits of the case, then the Court has the option to either dismiss or allow the bail petition, while under Section 498-A CrPC the Court is not authorized to admit the accused to bail in his absence…The petition for pre-arrest bail is to be dismissed if the petitioner is not present in Court on the date fixed for hearing the petition and it is not to be decided on merits in his absence, unless the Court exempts his presence.
ii) In case the petition is dismissed for non-appearance of the accused in a pre-arrest bail matter under Section 498-A CrPC, the petitioner can file a fresh bail petition before the same Court provided that he furnishes sufficient explanation for his non-appearance in the earlier bail petition and the Court is satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail.

Conclusion: i) A pre-arrest bail cannot be dismissed on merits when accused does not appear on adjourned date of hearing.
ii) Accused is under obligation to furnish sufficient explanation for his non-appearance in the earlier bail petition and the Court should be satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail.

12. **Lahore High Court**
Muhammad Riaz v. The State etc.
Crl. Rev. No.128/2021
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC3712.pdf

Fact: Petitioner's sentence was enhanced by the revisional court from 4 years to 7 years.

Issue: Whether it is mandatory for revisional court to issue notice to accused before enhancing his sentence?

Analysis: Sections 439 and 439-A of Cr.P.C. deal with the powers of revisional courts. Under section 439(2) of Cr.P.C. before passing an order prejudicial to the accused, it is obligatory for revisional court to send notice to accused for granting him an opportunity of being heard. Without issuing notice to the accused and granting him opportunity to advance arguments in his defence, enhancement of his sentence is glaring illegality.

Conclusion: It is mandatory for revisional court to issue notice to the accused before enhancing his sentence.

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13. **Lahore High Court**
Khizar Hayat v. The State etc.
Crl. Misc. No.18217-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3876.pdf

Fact: The petitioner has applied for post-arrest bail in a case registered against him under Section 489-F PPC wherein he remained an absconder.

Issue: If case of accused is of further inquiry, then whether his mere absconsion will be an impediment in the way of granting bail?

Analysis: It is well settled principle of law that if case of accused is of further inquiry, mere absconsion of accused will not be an impediment in the way of granting bail.

Conclusion: If case of accused is of further inquiry, his mere absconsion will not be an impediment in the way of granting bail.

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14. **Lahore High Court**
Abdul Razzaq v. The State & another
Criminal Miscellaneous No.49079-T of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC3842.pdf

Facts: The petitioner is the complainant of main case and he has filed petition for transfer of bail application of the accused pending in the court of learned

Additional Sessions Judge having apprehension of injustice from that Court.

Issues: i) What are the grounds/principles for transferring a case/application?
ii) What is reasonable apprehension?

Analysis: i) The settled principles for transferring a case from one court to another are following:

a. A case should be transferred from a court, if the allegations are supported by strong reasons or convincing evidence.
b. Allowing such application would mean that the allegations against a Judge are being considered to be true and this will lower the image, dignity and honor of judiciary in public.
c. Such applications should be allowed only in exceptional situations, in case of availability of strong reasons and evidence. Otherwise the parties would take undue advantage by filing transfer applications on false and baseless grounds.
d. While accepting such applications, it should also be kept in mind that the parties should not be allowed to choose the Court of their own choice.
e. Interference in the working of the trial judge on frivolous grounds will create a sense of insecurity amongst the Judicial Officers, which will certainly affect their efficiency.
f. For transferring a case, allegations/grounds should be clear and specific.
g. For a transparent judicial system it is also necessary to protect the judicial officers from frivolous and baseless allegations, so that one of the parties cannot overpower the Judge to get decision is his favour.
h. Dubious and baseless apprehensions are not sufficient ground to transfer of case.

ii) Apprehension means anticipation of adversity or misfortune or fear of future trouble. While reasonable means logical. Thus ‘reasonable apprehension’ means the fear must be based on sound or logical judgment. For a transfer application the standard of a finding of real or perceived bias is high and it should be considered carefully, as an allegation of reasonable apprehension of bias not only calls into question the integrity of a judge, but also the integrity of the whole judicial system.

Conclusion: i) See above.
ii) Reasonable apprehension means the fear of future evil and it should be considered with due diligence and care while deciding transfer application.

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15. **Lahore High Court**
Allah Yar and 4 others v. The State and another
Criminal Misc. No. 31756-B/2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC3927.pdf

Facts: Petitioners applied for their bail after arrest in case under Sections 22-A/23/24/27/28/32 of the Punjab Food Authority Act, 2011 wherein they were

allegedly busy in preparation of Synthetic Milk.

Issues: Whether the bail can be claimed as a matter of right in offences which do not fall in prohibitory clause of section 497 Cr. P.C?

Analysis: Petitioners cannot claim the bail as a matter of right if the offences do not fall within the prohibition contained in Section 497 Cr.P.C, for the reason that still discretion lies with the Court and that has to be exercised keeping in view specific features of each case.

Conclusion: The bail cannot be claimed as a matter of right even in offences which do not fall in prohibitory clause of section 497 Cr. P.C.

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16. **Lahore High Court**
Khizar Hayat v. The State etc.
Crl.Misc. No.18217-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3876.pdf

Facts: The petitioner supplicates bail after arrest under Section 489-F PPC.

Issue: Whether registration of cases of similar nature against the accused/petitioner is a ground to deprive him from the concession of bail?

Analysis: Petitioner is also involved in five other cases of similar nature, but no conviction order has been brought on the record against the petitioner. It is settled principle of law that mere registration of cases of similar nature against the petitioner is no ground to deprive him from the concession of bail. Reference is made to Qurban Ali vs. The State and another (2017 SCMR 279).

Conclusion: Registration of cases of similar nature against the accused/petitioner is no ground to deprive him from the concession of bail.

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17. **Lahore High Court**
Tariq Irshad v. Special Judge, etc.
Criminal Revision No.42994/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC3741.pdf

Fact: Petitioner contended that FIR is an attempt in duplication to repeat the sufferings that amounts to double jeopardy and he cannot be vexed twice and civil and criminal proceedings cannot go side by side.

Issue: Whether civil and criminal proceedings can go side by side?

Analysis: Criminal and civil proceedings pending between the parties are not identical to each other because in civil court question of genuineness of such documents is not pending in any suit; therefore, the question viz. stay of criminal proceedings does

not arise… civil and criminal proceedings can go side by side due to their ultimate outcome and difference in standard of proof.

Conclusion: Civil and criminal proceedings can go side by side due to their ultimate outcome and difference in standard of proof.

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18. **Lahore High Court**
Muhammad Jahangir Khan v. The State
Crl. Misc. No.1510-B/2021
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC3710.pdf

Fact: Through this petition, the petitioner sought post-arrest bail in a case under Section 9(c), Control of Narcotic Substances Act, 1997. The allegation against the petitioner is that 1170 grams of Chars was found in his possession.

Issue: Whether 170 grams Chars above the one kilogram falls within the purview of borderline case?

Analysis: Allegedly 1170 grams of Chars was recovered from petitioner's possession. Only a meager quantity of Chars i.e. 170 grams exceeded the quantity of one kilogram which brought the case of petitioner within the ambit of Section 9(c) of CNSA, 1997. So it was a borderline case between sub-sections (b) and (c).

Conclusion: A meager quantity of Chars i.e. 170 grams exceeding the quantity of one kilogram makes it a borderline case.

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19. **Lahore High Court**
Abdul Rehman vs. The State
Crl. Appeal No. 19, 78 of 2008
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC3635.pdf

Fact: The appellants have challenged their conviction in offences Sections 9(c)/15 of the Control of Narcotic Substances Act, 1997.

Issue: i) Once a formal request is received from a foreign country, what is the mode to carry out inquiry and other process under Control of Narcotics Substance Act, 1997?
ii) What is "Principle of AutDedere, Aut Judicare"? Whether it applies in offences under CNSA?
iii) Whether investigation record of a foreign agency can be brought on record as evidence before the trial court without formal recording of statement of concerned investigator/witnesses?
iv) Whether evidence of a fact could be proved through an affidavit in criminal trial?

Analysis: i) Once a formal request of foreign country is received, it should be processed as mentioned in section 59 of the CNSA. It is not necessary that there must be a treaty in existence between the countries before a request is made rather arrangements and understanding is sufficient as mentioned in section 56 of CNSA. Section 59 of CNSA applies not only for making request pursuant to section 60 of CNSA, 1997 but request for evidence gathering process if it is received from a foreign government, which clearly provides that evidence gathering process shall be initiated only on the direction of High Court. The contour of this section has also been replicated in new legislation whereby Parliament has introduced "Mutual Legal Assistance (Criminal matters) Act, 2020". Provision of section 9 of the said Act, for evidence gathering order are almost similar to the section 59 of CNSA, 1997 which requires that permission of the court is essential.

ii) The principle autdedere, aut judicare finds its place in international criminal law and is the core principle in extradition offences; it is usually applied in transition offences particularly organized one which affect more than one sovereign states. The principle of double criminality pushes this principle on the ground that if an act or omission is an offence under the laws of both or more sovereign states, the offenders shall be tried and punished in either of the States and both of the Sovereign states can ask each other "either to Prosecute or to extradite" which is called "autdedere, aut judicare". It is applicable in extraditable offences; Section-66 of Control of Narcotics Substance Act, 1997 declares all offences in Chap II of the Act are extraditable.

iii) Once an investigation report or statement of investigation officer is recorded by a court of competent jurisdiction, it becomes an evidence of fact stated therein and not otherwise. Presumption cannot be imported from a foreign jurisdiction about the documents which are not admissible in evidence in our legal system. Though some other foreign documents which are not subject of criminal investigation can be admitted into evidence if certified as per law yet criminal investigation process has no scope for its admission in evidence unless it has undergone judicial scrutiny. Though report of expert is per-se admissible yet proceedings of recovery and affidavit of any witness is always subject to judicial scrutiny and contents thereof are to be proved by its maker. All such foreign documents without legal translation from High Commission, Embassy and Ministry of Foreign affairs are not admissible in evidence. Article 96 of Qanoon-e-Shahadat does not relate to admissibility or otherwise of a copy of judicial record of a foreign country; it merely enables the court to raise a presumption that a judicial record of foreign country is genuine.

iv) There are certain provisions in Cr.P.C which allow proving of fact through affidavit such as Section 74, 539-A & Section 526 (4). Except above provisions, there is no other provision in law which could be used to prove a fact through affidavit. If the witnesses are not available, or prosecution cannot produce them due to certain reasons, it can request the court for recording of statement of investigation members of foreign country through live Link i.e., Skype or through

any modern gadgetry. Even prosecution can apply for commission u/s 503 (2-B) of Cr. P.C for recording the statement of such witnesses.

Conclusion: See above.

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20. **Lahore High Court**
Naeem Gulzar v. The State
Crl. Appeal No.74601-J of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3856.pdf

Fact: Appellant/accused along with another was tried by the learned Additional Sessions Judge, for the murder of deceased (father of complainant). The appellant was convicted and sentenced. The appellant filed the appeal against his sentence whereas the learned trial court sent Murder Reference for confirmation the sentence of appellant or otherwise.

Issue: i) What is the evidentiary value of chance witness?
ii) What is the effect of disbelieving prosecution witnesses in favour of one accused?

Analysis: i) In legal term a chance witness is the one who claims his presence at place of occurrence, while his presence at that place was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. The testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, otherwise his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.
ii) Once prosecution witnesses are disbelieved with respect to one co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.

Conclusion: i) The evidence of chance witness can only be relied upon if some convincing explanations, appealing to prudent mind for his presence on the crime spot, are provided.
ii) Once prosecution witnesses are disbelieved with respect to one co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.

21. **Lahore High Court**
Nisar Akhtar & others v. D.G.(HR), NTDCL
Writ Petition No.10371 of 2014
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2853.pdf

Fact: The petitioners joined WAPDA as Junior Engineers. In the year 1999, WAPDA was re-organized resulting into creation of different Generation Companies (GENCOs), Distribution Companies (DISCOs), National Transmission and Dispatch Company (NTDC) and Pakistan Electrical Power Company Ltd. (PEPCO). In the year 2001, the petitioners accepted offers of their employment in NTDC, MEPCO & GEPCO. Subsequently, on the recommendations of the Selection Board, the petitioners were appointed as Senior Engineers by WAPDA against the quota reserved for Junior Engineers having M.Sc. qualification and seniority list of Senior Engineers working in Power Wing was prepared by WAPDA which was circulated. Later on, PEPCO, while withdrawing the seniority/promotion earned by the petitioners on account of merit as well as higher qualification i.e. M.Sc., disturbed the Seniority circulated earlier.

Issue: i) Whether the transferred employees of WAPDA to other companies whose terms and conditions stand protected may file writ petition if any of those is violated?
ii) Whether the PEPCO is competent to deal with the terms and conditions of employees of other companies?

Analysis: i) The petitioners were transferred to their respective companies on the same terms and conditions, which were applicable to them in WAPDA. Though after transfer to the companies, their status was no more that of an employee of WAPDA, however, till the formulation of Service Rules and Regulations by the company concerned, the terms and conditions of the transferred employees were to be governed under the rules and orders of WAPDA. Therefore, their writ petition complaining against non-fulfillment of terms and conditions prevalent in their parent department, is maintainable.
ii) A perusal of the Memorandum of Association of PEPCO shows that no-where the PEPCO was given the mandate to determine the terms and conditions of service of employees of other distribution companies rather the BODs of the companies concerned were vested with the power to determine the terms and conditions of service of the employees of the relevant companies. It is well-established by now that an authority which has not been given specific power/jurisdiction in respect of any matter cannot assume the same by itself.

Conclusion: i) Till the formulation of Service Rules and Regulations by the company concerned, the terms and conditions of the transferred employees were to be governed under the rules and orders of WAPDA. Therefore, their writ petition

complaining against non-fulfillment of terms and conditions prevalent in their parent department, is maintainable.
ii) The PEPCO is not competent to deal with the terms and conditions of employees of other companies.

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22. **Lahore High Court**
Mst. Amna Majeed v. Govt. of the Punjab.
Writ Petition No. 12244 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3907.pdf

Fact: The petitioner is a Civil servant and wants High Court to restrain the respondents from transferring her from her present place of posting to another through exercise of jurisdiction under article 199 of the Constitution.

Issue: Whether any order relating to terms and conditions of service of a civil servant is amenable to Constitutional jurisdiction?

Analysis: Even if a question of fundamental rights including discrimination is involved in the matter, even if a challenge is laid to statutory rules adversely affecting civil servants, even if the order has been passed by an incompetent authority or even where an order suffers from malice and has been passed in bad faith, and even when an authority not recognized by the governing law has passed an order affecting the terms and conditions of a civil servant, the only forum available in all instances listed above as also in other instances except when a person is seeking appointment or upgradation in civil service or when question of fitness as opposed to eligibility of a civil servant to be promoted to a particular post is involved, is that of the Service Tribunal constituted under Article 212 of the Constitution.

Conclusion: An order relating to terms and conditions of service of a civil servant except when a person is seeking appointment or upgradation in civil service or when question of fitness as opposed to eligibility of a civil servant to be promoted to a particular post is involved, is not amenable to Constitutional jurisdiction of High Court in view of bar of Article 212 of the Constitution.

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23. **Lahore High Court**
Miss Shakeela Rana Advocate v. Govt. of Pakistan etc.
W.P. No. 59314/2017
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2021LHC3849.pdf

Facts: In this writ the petitioner has sought the prohibition of printing the National Flags in multiple colours except the original green and white colour. Printing of different portraits, cartoons on the National Flag and printing of flag on trousers etc. have been asserted as against the dignity of the National Flag.

Issue: What are the official protocols to protect the dignity of the National Flag of Pakistan?

Analysis: Our Parcham (flag) stands for freedom, liberty and equality for those who owe allegiance to it. It protects the legitimate rights of every citizen and upholds the integrity of the State of Pakistan. It is a mark that helps in maintaining peace throughout the world. It represents a State which has no special privileges or special rights for any particular community or interest but a State where citizens will have equal rights and equal opportunities and their share in privileges will be proportionate to their corresponding responsibilities.

As to the specification, the Pakistani Flag is a dark green, rectangular flag in the proportion of 3 x 2 with a white vertical bar, showing white crescent in the center and a five-pointed heraldic star. The size of the white portion is 1/4th size of the flag. Since the mast, the remainder is 3/4th being dark green. The dimensions of the five-pointed white heraldic star are determined by drawing a circle with radius equal to 1/10th of the width of the flag.

According to the National Flag Protocols prescribed officially, it must not touch the ground, shoes or feet or anything unclean and must not be flown in the darkness and must not be marked with anything (including words, numerals or images) and when raised or lowered it must be saluted by all in uniform and the others must stand in attention. It must not fly or be displayed upside down or with a crescent and star facing left. It must not be displayed where it is likely to get dirty. It must not be set on fire or trampled upon. It must not be buried or lowered into a grave. In the Pakistan Penal Code, 1860 section 123-B defines the defilement of the national flag an offence punishable with 3 years' imprisonment. Obviously, the printing of flags in different colours, on distorted shaped portraits, in ugly cartoons, its disgraceful imprint on cloths undermining the national dignity may be considered defilement.

Conclusion: See above.

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24. **Lahore High Court**
Sui Northern Gas Pipelines Ltd v. Federation of Pakistan & others
W.P No.63814 of 2020
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC3715.pdf

Fact: This petition intended to review the decision of Oil & Gas Regulatory Authority (OGRA) dated 11.11.2020 which determined the provisional price of Re-Gasified Liquefied Natural Gas (RLNG) for the month of August 2020. The petitioner challenged the decision on the ground that a sudden departure from past practice offended his rights of to be treated in accordance with law and violated the rule of law on which the determination of distribution loss has to be premised.

Issue: Whether the policy decision of (OGRA) determining a lower provisional price of (RLNG) while deviating from its previous settled practice has violated the right of legitimate expectation created in favour of petitioner?

Analysis: To avoid arbitrariness in agency decision making, the agencies must regard the decisional consistency to safeguard legitimate expectation. A comprehensive definition of the principle of legitimate expectation was provided by the Lord Fraser who indicated the two ways in which a legitimate expectation may arise: *"either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."*

This case falls in the latter of the two categories of legitimate expectation as there was a "regular practice which the claimant can reasonably expect to continue. The regular past practice of OGRA was to adopt a certain criterion for determination of the provisional price provided the basis for legitimate expectation to SNGPL i.e. the settled practice be implemented and not departed from. Since, it was clear, unambiguous, and made by a person with actual authority, therefore, if that past practice had to be abandoned or changed, it could only be done after prior notice and hearing. The policy was adopted by adjudication and any change in second adjudication cannot be arbitrary nor can it be retroactive. Moreover, revisiting of past practice must conform to rules of fairness and legitimate expectation. The sudden volte face by OGRA impacted SNGPL enormously financially and had a spiral effect on the consumers generally.

Conclusion: The deviation of (OGRA) from its settled criterion for the determination of provisional price of (RNLG) violated the right of legitimate expectation of petitioner.

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25. **Lahore High Court**
Yasir v. The State & another
Crl. Misc. No.43708-B/2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC3918.pdf

Facts: In the cases of sexual assault enlisted as schedule offences under Anti-Rape (Investigation & Trial) Ordinance, 2020, it came to the notice of the Court that provisions of the Ordinance, especially section 9 pertaining to investigation, was never implemented, despite of it being enforced from seven months.

Issue: What are the legal consequences of non-implementation Section of 9 of ITO 2020?

Analysis: Investigation of cases pertaining to sexual assault always remained focal point for the reformers of criminal justice system, as investigation of a criminal case is bedrock for carrying out successful prosecution of a criminal case, therefore

flawed investigation often results in miscarriage of justice. Section 9 ITO 2020 is mandatory provision of law because intention to promulgate this law is to provide special procedure for the investigation of cases of sexual assaults and this intention is clearly discernable from the preamble of ITO 2020.
Account rendered by the investigation agency for not implementing ITO due to lack of resources and non-availability of required superior officers is not acceptable at all, however at the same time Government, before promulgation of a law, should also consider the state resources and capacity to implement the same, after taking all the stakeholders on board because a good law should be viable, clear, publicized and most essentially implemented. After promulgation of any law or even before that, it should be extensively circulated at grass root-level and concerned public functionaries should coordinate with each other for its effective implementation.

Conclusion: Under Article 89 of the Constitution ITO 2020 is as good law as an Act of Parliament, therefore, its implementation is mandatory duty of concerned state functionaries and any departure therefrom shall be violative of Articles 4, 9 & 10-A of the Constitution. If ITO 2020 requires investigation to be carried out in accordance with section 9, it has to be conducted accordingly, or it shall amount to non-compliance of law and would carry penal consequences as provided in S. 22 of ITO 2020 and under the provisions of Police Order 2002.

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26. **Lahore High Court**
Ahmad Latif Chief Operating Officer, etc. v. The Cane Commissioner etc.
W.P. No.48553 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3794.pdf

Facts: The petitioner challenged the vires of a letter-cum-correspondence issued by a Cane Commissioner for the registration of FIR through a writ petition whereby the Hon'ble High Court issued a restraining order, suspending the operation of such letter-cum-correspondence. The local police, nonetheless, registered the FIR the same day at 1:20 PM despite the fact the stay order had been passed at 11.00 AM that day. The petitioner assailed this act of the local police through a constitutional petition mainly on the grounds that the very registration of FIR was *void ab initio* and of no legal effect in presence of a stay order and that the cognizance by the police of a correspondence-cum-complaint is a nullity in the eyes of law.

Issues: i) Whether the order suspending the operation of letter-cum-complaint passed in an application under section 151 C.P.C., filed along with the constitutional petition, is a stay order or an injunction?
ii) What is the difference between the effective time of a stay order and an injunction?

iii) What is the status of acts committed after granting a stay order?

Analysis: i) As regards the nature of an interim order, halting the operation of the communique for the registration of FIR, it qualifies to be a stay order as it suspends the operation of the correspondence in general and does not address a particular authority or individual, unlike an injunction which is made over to a particular authority or an individual. Moreover, the interim orders passed in a constitutional petition are stay orders and not prohibitory orders by way of injunctions. In order to ascertain whether a restraining order passed by a High Court is a stay order, the litmus paper is that when a High Court has the power to declare any proceedings as being invalid at the time of final determination of the matter, it follows that the intention of passing a stay order was that such order is to be operative immediately upon its pronouncement.

ii) Unlike an injunction, a stay order operates from the time it is made and at the very instant deprives the court/authority the power to proceed any further. If the order passed by the Higher Courts is of the nature of "Stay" and not "Injunction", the same is effective immediately upon its pronouncement and any action taken after the passing of such order before the communication of the same shall be invalid and will be liable to be recalled i.e. parties shall be placed at the position where they were at the time of passing of the stay order. Furthermore, a stay order passed by the higher courts is analogous to the passing of a statutory enactment that is enforceable at the time it is enacted, irrespective of its communication to anyone it is enacted to govern. Hence, a restraining order passed by a Court would go into effect the very moment it is passed, regardless of the fact whether the same was conveyed to the quarters concerned or not.

iii) As soon as a stay order is passed, it takes away the power of a court/authority to proceed any further. Therefore, no further action can be taken and such action, if taken, even if it involves the rights of a third person, it shall be void. Thus, the acts and exercises undertaken by both judiciary and executive are declared nullity if those have been undertaken in contravention of a stay order issued by a Superior Court in appellate and revisional jurisdiction (stay against judicial forums) or constitutional jurisdiction (stay against executive orders), irrespective of whether the stay order was communicated to them or not. The rationale in setting aside acts committed in the oblivion of, but after the time of pronouncement of a stay order, lies in the effect of a stay order and which is that though the order assailed is not altogether erased, its force and effect are suspended and hence no further action can be taken based on the assailed order. It exists but in a state of hibernation till it is either revived or killed through the final adjudication; till then it cannot budge.

When a stay order divesting a lower authority of the jurisdiction to deal with a matter is issued, it makes the order assailed redundant till final adjudication and no valid action can commence on the basis of or in consequence of the stay order. Besides, the acts done which have the effect of nullifying a stay order are a nullity because the very authority/jurisdiction to do any such thing is suspended and does

not exist operationally. Thus, the very registration of F.I.R. is, for the present at least, a nullity. Nevertheless, by considering that the matter is yet to be determined judicially, the operation of the crime report shall remain suspended until the issue and controversy raised in a writ petition challenging the letter-cum-correspondence filed by the present petitioner is decided against him or the stay order issued in the said constitutional petition is vacated.

Conclusion: i) The order suspending the operation of a letter-cum-complaint passed in an application under section 151 C.P.C., filed along with the constitutional petition, is a stay order and not an injunction.
ii) The stay order takes effect the very moment it is passed while an injunction becomes operative from the time it is communicated to the authority or an individual against whom it is passed.
iii) The act committed after granting a stay order shall be void.

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27. **Lahore High Court**
Manzoor Hussain v. Govt. of Punjab through Chief Secretary, Punjab Lahore etc.
Writ Petition No. 5942 of 2021/BWP
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3498.pdf

Fact: The petitioner, follower of the Fiqah-e- Jafria Sect, challenged an order of Deputy Commissioner whereby he refused to grant permission to the petitioner to hold Malis-e-Aza within the precincts of his property.

Issue: Whether right to profess religion freely, recognized by Article 20 of the Constitution of Islamic Republic of Pakistan 1973, can be interrupted by Executive Instructions or unstructured and subjective Standard Operating Procedures of the Provincial or the District Administration?

Analysis: Article 20 of the Constitution only permits to a Law to intrude into and regulate and control a citizens' right to freely profess his faith and show allegiance to it. This means that a citizen has the right to show allegiance to his religious beliefs and to profess and propagate the same freely, uninterruptedly, without any restrictions and without being hampered, unless a statutory law provides conditions, restrictions or riders to curtail the right or if such propagation damages public order or offends collective morality of the society. Administrative instructions or administrative guidelines or even Standard Operating Procedures, without requisite legal backing, cannot be allowed to make inroads in and dilute fundamental rights as contained in the Constitution. In any case, administrative instructions are neither laws nor rules and these can only be subservient to laws and rules and, therefore, cannot be allowed to dilute the allowance and freedom afforded by the Constitution.

Conclusion: Right to profess religion freely, recognized by Article 20 of the Constitution of Islamic Republic of Pakistan 1973, cannot be interrupted by Executive Instructions or unstructured and subjective Standard Operating Procedures of the Provincial or the District Administration, unless there is some legal backing.

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28. **Supreme Court of the United States**
Class v. United States, 583 U.S. ___ (2018)
https://www.supremecourt.gov/opinions/17pdf/16-424_g2bh.pdf

Facts: The decision relates to the ability to challenge the constitutionality of a federal law if the defendant has already pleaded guilty. After pleading guilty to a violation of federal law, Rodney Class sought to bring an appeal challenging the constitutionality of the same law. A three-judge panel of the D.C. Circuit denied Class' appeal, citing a precedent of the D.C circuit court, United States v. Delgado-Garciathat prohibits such challenges from defendants who pleaded guilty.

Issue: Is the D.C. Circuit's rule prohibiting defendants that plead guilty from later raising constitutional challenges to the same law on appeal unconstitutional?

Analysis: The case addressed a split among federal circuit courts on the issue of whether a guilty plea automatically waives a defendant's right to appeal the constitutionality of the statute under which a defendant was convicted. The D.C. Circuit, First Circuit, and Tenth Circuit prohibited a defendant who pleaded guilty from raising challenges on appeal to the constitutionality of the law under which the defendant was convicted. Under Rule 10 of the rules of procedure for the U.S. Supreme Court, the Supreme Court often grants certiorari to resolve differences between circuit courts.

Conclusion: The U.S. Supreme Court reversed the D.C. Circuit, ruling that a guilty plea does not prohibit a defendant from challenging the constitutionality of the statute under which they were convicted.

LIST OF ARTICLES:-

1. **MANUPATRA**
https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
RIGHT TO BE FORGOTTEN VIS A VIS RIGHT TO DISPENSATION OF INFORMATION by VenancioD'costa, Astha Ojha & Samarth Sansar

The recognition of privacy as a fundamental right in India was bound to affect the existing laws and give rise to multiple new but related issues. One such facet is an individual's right to be forgotten, particularly in the digital sphere. While upholding privacy as a fundamental right in the Puttaswamy judgment, Hon'ble Supreme Court noted that "in the digital world, preservation is the norm and forgetting a struggle." However, the right to be forgotten comes with inevitable conflicts with other rights, most importantly, the right to information of others also understood as right to dispensation of information. In this article, we have

tried to understand the overlap and distinction between the two rights. We also discuss the legal status of the right to be forgotten in India, tracing the recent judicial trends as well as its recognition in other jurisdictions.

2. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12363
   THE RULE OF LAW AND THE RULE OF EMPIRE: A.V. DICEY IN IMPERIAL CONTEXT by Dylan Lino

   The idea of the rule of law, more ubiquitous globally today than ever before, owes a lasting debt to the work of Victorian legal theorist A. V. Dicey. But for all of Dicey's influence, little attention has been paid to the imperial entanglements of his thought, including on the rule of law. This article seeks to bring the imperial dimensions of Dicey's thinking about the rule of law into view. On Dicey's account, the rule of law represented a distinctive English civilizational achievement, one that furnished a liberal justification for British imperialism. And yet Dicey was forced to acknowledge that imperial rule at times required arbitrariness and formal inequality at odds with the rule of law. At a moment when the rule of law has once more come to license all sorts of transnational interventions by globally powerful political actors, Dicey's preoccupations and ambivalences are in many ways our own.

3. **HARVARD LAW REVIEW**
   https://harvardlawreview.org/wp content/uploads/pdfs/vol123_admitting_doubt.pdf
   ADMITTING DOUBT: A NEW STANDARD FOR SCIENTIFIC EVIDENCE in Vol 123; Issue 8

   Since Daubert v. Merrell Dow Pharmaceuticals, Inc., 1 federal judges have had the responsibility to act as gatekeepers of scientific expert testimony through a two-pronged test to determine whether "an expert's testimony both rests on a reliable foundation and is relevant to the task at hand," based not on the expert's conclusions but on the "principles and methodology" used. Most state courts now use either the Daubert test, the older test from Frye v. United States requiring general acceptance by the relevant scientific community, or a mixture of the two standards. However, both tests mistakenly import scientific standards into the fundamentally legal decision of admissibility. This Note argues that admissibility should be based on relevance, with no separate reliability assessment, and also that judges should instruct juries on various factors related to reliability. This approach will improve accuracy by better informing the jury and by admitting evidence that does not meet current standards but that should be used to answer questions of fact. It also serves non-accuracy values by making adjudication fairer and by avoiding the inappropriate importation of scientific norms into law. The Note first describes relevant legal precedents and philosophy of science principles. It then discusses the different treatment of evidence in law and science and argues that current standards fall short of fulfilling the purposes of legal evidence. Finally, the Note sets out the proposed standard and explains why it provides a better solution.

4. **BANGLADESH LAW DIGEST**
https://bdlawdigest.org/extrajudicial-killings-and-constitution-of-bangladesh.html
EXTRAJUDICIAL KILLINGS: TOWARDS RESPONSIBLE STATE CARE by Mazharul Islam

The concept of 'Right to life' and 'Personal liberty' are the most esteemed and pivotal fundamental human rights. Therefore, Article 32 of the Constitution of Bangladesh occupies a unique position as a fundamental right. It is considered to be a prestigious provision. Thus, it ensures right to life and individual liberty not only for Bangladeshi citizens but also to the aliens. It is enforceable against the state. In Ekushay Television Ltd and others v Dr Chowdhury Mahmmod Hasan and others 54 DLR (AD) 130 it has been held that 'All the persons within the jurisdiction of Bangladesh are within the Bangladesh rule of law. The foreign investors in ETV are no exception to this principle.' Furthermore, Right to life and individual liberty is the contemporary term which has traditionally been called 'natural right'. It is the ancient right essential for the improvement of human individuality. It has also been mentioned in Magna Carta of 1215 Clause + (39) and + (40). Afterwards, John Locke articulated that the government is morally indebted to serve people by protecting life, liberty, and property and the views were mostly developed in his famous 'Second Treatise Concerning Civil Government.' Subsequently, Article 3 of the Universal Declaration of Human Rights reinforces the same.

5. **QUEENS LAW JOURNAL**
https://journal.queenslaw.ca/sites/journal/files/Issues/Vol%2042%20i1/2.%20Stratas.pdf
THE CANADIAN LAW OF JUDICIAL REVIEW: A PLEA FOR DOCTRINAL COHERENCE AND CONSISTENCY by The Hon'ble Justice David Stratas

The standard of judicial review rests at the very core of administrative law. For decades no, analytical approaches to judicial review have been constructed and demolished, and new ones offered in their place. In recent years, judges-including those on the Supreme Court of Canada-have openly expressed dissatisfaction with the current state of judicial review in administrative law and its application in Canada' highest court. Today, we have an incoherent and inconsistent jurisprudence that remains at risk of further change. Doctrinal clarity is the solution, but to achieve it, certain fundamental questions must be settled. Does the standard of review matter? What fundamental concepts animate judicial review? What is "reasonableness" and how should reasonableness review be conducted? Answering these questions and others, the author aims to close the never-ending construction site and allow for responsible renovations based on settled doctrine using accepted pathways of legal reasoning.

6. **Global Village Space**
https://www.globalvillagespace.com/pakistan-islam-on-cryptocurrency-the-future/?amp=1
Legality of Cryptocurrency: Legal & Islamic Perspective
Barrister Muhammad Ahmad Pansota

Regulating cryptocurrency is a challenge for the powerful cyber states of the West let alone Pakistan. But that doesn't mean that the country should fail to recognize the importance of this technological breakthrough.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-08-2021 to 31-08-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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1. **Lahore High Court**
Faysal Bank Limited v. Sajjad Aslam etc.
EFA No. 242230 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC4001.pdf

Facts: The petitioner assailed the order of Banking Court passed during execution proceedings whereby the proceedings of auction carried out by court auctioneer were set aside on the ground of irregularity committed by the court auctioneer as he pasted the proclamation outside the court premises three days prior to the date of such order by the court.

Issue: Whether an irregularity of pasting proclamation outside the court premises few days prior to such order is sufficient to set aside the whole auction proceedings?

Analysis: Order XXI Rule 90 CPC proceeds on different basis. In order to succeed it was mandatory for the judgment-debtor to satisfy the court, on the merits, that the sale should be set aside on the ground of a material irregularity, or fraud, in publishing or conducting it. Another condition was prescribed by means of the proviso thereto which stipulated that no sale shall be set aside on the ground of irregularity or fraud unless, upon the facts proved before the Court, it was established that the judgment-debtor had sustained substantial injury by reason of such irregularity or fraud. A mere allegation was not sufficient. It has to be established that no merely an irregularity but a material irregularity had taken place, or, in the alternative that fraud had been perpetrated in the process of carrying out the sale. Even if these conditions were complied with the judgment debtor must satisfy the court that he had sustained a substantial injury by reason thereof. It has further held that mere an irregularity, even if material, should not suffice unless it could be shown that material loss had been caused.
Where the judgment-debtor felt that he was being harmed by some ministerial order with respect to sale of his immoveable property, which was not in accordance with law, it was his clear duty to assert the same before the court rather raising it at the stage of appeal, or further appeal, or in review, or not at all and expect the court to do it for him and that the judgment-debtor could not be allowed to do nothing and then after the passage of many years in which third party interests had been created to rely on a technical objection to delay the court of justice.

Conclusion: The nature of irregularity committed by the Court Auctioneer is not such which has caused substantial injury to the judgment-debtor, so the auction proceedings cannot be set aside on account of mere irregularity which is not substantial in nature.

2. **Lahore High Court**
Syed Tahwer Hussain Rizvi v. Syed Javed Ali Rizvi
Civil Revision No.707/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC4054.pdf

Facts: The respondent filed a suit for declaration against the petitioner by alleging the petitioner ostensible owner of suit property. The petitioner raised preliminary objection that civil courts have no jurisdiction in terms of Section 43 of the Benami Transaction (Prohibition) Act, 2017, at which the plaint of the respondent was rejected under Order VII, Rule 11 CPC. On appeal the finding of trial court was reversed and matter was remanded to trial court for further proceedings in accordance with law.

Issues: Whether jurisdiction of civil court is barred in terms of Section 43 of Benami Act?

Analysis: Section 43 of Benami Act stipulates bar as to the jurisdiction of the civil courts in relation to any proceeding in respect of any matter which any of the authorities, or the Tribunal is empowered by or under this Act to determine. For applicability of Benami Act on a transaction, the property forming subject thereof must be held by a benamidar in terms of clause (a) and (b) of Section 2(8)(A) of the Act and not under the exclusion envisaged thereunder. Similarly, there must be some proceedings, triggered and initiated under Banami Act and/or matters, which any of the Authority or the Tribunal established thereunder are empowered to determine, in respect whereof the jurisdiction of civil courts is barred and not every matter where the issue of benami comes into play can be said to be barred. Civil courts in terms of Section 9 of CPC are courts of ultimate and plenary jurisdiction and any suit of civil nature is to be tried by the civil courts unless jurisdiction is expressly or impliedly barred. Similarly, to address the issue of maintainability of a suit before civil courts in terms of Section 43, it is from the pleadings of the parties and the issues framed therein, on case to case basis, which are to be the determining factors as to whether the matter agitated in a particular case falls within the ouster clause i.e., Section 43 or the exceptions thereof i.e., sub-clause (i) and (ii) of Section 2(8)(A)(b).

Conclusion: Jurisdiction of civil courts is not exclusive barred in terms of Section 43 of Benami Act. It is from the pleadings of the parties and the issues framed therein, on case to case basis, which will be the determining factors as to whether the matter agitated in a particular case falls within the ouster clause i.e., Section 43 or the exceptions thereof i.e., sub-clause (i) and (ii) of Section 2(8)(A)(b).

3. **Lahore High Court**
Dr. Sarfraz DDO Health, etc. v. Malik Muhammad Jamil, etc.
R.F.A No.33446 of 2019
Mr. Justice Ch. Muhammad Masood Jahangir,
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC3971.pdf

Fact: The appellants challenged the judgment and decree, whereby suit filed by respondent No.1 for recovery of Rs.6,90,00,000/- as damages was decreed to the extent of Rs. 2,40,00,000/-.

Issue: i) Whether a suit for damages is maintainable against Civil Servants for act done in good faith in their official capacity?
ii) Is it necessary to decide issues of law prior to deciding issues of fact?
iii) What is the spirit of Order XX Rule 5 CPC?

Analysis: i) Section 8 of the West Pakistan Essential Services (Maintenance Act) 1958 clearly provides that no suit, prosecution or other legal proceedings shall lie against any person who acts in good faith or intends to do under this Act…Under the law presumption of good faith is attached to official acts committed during discharge of official duties unless proved to the contrary. A civil suit is not maintainable against Civil Servants/ Government officials for acts done in good faith, while discharging official duty.
ii) It is settled principle that where jurisdictional point or maintainability of the suit is in question, the requirement is first to resolve these legal points so as to avoid further exercise of lengthy trial which certainly would consume the time and energy of the Court, as well as of the litigants.
iii) The spirit of Order XX Rule 5 CPC is that the judgment of the learned trial court should contain the findings on all issues separately.

Conclusion: i) A civil suit is not maintainable against Civil Servants/ Government officials for acts done in good faith in official capacity.
ii) It is necessary to decide issue of law prior to the decision of issues of fact.
iii) The spirit of Order XX Rule 5 CPC is that the judgment of the learned trial court should contain the findings on all issues separately.

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4. **Supreme Court of Pakistan**
Universal Insurance Company etc v. Karim Gul & another
Civil Appeal No.1280 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1280_2019.pdf

Facts: An insured motor vehicle was considerably damaged in an incident and it became (to use an insurance term in its technical sense) a "total loss" (according to the appellant). The claim of the insured having been settled what remained, i.e., (to again use a technical term) the "salvage" was sold off by the appellant to the

respondent No. 1. Respondent No. 1 expended a substantial sum to repair the car and bring it into usable condition. Its registration was refused by the authority stating that there was already another vehicle registered with the same number. He filed a suit for damages against insurance company (the appellant). Contention of the appellant company was that they sold a "wreckage" and not the car. Contention of respondent No. 1 was that he purchased a motor vehicle in a damaged condition.

Issue: Whether the "goods" as claimed by the contesting respondent, a motor vehicle in howsoever badly damaged a condition it may have been or was it, as contended by the appellant, nothing but and only a wreck which was not a motor vehicle in any meaningful sense, and absolutely no regard had to be given to what the contesting respondent intended to, or could, or actually did, do with it? The question is in what sense were the words "total loss" used in the contract: as "actual" or "constructive" total loss?

Analysis: The key words to be examined are "total loss". The question is how this term is to be interpreted and applied. Are the words to be understood in the technical sense that they bear in insurance business, or given an ordinary meaning, in the context of that what was being sold? There is nothing to suggest that the contesting respondent was involved in the insurance business or had any familiarity or knowledge of how these words are used there. Learned counsel for the appellant argued that the words were to be understood in an ordinary sense, i.e., that the loss undergone was total. If applied in this sense it would be plausible to conclude that what was sold was mere wreckage, i.e., something that had ceased to be a car in any meaningful sense. This could be regarded as a non-technical use of the words. However, if the words are to be understood in a technical sense a different conclusion could emerge. The reason is that in the insurance business the thing insured can be declared to be a "total loss" in two different senses. One is of it being an "actual total loss". Here, the sense is that the insured property has been destroyed or damaged to such an extent that it can be neither recovered nor repaired for further use; it has been (to use a somewhat everyday expression) "totaled". In this sense the insured property is reduced to just wreckage and nothing more. The other is "constructive total loss". This is the situation where the repair cost of the damaged insured property exceeds its market value if the repairs were undertaken…. It will be seen that in an "actual total loss" situation, the thing insured (here, the car) is so damaged that it ceases to be a thing of the kind insured. In other words, the car would cease to be as such, and become mere wreckage. However, in "constructive total loss" the insured property does retain its description as such; it is simply that it is not worthwhile to pay for the repairs or have them undertaken. In this sense, the car would be regarded as continuing to remain as such no matter how much damage it may have suffered… A well-known principle of interpretation of contracts is the contra proferentem rule: "when there is a doubt about the meaning of a contract, the words will be

construed against the person who put them forward"… This rule applies here, and the ambiguity must be resolved against the appellant. The words "total loss" used in the contract ought not to be construed in the sense of "actual total loss", which would reduce that what was sold to mere wreckage. They should be taken to have the other technical meaning, i.e., "constructive total loss". In other words, the car in question retained its character as such, and did not cease to be a thing of the kind that had been insured.

Conclusion: As per contra proferentem rule, the ambiguity must be resolved against the appellant who drafted the contract. The words "total loss" used in the contract ought not to be construed in the sense of "actual total loss", which would reduce that what was sold to mere wreckage. They should be taken to have the other technical meaning, i.e., "constructive total loss". In other words, the car in question retained its character as such, and did not cease to be a thing of the kind that had been insured.

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5. **Lahore High Court**
Bashir Ahmad v. Iqbal Ahmad
Civil Revision No. 1250-D-2011
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC4185.pdf

Facts: The respondent/plaintiff instituted a suit for possession on the basis of pre-emption which was decreed by learned appellate court. The petitioner/ defendant challenged the said decree through this revision petition.

Issue: Whether it is necessary to produce the postman as a witness to establish the delivery of notice of Talb-i-Ishhad?

Analysis: The august Supreme Court of Pakistan dispensed with the production of postman and declared that it is not violative of the law, if the registration clerk of the concerned G.P.O., who issued the receipt along with the relevant record, appeared before the Court and brought on record the receipt and acknowledgment due.

Conclusion: The production of postman can be dispensed with, if the registration clerk of the concerned G.P.O., who issued the receipt along with the relevant record, appeared before the Court and brought on record the receipt and acknowledgment due.

6. **Lahore High Court**
Dr. Muhammad Jawad Jan Arif v. Dr. Ayesha Chaudhary, etc.
W.P. No.12248 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3957.pdf

Fact: The petitioner has challenged order of a learned Judge Family Court whereby interim maintenance allowance in respect of the petitioner's 5½ years old autistic daughter has been raised from Rs.20, 000/- to Rs.50, 000/- per month.

Issue: i) Does the Family Court have un-fettered and un-bridled powers to fix interim maintenance at its discretion?
ii) Can constitutional jurisdiction, through writ petition be invoked against an interim order, where remedy of appeal is not available?

Analysis: i) The Family Court does not have un-fettered and un-bridled powers to fix interim maintenance at its discretion. The Court will broadly look into the social status of the parties, the earning of the defendant, his capacity to pay; requirements of the minor and on this touchstone fix interim maintenance.
ii) It is well settled principle that orders at the interlocutory stages should not be brought to the higher Courts to obtain fragmentary decision, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal. The principle of judicial review embodied in the remedy afforded by Article 199 of the Constitution certainly cannot be used to negate, erase or offend the manifest intent of the law-maker. When the Legislature has specifically prohibited the filing of an appeal against an interim order, to entertain a writ petition would tantamount to defeating and diverting the intent of the Legislature. However, if the order is absolutely irrational, overtly perverse, grossly disproportionate, without jurisdiction or even in excess thereof, or coram non judice, the statutory ouster/bar may be crossed.

Conclusion: i) The Family Court does not have un-fettered and un-bridled powers to fix interim maintenance at its discretion.
ii) Where an appeal is prohibited by law against an interim order, constitutional jurisdiction through writ petition cannot be invoked, unless the order is absolutely irrational, disproportionate or without jurisdiction.

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7. **Supreme Court of Pakistan**
Muhammad Imran v. The State, etc
Crl.P.860-L/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._860_l_2021.pdf

Facts: Petitioner had issued three cheques in favour of the business of the complainant in the sum of Rs 2 million each, which were subsequently dishonoured. Eight other criminal cases were registered against the petitioner by different parties under the

same offence, involving sizable amounts. Three cases were registered after instant F.I.R. Petitioner remained a proclaimed offender.

Issue: Whether petitioner is entitled to grant of bail when offence does not fall within prohibitory clause of Section 497(1) CrPC?

Analysis: The offence under Section 489-F, PPC does not fall within the prohibitory clause of Section 497(1) CrPC and bail in such a matter is a rule and refusal an exception. The grounds for the case to fall within the exceptions meriting denial of bail include (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged…Registration of cases prima facie, establish that the petitioner is prone to repeating the offence. Petitioner having been declared an absconder in this case for over one and a half year generates the apprehension that the petitioner may avoid standing trial and hence delay the prosecution of the case. The material on record makes the case of the petitioner fall under two exceptions to the rule of grant of bail.

Conclusion: Petitioner is not entitled to grant of bail even when offence does not fall within prohibitory clause of Section 497(1) CrPC since his case falls within two exceptions.

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8. **Supreme Court of Pakistan**
Inam Ullah v. The State, etc
Crl.P.39-L/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._39_l_2021.pdf

Facts: The petitioner filed a pre-arrest bail petition before the High Court which was withdrawn without arguments on merits. Thereafter, the petitioner filed a second pre-arrest bail petition. The High Court dismissed the second pre-arrest bail petition with the observation that the petitioner was trying to play hide and seek with the court in order to deliberately prolong the matter and create hurdles in the way of the investigation.

Issue: Whether the second pre-arrest bail petition after withdrawal of the first pre-arrest bail petition without satisfactory explanation for withdrawal is maintainable?

Analysis: Filing a pre-arrest bail petition, enjoying the concession of ad interim bail granted therein and then simply withdrawing the petition in order to file another one after sometime and availing the same benefit of ad interim bail once again, in the absence of any lawful explanation or justification, is a sheer abuse of the process of the court.… While the accused can approach the same court with a fresh pre-

arrest bail petition if the earlier one has been withdrawn without advancing arguments on merits, the court must be watchful that the successive petition is not readily entertained or the concession of ad interim bail granted to the accused, unless he furnishes satisfactory explanation for withdrawal of the first petition and filing of the second one…The accused must be required by the court to furnish satisfactory explanation for withdrawing the first pre-arrest bail petition at the time of entertaining the second pre-arrest bail petition. Unless there is satisfactory explanation, the second bail petition should not be entertained, because otherwise the accused would have an unchecked license to abuse the concession of ad interim pre-arrest bail by misusing the court-process, and hoodwink the Police to prolong the investigation. Therefore, while the accused has access to courts to seek pre-arrest bail, even successively for justifiable reasons, he cannot be permitted to abuse the concession of ad interim bail to stall the investigation and play hide and seek with the criminal justice system. In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

Conclusion: In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

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9. **Supreme Court of Pakistan**
Azam Saleem etc v. The State, etc
Crl.P.797-L/2021 and Crl. P.799-L/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._797_l_2021.pdf

Facts: The first pre-arrest bail petitions of petitioners were dismissed by the High Court for non-prosecution. The second pre-arrest bail petitions have been dismissed on merit.

Issue: Whether the second pre-arrest bail petition after dismissal of earlier one for non-prosecution was maintainable?

Analysis: If a pre-arrest bail petition is dismissed for non-appearance of the petitioner under Section 498-A CrPC, the second pre-arrest bail petition is maintainable only if the petitioner furnishes satisfactory explanation for his absence in the first petition. Only if the explanation is found satisfactory the Court can proceed further and decide the second petition on merits. However, if the explanation is found to be unsatisfactory, the second petition is not maintainable and is liable to be dismissed without going into the merits of the case.

Conclusion: The second pre-arrest bail petition is maintainable only if the petitioner furnishes satisfactory explanation for his absence in the first petition. If the explanation is

found to be unsatisfactory, the second petition is not maintainable and is liable to be dismissed without going into the merits of the case.

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10. **Lahore High Court**
Bashir Ahmad v. District Police Officer etc.
Crl. Misc. No.3831/H/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4175.pdf

Facts: Petitioner sought recovery of his son from the alleged illegal custody of Respondent No.3 (SHO).

Issue: What are the essential safeguards against police excesses after arrest of a person?

Analysis: Section 62 Cr.P.C. requires the officer in-charge of the police station to report the cases of all persons apprehended without a warrant to the District Superintendent of Police etc. irrespective of the fact whether they have been admitted to bail or not. Rule 12(ii) of Chapter 11-B Volume III of the Lahore High Court Rules and Orders enjoins that an accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Further information regarding his place of confinement should at all times be given to his friends on their application. And lastly, the prisoner should be informed that he is entitled to have the assistance of his counsel and to communicate with his relatives and friends. These provisions are formidable safeguards against police excesses.

Conclusion: See above.

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11. **Lahore High Court**
Muhammad Umar v. The State & 2 others
Criminal Appeal No. 88-J of 2015
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC4023.pdf

Facts: Appellant, along with two others, was trialed in case under Sections 302/34 PPC and was convicted under Section 302-B PPC. However other two were acquitted on the basis of compromise with legal heirs of deceased. Being dissatisfied from his conviction, appellant has assailed the impugned judgment.

Issues: i) Whether a promptly lodged FIR can rule out the possibility of false involvement of accused person?
ii) What are the golden principles of law regarding reasonable doubt?

Analysis: i) Promptitude in FIR is not enough to rule out the possibility of false involvement of accused, if on the basis of judicial scrutiny of the evidence on record it is found that prosecution has failed to prove its case beyond reasonable doubt. It is not a guarantee that in timely recorded FIR, false involvement of an innocent person is not possible.

ii) These are the golden principles of law regarding reasonable doubt: -

a. Finding of guilt against an accused cannot be based merely on the high probabilities that may be inferred from evidence in a given case.
b. Finding of the guilt should rest surely and firmly on the evidence produced by the prosecution.
c. Mere conjectures and probabilities cannot take the place of proof otherwise the golden rule of benefit of doubt will be reduced to naught.
d. It is the duty of prosecution to prove its case beyond reasonable doubt.
e. Accused is only to create dents in prosecution's case.
f. Benefit of doubt however slight must go to accused not as a matter of concession or grace but as a matter of right.
g. Even a single infirmity in prosecution's case would entitle accused to benefit of doubt.

Conclusion: i) A promptly lodged FIR cannot rule out the possibility of false involvement of accused person.
ii) See above.

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12. **Lahore High Court**
Waris v. The State, etc.
Crl. Misc. No.46188-B of 2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4042.pdf

Facts: Through this petition, the petitioner sought post-arrest bail in a case under Sections 392, 395, 412, 411 PPC.

Issue: i) Whether nomination of accused through supplementary statement without disclosure of source is a matter of further inquiry
ii) What is the effect of nomination of accused prior to identification parade at bail stage?

Analysis: i) In a case where accused is not nominated in FIR rather nominated through supplementary statement without disclosure of source of information, it becomes matter of further inquiry.
ii) Nomination of accused prior to identification parade diminishes sanctity of such Test Identification Parade and its evidentiary value shall be determined by the trial court.

Conclusion: i) Nomination of accused through supplementary statement without disclosure of source is a matter of further inquiry.

ii) Nomination of accused prior to identification parade diminishes sanctity of such Test Identification Parade.

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13. **Supreme Court of Pakistan**
Inhaf Ullah v. The State, etc
Criminal Petition No.60 of 2017
Mr. Justice Mushir Alam, Mr. Justice Yahya Afridi,
Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._60_2017.pdf

Facts: Petitioner was convicted under section 365-A of the Pakistan Penal Code, 1860 and sentenced to imprisonment for life. He was identified by the witness as recipient of the ransom in response to a court question.

Issue: How Court should exercise power to put question to a witness?

Analysis: Petitioner's identification, with handcuffs in the dock, through intervention of the Presiding Judge fails to commend our approval. The Court bears no responsibility either for the prosecution or the defence; it must maintain its neutrality to decide a case on the strength of evidence alone, essentially to be adduced by the prosecution itself to drive home the charge. No doubt, the trial Court is vested with ample authority to put questions to the witness, however, the power of this amplitude must be exercised with caution and circumspection, solely in aid of justice without disturbing equality in the scales; in the present case, incessant interventions by the trial Judge has grievously undermined testimony of a witness, otherwise mute and reticent on a fundamental detail of the case.

Conclusion: This power must be exercised with caution and circumspection, solely in aid of justice without disturbing equality in the scales.

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14. **Lahore High Court**
Rashed alias Chand, etc. v. The State
Crl. Appeal No. 582-J of 2016
Mr. Justice Ch. Abdul Aziz and Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4076.pdf

Facts: The appellants/accused were convicted and sentenced to death & life imprisonment etc. by Anti-Terrorism Court under Sections 302 & 34 of the Pakistan Penal Code, 1860 alongside Section 7 of the Anti-Terrorism Act 1997. The appellants filed appeal against their sentences and the learned trial court sent Murder Reference U/S 374 Cr.P.C, 1898 for the confirmation or otherwise of the death sentences.

Issues: i) Whether relationship of eyewitnesses with the deceased makes them interested witnesses?

ii) What are the salient points of instructions for conducting Identification Parade (ID)?

iii) Whether evidence of a Wajtakkar witness comes within the ambit of *res gestae* and is admissible in evidence?

iv) What is the precondition to make a judicial confession basis for awarding conviction and whether the confession retracted at a belated stage can have any impact in awarding conviction?

v) What is a standard of admissibility of CCTV footage and CDR of cell phones?

vi) What is the evidentiary value of a forensic report where delay has been caused in submitting the samples to Forensic Laboratory for conducting forensic analysis?

Analysis: i) It is a settled law that testimony of closely related witnesses cannot be discarded merely on the ground of their relationship with the deceased. As mere relationship of a witness with the deceased does not undermine the value of his testimony, if otherwise it is found with a ring of truth.

ii) Following are the salient points of instructions laid down in Rules and Orders of Lahore High Court for conducting identification parade:

a. List of all persons/dummies included in the parade should be prepared containing parentage, address and occupation of each member of the parade.

b. When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified.

c. If a witness identifies a person wrongly, it should be recorded so instead of mentioning that the witness identified nobody.

d. Magistrate should record complaint/objection of suspect, if any.

e. The Magistrate should state precautions taken to prevent the witnesses from seeing the suspect before commencement of ID parade.

f. Magistrate should ensure that no communication to facilitate identification of suspect is made to any witness, awaiting his turn to identify.

g. Magistrate should also note that whether dummies are inmates of jail or not.

h. It is fair both to the prosecution and the accused that the members of the parade should be presented in a normal state and, if possible, the dress of the parade should have resemblance to the accused as he appeared to the witness at the time of the commission of the offence.

i. At the end, the Magistrate should append a certificate regarding his proceedings.

iii) The evidence of a wajtakkar witness is relevant under the doctrine of *res gestae* as the witness came across the appellants while they were fleeing from the vicinity of crime while brandishing their weapons. Besides, the eyewitness told

the Wajtakkar witness that deceased had been shot. So, instance of seeing the accused fleeing from the place of occurrence by the Wajtakkar witness and utterance of another eyewitness is sufficiently spontaneous so as to form evidence of res gestae, thus is admissible.
iv) In order to make a judicial confession basis for awarding conviction, the prosecution is required to prove that such confession was made voluntarily and it contains true account of the occurrence. Moreover, it is a settled law by now that a confessional statement, if true, voluntary, and containing full details of the events of an occurrence, even if retracted afterwards, can be made basis of conviction even in case of capital punishment.
v) So far as the CCTV Footage is concerned, admittedly, it was not containing the clear visuals of the incident and the facial features of the culprits were also blurred. On this score alone, the evidence of CCTV footage is destined to be discarded. As regards Call Data Record, no person or record keeper of the cellular company appeared in the dock to provide legal sanctity to such evidence. Thus, these pieces of evidence are inadmissible in evidence.
vi) It is a cardinal principle of law that whenever a sample for forensic test is obtained or taken into possession, the same should be sent to Forensic Laboratory without any unnecessary and un-explained delay, to rule out possibility of any fabrication or tampering. Nevertheless, when delay is caused in sending the forensic material, the evidence may not be free from doubt, especially when no plausible explanation has been provided by the prosecution as to why these samples were not sent to PFSA with other items and why police authorities did wait for the arrest of the appellants and sent these samples only after taking subsequent samples from the appellants. So, this piece of evidence cannot be relied upon.

Conclusion: i) See above.
ii) See above.
iii) The evidence of a Wajtakkar witness comes within the ambit of the doctrine of res gestae and is admissible in evidence.
iv) See above.
v) See above.
vi) See above.

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15. **Lahore High Court**
Qamar Altaf v. The Commissioner Multan etc.
W.P.No. 1523 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC4102.pdf

Facts: The petitioner sought direction to deliver vacant possession of the official residential quarter allotted to him but not vacated by one of the respondents despite of the fact that he was compulsory retired from service on the ground of corruption.

Issue: i) Whether a government employee who is compulsory retired from service, can retain the officially allotted quarter on the ground of pendency of appeal before Service Tribunal?
ii) Whether concealment of facts regarding filing and pendency of earlier appeal before High Court disentitles a party for grant of relief?

Analysis: i) There is no legal obligation of the government to provide residential accommodation to its employees nor a government servant has any vested legal right or claim to the allotment of the government owned residential accommodation. However, allotment of the government accommodation is a discretion, the exercise whereof is guided and structured by the Allotment Policy. There is no entitlement to government accommodation save in accordance with allotment policy of the concerned government and there is no provision in the Allotment Policy for allowing retention of the government accommodation till decision of any service appeal against compulsory retirement of a government servant. There exists a valid policy reason for not incorporating such a provision: should the Tribunal consider any order of dismissal from service or compulsory retirement to be *prima facie* unjustified, it has ample jurisdiction to suspend the same.
ii) The concealment and suppression of facts regarding filing and pendency of an earlier appeal is material and consequential not only from the point of view of decision in this case but also from the perspective of administration of justice in civil cases. It is for this reason that Rule 1(a)(ix) of Part A to Chapter 1 (Judicial Business) in Volume V of Rules and Orders of the Lahore High Court requires that all judicial matters to be brought before the Court shall be accompanied by a certificate to the effect that as per instructions of the party no such petition/application or appeal has earlier been filed in the High Court in this matter. If a petition, application or appeal is filed through a counsel, signing of the certificate is his responsibility, who is obliged to disclose correct information on instructions or otherwise if in his personal knowledge. Any misstatement would lead to proceeding before the respective Bar Council in addition to rejection of relief for approaching the Court with unclean hands. Even though the Code does not stipulate such a Certificate, as a mandatory requirement of law, to be provided in relation to the proceedings before the courts subordinate to the High Court, nonetheless the High Courts and august Supreme Court frequently refuse to grant any equitable relief whenever the aforementioned inequitable conduct of a party to the proceedings is exposed. The principles of fair trial, as guaranteed by Article 10A of the Constitution, are to be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of any person. The principle of equality of arms is violated in every case where there is a concealment of facts regarding earlier proceedings.

Conclusion: i) Pendency of appeal before the Tribunal *ipso facto* does not create any vested right to retain possession of the Quarter.
ii) Concealment or suppression of the fact about earlier filed appeal would render the appeal of the concealing party to be *void* thus liable to outright rejection.

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16. **Lahore High Court**
Faysal Bank Limited v. Government of the Punjab.
Writ Petition No. 25108 of 2015
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4166.pdf

Facts: The Petitioner is a banking company incorporated under the laws of Pakistan having its Registered Office at Karachi and one of its branches at Jail Road, Lahore. Respondent No.6 (Sub-Divisional Police Officer) issued an undated notice under sections 6 & 10 of the Punjab Security of Vulnerable Establishments Ordinance, 2015, which was received at the Petitioner's Jail Road Branch. The Petitioner has challenged the said notice

Issue: How an establishment may be declared as vulnerable establishment under the Punjab Security of Vulnerable Establishments Act, 2015?

Analysis: The provisions of the Act would apply to an establishment subject to two conditions: first, the Committee identifies it as a vulnerable establishment and makes a recommendation to the DCO for notification as such; and secondly, the DCO declares it a vulnerable establishment by notification.

Conclusion: See above.

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17. **Lahore High Court**
Federation of Pakistan v. Ex. Naik Mumtaz Hussain
Intra Court Appeal No. 04 of 2021 in W.P. No.2775/2011.
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC3989.pdf

Facts: This intra court appeal is filed against order of single bench wherein conviction of respondent under Pakistan Army Act, 1952 was set aside and matter was remanded back to trial court, with a direction to first fulfill the mandatory requirements as envisaged under Army Act and thereafter proceed with the matter in accordance with the law.

Issue: i) Whether the order passed by a single judge in constitutional petition can be termed as an original order as required by section 3 of LRO, 1972?
ii) Whether intra court appeal lies against an order where law provides remedy of at least one appeal, revision or review to any court?
iii) Whether intra court appeal lies against an order where remedy of appeal, revision or review is provided but not availed?

iv) Whether intra court appeal is maintainable against the order passed by a single judge pertaining to any order passed by any of the Courts martial under the Army Act.

Analysis: i) Term "original order" used in proviso to section 3(2) LRO, 1972 means an order passed by the original/first fora and not the order passed by a single judge of this Court in Constitutional petition. Order passed by a single judge in Constitutional petition cannot be termed as an original order as required by section 3 of LRO, 1972 or an order passed in original civil jurisdiction of High Court because such order is passed in Constitutional jurisdiction conferred by Article 199 of the Constitution

ii) The proviso attached to sub-section 2 of section 3 of LRO 1972 is relevant which, in most unequivocal terms, lays down that remedy of ICA is not available against an order of single judge having arisen out of proceedings in which applicable law provides remedy of at least one appeal, revision or review to any court, tribunal or authority against the original order.

iii) It is of utmost importance to clarify that availing of such remedy of appeal, revision or review is not a sine qua non to question the maintainability of ICA and it is sufficient if applicable law in the matter provides such remedy. It is irrelevant whether such remedy is availed by the aggrieved person or not.

iv) Perusal of section 119 to 126, 131, 133(B)(1) of Army Act and Rule 116 of Pakistan Army Act Rules, 1954 clearly establishes that remedies of appeal, revision, review, filing a petition etc. are available to aggrieved persons, against the original orders passed by different Courts martial. Therefore, we have no hesitation to hold that the bar contained provided in proviso to section 3(2) LRO, 1972 is fully attracted and ICA is not maintainable against the order passed by a single judge pertaining to any order passed by any of the Courts martial under the Army Act.

Conclusion: i) The order passed by a single judge in Constitutional petition cannot be termed as an original order as required by section 3 of LRO, 1972.

ii) Intra court appeal does not lie against an order where law provides remedy of at least one appeal, revision or review to any court.

iii) Intra court appeal does not lie against an order where remedy of appeal, revision or review is provided but not availed.

iv) Remedies of appeal, revision, review, filing a petition etc. are available to aggrieved persons, against the original orders passed by different Courts martial, therefore Intra court appeal is not maintainable against the order passed by a single judge pertaining to any order passed by any of the Courts martial under the Army Act.

18. **Lahore High Court**
Waqar Shaukat v. Deputy Commissioner etc.
W.P. No.50002 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4112.pdf

Fact: The petitioner filed petition for issuance of direction to respondent No.3 not to demarcate the suit property, regarding which report of local commission has already been called by learned trial court.

Issue: When the jurisdiction of High Court under Article 199 of the Constitution can be invoked to defeat the provisions of a validly enacted statutory provision?

Analysis: Under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 resort and recourse to writ jurisdiction of High Court can only be made if there is no other adequate remedy available to a party. But it cannot be invoked in case of non-availability of the acknowledged grounds of judicial review i.e. illegality, irrationality, procedural impropriety or proportionality. Moreover, the Constitutional jurisdiction is equitable and discretionary in nature and cannot be invoked to defeat the provisions of a validly enacted statutory provision.

Conclusion: The jurisdiction of High Court under Article 199 of the Constitution can only be invoked if no other adequate remedy is available to a party and three acknowledged grounds of judicial review i.e. illegality, irrationality, procedural impropriety or proportionality, exist as well.

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19. **Lahore High Court**
Mst. Saima Mai v. DPO, etc.
Writ Petition No.11601/2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC3984.pdf

Facts: The petitioner filed the Constitutional petition under Article 199 of the Constitution of Pakistan1973 against harassment caused to her and her spouse illegally.

Issue: Whether public functionaries should be restrained from harassing and interfering in marriage of a sui juris and adult, out of free will and consent?

Analysis: Under Islamic law both male and female have the right to contract marriage with their own free will and their matrimonial life is protected under Article 35 of the Constitution. Under Articles 9 & 35 of the Constitution, it is bounden duty of State to protect the marriage, life and liberty of legally wedded couple. Such a sacred relationship founded by way of religious contract, entered into by two individuals to establish a home and start a family life, which is fundamental and primary foundation of society, should not be interfered with. It is therefore incumbent upon all state functionaries to act strictly in accordance with law and

not to transgress their lawful domain to disturb or disrupt the family life of a person without legal justification.

Conclusion: Public functionaries should remain within the four corners of law and desist from causing harassment in illegal manner to sui juris and adult who marry with person of his/her choice.

LATEST LEGISLATION/AMENDMENTS

1. **THE PUNJAB COMMISSION FOR REGULARIZATION OF IRREGULAR HOUSING SCHEMES (AMENDMENT) ORDINANCE 2021 (XXIII of 2021) [23 August 2021]**
https://punjabcode.punjab.gov.pk/en/show_article/VmZdawY1WmpUNg--
An Ordinance to amend the Punjab Commission for Regularization of Irregular Housing Schemes Ordinance 2021.
It is necessary to amend the Punjab Commission for Regularization of Irregular Housing Schemes Ordinance 2021 (XVII of 2021) for better functioning of the Commission and for the ancillary matters.

2. **THE NAMAL UNIVERSITY, MIANWALI ACT 2021 (ACT XXV OF 2021)**
https://punjabcode.punjab.gov.pk/en/show_article/VGRSZFZlBTVTMA--
Whereas it is expedient to provide for the establishment of Namal University, Mianwali in the private sector, and to provide for matters connected therewith and ancillary thereto.

LIST OF ARTICLES

1. **MANUPATRA**
http://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
WIDENING THE SCOPE OF WHITE COLLAR CRIME: UNVEILING SUBVENTION SCHEME FRAUD by Saloni Jain & Rohit Arya
The concept of "White Collar Crime" found its place in criminology for the first time in 1941 when Sutherland published his Research Paper on White Collar Crime. Until now this term has not been defined in any statute per se but is usually used as an umbrella term to connote any offence which has a financial motivation, done by individual/s who belong to a certain societal class or position. For instance, Government Functionaries, Ministers, Executives of Major Cooperatives– People who are in the position of decision making and weighing power. In other words, White Collar Crime is a non-violent act and involves a breach of trust or breach of faith bestowed by an individual or institution on the perpetrator. White Collar Crimes in India are already seeing a huge rise/spike in cases relating to Health care fraud, financial fraud, Cyber fraud, Bankruptcy fraud, Government fraud, Land pooling fraud, and so forth.

2. **MODERN LAW REVIEW**

https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12300

THE RISE OF DIGITAL JUSTICE: COURTROOM TECHNOLOGY, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE by Jane Donoghue

This article addresses a little discussed yet fundamentally important aspect of legal technological transformation: the rise of digital justice in the courtroom. Against the backdrop of the government's current programme of digital court modernisation in England and Wales, it examines the implications of advances in courtroom technology for fair and equitable public participation, and access to justice. The article contends that legal reforms have omitted any detailed consideration of the type and quality of citizen participation in newly digitised court processes which have fundamental implications for the legitimacy and substantive outcomes of court-based processes; and for enhancing democratic procedure through improved access to justice. It is argued that although digital court tools and systems offer great promise for enhancing efficiency, participation and accessibility, they simultaneously have the potential to amplify the scope for injustice, and to attenuate central principles of the legal system, including somewhat paradoxically, access to justice.

3. **HARVARD LAW REVIEW**

https://harvardlawreview.org/wp-content/uploads/2017/10/2434-2462_Online-Updated.pdf

LAW'S BOUNDARIES by Frederick Schauer

The history of law is in no small part the history of its boundaries. And the history of legal theory, or jurisprudence more narrowly, is thus a history of exploring, analyzing, and debating these boundaries……Law is a source-based enterprise, and understanding its nature accordingly requires understanding which sources constitute the law and which do not. It is only to be expected, therefore, that jurisprudential debates about the nature of law are so often debates about which sources of decisional guidance are to be treated as law — what counts as law.

4. **THE DAWN**

https://www.dawn.com/news/1641821

THE MENACE OF EMOTIONAL ABUSE AND WHY A DOMESTIC VIOLENCE BILL IS THE NEED OF THE HOUR by Barrister Muhammad Ahmad Pansota

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-09-2021 to 15-09-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Muhammad Yousaf & others v. Nazeer Ahmed Khan (decd) through LRs, etc
Civil Petition No.3772 of 2019
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3772_2019.pdf

Facts: Respondent instituted a suit for possession without challenging any mutation, order or proceedings and without seeking declaration regarding cancellation of the power of attorney etc. Even, the necessary parties were not arrayed in the suit. The High Court disposed of revision by directing that the original suit instituted by the respondent would stand dismissed as withdrawn with liberty to file a fresh one which remedy on being availed will be dealt with in accordance with law.

Issue: i) Whether permission to file fresh suit can be granted where a defect is removable through amendment of plaint?
ii) Whether a suit can be allowed to be withdrawn where there is inherent and fatal defect?
iii) What is a formal defect and how can it be distinguished from a fatal or inherent defect making the suit incompetent?

Analysis: i) Where a defect is removable or rectifiable by amendment of the plaint, permission to file a fresh suit cannot be granted.
ii) Where a defect which goes to the root of the case and is not merely a formal defect, permission to file a fresh suit would amount to allowing the plaintiff to retrace his steps plug the loopholes in the earlier suit and file a different case with different/ additional parties and a totally different relief. These to our mind are not steps that could by any stretch of the language be termed as removal of formal defect…. As such, neither the suit can be permitted to be withdrawn nor permission to file a fresh suit be granted on that score….. Suit for possession was filed without seeking a declaration of title, knowing that the property in question stood transferred on the basis of registered instrument. The suit was in our opinion stillborn from its very inception as it was not competent.
iii) The term formal defect has not been defined in the Code of Civil Procedure, its plain meaning in the context that the word has been used in the CPC appears to be that such defect should be only on the point of form of the suit. It appears to connote every kind of defect which does not affect the merits of the case. However, if the defect is material and substantial and affects the merits of the case or goes to the root of the claim it cannot be termed as a formal defect within the scope and meaning of sub clause (a) of Rule 1(2) of Order 23, CPC.

Conclusion: i) Where a defect is removable or rectifiable by amendment of the plaint, permission to file a fresh suit cannot be granted.
ii) A suit cannot be allowed to be withdrawn where there is inherent and fatal defect.
iii) See above.

2. **Lahore High Court**
Muhammad Zaheer v. Abdul Majeed
Civil Revision No.33725/2019
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4494.pdf

Facts: The plaintiff filed a suit under Order XXXVII CPC before Additional District Judge on the basis of pro-note for the recovery of his loaned amount. There was an additional security of mortgage concerning that loan. However after completion of ex-parte proceedings, the court returned the plaint for its presentation to the competent forum.

Issue: i) How it can be determined whether a document is a promissory note or not?
ii) Whether mere fact that mortgage deed has been executed in addition to a pro-note will exclude the summary jurisdiction of Court under Order XXXVII Rule 2 CPC for the enforcement of promissory note?

Analysis: i) The promissory note is defined under section 4 of the Negotiable Instruments Act, 1881. Plain reading of that definition shows that a document shall be regarded as promissory note if it fulfills the following requirements:-

(i) An unconditional undertaking to pay,
(ii) The sum should be a sum of money and should be certain,
(iii) The payment should be to or to the order of a person who is certain, or to the bearer, of the instrument,
(iv) And the maker should sign it.

If all above four conditions are present, the document becomes a promissory note under section 4 of the Act.
ii) The prayer clause of the plaint shows that the petitioner is only seeking money decree on the basis of pro-note and not for recovery of amount by selling the mortgage property on the basis of mortgage deed. Indeed suit for the enforcement of mortgage deed could only be filed in ordinary jurisdiction under Order XXXIV Rule 14 CPC, however, mere fact that petitioner has secured the repayment of the loan amount by way of mortgage in addition to pro-note, would not deprive the petitioner to enforce recovery of loan on the basis of pro-note. Order XXXIV Rule 14 CPC provides that where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgage property to sale otherwise than by instituting a suit for the sale in enforcement of mortgage and he may institute such suit notwithstanding anything contained in Order II Rule 2 CPC. The law thus provides dual remedy to such a person by filing a suit under Order XXXVII Rule 2 CPC on the basis of pro-note and suit under Order XXXIV Rule 14 CPC for enforcement of mortgage deed and such suit is not barred by Order II rule 2(b) CPC. Therefore, mere fact that mortgage deed has been executed in addition to a

pro-note will not exclude the summary jurisdiction of Court under Order XXXVII Rule 2 CPC for the enforcement of promissory note.

Conclusion: i) See above

ii) Mere fact that mortgage deed has been executed in addition to a pro-note will not exclude the summary jurisdiction of Court under Order XXXVII Rule 2 CPC for the enforcement of promissory note.

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3. **Lahore High Court**
Allah Ditta, etc.v. Muhammad Anwar, etc.
C.M. No.3027 of 2015 in CR. No.1200 of 2002
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC4403.pdf

Facts: The petitioners assailed the order of High Court through petition under section 12(2) CPC on the basis of fraud, misrepresentation and want of jurisdiction whereas main revision petition was dismissed due to compromise between the parties of the said revision petition.

Issue: i) Whether a person not party to the litigation has locus standi to invoke section 12(2) CPC against judgment and decree?

ii) What are the essential conditions for the application of doctrine of lis *pendens*?

Analysis: i) In section 12(2) C.P.C. the word ‘person’ has been used. If the intention of the lawmaker had been to restrict the right of filing application only to the person who was party to the suit, then the word party ought to have been used. Therefore, aggrieved person has every right to file the application under section 12(2), C.P.C.

ii) Application of this section is subject to certain conditions; the suit must be relating to a specific immovable property in which any rights of the parties are directly and specifically in question, the suit should be pending at the time when the alienation in favour of the third person has been made and neither the suit itself nor the outcome thereof must be collusive, fraudulent and/or is meant to entrap, deceive, and defraud an innocent transferee.

Conclusion: i) A person not party to the litigation has every right to file the application under section 12(2), C.P.C.

ii) See above.

4. **Lahore High Court**
Sheikh Azfar Amin v. Chaudhry Asif Ali & 4 others
R.F.A. No.172 of 2016
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC4511.pdf

Facts: Appeal was filed against order whereby plaint was rejected under Order VII Rule 11, Code of Civil Procedure, 1908.

Issue: i) What is the distinction between private and public nuisance.
ii) Interpretation of Section 91 of CPC and its applicability?
iii) Whether rejection of plaint under Order VII Rule 11, CPC is justified, in the circumstances of the case?
iv) Whether impugned order is per incuriam and learned Court, while rejecting the plaint, has ignored the law laid down by the Apex Court of the Country?

Analysis: i) The Hon'ble Court observed that one act that is crime under section 133 of the Code of Criminal Procedure, 1898 and civil wrong under section 91 of the Code of Civil Procedure, 1908 as public nuisance, can possibly provide a cause for an action as private nuisance to an individual. In essence the difference is that Section 91 of the Code of Civil Procedure, 1908 allows the action for public nuisance even in the absence of proof of special damages, however, where an individual can prove the special damage, can maintain the action as private nuisance for the same act. The damage will qualify as special if it is particular and direct. Hence one action can result into both private and public nuisance.
ii) Moreover while considering the scope of Section 91 of CPC, it was opined that section 91 (1) provides that "though no special damage is caused", which itself suggests that the permission of Advocate-General (prior to amendment of 2018) and now leave of Court is required, for public nuisance as it is collective cause for which suit is maintainable despite no special damage to any individual or requirement of proof of such damage to an individual. When it is particularly read with sub-section 2 of section 91, it is further clarified that the requirement of obtaining consent of Advocate -General (and now leave of the Court), is limited to the cases where no special damage is caused to more than one person but not hing limits the right to sue that otherwise accrues or is available under the law, to a person. The suit by Advocate -General or his consent is primarily a representation of people in the locality or people concerned. Hence, if complained conduct amounts to private nuisance, the permission of Advocate General is immaterial. Failing to resort to provision of section 91(1) of the CPC is not terminal for a case, when the conduct complained, is also allegedly resulting into private cause of action or private nuisance.
iii) It was noted by the Hon'ble Court that to non suit the plaintiff was against the basic principles of tort of nuisance. Nonetheless, permission could be a defense or a mitigation factor, subject to examination of other important features. Factors like (i) level of interference (ii) public utility as well as benefits to public of the

alleged conduct and harm being suffered by those who may be affected (or being effected or already suffered loss) and its magnitude or gravity, (iii) the original utility of land, and (iv) nature of locality etc., which were yet to be seen through evidence.

iv) Moreover it was observed that while rejecting plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, learned trial Court has further ignored Order VI of the Code of Civil Procedure, 1908. It is overlooked that the Appellant was only required to give material facts in the plaint as per Order VI Rule 2, CPC and the further and better particular of the claim, it could have been ordered under Order VI Rule 5 of the Code of Civil Procedure, 1908. In case after receiving the evidence and on the basis of public interest, Court reaches to the conclusion that injunction may cause injustice to others or harm to the public interest. The Hon'ble Court relied on the august Supreme Court judgment reported as (PLJ 2006 SC 127), wherein it is clearly observed that the Code of 1908 is enacted to regulate the proceedings and mainly contains procedural laws, which are subservient to the cause of justice and, therefore, such laws neither limits nor control the power of the Court to pass an Order or Decree, which is necessary to do complete justice in the facts and circumstances of the case.

Conclusion: See above.

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5. **Lahore High Court**
Ejaz Ahmad Butt v. Samreena
W.P. No. 51108 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC4396.pdf

Facts: The Special Attorney of the petitioner assailed the judgment and decree passed by Civil Judge Class III/Family Judge claiming it to be a nullity in the eye of law as the Presiding Officer, being a Civil Judge, Class III had no authority to exercise powers of a Family Court Judge as the subject matter of the suit valued more than Rs.22,00,000/- which was beyond his pecuniary jurisdiction on the original civil side.

Issues: Whether the Presiding Officer, being a Civil Judge, Class III and functioning in the capacity of a Family Judge can deal with the subject matter of a family suit valued beyond his pecuniary jurisdiction on the original civil side?

Analysis: The notification relied upon by the Petitioner was issued under provisions of the Punjab Civil Courts Ordinance, 1962 ("Ordinance") which governs the matters relating to Civil Courts in Province of the Punjab generally. Section 9 of the Ordinance postulates that the jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Civil Judge shall be determined by the High Court either by including him in a class or otherwise as it thinks fit. Section 18(1) of the Ordinance provides for the remedy of an appeal before a High Court or the District Judge against decree or order passed by a Civil Judge

on the basis of pecuniary limits specified therein. The notification, which has general application, prescribes three classes of Civil Judges to exercise pecuniary jurisdiction specified therein in respect of original civil suits and proceedings on the basis of value of the subject matter. It is settled law that where there is a conflict between a special law and a general law, the former shall prevail. The provisions of the Family Courts Act, 1964, which embody a special law, are manifestly distinct and inconsistent with the provisions and scheme of the Ordinance, which is a general law, therefore, provisions of the Ordinance (such as section 9 and 18 ibid) are declared to have no application insofar as those are inconsistent with provisions of the Act or the Rules made thereunder. The object, purpose, policy and the legislative intent underlying the Act highlighted herein above, provide sufficient justification for such precedence. Resultantly, the notification relied upon by the petitioner is declared to be irrelevant and inapplicable to the proceedings before the Family Courts.

Conclusion: The Presiding Officer, being a Civil Judge, Class III and functioning in the capacity of a Family Court Judge can deal with the subject matter of a family suit valued beyond his pecuniary jurisdiction on the original civil side

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6. **Lahore High Court**
Kaneez Fatima v. Additional Sessions Judge etc
Crl. Misc. No.250964/M/2018
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4323.pdf

Facts: The petitioner has questioned the findings of the Judicial Magistrate in Inquiry Report and prays that a direction be issued for registration of FIR against respondent and other officials for killing her son in a police encounter.

Issue: i) Whether the Magistrate’s order under section 176 Cr.P.C. is a judicial or administrative order?
ii) What is object and scope of the inquest by the Magistrate; whether he can give any finding as to the guilt or innocence of an accused?

Analysis: i) Although the word “inquest” used in sections 174 and 176, Cr.P.C., has not been defined in the Code, it carries particular significance when the same is conducted by a Magistrate….Subsection (1) of section 176 gives an indication as to what would be the ordinary procedure in conducting the inquest. It is necessary for the Magistrate, when holding an enquiry as a part of the inquest, to “record the evidence taken by him in connection therewith”, in the manner prescribed in the Code of Criminal Procedure for conducting enquiries. The choice from amongst *“the manners”* has been left to the Magistrate and it would depend upon the circumstances of each case. Thus, the Magistrate, when holding an inquest, would be making an “enquiry” in accordance with

the provisions of the Criminal Procedure Code and, thus, it would, all the more, make it a judicial function. Any order passed as a result of such an enquiry would, obviously, be revisable. It is needless to emphasize that the power to be exercised under subsection (2) of section 176 for disinterment of the body is a part of the jurisdiction conferred on the Magistrate to hold inquests. If the entire process of the inquest is to be conducted as an enquiry, then the disinterment of the body would also form part of the enquiry and any order passed in this behalf would also be a judicial function.

ii) The object of the proceedings under section 176 Cr.P.C. is merely to ascertain the cause of death of a person who has died an unnatural death. The Magistrate may opine about the apparent cause of the deceased's death but has no jurisdiction to go beyond it. He cannot give any finding as to the guilt or innocence of an accused.

Conclusion: i) The Magistrate's order under section 176 Cr.P.C. is a judicial order.

ii) The Magistrate cannot give any finding as to the guilt or innocence of an accused under section 176 Cr.PC.

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7. **Lahore High Court**
Umar Farooq v. The State etc.
Crl. Misc. No.7693-M/2020
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2020LHC4265.pdf

Facts: The petitioner assailed the order of trial court and revisional court, whereby his application under Section 539-B Cr.P.C for local inspection was dismissed.

Issue: i) What is the significance and usefulness of site plan/map for the court in a criminal trial?

ii) What is the purpose, procedure and importance of local inspection u/s 539-B Cr.PC?

Analysis: i) The site plan is not per se admissible in evidence as it has to be proved by producing its maker, as a witness in the Court, who may be subjected to cross-examination. The site plan is not a substantive piece of evidence. It is generally used for explaining the information relating to the crime scene for the purpose of appreciation of evidence. Being a reflection of the crime scene, preparing and bringing on record the site plan is part of an attempt to furnish a panoramic view of the occurrence to scrutinize the evidence of prosecution witnesses produced at the trial. The keen inspection of the prevailing circumstances and self-evident hard realities at the crime scene, despite their silence and voicelessness, in some cases may carry a potential either to fortify the accusation or to belie the same.

ii) Upon bare perusal of Section 539-B Cr.PC, it transpires unequivocally that the traits of this provision are procedural and substantive in their nature besides being discretionary. A Judge or a Magistrate at any stage of the trial or inquiry or other proceedings, after due notice to the parties, is vested with the power to **visit** and

inspect any **place** in which either an offence is alleged to have been committed or any other place having a nexus with the offence committed, which **"it is in his opinion"** is necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial. It may further be observed that the proceedings under this provision are judicial in their nature.
The power of local inspection either may be exercised suo motu or on the application of a party. A Judge or a Magistrate is required mandatorily, without any unnecessary delay, to record a memorandum of relevant facts observed by him at such local/site inspection. Such memorandum shall form part of the record of the case. A copy of the memorandum, if so desired by the public prosecutor, the complainant or the accused, shall be furnished to them free of cost. The requirement of recording of memorandum of the relevant facts observed by a Judge or a Magistrate at the time of inspection and forming it a part of the record without unnecessary loss of time appears to be a pragmatic attempt of the law givers to cover the risk of loss of evidence which occurs with the passage of time as a result of fading of human memory.

Conclusion: i) A criminal Court or a Judge while deciding about a crime is well advised to make every effort to visualize the crime scene through site map or from other pieces of evidence, for proper appreciation of evidence to reach at a just conclusion.
ii) The main object behind vesting power to make local inspection with a Judge or a Magistrate is to enable him for properly appreciating evidence given at an inquiry or trial.

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8. **Lahore High Court**
Muhammad Umar Farooq Saleem v. The State etc.
Crl. Misc. No.52463-B of 2021
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC4531.pdf

Facts: After filing of pre-arrest bail, petitioner made default in appearance.

Issue: Whether pre-arrest bail of petitioner is proceedable in his absence?

Analysis: This is petition for pre-arrest bail where personal appearance of the petitioner is mandatory and in his absence, his bail petition is neither proceedable nor can be decided on merits.

Conclusion: Pre-arrest bail of petitioner is not proceedable in his absence and it also cannot be decided on merits.

9. **Lahore High Court**
Shoaib Ali v. The State etc.
Crl. Misc. No. 32864-B of 2021
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC4533.pdf

Facts: The complainant paid Rs.16,00,000/- to the petitioner and his other co-accused persons as trust (امانت) for the purpose of purchasing plots and when after sometime he inquired from accused persons about purchase of said plots and demanded his aforementioned amount back then accused persons refused to pay said amount.

Issue: If amount has been paid as advance for the purchase of plot, whether it will constitute offence under section 406 PPC?

Analysis: Amount was paid as advance for purchasing plots and when said plots have not been given to the complainant then instant case has been got registered, therefore, prima facie this is a civil transaction and not the case of "criminal breach of trust" defined under section 405 PPC and punishable under section 406 PPC.

Conclusion: If amount has been paid as advance for the purchase of plot, it will not constitute offence under section 406 PPC.

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10. **Lahore High Court**
Muhammad Umair v. The State etc.
Crl. Revision No. 211975 of 2018
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4356.pdf

Facts: The appellant assailed his conviction and sentence of life imprisonment u/s 302(b) passed in a private complaint, whereas the complainant through revision, sought enhancement of sentence of the appellant.

Issue: Whether it is mandatory duty of the prosecution to prove motive in every murder case?

Analysis: When motive is alleged but not proved then the ocular evidence required to be scrutinized with great caution. In the case of Hakim Ali vs. The State (1971 SCMR 432 it has been held that the prosecution though not called upon to establish motive in every case, yet once it has set up a motive and failed to establish it, the prosecution must suffer consequence and not the defense. In the case of Ameenullah v. State (PLD 1976 SC 629) it has been held that where motive is an important constituent and is found by the Court to be untrue, the Court should be on guard to accept prosecution story.

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

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11. **Lahore High Court**
Abdul Rasheed v. ASJ etc.
Crl. Misc. No. 49423-M of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4350.pdf

Facts: Petitioner was given superdari of a tractor/vehicle taken into possession under section 550 Cr.P.C by the Judicial Magistrate on the ground that he possessed an open transfer letter concerning said vehicle. Application of respondent No. 5 (last possessor) seeking cancellation of order granting superdari was dismissed by the learned Judicial Magistrate. Revision against this order was also dismissed. Respondent approached the High Court under section 561-A Cr.P.C., assailing the order of the revisional court.

Issues: i) What essential conditions are necessary to exist for making an order of superdari?
ii) Whether an open transfer letter confers any title of ownership of a vehicle?
iii) What weightage is to be given to the last possessor while deciding an application for superdari?
iv) Which court is competent to ascertain the title of a vehicle?

Analysis: i) For granting superdari, the following essential conditions must be fulfilled:

a. There must have been investigation, inquiry or trial.
b. The property in respect of which the order is to be made must be one:
   I. regarding which any offence appears to have been committed,
   II. which has been used for commission of any offence,
c. It is alleged or suspected to be stolen or when it is found in circumstances that give rise to a suspicion that an offence has been or is about to be committed.
d. It has been taken into custody.
e. It is produced in the Court.
f. Its seizure is reported to the Magistrate.

ii) An open transfer letter is not a valid document of title and does not confer ownership of a vehicle as per the mandate given under the Provincial Motor Vehicles Ordinance, 1965 (Ordinance XIX of 1965). In the case in hand, the petitioner only possessed a photocopy of the undated transfer letter, describing

himself as the owner of the vehicle. Besides, the registration certificate of the vehicle showed that the original owner of the vehicle was a third party/financial institution, which was leased in the name of somebody other than the petitioner. So, when the petitioner made an application for the superdari of the vehicle, he was not the owner of the vehicle. Therefore, his application for releasing the vehicle was not maintainable.
iii) In making an order for superdari, the real weightage should be given to the last possessor or the person from whom the property was recovered unless there are strong reasons against it.
iv) A civil court is competent to ascertain the title of a vehicle.

Conclusion: i) See above.
ii) See above
iii) Superdari order should be passed in favour of the last possessor unless strong reasons exist to deviate.
iv) Civil court is competent to determine the title of a property.

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12. **Lahore High Court**
Ali Raza v. The State and another
Crl. Misc. No. 46912-B/2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4343.pdf

Fact: The petitioner sought post-arrest bail in a case under Section 9(c), Control of Narcotic Substances Act, 1997. The allegation against the petitioner is that 1520 grams of Chars was found in his possession.

Issue: i) Whether statement of co-accused in absence of any other incriminating material is sufficient for denying bail to accused petitioner?
ii) What is meant by term “possession” used in CNSA?

Analysis: i) Under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused. The confessional statement of that co-accused is circumstantial evidence against the other co-accused and is ordinarily regarded as suspicion; therefore, extent and level of corroboration has to be assessed keeping in view the peculiar facts and surrounding circumstances of the case. The question whether the petitioner had the conscious knowledge or possession of the recovered narcotic substance from co-accused shall be determined at the time of trial. Furthermore, mere leveling of allegations of heinous offence is not sufficient to keep the accused behind the bars.
ii) That the accused was knowingly in control of something in the circumstances, which showed that he was assenting to being in control of it. It means actual physical possession and not mere constructive possession. Moreover possession should be exclusive of the accused.

Conclusion: i) Bail cannot be denied on mere statement of co-accused in absence of any other incriminating material.
ii) See above

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13. **Lahore High Court**
Qari Muhammad Atta Ullah v. DPO and another
Crl. Misc. No. 52238-H of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4442.pdf

Fact: Through this petition under Section 491 Cr.P.C the petitioner seeks the recovery and production of his son from the alleged illegal and improper custody of police.

Issue: How the record qua arrest of person is to be maintained at police station?

Analysis: The following directions are issued to police officials.

i) Whenever, a person is arrested in any case, his arrest be incorporated forthwith in computerized as well as manual *roznamcha* with date and time;

ii) Similarly, when an accused is taken out from the police station for any purpose, a rapat should be written in this regard, vice versa on his return this practice should be adopted;

iii) To make the process of entry in *roznamcha* transparent, it is ordered that entries in manual *roznamcha* (register No. 2) be made through ball-point.

iv) More so, when the accused will be produced before the learned Area Magistrate for the physical or judicial remand, date and time of arrest must be mentioned in the application for obtaining remand and in case of failure, learned Area Magistrate should refuse to entertain request of remand.

v) Police file/case diaries should be retained at police station as provided in Rule 25.55 (3) of Police Rules, 1934 and whenever the investigating officer will proceed along with police file of case from police station for the purpose of investigation or any other purpose that fact should be incorporated in the *roznamcha* (register No. 2) and on return the same practice be also adopted, other than this, police file must be retained at police station.

Conclusion: See above.

14. **Lahore High Court**
T.A. No.48296/2021
Umer Daraz v. Learned Additional Sessions Judge, etc.
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4486.pdf

Facts: Petitioner filed transfer application under section 526 of the Code of Criminal Procedure, 1898 seeking transfer of his application filed under section 22-A(6) of Cr.P.C.

Issue: i) Whether application u/s 22-A(6) Cr.P.C. can be transferred under section 526 Cr.P.C?
(ii) If an application filed under section 22-A(6) Cr.P.C. cannot be transferred under section 526 Cr.P.C., then whether an aggrieved person shall be left remediless?

Analysis: i) Minute scrutiny of section 526 Cr.P.C envisages that three terms i.e. "criminal court", "inquiry" or "trial" have been used in this section and are important to decide the scope of this section. These are pre-conditions to exercise the jurisdiction under this section. First and most important pre-condition to decide the maintainability of petitions like one in hand is that transfer sought for should be from a criminal court subordinate to the High Court. So, Court has to see whether office of JOP does fall within the definition of court or not. Section 6 Cr.P.C. clearly envisages that under this section, besides this Court, there are two classes of Criminal Courts i.e. Courts of Sessions and Courts of Magistrates and office of JOP nowhere falls within the ambit of definition of a criminal court…Ex-officio Justice of Peace while performing its functions under section 22-A(6) Cr.P.C. is not a criminal court and this pre-condition to exercise the jurisdiction under section 526 Cr.P.C. is not fulfilled. Hence proceedings before Justice of Peace cannot be transferred under section 526 Cr.P.C.
ii) Under Articles 4 & 10-A of the Constitution every person has a right to be dealt with in accordance with the law and have a fair trial. A person who is aggrieved by some unwarranted act, always has a remedy available under Article 199 of the Constitution, if there is no other remedy provided in any other law, by the virtue of above stated maxim i.e. Ubi Jus Ibi Remedium.

Conclusion: i) Provisions of section 526 Cr.P.C. cannot be adhered to for transferring a proceedings under section 22-A(6) Cr.P.C.

ii) If an application filed under section 22-A(6) Cr.P.C. cannot be transferred under section 526 Cr.P.C., then petitioner can file a constitutional petition under Art. 199 of the Constitution of Pakistan.

15. **Lahore High Court**
Criminal Appeal No.258963 of 2018
Faisal v. The State etc
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4466.pdf

Facts: The appellant was convicted under section 302(b), P.P.C. and sentenced to imprisonment for life on the basis of extra judicial confession, medical evidence etc.

Issue: i) Whether extra judicial confession not providing any details of the occurrence and manner in which it was committed can be treated as confession?
ii) What is the nature of medical evidence?
iii) If the prosecution evidence is disbelieved against the few accused facing trial, whether it can be believed against other accused for conviction?

Analysis: i) No time, place, manner of occurrence and role played by each accused in commission of offence in question had been provided in extra-judicial confession, which further makes it doubtful. Extra judicial confession not providing any details of the occurrence and manner in which it was committed cannot be treated as confession made by the accused.
ii) It is otherwise trite law by now that medical evidence can only confirm the ocular account with regard to the receipt of injury, locale of injury, kind of weapon used for causing the injury, duration between the injury and the death but would not disclose the identity of the culprits.
iii) It is well established law that if the prosecution evidence is disbelieved against the few accused facing trial, Court is competent to reject such evidence against other accused in absence of strong and independent corroboration on record. In these circumstances when the evidence to the extent of acquitted co-accused has already been disbelieved by learned trial court, it cannot be believed against the appellant until and unless the same is supported by any independent corroborative piece of evidence.

Conclusion: i) Extra judicial confession not providing any details of the occurrence and manner in which it was committed as such cannot be treated as confession made by the accused.
ii) Medical evidence is just confirmatory evidence and it would not disclose the identity of the culprits.
iii) If the prosecution evidence is disbelieved against the few accused facing trial, it cannot be believed against the other accused until and unless the same is supported by any independent corroborative piece of evidence.

16. **Lahore High Court**
Muhammad Hamad ur Rehman v. Director FIA, etc.
W.P. No.52390 of 2021
Mr. Justice Muhammad Shan Gul,
https://sys.lhc.gov.pk/appjudgments/2021LHC4371.pdf

Fact: The petitioner challenged the notice under section 160 Cr.P.C. issued by the Federal Investigation Agency asking him to appear before the Agency in connection with an inquiry.

Issue: i) Whether issuance of notice under section 160 Cr.P.C. by the Federal Investigation Agency can be challenged in constitutional jurisdiction of High Court?
ii) What is doctrine of prematurity and ripeness?

Analysis: i) The issuance of a notice under section 160 Cr.P.C. for the purpose of participating and aiding in an ongoing inquiry is glaringly not an adverse action that can adversely impact the rights of the petitioner. In other words, the stage whereby this Court can interfere is yet to be reached.… To entertain judicial review at such an incipient stage would tantamount to somewhat retarding statutory duties and obligations. In the present matter, statutory responsibilities of the Federal Investigation Agency to inquire into a crime which falls within its jurisdictional competence shall be offended if any interference is made at this stage.
ii) The doctrine of prematurity and ripeness suggests that a matter is not amenable to adjudication in constitutional jurisdiction if it is either premature or not ripe for adjudication inasmuch as the impugned step or the executive act complained of does not give rise to any tangible grievance that can be addressed in law. It may also be that the time of challenge coincides with a yet not complete intervening process leading up to the final act or that an opportunity or chance, besides resort to Constitutional jurisdiction, is still available with the litigant. There may be some forms of administrative or executive action such as preliminary measures which are mere staging posts midway to some final legally effective decision and which do not directly impact upon the rights or interests of individuals.

Conclusion: i) Issuance of notice under section 160 Cr.P.C. by the Federal Investigation Agency cannot be challenged in constitutional jurisdiction of High Court.
ii) See above.

17. **Supreme Court of Pakistan**
Muhammad Afzal & others v. The Secretary Establishment Division Islamabad & others
C.A.491/2012 etc
<u>Mr. Justice Mushir Alam</u>, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._491_2012.pdf

Facts: Appellants/petitioners have impugned the appointments/promotions under the Sacked Employees (Reinstatement) Ordinance Act, 2010 contending it to be ultra vires of the Constitution.

Issue: i) Whether a non-obstante clause can override the provisions of the Constitution and nullify the judgment of Supreme Court?
ii) What is difference between the terms 'civil servant' and employees in 'Service of Pakistan'?
iii) What is effect of declaring a law to be ultra vires of the Constitution?

Analysis: i) Given the fact that the legislature itself is subservient to the Constitution, a non-obstante clause cannot be deemed to override the provisions of the Constitution itself…. it is a settled position in law that a legislature cannot destroy, annul, set aside, vacate, reverse, modify, or impair a final judgment of a Court of competent jurisdiction…. It will not be sufficient merely to pronounce in the statute by means of a non-obstante clause that the decision of the Court shall not bind the authorities, because that will amount to reversing a judicial decision rendered in exercise of the judicial power which is not within the domain of the legislature.
ii) On a careful examination of the definitions of `Service of Pakistan' as given in Article 260 of the Constitution and the `Civil Servant' as mentioned in Civil Servants Act, 1973, it would 'appear that the two expressions are not synonymous. The expression `Service of Pakistan' used in Article 260 of the Constitution has a much wider connotation than the term `Civil Servant' employed in the Civil Servants Act. While a `Civil Servant' is included in the expression `Service of Pakistan', the vice versa is not true. `Civil Servant' as defined in the Civil Servants Act, 1973 is just a category of service of Pakistan mentioned in Article 260 of the Constitution. To illustrate the point, we may mention here that members of Armed Forces though fall in the category of `Service of Pakistan' but they are not civil servants within the meaning of Civil Servants Act and the Service Tribunals Act.
iii) It is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability… In such like circumstances, the benefits, if any, accrued to the persons by the said legislative instruments shall stand withdrawn as if they were never extended to them.

Conclusion: i) Neither a non-obstante clause can be deemed to override the provisions of the Constitution itself nor it can destroy, annul, set aside, vacate, reverse, modify, or impair a final judgment of a Court of competent jurisdiction.
ii) See above.
iii) No right or obligation can accrue under an unconstitutional law. Once a legislative instrument is declared unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability.

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18. **Supreme Court of Pakistan**
Federation of Pakistan v. M.Y. Labib-ur-Rehman and others
Civil Appeal No. 30-L of 2018
Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._30_l_2018.pdf

Facts: Respondent was superseded at a number of times. His constitutional petition was accepted and he was granted ante-dated promotion.

Issue: Whether a superseded civil servant can regain his seniority if promoted later?

Analysis: Civil servant who was consciously superseded after considering his service record by the departmental promotion committee cannot regain his original seniority or subsequent promotions so long the order of the promotion committee superseding him stands in the field and supersession of the civil servant in such a case is neither advertent nor same falls in the category of deferment, so as to entitle the civil servant, on subsequent promotion, to regain his original seniority. (1998 SCMR 2544) relied.

Conclusion: A superseded civil servant cannot regain his seniority if promoted later without getting the order of supersession set aside.

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19. **Supreme Court of Pakistan**
Khushdil Khan Malik v. The Secretary, Establishment Div
Civil Petition Nos. 1092 & 1093 of 2018
Mr. Justice Mushir Alam, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1092_2018.pdf

Facts: Petitioner requested for consideration of his promotion on Time Scale basis.

Issue: Whether Time Scale Promotion is part of terms and conditions of service and whether it is regular promotion?

Analysis: The Act of 1973 doesn't define the term 'Time Scale Promotion'; therefore it cannot be considered as a term and condition of service. Promotion on the basis of Time Scale is not a regular promotion but a matter of policy granted to specific categories of professions by the relevant competent authority with the concurrence of the Finance Division. Such a policy is meant to grant benefits of higher pay scales to those cadres of civil servants which do not ordinarily get promotions to higher grades under the Rules 1973 on a regular basis. The monetary benefits under the Time Scale Formula cannot be extended generally to all civil servants but to class of civil servants as mentioned in the approved policy.

Conclusion: Time Scale Promotion is neither part of terms and conditions of service nor it is a regular promotion.

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20. **Lahore High Court**
Muhammad Aslam v. Federation of Pakistan etc.
W.P.No. 16392 of 2019
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC4426.pdf

Facts: The petitioners being contract employees (daily wagers) invoked the constitutional jurisdiction of High Court in respect of their grievance relating to regularization.

Issue: i) Whether the contract employee can invoke the constitutional jurisdiction of High Court?
ii) Whether employees of PASSCO are governed by the principle of Master and Servant?

Analysis: i) It is settled law that the contract employees have no right to invoke writ jurisdiction.

ii) PASSCO is a public limited company and the policy and service rules were made by the Board of Directors which are non-statutory and the employees of PASSCO are governed by the non-statutory rules and they would be governed by the principle of "Master and Servant".

Conclusion: i) Contract employees have no right to invoke writ jurisdiction.
ii) Employees of PASSCO are governed by the principle of Master and Servant

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21. **Lahore High Court**
Muhammad Khalid etc. v. Market Committee Muzaffargarh etc.
Writ Petition No. 7603 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4503.pdf

Facts: Through petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have

challenged the authority of Respondent to impose the parking fee and its auction for collection rights.

Issue: Whether Market Committee was authorized to impose fee for use of parking space under Punjab Agricultural Produce Markets Ordinance, 1978 as well as under Punjab Agricultural Marketing Regulatory Authority Act, 2018?

Analysis: A bare reading of section 19 of Punjab Agricultural Produce Markets Ordinance, 1978 shows that the power to levy fees was limited to agricultural produce. To be more specific, it did not authorize the market committee to impose any fee for use of parking space. The PAPM Rules, which the Provincial Government framed under section 35 of the 1978 Ordinance, also did not contain any provision for imposition of such fee. The situation has changed with the 2018 Act. Clauses (i) and (j) of section 15C thereof expressly empower a Market Committee to regulate the entry of persons and vehicular traffic into the market yard and sub-market area vesting in it and to levy, recover rates, charges, fees in respect thereof.

Conclusion: As above.

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22. **Lahore High Court**
Imran Saeed Malik v. Appellate Authority & 3 others
Writ Petition No.50075 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC4454.pdf

Facts: Petitioner filed his nomination papers to contest election of Cantonment Local Government Elections 2021, Sialkot, for general seat from Ward No.2. The nomination papers of the Petitioner were accepted by the returning officer. The same was challenged by Respondent No.2 before the learned Appellate Authority by way of appeal which was accepted. Resultantly, nomination papers of the Petitioner from Ward No.2, Sialkot for upcoming election of Cantonment Board 2020-2021 were rejected.

Issue: What is scope of section 60 Sub Section (i) of the Cantonment Ordinance, 2002 pertaining to qualifications for candidates and elected members?

Analysis: Reading of section 60 (i) of the Ordinance clearly reflects that a candidate cannot qualify to be elected if he possesses assets which are inconsistent with his declaration of assets or fails to establish justifiable means for his assets, which are in his own name or the candidate has de-facto control of such assets.
The obvious rational behind the aforesaid provision as well as requirement to file declaration of assets is to ensure that no dishonest person should be allowed to hold the affairs of the public of the given ‘ward’ or the area of the cantonment. The Honourable Court relied on the following case precedents to draw its conclusion, 2021 SCMR 988, 2018 SCMR 2128 and PLD 2017 SC 70.

Further it was opined that it cannot be the intention behind the legislation to disqualify a person from exercising his right to contest election or to be elected, on the basis of mere technicalities or an innocent mistake or omission to declare a property acquired through lawful means.

It is the credibility of the explanation that would be the determining factor as to whether non-disclosure of an asset carries with it the element of dishonesty or not The learned Appellate Court, vide the impugned judgment has rejected the nomination papers without proper probe and inquiry as well as without disclosing the asset and income, which has been concealed, dishonestly. It was observed that the Respondents failed to satisfy as to bad intent, of the Petitioner, behind not mentioning of the name of aforesaid partnership, in the nomination papers or Form-IV.

Conclusion: A candidate cannot qualify to be elected if he possesses assets which are inconsistent with his declaration of assets or fails to establish justifiable means for his assets, which are in his own name or the candidate has de-facto control of such assets… It cannot be the intention behind the legislation to disqualify a person from exercising his right to contest election or to be elected, on the basis of mere technicalities or an innocent mistake or omission to declare a property acquired through lawful means.

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23. **Lahore High Court**
Haroon Farooq v. Government of Punjab & others
W.P. No.227807/2018
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC4226.pdf

Facts: The primary theme of these petitions is that directions be issued by this Court to compel the State to invest in climate mitigation strategies. The subject matter of these petitions broached issues which gave rise to real and immediate concern for an environmental and social framework to be put in place to reduce greenhouse gas emissions and building resilience, all while developing economic, environmental, health and social co-benefits.

Issue: What is role of Courts as guardians of Climate justice?

Analysis: It was observed by the Honourable court that our Constitution is a social compact between the State and the people. It contains rights which the State is under obligation to enforce and a failure to do so spawns rights-based environmental litigation. It was opined that Courts in Pakistan have been at the vanguard of providing climate justice to the people. Further holding that it must be borne in mind that, in essence and as a primary duty, it is the obligation of the State which is tasked to take climate action and other decisions with negligible climate

impacts. It is only the weak enforcement of climate policies and existing climate legislation that leads litigants to sue for violations of constitutional rights. The Hon'ble court made a reference to the august Supreme Court case reported as (2021 SCMR 834), for explaining the concept of water justice which was dilated upon in the following words: *In adjudicating water and water-related cases, judges should be mindful of the essential and inseparable connection that water has with the environment and land uses, and should avoid adjudicating those cases in isolation or as merely a sectoral matter concerning only water.* Hence, it was noted that there is an overriding public interest which justifies the issuance of constitutional remedies to compel executive action to achieve climate goals.

Conclusion: See above.

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24. **Supreme Court of the United States**
Monasky v. Taglieri, 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-935_new_fd9g.pdf

Facts: It is a case in which the court held that a child's "habitual residence" under the Hague Convention on the Civil Aspects of International Child Abduction should be determined based on the totality of the circumstances specific to the case, and should not be based on categorical requirements for instance such as an agreement between the parents. Domenico Taglieri, an Italian, and Michelle Monasky, an American, were a married couple living in Italy when they had a daughter, A.M.T. Both parents began applications for Italian and U.S. passports for their daughter. In 2015, Taglieri revoked his permission for A.M.T.'s U.S. passport. Two weeks later, Monasky took A.M.T. to the United States. Taglieri petitioned the Northern District of Ohio for A.M.T's return to Italy under the Hague Convention. The district court granted Taglieri's petition. On appeal, the 6th Circuit affirmed the district court's ruling.

Issue: (i) Where an infant is too young to acclimate to her surroundings, whether a subjective agreement between the infant's parents is necessary to establish her habitual residence under the Hague Convention?

Analysis: It is the first case in which the United States Supreme Court substantively addressed the meaning of the definition of "habitual residence" as contemplated by The Hague Convention on the Civil Aspects of International Child Abduction. Justice Ruth Bader Ginsburg noted that a child's "habitual residence" (as the term is used by the Hague Convention) should be determined by the totality of the circumstances specific to each individual case, not on categorical requirements such as an actual agreement between the parents. Ginsburg noted that the Hague Convention does not define "habitual residence" and that courts should conduct a fact driven inquiry based on the unique circumstances of each case and common sense, which is how courts in other countries have enforced it. In addition, Ginsburg noted that Monasky's argument that an actual agreement between the

parties was necessary to determine "habitual residence" was unpersuasive and would lead to problems in adjudicating custody cases. The majority opinion also held that the trial court's determination of habitual-residence is a mixed question of law and fact.

Conclusion: The court affirmed the 6th Circuit's decision in a unanimous ruling, holding (1) an actual agreement between the parents on where to raise a child is not necessary to establish the child's habitual residence and (2) a district court should use clear-error review to determine habitual residence under the Hague Convention.

LIST OF ARTICLES:-

1. **MANUPATRA**
   file:///C:/Users/LHC/Desktop/80ee1d5c-0aeb-427e-b9ab-6b6603d826a8.pdf
   JUDICIAL INTERPRETATION OF ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE by Anushka Jain and O.P. Jindal

   Without an express legal or constitutional prohibition against its admissibility, illegally obtained evidence remains admissible in criminal as well as civil trials in India. Illegally or improperly obtained evidence is allowed so long as it is relevant to the facts-in-issue at trial. This view has been followed by both British as well as Indian courts. Even though India recognizes an exception to this admissibility, being the Unfair Operation Principle, it has never been elaborated or actually applied. The only exceptions to evidences which when obtained are inadmissible are coded in The Indian Evidence Act, 1872, being evidence obtained which is protected by "spousal privilege" under Section 122, or "state privilege" under Section 123 or even "attorney client privilege" under Section 126 and a few other exceptions as well. The viability of illegally obtained evidence is not mentioned anywhere in the code or even in the Constitution.

2. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12603
   Cloud Crypto Land by Edmund Schuster

   The supposed disruptive and transformational potential of blockchain technology has received widespread attention in the media, from legislators, and from academics across disciplines. While much of this attention has revolved around crypto currencies such as Bitcoin, many see the true promise of blockchain technology in its potential use for transactions in traditional assets, as well as for facilitating self-executing 'smart contracts', which replace vague and imprecise natural language with unambiguous computer code. This article presents a simple legal argument against the feasibility of a meaningful blockchain-based economic system. Blockchain-based systems are shown to be unsuitable for transactions in traditional assets, unless design choices are made which render the use of the technology pointless. The same argument is shown to apply to smart contracts. Legal and practical obstacles therefore mean that, outside its original realm of crypto currencies, blockchain technology is highly unlikely to transform economic interactions in the real world.

3. **BANGLADESH LAW DIGEST**

https://bdlawdigest.org/economic-social-and-cultural-rights.html

ESC RIGHTS: BUDDING TRENDS IN CONSTITUTIONAL REGIMES OF SOUTH AFRICA, INDIA AND BANGLADESH by Mohammad Faysal Saleh

Nationally and internationally, the traditional distinction between CP (Civil and Political Rights) and ESC (economic, social and cultural) rights are diminishing. Many states like South Korea, South Africa, Thailand, Indonesia, Afghanistan, Argentina, Brazil, Bolivia, Ecuador, Cuba, Uganda, and Ethiopia have enshrined legally enforceable ESC rights in their constitutions under the heading of 'Fundamental Rights'. Although other states, notably India, Ireland, Bangladesh, Pakistan, Myanmar etc., have listed ESC rights in their constitutions as directive or fundamental principles of state policy, courts and regional bodies there have routinely adjudicated upon ESC rights claims, proving these rights judicially enforceable. States that are parties to the International Covenant on Economic, Social and Cultural rights (ICESCR) and its Optional Protocol are obliged to take deliberate, concrete and targeted steps towards the full realization of ESC rights and also have 'a minimum core obligation', regardless of their available resources, to ensure the satisfaction of minimum subsistence rights (such as essential foodstuffs, essential primary health care, basic shelter and housing, basic education etc.) for all.

4. **YALE LAW REVIEW**

https://www.yalelawjournal.org/article/the-origins-of-judicial-deference-to-executive-interpretation

THE ORIGINS OF JUDICIAL DEFERENCE TO EXECUTIVE INTERPRETATION by Aditya Bamzai

Judicial deference to executive statutory interpretation - a doctrine now commonly associated with the Supreme Court's decision in Chevron v. Natural Resources Defense Council - is one of the central principles in modern American public law. Despite its significance, however, the doctrine's origins and development are poorly understood. The Court in Chevron claimed that the roots of judicial deference stem from statutory interpretation cases dating to the early nineteenth century. Others, by contrast, have sought to locate Chevron's doctrinal roots in judicial review's origins in the writ of mandamus. According to the standard narrative, courts in the pre-Chevron era followed a multifactor and ad hoc approach to issues of judicial deference; there was little theory that explained the body of cases; and the holdings and reasoning of the cases were often contradictory and difficult to rationalize. This Article challenges the standard account. It argues that the Supreme Court in Chevron, and scholarly commentators since, have misidentified nineteenth-century statutory interpretation cases applying canons of construction respecting contemporaneous

and customary interpretation as cases deferring to executive interpretation as such.

5. **GLOBAL VILLAGE SPACE**
https://www.globalvillagespace.com/ judiciary-ensuring-justice-through-public-interest-litigation/?amp=1
JUDICIARY ENSURING JUSTICE THROUGH PUBLIC INTEREST LITIGATION by Barrister Muhammad Ahmad Pansota

Citizens of India and Pakistan are usually deprived of their fundamental rights. However, through public interest litigation, the judiciary can ensure that justice is served and people's rights are protected. Barrister Pansota offers a panoramic view. Must Read for students of law and policy.

LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update *Online Edition*

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FORTNIGHTLY CASE LAW BULLETIN

(16-09-2021 to 30-09-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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1. Supreme Court of Pakistan
Muhammad Arshad Nadeem etc.v. The State
Criminal Petition No.408-L of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._408_l_2021.pdf

Facts: Post arrest bail of accused was dismissed by the High Court. He approached the Hon'ble Supreme Court through application for leave to appeal after a delay of 72 days. He cited his incarceration as his disability to approach the Supreme Court within limitation period and prayed to treat it as sufficient cause for condonation of delay.

Issue: i) How the sufficient cause is to be viewed in case of accused behind the bars with reference to his application for condonation of delay?
ii) What is the consideration behind refusal to grant bail?

Analysis: i) In a criminal case where the liberty and freedom of a person is at stake, "sufficient cause" is to be viewed by the Court through the lens of fundamental rights guaranteed under the Constitution, in particular through the right to liberty, dignity and fair trial guaranteed to an accused under Articles 9, 14 and 10A of the Constitution, which primarily translates into providing the accused, behind bars, with equal access to court and proper opportunity to defend and avail remedies allowed by law, as are available to a free person…… It would be fair to assume that a person approaching a court of law for the redressal of his grievance from behind bars, suffers a disability in comparison to those who enjoy liberty and freedom of movement. Therefore, incarceration of the petitioner seeking post arrest bail by itself constitutes "sufficient cause" to allow condonation of delay, unless it is established that the delay was caused by the petitioner due to some ulterior motive.

ii) Refusal of bail to an accused found prima facie involved in the commission of offences falling within the prohibitory clause of Section 497(1) CrPC is not a punitive measure but is more of a preventive step, taking care of the bifocal interests of justice towards the right of the individual involved and the interest of the society affected. The law presumes that the severity of the punishment provided for offences falling within the prohibitory clause of Section 497(1) CrPC is such that it is likely to induce the accused person to avoid conviction by escaping trial or by tampering with the prosecution evidence including influencing the prosecution witnesses. … BY declining bail, the courts ensure the presence of the accused person to face trial and protect the prosecution evidence from being tampered with or the prosecution witness from being influenced. The courts attempt to balance the interest of the society in bringing the offenders to justice and the presumption of innocence in favour of the accused person, by determining whether or not there are reasonable grounds for believing that the

accused person has committed the offence, in exercising their discretion to grant or decline the relief of bail.

Conclusion: i) See above.
ii) See above.

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2. **Supreme Court of Pakistan**
Muhammad Iqbal Khan Noori v. National Accountability Bureau etc
Civil Petitions No.3637 & 3638 of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3637_2019.pdf

Facts: The National Accountability Bureau has arrested and detained the petitioners in the course of investigation in NAB Case. The petitioners filed two separate writ petitions in the Islamabad High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 praying for their release on bail till decision of the case. The High Court dismissed their petitions while observing that offence with which the petitioners were charged fell within the prohibitory clause of section 497 Cr.P.C. They have, therefore, filed the present petitions, under Article 185(3) of the Constitution, for leave to appeal against the said order of the High Court.

Issue: What grounds are relevant for consideration in deciding post arrest bail application while exercising jurisdiction under Article 199 of the Constitution of Pakistan?

Analysis: The High Court while exercising its jurisdiction under Article 199 of the Constitution for the enforcement of fundamental rights can pass appropriate orders, which include an unconditional release or release on bail, to grant the relief to the aggrieved person. It is for the enforcement of fundamental rights under the Constitution and not the sub-constitutional statutory grounds provided in Section 497 CrPC, that this Court has been granting bails to the accused persons in NAB cases in exercise of constitutional jurisdiction under Article 199 read with Article 185(3) of the Constitution, mainly on the grounds of: (i) delay in conclusion of the trial,9 (ii) life-threatening health condition of the accused,10 and (iii) non availability of sufficient incriminating material against the accused.

Conclusion: It is for the enforcement of fundamental rights under the Constitution and not the sub-constitutional statutory grounds provided in Section 497 CrPC, that this Court has been granting bails to the accused persons in NAB cases in exercise of constitutional jurisdiction under Article 199 read with Article 185(3) of the Constitution, mainly on the grounds of: (i) delay in conclusion of the trial,9 (ii) life-threatening health condition of the accused,10 and (iii) non availability of sufficient incriminating material against the accused.

3. **Supreme Court of Pakistan**
Sajid Hussain @ Joji v. The State and another
Criminal Petition No. 537 of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._537_2021.pdf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks pre-arrest bail in murder case.

Issue: Whether merits can be touched in deciding pre-arrest bail?

Analysis: This Court has broadened the scope of pre-arrest bail and held that while granting extraordinary relief of pre-arrest bail, merits of the case can be touched upon……When all these aspects are considered conjointly on the touchstone of principles of criminal jurisprudence enunciated by superior courts from time to time, there is no second thought to this proposition that the scope of pre-arrest bail indeed has been stretched out further which impliedly persuade the courts to decide such like matters in more liberal manner.

Conclusion: While granting extraordinary relief of pre-arrest bail, merits of the case can be touched upon.

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4. **Lahore High Court**
Muhammad Zubair Waseem etc.v. Muhammad Anwar, etc.
Crl. Misc. No.47481-B/2021 etc
Mr. Justice Muhammad Ameer Bhatti CJ, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4585.pdf

Facts: Petitioners sought their post arrest bail in offence under section 365-A PPC and 155(c) of Police Order, 2002

Issue: Where there exists reasonable possibility of other view about the guilt based on material available on record, may the matter be termed as of further inquiry?

Analysis: If there existed any possibility to have a second view of the material available on the record then the accused was entitled for the relief of bail in the spirit of S.497(2), Cr.P.C.

Conclusion: Where there exists reasonable possibility of other view about the guilt based on material available on record, the matter may be termed as of further inquiry.|

5. **Lahore High Court**
Yasir Aurangzaib v. The State, etc..
Criminal Appeal No.3873-ATA/2015.
Mr. Justice Muhammad Ameer Bhatti CJ, Mr. Justice Tariq Saleem Sheikh
01) 12 (lhc.gov.pk)

Facts: Prosecution remained failed to prove its case wherein accused introduced his own version in his statement under section 342 Cr.P.C.

Issue: When statement of accused under section 342 Cr.P.C can be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984.?

Analysis: When on the basis of evidence produced, the prosecution has failed to establish guilt against the appellant, his statement u/s 342 Cr.P.C would be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984.

Conclusion: When on the basis of evidence produced, the prosecution has failed to establish guilt against the appellant, his statement u/s 342 Cr.P.C would be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984.

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6. **Lahore High Court**
Mst. Naheed Shahid etc v. Muhammad Tariq
Civil Revision No.234103/2018
Mr. Justice Muhammad Ameer Bhatti CJ
https://sys.lhc.gov.pk/appjudgments/2021LHC4633.pdf

Facts: Plaintiffs have challenged the gift of ancestral property in favour of their brother/defendant alleging it to be fraudulent.

Issue: Who is under legal obligation to prove the validity of transaction when females have been deprived of their right of inheritance through gift?

Analysis: It is well settled law that beneficiary is under legal obligation to prove the validity of the transaction particularly where females have been deprived of their legitimate rights of inheritance through purported gift deed.

Conclusion: Beneficiary is under legal obligation to prove the validity of the transaction particularly where females have been deprived of their legitimate rights of inheritance through purported gift deed.

7. **Lahore High Court**
Sajjad Ashraf v. The State, etc.
C.M.No.01-2019 and Main Case.
PSLA. No.6266/2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC4808.pdf

Facts: The petitioner has filed special leave to appeal against acquittal of respondents which is barred by time by ninety seven (97) days and also moved an application under section 5 of the limitation Act, 1908 for condonation of delay in filing the said petition.

Issue: Whether strike of lawyers is sufficient cause for condoning the delay in filing petition?

Analysis: Allowing such application of condonation of delay on ground of lawyers' strike abstaining deliberately from the court work or going on strike boycotting the courts' working is not only against the spirit of public policy, but is such an act of contempt of court that should not be respected in any way. Allowing such application on ground of lawyers' strike would amount to recognizing the lawyers' strike as sufficient ground for not appearing in the court. This situation cannot be accepted in public interest as well as in interest of justice.

Conclusion: Strike of lawyers, cannot be accepted as sufficient cause for condoning the delay in filing petition.

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8. **Lahore High Court**
Malik Usama Bin Tahir Awan v. The State & Another
Crl.Misc.No.1600-B of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC4604.pdf

Facts: The petitioner has filed this petition under Section 498 of Cr.P.C. for grant of pre-arrest bail, for offences under Sections 279, 337-G, 427, 302 and 34 of PPC. The petitioner was nominated through supplementary statement.

Issues: How the term ‘malafide’ can be proved?

Analysis: The term “mala fide” is not a uniformly identified term. It can be gathered from the attending circumstances. Being a state of mind, the term “mala fide” cannot always be proved through direct evidence, and it is often to be inferred from the facts and circumstances of the case.

Conclusion: The term “mala fide” cannot always be proved through direct evidence, and it is often to be inferred from the facts and circumstances of the case.

9. **Lahore High Court**
Election Commission of Pakistan Through its Secretary, Islamabad v. Appellate Authority, District Judge, Rawalpindi and 2 others
Writ Petition no.2543 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC4609.pdf

Facts: The Respondent/ petitioner of the connected petition filed his nomination papers to contest election from Ward No. A on general seat. The nomination papers were rejected during scrutiny by Returning Officer, on the ground that the name of "respondent" was figuring in the electoral roll of Ward No. B. Being aggrieved the respondent preferred an appeal before respondent No.1, which was accepted. In the connected petition grievance of "respondent" is that after passing of order when he approached the District Election Commissioner, he issued vote certificate showing his vote falling in Ward No. A. He then submitted vote certificate to Returning Officer with the request to accept his nomination papers and to allow him to contest election. It is his grievance that vide order he has been disallowed to contest the election.

Issues: i) Who can qualify to be elected or chosen or to hold an elective office or membership of a local government?

ii) Whether an appellate authority can issue order for revision, correction and transfer of the vote from one electoral area to another?

Analysis: i) Section 60 of Cantonments Ordinance, 2002" lays down the qualifications for candidates and elected members. It is manifestly clear from the section 60 of the Ordinance that a person can only qualify to be elected or to be chosen or to hold an elective office or membership of a local government if he is enrolled as a voter in the electoral roll of the relevant ward… By virtue of Rule 19(4) of Cantonments Local Government (Election) Rules, 2015 the Returning Officer is empowered to reject nomination papers if he is satisfied that a candidate is not qualified to be elected as a member.

ii) Chapter IV of the Elections Act, 2017 deals with the electoral rolls and provides a self-explanatory mechanism for preparation and correction of electoral rolls. In terms of Section 39 of the Act ibid certain restrictions have been placed on the revision, correction and transfer of the vote from one electoral area to another. If a candidate suffers with a defect of substantial nature, he cannot be allowed to contest the election from such ward. If a candidate is not registered voter in a particular Ward, it would be beyond the mandate and scope of the Appellate Authority to direct the Election Commission for shifting/transfer of his vote from one Ward to the other Ward and re-scrutiny of his nomination papers thereafter. Guidance in this respect, if needed, can be sought from NADEEM SHAFI versus TARIQ SHUJA BUTT and others (PLD 2016 Supreme Court 944) and Federation of Pakistan v. Mian Muhammad Nawaz Sharif (PLD 2009 SC 284) wherein the August Court held that: "..Rule 14(7) of the 2013 Rules only

empower a Returning Officer to allow a defect other than one of a substantial nature to be remedied, such as the name, or the corresponding serial number in the electoral roll or other particulars of the candidates or his proposer or seconder and son as to ensure that the same are accurate. But if the name of the candidate and his particulars are altogether missing and/or same is the position of the proposer/seconder the Returning Officer cannot be allowed to add these afresh…The Returning Officer and the Appellate authority are barred from correcting a defect of a substantial nature; if the fact that the proposer and/or seconder is not a voter of the constituency is not a defect of a substantial nature, then what is? Therefore, there can be no valid appellate orders allowing substitution or rectification of a defective nomination paper.

Conclusion: i) A person can only qualify to be elected or to be chosen or to hold an elective office or membership of a local government if he is enrolled as a voter in the electoral roll of the relevant ward.

ii) An appellate authority cannot issue order for revision, correction and transfer of the vote from one electoral area to another, as the Appellate authority is barred from correcting a defect of a substantial nature.

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10. Lahore High Court
Mian Zahid Daultana v. Begum Tehmina Daultana etc.
F.A.O No.51220/2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC4304.pdf

Facts: The Appellant was appointed as guardian of person and manager of properties of his mother, under the Mental Health Ordinance, 2001. Later on the sister of Appellant/ Respondent No.2 filed an application under Section 41 read with section 37 of the Ordinance ibid for removal of the appellant as guardian and manager of properties of mentally disordered lady, on the ground of non-fulfillment of his duties as well as embezzlement and misappropriation in assets. The appellant filed an application for disposal of the case with the assertion that his mother had expired and after her death, the Court of Protection has no jurisdiction to proceed further with the matter as the said proceedings stand abated automatically.

Issues: Whether after the death of the mentally disordered person, all the proceedings emerging out of the guardianship of the mentally disordered person's assets & properties stand abated?

Analysis: The custody of assets of an incapacitated/ mentally disordered person is a sacred trust and guardian / manager is placed under extraordinary stringent obligation to maintain the accurate accounts or use the same with honest care & caution and court which is the ultimate legal custodian/guardian of the mentally disordered person's assets/property, has the jurisdiction to scrutinize the transparent utilization of the assets and under the law, the guardian/manager is placed under

unalienable obligation to furnish meticulous details of assets/properties, income whereof and expenditures for the period he remained custodian of mentally disordered person, and death of the disordered person or removal of the guardian does not absolve guardian/ manager from his responsibility to avoid the tendering of the income/expenditure detail statement. Where the right to sue is still in existence as enunciated under Section 41(2) of the Ordinance ibid read with Order 22 C.P.C, the proceedings remain continue and do not abate.

Conclusion: Due to the death of the mentally disordered person, all the proceedings emerging out of the guardianship of the mentally disordered person's assets & properties do not stand abated.

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11. **Lahore High Court**
Sajjad Ahmad Saleem etc v. Industrial Development Bank of Pakistan etc.
C.R.No.46895/2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC4315.pdf

Facts: The respondent No.1/ bank filed an application for the sale of mortgaged/suit property for the satisfaction of the outstanding amount, which was accepted by the learned District Judge. The respondents did not challenge the aforesaid judgment in appeal. The respondent-bank thereafter filed an execution petition, which is still pending. The predecessor-in-interest of the petitioners No.1 to 9 filed application/objections to attachment of the suit property, claiming that he purchased the suit property in good faith but said application was dismissed. The Hon'ble Supreme Court of Pakistan also upheld the order of the learned District Judge, Lahore. Now the petitioners filed an application before the learned executing Court seeking permission to pay the decretal amount in installments which was dismissed by the learned executing court.

Issues: i) Whether successors can claim better title than that of their predecessor, whose right has already been denied up to the Hon'ble Supreme Court?

ii) Whether strangers to the lis, can pay decretal amount?

Analysis: i) Successors derive right from their predecessor and they will step into the shoes of their predecessor and are debarred to claim any independent better title than that of their predecessor. A matter, which has already been finalized up to the Hon'ble Supreme Court of Pakistan and has attained the status of past and closed transaction, it cannot be re-opened or re-adjudicated merely on the whims and caprice of a litigating party.

ii) A person, who is neither interested party nor has any cause of action and being strangers to the lis, has no right to request the learned executing Court for making deposit of the decretal amount. Strangers to the lis have no locus standi to file application for making deposit of the decretal amount in installments rather these

proceedings must be tainted with mala fide to frustrate the execution proceedings.

Conclusion: i) Successors cannot claim better title than that of their predecessor, whose right has already been denied up to the Hon'ble Supreme Court.

ii) Sstrangers to the lis, being neither interested party nor having any cause of action, have no right to pay decretal amount.

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12. **Lahore High Court**
Muhammad Umais v. Cantonment Board Rawalpindi and others.
W.P No. 1355 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC4758.pdf

Facts: The petitioner challenged the establishment of Food Street in Rawalpindi and declaring the part of road as pedestrian zone from sunset to late night on the touchstone of infringement of his fundamental right to movement under Article 15 of the Constitution.

Issue: i) Whether right of movement provided under Article 15 is absolute or qualified?
ii) What is the concept of Judicial Restraint?
iii) Whether Cantonment Board is empowered to declare a particular part of the road as Pedestrian zone/walking street from sunset to late night to regulate the traffic load?

Analysis: i) Freedom of movement of a citizen of Pakistan or any other person who is within the territorial bound of the country is his fundamental right as provided under Article 15 of the Constitution. Nevertheless, this fundamental right is not absolute rather it is qualified and reasonable restriction can be imposed in the exercise of this right through law in public interest. However, it is the duty of the Court to examine, that if any restriction is imposed by law or by an authority established under the law, whether such restrictions advancing the public interest, is within the judicious bound of 'reasonableness' or not and whether the imposed restriction only regulates and not totally negates the freedom of movement on the touchstone and pretext of public interest….. Eminent Jurist John Salmond defined a legal right as an interest, recognized and protected by the rule of legal justice. Fundamental rights are those rights which are recognized, provided and pledged by the State to its citizens regardless of their color or creed and belief or believes. However, each fundamental right is attached to a corresponding responsibility i.e., the right to be recognized equally before the law implies the responsibility to abide by the laws.

A plain reading of Article 15 made it abundantly clear that it is a fundamental right of every citizen to move freely throughout Pakistan. However, reasonable restriction can be imposed to further the public interest by law on the exercise of such right of free movement. Now the question arises, what amounts to 'reasonable restriction'. The word 'reasonable' implies intelligent care and

deliberation, that is the choice of a course which reasons dictates. In other words, the concept of reasonableness is nothing but that of harmonizing individual right with collective interest. However, for the sake of determining reasonableness of a restriction so imposed, the basic principle must be kept in mind that the power to impose restriction granted under the Constitution does not mean or include the power to destroy the very right, which is the subject matter of such regulatory dominion because the existence of right cannot be undone to nihility by way of authority to administrate its exercise. The right is basic and fundamental whereas the power to administer the same is auxiliary and supplemental. A right is independent whereas the power to regulate the same does not exist independently, and always dependent and contingent to the right so attached with.
ii) In the absence of any glaring illegality or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any initiative taken by government or any Statutory Body/Board to encourage and promote the business activities and to ensure the provision of places of public entertainment for the general public as mandated by Article 26 of the Constitution.
iii) The qualification for imposition of ‘reasonable restriction’ on the fundamental right of freedom of movement as envisaged under Article 15 of the Constitution is that it must be imposed in the public interest whereas Section 117 sub-section (K) of Cantonment Act, 1924, empowers the Board to perform discretionary functions if it is likely to promote the safety, health or convenience of the inhabitants of the Cantonment. Under Section 108 of the Cantonment Act, all streets and the pavements appertaining to streets are provided and maintained by the Board and therefore it was competent to regulate the flow of traffic by way of declaring the portion of Road as Pedestrian Street/walking street from sunset to midnight because it offered a solution to the problem of heavy influx of traffic in the area and regulated the flow of the same and thus directly promoted the convenience of the inhabitants as provided under Section 117(K) of the Act.

Conclusion: i) A citizen of Pakistan or any other person who is within Pakistan for the time being has fundamental right of freedom of movement under Article 15 of the Constitution. However, this fundamental right is not absolute rather it is qualified and reasonable restriction can be imposed in the exercise of this right through law in public interest.
ii) Judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own powers to intervene in the matters relating to policy of the Statutory Bodies/Board having financial perspective and outcome.
iii) The Cantonment Board is competent to regulate the flow of traffic by way of declaring the portion of a Road as Pedestrian Street/walking street from sunset to midnight because u/s 117(K) of the Act, it has discretion to take any action which promote convenience of the public.

13. **Lahore High Court**
M/s Jet Green (Pvt.) Limited v. Federation of Pakistan etc.
I.C.A No. 54648 of 2021
Mr. Justice Jawad Hassan, Mr. Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC4654.pdf

Facts: Petitioner's writ petition seeking direction against Civil Aviation Authority for issuance of regular public transport license was disposed of by Single Bench on the ground of that since the office of the Authority was in Karachi so the Court did not have territorial jurisdiction in the matter.

Issue: Whether High Court is competent to assume jurisdiction when the matter is relating to an Authority established under Federal law and performing functions in connection with the affairs of federation regardless of the fact that the particular office is not within its territorial jurisdiction?

Analysis: The celebrated maxim of Common Law *"boni judicis est ampliare jurisdictionem"* laid down the principle that it is the duty of a Judge to extend (or use liberally) his jurisdiction whereas the maxim *Boni judicis est ampliare justitiam* set down the idea that it is the duty of a good judge to enlarge or extend justice. In a nutshell, it is the duty of Court to amplify, enhance and extend its jurisdiction to advance justice and for that purpose it must adopt an approach to embrace rather to deny. The CAA is a statutory authority, which is a creation of federal law and it performs functions in connection with the affairs of the Federation, which is the mandatory and required criteria to pass a direction in the nature of Mandamus as ordained under Article 199(1)(ii) of the Constitution. Admittedly, the Appellant is residing within the territorial jurisdiction of this Court and carrying out its business throughout Pakistan through his office situated within the territorial bound of this Court and the prayer it has made regarding the issuance of RPTL from the Respondent, if granted, will also take effect and going to be operative and effective throughout the Country including the Province of Punjab. Moreover, the subject matter of the Petition, the RPTL, whether granted or denied by the Respondent, will directly have an impact on the rights and interests of the Appellant, which is residing for the purposes of carrying out business through its office within the jurisdictional limits of this Court and since any order of the Respondent will directly affect the functionality and operation of the Appellant within the limits of this Court, therefore this Court has got the jurisdiction to entertain and decide the instant Petition.

Conclusion: If an authority, which is established under a federal law and performing functions in connection with the affairs of federation, no matter where the head office is situated, in the Capital or in any other city of a Province, if it passes any order or undertakes any proceedings in relation to any person living or doing business in any of the Provinces, then the High Court of the Province, in whose territory the

order would affect that person, would be competent to exercise jurisdiction in the matter.

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14. **Lahore High Court**
Inamullah Khan Mazari v. Bank Al-Falah & 3 others
RFA No. 259 of 2013
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC4559.pdf

Facts: The appellant obtained financing facility from respondent Bank for purchase of car. He could not pay three installments but when he went for payment of outstanding installments; his car was snatched and ultimately auctioned by Bank. He was also humiliated by Bank officials. Therefore he filed suit for recovery of twenty millions as damages but it was dismissed. So he filed this appeal.

Issue: i) Which type of claim of damages falls within the jurisdiction of Banking Court?
ii) Whether the customer has good case to claim damages from Bank upon repossessing vehicle in case of non-payment of installments?

Analysis: i) The claim for damages caused on commission of tort or by breach of a contract has nothing to do with the default in the fulfillment of an obligation arising from a financial facility and covered under the definition of finance as provided in Section 2(d) of the Ordinance. Obviously such plea cannot be agitated before the Banking Court. Whereas, a claim for damages, on account of an injury or loss, caused by the Financial Institution in the fulfillment of its obligation in relation to finance, certainly falls within the domain of Banking Court... The Banking Court has no jurisdiction in matters of recovery of damages on account of defamation.
ii) The customer has no good case in his favor for the reason that under Section 3 of the Ordinance, it shall be the duty of a customer to fulfill his obligations to the financial institution otherwise he has to face the music. He cannot challenge the powers of Bank for repossessing the vehicle. Therefore if the officials of the Bank had taken into possession the car from appellant, no question arises to hold that the said action was wrong or unjustified.

Conclusion: i) See above
ii) The customer has no good case to claim damages from Bank upon repossessing vehicle in case of non-payment of installments with a plea of humiliation.

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15. **Lahore High Court**
Muhammad Javed Iqbal v. Rao Shahzeb & 3 others
Regular Second Appeal No. 91 of 2018, Civil Revision No. 1572-D of 2018
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC4871.pdf

Facts: The appellant filed a suit for specific performance of agreement to sell regarding the property of minors, claiming that the mother of the minors (respondent)

entered into impugned agreement to sell. She got transferred the land in favour of appellant to the extent of her share through a registered sale deed; Respondent No.1 also instituted a suit for declaration against his brothers, sister, mother and appellant and called in question the legality of disputed agreement.

Issues: i) Whether a mother can enter into an agreement to sell qua the property of her minor children without being the legal guardian of their person and property?
ii) What are the duties of a guardian?

Analysis: i) By now these are the settled principles based on Mohammadan Law, a mother of minor is not the natural guardian to deal with the property of her minor child and that at the most, she can be his/her de facto guardian in terms of Section 361 of the Mohammadan Law having no powers to make any transaction about the property of minor child. The apex Court in Muhammad Haneef vs. Abdul Samad & others PLD 2009 SC 751, when a mother had made an exchange of property of her minor child, was pleased to hold that, "The respondent No.6, albeit mother of respondent No.7, was not the natural guardian to deal with the property of her minor daughter, the respondent No.7, under the Mohammadan law. At the most, she was the de facto guardian of the property of her daughter…. As regards a de facto guardian, it is laid down in section 361 a person may neither be a legal guardian (section 359) nor a guardian appointed by the Court (section 360) but may have voluntarily placed himself incharge of the person and property of a minor. Such a person is called de facto guardian. A de facto guardian is merely a custodian of the person and property of the minor. Section 364 leaves no doubt that a de facto guardian (section 361) has no power to transfer any right or interest in the immovable property of the minor."

ii) The guardianship is a legal process used to protect individuals who are unable to care for their own well-being due to infancy, incapacity or disability. The court appoints a legal guardian to care for an individual, known as a ward, who is in need of special protection. A guardian has to act within four corners specified and the authority given by the guardian court. Each act including the sale of property has to be for the benefit of the minor with prior permission of the court. In general, a guardian does not have the authority to make contract for the ward without specific permission from the court. Finally every act of guardian must be in the better interest of minor and not otherwise.

Conclusion: i) A mother, being de facto guardian, cannot enter into an agreement to sell qua the property of her minor children without being the legal guardian of their person and property.

ii) See above.

16. **Lahore High Court**
Hafiz Muhammad Kaleem ud Din v. Province of the Punjab etc.
W.P. No.3963 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4838.pdf

Facts: Promotion of the petitioner was deferred due to alleged pending inquiry and incomplete service record while the juniors of the petitioner were promoted. The petitioner approached the respondents who demanded from him NOCs and service record which petitioner produced before them. Thereafter, Director Anti-Corruption Establishment, sent for droppage of inquiry and preparation of cancellation report which was agreed by the competent authority. The petitioner attained the age of superannuation but respondents did not consider his case for pro forma promotion and refused to give promotion as well as pro forma promotion to the petitioner.

Issue: Whether mere pendency of an inquiry is a ground to withhold promotion?

Analysis: It is settled law that mere pendency of the inquiry is no ground to deprive the petitioner from his lawful right. Even otherwise, petitioner cannot be kept waiting indefinitely for redressal of his grievance and deprived of his lawful right of promotion when inquiry against him has been dropped.

Conclusion: Mere pendency of an inquiry is no ground to withhold promotion.

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17. **Lahore High Court**
Mst. Sheedan Begum etc. v. Muhammad Usman Khan etc.
R.S.A. No.21 of 2011.
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4844.pdf

Facts: The appellants, being legal heirs of the deceased, filed a suit for declaration and challenged the mutations, gift deeds and Tamleek Namas on the ground of fraud. Through instant R.S.A. appellants have challenged the order passed by learned trial court whereby application under order VII rule 11 C.P.C. filed by respondents was accepted and plaint filed by appellants was rejected concluding that appellants have no cause of action to file the suit.

Issues: i) Whether legal heirs of deceased can challenge a mutation on the ground of fraud, after the death of their predecessor?
ii) Whether a suit for cancellation of a mutation on the basis of fraud, filed after 30/40 years of sanctioning of such mutation, is maintainable?

Analysis: i) The registered document attaches sanctity and there is no ground to disbelieve those documents. The other important question in this proposition was the locus standi to the appellants to agitate/challenge those mutations after a period of more

than 30/40 years. The owner remained alive for remarkable period and appellants did not challenge anything in his life time. Inheritance opens after death of the owner of the property and not during the life. These mutations were sanctioned during life time of the owner. Being descendants definitely appellants have no locus standi to challenge the aforesaid mutations.

ii) As per Article 120 of the Limitation Act, 1908, maximum six years are provided to seek such right but appellants remained silent for decades and did not agitate or assailed any mutation, gift deed or Tamleek specially during life time of their predecessor, therefore, wisdom of the statute is that such matters where limitation affects the rights of other person and also where prima facie locus standi of the claimant persons is doubted such matters should be straight way refused to entertain. As per mandate of section 3 of Limitation Act, Court is under obligation to scrutinize the plaint, the application and the appeal on the point of limitation regardless of the fact that the said point has been agitated by either party or not… Moreover, it is an established principle by now that law of limitation is not merely a formality/technicality, rather said statute furnishes certainty and regularity to the human affairs, matters and dealings. It is also well settled principle that law helps the vigilant and not the indolent. Furthermore, delay of each and every day has to be explained satisfactorily, otherwise the delay cannot and should not be condoned.

Conclusion: i) Legal heirs of deceased cannot challenge a mutation on the ground of fraud, after the death of their predecessor, especially when the owner remained alive for remarkable period and the transaction was not challenge during his life time.

ii) See above.

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18. **Lahore High Court**
Muhammad Farooq etc. vs Member (Judl-II) Board of Revenue, Punjab Lahore etc.
W.P.4399 of 2017.
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4832.pdf

Facts: On 26.11.1961 land was allotted to the predecessor of present petitioners under the Tube Well Sinking Scheme by the order of District Collector, which was resumed in favour of the State vide order dated 25.03.1968 by the Deputy Commissioner/Collector. After failure to get relief from various revenue forums, the petitioners approached Lahore High Court in writ jurisdiction which was accepted. However in 1979 the District Collector again resumed land in favour of the State. In 2nd round of litigation, the petitioners again did not get any relief from the revenue forums. This time their writ was disposed of with the direction to approach the District Collector who was directed to consider the case of allotment of alternative land in lieu of land resumed earlier according to law. The District collector in the year 2002 once again resumed land in favour of the State on the ground that the land was situated in the prohibitive area its proprietary

rights could not be granted. Once more the petitioners going through various revenue forums invoked constitutional jurisdiction of the High Court.

Issue: Whether the distance of a land to determine the prohibitive zone around a municipal area is to be measured from the date when the allotment was made or the date when proprietary rights conferred upon the allottee?

Analysis: As regards the prohibited zone, the instructions were that the distance should be measured as required when the allotment was made and not as when the proprietary rights are conferred……….The date of allotment was the crucial one, which was to be kept in view while deciding the propriety rights of the land to an allottee…………..At the time of allotment of the subject land to the predecessor-in-interest of the petitioners, the same was not falling within the prohibited zone and there was no need to hold inquiry in this regard. Hence, the instant writ petition is accepted.

Conclusion: The distance of a land should be measured from the date when the allotment was made and not when proprietary rights conferred upon the allottee.

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19. **Lahore High Court**
Mst. SharifanBibi (deceased) through L.Rs. etc. v. Mst. IrshadBibi etc.
Civil Revision No.13-D/2009
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4819.pdf

Facts: The petitioner challenged the concurrent judgments of the trial court and first appellate court whereby the suit for declaration of the respondent was decreed and appeal of the petitioner against that was dismissed.

Issue: i) Whether Revenue Court has jurisdiction to adjudicate upon the question of title particularly in inheritance matters and whether limitation will apply in inheritance cases?
ii) Whether, upon the death of tenant, the Collector has discretion to grant proprietary rights to any other person in presence of his legal heirs under Section 20 of the Colonization of Government Lands (Punjab) Act, 1912.

Analysis: i) Civil Court is the competent forum to see such issues where the matter of title is involved and the matter of inheritance is specifically agitated because the revenue authorities are not having jurisdiction to decide the matter of inheritance. It is settled rule that the limitation in inheritance cases would not run, speciallywhen there is an evidence that the inheritance mutation was fraudulently sanctioned by the revenue department
ii) The bare reading of Sections 19 & 19-A establishes that under this Act the tenancy shall devolve upon the heirs in accordance with the Muslim Law. This is important that Section 19-A was enacted in 1951. Prior to that Section 20 was applicable to the succession of tenants acquiring otherwise than by succession.

The contention of the petitioner is that Section 19-A of the Act was not applicable at the time when Hakim Ali died, whereas Jalal Din died after a long time of the death of Hakim Ali deceased. Under Section 20 of the Colonization of Government Lands (Punjab) Act, 1912, the property was to devolve upon the widow of the tenant until she dies or remarries or loses her rights under the provisions of this Act; the unmarried daughters of tenant until they die or marry or lose their rights under the provisions of this Act. After the death of Hakim the allottee the land was to be devolved under Section 20 of the Act to the widow and the daughter till their entitlement. It has been noted with great concern that neither the District Collector made any inquiry before issuance of Pata Malkiyat or grant of proprietary rights as required under this Act, nor the predecessor-in-interest of the petitioners disclosed the fact that under which capacity he was claiming the proprietary rights.

Conclusion: i) See above.
ii) Under Section 20 of the Colonization of Government Lands (Punjab) Act, 1912, the Collector has no discretion to grant proprietary rights to any other person in presence of the legal heirs. Therefore, his order confirming the proprietary rights to defendant was rightly declared null and void by the learned Courts below.

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20. **Lahore High Court**
Shahid Mahmood v. Islamia University Bahawalpur etc.
W.P No. 3972 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4791.pdf

Facts: The petitioner assailed the notification whereby respondent was appointed as Registrar of Islamia University Bahawalpur by the Syndicate without giving prior advertisement in the Newspaper.

Issue: Whether Syndicate is competent to appoint Registrar of the University without giving advertisement in the newspaper?

Analysis: The University is an independent autonomous/statutory body which has its own constitution; and appointment of Registrar is regulated under Section 16 of the Islamia University Bahawalpur Act, 1975, --- Syndicate was fully authorized under Section 33 of the Act to make rules to regulate any matter relating to the affairs of the University. Rules for appointment to the posts of Registrar, Treasurer and Controller of Examinations were approved and all the terms and conditions were settled in the Minutes of 74th and 75th meetings of Syndicate on the basis whereof respondent No.3 was appointed as Registrar. The Honorable Supreme Court in **(2021 SCMR 977)** has held that *Where a matter related to the internal working and procedures of the Syndicate, then in the absence of bias, partiality or lack of transparency on the part of a Committee (acting on*

instructions and authorization of the Syndicate) the same could not be interfered with and High Court in its constitutional jurisdiction cannot substitute the findings of the Syndicate without proof of mala fides, bias, illegality or lack of transparency."

The University has produced advertisements for the post of Registrar, previously advertised by them, which show that there was no malice on their part to appoint respondent as Registrar. As the University has to run all its administrative affairs through the Registrar and in case as a result of advertisement if no one qualifies for that post, the Syndicate had no option but to make Rules and appoint somebody on the said post in order to run the affairs of the University under the relevant rules of the Act, 1975.

Conclusion: Under Section 16 of the Islamia University Bahawalpur Act, 1975, the Syndicate is empowered to make the appointment of Registrar by approving new rules when no suitable candidate was approved for the post as a result of previous advertisements.

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21. Lahore High Court
Muhammad Tanveer v. The State etc.
Criminal Misc. No. 22244-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4334.pdf

Facts: The petitioner (a juvenile) sought bail after arrest, in a case under section 302 PPC, on merits as well as on the ground of statutory delay in conclusion of trial.

Issues: Whether the period of declaring a child accused as juvenile can be attributed to such juvenile while considering his bail petition on the ground of statutory delay?

Analysis: Section 6(5) of Juvenile Justice System Act, 2018 provides that the juvenile will be entitled to be released on bail if he has been detained for a continuous period exceeding six months while his trial has not been concluded, unless the delay has been occasioned by the act or omission of such juvenile. The period consumed in deciding such application for declaring the child as juvenile cannot be attributed to the juvenile, if he did not contribute towards the delay, because it is a procedural delay and no one can be deprived of any legal right… It has been consistently held by superior courts of the country that if a case, on such statutory delay in conclusion of trial, is made out then ordinarily bail should not be refused on hyper technical grounds.

Conclusion: A period of declaring a child accused as juvenile cannot be attributed to such juvenile while considering the ground of statutory delay, if he did not contribute towards such delay.

22. **Lahore High Court**
Dr. Islam Ullah Khan Lodhi v. CCPO, etc.
W.P. No. 49238 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4339.pdf

Facts: Through this writ petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioner (father) sought custody of his two daughters.

Issues: Who is the best person entitled for the custody of minor children?

Analysis: According to the Fatawai Alamgiri, the mother amongst all is the best person entitled to the custody of her minor children during the connubial relationship as well as after its dissolution, and similar is the position as laid down regarding the custody of the minors by the mother in Muhammadan Law, pages 222-223, Edition 1965. It is thus clear that this right belongs to the mother which cannot be taken from her except her own misconduct. Similarly, the tenderness of their ages or the weakness of their sex, renders a mother's care necessary. Mohammdan Law supports the mother's natural right qua the custody of the children and similarly according to the Hanafi doctrine the mother is entitled to the custody of their children until they arrive at puberty.

Conclusion: Amongst all, the mother is the best person who is entitled to the custody of her minor children.

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23. **Lahore High Court**
Muzaffar Nawaz v. Ishrat Rasool and another
Criminal Revision No.168/2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC4594.pdf

Facts: Against the decision of Judicial Magistrate Sec. 30, wherein the petitioner was awarded sentence to undergo three months imprisonment and pay a fine to the tune of Rs. 500,000/- U/Sec. 6(5)(b) of the Muslim Family Laws Ordinance 1961 (Ordinance), the petitioner preferred an appeal before the learned Additional Sessions Judge, which was dismissed. Being aggrieved, the petitioner invoked revisional jurisdiction of High Court mainly on the ground that the learned Judicial Magistrate had no jurisdiction to entertain the private complaint U/Sec. 6(5)(b) of the Ordinance.

Issue: What would be the proper forum to try a complaint under section 6(5) (b) of The Muslim Family Laws Ordinance, 1961 i.e. a Judicial Magistrate simpliciter or necessarily it be a Judge Family Court who also enjoys the powers of a Judicial Magistrate, as required by section 20 of the West Pakistan Family Courts Act, 1964 (amended by Family Courts (Amendment) Ordinance 2002)?

Analysis: Under section 5 of the West Pakistan Family Court Act 1964 (Act), the Family Court has exclusive jurisdiction to try the offences specified in Part II of the Schedule. Moreover, under section 20 of the Act, a Family Court exercises the powers of a Judicial Magistrate First Class while trying the offences enshrined therein the schedule. The legislative intent behind conferring jurisdiction upon Family Court to try offences under the schedule is to fold all family affairs under an umbrella so that the sanctity of family affairs and dignity of spouses could be saved from public exposure in ordinary courts. The word "exclusive" used in Section 5 of the Act makes it quite clear that no other court can exercise jurisdiction in respect of provisions of the Muslim Family Laws Ordinance except the one constituted under the Act. Therefore, once it is obvious that the complaint pertains to any of the offences specified in the schedule, the Family Court has jurisdiction to entertain the matter. Accordingly, a complaint filed under section 6(5)(b) of the Ordinance is within the exclusive domain of the Family Court. In the present case, it was held that Magistrate had erroneously assumed the jurisdiction; hence, the trial stood vitiated, consequently, the proceedings were quashed.

Conclusion: The Family Court has exclusive jurisdiction to entertain a complaint under section 6(5) (b) of the Muslim Family Laws Ordinance 1961.

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24. **Lahore High Court**
Muhammad Akhtar, etc. v. The State
Criminal Appeal No.167/2011.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC4570.pdf

Facts: In a case registered under section 302/34 PPC, the trial court convicted two accused/appellants and awarded the sentence of life imprisonment, while acquitting the remaining two. Against the sentence, the appellants knocked at the door of Hon'ble Lahore High Court and preferred an appeal. On the other hand, the complainant invoked revisional jurisdiction of the court, praying for the enhancement of the sentence of the appellants.

Issue: i) What is the procedure for recording defence evidence?
ii) What does the expression, 'written statement' appearing in section 265-F Cr.P.C., connote, and how it may be filed by an accused?
iii) Whether courts can summon/call defence witnesses on the request of the accused and whether defence plea of an accused could have value without his appearance as a witness under section 340(2) Cr.P.C.?

Analysis: i) After recording evidence of the prosecution and conducting an examination of the accused, the accused shall be asked whether he means to produce evidence, and if he opts to do so, the accused may bring on the record the evidence either

through submitting a written statement or adducing evidence/producing witnesses. Meaning thereby, the court shall call on the accused to enter on his defence and produce evidence. Here, the expression "entering on to defence" means the accused shall appear as his witness as required under section 340(2) Cr. P.C for the recording of his statement. Also, he shall be obliged to go through the test of cross-examination. Thereafter, he shall bring witness(es) in support of his defence.

ii) The use of the expression 'written statement' in section 265-F Cr.P.C. is to be viewed under the concept of written statement as detailed therein the Code of Civil Procedure 1908 (CPC). Under Order VI, Rule 1, CPC, a written statement, being part of pleading carries certain legal requisites that it must have verification (on oath or solemn affirmation) at the bottom that the contents of such and such paragraphs are based on one's personal knowledge or from information received, as required under Order VI Rule 15 of CPC. So, if the accused wishes to file a written statement, instead of entering as a witness in his defence, the format of the written statement must be the one as detailed given therein the CPC. This helps the court to consider the facts based on oath as probable if it wishes to summon any material witness as DW or CW, or call for any document, indicated in said written statement, which is necessary for the just decision of a case. Such written statement shall form part of the record as evidence.

iii) The court could call the defence witnesses only after the accused himself has appeared as a witness under section 340(2) Cr.P.C. or has filed a written statement in his defence. Where the accused opts to file a written statement, he may liberate himself to face the check of cross-examination. "….Usually both the parties bring on record their respective stances which could only be verified or defied with a third stand/stance and that third stance is in the form of witness to the parties. So, a witness in support of party would only be called if the party first raises a stance through approved legal procedures. The intent and purpose of the legislature to balance the opportunities for adducing evidence by both the parties is reflected from the relevant section which in fact saves the fundamental right of fair trial; it must be followed by all subordinate courts conducting trials under Chapter XXII-A of Cr. P.C…." In the present case, the accused being failed to bring on record his stance and defence witness in the process through formal ways; therefore, his plea could not be substantiated during the trial which disentitled him (one accused) to claim acquittal.

Conclusion: i) See above.
ii) See above.
iii) See above.

25. **Lahore High Court**
Lahore Development Authority v. Habib Construction Services
FAO No. 52305 of 2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4209.pdf

Facts: The petitioner has filed this appeal against the decision rendered by the Civil Court, on the application of the respondent against the appellant under Section 20 of the Arbitration Act, 1940, whereby the Court while accepting the application directed to file the arbitration agreement between the parties in the Court and appointed the arbitrator to resolve the dispute between the parties through arbitration. While the petitioner alleged that there was no dispute at all between the parties, so matter could not be referred to arbitrator.

Issues: What is the scope of Section 20 of the Arbitration Act, 1940?

Analysis: Section 20 of the Arbitration Act, 1940 underlines the sanctity of an arbitration agreement and reinforces the basic principle that where the parties to an agreement have undertaken to resolve their inter se disputes through arbitration, the intention of the parties ought to be respected and given effect. Section 20 fundamentally is limited to the determination of existence of a real and alive dispute between the parties in a summary procedure. The Court is only required to prima facie satisfy itself regarding the existence of the dispute measured with the yardstick of "sufficient cause"… The scope of Section 20 of the Act restricts the Court to give findings on issues emanating from an agreement itself regarding which the parties have agreed to resolve through arbitration. The Court is only required to satisfy itself regarding the existence of a real and alive dispute between the parties. The rationale of the same is that reference to arbitration cannot be a futile exercise hence, the Court may not blindly refer a non-existent dispute to arbitration but is required to satisfy itself that there is a tangible prima facie dispute between the parties which requires resolution through arbitration as agreed by the parties. The Court, however, is empowered to determine if the application under Section 20 of the Act itself was barred by time or not.

Conclusion: The scope of Section 20 of the Arbitration Act, 1940 is limited to the determination of existence of a real and alive dispute between the parties in a summary procedure. The Court is only required to satisfy itself regarding the existence of a real and alive dispute between the parties.

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26. **Lahore High Court**
Muhammad Saleem v. The Province of Punjab and three others
W. P. No. 2112 / 2019 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4638.pdf

Facts: The Respondent filed a suit for declaration and permanent injunction to the effect that he is and be declared as owner in possession of the property and the petitioner

has no connection with the property, as he has tempered the impugned mutation. The said suit was unconditionally withdrawn by the respondent. At the same time, the respondent also filed an appeal before the Assistant Commissioner / Collector under Section 161 of Land Revenue Act, 1967 for correction of the mutation by taking plea of fraud. The said appeal was allowed. The order of the Assistant Commissioner was upheld by the Member (Judicial-II), Board of Revenue, Punjab, Hence, this Petition.

Issues: Whether in case of rival claims of ownership or possession or any right pertaining to the same property on the basis of a mutation, Revenue officials are the competent authority to decide the matter?

Analysis: The legislature was conscious of the fact that Civil Court under the general law is the competent forum for the determination of mutual rights and liabilities of the parties under the applicable civil law through free and fair trial. Hence, to settle and adjudicate rights of title, possession and rights requiring recording of evidence through a fair trial, the institution of a suit for a declaration of rights under Chapter IV of the Specific Relief Act, 1877 was recognized under Section 53 of the Land Revenue Act. Thus, only such cases of correction of mutations which are undisputed not involving adversarial claims or which happen due to inadvertent typographical or arithmetical mistakes of Revenue officials and are not long-standing entries can be corrected under Section 172(1) & (2)(vi) of the Act. The simple test to determine as to whether the issue falls under Section 53 or Section 172(2)(vi) of the Act is as to whether the claimed correction affects the rights or interests of the other party and if so whether the other party concedes or objects to the correction of such mutation under Section 172(1) & (2)(vi) of the Act. If the right or interest of the other party is affected through correction and such person objects to such correction, the Revenue Officials are duty bound to refer the matter to the Civil Court under Section 53 of the Act.

Conclusion: Where two or more persons allege rival claims of ownership or possession or any right pertaining to the same property on the basis of a mutation, its real nature and character is that of determination of title, possession or rights between adversaries which would squarely fall within the jurisdiction of civil courts.

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27. **Lahore High Court**
Munir Ahmad v. Hassan Hussain
W. P. No. 132489 / 2018
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4943.pdf

Facts: The respondents no. 1and 2 filed a suit for specific performance of agreement to sell and alleged that total consideration amount was paid. The petitioner/defendant filed an application under order 7, Rule 11(d) for rejection of plaint, alleging therein that the suit is hopelessly time barred, which was dismissed by the courts below.

Issues: If in a case limitation is a mixed question of law and fact, can it be decided as preliminary issue?

Analysis: In some cases, the question of limitation is mixed question of law and fact and evidence is required to decide such question. To decide the issue after recording evidence will not prejudice the rights of the petitioner. The petitioner can still produce evidence to prove the issue of limitation. In Aamir Shahzad Dhody v. Adamjee Insurance Co. and others 2020 CLD 1329, it was held that 'once a question qua limitation has been framed and the court has initiated the process of recording the evidence, then preferred course is to take the case to its logical ends.' The observations were made by following the case of Irshad Ali v. Sajjad Ali and 4 others, PLD 1995 SC 629; and the case titled, Haji Abdul Sattar and others v. Farooq Inayat and others, 2013 SCMR 1493

Conclusion: Where the question of limitation is mixed question of law and facts and evidence is required to decide the issue of limitation. To decide the issue after recording evidence will not prejudice the rights of the petitioner.

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28. **Lahore High Court**
Irfan alias Imran alias Kadu v. The State & another
Crl. Appeal No.478/2012
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4796.pdf

Facts: The appellant assailed his conviction and sentence under Section 376, PPC through the instant appeal.

Issue: i) What is essential condition for any person to appear and testify as a witness in a court of law?
ii) To what extent DNA test may be relied?

Analysis: i) Plain scrutiny of the provisions of Qanoon-e-Shahadat, 1984 reveals that the essential condition for any person to appear and testify as a witness in a court of law is that he/she should possess the capability and intellect of understanding the questions put to him/her, and also be able to rationally respond thereto. This threshold has been referred to as passing the *"rationality test"*, and the practice that has developed with time in our jurisdiction is for the same to be carried out by the presiding Judge prior to recording the evidence of a witness.
ii) It is consistent view of the superior courts of the country that DNA technology is the mean of identifying perpetrator with a high degree of confidence. It has been held in a recent verdict of Honorable Supreme Court of Pakistan that DNA test not only plays a vital role in bringing the actual culprits to book but it is also very helpful to exonerate the innocent. DNA test is considered, due to its scientific accuracy and conclusiveness, as a gold standard to establish the identity of an accused.

Conclusion: i) Essential condition for any person to appear and testify as a witness is that he/she should possess the capability of understanding the questions put to him/her, and also be able to rationally respond thereto.
ii) DNA test is considered, due to its scientific accuracy and conclusiveness, as a gold standard to establish the identity of an accused.

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29. **Lahore High Court**
Rana Kashif Ali Versus Chief Secretary, etc
W.P. No.10683 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC4742.pdf

Facts: The petitioners have challenged various orders of transfer, posting, suspension and dismissal from service passed by the Administrative Department of Local Government & Community Development, Province of Punjab.

Issue: i) What is the effect of non-extension of order granting injunctive relief when the said relief had been granted till next date of hearing?
ii) Whether in case of violation of injunctive order, the High Court can restore the party to the position where it originally stood?

Analysis: i) The injunctive relief once granted by a High Court, even if granted till the next date of hearing, remains in force and its operation remains in effect till the time the Court itself positively intervenes in the matter and by means of application of judicial mind recalls, modifies, vacates or suspends such injunctive relief itself…. That when no request was made for discharge of injunctive relief, the legal position would be that the injunctive relief would continue despite no specific order having been passed extending the order granting injunctive relief
ii) By contravening an injunctive order the party against whom the order is passed has done something for its own advantage to the disadvantage of the other party, this Court under its inherent jurisdiction in terms of Section 151 CPC can bring back the party and restore to its position where it originally stood by deeming that the violation never occurred.

Conclusion: i) Interim orders (specifically stay orders affecting rights of the parties) even if issued "till the next date of hearing" are presumed to be in force until final adjudication or until such orders are specifically modified or vacated.
ii) In case of violation of injunctive order, the High Court can restore the party to the position where it originally stood.

30. **Lahore High Court**
Zarmeen Abid v. National Database and Registration Authority, etc.
Writ Petition No.7102 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC4733.pdf

Facts: The petitioner's biological father was unknown. Her CNIC was blocked by NADRA on the application of the husband of petitioner's foster mother, whose name was mentioned in the column of father in adopted capacity on her CNIC, as he contended that she is not her real daughter.

Issue: i) Whether right to identity and issuance of CNIC is fundamental right of a person?
ii) Whether the petitioner, whose biological father is unknown, is entitled to have CNIC from NADRA and what would be the mode regarding mentioning the name of father?

Analysis: i) Under International Law, a human rights based lens is adopted with respect to state obligations. ---The obligation to respect identity means that state must refrain from actively interfering with the individual's identity. This responsibility encompasses protection from arbitrary denial of identity documents, as that directly violates the individual's right to identity, and interferes with her name and ties to family, place and nation. The obligation to protect identity means that state must take necessary measures to prevent others from interfering with the individual's identity. On a global level, this responsibility requires states to register their populations, since civil registration in turn protects citizens and other individuals within a state's territory from vulnerability to criminal activity like human trafficking, forced prostitution, bonded labour, etc.
Therefore, it is immaterial whether the national framework expressly includes this right. For example, in the case of Pakistan, the Constitution of Pakistan does not expressly include a 'right to identity', as such and it is deduced from a range of positively recognized rights and principles of policy. These include, *inter alia,* the right to life, inviolability of dignity, and equality of citizens. It is a concomitant right of such positive rights.
ii) Guaranteeing a national identity document to those aged 18 and above is integral to ensuring protection from criminal activity and general menaces which tend to benefit from the lack of identity documentation of individuals, especially vulnerable population groups like women, persons with disabilities, indigenous people, transgender persons etc. The Director General, National Database and Registration Authority was asked to take heed from an enlightening judgment of this Court "*Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others*" (**PLD 2018 Lahore 54**), wherein on account of the indulgence shown by the Court, the National Database and Registration Authority authorities framed a policy for issuance of identity cards to Eunuchs. The Policy dated 21.8.2017 titled **issuance of CNIC to Eunuchs** recognizes orphans with unknown parentage and

since in the judgment in question Eunuchs with unknown parentage had been ordered to be granted identity cards by filling in their parentage columns with random names culled from National Database and Registration Authority database, the Director General, National Database and Registration Authority was sensitized to follow suit. He was reminded about Article 25(2) which allowed for affirmative action in favour of women!. The Director General, National Database and Registration Authority has made arrangements for a fresh identity card to be issued in the name of the petitioner with the same (imaginary) yet necessary parentage of Abid-ur-Rehman and now the petitioner stands entitled and eligible to enjoy the rights guaranteed to her by the Constitution of Islamic Republic of Pakistan, 1973. It may be mentioned here that the name Abid-ur-Rehman which shall now figure in the column of parentage of the petitioner is not of the same Abid-ur-Rehman who was previously married to the petitioners' mother but is rather in the nature of the imaginary '**Guru**' recognized and noted with approval in "*Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others*" **(PLD 2018 Lahore 54)**

Conclusion: i) The right to identity is a fundamental, non-derogable, independent and autonomous right which is rooted in human dignity and preserves each human's distinct existential interest.
ii) See above.

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31. **Supreme Court of UK**
R (on the application of TN (Vietnam)) v. Secretary of State for the Home Department and another
On appeal from: [2018] EWCA Civ 2838
Lord Lloyd-Jones, Lord Briggs, Lady Arden, Lord Sales and Lord Stephens
http://www.bailii.org/uk/cases/UKSC/2021/41.html

Facts: The appellant has challenged the decision of the Court of Appeal by which she lost her appeal against the Secretary of State's decision to object her asylum claim under the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, contending the FTR 2005 fell to be quashed. The Honorable Judge, who heard her application, agreed on that issue. But the Appellant then contended that the decision of the First-tier Tribunal ("FTT") in her case also fell automatically to be quashed.

Issue: Whether the systemic unfairness inherent in the FTR 2005 meant that the determination of appeal by First-tier Tribunal ("FTT") is also nullified automatically?

Analysis: The FTT's jurisdiction is set out in the 2002 Act, and, as Lord Sales points out, in the events which happened its jurisdiction was solely governed by its obligation to act judicially, that is in this case, to act fairly. Provided that the FTT was fair in its conduct of the appeal, its decision was accordingly valid. In turn if, because of

following the rules, its determination was unfair, the FTT would have no jurisdiction, and the resultant determination should be set aside. On this analysis, there is no automatic nullification of the FTT's decision. In relation to judicial decisions, the rationale of the principle must be to bring litigation to an end and to promote certainty, especially in property and status matters. The principle and its rationale would be undermined if the consequence of the systemic failings in the FTR were that tribunal decisions were automatically null and void. It would undermine confidence in the legal system if automatic nullification were the result, which is one of the reasons why it is in the public interest that there should, at an appropriate stage, always be finality in litigation… It is well established that the decision-maker is not constrained by rules of evidence and has to consider all material considerations when making an assessment about the future. It is important to analyze carefully whether there was unfairness in the course of the hearing and, if so, whether that was caused by the FTR 2005 and what the effects of that unfairness were. In this analysis it may be helpful to follow the methodology in *The Right to a Fair Trial in International Law*, Clooney and Webb, (Oxford, 2021) which disaggregates the right to a fair trial into a number of separate elements, such as the right to an independent tribunal, the right to prepare a defence, the right to adequate time and facilities to prepare a defence, the right to be present, the right to examine witnesses, the right to an interpreter and so on. A disaggregated analysis may assist the court to form a clearer view as to the causes, and causative effect, of any departure from what fairness required. Of course, at the end of the day, the court must look at the matter in the round and determine whether the hearing, as a whole, was unfair because of the FTR 2005. A careful analysis is called for, remembering always that the asylum claimant does not have to establish his or her claim to the same standard of proof as a civil claimant. But the system is not inquisitorial but adversarial. The trial takes place at the hearing, and it is not a continuous fact-finding process which goes beyond that hearing. So even where the alleged unfairness stems from the provision of a defective system the court will look at the impact of the system, and not simply set aside the order without considering the impact. In order for the FTT decision to be found to be a nullity, it would have to be established that it was ultra vires in the sense that it was taken by the FTT without jurisdiction in the wide *Anisminic* sense. That means that it would have to be established that it was a decision arrived at outside the jurisdiction conferred by section 82(1) of the 2002 Act. That provision includes as an implied condition that a decision should be arrived at fairly: that means, fairly in the circumstances of the individual case.

Conclusion: The fact that the FTR 2005was held to be structurally unfair does not mean that the hearing of a case, when these rules were applied, is itself unfair. Thus the determination of appeal by First-tier Tribunal will not be nullified automatically?

32. **Supreme Court of the United States**
Babb v. Wilkie, No. 18-882, 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-882_3ebh.pdf

Facts: Dr. Noris Babb, a pharmacist working at the VA Medical Center in Bay Pines, Florida, sued the U.S. Department of Veterans Affairs (VA) secretary, alleging age and gender discrimination and a hostile work environment. The Middle District of Florida rejected Babb's claims, granting summary judgment to the VA secretary. On appeal, the 11th Circuit Court of Appeals reversed the district court's ruling on Babb's gender discrimination claim and affirmed the district court's ruling on Babb's age discrimination and hostile-work-environment claims. The court remanded the case. Babb petitioned the U.S. Supreme Court for review, arguing the 11th Circuit's decision disadvantaged federal employees bringing discrimination claims under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA) of 1967.

Issue: Scope of protections for federal employees in the Age Discrimination in Employment Act of 1967.

Analysis: The Court ruled that plaintiffs only need to prove that age was a motivating factor in the decision in order to sue. However, establishing but for causation is still necessary in determining the appropriate remedy. If a plaintiff can establish that the age was the determining factor in the employment outcome, they may be entitled to compensatory damages or other relief relating to the end result of the employment decision.

Conclusion: In an 8-1 opinion, the court reversed and remanded the judgment of the 11th U.S. Circuit Court of Appeals, holding the plain meaning of §633a(a) of the Age Discrimination in Employment Act of 1967 "indicates that the statute does not require proof that an employment decision would have turned out differently if age had not been taken into account."

Justice Samuel Alito wrote the opinion of the court. Justice Sonia Sotomayor filed a concurring opinion, joined by Justice Ruth Bader Ginsburg. Justice Clarence Thomas filed a dissenting opinion.

LATEST LEGISLATION/AMENDMENTS

1. Government of the Punjab Law and Parliamentary Affairs Department (Implementation & Coordination Wing) vide notification No. SO(Cab-I)2-4/2020(S.P), dated 14-09-2021 has amended following Rules and Schedules of **The Punjab Government Rules of Business 2011:**
    - Rule 2
    - Rule 3
    - Rule 9-A
    - In the First Schedule
        - Sr. No. 1A
        - Sr. No. 13
        - Sr. No. 13A
        - Sr. No. 16A
        - Sr. No. 18
        - Sr. No. 18A
        - Sr. No. 26
        - Sr. No. 26A
        - Sr. No. 27A
        - Sr. No. 31B
        - Sr. No. 35
        - Sr. No. 36A
        - Sr. No.38A
    - In the Second Schedule, amendments are made under the following headings;
        - Agriculture Department
        - Board of Revenue
        - Communication and Works Department
        - Forestry, Wildlife and Fisheries Department
        - Higher Education Department
        - Housing, Urban Development and Public Health Engineering Department
        - Irrigation Department
        - Livestock and Dairy Development Department
        - Local Government and Community development Department

- Primary and Secondary Healthcare Department
- School Education Department
- Specialized Healthcare and Medical Education Department

LIST OF ARTICLES:-

1. **MANUPATRA**
file:///C:/Users/LHC/Desktop/04f2c209-5742-4cf0-baa6-31d616b6564f.pdf
UNDERSTANDING THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021 by Abhishek Choudhary & Ritika Ritu

The new IT Rules aim at strengthening government oversight of social and digital media. The objective sought to be achieved by the government, so far as it relates to tackling the issue of fake news, hate speech, child pornography etc., is laudable and necessary. However, a major chunk of the stakeholders, including many SSMIs have voiced their concerns against the IT Rules, on the grounds, inter alia, of being intrusion upon the fundamental right to speech and expression and the right to privacy. Quite clearly, there are conflicting opinions, howsoever; taking into consideration that the matter is subjudice before the various High Courts, we must be hopeful for the dust to settle down soon.

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/09/13/commentary/law-and-ai-should-artificial-intelligence-be-conceived-as-a-legal-inventor/
LAW AND AI: SHOULD ARTIFICIAL INTELLIGENCE BE CONCEIVED AS A LEGAL INVENTOR? by Muhammad Qasim Dogar

Patent laws in the UK, the US and Pakistan are only applicable to humans as these laws have been enacted several years ago and become outdated with the recent advancements in technology. By providing inventorship rights to AI, people will be incentivized to invest further in AI and come up with novel inventions to novel problems, which will in turn benefit the society. Apart from people, AI itself can be motivated once its algorithms are commingled with models of motivation. It is easier to grant the rights of an inventor to AI instead of tracing multiple individuals who contributed towards the creation of the AI. Moreover, it is necessary to protect the moral rights of AI and its owners, considering the possibility of awareness in AI. People should not be granted the rights to an invention which they did not actually create. Instead, AI should be afforded such rights if it has come up with the inventions through its own capabilities and without any human input. Consequently, it is understandable that inventorship rights underpin certain responsibilities at which only a human being may be adept. However, the solution to this resides in the articulation of modern legislature whereby new laws, similar to patent laws, could be ordained which award the status of inventor to AI and transfer any human-based responsibilities to the owner of the AI. Such laws will not only safeguard the moral rights of the

AI and its owner, but also incentivize people to invest further in AI, thereupon advantaging the society.

3. **BANGLADESH JOURNAL OF LAW**
   http://www.biliabd.org/article%20law/Vol 08/Md.%20Jahid%20Hossain%20Bhuiyan.pdf
   PREVENTIVE DETENTION AND VIOLATION OF HUMAN RIGHTS: BANGLADESH, INDIA AND PAKISTAN PERSPECTIVE by Md. Jahid Hossain Bhuiyan

   Personal liberty is a basic human right of every individual. 110 Preventive detention laws added fuel to the fire against personal liberty. It is an anathema to all those who love personal liberty. Preventive detention makes an inroad on the personal liberty of a citizen without the safeguards inherent in a formal trial before a judicial tribunal and …it must be jealously kept within the bounds fixed for it by the Constitution and the relevant law. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue. The study reveals that preventive detention is serious violation of personal liberty of a citizen. The detaining authority, at its will, may detain anybody and this law provides the authority all immunities from liability. Consequently the detaining authorities misuse their power….

4. **QUEENS LAW JOURNAL**
   https://journal.queenslaw.ca/sites/journal/files/Issues/Vol%2044%20i2/5.%20Penney.pdf
   ENTRAPMENT MINIMALISM: SHEDDING THE "NO REASONABLE SUSPICION OR BONA FIDE INQUIRY" TEST by Steven Penney

   In Canada, the entrapment defence can be established in one of two ways. In the first way, "Entrapment 1", the defence must prove that police provided the accused with an opportunity to commit an offence without: (i) reasonably suspecting him or her of committing that offence; or (ii) engaging in a bona fide inquiry. "Entrapment 2" arises when police go beyond providing an opportunity and "induce" the commission of the offence. The author argues that courts should cease recognizing Entrapment 1 as a discrete defence generating an automatic stay of proceedings. Entrapment 1 coheres poorly with the defence's rationale (deterring police from manufacturing crime), has generated a convoluted and inconsistent jurisprudence, and fails to draw a sensible line between abusive and non-abusive police methods. Instead, Entrapment 1 should be folded into the Charter's general abuse of process doctrine, allowing courts to consider all relevant circumstances in deciding whether alleged state misconduct is grave enough to warrant a stay of proceedings. This would leave Entrapment 2 as the only true entrapment defence automatically requiring a stay.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-10-2021 to 15-10-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Deputy Inspector General of Police v. Sarfraz Ahmed
Civil Appeal No. 648 of 2021
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._648_2021.pdf

Facts: Respondent a constable was dismissed from service after a regular inquiry. His period of absence from service without leave was treated as extra ordinary leave without pay.

Issue: i) Whether the penalty of dismissal from service may be imposed when period of absence has already been treated as extra ordinary leave without pay?
ii) Why it is necessary to provide for treatment of absence period?

Analysis: i) Employer/competent authority in case of unauthorized absence of employee from duty will be entitled to dismiss, remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee and the penalty of dismissal from service could be maintained even though the absence has been treated as leave without pay.
ii) The penalty imposed by the competent authority was of compulsory retirement which follows the payment of salaries and other dues till the date of imposing such penalty, therefore, it was necessary to give finding as to how such absence is to be treated but where an employee is dismissed from service he may not be entitled to any dues, therefore, there could hardly be any reason to provide for the treatment of his unauthorized absence as leave without pay.

Conclusion: i) Employer/competent authority in case of unauthorized absence of employee from duty will be entitled to dismiss, remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee and the penalty of dismissal from service could be maintained even though the absence has been treated as leave without pay.
ii) Penalty of compulsory retirement follows the payment of salaries and other dues till the date of imposing such penalty, therefore, it is necessary to give finding as to how such absence is to be treated.

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2. **Supreme Court of Pakistan**
Provincial Selection Board KPK v. Hidayat Ullah Khan Gandapur
Civil Appeal No.1486 of 2017
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1486_2017.pdf

Facts: Respondent was arrested by NAB. He opted for plea bargain. After retirement he claimed proforma promotion on the basis of case of another civil servant who in similar circumstance was granted proforma promotion.

Issue: Whether benefit on the basis of equal/similar treatment can be claimed when earlier benefit granting order to some other was wrong?

Analysis: We are sanguine that the catchphrase and expression "two wrongs don't make a right" symbolizes a philosophical benchmark in which a wrongdoing is made level or countered with another wrongdoing. In fact this maxim is used to reprimand or repudiate an unlawful deed as a reaction to another's misdemeanor. A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality. The respondent could not claim that if something wrong has been done in the case of Zahid Arif, therefore, the same direction should be given in his case also for committing another wrong which would not be setting a wrong to right but would be moving ahead and perpetuating another wrong which is disapproved and highly deprecated. No case of any sort of discrimination is made out. The concept of equal treatment could not be pressed into service by the respondent which presupposes and deduces the existence of right and remedy structured on legal foothold and not on wrong notion or whims.

Conclusion: A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality.

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3. **Supreme Court of Pakistan**
Fida Muhammad v. Government of Khyber Pakhtunkhwa Secretary of Education,
Civil Appeal No.465 of 2021
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._465_2021.pdf

Facts: The benefit of up-gradation from BPS 16 to BPS 17 was not accommodated to the appellant while other employees at par were given the same benefit keeping in view their length of service in BPS 16.

Issue: What is upgradation and whether it can be claimed as matter of right?

Analysis: The upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. There is a meticulous differentiation stuck

between upgradation and promotion. The promotion involves advancement in rank, grade or a footstep en route for advancement to higher position whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. In an upgradation, the candidate continues to hold the same post without any change in his duties but he is accorded a higher pay scale. It is also well settled exposition of law that the benefit of upgradation is normally granted to the persons stuck-up in one pay-scale for considerable period of their length of service either having no venue for promotion or progression. In order to minimize the anguish or suffering being stuck-up in particular pay scale for a sizeable period, the mechanism of up-gradation as a policy decision comes in field for redress and rescue. Up-gradation is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for sufficient length of service on particular post without any progression or avenue of promotion.

Conclusion: Up-gradation cannot be claimed as matter of right. It is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for sufficient length of service on particular post without any progression or avenue of promotion.

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4. **Supreme Court of Pakistan**
Muhammad Ramzan v. The State, etc
Criminal Petition No.952/2021
Mr. Justice Syed Mansoor Ali Shah, **Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._952_2021.pdf

Facts: During hearing of a bail petition in murder case, learned Additional Prosecutor General vehemently pointed out that the statement of witnesses referred to by the IO have been recorded in the case diary (zimni) prepared under section 172 of the Cr.P.C and do not constitute statement of a witness under section 161, Cr.P.C.

Issue: Whether the statement of witnesses recorded in the case diary (zimni) prepared under section 172 of the Cr.P.C do not constitute statement of a witness under section 161, Cr.P.C?

Analysis: Under section 161(3) Cr.P.C. the Police officer is to reduce in writing any statement made to him in the course of examination of any person supposed to be acquainted with the facts and circumstances of the case. The Police Officer is to make a separate record of the statement of each such person but in case the statement of such a person, recorded by the IO, is embodied in the case diary

instead of being recorded separately, it is at best a procedural lapse on the part of the IO but the statement itself does not lose its character as a statement under section 161, Cr.P.C. The distinction between sections 161 and 172, Cr.P.C is that while one deals with the recording of the statement of witnesses / persons acquainted with the facts and circumstances of the case, the other is the information or opinion of the IO which he gathers and forms during the course of the investigation. So if while recording his opinion in the case diary, the IO also records the statement of a witness, any such statement continues to pass for a statement under section 161 Cr.P.C. and does not become a part of the case diary under section 172 Cr.P.C.

Conclusion: In case the statement of a person, recorded by the IO, is embodied in the case diary instead of being recorded separately, it is at best a procedural lapse on the part of the IO but the statement itself does not lose its character as a statement under section 161, Cr.P.C.

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5. **Lahore High Court**
The State v. Muhammad Sarwar
Murder Reference No. 599 of 2017
Muhammad Sarwar v. The State
Crl. Appeal No. 105580 of 2017
Mr. Justice Muhammad Tariq Nadeem, Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC4929.pdf

Facts: Appellant/convict filed the criminal appeal against the judgment wherein he was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant.

Issue: i) What is the evidentiary value of chance witness?
ii) What is effect if motive alleged but not proved?
iii) What is effect of matching crime empty with recovered weapon if crime empty was sent to the Office of Punjab Forensic Science Agency after the arrest of culprit?

Analysis: i) The testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, otherwise his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.
ii) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

iii) Although report of Punjab Forensic Science Agency is positive qua the gun but it has not been explained by the prosecution that why the crime empty was not sent to the Office of Punjab Forensic Science Agency till the arrest of appellant, this fact makes the report of Punjab Forensic Science Agency inconsequential.

Conclusion: i) The evidence of chance witness can only be relied upon if some convincing explanations, appealing to prudent mind for his presence on the crime spot, are provided.

ii) If prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

iii) If the crime empty was not sent to the Office of Punjab Forensic Science Agency till the arrest of culprit this fact makes the report of Punjab Forensic Science Agency inconsequential.

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6. Lahore High Court
Crl. Appeal No.75131 of 2019
Mazhar vs The State and another
Miss Justice Aalia Neelam, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC5161.pdf

Fact: The appellant/convict has filed instant criminal appeal against his conviction and sentence, passed by the trial court.

Issue: What is legal effect of non-production of Rapats of Roznamcha of departure or arrival at Police station about recovery proceedings especially when recovery is made from the jurisdiction of other police station?

Analysis: They raided house of present appellant in village Kurriala which is situated in the territorial jurisdiction of Police Station Kasoki, Tehsil and District Hafizabad on 07.07.2019 and statedly recovered detenue from there. However, neither any Rapat (رپٹ) of Rozenamcha (روزنامچہ) of any Police Station from Lahore about their departure on that day for Hafizabad nor any Rapat (رپٹ) of Rozenamcha (روزنامچہ) about their arrival in Police Station Kasoki, Tehsil and District Hafizabad for the purpose of conducting raid in the house of appellant situated in the territorial jurisdiction of said police station and then taking any police force from said Police Station and going to the house of appellant and after alleged recovery coming back to said Police Station has been produced by the prosecution. It is trite law that non-production of said rapats (رپٹس)/entries of Rozenamcha (روزنامچہ) is fatal for the case of prosecution and said recovery is, therefore, not reliable.

Conclusion: It is trite law that non-production of said rapats (رپٹس)/entries of Rozenamcha (روزنامچہ) is fatal for the case of prosecution and no implicit reliance can be placed on such type of recovery.

7. **Lahore High Court**
Babu Khan v. The State
Crl. Appeal No.1974 of 2012
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC5254.pdf

Facts: The appellant filed complaint in High Court against Stenographer with the allegation that he paid amount for job of his son. During proceedings the appellant recorded statement that he did not want to pursue his complaint. But upon direction of High Court regular inquiry against Stenographer was conducted. On receiving inquiry report along with statement of the appellant, the proceedings under section 476 Cr.P.C. for summary trial of the appellant for the offence under Section 182 PPC was registered and the appellant was convicted and sentenced for making false statements. Hence, instant appeal.

Issue: i) How the jurisdiction can be taken in offences under section 182 PPC?
ii) Whether the District & Sessions Judge can take cognizance in trying offence on the basis of inquiry report?

Analysis: i) Section 195 (1) (a) of the Code of Criminal Procedure provides that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the Pakistan Penal Code except on the complaint in writing of the public officer concerned or of some other public servant to whom he is subordinate. Section 476 of the Code of Criminal Procedure prescribes the procedure to be followed where a Court is moved to lay a complaint, and that applies only to offences mentioned in Sections 195(1)(b)(c) and not to those mentioned in section 195(1)(a).
ii) District and Sessions Judge, Hafizabad could have made a complaint in respect of an offence under Section 182 PPC before the jurisdictional Magistrate in accordance with law and the jurisdictional Court was not debarred from taking cognizance of that offence. Here, in the present case, the learned District and Sessions Judge has not taken cognizance of the offence punishable under Section 182 of the PPC in a separate complaint case on receiving an inquiry reportand the cognizance has been taken by himself under Section 476 of the Cr.P.C instead of making it to the jurisdictional Magistrate. The manner in which the cognizance of the offence has been taken cannot be approved.

Conclusion: i) The jurisdiction can only be taken on a complaint in writing of public officer.
ii) The District & Sessions Judge cannot take cognizance in trying offence on the basis of inquiry report.

8. **Lahore High Court**
M/s Jamal Tube (Pvt) Ltd, Lahore & others v. First Punjab Modaraba, Lahore & another
RFA No.901 of 2016
Mr. Justice Abid Aziz Sheikh, **Muhammad Sajid Mehmood Sethi**
https://sys.lhc.gov.pk/appjudgments/2021LHC5044.pdf

Facts: The Court, in a suit by the respondent/bank for recovery of money, dismissed the applications for leave to appear and defend the suit by the applicants and decreed the suit.

Issue: i) What is the legal requirement regarding submission of statement of account under the Financial Institutions (Recovery of Finances) Ordinance, 2001?

ii) What will be the effect if the financial institution omits to annex statement of account along with the plaint?

iii) Whether the defect of non-submission of statement of account is curable by its submission along with replication or application seeking submission of additional documents?

Analysis: i) Under Section 9(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("FIO, 2001"), plaint of the suit filed by financial institution must be supported by a statement of account, which shall be duly certified under the Bankers Books Evidence Act, 1891, and all other relevant documents relating to grant of finance. The purpose of such obligation was to give fair opportunity to defendant to come up with cogent grounds to seek leave from the Court.

ii) It is settled law that such omission by the bank is a non-compliance of provision of law and the effect of such non-compliance entails grant of leave to defend the suit to defendant. If a financial institution fails to adhere strictly to this mandatory requirement of law, then a defendant, of course, besides entitled for the grant of a leave to defend the suit or otherwise, may be within his/its right to contest for rejection of the plaint.

iii) It is equally well-settled that defect of non-filing of complete and accurate statement of account with the plaint cannot be cured subsequently by filing the same with replication or application seeking submission of additional documents. If it happens, no opportunity would be available to appellants to counter or rebut those documents, as after filing the PLA, the law does not permit and provide any further remedy to lead further defence unless leave is granted.

Conclusion: i) Under the Financial Institutions (Recovery of Finances) Ordinance, 2001, complete and accurate statement of account must be annexed with the plaint?

ii) The defendant, on failure of the bank to annex statement of account with the plaint, besides entitled for the grant of a leave to defend the suit or otherwise, may be within his right to contest for rejection of the plaint.

iii) Defect of non-filing of statement of account with the plaint cannot be cured subsequently by filing the same with replication or application seeking submission of additional documents.

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9. **Lahore High Court**
Mozammil Iqbal v. Deputy Director (HR) Punjab Emergency Service etc.
Writ Petition No.49994 of 2019
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5214.pdf

Facts: The petitioner was a contract employee of respondent department whose services were subsequently regularized but he was removed from service under Rule 4(5) of the Punjab Emergency Leave Efficiency & Disciplinary Rules, 2007 and his appeal was dismissed by the appellate authority.

Issue: Without holding regular inquiry, whether an employee of PESL can be removed from service after show cause on the ground of unsatisfactory service and earning three unsatisfactory PERs in consecutive two years?

Analysis: By plain reading of Rule 4(5) of the Rules, it appears that the Competent Authority may after serving show cause notice and affording an opportunity of hearing can remove an official from service, who earns three unsatisfactory performance evaluation Reports in two consecutive years. However under Rule 7 of the Rules, in case of other serious charges including “misconduct”, the official shall be liable to be proceeded under PEEDA Act. There is also no dispute that under Section 5 (1) (a) of the PEEDA Act, the regular inquiry as required under sections 5 and 9 of PEEDA Act, could be dispensed with. However the perusal of the show-cause notice in this particular case shows that same was not merely confined to unsatisfactory three PERs in two consecutive years rather there were serious allegations of misconduct including irresponsible, non-serious, uninterested and negligent attitude towards job against the petitioner, which as per show cause notice amounts to misconduct and inefficiency. It was a case of misconduct on the basis of unsatisfactory performance since 2013 till 2018 and therefore, the petitioner could only be proceeded for misconduct under Rule 7 of the Rules read with relevant provision of the PEEDA Act, which contemplated regular inquiry in case of major penalty of removal from service under Section 4(b) (v) of the PEEDA Act.---- it is settled law that the major penalty like removal from service on the basis of serious allegation of misconduct can only be imposed after regular inquiry. The rule 4(5) does not dispense with the regular inquiry under sections 5 and 9 of the PEEDA Act unless the said inquiry is specifically

dispensed with by the competent authority under section 5(1)(a) of the PEEDA Act.

Conclusion: For disciplinary proceedings against employees of PESL, the PEEDA Act will apply and Rules are merely in addition to PEEDA Act. The major penalty like removal from service on the basis of serious allegation of misconduct can only be imposed after regular inquiry. Only in exceptional circumstances, the regular inquiry can be dispensed with and summary procedure may be followed when there was no factual controversy or the allegations are admitted and not otherwise.

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10. **Lahore High Court**
A.M. Construction Company (Pvt.) Ltd. v. The Province of Punjab through Secretary Communication & Works Department etc.
ICA No.18231/2021.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC5073.pdf

Facts: The intra court appeal is directed against the order of learned single judge in chamber dated 12.03.2021 wherein their writ petition against the demand of additional performance security being violative of rule 56 of rules 2014 was disposed of with the direction to the Redressal Grievance Committee under rule 67 of the Rules to decide the objections of the appellant, but the respondents again repeated the impugned demand through letter dated 12.03.2021.

Issue: Whether additional performance security demanded under Para 26(A) of the General Directions for the guidance of the tenderers (General Directions) is violative of the rule 56 of the Punjab Procurement Rules, 2014 (Rules)?

Analysis: The plain reading of Para 26(A), 26(B) of the General Directions shows that the same relates to the deposit of performance security/additional performance security by the "lowest bidder", whereas rule 56 of the Rules relate to the furnishing of performance guarantee by the "successful bidder". Under Para 26(A) of the General Directions, in case the total tender amount is less than 5% of the approved estimated amount, then the lowest bidder will have to deposit additional performance security from the scheduled bank ranging from 5% to 10% (however, in some of the General Directions, the upper limit prescribed in Para 26(A) is more than 10%). Under Para 26(B) of the General Directions, should the lowest evaluated bidder refused or failed for any reason to furnishing the performance security/additional performance security within specified time, it should constitute a just cause for rejection of his tender and in the event of such rejection, the entire earnest money shall be forfeited. Similarly, under Para 15, if the lowest bidder, who was required to furnish performance security or additional performance security to enter into contract, enters into contract and commences work but fails to furnish performance security, this will be a just cause to reject the tender and annulment of award. Paras 26(A), 26(B) and 15 of the General Directions show that these are for furnishing of performance security or additional

performance security by the lowest bidder in case the total tender amount is less than 5% of the estimated amount. However, once the lowest evaluated bid is accepted and lowest bidder becomes successful bidder only then rule 56 of the Rules shall come into play. The terms "performance security" and "additional performance security" are used interchangeably in Para 26(A), 26(B) and 15 of the General Directions. The test is not whether the demand is of performance security or additional performance security rather the test is that whether demand is from the lowest bidder or from a successful bidder. If the demand is from the lowest bidder, then whether it is performance security or additional performance security, the rule 56 of the Rules shall not apply, however, if the demand is from the successful bidder, then rule 56 of the Rules will apply regardless of the nomenclature used for the security. Rule 56 of the Rules is not an over-riding provision rather it is subject to bidding documents. Under rule 56 where it is needed and clearly expressed in bidding documents, the procuring agency shall require the successful bidder to furnish performance guarantee, however the successful bidder should not be required to furnish performance guarantee exceeding 10% of the contract amount. The perusal of Para 30 of the General Directions shows that same is relevant to rule 56 of the Rules and provide that successful tenderer shall furnish the performance security 5% of the contract amount.

Conclusion: In view of above discussion, this ICA alongwith writ petitions mentioned in Appendix A are disposed of in following terms: -

i) Demand of additional performance security under Para 26(A) of the General Directions is not violative of rule 56 of the Rules.

ii) In all those petitions/appeal, where the lowest bidder did not become successful bidder, the performance security or additional performance security under Para 26(A) of the General Directions could be demanded in terms thereof and rule 56 of the Rules had no bearing on such performance/additional performance securities.

iii) However, if the lower bidder acquired the status of a successful bidder, then performance security or even additional performance security shall be governed by rule 56 of the Rules and no payment of performance security or additional performance security could be demanded beyond the limit of 10% of the "contract price" prescribed in rule 56 of the Rules.

iv) In case no performance security or additional performance security as per Para 26(A) of the General Directions was provided by the lowest bidder, the procuring agency was within its right to reject the bid under Paras 15 and 26(B) of the General Directions read with rule 35 of the Rules.

11. **Lahore High Court**
Imran Hussain & another v. The State & another.
Crl. Misc. No.33826/B/2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC5015.pdf

Facts: Through this petition, petitioners seek post arrest bail for offences under Sections 2(S), 16, 139, 156(1)(8)(i)(c)(iii)(a)(70), 157 and 178 of Customs Act, 1969, read with SRO 666(1) 2006 and SRO 499(1)/2009.

Issue: What circumstances make the case one of further inquiry for offences under Sections 2(S), 16, 139, 156(1)(8)(i)(c)(iii)(a)(70), 157 and 178 of Customs Act, 1969, read with SRO 666(1) 2006 and SRO 499(1)/2009?

Analysis: The circumstances given below make the case one of further inquiry qua the offences relating to smuggling if, no luggage tag as well as information qua the subject luggage's booking in the name of accused is available on record, information regarding the luggage booked against the accused's' name is not received from the Airport, possession of CCTV footage or video is not taken by immigration and custom staff, certificate of registration of the cell phone numbers in culprit's name is not available, forensic report qua the use of recovered cell phones or the use of whatsapp account is not on record, nature or availability of recovered items in the luggage is not in knowledge of accused, availability or reference of method/formula for assessment of items, name of assessing person, the Officer is unable to point out the availability or reference of method/formula or any document, price list on file according to which the value was determined prior to the registration of this case, name of the person who assessed the goods' value for the complainant is not given in the file which is very much relevant with regard to the quantum of sentence of imprisonment provided by different provisions of The Customs Act, 1969 and there is no previous criminal record of the accused.

Conclusion: All above mentioned circumstances make the case one of further inquiry for the grant of post arrest bail in the above mentioned offences.

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12. **Lahore High Court**
Khawaja Aqeel Rasheed Butt v. CCPO, Lahore & others.
Crl. Revision No.59756 of 2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC5041.pdf

Facts: The petitioner through this criminal revision has come up to this Court challenging the legality and validity of the order passed by the learned Judicial Magistrate 1st Class upon a 'Qalandra' moved by the Station House Officer, under Sections 110 & 55 of the Code of Criminal Procedure, 1898.

Issue: Whether criminal revision can be directly filed in the High Court against order of Magistrate without first approaching to the Sessions Judge?

Analysis: Section 439 of the Code of Criminal Procedure, 1898, candidly provides concurrent jurisdiction to the High Court but at the same time it does not mean that without any plausible justification, a party being aggrieved by an order of the learned Magistrate who is inferior to the Sessions Judge as provided in explanation of Section 435 of the Code ibid, can directly approach the High Court as a parallel option available to him. I am of the opinion that such practice, if allowed, is likely to frustrate the wisdom behind the legislation of Section 439-A of the Code of Criminal Procedure, 1898, by virtue of which revisional powers have been devolved to the Sessions Judges and the scheme of dispensation of justice at doorstep.

Conclusion: Criminal revision cannot be directly filed in the High Court against order of Magistrate without first approaching to the Sessions Judge.

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13. Lahore High Court
Munir Ahmad v. Government of Pakistan, etc
W.P.No.3834 of 2020.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5001.pdf

Facts: This judgment addresses the issue of Price Control by Government, of Essential Commodities, as opposed to price determination by market forces on 'supply and demand' principle. August Supreme Court took notice of Government's failure, on a letter against price hike of flour being essential commodity. Directions were given for taking necessary steps under the Price Control and Prevention of Profiteering and Hoarding Act, 1977 to Federal Government and to Provincial Government under the Punjab Foodstuffs (Control) Act, 1958. Instant writs are filed highlighting the inaction on part of both the Governments by referring to the prevailing Sugar scam. It was pointed out that instead of controlling price of the Sugar, as essential commodity, the farmers are restrained from manufacturing Gur (jaggery), even for their own consumption, and are forced to supply sugarcane to the factories, in the garb of Gur Control Order, 1948 ("the Order of 1948")

Issue: i) What is object and scope of Price Control Laws?
ii) Who is primary responsible for the price control of essential food items?
iii) Whether "Gur Control Order, 1948 ("Order of 1948") is ultra vires of the Constitution?

Analysis: i) Price Control are restrictions, set in place and enforced by Government to manage affordability of certain goods and services. These are imposed in two primary forms, 'price ceiling'; maximum price of the commodities essential for living a respectable life and 'price flooring' minimum price; like limiting increase

in rent, minimum ‘living wage’ and minimum ‘support price’ for growers, of an essential crop…. Price control and competition laws, are meant to protect consumers’ right, however, are required to be implemented by forging a balance, because a thriving stable economy is the backbone of a country, for which certainty in policy making and enforcement of law is a sine qua non. It is important to note that excessive price control may lead to disruptions in market like decrease in quality and losses for producers, which may result into flight of investment.

ii) Entry No.23 of the Rules of Business, 1973 with the caption ‘National Food Security and Research Division’ states that it was incorporated after the 18th Amendment in the Constitution, which shows that, price control of essential food items is a primary responsibility of the Federal Government…. that the 18th Amendment has not taken away or affected Federal Government’s powers under the Act of 1977… Inter-provincial issues or matters, spilling over territorial boundaries of a Province and affecting enforcement of fundamental rights are within competence of the Federation after the 18th Amendment, despite absence of its specific mention in the Federal Legislative List, because enforcement of fundamental right cannot be compromised due to any vacuum. The issue of Price fixation and control has inter-provincial affect. Provinces cannot impose any restriction or tax, under Article 151(3) of the Constitution, on inter-provincial trade. …. The Federal Government has to have control on the production, supply chain and stocks of essential commodities to know their exact statistics, to meet the demand in market. The policy of having Buffer Stock of essential commodities be reconsidered, to avoid expensive import on emergent basis, which is still within Federation’s competence after the 18th Amendment.

iii) There is no apparent existing force of law behind the Order of 1948. Even if exist, it appears to be in violation of Article 18 of the Constitution, particularly when no support price is fixed for purchase of sugarcane by Government to protect grower’s interest. The Order of 1948 is held ultra vires hence void, being in violation of fundamental rights guaranteed by the Constitution. After this declaration and based on admission of not adopting or applying this law, all enforcement agencies, both Federal and Provincial are restrained from taking any action against farmers prohibiting manufacturing of Gur or Shaker (raw sugar)..

Conclusion: i) Price Control are restrictions, set in place and enforced by Government to manage affordability of certain goods and services.

ii) Federal Government is primary responsible for the price control of essential food items.

iii) Gur Control Order, 1948 (“Order of 1948”) is ultra vires of the Constitution.

14. Lahore High Court
Gulzar Ahmad, etc. v. Ayesha Naz Sarwar, etc.
C.R.No.1514 of 2012
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5299.pdf

Facts: A suit for declaration was instituted by the petitioners against the respondents alleging therein that the deceased was of Sunni faith, but the impugned mutation has shown him to be of Shia faith, therefore, impugned mutation is fraudulent.

Issue: How to prove that deceased belonged to a particular sect/faith?

Analysis: It is presumed by reference to section 28 of the Muhammadan Law that a Muslim is of Sunni faith unless proved otherwise. In this background it needs to be deciphered what is the status and binding effect of the provisions of Muhammadan Law. The Hon'ble Court by relying on the judgment referred as PLD 2021 Federal Shariat Court 1 observed that Muhammadan Law can only be consulted as a reference book and cannot be termed to be statutory law having binding effect, upon which any presumption can be drawn against a person. Further the court while dilating upon the term presumption opined that it can be bifurcated into two parts i.e. presumption of fact and presumption of law. In the first case, the presumption is rebuttable in view of the fact that it is not based on law and is based on the inference which the mind naturally and logically draws from the given facts, thus, to prove the said presumption it is the person, who alleges to believe/rely/seek benefit of such presumption and once he manages to prove the same through unequivocal and clear evidence, the onus shifts on the other side. Whereas, in the latter case where the presumption is based on law, it would be mandatory for the person, who negates the said presumption to prove the same. In the above circumstances, the Hon'ble Court formed the view that since it was alleged by the petitioners that the deceased was of Sunni faith and the impugned mutation has fraudulently been sanctioned in favour of respondent Nos.1 and 2 on the ground that deceased was of Shia faith, therefore under Article 119 of the Qanun-e-Shahadat Order 1984 being a particular fact, the initial onus to prove was on the petitioners, which in the case in hand, they have failed to discharge as no cogent and unequivocal evidence has been produced by them. It is settled proposition of law that a party, who alleges a fact has to prove his case himself and cannot thrive on the lacunas left by the opposite party. Moreover it is also trite law that when a person dies and his succession opens, his estate will be divided according to his faith and personal law and not according to the faith of the successors.

Conclusion: Muhammadan Law can only be consulted as a reference book and cannot be termed to be statutory law having binding effect, upon which any presumption can be drawn against a person. The term presumption can be bifurcated into two

parts i.e. presumption of fact and presumption of law. In the first case, the presumption is rebuttable in view of the fact that it is not based on law and is based on the inference which the mind naturally and logically draws from the given facts, thus, to prove the said presumption it is the person, who alleges to believe/rely/seek benefit of such presumption and once he manages to prove the same through unequivocal and clear evidence, the onus shifts on the other side. Where the presumption is based on law, it would be mandatory for the person, who negates the said presumption to prove the same.

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15. **Lahore High Court**
Province of Punjab & another v. Sajida Zaheer & others
W.P. No.33240 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC5050.pdf

Facts: Termination of respondent No.1 was set aside by the Labour Court through ex parte order, but it did not send copy of that order to the government. Petitioners appeal against the decision was dismissed by the appellate tribunal on the ground of limitation.

Issue: Whether the requirement of sending two copies of the order to the government as mentioned in 46 of the Punjab Industrial Relations Act, 2010 ("PIRA, 2010") is directory or mandatory?

Analysis: Reading of section 46 of PIRA 2010 makes it clear that the Labour Court is required to immediately forward two copies of its decision to the Government, which is under obligation to publish it in the official gazette. The above provision also provides remedy of appeal against decision of Labour Court along with its limitation, which has been linked with communication of the final decision. Section 46 ibid clearly suggests that communication of decision to the Government is mandatory in nature; therefore, its strict compliance is imperative and was to be strictly construed.

Conclusion: Requirement of sending two copies to the government u/s 46 of the PIRA 2010 is mandatory.

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16. **Lahore High Court**
Sabira Khatoon v. Government of the Punjab etc
Writ Petition No.53541/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4695.pdf

Facts: Petitioner, an Elementary School Teacher, with 28 years' service has challenged the vires of show cause notice issued to her on the allegation that her appointment order was bogus.

Issue: i) What is doctrine of ripeness?

ii) Whether an order directing an inquiry or a show cause notice is an adverse order which can be challenged in constitutional petition?
iii) Whether disciplinary action against a civil servant is a part of his terms and conditions of service?

Analysis: i) Ripeness is a doctrine which courts use to enforce prudential limitations upon their jurisdiction. It is founded on the principle that judicial machinery should be conserved. It reflects concerns that courts involve themselves only in problems that are real and present or imminent and should not exhaust themselves in deciding theoretical or abstract questions that have no impact on the parties at least for the time being. This doctrine postulates that the lawsuit must be well developed and specific and appropriate for judicial resolution. Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all…The basic rational behind the 'Ripeness' doctrine is 'to prevent the courts through avoidance of premature adjudication, from entangling themselves, in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.
ii) Neither an order directing an inquiry nor a show cause notice is an adverse order. None of them mean that the case would unfailingly be decided against the official/officer. There is always a possibility of a decision in his favour. Thus, any petition for judicial review of such order or show cause notice would be based on apprehension or speculation and hit by the ripeness doctrine.
iii) Disciplinary action against a civil servant is a part of his terms and conditions of service and the jurisdiction of the High Court is expressly barred in respect thereof. The order directing an inquiry, the appointment of Inquiry Officer and issuance of show cause notice are integral part of disciplinary proceedings or at least preliminary steps towards thereto and would also attract the ouster clause of Article 212. If this Court cannot entertain a petition challenging a final order, it cannot interfere in an interim order.

Conclusion: i) Ripeness doctrine prevents the courts through avoidance of premature adjudication. The lawsuit must be well developed and specific and appropriate for judicial resolution. Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all.
ii) Neither an order directing an inquiry nor a show cause notice is an adverse order. It cannot be challenged in writ petition in view of doctrine of ripeness.
iii) Disciplinary action against a civil servant is a part of his terms and conditions of service.

17. Lahore High Court
Ameer Hussain v Government of Punjab etc.
Writ Petition No. 48765/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5018.pdf

Facts: The petitioner impugns order of the Deputy Commissioner, Lahore directing detention of Hafiz Saad Hussain Rizvi under section 11-EEE of the Anti-Terrorism Act, 1997 (the "ATA"), and seeks his immediate release.

Issue: i) Contours of Preventive Detention.
ii) Whether a person released from preventive detention under a provincial law can be taken into custody subsequently under a federal law?
iii) Whether Federal and the Provincial Government have concurrent powers under section 11-EEE of the ATA 1997 to detain a proscribed person?
iv) Whether Punjab Rules of Business 2011 were followed in giving ex post facto approvals to the detention orders?
v) Applicability of principles of proportionality in preventive detention matters.
vi) Doctrine of exhaustion of statutory remedies.

Analysis: i) Personal liberty is one of the basic human rights and the principle that the governments cannot deprive individuals of that right is central to the concept of rule of law. Nevertheless, the right to personal liberty is not an unqualified right and in some compelling circumstances a State may have to put curbs on an individual and resort to what is called preventive (or preventative) detention. Preventive detention is a measure whereby the executive takes a person into custody to prevent a future harm. He may not have committed a crime but there is apprehension that he would indulge in acts that are prejudicial to public peace.

Article 10(4) of the Constitution mandates that a person cannot be detained under any preventive detention law beyond three months unless his case is reviewed by the prescribed Review Board and authorized by it. In the instant case in view of this constitutional command, the Punjab Government made a reference under section 3(5) of the MPO 1960 to the Provincial Review Board consisting of three Hon'ble Judges of this Court. The Board opined that there wasn't any sufficient ground for any further detention and hence declined the Government's request for extension and directed immediate release of the detenu. The Hon'ble Court with advantage referred to the erstwhile case of Amatul Jalil Khawaja and others (PLD 2003 SC 442) laying the criteria for cases of preventive detention. Moreover case of Bijaya Shaukat Ali Khan (PLD 1966 SC 286) was also relied where the Hon'ble Supreme Court held that preventive detention makes an inroad on the personal liberty of a person without the safeguards of a formal trial so it must be jealously kept within the legal confines. Where the government feels compelled to deprive a person of his liberty, it "must strictly and scrupulously observe the

forms and rules of law". Whenever this is not done, the Court will set the prisoner at liberty in a proceeding for habeas corpus.

ii) Legally speaking, a person released from preventive detention under a provincial law can be taken into custody again under a federal law provided it can be justified. It could only be justified only if new circumstances had arisen after its order. In the instant case, it was observed that the impugned order was founded on the same grounds which were rejected by the Provincial Advisory Board.

iii) Bearing in mind the definition in clause (i) of section 2, there is nothing in section 11-EEE of ATA to restrict the power to order preventive detention to the Federal Government. It can be legitimately exercised by the Provincial Government in its own right without any delegation from the Federal Government under section 33 of ATA.

iv) The Hon'ble Court after discussing the relevant Rules i.e. 24, 25, 27, 28 and 30 of the Punjab Rules of Business 2011 observed that the ex-post facto approval of notification in question for detention and the orders issued by the Deputy Commissioners exercising delegated powers were given without observing the mandate of the Rules of Business. It was opined that the Punjab Rules of Business have been framed under Article 139 of the Constitution and as such these constitutionally mandated rules were twined with the concept of good governance and were mandatory. The Punjab Government committed gross violations in following these which rendered the entire exercise nugatory.

v) The Hon'ble Court while discussing the law and jurisprudence developed globally opined that element of proportionality is also relevant for determining whether detention is arbitrary. In fact preventive detention is limited by the principles of legality, need and proportionality. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. The jurisprudence developed interdicts arbitrary detention and holds that the principle of proportionality would apply even where the authorities claim that it is legitimate. However, a fair or reasonable balance must be struck between the rights of individuals and the general public interests of society. In the context of preventive detention of terror suspects, a proportionate balance is required between preventive detention and prevention of terrorism.

vi) The constitutional law recognizes the doctrine of exhaustion of statutory remedies. However, the courts generally distinguish between cases seeking enforcement of fundamental rights and those in which no such issue is involved "Habeas corpus is a writ 'of right' and not a writ 'of course', and not a discretionary writ. The court is bound to issue the writ if on return, no cause or no

sufficient cause appears and cannot refuse it on the ground of existence of alternative remedy.

Conclusion: On the touchstone of the afore-mentioned principles the petition stood accepted and the detention order was declared to be without lawful authority and set aside.

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18. **Lahore High Court**
Ch. Fayyaz Hussain v. Province of Punjab etc.
W.P No. 29668 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC5112.pdf

Facts: The petitioner challenged the amendment made in Punjab Emergency Service Act, 2006 whereby Rescue 1122 was made an independent administrative department.

Issue: i) Whether it is necessary for a petitioner to establish his locus standi and grievance in order to challenge a validly passed legislation?
ii) Whether there is presumption of constitutionality attached with a law passed by the legislature?

Analysis: i) The petitioner has invoked the constitutional jurisdiction of High Court under Article 199 of the Constitution, therefore, it was incumbent upon him to establish that his legal or fundamental rights guaranteed under the Constitution have been violated. Similarly, he was bound to prove his *locus standi* to strike down the amendments in this regard on the pretext of denial of his legal rights, if any. For a person to have *locus standi* to initiate a petition for issuance of writ, he must have some right in the matter. The Fundamental Right to life is a constitutional guarantee pledged under Article 9 of the Constitution, and the expression 'life' has been interpreted through various precedents of Superior Courts a healthy life with all ancillary facilities/amenities, which are required for living a full and healthy life. Therefore, when the State is providing the basic necessities to fulfill the fundamental rights of health by providing an independent and more efficient emergency services through the Rescue 1122 then it should not be restrained or hindered to do so under the constitutional jurisdiction without any justiciable and justifiable reasons to substantiate such intervention. For that, the bar was on the petitioner to establish how and in which manner he is an aggrieved person and comes within the ambit of Article 199 of the Constitution to challenge the validly and competently enacted Amendments.
ii) Article 69 of the Constitution states that the validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of any procedure. However, this provision applies to the Provincial Assembly in terms of Article 127 of the Constitution, which specifically bars any person to approach the Courts of law for calling into question any of the proceedings regardless of the fact that it carries any irregularity in procedure.

There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two. The wisdom of the Parliament in legislation is outside the scope of Judicial Review. As long as the Legislature has the competence to legislate, the grounds or wisdom of legislation remains its exclusive prerogative. A strong presumption exists that a Legislature understands and correctly appreciates the needs of the public, that its laws are directed to the problems manifested by experience, and that its discrimination are based upon adequate grounds.

Conclusion: i) It was *sine qua non* for initiation of proceedings under Article 199 of the Constitution that the petitioner should have a *locus standi* to institute such proceedings or in other words the petitioner should have been an aggrieved party from the action of the respondents.
ii) There is always a presumption in favor of constitutionality of a law which must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two and where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favors validity and mala fide cannot be attributed to the legislature.

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19. **Lahore High Court**
Abdul Jabbar v. The State and another
Criminal Revision No.22730 of 2017
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC5156.pdf

Fact: The appellants/convicts have filed instant criminal appeal against their conviction and sentence. During instant appeal the complainant of the case sworn affidavit, wherein he has mentioned that in presence of Muhammad Ayub and Ahmad Deen (prosecution witnesses), he has forgiven the petitioners/convicts in the name of Almighty Allah.

Issue: Whether acquittal order can be made on the basis of partial compromise?

Analysis: Since complainant is not the only aggrieved person i.e. "the person cheated" rather other persons are also statedly aggrieved i.e. "the persons cheated", who have not effected compromise with the petitioners, therefore, this compromise is partial in nature and cannot be taken into consideration for acquittal.

Conclusion: Compromise partial in nature cannot be taken into consideration for acquittal.

20. **Lahore High Court**
Muhammad Rashid v. University of Engineering & Technology, Lahore, etc.
W.P. No.26155 of 2013
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5203.pdf

Facts: Petitioner was found guilty as charged and recommendation of major penalty of compulsory retirement from service was made. On receipt of findings/recommendations of the inquiry committee the competent authority imposed major penalty of removal from service.

Issues: i) Whether the competent authority is obliged to follow the recommendations of the inquiry committee, while deciding inquiry matters?

ii) Whether inquiry shall be vitiated merely on the grounds of non-observance of the time schedule?

Analysis: i) Perusal of section 10 of the Punjab Employees Efficiency Discipline and Accountability Act, 2006 that deals with inquiry committee's proceedings, findings and recommendations, shows that no such fetter is imposed on the powers of the competent authority as the third proviso to section 10(6) of the Act clearly states that the recommendations of the inquiry committee shall not be binding on the competent authority.

ii) The third proviso to section 10(6) of the Punjab Employees Efficiency Discipline and Accountability Act, 2006 clearly states that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for its completion

Conclusion: i) The competent authority is not obliged to follow the recommendations of the inquiry committee, while deciding inquiry matters.

ii) The inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for its completion.

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21. **Lahore High Court**
Israr Hussain v. Imtiaz Ahmad Sheikh, etc.
W.P. No.18754 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5225.pdf

Facts: Eviction petition was allowed on the ground of violation of terms and conditions of tenancy agreement.

Issues: Whether violation of terms and conditions of tenancy agreement and the rent laws in force are the valid grounds for eviction of a tenant?

Analysis: It is discernible from ground "(a)" in the eviction petition that ejectment was solicited amongst others on the ground of violation of terms and conditions of the

rent agreement and the rent laws in force. Under section 13(d) of the Punjab Rented Premises Act, 2009 the tenant is under obligation to deliver vacant possession of the rented premises on the expiry of lease. Similarly as per clause 12 of the lease agreement, the petitioner was under obligation to deliver vacant possession of the premises on expiry of lease. The period of lease in this case being 11 months, which undeniably stood expired, the continuation of possession on part of the petitioner was a clear violation of section 13(d) of the Act and also clause 12 of the lease agreement. Section 15(a) provides for the right of eviction on the expiry of lease while its clause (d) entails eviction of tenant due to violation of an obligation under section 13 of the Act. In "Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others" (PLD 2018 SC 81) while considering the infringement of terms and conditions of lease as a ground for eviction under section 17(2)(ii)(b) of the Islamabad Rent Restriction Ordinance, 2001, read with section 6 thereof, it was observed that as per said section 6, tenancy determines at expiry of terms of tenancy and if thereafter the tenant holds on to such property without the consent of the landlord, it shall be a clear violation and infringement of the conditions of tenancy on which the property was held and this in itself constituted a ground for eviction.

Conclusion: Under the Punjab Rented Premises Act, 2009 amongst other grounds, violation of terms and conditions of tenancy agreement and the rent laws in force are the valid grounds for eviction of a tenant.

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22. **Lahore High Court**
Allah Rakkha v. The State & another
Criminal appeal No. 445 of 2013
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC5167.pdf

Facts: Appellant was alleged to have murdered the deceased along with co-accused. Entire case was based on circumstantial evidence.

Issue: How the circumstantial evidence is to be appreciated?

Analysis: i) Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined.
ii) Circumstances should be ascertained with minute care and caution, before any conclusion or inference adverse to the accused is drawn.
iii) The process of inference and deduction involved in such cases is of a delicate and perplexing character, liable to numerous causes of fallacy.
iv) This danger points need for great caution in accepting proof of the facts and circumstances, before they are held to be established for the purpose of drawing inferences there from.
v) A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, can create a specious appearance, leading to fallacious inferences.

vi) It is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well established.
vii) A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused person is to be drawn.
viii) There are chances of fabricating evidence in cases that are based solely on circumstantial evidence; therefore, the court, in such cases, should take extra care and caution to examine the evidence with pure judicial approach on strict legal standards to satisfy itself about its proof, probative value and reliability.
ix) When there are apparent indications of possibility of fabricating evidence by the investigating officer in making the case, the court must be watchful against the trap, which may misled to drawing a false inference, and satisfy itself about the fair and genuine collection of such evidence. The failure of the court to observe such care and caution can adversely affect the proper and safe administration of criminal justice.
x) The settled approach to deal with the question as to sufficiency of circumstantial evidence for conviction of the accused is this: If, on the facts and circumstances proved, no hypothesis consistent with the innocence of accused can be suggested, the case is fit for conviction on such conclusion; however, if such facts and circumstances can be reconciled with any reasonable hypothesis compatible with the innocence of the accused, the case is to be treated one of insufficient evidence, resulting in acquittal of the accused.
xi) Circumstantial evidence, in a murder case, should be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused.
xii) No link in chain of the circumstances should be broken and the circumstances should be such as cannot be explained away on any reasonable hypothesis other than guilt of accused.
xiii) Chain of such facts and circumstances has to be completed to establish guilt of the accused beyond reasonable doubt and to make the plea of his being innocent incompatible with the weight of evidence against him. Any link missing from the chain breaks the whole chain and renders the same unreliable and in that event, conviction cannot be safely recorded, especially on a capital charge.
xiv) If the circumstantial evidence is found not of the said standard and quality, it will be highly unsafe to rely upon the same for conviction; rather, not to rely upon such evidence will a better and a safer course.

Conclusion: Above parameters are to be considered to evaluate circumstantial evidence.

23. **Lahore High Court**
Zafar Iqbal v. The State and another
Crl. Appeal No. 220325 of 2018
Abdul Qayyum Khan v. The State and another
Crl. Revision No. 219868 of 2018
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4917.pdf

Fact: The appellant has filed instant criminal appeal against his conviction and sentence, while criminal revision has been preferred by the complainant for enhancement of sentence from life imprisonment to normal penalty of death of Zafar Iqbal.

Issue: i) Whether delay in conducting of postmortem is always fatal to prosecution?
ii) What is the evidentiary value of related witnesses?
iii) Whether capital punishment can be awarded to accused when motive is not proved?

Analysis: i) Delay in conducting postmortem is not always fatal to prosecution, as occurrence took place in far-flung area and also just before sunset, therefore, time had been consumed in arranging and shifting the dead body to the hospital. The consumption of such a time seems to be quite reasonable hence, the prosecution evidence cannot be brushed aside on this score alone to extend the benefit of doubt as claimed.
ii) If evidence of related witnesses is free from ulterior motive and enmity then same could not be discarded merely on the basis of their relationship with the deceased. If otherwise is trustworthy and confidence.
iii) The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder.

Conclusion: i) Delay in conducting postmortem is not always fatal to prosecution.
ii) If evidence of related witnesses is trustworthy and confidence inspiring and is free from ulterior motive then same could not be discarded.
iii) If the prosecution fails to prove motive then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder.

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24. **Lahore High Court**
Abdul Hameed v. Province of the Punjab and seven others
W. P. No. 4488 / 2021 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4948.pdf

Facts: The petitioner is aggrieved of the impugned notice, issued by respondent No. 5 (Sub Registrar) seeking payment of specified amount therein on the alleged

ground that Capital Value Tax (the "CVT") payable under the prevalent and applicable law on the date of registration of Power of Attorney in favour of the petitioner could not be collected in full, as such, the petitioner is liable to pay the deficient amount of the CVT.

Issues: Whether notice(s) for the recovery of outstanding CVT, after 10 years of registration of Power of Attorney, is time barred and unjustifiable?

Analysis: In Sections 6(7) to 6(17) of the Punjab Finance Act, 2012 comprehensive machinery regarding due collection and payment of the CVT is provided, which unequivocally manifests a conscious attempt by the legislature to provide for the blatant omission in the original Section 6 of the Act of 2010. Most importantly, Section 6(16) provides that the powers under Section 6(9) or Section 6(14) shall not be exercised after the expiry of five years from the conclusion of the financial year to which the assessment relates. It was thereafter that the person who was liable to pay it was made subject to recovery through an officer designated by the Board of Revenue in this behalf and the provisions of Punjab Land Revenue Act, 1967 were made applicable subject to remedies of appeal, review or revision as provided in the requisite Sections of the Punjab Land Revenue Act, 1967. It, therefore, follows that the aforesaid provisions were procedural in nature that provided a machinery for the determination of due assessment of the CVT and provision of information regarding the tax due from the taxpayer, which was prerequisite before notice of recovery could be served upon the taxpayer. Thereafter, the taxpayer was given a right of hearing to contest the claim of deficiency in the payment of the CVT. Since, the nature, substance and character of the aforesaid provisions are procedural; they shall be deemed to have retrospective effect and shall apply from the date of enforcement of the CVT, i.e. 01.07.2010. This view is further fortified from the fact that limitation of five years was provided under Section 6(16) of the Act of 2012 which validly covered the period from 01.07.2010 to 30.06.2012 when such machinery for the deficient collection and recovery of the CVT was not available in the original Section 6 of the Act of 2010. Procedural amendments providing a machinery to collect and recover a tax through due process, are given retrospective effect, especially when they are beneficial to the taxpayer. Absence of due process offends Articles 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan, 1973… Thus the liability arising from deficiency in the payment of the CVT under Section 6 of the Act of 2010 or the Act of 2012 does not lapse with the efflux of time, however the determination of specific liability of the petitioner(s) regarding payment of deficiency in the CVT is subject to the right of personal hearing and subsequent remedies provided under the Punjab Land Revenue Act, 1967.

Conclusion: The liability arising from deficiency in the payment of the CVT under Section 6 of the Act of 2010 or the Act of 2012 does not lapse with the efflux of time, however the determination of specific liability regarding payment of deficiency in

the CVT is subject to the right of personal hearing and subsequent remedies provided under the Punjab Land Revenue Act, 1967.

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25. **Lahore High Court**
Mst. Khalida Parveen & 19 others v. Government of Punjab and five others
W. P. No. 2962 / 2021 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5234.pdf

Facts: Petitioners were appointed on contract basis. They moved their applications for regularization or extension of their contract services which request was declined and the petitioners were relieved from their posts.

Issues: Whether a contract employee has vested right to remain in service after expiry of the contract period and can challenge his termination by filing a constitutional petition?

Analysis: The contract employee has no vested right to remain in service after expiry of the contract period. The only remedy available to a contractual employee is to seek damages for wrongful termination or for any alleged breach of the contract or failure to extend the contract… The principle of master and servant is attracted and applicable with respect to the contract employees and, therefore, a constitutional petition is not maintainable.

Conclusion: A contract employee has no vested right to remain in service after expiry of the contract period. The principle of master and servant is attracted and applicable with respect to the contract employees and, therefore, a constitutional petition is not maintainable.

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26. **Lahore High Court**
Mian Usman Ali v. District Judge and 17 Others.
Writ Petition No. 13535 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5059.pdf

Facts: The present constitution petition is filed against judgment passed by the learned District Judge in revision against the order of learned trial Court in which the application filed by respondent No.3 for producing the certified copies of mutation and original family registration certificate was accepted. The order passed by the learned trial Court has been maintained.

Issue: i) Whether a party can be allowed to produce the documents on subsequent stage?

ii) What is the object behind the provisions of Order 13 Rules 1 and 2 of the Code of Civil Procedure, 1908?

iv) Whether there are any fixed criteria or a yardstick to ascertain good cause and inadvertence and human error can be straightaway rejected as no ‘good cause’?

Analysis: i) The documents, which were in the possession or within the power of the parties, cannot be produced on subsequent stage, unless (i) 'good cause' is shown (ii) this 'good cause' should be to the satisfaction of the Court and (iii) Court is required to record reasons for allowing such production of documents. It is frequently held by the Honorable Supreme Court of the Pakistan that at the time of allowing production of documents under Order 13 Rule 2 of the Code of Civil Procedure, 1908 the learned Court should also consider the genuineness of the documents required to be produced and the prejudice that can possibly be caused to the other side of not having timely notice as well as the chance of depriving the opportunity of rebuttal of said documents.

ii) The objects behind provisions of Order 13 Rules 1 and 2 of the Code of Civil Procedure, 1908 are to prevent the litigants from fraud, to avoid undue delays and to create a barrier against the misuse of process of law. The purpose of requiring to record reasons for allowing such production is to be watchful that no collateral purpose besides establishing the cause(s) in the pleadings and enabling the Court to reach a just conclusion can be achieved by the litigants. There appears no intention behind this part legislation, to completely close the doors for receiving the documents, in the circumstances where these documents are necessary to reach the just conclusion and other side can reasonably be afforded an opportunity to admit or deny or rebut those documents.

iii) There cannot be any fixed criteria or a yardstick to ascertain 'good cause' and it certainly will fluctuate with the facts of every case, which has to be seen by the learned Courts while keeping in view the nature of documents sought to be produced, stage of the trial and / or proceedings and other elements. The real question for consideration is whether the negligence of such nature can be condoned and the plea of default due to inadvertence and human error can be straightaway rejected as no 'good cause', in every case and more importantly when the documents are relevant for the case. The error to attach a document with plaint or mentioning it in the list, in the experience of even a careful and prudent person, is neither improbable nor unexpected and if that is the case, such reason if joined by other indicators/elements can constitute a 'good cause'.

Conclusion: i) The court can allow the party to produce the documents on subsequent stage if court is satisfied about the 'good cause' shown by the party.
ii) The objects behind the above two provisions are to prevent the litigants from fraud, to avoid undue delays and to create a barrier against the misuse of process of law.
iii) There cannot be any fixed criteria or a yardstick to ascertain 'good cause' and it certainly will fluctuate with the facts of every case. The error to attach a document with plaint or mentioning it in the list, in the experience of even a careful and prudent person, is neither improbable nor unexpected and if that is the case, such reason if joined by other indicators/elements can constitute a 'good

cause'.

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27. **Lahore High Court**
W.P.No. 49447 of 2021
Zulqernain Khurram and another v. Punjab Healthcare Commission etc.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5263.pdf

Facts: On the complaint, officer of Healthcare Commission visited the healthcare establishment and found that petitioner along with others were rendering healthcare services. Allegedly, the said service providers were providing medical services without basic medical education or license to practice and registration from Pakistan Medical and Dental Council/Pakistan Medical Council (PMC), in contravention of various provisions of the Punjab Healthcare Commission Act, 2010 (PHCA, 2010) and the Punjab Healthcare Commission Regulations for banning quackery in all its forms and manifestations (Anti-Quackery Regulations 2016). Action was taken against them. The appeal of petitioner before District & Sessions Judge failed. Hence this constitution petition.

Issue: i) When a particular plea or objection is not raised before the learned *fora* below, whether it can be raised in the Constitutional jurisdiction?
ii) Whether a person who has failed to avail the remedy provided by statute can invoke the constitutional jurisdiction?
iii) Who is under burden to prove the plea of *mala fide*?

Analysis: i) When a particular plea or objection is not raised before the learned *fora* below, it is not open for the party to raise the controversy at this stage. This plea was always available to the Petitioners, which is neither a part of the impugned judgment nor is given in the appeal, which shows that petitioners were satisfied with adopted procedure. Now, the same cannot be allowed to be raised in the Constitutional jurisdiction of this Court.
ii) When a person fails to avail the remedy of review, revision or appeal if provided by Statute, the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can only be invoked in the limited and exceptional circumstances.
iii) The person who raises this allegation must bring something rational on record showing deviation from due process of law or clearly visible from circumstances, as initial burden to construct a cause to further proceed. Then for the final success, on the plea of *mala fide*, the party alleging has heavy burden to be discharged. Obviously, this burden is not that is required in the criminal cases or 'beyond reasonable doubt' but certainly evidence in this regard should be at least 'clear and convincing'.

Conclusion: i) When a particular plea or objection is not raised before the learned *fora* below, it cannot be raised in the Constitutional jurisdiction.
ii) When a person fails to avail the remedy if provided by Statute, the constitutional jurisdiction can only be invoked in the limited and exceptional circumstances.
iii) The person who raises allegation of mala fide must bring something rational on record showing deviation from due process of law or clearly visible from circumstances, as initial burden to construct a cause to further proceed.

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28. Lahore High Court
Fateh Muhammad, etc. v. Dishad Ahmad, etc.
C.R. No.11-D of 2009
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5129.pdf

Facts: The suit for possession under section 8 of Specific Relief Act was concurrently decreed by the learned trial as well as learned appellate court without determining the question of ownership.

Issue: Whether the High Court in exercise of revisional jurisdiction can remand a case where concurrent findings of fact are perverse and result of a material irregularity inasmuch as jurisdiction vesting in the courts below has not been exercised?

Analysis: A High Court in exercise of revisional jurisdiction is not bound to enter into the merits of the evidence or for that matter of the case or the controversy involved but in a case where concurrent findings of fact are perverse and result out of a material irregularity inasmuch as jurisdiction vesting in the courts below has not been exercised, a High Court can remand the matter to the courts below and not indulge in a fact finding exercise itself or even in an exercise rooted in discovering facts that have a crucial bearing on the controversy to be so resolved.

Conclusion: The High Court in exercise of revisional jurisdiction can remand a case where concurrent findings of fact are perverse and result of a material irregularity inasmuch as jurisdiction vesting in the courts below has not been exercised.

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29. Lahore High Court
Rashid Iqbal v. Chancellor, etc
W.P. No.18802 of 2019
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5149.pdf

Facts: Chancellor of Bahauddin Zakariya University, Multan set aside the order of appointment of the petitioners approved by the Syndicate but did so without affording any opportunity of hearing to them.

Issue: Whether hearing was to be given to petitioners mandatorily by Chancellor before setting aside appointment process?

Analysis: The proviso to section 11-A of the Bahauddin Zakariya University Act, 1975, was added subsequently after the promulgation of the Act in its original form and is, therefore, manifestly reflective of the legislative intent in supporting, ensuring and making the exercise of power under section 11-A subject to the right of fair hearing. The provision of personal hearing to affectees of exercise of powers in revision under section 11-A is mandatory.

Conclusion: Hearing was to be given to petitioners mandatorily by Chancellor before setting aside appointment process.

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30. **Lahore High Court**
Badar Din v. Province of Punjab
Civil Revision No. 577 of 2018
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5065.pdf

Facts: The suit for declaration was dismissed for non prosecution. Application for restoration of suit was also dismissed for non prosecution. Application for restoration of application for restoration of suit was filed after three years and four months.

Issue: Which article of Limitation Act governs such an application?

Analysis: A second application for restoration of previously dismissed application filed for restoration of a lis/suit would lie and in the absence of an express provision in the Limitation Act for dealing with such an eventuality, in all such cases, Article 181 of the Limitation Act would be properly applicable as this Article is a residuary Article which governs all applications for which no express provision is made in the Limitation Act.

Conclusion: Article 181 of Limitation Act governs such application.

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31. **Lahore High Court**
Province of Punjab, etc. v Mian Gohar Mubashar Hameed
Civil Revision No.2838 of 2012
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC4995.pdf

Facts: Through this civil revision, the petitioners have challenged the judgment and decree passed by the learned Additional District Judge, whereby appeal preferred by the respondent against the judgment and decree passed by the learned Civil Judge, dismissing his suit for declaration and permanent injunction, was accepted.

Issue: What will be the effect if the vires of the Valuation Table of the District Collector

was challenged in the suit on the ground that the same was not duly "notified"?

Analysis: For it to be effective and applicable, the Valuation Table determining the value of properties situated in the concerned locality is to be "notified" by the District Collector. It is a mandatory requirement of the law specified in Section 27-A of Stamp Act, 1899. The term "notified" has not been defined in the said Act and the same has been subject matter of judicial construction. The term "notify" has been judicially defined to mean give notice, proclaim or publish in any recognized manner. Whether or not the word "notified" used in any statute would require publication of a notification in the Official Gazette depends upon the nature and object of a particular statute and involvement of rights and obligations of the persons involved. The Act is a fiscal legislation that creates a burden and liability to pay stamp duty on occurrence of various taxable events specified therein. Section 27-A of the said Act relates to prescription of valuation of properties for the purpose of levy of a tax. In fact, by insertion of section 27-A ibid, the discretion of parties in fixing the valuation of property for the purpose of payment of stamp duty has been taken away, however, the effect of the Valuation Table has been judicially recognized to commence from the date when it is duly "notified" i.e. published in the Official gazette…. The learned District Judge, while recording his findings on the aforementioned issue in favour of the respondent, noted that the petitioners have not produced any concerned officer before the learned trial court to prove that the Valuation Table was published in the Official Gazette or newspaper or that it was made known to the public or by beat of drum or by affixation of the same at some conspicuous place in the locality, including on the notice board at respective offices of the Assistant Collectors, therefore, the same was not proved to have been duly notified on the relevant date to satisfy the requirement of Section 27-A of the Act, resultantly the demand of the stamp duty pursuant thereto through the notice impugned was declared to be unlawful.

Conclusion: If the Valuation Table of the District Collector was not duly "notified" it did not satisfy the requirement of Section 27-A of the Act and is ultra vires?

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32. **Sindh High Court**
Dawood Khan v. Rana Muhammad Rafique & others
Constitutional Petition No. S – 607 of 2021
Mr. Justice Nadeem Akhtar
https://caselaw.shc.gov.pk/caselaw/view-file/MTU0NDQ2Y2Ztcy1kYzgz

Facts: The petitioner invoked the constitutional jurisdiction of Hon'ble Sindh High Court under Article 199 of the Constitution by assailing the orders of the learned Appellate Court whereby his appeal was dismissed, filed against the orders of learned Rent Controller for striking off the defence of the petitioner, and directing him to vacate the rented premises.

Issue: i) Whether a tenant is required to vacate the rented premises even if he claims to have purchased the rented property during the continuation of tenancy?
ii) Whether a tenant is bound to pay monthly rent even after asserting purchase of the rented premises?
iii) Whether the right to defend may be struck off for not complying with the tentative order passed by the Rent Controller directing the tenant to pay arrears of rent?

Analysis: i) A tenant is bound to vacate the rented premises even if he asserts that he has purchased the rented premises/property. In such a scenario, the tenant is required to file a suit for specific performance of the agreement to sell, and he would be entitled to the possession of the property in accordance with law only if he succeeds in his suit.
ii) It is a well-settled principle of law that a tenant is bound to pay the monthly rent to the landlord till such time the Civil Court passes a decree against the landlord in a suit for specific performance of the agreement to sell.
iii) It is an established principle of law that non-compliance of the tentative order passed by the learned Rent Controller requiring the tenant to pay the arrears of rent, shall cause his right to defend to be struck off.

Conclusion: i) A tenant is obliged to vacate the rented premises despite the assertion that the he has purchased the rented property.
ii) A tenant is required to continue to pay monthly rent until getting a decree in his favour, entitling him to the ownership of the rented property.
iii) The default on the part of the tenant to pay arrears of rent shall cause his defence to be struck off.

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33. **Supreme Court of the United States**
Opati v. Republic of Sudan, 590 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/17-1268_c07d.pdf
https://ballotpedia.org/Opati_v._Republic_of_Sudan

Facts: It is a case involving the Foreign Sovereign Immunities Act with its 2008 amendments, whether plaintiffs in federal lawsuits against foreign countries may seek punitive damages for cause of actions prior to enactment of the amended law, with the specific case dealing with victims and their families from the 1998 United States embassy bombings.

Issue: Whether the Foreign Sovereign Immunities Act applies retroactively; thereby permitting recovery of punitive damages under 28 U.S.C. § 1605A(c) against foreign states for terrorist activities occurring prior to the passage of the current version of the statute.

Analysis: As the case concerned the Foreign Sovereign Immunities Act (FSIA) and questioned if the Act prohibited a punitive damages award against Sudan for its

role in embassy bombings in Kenya and Tanzania in 1998. Justice Gorsuch observed that "*Congress was as clear as it could have been when it authorized plaintiffs to seek and win punitive damages for past conduct using §1065A(c)'s new federal cause of action. After all, in §1083(a), Congress created a federal cause of action that expressly allows suits for damages that "may include economic damages, solatium, pain and suffering, and punitive damages." ... Put another way, Congress proceeded in two equally evident steps: (1) It expressly authorized punitive damages under a new cause of action; and (2) it explicitly made that new cause of action available to remedy certain past acts of terrorism."*

Congress passed the FSIA in 1976. The Act held that foreign states are immune from lawsuits in federal and state courts, with exceptions. One of those exceptions was a terrorism exception Congress added in 1996. The terrorism exception allowed plaintiffs to sue foreign countries who had committed or supported terrorist acts and who the U.S. State Department designated as state sponsors of terror. As originally enacted, the FSIA barred foreign countries from being subject to punitive damages. However, Congress amended the FSIA in 2008, moving the terrorism exception from §1605(a)(7) of the FSIA to a new section of U.S. Code, 28 U. S. C. §1605A. The move thereby removed the terrorism exception from the FSIA's baseline punitive damages bar. §1605A(c) also authorized punitive damages to certain plaintiffs. Congress also allowed existing lawsuits to be treated as if they were filed under §1605A(c) and allowed plaintiffs to file new lawsuits to claim benefits under §1605A.

Conclusion: The Court ruled unanimously that punitive damages can be sought from foreign nations in such cases for pre enactment conduct. The unanimous ruling, written by Justice Neil Gorsuch, vacated the DC Circuit's ruling, restoring the US$4.3 billion punitive award, and remanded the case back to the lower court.

LATEST LEGISLATION/AMENDMENTS

- Vide notification dated 01, October 2021 No. PAP/Legis-2(82)/2020/263/ of Provincial Assembly of the Punjab, **The Companies Profits (Workers' Participation) (Amendment) Act 2021** has been enacted. Through this Act, **The Companies Profits (Workers' Participation) Act, 1968** has been adapted with following amendments;
  - 2nd paragraph of preamble of the Act has been omitted.
  - In Sections 2,3,4,5,6,7,8 and 9 the words 'Federal Government' has been substituted with words 'Government'.
- Vide notification dated 01, October 2021 No. PAP/Legis-3(76)/2020/2640 of Provincial Assembly of the Punjab, **The University of South Asia, Lahore (Amendment) Act, 2021** has been enacted. Through this Act amendments have been made in section 2 and section 4 of **The University of South Asia, Lahore Act, 2005.**

- Vide notification dated 01, October 2021 No. PAP/Legis-2(89)/2020/2639 of Provincial Assembly of the Punjab, **The Punjab Privatization Board (Repeal) Act, 2021** has been enacted. Through this Act **The Punjab Privatization Board Act, 2010** has been repealed and a saving has been added.
- Vide notification dated 01, October 2021 No. PAP/Legis-2(128)/2021/2638 of Provincial Assembly of the Punjab, **The Stamp (Amendment) Act, 2021** has been enacted. Through this Act amendments have been made in Section 1 and Section 2 of **The Stamp Act, 1899.** Moreover the words 'Provincial Government' have been substituted with the word 'Government', wherever used in the Act except in Schedule I, article 57, column 2, paragraph (b) and under the headings 'Exemption'.
- Vide notification dated 04, October 2021 No. PAP/Legis-2(113)/2021/2641 of Provincial Assembly of the Punjab, **The Lahore Ring Road Authority (Amendment) Act, 2021** has been enacted. Through this Act amendments have been made to substitute the word 'Act' and preamble of **The Lahore Ring Road Authority Act, 2011**.
- Vide official Gazette dated October 6, 2021, notification no. F 9(10)/2021- Legis. **The Special Technology Zones Authority Act, 2021** has been enacted to ensure the development of scientific and technological eco-system through development of zones to accelerate technology development in the country. This Act consists of a preamble, seven chapters and 46 Sections.
- Vide official Gazette dated October 6, 2021 **The National Accountability (Second Amendment) Ordinance, 2021** has been promulgated to amend **The National Accountability Ordinance, 1999.** Through this Ordinance, section 4, 5, 5-A, 6, 7, 8, 9, 15, 16,31DD, 33F of the ordinance has been amended.
- Vide official Gazette dated October 6, 2021, notification no. F 24(22)/2021- Legis, **The Legal Practitioners and Bar Councils (Amendment) Act, 2021** has been enacted. Through this Act section 5 and the schedule of **The Legal Practitioners and Bar Councils Act, 1973** has been amended.
- Vide official Gazette dated October 9, 2021 **The Ibadat International University Islamabad Act, 2021** has been enacted for the establishment of Ibadat International University at Islamabad. This Act consists of a preamble and 41 sections.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Criminal

   THE RELEVANCE AND ADEQUACY OF MOTIVE by Ms. Chinmayee Prasad

   Behind every criminal act of a human being, people tend to presume a motive, albeit more often than not there is not a sufficient or rather a proportionate motive for the criminal acts done by a person. Motive is the emotion, which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. As has been laid down in the landmark decision of R v Palmer that "...the adequacy of motive is of little importance...atrocious crimes have been

committed from very slight motive: not merely from malice or revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties." Thus, it would not be entirely wrong to contend that a person may be guilty of a crime, for which he had no apparent reason that could possible drive him to commit a crime of that magnitude. Human mind is one of the many complex areas which no scientific enquiries has been able to unravel. What impels a person to act in the manner, in which he does, cannot be ascertained compellingly by any fixed procedure and it's only through the conduct of the person or other related facts that it can be ascertained. Though, there is a great deal of confusion among the masses that only when the motive for an act is proved, that a person can be held guilty of that act, its not the same position in law. Motive is relevant to establish the guilt of an accused, however the absence of the same need not necessarily negate the possibility of his culpability.

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/09/13/commentary/law-and-ai-should-artificial-intelligence-be-conceived-as-a-legal-inventor/
Network Neutrality and State's Obligation: Freedom of Speech vs Access to Information by Iqra Saif Agha

   With the growing significance of information technology, the debates surrounding network neutrality also gain momentum. The notion of network neutrality has been able to highlight the concerns of possible human rights violations posed by practices entailing zero-rating. Central to these discussions has been the freedom of speech/expression and the important role played by network neutrality in upholding it in the public spaces of the internet. While these have been pertinent in raising valid arguments and bringing the state's attention towards its obligations in ensuring the freedom of speech/expression, an important aspect i.e. the right to access information, has been absent in the discourse so far. It is imperative that the discourse and debates surrounding network neutrality also focus on the access to information because this right is a subset of the right to speech/expression. Otherwise, as argued, it would lead to the state's failure to fully recognize and fulfill its positive obligation in ensuring that people have full access to information despite the circumstances….

3. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/sites/default/files/a_concoction_of_powers.pdf
A CONCOCTION OF POWERS: THE JURISPRUDENTIAL DEVELOPMENT OF ARTICLE 184 (3) & ITS PROCEDURAL REQUIREMENTS by Shayan Manzar

   This paper tracks the jurisprudential development of Article 184 (3) of the Constitution of Islamic Republic of Pakistan, across 941 cases from 1973 to 2019. The purpose of this consolidated research paper is to trace the origins of the suo motu power, while highlighting its obvious textual absence. For this purpose, this paper synthesises data on the Supreme Court's reading of the procedural

requirements of Article 184 (3) during three time periods: The pre-Darshan Masih, the Darshan Masih, and the post-Darshan Masih eras. The study highlights the Supreme Court's varied reading of Public Interest Litigation as a legal tool and inconsistent deployment of statutory interpretational techniques. Finally, this paper analyses the implications that an expansive interpretation and complete subversion of Article 184 (3)'s procedural requirements has had on the dissemination of fundamental rights, doctrine of separation of powers, and the Court's questionable role as a framer of public policy.

4. **KING'S LAW JOURNAL**
   https://www.tandfonline.com/doi/pdf/10.1080/09615768.2021.1885326
   THE RULE OF (SOFT) LAW by Stephen Daly

   The COVID-19 pandemic has forced governments around the world to become innovative in how they carry out their functions. In particular, they need to respond speedily to developments as the scientific evidence evolves. Rules for regulating conduct accordingly need to constantly evolve. The 'golden met-wand' of law is not particularly well-tuned to assist in such regulation other than at a level of generality. It is unsurprising accordingly that governments have had to 'supplement' legal provisions with soft law. There is nothing novel about this, but it does raise important questions about the nature of domestic soft law, what role it should play and whether the UK government's use of it during the period of the pandemic has been appropriate.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-10-2021 to 31-10-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Waqas ur Rehman alias Moon v. The State etc
Criminal Petition No. 796-L of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._796_l_2021.pdf

Facts: Definite finding of guilt has been given by the Investigating Officer against the petitioner who is seeking pre-arrest bail.

Issue: Whether the ipsi dixit of police is binding on the courts?

Analysis: The accusation against the petitioner was otherwise found correct during the course of investigation and as such a definite finding of guilt has been given by the investigating officer against the petitioner. We are conversant with the fact that ipsi dixit of the police is not binding on the Courts but it has persuasive value.

Conclusion: The ipsi dixit of the police is not binding on the Courts but it has persuasive value.

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2. **Supreme Court of Pakistan**
Zafar Iqbal, Mazhar Hussain & Muhammad Saleh v. The State, etc.
Criminal Petition No. 1145-L of 2020
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1145_l_2020.pdf

Facts: Pre-arrest bail granted to petitioners by learned Additional Sessions Judge was cancelled by the High Court.

Issue: Whether the benefit of reasonable doubt can be extended even at bail stage?

Analysis: Our judicial system has evolved beside others the concept of "benefit of reasonable doubt" for the sake of safe administration of criminal justice which can not only be extended at the time of adjudication before the trial court or court of appeal rather if it is satisfying all legal contours, then it must be extended even at bail stage which is a sine qua non of a judicial pronouncement.

Conclusion: Benefit of doubt must also be extended at bail stage, if it satisfies all legal contours.

3. **Supreme Court of Pakistan**
Asfandiyar v. The State, etc.
Criminal Petition No.1001 of 2016
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1001_2016.pdf

Facts: In a murder case, petitioner was convicted and sentenced to life imprisonment on the basis of solitary statement of a witness.

Issue: i) Whether law requires a particular number of witnesses to prove a criminal charge?
ii) What is the legal nature of rule of corroboration?

Analysis: i) Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge.
ii) Corroboration is a rule of prudence and not law and cannot be invariably insisted in every case.

Conclusion: i) Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge.
ii) Corroboration is a rule of prudence and not law and cannot be invariably insisted in every case.

---

4. **Supreme Court of Pakistan**
Muhammad Khan v. Iqbal Khan & another
Criminal Petition No.687 of 2020
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._687_2020.pdf

Facts: The High Court, ignoring respondent's absconsion, granted him bail in a murder case.

Issue: Whether the absconsion may be taken into consideration at bail stage?

Analysis: Though the absconsion by itself is not proof of guilt nor insurmountably stands in impediment to release of an offender if otherwise a case for grant of bail is made out, nonetheless, it is a circumstance which cannot be invariably ignored without having regard to peculiarity of circumstances in each case as there are situations that possibly entail consequences.

Conclusion: It is a circumstance which cannot be invariably ignored without having regard to peculiarity of circumstances in each case as there are situations that possibly entail consequences.

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5. **Supreme Court of Pakistan**
Haji Shah Behram v. The State and others
Criminal Petition No.893 of 2020
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._893_2020.pdf

Facts: Order of release on post arrest bail by High Court was assailed in the august Supreme Court with the contention that there was no occasion for the High Court to release the respondents on bail as the statements of the witnesses supported by medical evidence and investigative conclusions, squarely constituted "reasonable grounds" within the contemplation of section 497 of the Code of Criminal Procedure, 1898, standing in impediment to their release on bail in the absence of any space admitting consideration for "further inquiry", a sine qua non, for favourable exercise of discretion.

Issue: What is "further inquiry"?

Analysis: Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial subsequently after evaluation of evidence1". Similarly, "mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection 2 of section 497 Cr.P.C. Expression "further inquiry" is a concept far from being confounded in subjectivity or to be founded upon denials or parallel stories by the defence; it requires a clear finding deducible from the record so as to be structured upon a visible/verifiable void, necessitating a future probe on the basis of material hitherto unavailable.

Conclusion: See above.

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6. **Supreme Court of Pakistan**
Resham Khan etc v. The State
Criminal Petition No.950 of 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._950_2021.pdf

Facts: Petitioners were denied post arrest bail despite of this fact that they were declared innocent by police and there were contradictions in ocular account and medical evidence. Moreover, complainant had also filed complaint with different allegations.

Issue: How tentative assessment of material available on the record should be made at bail stage?

Analysis: At the bail stage the court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything in the nature of a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un-rebutted, may lead to the inference of the guilt of the accused.

Conclusion: The concept of further inquiry is elaborated above.

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7. **Lahore High Court**
Dr. Imran Fareed Khan etc. v. University of the Punjab, Lahore etc
Writ Petition No. 31629 of 2014
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5707.pdf

Facts: The Higher Education Commission of Pakistan (HEC) introduced Overseas Ph.D Scholarship under the Faculty Development Programme in the year 2005. Respondents No.5 & 6, who were working as Deputy Registrar (Network) and Deputy Registrar (System) in the University of the Punjab (the University) respectively, were also given benefit of the Scholarship Programme. On completion of their Ph.D Degrees, respondents No.5 & 6 rejoined the University in the year 2011/2012 where-after they were appointed as Assistant Professors in the department of Electrical Engineering on ad-hoc basis. Further, the appointment of respondents No.5 & 6 was actuated w.e.f. 30.12.2006. As a result, they became senior to the petitioners. Being aggrieved of grant of benefit of the Scholarship Programme to respondents No.5 & 6 the petitioners filed this petition.

Issue: Whether writ of quo-warranto is maintainable in collateral proceedings?

Analysis: The Hon'ble Court while relying on (PLD 2002 SC 853) (PLD 2018 SC 114) held that it is well settled by now that writ of quo-warranto is not maintainable in collateral proceedings and to settle their personal vendetta.

Conclusion: It is well settled by now that writ of quo-warranto is not maintainable in collateral proceedings.

8. **Lahore High Court**
Naveed Masood Malik.v. Bank Alfallah Limited and others
RFA No.338 of 2015.
Mrs Justice Ayesha A. Malik and Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2021LHC5307.pdf

Facts: The bank instituted a recovery suit. Application for leave to defend of the appellant and others was dismissed and the judgment and decree was in favour of the bank. Regular first appeal has been filed under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 by the appellant for calling into question the judgment and decree passed by the banking court.

Issue: What are the standards which guide the banking court for grant of leave under the Financial Institutions (Recovery of Finances) Ordinance, 2001?

Analysis: The standard that guides the banking court for grant of leave under the Ordinance is much more stringent than the one provided under Order XXXVII CPC. Under section 10(8) of the Ordinance, the opinion formed by the banking court for grant of leave is dependent on the contents of the plaint, the application for leave to defend and the reply thereto. Correspondingly, section 10 (3) (4) & (5) stipulate that the application for leave to defend shall contain a summary of the substantial questions of law as well as fact on which evidence needs to be recorded in the opinion of the defendant. It furthermore requires the application for leave to defend to state (a) the amount of finance availed by the defendant from the financial institution; the amounts paid by the defendant to the financial institution and the dates of payments; (b) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution; and (c) the amount if any which the defendant disputes and facts in support thereof. The defendant is required to append all the documents which in his opinion support the substantial questions of law or fact raised by him. Sub-section (6) of section 10 imposes penal consequence of dismissal of the application for leave to defend in case of failure by the defendant to show compliance to the conditions attached by sections 10 (3) (4) & (5) of the Ordinance. The banking court at the leave stage is not obliged to only look at the defence of the defendant for making up its mind rather it is required to consider the entire pleadings of the parties including the replication to the application for leave to defend and by extension the finance documents and the statement of account. The quality of defence must be of such a nature as to carry some plausible degree of conviction. In other words, the defence raised by the defendant must be more than an arguable case. Obviously, the facts of each case would vastly differ, and the banking court is required to evaluate the same in its decision to grant or refuse leave to the defendant. It is not the function of the banking court at the leave stage to be concerned about the evidence for determining the truth of the defence, but its task is to decide whether there is a genuine issue for trial. There can of course be instances where the banking court while refusing leave to the defendant for its failure to present a

genuine, bona fide and substantial defence may still require the plaintiff to establish its case by evidence, oral as well as documentary.

Conclusion: The banking court is bound to consider in totality the case set up by the plaintiff and the defence of the defendant in making a determination that a substantial and genuine question of fact has been raised on the basis of the available record requiring trial for its decision thereby denying a summary judgment in favour of the plaintiff.

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9. **Lahore High Court**
Khan Construction Company v. Punjab Province through Secretary HUD and PHED Government of the Punjab, Lahore etc
WP No.61452/2021
Mrs. Justice Ayesha A. Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC5320.pdf

Facts: The petitioner has impugned the act of the disqualifying his pre-qualification technical bid without specifying any reasons and without giving the petitioner an opportunity to improve upon its technical bid. The basic dispute between the parties is with regard to the procedure followed by the respondents for the single stage two envelope tender notice with respect to the bid.

Issue: i) Whether the procuring agent is duty bound to inform the reasons of disqualification of technical bid?
ii) What is difference between the single stage two envelope bidding and the two stage bidding process?
iii) Whether remedy under Procurement Rule 67 is available in case of disqualification of technical bid?

Analysis: i) Rule 17(3) merely requires that the contractor is informed as to whether it has been prequalified or not and therefore the procuring agent is not required under Rule 17 to provide for reasons of disqualification. In the event that a bidder wants to know the reasons, it can apply to the procuring agent for the reasons which the procuring agent shall then communicate to the said bidder.
ii) The single stage two envelope bidding process is designed, such that the bidders submit two envelopes simultaneously, one showing the technical proposal and the second containing the financial proposal. The procuring agent first evaluates the technical proposal without reference to the financial proposal or the price and bidders who do not conform to the technical requirements as specified are rejected being deficient. The basic difference between the single stage two envelope bidding and the two stage bidding is that in the single stage bidding procuring agent is clear about its technical requirements and needs to evaluate price proposal of those bidders who are technically sound and meet the requirements. However, where it is two stage bidding process, in that case the bidders can be given an opportunity to meet the technical requirements which are

prescribed under the Rules in terms of Rule 38(2)(b) and (c). In the two stage process, there is room to improve and discuss technical requirements whereas in the single stage, the technical requirements are specific and need to be met with.
iii) As per Rule 67, any bidder feeling aggrieved by any act of the procuring agent after submission of its bid may lodge a written complaint not later than 10 days after the announcement of the bid evaluation report. This means that where a bidder participates in a single stage two envelopes bidding procedure and is technically disqualified, remedy under Rule 67 is available to such bidder to file its complaint not later than 10 days after it has asked for the reasons for rejection of his technical bid from the procuring agent.

Conclusion: i) The procuring agent is not duty bound to inform the reasons of disqualification of technical bid.
ii) In the single stage bidding procuring agent is clear about its technical requirements while in two stages bidding process the bidders can be given an opportunity to meet the technical requirements.
iii) The remedy under Procurement Rule 67 is available in case of disqualification of technical bid.

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10. **Lahore High Court**
Pepsi Cola International (Private) Limited v. Federation of Pakistan through Secretary Revenue Division, Islamabad etc.
WP No.21602/2021
Mrs. Justice Ayesha A. Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC5626.pdf

Facts: A show cause notice is issued under section 161 of Income Tax Ordinance with respect to the tax year 2014. As per the notices, the petitioner has been asked to provide documentary evidence of certain transactions and details of payments called for in the show cause notices. According to petitioner, in terms of Section 174(3) of the Ordinance, the taxpayer is to maintain accounts and documents for six years after the end of the tax year. Therefore six year period expired on 31.12.2019 and the petitioner is not required to maintain any accounts or documents which are now being asked for by the respondents.

Issue: i) Whether the taxpayer can be compelled to produce documents beyond six years in terms of Section 174(3) of the Ordinance?
ii) Whether the tax payer can be rendered liable for want of documentary evidence and account on delayed action taken by Tax Authorities?

Analysis: i) The taxpayer cannot be compelled to produce documents which the statute does not require it to maintain beyond six years in terms of Section 174(3) of the Ordinance. The purpose of setting a time limit and maintaining accounts and documents is to ensure that proceedings under the Ordinance are held within time and where there is a delay, the obligation then rests on the department being the relevant Commissioner to justify the cause delay and the reasons for seeking

documents beyond the six year period. There lies a burden on the department to justify delayed proceedings, especially in view of Section 174(3) of the Ordinance.

ii) The Commissioner is not barred from taking action under Section 161 beyond the six year period, they will have to justify the late action taken and determine the liability on the basis of the information provided if at all possible but cannot penalize the taxpayer for not producing any documentary evidence. In this regard, it is clarified that the department has to discharge their burden before declaring any liability and cannot simply conclude that for want of documentary evidence and accounts, the taxpayer is rendered liable. Essentially the action under Section 161 of the Ordinance should have been taken at the right time and any delayed action means that the burden is on the Commissioner to justify the demand raised and the imposition of any liability.

Conclusion: i) The taxpayer cannot be compelled to produce documents which the statute does not require it to maintain beyond six years in terms of Section 174(3) of the Ordinance.

ii) The tax payer cannot be rendered liable for want of documentary evidence and account on delayed action taken by Tax Authorities.

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11. **Lahore High Court**
Bank Alfalah Limited v. Punjab Small Industries Corporation
R.F.A No.29881/2017.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC5648.pdf

Facts: The regular first appeal is directed against the judgment and decree dated passed by learned Civil Court, Lahore whereby suit filed by respondent against the appellant for recovery of Rs.8,01,78,996/- alongwith profit at the market rate from the date of maturity of Anmol Deposit Certificates purchased on 04.7.2002 till its realization was decreed in favour of the respondent.

Issue: i) What is difference between an “offer” and “an invitation to treat”?

ii) What is difference between alteration and novation of contract?

Analysis: i) The test deduced is that if the statement or act contemplates that further negotiations will take place, then the statement or act is not binding but merely a preliminary communication before a definite offer is made. Such communication is not an “offer” but an “invitation to treat”. The party making invitation to treat does not make an offer but invites the other party to do so. However, proposal made by a person in response to the invitation to treat when accepted constitutes a promise within the meaning of section 2(b) of the Contract Act.

ii) There is difference between alteration and novation of contract in section 62 of the Contract Act. The Novation is the complete substitution of the original contract with a new contract. The original contract remains no more in existence

and the parties are not required to perform that. Contrarily an alteration of a contract is variation, modification or change in one or more respects which introduces new elements into the details of the contract, cancels some of them but leaves the general purpose and effect undisturbed. Generally, the modifications are read into and become part of the original contract. The original terms also continue to be part of the contract and are not rescinded and/or superseded except in so far as they are inconsistent with the modifications. However, those of the original terms which cannot make sense when read with the alterations must be rejected.

Conclusion: i) If statement or act contemplates further negotiations such communication is not an offer rather invitation to treat. Whereas proposal made by a person when accepted constitute a promise.

ii) Novation is complete substitution of original contract whereas alteration of contract is variation, modification or change of some terms.

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12. **Lahore High Court**
Chief Officer, TMA, Vehari v. Abdul Jabbar etc.
Review Application No.24/2019
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC5343.pdf

Facts: The petitioner sought review of order through which the writ petition has been disposed of, on the conceding statement made by Legal Advisor of the Tehsil Municipal Administration (the applicant).

Issues: i) Whether legal advisor of a government department is legally competent to make conceding statement? If no, can a decision given on the basis of same be reviewed?

ii) Whether delay can be overlooked and condoned to rectify a wrong or void order?

Analysis: i) Vide notification No.F.5(2)/2003–AGP dated 27.05.2003, a Law Officer is not only debarred from making a conceding statement before the Court, unless written instructions are available with him, but it is also mandatory to produce an officer not below the rank of Grade-17 to appear before the Court and verify and reiterate the same. The sensitivity of the matter can be further gauged from the fact that it is also obligatory on part of the Court to record presence of such officer in the order and to make the written instructions part of the record of the Court. These recommendations got judicial approval from the Hon’ble Supreme Court in case of Faisalabad Development Authority supra and hence, becomes binding upon this Court in terms of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973… It is now settled position of law that all state organs including the courts are bound to protect state exchequer under the doctrine of trust and if consent is given in defiance of any legal principle settled by the Hon’ble Supreme Court, resulting in the loss to exchequer, such an error can always be rectified by

this Court.

ii) It is worth mentioning that no limitation runs in cases where the order is void. Where important facts have escaped the notice of the Court and state exchequer is likely to suffer loss, this Court in its inherent jurisdiction can overlook and condone the delay to rectify the wrong. Therefore, even if there is delay in the instant matter, the same is condoned in view of the fact that the Court has not looked into the lawful authority of the Legal Advisor to make a conceding statement.

Conclusion: i) Legal advisor of a government department is not competent to make conceding statement, unless written instructions are available with him, as well as an officer not below the rank of Grade-17 also appears before the Court and verifies and reiterates the same. Therefore, a decision given on the basis of such statement can be reviewed.
ii) Delay can be overlooked and condoned to rectify a wrong.

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13. **Lahore High Court**
State Life Insurance Corporation v. Mst. Bibi Reema
Insurance Appeal No.178/2021
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC5373.pdf

Facts: This appeal impugns judgment and decree of the Insurance Tribunal, whereby the suit of the respondent for recovery of insurance claim under Section 118 of the Ordinance was allowed.

Issues: i) Whether production of documents and their admissibility as well as the proof and probative value carried by such documents are same things?
ii) How the documents, which are not copies of the judicial record, should be received in evidence?
iii) When the provision of Section 79 of the Insurance Ordinance, 2000 can be invoked?

Analysis: i) It is well-coalesced and deeply-embedded position of law that production of documents and their admissibility as well as the proof and probative value carried by such documents are entirely two different things and should never be used or construed interchangeably. For proving veracity of a document, the person who authored it must depose before the court in support of the contents, otherwise such document can merely be taken into consideration for the purpose of showing that such a document was issued but whether the contents of the same are correct or not, such facts cannot go into the evidence unless the author of the document deposes before the court and faces cross-examination. Once a document is produced as a piece of evidence, it has to undergo the crucible of objective scrutiny in terms of Article 78 of the Qanoon-e-Shahadat Order, 1984. Mere production of a document neither lends any credence nor confers any probative

value to it.

ii) In Muhammad Zakria and 3 others v. Bashir Ahmad (2001 CLC 595 Lahore), this Court has held that the documents, which are not copies of the judicial record, should not be received in evidence, without the proof of the signatures and handwriting of the person alleged to have signed or written the instrument, even if, such documents are brought on record, are accepted without objection.

iii) It is correct that non-disclosure or wrong declaration of any material information can entitle the appellant to invoke Section 79 of the Ordinance to repudiate the contract of insurance, however, the said provision has to be interpreted in a reasonable manner… In Indian Jurisdiction, Section 45 of the Insurance Act, 1956 is in pari materia with Section 79 of the Ordinance, and in Life Insurance Corporation of India and Ors. v. Asha Goel and Ors.. (2001) 2 SCC 160), the held that on a fair reading of Section 45 it is clear that it is restrictive in nature and the burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so, there is no question of the policy being avoided on ground of misstatement of facts and repudiation of a policy should be done with extreme care and caution and not in a mechanical and routine manner.

Conclusion: i) Production of documents and their admissibility as well as the proof and probative value carried by such documents are entirely two different things and should never be used or construed interchangeably.

ii) The documents, which are not copies of the judicial record, should not be received in evidence, without the proof of the signatures and handwriting of the person alleged to have signed or written the instrument.

iii) Non-disclosure or wrong declaration of any material information can entitle the appellant to invoke Section 79 of the Ordinance to repudiate the contract of insurance; however, the said provision has to be interpreted in a reasonable manner.

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14. **Lahore High Court**
Irfan Rasheed v. Muhammad Muazim, etc.
R.F.A. No.9641 of 2020
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5187.pdf

Facts: The instant appeal calls into question order of the learned Civil Judge, whereby the suit of the appellant was dismissed for non-deposit of balance sale consideration.

Issue: Whether the warning that in case of failure to deposit balance consideration as ordered earlier the order shall be passed in accordance with law includes order dismissing the suit or specific warning regarding dismissal of suit must be administered?

Analysis: The appellant was ordered to deposit remaining sale consideration by the learned Civil Judge as a condition for grant of status quo order. The repeated caution and

last opportunities given by the learned Civil Judge to the appellant for non-deposit of the balance sale consideration were couched in general terms of reiterating that in case of failure to deposit, "an order would be passed in accordance with law". In the context that the order of deposit was made as an attendant condition to the stay order, prospective passage of such an order under caution and in accordance with law, it appears, could be interpreted to entail the vacation of the status quo order qua alienation granted in favour of appellant. No explicit and unequivocal warning of dismissal of suit as specific penal consequence of non-deposit of balance sale consideration was recorded by putting appellant on notice nor could anything to this effect be shown to us by the learned counsel for the respondents. In the circumstances the measure of dismissing the suit itself on non-deposit of the balance sale consideration does not appear to be readily covered by the phase "order shall be passed in accordance with law" repeatedly used by the learned Civil Judge… Suit cannot be dismissed for non-deposit unless the Trial Court specifically directs deposit of remaining sale consideration and puts the plaintiff on explicit notice to this effect bearing clear warning that non-deposit of balance sale price shall be deemed to be his inability of performing his part of contract as envisaged under section 24(b) of the Specific Relief Act, 1877.

No such clear, unambiguous and pointed warning was ever issued to the appellant in this case as to explicitly notify the appellant of the penal effect of dismissal of suit. In the circumstances we find that the order of dismissal passed by the learned Civil Judge in the peculiar circumstances is not sustainable.

Conclusion: The order that an order would be passed in accordance with law due to non-deposit of balance consideration does not include dismissal of suit. Clear, unambiguous and pointed warning must be issued to the appellant as to explicitly notify the appellant of the penal effect of dismissal of suit.

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15. **Lahore High Court**
Commissioner Inland Revenue (Zone-I), RTO, Rawalpindi v. Mr. Tariq Mahmood, Proprietor Standard Medical Store
ITR No. 25 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC5698.pdf

Facts: Respondent filed his Returns for the tax years 2011, 2012 and 2013 declaring his net profits, which were treated as Assessment Orders under section 120(1) of the "Ordinance". The petitioner found assessments erroneous and prejudicial to the interest of revenue on the ground that the taxpayer had allegedly failed to pay the minimum tax under section 113 of the "Ordinance" properly while unlawfully claiming rebate under Clause 8 of Part III of Second Schedule to the "Ordinance", therefore, the same were amended accordingly in exercise of jurisdiction under section 122(5A) of the Ordinance.

Issues: i) Whether definition of a word given in one statute can be invoked for interpreting the same term used in other statute?

ii) Whether taxpayer, who is not a distributor of pharmaceutical products, is entitled to rebate at the rate of 80% of the minimum tax payable u/s 113 of the Income Tax Ordinance, 2001?

Analysis: The answer lies in negative in view of the law enunciated by the august Supreme Court in the case of Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz (PLD 2011 SC 260) in the following terms: It is settled law that the definition clause or section in a statute is generally meant to declare what certain words or expressions used in that statute shall mean, the obvious object of such clause is to the necessity of frequent repetition in describing all the subject matter to which the word or expression so defined is intended to apply. It is a rule of interpretation of laws that when a word is given a meaning in another statute of the Parliament (statute) it does not mean that it shall ipso facto have the same meaning in another Act of the Parliament, except in cases where on the rule /principle of legislation by reference, a definition of an earlier law may be borrowed or adopted as definition construing the operative provisions of the later law. A definition appearing in one Act cannot be used to interpret the same word appearing in another Act, until it is specifically so referred and borrowed with clear command of law. Because, the context, the purpose, the object and the requirements of every statute may vary from other; the definition of a word from one statute cannot be safely imported to another, which if so resorted to without ascertaining the clear intention of the legislation by following the rules of interpretation, just as a matter of routine and course, it shall not only be hazardous, rather may distort and frustrate the object of the law and violate legislative intent which is absolutely impermissible in law.

ii) The eighty percent reduction in the minimum tax rate under Clause 8 in Part III of Second Schedule to the "Ordinance" has been allowed only to a distributor of (i) pharmaceutical products (ii) fertilizers and (iii) consumers goods including fast moving consumers goods. The specific classes of products mentioned in Clause 8 ibid are not of the same genus or family but are different and independent from each other. It is well settled that where specific words enumerating subjects and classes of products which greatly differ from each other, the words will have a different and independent meaning without taking any colour from the spec of words preceding or following it… Accordingly, the second question proposed in these ITRs is answered in negative, in favour of the Applicant and against the respondent. It is held that while allowing appeal of the respondent through the impugned order, learned ATIR has erroneously found the pharmaceutical products to fall within the fast moving consumer goods, therefore, the respondent was not entitled to any rebate on that basis.

Conclusion: i) Definition of a word given in one statute cannot be invoked for interpreting the same term used in other statute.

ii) A taxpayer, who is not a distributor of pharmaceutical products, is not entitled to rebate at the rate of 80% of the minimum tax payable u/s 113 of the Income Tax Ordinance, 2001.

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16. **Lahore High Court**
Wasi Haider v. The State
Criminal Appeal No.281 of 2019
Murder Reference No.29 of 2019
The State v. Wasi Haider
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC5635.pdf

Facts: Appellant filed criminal appeal against the judgment wherein he was awarded death sentence in a murder case whereas learned trial court sent reference under section 374, Cr.P.C. for the confirmation or otherwise of death sentence awarded to him.

Issue: i) What are legal requirements and purpose of preparation of inquest report by I.O and what will be the effect of not mentioning the brief facts of occurrence in inquest report?
ii) Whether omission to prove source of light at place of occurrence can damage the case of prosecution?
iii) What is the effect of conflict between medical and ocular evidence?

Analysis: i) Investigating Officer is to draw a report in duplicate and in prescribed format mentioning therein the apparent cause of death, marks of violence observed on the corpse, the weapon with which these appear to have been inflicted and the brief facts of the case gathered from the witnesses. The corpse is to be forwarded to Medical Officer for autopsy along with a report prescribed to be prepared in the format mentioned in 25.39 of Police Rules, 1934. The purpose of providing inquest report to doctor before the postmortem examination is designed at countering the possibility of tampering with police record. Even otherwise, it is well entrenched principle of law that if statute or rule framed therein provides a thing to be done in a particular manner it should be done in that manner alone. Such rule emanates from maxim "a communi observantia non est recedendum." It goes without saying that impartial, defective and dishonest investigation paves way to false implication of an innocent person and gives vent to injustice. On the relevant page of inquest report, neither the name of any perpetrator is mentioned nor the manner in which the crime occurred is stated even tentatively. This omission gives a strong clue that the FIR was not registered till the holding of postmortem examination.
ii) The absence of light at the crime scene gives rise to the possibilities of false implication through mistaken identification and incorrect attribution of role to an accused. For this reason, emphasis is laid by the courts that in cases of night occurrences, the prosecution must prove the source of light. We are not oblivious

of the fact that this is not a statutory requirement to prove the source of light, rather is a rule of caution with object to administer justice beyond shred of all uncertainties. Prosecution badly failed to satisfactorily explain the source from which light was emanating so as to provide an opportunity to the witnesses to see all the necessary details of the occurrence. Such omission inexorably damaged the case of prosecution to great extent.

iii) As a necessary consequence, it can unambiguously be held that glaring anomaly is discernable from the ocular account and medical evidence. It goes without saying that purpose of collecting medical evidence in a case against human body, primarily, is aimed at providing assistance to the court in arriving at just conclusion by using it for scrutinizing the ocular account. Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

Conclusion: i) The legal requirements and purpose preparation of inquest report by I.O and effect of not mentioning the brief facts of occurrence in inquest report are discussed in para (i) of analysis.

ii) Omission to prove source of light at place of occurrence can damage the case of prosecution.

iii) Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

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17. **Lahore High Court**
Mian Furqan Idrees etc. v. JS Bank Limited etc
R.F.A No.208787of 2018
Mr Justice Muhammad Sajid Mehmod Sethi, Mr. Justice Muhammad Raza Qureshi,
https://sys.lhc.gov.pk/appjudgments/2021LHC5476.pdf

Facts: The banking suit for recovery was decreed along with cost of funds and costs of the suit against the Principal Debtor as well as against guarantors. The guarantors have assailed the decree.

Issue: i) Whether the "New Management of borrower/company falls in definition of customer and thus it is necessary to implead new management of borrower/company in banking suit for recovery?

ii) Whether guarantors are discharged of their liability if new management took over Borrower Company?

Analysis: i) The members of the New Management did not fall within the definition of 'customer' as defined under Section 2(c) of FIO, 2001, as neither the finance was extended by the Bank in their favor nor any of them stood guarantors or surety for the repayment of finance or defaulted in performance of their obligation towards the Bank. As they are not customers who would have committed any default nor any finance was extended by the Respondent Bank to the members of the New

Management nor they ever defaulted in the fulfillment of any obligation Therefore, their impleadment was neither necessary nor proper, rather as per mandate contained in Section 9 of FIO, 2001 the suit filed by the Bank was not maintainable against the said members of the New Management.
ii) In terms of Section 128 of the Contract Act, 1872, guarantor and principal debtor are jointly and severally liable to pay the outstanding amount to the creditor. If there is no restructuring or rescheduling between the Bank and the New Management, then the liability of guarantors never stood discharged.

Conclusion: i) The new management of the borrower Company does not fall in the definition of customer. Thus, it is neither necessary nor proper to implead new management of borrower/company in banking suit for recovery.
ii) The guarantors are not discharged of their liability if new management took over Borrower Company.

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18. **Lahore High Court**
M/S Travel International Limited etc. Versus Habib Bank Limited, etc.
Case No. EFA No.83 of 2016
Mr Justice Muhammad Sajid Mehmod Sethi, Mr. Justice Muhammad Raza Qureshi,
Microsoft Word - Final-EFA No.83 of 2016 and connected Apeals.docx (lhc.gov.pk)

Facts: The suit for recovery was filed by Bank against the appellants. The suit was ex-parte decreed. The Bank filed the execution proceedings, and property of appellant was auctioned. Upon knowing about auction, the appellants approached the court and succeeded to set aside exparte decree on the ground that Bank has not provided their known address in court. Thereafter the appellants approached the Bank for settlement of their liability which was ultimately done. The property of appellant was redeemed and suit was dismissed being infructuous. The auction purchaser challenged the order of dismissal of suit but his application was dismissed by Banking Court. But his appeal before Sindh High Court was allowed. The appellants challenged the order before August Supreme Court from where obtained direction for executing court to decide the objection. Their execution petitions were dismissed. Hence this execution first appeal.

Issue: i) What is applicability of legal proposition that "debtor seeks the creditor"?
ii) Whether the article 166 of limitation apply in matters of fraud or willful concealment?
iii) Whether auction proceedings are liable to be set aside if it the court fixed the throwaway reserved price?

Analysis:

i) There is no cudgel to the legal position that 'debtor seeks the creditor' but this cannot be stretched to the detriment of those who had not lost their whereabouts. The principle could be applied where the Appellants had lost their whereabouts. In the instant case the Bank was in liaison with the Appellants. The moment the Appellants prima facie established that the Bank was aware of their foreign address, the Appellants stood absolved of their obligation. In such a case the debtors shall rather be deemed to have chased the creditor Bank.

ii) This obviously cannot be even conceived that someone may seek remand of order emanating from the proceedings to which he had no knowledge. It, thus, leads to a conclusion that when the Judgment Debtor is kept away from the proceedings against him such an ex parte decree, subsequent auction proceedings and confirmation of sale, the limitation would commence from the date of knowledge of the fraud or proceedings… In our tentative opinion it appears that Article 166 will be inapplicable in the facts and circumstances of the case and consequently period for filing of Objection Petition within 30 days is inapplicable on the Appellants and their plea and allegation of fraud in conducting and holding the subject matter auction proceedings and challenge in respect thereof fall under the residuary provision of Article 181 of the Limitation Act, 1908 for which the period of limitation has been prescribed as three (03) years.
iii) If the judgment debtor is not present before the Executing Court it was still an obligation of the Executing Court to determine the reserve price according to criteria of applicable provisions of law and dicta laid down by the Hon'ble Superior Courts of the Country… When the land in question was indeed sold at a throwaway price and ex facie causing substantial injury and loss to the Judgment Debtors. This seems to be a classic case of Order XXI rule 90 CPC. The learned Executing Court should have considered this aspect of the matter even in absence of the Appellants.

Conclusion: i) The principle could be applied where the creditor had lost the whereabouts of debtor.
ii) The Article 166 of limitation Act is inapplicable on the plea and allegation of fraud and thereof falls under the residuary provision of Article 181 of Limitation Act,
iii) The auction proceedings are liable to be set aside if it the court fixed the throwaway reserved price.

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19. **Lahore High Court**
Sultan Ahmad v. District Police Officer etc
Crl. Misc. No.54755/H/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5616.pdf

Facts: Habeas petition under 491 Cr.P.C was moved for recovery of a minor girl who was abducted and apparently forcibly married to the Respondent.

Issue: i) Scope of Section 491 Cr.P.C
ii) Whether age of puberty is considered to mean the same thing as sui juris?

Analysis: i) The Hon'ble Court by referring to august Supreme Court case reported as PLD 1972 SC 6 observed that section 491 Cr.P.C mandates two things: (a) the High Court shall deal with a person within its appellate criminal jurisdiction according to law; and (b) it shall set him at liberty if he is illegally or improperly detained. Further the court while referring to PLD 2002 Karachi 152, a Full Bench of the Sindh High Court drew a distinction between the terms "illegal" and "unlawful" and observed that the principal distinction between terms 'lawful' and 'legal' is that the former contemplates the substance of law, the latter the form of law. To

say of an act that it is 'lawful' implies that it is authorized, sanctioned, or at any rate, not forbidden by law. To say that it is 'legal' implies that it is done or performed in accordance with the forms and usages of law, or in a technical manner. Hence 'an unlawful act' generally includes an illegal act but in contradistinction it, inter alia, implies an act not authorized or sanctioned by law but forbidden by law, while an illegal act is one which is done or performed not in accordance with the forms and usages of law or in a particular manner directed by law in technical sense. The court discussed the nature of orders which could be passed under section 491 Cr.P.C which could either be (i) if the person is a minor, the court may make over his custody to the guardian and (ii) If the person is a major, whether the custody is public or private, the court must set him at liberty forthwith. Even in such cases the High Court may only regulate interim custody of the minors and leave the determination of final custody for the Guardian Judge as proceedings under section 491 Cr.P.C. are summary in nature and the court cannot determine legal status of the relationship between the parties.

ii) The phrase sui juris indicates inter alia, the capacity to manage one's own affairs. It also indicates an entity that is capable of suing and or being sued in legal proceeding in its own name. Correspondingly, the term 'majority' means the particular age at which a person has the legal capability to undertake certain acts for which he could be held responsible. According to the majority of jurists, this capacity is only attained at puberty. Moving forward there is a distinction between the two concepts. Puberty enables a person to exercise rights regarding marriage, dower, divorce and adoption provided under the Islamic law as per the rider clause contained in section 2 of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962. However he only acquires full legal competence when he reaches the age of majority stipulated by the Majority Act i.e. 18 years. Therefore, the term "sui juris" may be loosely applied when talking of one's capacity in respect of the aforesaid matters but it has its real application when one becomes a "full person" and the law permits him to manage his affairs in entirety.

Conclusion: The Hon'ble Court as discussed above spelt out the scope of section 491 Cr.PC viz a viz the orders which could be passed under this provision. Moreover it also emphasized the thin line of distinction between the terms sui generis and age of puberty in terms of the Muslim Personal Law.

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20. **Lahore High Court**
Muhammad Faizan Saleh Vs. The State etc.
Writ Petition No. 11984 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2020LHC4277.pdf

Facts: Through this petition under Article 199 of the Constitution of Pakistan, 1973, the Petitioner assailed his conviction and sentence passed by the Special Judicial Magistrate. The Petitioner and his co accused were produced before the Special

Judicial Magistrate where the Police requested that they might be remanded to judicial custody. During the proceedings they pleaded guilty whereupon the Special Magistrate taking “a lenient view” convicted them under section 5 of the Punjab Prevention of Gambling Ordinance, 1978 and imposed fine in the sum of Rs.5000/- each through a common order.

Issue: i) When a person accused of is produced for remand then whether the Magistrate in addition to recording his confessional statement under section 164 Cr.P.C. could also convict him at that stage even if he had confessed his guilt?
ii) Spirit of the procedure stipulated in sections 164, 342, 340(2) and 364 Cr.P.C
iii) Significance of Section 243 CrPC
iv) Whether a co accused who has not even challenged his conviction the Court would still be competent to quash his conviction and sentence in exercise of its revisional powers under sections 435 and 439 Cr.P.C?

Analysis: i) The police had produced the Petitioner before the Special Magistrate for judicial remand when he made the so-called confession. The Special Magistrate had no jurisdiction to convict him at that stage. Moreover, the Hon’ble Court observed that the Special Magistrate did not record the Petitioner’s statement at all what to talk of following the prescribed procedure and proceeded to convict him which was out-and-out unlawful.
ii) Sections 164, 340(2), 342 and 364 Cr.P.C. contain provisions for recording confessions and statements of accused persons. Section 164 may be invoked any time before the commencement of the inquiry or trial. On the other hand, sections 340(2) and 342 deal with the examination of the accused during the inquiry or trial. Section 364 prescribes the manner in which the examination is to be recorded. Sections 164, 340(2) and 342 Cr.P.C. all have distinct objects. Section 164 seeks to provide a method of securing a reliable record of statements of confessions made during police investigation which could be used during the inquiry or trial, if necessary. The object of section 342 is to afford an opportunity to the accused to explain his position in respect of the evidence brought against him during the inquiry or trial while section 340(2) enjoins that an accused, if he does not plead guilty, may give evidence on oath in disproof of the charges or allegations leveled against him or his co-accused. It was emphasized that recording of confession is a very solemn act and the magistrate must see that the requirements of section 164 are fully satisfied as the procedure adopted in determining the rights of the parties must at every step pass the test of fairness and procedural propriety and at all times must honour the law and the settled legal principles. Further the Hon’ble Court eloquently discussed the erstwhile salient featured of Section 164 as contained in Rule 4 of Chapter 13 Volume III of the Lahore High Court Rules and Orders. Further with regard to section 164 it was opined that it is not restricted only to confessions. The section says ‘any confession or statement’. It does not specifically mention any person whose confession or statement is to be recorded; it may be an accused or one who may

ultimately be an accused, or a witness capable of giving useful information relating to the offence. Again, the 'statement' may be a confession or it may not amount to a confession, or it may be partly confessional and partly exculpatory.
iii) There is divergence of opinion regarding the true import of section 243. Some authorities hold that section 243 does not impose any condition and an accused may confess his guilt at any stage of the trial. The second view is that when the charge is framed and the accused denies it the magistrate has to proceed with the trial. If he subsequently makes a voluntary confession, it shall be recorded in accordance with section 364 and put to him for his explanation under section 342 Cr.P.C. Such a confession does not amount to a plea of guilt within the meaning of sections 243 and the court cannot convict him on its basis alone. The third opinion is that if the accused denies the charge when he is indicted but pleads guilty when the trial progresses, the magistrate should require independent evidence to convict him. The last view is more widely accepted and even the Division Benches of this Court have approved it.
iv) There is a cornucopia of cases in which the courts exercised suo moto revisional jurisdiction and extended the benefit of its findings recorded in an appeal preferred by a convict to those co-accused who had not approached it.

Conclusion: The Hon'ble Court while discussing the scope and significance of sections 164, 342, 340(2), 364 and 243 CrPC observed that when a person accused of is produced for remand then the Magistrate in addition to recording his confessional statement under section 164 Cr.P.C. could not convict him at that stage even if he had confessed his guilt. Moreover the court while exercising its revisional powers under sections 435 and 439 Cr.P.C would be competent to quash conviction and sentence of a co accused who has not even challenged it.

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21. **Lahore High Court**
Rida Fatima v. Pakistan Medical Commission etc.
W.P No. 56763 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC5524.pdf

Facts: The petitioner challenged the procedure of National Medical & Dental Colleges Admission Test (MDCAT) 2021, on the ground that these were held throughout the country on different dates and not on a single date as provided under Section 18(1) of the Pakistan Medical Commission Act, 2020, so it must be declared ultra vires of the Act and be conducted afresh.

Issue: i) Whether not conducting of MDCAT examination on a single date throughout the country is illegal and ultra vires to Section 18 of the PMC Act?
ii) What are the grounds on which a subordinate legislation can be declared illegal and ultra vires?

Analysis: i) Perusal of Section 18(1) of the Act makes it abundantly clear that the expression "single admission test" refers to the fact that every student would only be allowed to appear in and sit for one MDCAT and the context and object of the Act shed light on the purpose underlying behind the condition laid down under the Act, which clearly suggests that the emphasis is on substance and not on form, which means that all the students must be adjudged on a single standard of testing and on a similar pattern of scoring with equal number of opportunity to participate in the exam in a single year and no preferential discrimination will be done in this regard. Perusal of Section 18(1) shows that the words **"on a date"** and the expression **"a single admission test"** contained therein do not implythat the same must be read conjunctively. The words "a single admission test" clearly denote a single attempt by every applicant; and, the words "on a date" undoubtedly mean the date approved by the Council. In this context, the submission made on behalf of learned counsel for PMC that single admission test means a centralized test across Pakistan has no force.

ii) Delegated legislation forms an important part of the statutory law, which expounds and explain the skeleton principles of the parent statute in order to achieve the purposes of the said legislation….. It is well established principle of interpretation that if delegated legislation is directly repugnant to the general purpose and object of the very Act, under which such powers were created and passed on, or if it is repugnant to any settled and well established principle of statute or result of excessive delegation then it can be declared *ultra vires*. However, delegated legislation cannot be questioned on the ground of mala fide or unreasonableness because there is a strong general presumption attached to its legality and the onus to prove otherwise will be on the person who asserts it to be against the statute.

Conclusion: i) The expression "single admission test" as used in Section 18 does not mean that such examination is to be conducted on a single day throughout the country rather the context of the provision clearly spell out the object of such condition as to enable an eligible candidate to participate in such an annually conducted examination only "single time in a year" and not specifically "on a single day throughout the country", so conducting the same on different dates but with single chance is not illegal or contrary to Section 18 of the Act.

ii) A subordinate legislation can be strike down if it is violative of fundamental rights guaranteed under the Constitution, if it is contravening with Constitutional provisions, if it is beyond the scope of delegate or if it is being contrary and beyond the scope of parent statute.

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22. **Lahore High Court**
Dilsons (Pvt.) Limited and others V. Security & Exchange Commission of Pakistan and another
C.O.No.62794 of 2020
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC5599.pdf

Facts: This petition has been filed by authorized representatives of the Petitioners for

obtaining sanction of this Court to a Scheme of Arrangement and for merger between the Petitioners by seeking approval from Securities and Exchange Commission of Pakistan and Competition Commission of Pakistan.

Issues: i) What is the Philosophy of Mergers Control?
ii) What is the scheme of merger in Pakistan?
ii) What is the duty of the court regarding Sanction of the Scheme of merger?

Analysis: i) Mergers and acquisitions are generally important for the economy as they can herald in efficiency, synergy and investment. They may help the companies to improve management, resources, research, development and technology. Similarly, they may also assist the companies to work quickly and smoothly, minimize disruptions, increase market share, innovate and adapt to emergent trends. However, some transactions can potentially lead to substantial lessoning of competition in the market thereby leading to uncompetitive pricing, fewer choices, drop in quality, or more barriers to entry in the market etc. This is particularly true in relatively uncontested markets (with less numbers of competitors) or where one or more merging parties hold dominance in the market. This underscores the importance of merger control as "the analysis of competition issues invariably requires an assessment of market power, and such an assessment cannot be conducted without an understanding of the economic concepts involved. The same is true of the types of behavior – for example cartelization, predatory pricing, discrimination, mergers – with which competition law is concerned."
ii) The mergers and acquisitions in Pakistan are primarily governed by the Companies Act 2017 (the "Act"), the Competition Act 2010 and the Competition (Merger Control) Regulations 2016. Sections 279 to 283 and 285 of the Act govern the procedure for merger in Pakistan. Section 279 of the Act empowers SECP to order a meeting of the creditors or members of the company where a "compromise" or "arrangement" is proposed between a company and its creditors or between the company and its members. If three-fourth creditors or members agree to such compromise or arrangement and if it is sanctioned by SECP, such compromise or arrangement becomes binding on the company, its creditors, its members and the contributories.

iii) By examining Sections 279 to 284 of the Act, it is clear where the Scheme is found to be reasonable and fair, at that moment in time it is not the sense of duty or province of the Court to supplement or substitute its judgment against the collective wisdom and intellect of the shareholders of the companies involved. Nevertheless, it is the duty of the Court to find out and perceive whether all provisions of law and directions of the Court have been complied with and when the Scheme seems like in the interest of the company as well as in that of its creditors, it should be given effect to. However the Court has to satisfy and reassure the accomplishment of some foremost and rudimentary stipulations that is to say, the meeting was appropriately called together and conducted… The

Court has the power to give effect to all the incidental and ancillary questions in the effort to satisfy itself whether the scheme has the approval of the requisite majority. It is not the function of the Court to examine whether there is a scope for better scheme. However, where the Court finds that scheme is patently fraudulent, it may not respond or function as mere rubber stamp or post office but reject the scheme of arrangement.

Conclusion: i) The philosophy of merger is to help the companies to improve management, resources, research, development and technology. Similarly, it also assists the companies to work quickly and smoothly, minimize disruptions, increase market share, innovate and adapt to emergent trends.
ii) See above;
iii) The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits.

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23. **Lahore High Court**
Muhammad Shahid v. The State
Criminal Appeal No.234 of 2020
Mr. Justice Ch. Abdul Aziz, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5543.pdf

Facts: The appellant sitting on the driving seat of Suzuki pick-up parked near a shop was apprehended. Ten cans were secured from the rear portion of Suzuki Pick-up, whereas 130 more were recovered from a shop upon the disclosure and pointing out of the appellant. All these cans were containing sulfuric acid, total weight of which was 6300-kilograms. The appellant was convicted and sentenced for commission of offence punishable u/s 9(c) of CNSA, 1997.

Issue: i) Whether a nexus between the accused and the vehicle as well as shop (place of recovery of narcotics) is required to be proved by prosecution?
ii) When the burden shifts upon accused to prove otherwise under section 29 of CNSA, 1997?
iii) Whether Section 9 of CNSA, 1997 is applicable regarding the recovery of sulfuric acid?

Analysis: i) Prosecution has to prove every bit of its case and as a necessary corollary, a nexus between the accused/appellant and the vehicle was incumbently required to be proved during trial by none other than the prosecution. For providing credibility to the recovery effected from shop, it was obligatory for prosecution to prove that appellant was in exclusive and absolute possession of the shop and success in this respect would have established a strong connection between the appellant and recovered substance. We are mindful of the fact that the expression “possession” denotes the power of a person to control the premises to the exclusion of all others and for this reason it is a factor to be proved in cases of CNS Act, 1997.

ii) In cases arising out of CNS Act, 1997, the primary onus is on prosecution to prove its case and such burden includes the obligation to establish a strong and undeniable nexus between the recovered substance and the accused facing trial. Only the success of prosecution in establishing a tie between the recovered substance and accused will bring in action Section 29 of CNS Act, 1997.
iii) When seen in the context of United Nations' Conventions of 1988, the sulfuric acid since is used for the manufacture of narcotic drugs or psychotropic substance, thus comes within the purview of controlled substance as defined in Section 2 (k) of CNS Act, 1997. Sulfuric acid is mentioned as controlled chemical in Schedule-V division II of Control of Narcotic Substances (Regulations of Drugs of Abuse, Controlled Chemicals, Equipment and Materials) Rules, 2001. Since sulfuric acid is used in preparing narcotic drugs, thus its unlawful possession comes within the purview of Section 6 of CNS Act, 1997.

Conclusion: i) A nexus between the accused and the vehicle as well as shop (place of recovery of narcotics) is required to be proved by prosecution.
ii) Only the success of prosecution in establishing a tie between the recovered substance and accused will bring in action Section 29 of CNS Act, 1997.
iii) Since sulfuric acid is used in preparing narcotic drugs, thus its unlawful possession comes within the purview of Section 6 of CNS Act, 1997.

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24. **Lahore High Court**
M/s Shifa Health Care Pvt. Ltd v. Special Judge (Rent), etc.
W.P. No.48322 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5679.pdf

Facts: The learned Special Judge (Rent) disposed of an ejectment application on the basis of compromise. He also ordered for eviction in execution proceedings. The petitioner filed this constitutional petition being aggrieved of the order passed in execution proceedings.

Issue: Whether an eviction order can be passed in execution proceedings when the eviction application had earlier been disposed of on the basis of compromise?

Analysis: There was no conditional ejectment order that was passed nor could it be assumed or inferred from bare reading of the order that the Rent Tribunal had any intentions to direct eviction of the tenant in case of breach of terms and conditions of the fresh rent agreement. In fact, the parties were satisfied by the new terms and conditions of lease and had agreed to abide by the same and in case of any violation of the fresh lease agreement, legally admissible remedy could not involve filing of execution proceedings directly but rather required filing of fresh ejectment application under section 19 of the Act. The learned Rent Tribunal without considering this aspect of the matter and without attending to the maintainability of the execution proceedings, mechanically issued warrants for

possession and, thereafter, enforced the same through police assistance which order were patently without lawful authority, jurisdiction and were legally untenable.

Conclusion: In absence of any ejectment order, an eviction order cannot be passed in execution proceedings when the eviction application had earlier been disposed of on the basis of compromise.

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25. **Lahore High Court**
Mst. Kamalan Bibi v. Province of Punjab, etc.
C.R. No.2682 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5348.pdf

Facts: Petitioner and her sister instituted a suit for declaration to challenge mutations, got sanctioned on the basis of oral gift, on grounds of fraud and collusion and being inoperative on their right of inheritance to the extent of their share in the property.

Issues: i) What are the necessary ingredients to establish oral gift?

ii) Whether a single plaintiff/ defendant can challenge a decree or order, in absence of other plaintiffs/ defendants?

Analysis: i) In cases where oral gift is claimed it is imperative for the beneficiary to allege foundational ingredients of the gift including time, date and place of the alleged gift in the pleadings and, thereafter, to prove the same. It is also necessary to disclose the names of witnesses in whose presence the alleged declaration and acceptance of oral gift was enacted. In the absence of such disclosure no evidence could be led and even if any evidence comes on record the same is liable to be ignored.

ii) Order XLI, Rule 4, C.P.C. envisaged that where there are multiple plaintiffs or defendants and decree appealed from proceeded on any ground common to all the plaintiffs or defendants, any one of the plaintiffs or defendants, as the case may be, could appeal from the whole decree and, thereupon, the appellate court could reverse or vary the decree in favour of all the plaintiffs or defendants. Order XLI, Rule 33, C.P.C also invests the court with the authority to make any order or pass any decree that ought to have been passed or made and to pass or make such further order or decree as the case may require and such authority could be exercised notwithstanding that the appeal was as to only part of the decree and may be exercised in favour of all or any of the parties, including respondents, though such respondents may not have preferred an appeal or file cross-objections.

Conclusion: i) It is essential requirement of law that the beneficiary should provide full particulars of oral gift in the written statement along with the names of the persons who were allegedly present at the time of making of oral gift.

ii) Where there are multiple plaintiffs or defendants and decree appealed from proceeded on any ground common to all the plaintiffs or defendants, any one of the plaintiffs or defendants, as the case may be, could appeal from the whole decree.

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26. **Lahore High Court**
Muhammad Abbas v. Raja Muhammad Ishaq
C.R. No.2069 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5363.pdf

Facts: The respondent filed a suit for pre-emption, which was dismissed by learned civil judge but was partially decreed by learned Addl. District Judge. The respondent and petitioner being co-sharers were ordered to hold suit property in equal shares.

Issues: How Talb-i-ishhad can be proved where receipt of notice of Talb-e-Ishhad is denied?

Analysis: It is a settled rule that where Talb-e-Ishhad is disputed and receipt of notice of Talbe-e-Ishhad is denied, it is for the preemptor to prove through credible evidence that the Talb was made in the presence of two truthful witnesses; notice of Talb-e-Ishhad duly attested by two truthful witnesses was sent through registered-post "Acknowledgement Due" and that a notice was received by the addressee, which undoubtedly requires the production and examination of postman.

Conclusion: Where Talb-e-Ishhad is disputed and receipt of notice of Talb-e-Ishhad is denied, the mode of proving the same is given in the preceding para.

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27. **Lahore High Court**
Meer Nawaz alias Meero v. The State
Criminal Appeal No.722/2017.
Mr. Justice Muhammad Amjad Rafiq, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC5278.pdf

Facts: In a case registered under section 365-B, 376, 302, 109 PPC, the trial court convicted an accused/appellant and awarded the sentence of death, while acquitting the co-accused. Against capital punishment, the appellant knocked at the door of Hon'ble Lahore High Court and preferred an appeal on the grounds, *inter alia*; the wrecked chain of custody protocols and confused PFSA reports cannot be made the basis for conviction. Besides, the trial court sent a murder reference for confirmation or otherwise of the death sentence.

Issues: i) What safety protocols are required for collecting, packaging, preserving, and dispatching samples for undertaking DNA forensic analysis and to make a forensic report to fulfill the criteria of a standard of proof in a criminal case?

ii) Whether a positive DNA forensic report prepared in disregard of safety protocols could be relied upon?
iii) What recourse is available to the prosecution if a forensic report prepared by the PFSA is either unclear or doubtful?

Analysis: i) In order to fulfill the criteria of a standard of proof in a criminal case, a forensic report must be prepared by following the safety protocols developed for the purpose of collecting, packaging, preserving, and dispatching samples. These include the Rules provided therein Chapter 18, Rule B, Volume III of High Court Rules & Orders, and Rule 25.41 of the Police Rules 1934.
ii) The failure of handing over articles to the Moharir and the Investigating Officer and their direct submission by a police official at the PFSA makes the safe custody of parcels highly doubtful. Moreover, when there is a doubt regarding the integrity of a parcel containing the vaginal swabs, detection of DNA was not sufficient. Therefore, a report prepared in disregard of the safety protocols provided by the law, though positive, cannot be relied upon.
iii)The prosecution may seek clarification of a forensic report from the PFSA under section 11 of the Punjab Forensic Science Agency Act 2007 (the Act) if a report is not clear. Moreover, the prosecution may apply to the PFSA for the re-examination of forensic material under section 12 of the Act if the report is doubtful. Nevertheless, in the absence of any of such actions, the court may call upon the expert witness and clarify the doubts as mandated under Article 65 of the Qanun-e-Shahadat Order 1984.

Conclusion: i) The Rules given in the High Court Rules and Orders Vol. III and in the Police Rules 1934 are to be followed in packaging, preserving, and dispatching samples for undertaking DNA forensic analysis and to make a forensic report to fulfill the criteria of a standard of proof in a criminal case.
ii) A positive forensic report prepared without observing the safety protocols cannot be relied upon.
iii) The prosecution may seek clarification as well as request for re-examination where a forensic report is either unclear or doubtful.

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28. **Lahore High Court**
Noor Muhammad & others. v. Mst. Sukhan (deceased) through L.Rs., etc.through L.Rs.
Civil Revision No. 1266 of 2002.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5449.pdf

Facts: The plaintiffs challenged the validity of the impugned mutations by seeking declaration as legal heirs. Some of the defendants filed contesting written statement by raising certain legal as well as factual objections. The learned trial court decided the suit vide judgment and decree. Feeling aggrieved, the plaintiffs preferred an appeal and the defendants also filed cross-objection. The learned

appellate Court passed consolidated judgment and decree which has been assailed vide separate civil revisions.

Issue: Whether successors of propositus are entitled to inherit if on the termination of limited owner of a female, the inheritance is opened at the time of death of last male owner?

Analysis: The West Punjab Muslim Personal Law (Shariat) Application Act, 1948 as amended in 1951 by Punjab Muslim Personal Law (Shariat) Application (Amendment) Act, 1951 provide for the application of the Muslim Personal Law (Shariat) to Muslims in Punjab. Property which came to a person under the customary law at once became subject to Muslim Law on passing of the Act ibid and that statute introducing distribution of property on the Muslim heirs in accordance with Muslim Law. In accordance with Section 3 of Act ibid, on the termination of limited owner of a female the inheritance is opened at the time of death of last male owner and successors of propositus are entitled to inherit. Under that section it was provided that the property given to the females as limited owner would devolve on heirs of last full owner. On the promulgation of West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, under section 3 limited estate created under the customary law stood terminated. Section 5 of the Act ibid provides the rule of succession.

Conclusion: Successors of propositus are entitled to inherit if on the termination of limited owner of a female, the inheritance is opened at the time of death of last male owner.

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29. **Lahore High Court**
Saima v. Additional District Judge & others.
Writ Petition No.17355 of 2019.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5436.pdf

Facts: The petitioner instituted a suit for recovery of dowry articles (which is not subject matter of this writ petition) and filed an application for "Judicial Separation" on the grounds of adultery and cruelty. The learned trial court dismissed the application vide consolidated judgment and decree. Feeling aggrieved, she preferred an appeal, which met the same fate and was dismissed by the learned appellate Court. The petitioner, through this constitutional petition called in question the validity, legality, and propriety of judgments and decrees whereby, the petitioner's application for judicial separation under Christian Divorce Act, 1869, was concurrently dismissed.

Issue: Whether judicial separation of Christian spouses is permissible under the Divorce Act, 1869 on the grounds other than adultery?

Analysis: Section 10 of the Divorce Act, 1869 provides the grounds of dissolution of marriage. The grounds of the decree are provided in Section 19 of the Divorce Act, 1869. Undeniably, under Section 10 of the Act ibid, it is clear from bare reading that unless and until anyone of the grounds as mentioned above is not proved marriage cannot be dissolved meaning thereby to get the dissolution of marriage, the party is required to allege and prove the allegation of adultery. The grounds of judicial separation are provided in section 22 of the Divorce Act, 1869. Before the promulgation of Federal Laws (Revision and Declaration) Ordinance, 1981, section 7 of the Divorce Act, 1869 was available and grounds of divorce under U.K. Matrimonial Causes Act, 1973 (UK Act) including the ground that the marriage has broken down irretrievably were also available in the Courts of Pakistan. The Ordinance ibid (item 7(2) of the Second Schedule) simply provides that section 7 of the Act shall be omitted. On behalf of Section 7 by the Ordinance, the grounds left for divorce or dissolution of marriage are provided under Section 10 of the Act. Section 7 of the Act, ibid provides that the Courts in Pakistan, shall, in all suits and proceedings hereunder, act and give relief on principles and rules to Christian which, in the opinion of the Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. The UK law referred to in Section 7 is the "UK Matrimonial Causes Act,1973". In UK Matrimonial Causes Act,1973, part 1, Chapter 18 Section 1(2) (b) provides as - "that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent." Section 1(4) empowered to Court to grant a decree of divorce. As no religion allows a hateful union that is not based on true consent of the parties especially in Christen Marriage Act, where marriage is a sacrament and at the time of marriage both the parties vow to stand together in sorrow and happiness etc. till death departs them. Although divorce is not encouraged in any society, where the relations between husband and wife are such that the legitimate objects of matrimony have been utterly destroyed and in perpetuating a marriage after all possibilities of accomplishing a desirable purpose of such relationship is gone, or out of which no good can come and from which harm may result, then it is better to terminate dead marriages and does not discourage divorce. UK law and other international law, on the subject, show that "no-fault divorce" or "irretrievable breakdown of marriage" is an established ground of divorce in Christian majority countries of the world. Section 7 of the Act ibid was restored. The term subject to the provision of the Act in Section 7 is read down to make sections 7 & 10 work together and to make them constitutionally compliant.

Conclusion: Judicial separation of Christian spouses is permissible under the Divorce Act, 1869 on the grounds other than adultery.

30. **Lahore High Court**
Mst. Sharifan Mai (deceased) through L.Rs., etc. v. Khuda Bakhsh and others.
Civil Revision No.337-D of 2004.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5423.pdf

Facts: The predecessor of the petitioners instituted a suit for declaration on the basis of dower deed and being legal heir of her husband. The learned trial Court decreed the suit. Feeling aggrieved, the respondents preferred an appeal which was allowed by the learned appellate Court. Through this civil revision, the petitioners called in question the legality and validity of judgment and decree passed by learned appellate Court.

Issue: i) Whether the transfer of property by a Muslim to Muslim in lieu of dower (Hiba-bil-ewaz) requires registration under the Registration Act, 1908?
ii) What are the principles governing the applicability of doctrine of Marz-ul-Mout?

Analysis: i) The transfer of property by a Muslim to Muslim in lieu of dower, is a gift (Hiba-bil-ewaz), it does not require registration under the Registration Act, 1908. Neither any writing would be required nor any such document acknowledging transfer of property in lieu of dower would require registration. Ordinarily in a transfer of immovable property by a Muslim husband to his wife in lieu of dower, there are two distinct gifts, one by each party to the other. The husband transfers by gift the property, while the wife makes the gifts of her. The transaction is essentially hiba-bil-ewaz. This being the ordinary role, it needs to be observed that there might, be some exceptions, as visualized in some cases, depending upon peculiar circumstances thereof. A transfer by a Muslim husband in favour of his wife in lieu of her dower being essentially a gift, was not required, to be affected through a registered instrument. The provisions contained in Chapter VII of the Transfer of Property Act, 1882 which Inter alia require making of a gift of immovable property only by registered instrument, do not apply to the present case which is of hiba-bilewaz by a Muslim such gifts are excluded by virtue of section 129 of the Act ibid, which provides that nothing in Chapter VII shall be deemed to affect any rule of Muslim Law. The dower deed was a document, which not creating or extinguishing right in immovable property and execution of such document thereto only acknowledged the factum of transfer of immovable property in favour of his wife in lieu of dower.
ii) With regard to the principles governing the applicability of doctrine of Marz-ul-Mout, the Court should consider the following factors to sustain the conclusion that the impugned transaction was made under such pressure (Marz-ul-Mout). (i) Was the donor suffering at the time of gift from a disease which was the immediate cause of his death? (ii) Was the disease of such a nature or character as

to induce in the person suffering the belief that death would be caused thereby, or to engender in him the apprehension of death? (iii) Was the illness such as to incapacitate him from the pursuit of his ordinary avocations- - a circumstance which might create in the mind of the sufferer an apprehension of death? (iv) Had the illness continued for such a length of time as to remove or lessen the apprehension of immediate fatality or to accustom the, sufferer to the malady?"

Conclusion: i) The transfer of property by a Muslim to Muslim in lieu of dower (Hiba-bil-ewaz) does not require registration under the Registration Act, 1908.
ii) The principles (a) a disease which was the immediate cause of his death, (b) the disease to induce belief of death or apprehension of death, (c) the illness to incapacitate from the pursuit of ordinary avocations and (d) the illness continued for a length of time as to remove or lessen the apprehension of immediate fatality or to accustom to the malady govern the applicability of doctrine of Marz-ul-Mout

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31. **Lahore High Court**
Sadiq Rasheed and another. v. Mst. Uzma Rizwan & 10 others.
Civil Revision No.1242 of 2019.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5405.pdf

Facts: Respondent No.1/plaintiff instituted three suits for declaration to the effect that defendants are only Benami owners, while actual owner was her predecessor. The learned trial court rejected the plaints under Order VII Rule 11 C.P.C as barred by law. Feeling aggrieved, she filed three separate appeals, which were allowed by the learned appellate court. The petitioners have assailed the impugned judgments and decrees of the learned appellate court through these civil revisions.

Issue: Whether the civil court has jurisdiction to entertain suit or proceedings when there is title and ownership dispute regarding the properties of Benami Transactions despite the Benami Transactions (Prohibition) Act, 2017?

Analysis: From the reading of section 43 of the Benami Transactions (Prohibition) Act, 2017, it is manifestly clear that Civil Courts shall have no jurisdiction to entertain any suit or proceedings in respect of any matter to which any of the authorities or the tribunal is empowered by or under the Act to determine. Intent and object of Benami Transactions (Prohibition) Act, 2017 is very much clear. According to which, if a property was purchased in the name of a person who according to his social status unable to have purchased any property by his own means, if found such property in his name then the Act ibid will come into play and will act upon the procedure as laid down in Section 22 of the Act ibid and such property shall be considered as "Benami property" and would be subject to confiscation in favour of the State. Section 22 provides that when the Initiating Officer has reason to believe on the basis of material in his possession that any person is a

Benamidar in respect of a property, he may issue a notice of show cause that why such property should not be treated as a Benami property and after making inquiry and calling for evidence draw up a statement of case and refer it to the Adjudicating Authority. After receipt of the reference proceedings for adjudication of Benami property shall start by the adjudicating authority under Section 24 of the Act, ibid. It is manifest from the reading of above mentioned provision of law that Civil Court shall have no jurisdiction to entertain any suit or proceedings in respect of any matter to which any of the authorities or the tribunal is empowered by or under the Act to determine. Unit (ii) of Clause 8(B) of the Act ibid, excludes those properties from the purview of Sub Section 8 Clause-B (ii) of Section 2 of the Act, which suggests that the properties of the individuals are exempted from the meaning of Benami properties upon which the Act is exclusively inapplicable when such controversy arises between the parties regarding the ownership of the house, exclusive jurisdiction vests in the Civil Courts to decide the title and ownership of such property after recording of evidence of the parties. The Civil Courts have the exclusive and ultimate jurisdiction to declare the rights, title and status of a person or property.

Conclusion: The civil court has jurisdiction to entertain suit or proceedings when there is title and ownership dispute regarding the properties of Benami Transactions.

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32. **Lahore High Court**
Mst. Zohran Bibi, etc. v. Ghulam Qadir, etc.
Civil Revision No.14 of 2016.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5411.pdf

Facts: The predecessors of the respondents challenged the validity of inheritance mutation by instituting a suit for declaration against the predecessors of the petitioners. The learned trial Court proceeded ex-parte and then suit was ex-parte decreed without recording any evidence. The learned trial Court dismissed the application of the petitioners for setting aside ex-parte decree. Feeling aggrieved, they preferred an appeal which was dismissed by the learned appellate Court. The petitioners challenged both the judgment/order of the learned lower Courts by filing instant revision petition.

Issue: i) Whether non observing of the procedure given in Order V Rule 16, 18, 19 of the Code of Civil Procedure, 1908 relating to service of summons will result in setting aside ex-parte decree?
ii) Whether the Court has powers to proceed with the case ex-parte against the defendant and pass a decree under Order IX, Rule 6(1), C.P.C. without calling for an affidavit or recording of ex-parte evidence?
iii) Whether application for setting aside ex-parte decree was governed with Article 164 of the Limitation Act, 1908?
iv) Whether the principle of natural justice must be read in each and every

Statute?

Analysis: i) The bare reading of the mandatory provisions i.e. Order V Rule 16, 18, 19 of the Code of Civil Procedure, 1908 provides complete guidelines for the Courts and Process-Serving Agencies. It says that in all cases in which summons have been served under Rule 16 C.P.C. mentioned above, the Process Server shall require the signature of the person to whom the copy is so delivered or endorsed on the original summons his report thereon. Rule 18 ibid further directs the manner of service in which the same is served, to mention the name and address of the person (if any) and identify the person served and witnesses of the delivery or tender of the summons. Similarly, rule 19 C.P.C. lays down the procedure for the Court that where a summon is returned under rule 17 aforesaid duly verified, the Serving Officer shall be examined on oath and may make such inquiry in the matter as it thinks fit and shall either declare that the summons is duly served or as it thinks fit and after his satisfaction to proceed further. The ex-parte decree would be set aside if the summons was not duly served and the meaning of "duly served" would mean the service as required by law. Consensus of the courts are that for defending an exparte proceedings and decree the plaintiff has to produce the process server to prove due service when the service was denied by the defendant. It is also settled principle of law that where service of summons is denied and Process Server has nowhere stated in his report that copy of the summons is delivered to the defendant, the presumption would be that defendant is not properly served.

ii) The Law Reforms Ordinance (XII of 1972) read with section 6 of the Oath Act, 1873, introduced the verification of pleadings on oath by adding the words "on oath or solemn affirmation" after the word verified in Rule 15(1) of Order VI, C.P.C. After such amendment, in presence of verified pleadings on oath, the Court has powers to proceed with the case ex-parte against the defendant and pass a decree under Order IX, Rule 6(1), C.P.C. without calling for an affidavit or recording of ex-parte evidence.

iii) The application for setting aside ex-parte decree was governed by Article 164 of the Limitation Act, 1908 which provides period of 30-days from the date of decree or where summon was not duly served when the applicant has knowledge of the decree. Residuary Article 181 of the Act ibid, provides period of three years when the right to apply accrues.

iv) It is settled principle of law that principle of natural justice must be read in each and every Statute unless and until it is prohibited by the wording of the statute itself. The principle of "Audi alterm parterm" is also one of the basic principle of natural justice that nobody should be condemned unheard. Law favours adjudication of lis on merit and not on mere technicalities. No one should be knocked out merely on technicalities.

Conclusion: i) Non observing the procedure given in Order V Rule 16, 18, 19 of the Code of Civil Procedure, 1908 relating to service of summons will result in setting aside ex-parte decree.

ii) The Court has power to proceed with the case ex-parte against the defendant and pass a decree under Order IX, Rule 6(1), C.P.C. without calling for an affidavit or recording of ex-parte evidence.
iii) The application is governed by Article 164 of the Limitation Act, 1908 which provides period of 30-days from the date of decree or where summon was not duly served when the applicant has knowledge of the decree.
iv) The principle of natural justice must be read in each and every Statute.

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33. **Lahore High Court**
Abdul Ghafoor v. Province of the Punjab, etc
Civil Revision No. 219-D of 2005.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5463.pdf

Facts: Contention was that the writ petition was dismissed in limine without discussing the facts in controversy and without giving any findings on those facts, however, learned lower courts dismissed the suit of the petitioner on the principle of res judicata.

Issue: Whether an order passed in writ petition would operate as res judicata on civil suit?

Analysis: It is a rule of law that a man shall not be vexed twice by one and the same cause. For this rule, two reasons have always been assigned; the one, public policy and the other, hardship on the individual that he should be twice vexed for the same cause and when a party to litigation seeks improperly to raise again the identical question, which has been decided by a competent court. The Court has always-inherent power to prevent/check abuse of its process. Even if section 11 of C.P.C. may not, in terms, apply in support of the plea of res-judicata, the general principles of res-judicata are clearly attracted to debar a party from re-agitating the matter afresh by a civil suit which had been put at rest by a judgment of the High Court passed in writ jurisdiction. The Courts have always power to prevent an abuse of their process which has been recognized to inhere in courts vested with the administration of justice and is expressly saved by section 151 of the Code of Civil Procedure. Even if section 11 of C.P.C. does not apply in terms, in such like cases, the general principles of res judicata would apply whatever the forum whether the special or general jurisdiction it will operate as a bar on the re-opening of the case. The general principles of res-judicata are clearly attracted to debar a party from re-agitating the matter afresh by a civil suit, which had been put at rest by a judgment of the High Court passed in writ jurisdiction.

Conclusion: An order passed in writ petition would operate as res judicata on civil suit.

34. **Lahore High Court**
Muhammad Iqbal v. Mst. Kalsoom Bibi and Three others
C.R. No. 112 of 2019 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5389.pdf

Facts: The respondents, real sisters of the petitioner filed a suit for declaration on the ground that their predecessor had died leaving behind the suit property as well as other property. That respondents being legal heirs of the deceased were entitled to get their due share, but the petitioner fraudulently got mutated suit property in his favour through oral gift.

Issues: i) When right of inheritance can be enforced regarding property of deceased?

ii) Whether a mutation can be challenged on the basis of procedural irregularities, after a long period of the death of its executant?

Analysis: i) Right of inheritance is the most valuable, cherished and elementary right granted by Islam and law but equally indispensable is the right to create, hold and dispose of property which is recognized and protected with the same zeal and command of Islam and law. The right of inheritance can only be enforced against the estate of the deceased left behind at the time of death. By no stretch of imagination, the right of inheritance extends to question the legitimate and lawful transactions of transfer of property undertaken by the deceased in his life time by himself through the instrumentality of the State after following the due process of law merely on the basis of bald, general and evasive assertion of fraud unsubstantiated by cogent and irrefutable evidence. Such transactions can at best be treated at par with any other transaction challenged on the basis of fraud. Once that threshold is crossed and the transaction is cancelled, it is only then that the question of inheritance will arise.

ii) Unless fraud is conclusively established by the party alleging it, going behind the transaction executed by the deceased not questioned for years in his life time on the touchstone of procedural irregularities would tantamount to trial of his grave. The obvious reason is that it is the duty of the State officials to ensure the fulfillment of procedural requirements before sanctioning or passing of a transaction. In case, there are any procedural lapses, the parties to a transaction have a right to know and the state functionaries are under a duty to point out before sanctioning the transaction so that the persons involved in the transaction get a fair and reasonable opportunity to rectify the same and enforce their will and decision thereafter. Cancellation of such a transaction after the death of the deceased on the basis of procedural lapses would invariably mean that the deceased would never get an opportunity to enforce his desire and intention regarding the disposal of his property which would stand substituted by the decision of the Court.

Conclusion: i) The right of inheritance can only be enforced against the estate of the deceased left behind at the time of death. The right of inheritance cannot be extended to question the lawful transactions undertaken by the deceased himself in his life time.

ii) A mutation executed by the deceased, not questioned for years in his life time, cannot be challenged on the basis of mere procedural irregularities unless fraud is conclusively established by the party alleging it.

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35. **Lahore High Court**
Province of Punjab v. Sajjad Naseem etc.
W.P.No.11438/2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5180.pdf

Facts: Respondent was appointed on daily wages basis as Security Guard against a regular post by Punjab Irrigation Department. He was then appointed as Baildar and again appointed as Boatman. After completion of probationary period he sought regularization since his first appointment with all back benefits. The Labour Court accepted his grievance petition while Appellate Tribunal dismissed the appeal of petitioner.

Issues: Whether an employee of Government Department can invoke the jurisdiction of Labour Court seeking regularization of his post?

Analysis: In case titled Province of Punjab and 3 others v. Gul Hassan and 33 others (1992 PLC 924) the Honourable Supreme Court observed that regularization of an employee is governed under the Punjab Regulations of Service Act, 2018 which importantly exclude persons applying under special pay packages. A government employee must advance his claim of regularization under the said law and if the claim of the employee is prior to the coming into force of the said law (as in the titled case) then on the strength of a policy or notification that addresses the issue of regularization in contrast to merely seeking regularization with the passage of time through the PIRA or the Standing Order… The Standing Order and PIRA did not apply to the case of the respondent. Hence, the entertainment of the Grievance Petition, its adjudication and direction to regularize the respondent from the date of his appointment as Boatman and holding that he is entitled to get back benefits under the law including all emoluments is held to be without jurisdiction.

Conclusion: The Standing Order and PIRA do not apply on Government Department. Therefore, an employee of Government Department cannot invoke the jurisdiction of Labour Court seeking regularization of his post.

36. **Lahore High Court**
Mst. Anwar Mai v. Ghulam Sarwar etc.
Civil Revision No.1213-D/2003
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC5330.pdf

Facts: The petitioner filed two suits, one for declaration or in alternate the specific performance and the other suit for declaration along with consequential relief and cancellation of impugned mutation, alleging that her father sold 1/5th share of his said property to her through oral sale. But respondents/her real brothers got mutated the whole land in their favour.

Issues: i) Whether every transfer in favour of a legal heir depriving female legal heirs of the deceased, is void?

ii) What does contradiction mean and what is its effect regarding credibility and veracity of testimony of a witness?

Analysis: i) Admittedly in our society there is a wide spread social practice to deprive the females from their legal inherited share, which superior courts have always deprecated. Such deprivation is generally effected through instrument such as gift/tamleek and mutations sanctioned in pursuance thereof. Honourable Supreme Court of Pakistan has held such agreements to be against the public policy. The agreements and/or contracts which the honourable Supreme Court has held to be against the public policy are those which are purportedly entered into or executed between the male legal heirs and the female legal heirs to deprive the latter from their right to inherit property by surrendering their rights. Such agreements are generally result of exploitation, emotional or otherwise of females which takes away element of free consent from such contracts. Another category of such agreements and/or contracts is one where male legal heirs claim to be donees of the inherited property from the predecessor-in-interest to the exclusion of the female legal heirs and such transactions come to surface either before or after the demise of the predecessor-in-interest of the parties and is mostly result of exercise of undue influence, fraud or misrepresentation committed by the donees/beneficiaries. However, every case has its own peculiar facts and circumstances, and the same requires proper analysis and adjudication.

ii) Contradiction is the act of saying something that is opposite or very different in meaning to something else that is said earlier and the same come in the way of inspiring confidence about credibility and veracity of testimony of a witness. Usually, contradictions are not minor discrepancies on trivial issues but go to the root of the matter and shake the basic stance of the claimant. When the entire evidence of claimant is read as a whole, it appears that the ring of truth is conspicuously missing on account of glaring contradictions and the case of claimant squarely falls under the maxim Allegans Contraria Non Est Audiendus (A person who alleges things contradictory to each other is not to be heard) disentitling him/ her from any relief.

Conclusion: i) **Every transfer in favour of a legal heir, which deprives female legal heirs of the deceased, is not void.** Every case has its own peculiar facts and circumstances, and the same requires proper analysis and adjudication.

ii) Contradiction is the act of saying something that is opposite or very different in meaning to something else that is said earlier and the same come in the way of inspiring confidence about credibility and veracity of testimony of a witness.

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37. **Lahore High Court**
Mst. Farkhanda Jabeen v. Province of Punjab, etc.
Review Application No.13 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5691.pdf

Facts: The petitioner filed writ petition to restrain the respondents from deducting allowance from the applicant's pay and salary. Writ petition was dismissed being not maintainable. Hence this review

Issue: Whether the matters relating to payment or withdrawal of allowances can be challenged in writ jurisdiction of High Court?

Analysis: In terms of reported precedent cases, approach by a civil servant to this Court under Article 199 of the Constitution in matters which are germane to his terms and conditions of service including grant, refusal, return or deduction of allowances has been looked down upon as being legal anathema. Not only this High Court but all other Provincial High Courts have also followed this trite position of law…. Therefore, withdrawal of allowance of a civil servant was clearly held to be a matter connected with the terms and conditions of a civil servant and outside the jurisdiction of a High Court.

Conclusion: The payment or withdrawal of allowances cannot be considered in writ jurisdiction of High Court.

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38. **Lahore High Court**
Muhammad Iqbal, etc. v. Jalal Din, etc.
C.R. No.1253 of 2015
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5573.pdf

Facts: The suit filed by petitioner was dismissed. Against the order of dismissal he filed appeal and the matter was remanded for recording additional evidence. The suit was again dismissed and he again preferred appeal. When the appeal was riped, the petitioner filed under Order XXIII, Rule 1 CPC for withdrawal of appeal and the suit with permission to file the suit afresh. The said application was dismissed hence this revision.

Issue: What are consideration for allowing the application for withdrawal of appeal and the suit with permission to file the suit afresh?

Analysis: On the basis of earlier precedents,

a. permission under order XXIII, Rule 1 CPC can only be granted in respect of a formal defect and where the defect is latent and touches merits of the case then permission to withdraw the suit on this score cannot be granted

b. Order XXIII, Rule 1 CPC based on sufficient cause must be filed at the earliest opportunity and the grounds taken therein must be cogent and not fanciful."

c. Where evidence to meet the issues framed has been adduced by both parties and on these issues a decision has been arrived at and a decree has been passed, and that decree has been upheld-on appeal, this Court on second appeal has no power to allow withdrawal of the suit to deprive the defendant of the advantage he has gained from the decision of the issues in his favour, Order XXIII, rule 1, will not give such power where once the suit has been decided and a decree has been passed.

d. An application under Order XXIII, Rule 1 CPC can only be allowed upon showing sufficient cause that satisfies judicial conscience and that there was an objective satisfaction in respect of sufficient cause that had to be met as also that the application was not tainted with oblique or malafide motives and was not aimed at abusing the process of law.

Conclusion: The application for withdrawal of appeal and the suit should be allowed with permission to file the suit afresh in respect of formal defect and upon showing sufficient cause keeping in view situations described above.

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39. **Lahore High Court**
Dr. Muhammad Eshfaq Gujjar and another v. Additional District Judge Multan
Writ Petition No. 7136 of 2016
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5486.pdf

Facts: The order passed by a learned Additional District Judge is challenged whereby he allowed the Punjab Healthcare Commission to become a party and to be arrayed as a respondent. The petitioners have also laid a challenge to the hearing of their appeal by a learned Additional District Judge instead of the District Judge himself.

Issue: i) Whether the term judge and court are interchangeable?

ii) Which law deals with functioning of court under Punjab Healthcare Commission Act 2010?
iii) Whether in the presence of Sections 30 and 31 of the Punjab Healthcare Commission Act 2010, is it possible for a District Judge to delegate and assign the hearing of appeals to Additional District Judges in the District?
iv) Whether an application under Order 1 Rule 10 CPC could be filed and was maintainable in an appeal emanating out of imposition of penalty in terms of Punjab Healthcare Commission Act 2010?

Analysis: i) The terms 'Court' and 'Judge' are synonymous and are to be treated as such when mentioned individually or collectively. While the term 'Court' denotes the Judicial Public Office created by a statute, the judge is the public official occupying the said judicial office. The powers and functions conferred upon Courts are exercised by the Judges and but for semantics there is no operational difference leading to a clash in meanings of both terms. The power reserved for the Courts are validly exercised by Judges even if the terms are individually used in a statute without reference to the other. The power of the Court is the power of the Judge.
ii) Since the Punjab Healthcare Commission Act 2010 does not create any court nor prescribes any specific rules for the purpose of carrying out the functions and duties by the Court or by the Judge thereunder but merely adds another judicial function to be performed by already established courts, in such cases, the Courts and Judges upon whom the added duties or functions are conferred may well be governed in such matters by the laws which create such courts/judges and prescribe the process of enforcement of duties and exercise of functions by them…. It will be implied that the ordinary procedure, power and jurisdiction of that Court is to attach to it, and in such a case the Presiding Officer of that Court performs his functions under that special law in the exercise of his ordinary powers and procedure and not as a persona designata.
iii) Sections 30 and 31 of the 2010 Act though mention the 'Court of the District and Sessions Judge' as the forum of a suit and an appeal in respect of the matters specified therein, but do not state as to how that Court or the Presiding Judge of that Court is to regulate its or his functioning in the matter of hearing the suit or appeal. This matter being not dealt with in the 2010 Act is to be regulated by the ordinary powers of the Presiding Officer of the Court of the District and Sessions Judge under the Civil Courts Ordinance 1962, the Code of Civil Procedure 1908 and the Code of Criminal Procedure 1898. Therefore, a District & Sessions Judge can, in exercise of his ordinary powers under the said enactments, entrust a suit or an appeal filed in his Court under Section 30 or Section 31 respectively of the Punjab Healthcare Commission Act 2010 for decision to an Additional District & Sessions Judge…. However this will not amount to bestowing an Additional District Judge with the status of a District Judge but shall only mean that an Additional District Judge may, in terms of the Civil Courts Ordinance 1962, be

assigned functions of the District Judge so as to be exercised by an Additional District Judge
iv) Since the order under challenge in appeal has been passed by the Punjab Healthcare Commission, it is axiomatic that it must be afforded an opportunity to defend its order. The Court can only gain from the technical knowhow, experience and expertise of the Punjab Healthcare Commission in the matter… Like all living citizens and persons, the government and its agencies are also entitled to due process of law and to equal protection of laws and therefore, the right of the Punjab Healthcare Commission guaranteed in terms of Articles 4 and 10-A of the Constitution will be compromised if the Commission is not allowed to present its stance in the matter..Furthermore, on the strength of Article 4(2) of the Constitution it may be stated that what is not prohibited is permitted.

Conclusion: i) The terms judge and court are interchangeable as there is no operational difference.
ii) The laws which create such courts/judges and prescribe the process of enforcement of duties and exercise of functions by them is applicable.
iii) Additional District and Sessions Judges can hear appeals in terms of Section 31 of the Punjab Healthcare Commission Act 2010 if the same have been so assigned to them by the court of District and Sessions Judge.
iv) An application under Order 1 Rule 10 CPC could be filed and was maintainable in an appeal emanating out of imposition of penalty in terms of Punjab Healthcare Commission Act 2010.

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40. **Lahore High Court**
M/s Sheikh Goods Transport Company, etc. v National Fertilizer Marketing Ltd.
Civil Revision No.2994/2013.
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC5590.pdf

Facts: Through this civil revision, the petitioners have challenged the order passed by the learned Civil Judge whereby application of the respondent under rule 1 Order XVI read with Section 151 C.P.C. for summoning of witness in the suit for damages instituted by the respondent was allowed.

Issue: What qualifies to be valid reasons for the grant of permission for summoning of witnesses under rule 1(2) of Order XVI C.P.C?

Analysis: Rule 1(2) of Order XVI C.P.C. requires the court to record reasons for the exercise of its discretion. Such requirement has been imposed apparently to keep a judicial check on unbridled and absolute discretion of the court. What qualifies to be valid reasons for the grant of permission under rule 1(2) ibid has been a subject matter of judicial discourse. One view in such discourse is that reasons to be recorded by the trial court for the permission granted under the said rule must be confined to the “good cause” shown (i.e. the explanation advanced) by the

party for the omission to include name of witness sought to be called or produced. The other end of the spectrum of this discourse takes a broader view by liberating the reasons to be recorded by the trial court from the confines of explanation furnished by the litigant for the omission of the name of a witness in the list and includes elements such as importance of the witness in the trial; prejudice, if any, to the opposite party; and inconvenience of the trial court. The primary focus of such a view appears to be on how the permission sought, if not granted, may curtail access to justice of the applicant, how much administration of justice is likely to be burdened in the proceedings before the court if the permission sought is granted, and how the fair trial right as enshrined in Article 10A of the Constitution, shall be curtailed by the grant or refusal of such an application. The focus surely shifts away from technical knockout of the litigants for their omissions and inefficiencies. Application of the law reiterated herein above to the facts of this case requires perusal of the record, in particular application of the respondent seeking permission, reply to the application and the order passed therein... It is apparent from the application under rule 1 of Order XVI C.P.C. filed by the respondent that no cause whatsoever, let alone any "good cause", was shown by the respondent for its omission to include name of Muhammad Ramzan, its Deputy Manager Finance in the list of witnesses. It is manifest from the order impugned that application of the respondent was allowed by the trial court "in the interest of justice" apparently for the reason that the respondent itself was producing the said witness voluntarily, implying therein that no summoning powers of the court were being invoked, which is an irrelevant consideration since the Lahore High Court amendment introduced in the rule 1(2) of Order XVI, as fully explained above. No findings are recorded on the importance of the witness in the trial, prejudice, if any, caused to the petitioners and inconvenience, if any, caused to the court. It is obvious that the permission to produce witness has been granted as a matter of routine without recording reasons showing judicious application of mind.

Conclusion: The valid reasons for the grant of the permission for summoning of the witnesses under rule 1(2) of Order XVI CPC are discussed in detail in analysis part.

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41. **Supreme Court of Azad Jammu & Kashmir**
Azad Govt. & others v. Muhammad Ishaq & others
Civil Appeal No.205 of 2021
Mr. Justice Raja Saeed Akram Khan, CJ, Mr. Justice Kh. Muhammad Naseem, Mr. Justice Raza Ali Khan
https://ajksupremecourt.gok.pk/azad-govt-others-vs-muhammad-ishaq-others/

Facts: This appeal is directed against the order of learned High Court wherein the writ petition of respondents No 1 to 8 against the proposed amendments in the Azad Jammu and Kashmir Advocate General Office Service Rules, 1995 was partially accepted being contrary to the Rules.

Issue: i) Whether appointment of Advocate General can be made without consultation of Chief Justice of Supreme Court and High Court?
ii) Whether Advocate General is subordinate to the Secretary Law, Justice, Parliamentary Affairs and Human Rights?
iii) Whether in presence of the Law Officers, Government can engage any private counsel to defend the cases?

Analysis: i) The office of the Advocate General finds place almost in all the countries and Constitutions of the world irrespective of the Presidential or Parliamentary System of the Government. In Azad Jammu and Kashmir, the office of the Advocate General is established under Article 20 of the Constitution. President appoints a person, being a person qualified to be appointed a Judge of the High Court to be the Advocate General for Azad Jammu and Kashmir. The learned High Court in the impugned judgment has held that no person shall be appointed as Advocate General without consultation with the Chief Justices of Azad Jammu and Kashmir and High Court and that all other Law Officers and Legal Advisors shall be appointed by the Government in consultation with the Advocate General. The wisdom behind such observations as assigned by the High Court is that the qualification for the post of the Advocate General is same as that of the Judge of the High Court and for appointment of the Judge of the High Court consultation with the Chief Justice of Azad Jammu and Kashmir and that of High Court is mandatory. The learned High Court has relied upon Article 43(2-A) of the Constitution wherein it is provided that the eligibility criterion for the Advocate-General and that of Judge of the High Court is same. Such observations of the High Court are offending the clear constitutional provisions. A Court of law has to observe the law as it is and not as it should be. The correct position is that the Advocate General is appointed under Article 20 of the Constitution, whereas, Judge of the High Court is appointed under Article 43. Both the statutory provisions are independent. Since Article 20 of the Constitution itself does not envisage consultation by the President with the Chief Justice of Azad Jammu and Kashmir and Chief Justice of High Court in the matter of appointment of Advocate-General, hence, the learned High Court wrongly read the same into the said Article.
ii) It has been noticed by us time and again that in a number of cases, the Advocate-General has shown his inability to argue the case on the ground that he has not been directed so by the Secretary Law, Justice, Parliamentary Affairs and Human Rights. Such a practice is highly deprecated. The Advocate-General is holding the constitutional post, hence, he is not supposed to be subordinate to Secretary Law. Even otherwise, it is the Advocate-General who is a fit person to decide the matter of distribution of the cases amongst the Law Officers and not the Secretary Law.
iii) Advocate-General, a large number of Law Officers are appointed by the Government. Despite the fact that they are being paid from the public exchequer, the private counsels are also engaged by the Government in several cases. In our

estimation, if the government contends that none amongst its law officers is capable of handling the cases then the question would arise why incompetent persons have been appointed. In such a scenario the public suffers twice, firstly, they have to pay for incompetent law officers, and secondly, they have to pay again for the services of competent counsel the government engages. The public exchequer is not there to be squandered in this manner. The State must protect the belongings and assets of the State and its citizens from waste and malversation.

Conclusion: i) The findings recorded by the High Court that no person shall be appointed as Advocate General without consultation with the Chief Justice of Supreme Court and High Court are set-aside being not in consonance with the relevant Constitutional provisions as well as the principle of law laid down in the case reported as Secretary Ministry of Law & others vs. Muhammad Ashraf Khan & others [PLD 2011 SC 7]

ii) The Advocate-General, being holding the constitutional post is not supposed to be subordinate to the Secretary Law, Justice, Parliamentary Affairs and Human Rights.

iii) In presence of the Law Officers, being paid from the Government exchequer, there is no occasion for the Government to engage the private counsel to defend the cases in the Supreme Court and High Court, however, in exceptional cases, after consultation with the Advocate General and prior permission of the Court, the private counsel can be engaged for assistance of the Advocate-General but it cannot be allowed to make a practice.

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42. **Supreme Court of the United States**
Rotkiske v. Klemm, 589 U.S. ___ (2019)
https://www.supremecourt.gov/opinions/19pdf/18-328_pm02.pdf
https://ballotpedia.org

Facts: It was a decision involving the statute of limitations under the Fair Debt Collection Act of 1977. Rotkiske accumulated credit card debt between 2003 and 2005. Someone accepted service for a debt collection lawsuit on Rotkiske's behalf without his knowledge. Klemm & Associates obtained a default judgment of approximately $1,500. Rotkiske sued Klemm for violating the Fair Debt Collection Practices Act (FDCPA), arguing the statute of limitations to file a suit begins when the plaintiff knows of his injury.

Issue: Whether the "discovery rule" applies to toll (tolling is a legal doctrine that allows for the delay or pausing of a statute of limitations) the one (1) year statute of limitations under the Fair Debt Collection Practices Act, 15 U.S.C?

Analysis: In an 8-1 opinion, the court affirmed the 3rd Circuit's ruling, holding that the FDCPA's statute of limitations begins to run when the alleged FDCPA violation occurs, not when the violation is discovered. Justice Thomas wrote that the text of

§1692k(d) of the FDCPA was clear: "*The FDCPA limitations period begins to run on the date the alleged FDCPA violation actually happened*." Thomas also wrote it was not the court's role to "*second-guess Congress' decision*" not to include language setting limitations periods to run at the discovery of a violation.

Conclusion: The Court ruled that the statute of limitations begins one year after the alleged FDCPA violation took place, not one year after the violation was discovered by the plaintiff. This ruling upheld the 3rd Circuit's ruling against Rotkiske, and resolved a circuit split between the 3rd Circuit and the 4th and 9th Circuit Courts of Appeal.

LATEST LEGISLATION/AMENDMENTS

1. On Wednesday, October 6, 2O2I, vide notification No. F. 9(10)/202l-Legis, an Act No. XVI of 2021 **'PAF Air War College Institute Act, 2021'** has been enacted to provide for re-organization of the Pakistan Air Force Air War College as a degree awarding institute. This Act consists of a preamble, 7 chapters and 44 sections.
2. On Wednesday, October 13, 2O2I, vide notification No. S. R. O. 1343(1)2021, rules titled the **Removing and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguard) Rules, 2021** have been made. It has 6 chapters, 15 Rules and a Schedule.
3. On Thursday, October 14, 2O2I, vide notification no. No. F. 2(1)/202f –Pub, an Ordinance no. IXlV of 2021 the **Diplomatic and Consular Officers (Oath and Fees) (Amendment) Ordinance, 2021** has been promulgated further to amend the Diplomatic and Consular Officers (Oath and Fees) Act, 1948. This Ordinance consists of a preamble and 9 Articles.
4. On Thursday, October 14, 2O2I, vide notification No. F. 2(1)/2021-Pub, an Ordinance No. XXV of 2O2I the **National Rahmaut-lil-Aalameen Authotity Ordinance, 2021** has been promulgated to provide for the establishment of National Rahmatul-lil-Aalameen Authority. This Ordinance has a preamble and 23 Articles.
5. On 27th October, 2021 the **Punjab Civil Servants (Amendment) Act, 2021** has been enacted for the purpose of modifying provisions relating to retirement of civil servants. Through this Act amendments have been made in section 12 of the Punjab Civil Servants Act, 1974 and the Punjab Civil Servants (Amendment) Ordinance, 2021 has been repealed.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   CORPORATE RESTRUCTURING: BRIEF UNDERSTANDING MERGER AND ACQUISITION WITHIN INDIAN MARKET by Abhishek Narsing & Priyanshu Gupta
   The term corporate restructuring comprises of relevant techniques which developed through the ideas behind the financial market growth though distinct

but related groups of activities, expansions including mergers and acquisitions, tender offers, joint ventures, and acquisitions. contraction including sell offs, spin offs, equity carve outs, abandonment of assets, and liquidation, and ownership and control, focusing the interest of the shareholders managing the atmosphere of the market including the market for corporate control, stock repurchases program, exchange offers and going private. Mergers and acquisitions (M&A) and corporate restructuring are a big part of the corporate finance world focusing on the listed companies under the stock market. The key principle doing the restructuring of the company is to create shareholder value and to provide better platform over and above that of the sum of the two companies. The idea of the corporate restructuring is to bring that two companies together are more valuable than two separate companies at least, that's the reasoning behind M&A.

2. **COURTING THE LAW**
   https://courtingthelaw.com/2021/09/04/commentary/disability-and-reform-under-modern-islamic-thought/
   DISABILITY AND REFORM UNDER MODERN ISLAMIC THOUGHT
   by Khansa Maria
   The disability rights discourse in Modern Islamic Thought has seen a considerable amount of evolution. This may not be the same as the political movement of the West but is nevertheless an important stepping stone for the conversation in the Islamic world. Perhaps this conversation has stagnated because of what are perceived to be more pressing issues faced by the community (such as Islamophobia, terrorism, etc.). Disability rights were overlooked during the period of reform because the reformers had been focused on other political and social issues. However, the fact remains that the retraction of focus leads to further stigmatization of disabled individuals in the Islamic world. The theological understanding of disability has also not been focused upon. The disability rights discourse today is predominantly a result of the movement in the West. The rise of individual-focused disability rights organizations such as Mohsin and the Yakeen Institute perhaps do reflect the larger trend in Islamic movements i.e. which is focused more towards individuals and their personal/spiritual growth. But in order to guarantee the rights of disabled individuals and explore their true position in Islam, Islamic reform must be broadened to address all questions and scholars must make them a part of the mainstream discourse.
3. **LUMS LAW JOURNAL**
   https://sahsol.lums.edu.pk/sites/default/files/Wednesbury%2C%20Proportionality%20and%20Judicial%20Review.pdf
   WEDNESBURY, PROPORTIONALITY AND JUDICIAL REVIEW by Shayan Manzar
   This article argues in favour of the proportionality test as the standard for the judicial review of executive actions in Pakistan. It begins by tracing out the origins of the prevailing Wednesbury unreasonableness test as well as the proportionality test, both in Pakistan and in common law jurisprudence generally. It then juxtaposes the two tests, and argues that both attempt a review of the calculus undertaken by the primary decision-maker tempered with the appropriate amount of deference given to him. However, the analytically clearer

framework provided by the proportionality test means that it is able to channel this inquiry in a more transparent and accurate manner, and as such, provides a more reliable test for the review of executive actions.

4. **HARVARD LAW REVIEW**
https://harvardlawreview.org/wp-content/uploads/2018/06/2117-2186_Online.pdf
HARMLESS ERRORS AND SUBSTANTIAL RIGHTS by Daniel Epps

The harmless constitutional error doctrine is as baffling as it is ubiquitous. Although appellate courts rely on it to deny relief for claimed constitutional violations every day, virtually every aspect of the doctrine is subject to fundamental disagreement and confusion. Judges and commentators sharply disagree about which (and even whether) constitutional errors can be harmless, how to conduct harmless error analysis when it applies, and, most fundamentally, what harmless constitutional error even is — what source of law generates it and enables the Supreme Court to require its use by state courts. This Article offers a new theory of harmless constitutional error, one that promises to solve many of the doctrine's longstanding mysteries. There is widespread consensus that harmless constitutional error is a remedial doctrine, in which the relevant question is the appropriate remedy for an acknowledged violation of rights. But harmless error is in fact better understood as an inquiry into the substance of constitutional rights: a purported error can be harmless only if the defendant's conviction was not actually obtained in violation of the defendant's rights. That approach can help solve the doctrine's longstanding riddles. It explains why harmless error is binding on state courts; it clears up confusion about the relationship between the doctrine and statutory harmless error requirements; it shows which errors can never be treated as harmless without effectively being eliminated; and it provides useful guidance for how courts should conduct harmless error analysis where it applies. Most importantly, it reflects a more realistic understanding of the right-remedy relationship that makes it harder for courts to surreptitiously undermine constitutional values.

5. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12696
IS INTERFERENCE WITH A CORPSE FOR PROCREATIVE PURPOSES A CRIMINAL OFFENCE? by Lisa Cherkassky

An increasing number of court orders from grieving women seek the retrieval of sperm from their deceased husbands, fiancés or boyfriends for the purposes of procreation. The legality of the retrieval of gametes from a dead body is unclear in the United Kingdom, and other jurisdictions have similarly confusing jurisprudence on the matter. The Human Fertilisation and Embryology Act 1990 requires the informed consent of both gamete providers before fertility treatment can commence, rendering the act of electro-ejaculation upon a dead body a pointless (and potentially sexual) violation. This article takes a unique look at the legality of posthumous gamete retrieval and its contradiction to our shared respect for the dead. It suggests that when carried out upon a dead body without a lawful excuse, electro-ejaculation may offend public morality and could constitute

a criminal offence of 'sexual penetration of a corpse' under section 70 of the Sexual Offences Act 2003.

LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(01-11-2021 to 15-11-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Senior Superintendent of Police (Operations) v. Shahid Nazir
Civil Appeal No.608 Of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._608_2021.pdf

Facts: A show cause notice was issued to the respondent under the Punjab Police (E&D) Rules, 1975 that he failed to perform his duty efficiently and registration of some FIRs in different Police Stations exposes his involvement in criminal cases in which Reports under Section 173 Cr.P.C were also submitted in the concerned trial courts.

Issue: What is the difference between departmental inquiry and criminal prosecution? Whether both may be conducted simultaneously?

Analysis: The purpose and sagacity of initiating disciplinary proceedings by the employer is to find out and come to a decision whether the charges of misconduct leveled against the delinquent officer/employee are proved or not and in case his guilt is established, what action should be taken against him under the applicable Service laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority/Management. In contrast, the perception and rationality to set into motion criminal prosecution is altogether different where the prosecution has to prove the guilt of an accused beyond any reasonable doubt. Both have distinct features and characteristics with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to inflict punishment of the offences committed by the accused while departmental enquiry is geared up or activated to inquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence on any such institution. Even an acquittal by criminal court would not debar an employer from exercising disciplinary powers in accordance with applicable service Rules and Regulations.

Conclusion: the difference between departmental inquiry and criminal prosecution has been given above. The prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently.

2. **Supreme Court of Pakistan**
Muhammad Akram v. The State
Criminal Miscellaneous Applications No. 365-L/2020 and 96-L/2021 in/and Jail Petition No.491 of 2017
Mr. Justice Gulzar Ahmed, HCJ. Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._365_l_2020.pdf

Facts: Petitioner murdered his wife when she was in police custody in connection with a theft case on account of "ghairat" and also injured a police constable. He was convicted under section 7 of ATA, 302(b), 324, 353 etc PPC. Compromise with the legal heirs of deceased and injured constable was effected.

Issue: i) Whether creation of fear or insecurity in the society due to an act which is a result of private enmity when fear or insecurity is not intended is by itself terrorism?
ii) What is diminished liability?

Analysis: i) Only creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime and mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism.

ii) It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in committing or being a party to an alleged violation, which is committed due to love and affection and injury to reputation. The doctrine of diminished responsibility provides a mitigating defense in cases in which the mental disease or defect is not of such magnitude as to exclude criminal responsibility altogether.

Conclusion: i) Only creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create it.
ii) It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in committing or being a party to an alleged violation, which is committed due to love and affection and injury to reputation.

3. **Supreme Court of Pakistan**
Zahid v. The State
Criminal Petition No. 75-Q of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._75_q_2021.pdf

Facts: Accused was convicted for sexually abusing the daughter of the complainant.

Issue: Whether solitary statement of victim of sexual offence is sufficient for the conviction?

Analysis: Rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person…. The statement of the victim in isolation itself is sufficient for conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused.

Conclusion: Solitary statement of victim of sexual offence is sufficient for the conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused.

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4. **Supreme Court of Pakistan**
Sakhi Jan & another v. Qamar Ali Khan
Civil Petition No.223-P/2012
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._223_p_2012.pdf

Facts: Suit of plaintiff for pre-emption against two vendees was partially decreed.

Issue: Whether the distribution of the property under Section 20 of the Act of 1987 between the parties having equal status and right of pre-emption on the basis of contiguity is to be made in two equal shares or per capita?

Analysis: In such like situations, the property has to be distributed as per capita. Further simplifying the matter, we may add that the number of pre-emptors and the vendees, having the same status and pre-emption right, will get the property under pre-emption in equal shares.

Conclusion: The property has to be distributed as per capita.

5. **Supreme Court of Pakistan**
General Manager, SNGPL v. Qamar Zaman
Civil Petition No.509-P/2012
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._509_p_2012.pdf

Facts: A suit was filed in a civil court with regard to the matter which the Authority was empowered to determine under Oil & Gas Regulatory Authority Ordinance, 2002.

Issue: Whether a Civil Court, being a Court of plenary and ultimate jurisdiction, will have jurisdiction to entertain the disputes referred to in the Ordinance despite the fact that there is no specific bar in the statute over the jurisdiction of the Civil Court?

Analysis: The Oil & Gas Regulatory Authority Ordinance, 2002 being a special law explaining the powers and jurisdiction of the Authority and redressal of the disputes with overriding effect, then no other forum, Tribunal shall have the jurisdiction to step in for resolving the disputes. An overall look of the Ordinance would reflect that except the provisions of Section 43, which gives the overriding effect to the Ordinance, and the provisions of Sections 11 & 12 of the Ordinance, providing the procedure for resolving the disputes and appeal against the order/decision of the Authority, no other specific provision barring the jurisdiction of the Civil Court is there in the Ordinance. In the given circumstances, question would arise, as to whether a Civil Court, being a Court of plenary and ultimate jurisdiction, will have no jurisdiction to entertain the disputes referred to in the Ordinance despite the fact that there is no specific bar in the statute over the jurisdiction of the Civil Court? Answer to the above question would be a simple yes. No doubt, there is no specific bar provided in the statute over the jurisdiction of Civil Court but the above noted provisions of the Ordinance would reflect that an exclusive jurisdiction has been conferred on the Authority for determining the disputes referred to in the Ordinance which reflects the intent of the legislature. In such like situation, the jurisdiction of Authority is exclusive and the jurisdiction of Civil Court is barred but this would be an implied bar, very much permissible under the settled law and it will be equivalent to the specific bar provided in any statute.

Conclusion: Though there is no specific bar provided in the statute over the jurisdiction of Civil Court but the above noted provisions of the Ordinance would reflect that an exclusive jurisdiction has been conferred on the Authority for determining the disputes referred to in the Ordinance which reflects the intent of the legislature. In such like situation, the jurisdiction of Authority is exclusive and the jurisdiction of Civil Court is barred but this would be an implied bar, very much permissible

under the settled law and it will be equivalent to the specific bar provided in any statute.

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6. **Supreme Court of Pakistan**
Shakeel Shah v. The State
Criminal Petition No.1072/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1072_2021.pdf

Facts: The bail of accused for offences punishable under sections 392 and 411 on the ground of statutory delay was dismissed throughout. He requested the august Supreme Court to release him on bail due to non-conclusion of trial.

Issue: i) When the period of one year begins for computing the statutory period of one year for grant of bail?
ii) How to determine that act or omission of accused has caused delay in the conclusion of trial?
iii) How to determine that whether or not the accused is a hardened, desperate or dangerous criminal?

Analysis: i) The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused and it is of little importance as to when the charge is framed and the trial commenced.
ii) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.
iii) The words hardened, desperate or dangerous have been couched in between conditions (i) and (iii) and therefore signify the same sense of gravity and seriousness as to the nature of the offence and character of the accused. The principle that the meaning of a word is recognized by its associates is traditionally expressed in the Latin maxim noscitur a sociis. A word or phrase in an enactment must always be construed in the light of the surrounding text, and their colour and meaning must be derived from their context Further, the words hardened, desperate or dangerous are to be understood collectively. The ejusdem generis principle is a principle of constriction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the

same limited character. For the said principle to apply, there must be sufficient indication of the category or word that can be properly described as the class or genus, which is to control the general words. The genus must be narrower than the general words it is to regulate "Dangerous" means harmful, perilous, hazardous or unsafe–someone who can cause physical harm or injury or death. "Hardened" is someone who is pitiless, hardhearted, callous or unfeeling and set in his bad ways and no longer likely to change, having a tendency of repeating the offence and is, thus, dangerous to the society. "Desperate" is someone who is reckless, violent and ready to risk or do anything;8 such person is, therefore, also dangerous to society. All the three words paint a picture of a person, who is likely to seriously injure and hurt others without caring for the consequences of his violent act. Therefore, for this exception to apply, there has to be material to show that the accused is such a person who will pose a serious threat to the society if set free on bail. In the absence of any such material, bail cannot be denied to an accused on the statutory ground of delay in conclusion of the trial.

Conclusion: i) The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused and it is of little importance as to when the charge is framed and the trial commenced. mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.
ii) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.
iii) See above.

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7. **Lahore High Court**
Malik Zafar Iqbal etc. Vs. The State etc.
Criminal Appeal No.25874/2021
Mr. Justice Muhammad Ameer Bhatti CJ, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5961.pdf

Facts: This appeal is directed against judgment of learned Special Judge, Anti-Terrorism Court in case registered for offences under sections 11-F, 11-H (2), 11-I(2), 11-J(2), 11-N of the Anti-Terrorism Act, 1997.

Issues: i) Whether a person can be punished for an act or omission, which was not penal offence at the time of its commission?
ii) Whether the Special Courts functioning under the ATA are also required to provide documents to the accused within seven days before the trial as stipulated in section 265-C Cr.P.C.?
iii) Whether a case can be remanded for retrial on the plea of defective charge, even if the prosecution has no case at all?

Analysis: i) The cardinal principle of criminal administration is nullum crimen nulla poena sine lege which means that "there can be no crime or punishment unless it is in accordance with law that is certain, unambiguous and not retroactive. The maxim further says that there should be no crime except according to predetermined, fixed law." In Nabi Ahmed and another v. Home Secretary, Government of West Pakistan, Lahore and 4 others (PLD 1969 SC 599) the Hon'ble Supreme Court of Pakistan explained the rationale underlying this precept as follows: "Law-abiding members of society regulate their lives according to the law as it exists at the time of their actions, and they expect the law to be steadfast and reliable." The international human rights law prohibits retrospective punishment. Article 11(2) of the Universal Declaration of Human Rights (1948), Article 15(1) of the UN Covenant on Civil and Political Rights (1966), Article 7 of the European Convention on Human Rights and the Constitutions of most of the countries around the globe contain similar interdiction. Article 1, section 9 of the American Constitution mandates that "no ex post facto law shall be passed." In Pakistan, Article 12(1) of the Constitution of 1973 also provides protection against retrospective punishment. S. M. Zafar explains that Article 12 does not deprive the legislature of its powers to give retrospective effect [to a law]. It prohibits convictions and sentences being recorded in the criminal jurisprudence under ex post facto laws. However, a procedural rigour including converting the bailable offence into non-bailable can be effected retrospectively. The protection under Article 12 of the Constitution of 1973 operates with reference to the time of act or omission.

ii) Section 19(7) of the ATA mandates that the Special Court shall, on taking cognizance of a case, proceed with the trial from day to day and decide it within seven days failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions. And, section 19(8a) stipulates that non-compliance with the aforesaid timeline would render the presiding officer of the Special Court liable to disciplinary action by the concerned High Court. Section 32 gives the ATA an overriding effect and inter alia states that the provisions of the Code of Criminal Procedure, 1898, shall apply insofar as they are not inconsistent with it. The incongruity between section 265-C Cr.P.C. and section 19(7) of the ATA is un-ambivalent. As adumbrated, the purpose of section 265-C Cr.P.C. is to enable the accused to know the prosecution case and meet the allegations leveled against him. A preponderance of judicial decisions hold that the "seven days" requisite does not apply to the Special Courts under the ATA but they add that the accused must be afforded proper opportunity to prepare his defense and meet the requirements of fair trial under Article 10A of the Constitution of 1973.

iii) In our opinion, this would not be justified because the prosecution has no case at all. Section 232 Cr.P.C. deals with the effect of material error in the framing of charge and sub-section (2) thereof stipulates that if the court is of the opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Conclusion: i) A person cannot be punished for an act or omission, which was not a penal offence at the time of its commission/ omission.
ii) A preponderance of judicial decisions hold that the "seven days" requisite does not apply to the Special Courts under the ATA but they add that the accused must be afforded proper opportunity to prepare his defense and meet the requirements of fair trial under Article 10A of the Constitution of 1973.
iii) It would not be justified to remand the case on the plea of defective charge, when the prosecution has no case at all.

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8. **Lahore High Court**
Muhammad Sarwar v. The State etc.
Crl. Appeal No. 105580 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4929.pdf

Facts: Appellant/convict filed the criminal appeal against the judgment wherein he was awarded death penalty in murder case whereas the learned trial court sent murder reference under section 374 CrPC for confirmation of the sentence of appellant.

Issue: i) What is effect of delay in conducting post mortem examination?
ii) What is evidentiary value of chance witnesses if they cannot justify their presence at the place of occurrence?
iii) Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

Analysis: i) For delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time of occurrence and the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made witnesses subsequently, otherwise there was no justification for not dispatching the dead body to the mortuary and providing police papers with such delay.
ii) A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.

iii) As a necessary consequence, it can unambiguously be held that glaring anomaly is discernable from the ocular account and medical evidence. It goes without saying that purpose of collecting medical evidence in a case against human body, primarily, is aimed at providing assistance to the court in arriving at just conclusion by using it for scrutinizing the ocular account. Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

Conclusion: i) Effect of delay in conducting post mortem examination has discussed in para (i) of analysis.
ii) If chance witnesses fail to justify their presence at the place of occurrence then their evidence will be discarded.
iii) Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

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9. **Lahore High Court**
Mazhar v. The State etc.
Crl. Appeal No. 104912 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6329.pdf

Facts: Appellants/convicts filed the criminal appeal against the judgment wherein Mazhar was awarded death penalty and Mst. Zahida Bibi was sentenced for life imprisonment.

Issue: i) What is effect of delay in lodging the FIR & conducting post mortem examination?
ii) What is effect if prosecution witnesses made dishonest improvements in their statements?
iii) Whether omission to take into possession the source of light from place of occurrence can damage the case of prosecution??

Analysis: i) Delay in setting the machinery of law into motion speaks volume against the veracity of prosecution version. Similarly, delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time of occurrence and the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made witnesses subsequently, otherwise there was no justification for not dispatching the dead body to the mortuary and providing police papers with such delay.
ii) It is cardinal principle of law that any statement improved during trial is not worth relying, rather such improvement creates serious doubt about its veracity and credibility.

iii) Source of light is a material piece of evidence and omission to take into custody creates dent in the prosecution case.

Conclusion: i) Effect of delay in lodging the FIR & conducting post mortem examination have discussed in para (i) of analysis.
ii) If the prosecution witnesses made dishonest improvements in their statements then their statements are not reliable.
iii) Omission to take into custody the source of light from place of occurrence creates dent in prosecution story.

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10. **Lahore High Court**
Muhammad Ijaz. v. The State
Criminal Appeal No.115978-J of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6628.pdf

Facts: The appellant was convicted for causing Qatl-i-Amd of his wife (daughter of the complainant) and was awarded death sentence as tazir and also asked to pay compensation u/s 544-A CrPC of Rs.5,00,000/- to the legal heirs of the deceased.

Issue: i) What presumption could be drawn where the post-mortem examination on the deceased is conducted after a long delay?
ii) What is the evidential value of the statement of a chance witness who fails to give any valid reason for his presence at the crime scene?
iii) What would be the effect where the prosecution withholds its best evidence?

Analysis: i) As such, there is delay of 12 hours in conducting the post-mortem examination on the dead body of the deceased. The abovementioned delay in conducting the post-mortem examination on the dead body of the deceased is suggestive of the fact that eye witnesses of the prosecution were not present at the spot at the relevant time and the said delay was consumed in procuring the attendance of fake eye witnesses.
ii) The occurrence had taken place in house of the appellant. From that place, the village of the complainant (PW.4) was situated at a distance of 10-kilometers, whereas, the village of other witness of ocular account (PW-5) was situated at a distance of 50-kilometers. As such, both the abovementioned eye witnesses are chance witnesses. The said witnesses have not given any valid reason for their presence in the house of occurrence at odd hours of the morning i.e. 05:00/06:00 a.m. It is by now well settled that if a chance witness is unable to establish the reason of his presence at the spot at the time of occurrence then his evidence is not worthy of reliance.
iii) Real sister of the deceased was married with the brother of the appellant and was inmate of the house where the occurrence had taken place. She was a natural eye witness of the occurrence. She was admittedly present in the house of

occurrence at the time of occurrence but she has not been produced in the witness box by the prosecution and as such, the best evidence has been withheld by the prosecution; therefore, an adverse inference under Article 129 (g) of the Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution that had the abovementioned lady been produced in the witness box then she would not have favoured the prosecution case.

Conclusion: i) Such a delay will be suggestive of the fact that witnesses were not present at the crime scene and said delay is consumed in procuring the attendance of the eye witnesses.
ii) If a chance witness cannot establish the reason of his presence at the crime scene, he is not worthy of reliance.
iii) Under Article 129 (g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn against the prosecution that the withheld evidence would not have favoured the prosecution case had it been produced in evidence.

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11. **Lahore High Court**
Muhammad Nawaz v. The State
Criminal Appeal No. No.99880 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6642.pdf

Facts: Allegedly the appellant along-with others had murdered the daughter of the complainant for refusing his hand in marriage. He was convicted for causing Qatl-i-Amd and was awarded death sentence and also asked to pay compensation u/s 544-A CrPC of Rs.2,00,000/- to the legal heirs of the deceased.

Issue: i) What presumption the court may draw where the post-mortem examination on the deceased is conducted after considerable delay?
ii) What would be the effect of sending the crime empty to the PFSA after the arrest of the accused?

Analysis: i) The delay in conducting the post-mortem examination on the dead body of the deceased of 11 hours and 45 minutes is suggestive of the fact that the eye witnesses of the prosecution were not present at the spot at the relevant time and the said delay has been consumed in procuring the attendance of fake eye witnesses.
ii) No date of arrest of the appellant has been brought on record by the prosecution through the statement of any of the prosecution witness. Under the circumstances, it is not determinable in this case that as to whether empty recovered from the spot was sent to the office of PFSA, Lahore after the arrest of the appellant or the same was sent to the said office before his arrest; hence it is not safe to rely upon the abovementioned prosecution evidence. It is by now well settled that if the empty is sent to the office of PFSA after the arrest of the

accused then it is not safe to rely upon the positive report of PFSA and recovery of weapon from the possession of the accused.

Conclusion: i) Such a delay will be suggestive of the fact that witnesses were not present at the crime scene and said delay is consumed in procuring the attendance of fake witnesses.
ii) If the empty is sent to the office of PFSA after the arrest of the accused then it is not safe to rely upon the positive report of PFSA and recovery of weapon from the possession of the accused.

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12. **Lahore High Court**
Muhammad Ashraf v. The State etc
Criminal Appeal No. No. 115212 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6654.pdf

Facts: Allegedly the appellant, on the grudge of refusing his hand in marriage, took the wife of the complainant to his house and along-with others murdered her. The appellant in his statement u/s 342 CrPC claimed that the deceased had illicit relations with him and she used to spend time in his house with him. He claimed that on the day of occurrence the complainant found him with her, and tried to kill him. He escaped from the crime scene, but the complainant himself killed the deceased. At the conclusion of trial the appellant was convicted for causing Qatl-i-Amd and was awarded death sentence and also asked to pay compensation u/s 544-A CrPC of Rs.3,00,000/- to the legal heirs of the deceased.

Issue: i) Whether the accused could be convicted for the offence of *Zina* upon the admission made by him in his statement u/s 342 CrPC?
ii) What would be the effect where the conduct of the eye-witnesses at the time of occurrence appears to be unnatural?

Analysis: i) Although the appellant admitted during his statement u/s 342 CrPC that he had illicit relations with the deceased but he has not admitted that they ever committed *Zina* with each other. The nature of above-mentioned illicit relationship is not determinable in this case because no detail of said relationship has been brought on the record by the defence, whereas, no such allegation has been leveled by the prosecution. Moreover, charge for the offence of *Zina* was also not framed by the trial Court.
ii) It is evident from the prosecution evidence that eyewitnesses stood like silent spectators at the time of occurrence and did not take a single step to rescue the deceased. The deceased was wife of the complainant (PW-5), whereas the other eye-witness (PW-6) were brother-in-law of the complainant and the given up PW was nephew of the complainant. They were closely related to the deceased. Had the abovementioned eye-witnesses been present at the spot at the time of

occurrence as claimed by them then they could have saved the deceased or apprehend the appellant at the spot. Their conduct is un-natural thus their evidence is un-trustworthy.

Conclusion: i) The nature of admitted illicit relationship is not determinable in this case because no detail of said relationship has been brought on the record by the defence, whereas, no such allegation has been leveled by the prosecution. Moreover, charge for the offence of *Zina* was also not framed by the trial Court. Therefore, accused cannot be convicted upon the admission made by him in his statement u/s 342 CrPC.
ii) Unnatural conduct of the eye-witnesses makes their evidence untrustworthy.

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13. **Lahore High Court**
Zahid Latif Bhatti v. Director General, LDA, etc.
W.P. No. 233477/2018
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC6552.pdf

Facts: The petitioner, an employee of LDA, was dismissed form service on being absent from duty. His appeal against the decision remained unsuccessful. Revision by him was also rejected since remedy of second appeal was not provided against the penultimate order. However, the Chief Minister on the application of the petitioner ordered his reinstatement on humanitarian grounds. However said order was not implemented by LDA; therefore he invoked constitutional jurisdiction of the High Court.

Issue: i) Whether the respondents (LDA) were bound to implement the order of reinstatement passed by the Chief Minister on humanitarian grounds?
ii) Whether under the Punjab Removal from Service (Special Powers) Ordinance, 2000 (the Ordinance), the Chief Minister was a ‘competent authority’ in respect of the petitioner who was serving in BPS-11 at the time of his dismissal?

Analysis: i) A perusal of directive issued by the Chief Minister Secretariat shows that reinstatement of the petitioner was directed on humanitarian grounds. The said ground being alien to law on the subject was not justified……The Hon’ble Court while relying on (2018 SCMR 1120), (2018 SCMR 1411), (2017 SCMR 192), & (2015 SCMR 1449), held that order passed by an Executive, how so high, is not enforceable by the public functionaries until and unless it has the backing of law. If the conduct of the respondents refusing to implement the directive issued by the Chief Minister is considered in the light of afore-referred judgments of the Hon’ble Supreme Court of Pakistan, there leaves no ambiguity that they performed their duties efficiently, thus no adverse opinion can be formed against them.
ii) Vide Notification No.SOR-III.1-33/94(A) dated 06.12.2000, the competent authority in respect of employees in different scales were determined. The Chief

Minister was not declared as competent authority in respect of the employees falling in BPS-1 to 15. Since the petitioner was serving in BPS-11 at the time of his dismissal from service, the Chief Minister could not be considered his competent authority.

Conclusion: i) The respondents were not bound to implement an order that had no backing of law.

ii) The Chief Minister was not the 'competent authority' in respect of the petitioner who was serving in BPS-11 at the time of his dismissal.

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14. **Lahore High Court**
Commissioner Inland Revenue v. M/s Monnoowal Textile Mills Ltd.
ITR No.94 of 2015
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC5876.pdf

Facts: Instant reference application is against order dated 06.10.2014, passed by learned Appellate Tribunal Inland Revenue. The primary dispute is regarding apportionment of expenditures incurred and adjustments claimed by the respondent taxpayer, claimed to have drawn income from the manufacture and sale of yarn.

Issue: Whether apportionment of expenditures /deductions claimed by the taxpayer, in the instant case, is required to be carried out under section 67 and Rule 13 of the Rules or Rule 231 of the Income Tax Rules, 2002?

Analysis: Reliance of the Appellate Tribunal on Rule 231 is misconceived. It is discernable from bare reading of Rule 231, ibid, that same relates to computation of export profits relatable proportionately to the export sales, having no relevance to the case at hand. In terms of the ratio settled in the case of "Commissioner Inland Revenue v. Messrs Quality Textile Mills Ltd." (2013 PTD 2095) = [(108) Tax 137 (H.C.Kar)], Rule 231 and Rule 13 are distinct, claiming independent character / attributes, and each one is attracted to different set of situations / circumstances. Section 67, read with Rule 13, provides mechanism for apportionment of expenditures, with respect to class or classes of income, as classified therein. In the instant case income was derived from local sales, supplies and exports.

Conclusion: In view of the above, we firmly opine that apportionment of expenditures, in the instant case, is required to be carried out under section 67 and Rule 13 of the Rules. And Rule 231 has no application in the context of the expenditures / deductions claimed by the taxpayer.

15. **Lahore High Court**
Jamshed Iqbal Cheema v. The Returning Officer, NA-133 and others
Election Appeal No.07/R OF 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC6354.pdf

Facts: The judgment decides the connected appeals against the orders passed by the District Election Commission/Returning Officer against the qualification of the proposer pertaining to subscription of the nomination papers of the appellant and hence sought rejection of the nomination papers in view of Section 62(9)(b) of the Elections Act, 2017.

Issue: i) Whether rejection of nomination papers is justified for the reason that either of the subscribers (proposer or seconder) is not enrolled as voter in the Electoral Roll of the constituency?
ii) Whether this defect is substantial or curable?

Analysis: i) It was opined by the Appellate Tribunal by interpreting the relevant provisions of the Elections Act, 2017 i.e. Section 60(1), 60(4) and 62(9)(b)(i), that the subscriber should be satisfied that his name is enrolled in the Electoral Roll of the same constituency. In fact it requires an extra qualification for proposer or seconder to be an enrolled voter in Electoral Roll. Hence the mandate of law requires a candidate ought to be proposed by a voter existing in the Electoral Roll of "the constituency" where he intends to propose or second a candidate not of any other constituency.
ii) The Hon'ble Tribunal while referring to the case precedents reported as **PLD 2016 Supreme Court 944** and **PLD 2007 Supreme Court 277** observed that provisions relating to proposer and seconder of a candidate in the Election Act, 2017 are mandatory in nature, and any defect in respect thereof is a defect of substantial nature and not curable as such.

Conclusion: i) A candidate ought to be proposed by a voter existing in the Electoral Roll of "the constituency" where he intends to propose or second a candidate not of any other constituency.
ii) if there is any defect is this regard then the same would be substantial and not curable.

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16. **Lahore High Court**
Fayyaz-ul-Haq etc. v. Ghulam Nabi (deceased)
C.R.No.384/2012
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC5770.pdf

Facts: The petitioners filed a suit for declaration alleging therein that they are owners in possession of suit land. The petitioners and their mother executed a power of attorney in favour of defendant No.1, but later on revoked it.

Issues: Whether a general power of attorney, executed against paid consideration, can be revoked?

Analysis: Under Section 202 read with Section 206 of the Contract Act, 1872, the principal is duty bound to give notice to the agent before cancellation of the power of attorney. The conjoint reading of the above provisions of law clearly provides that a power of attorney could only be rescinded after serving a notice upon the attorney and any revocation of the attorney-ship without notice to the attorney would be illegal. Further here in this case, the power of attorney was issued against receipt of consideration amount of land from the attorney and necessary dues are paid and document was got registered as per law and same is liable to be treated as a sale deed, as such, said power of attorney could not be revoked until and unless an adverse declaration is obtained from the competent court of jurisdiction.

Conclusion: A general power of attorney, executed against paid consideration, cannot be revoked until and unless an adverse declaration is obtained from the competent court of jurisdiction.

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17. **Lahore High Court**
Abdul Rehman Khan etc. v. The Member (Judicial-V)/Chief Settlement Commissioner etc.
W.P.No.14-R/2011
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC5777.pdf

Facts: Through this writ petition, the petitioners have challenged the order passed by the Member Judicial-V/Chief Settlement Commissioner, Board of Revenue, Punjab who cancelled the allotment from the name of, predecessor-in-interest of the petitioners, and resumed the land in favour of the state.

Issues: i) Whether an Indian national can seek declaration in Pakistan?
ii) Whether an authority can reverse an erroneous or illegal order, earlier passed by it?

Analysis: i) Predecessor of the petitioners, was a permanent resident of India, as such, he as well as his legal heirs are foreigners, who are also residents of the enemy state, thus by any stretch of imagination, cannot seek a decree to declare them as legal heirs of an Indian Citizen from a court in Pakistan.

ii) Section 21 of the General Clauses Act, 1897 confers an inherent jurisdiction to an authority which has passed the order to reverse the erroneous or illegal order earlier passed by it. Similarly if any benefit has been obtained from authority by practicing misrepresentation or fraud, the same forum is vested with inbuilt jurisdiction to undo the wrong. In this regard the Hon'ble Supreme Court of Pakistan in a case titled as Muhammad Baran and others v. Member (Settlement and Rehabilitation) Board of Revenue Punjab and others (PLD 1991 SC 691) has

held that where the allotment order made by the authorities was illegal, without jurisdiction, based on fraud and forgery, in that eventuality the same authority can undo such illegal order either on its own motion or on the information received to it through application. In the case of obtaining allotment of evacuee land through fraud, the settlement authority may reverse such order of allotment and in such like matter the superior Courts can withhold the exercise of their discretionary writ jurisdiction to annul the order of authority, even though it was clearly without jurisdiction.

Conclusion: i) Indian nationals, who are also residents of the enemy state, cannot seek a decree to declare them as legal heirs of an Indian Citizen, in Pakistan.
ii) An authority can reverse an erroneous or illegal order, earlier passed by it.

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18. **Lahore High Court**
Malik Allah Ditta (deceased) through his legal heirs etc. v. Member, Board of Revenue etc.
I.C.A. No.761/2014
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC6673.pdf

Facts: The appellants and others filed an application before the Chief Settlement Commissioner, for the purchase of the evacuee land. The application of the appellant was partially accepted by the Notified Officer who allowed the appellants to purchase the evacuee land at the prevailing market price plus 50% penalty.

Issues: i) Who is eligible for the offer of sale of evacuee land under the Evacuee Law / Policy?
ii) Whether the Notified Officer has the jurisdiction to sell the evacuee agricultural land to sitting occupant through a private treaty?

Analysis: i) The conjoint reading of Section 3(1)(b) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 with Chapter II para 2 Part Second (Iv), Chapter 3, para 2 as well as Proviso to para 2 and Chapter 4 of the Scheme as well as the policy notification dated 02.12.1998 leads to conclude that the unallotted/ unoccupied evacuee land shall be disposed of only through unrestricted open public auction. But for the un allotted occupied land a modus operandi has been described in Chapter 1, Item No.ii containing qualification for the purchaser of the evacuee land i.e. first stipulation is that the un allotted occupied land should be offered for sale to such person who was in possession of said land for four harvests immediately preceding Kharif, 1973 unless an order of ejectment has been passed against him and the second stipulation for sale of the un allotted occupied land to the occupant was that his total holding including the evacuee land occupied by him shall not exceed 12 ½ Acres (100 Kanals) as subsisting holdings provided in Land Reforms Ordinance, 1972. Any disqualification of occupants as stated above, the land shall be disposed of through un-restricted open public auction. The target date for exercising the option to purchase the land

was also fixed in the above said policy but from perusal of the record, it transpires that the appellants filed application to the Chief Settlement Commissioner on much after the lapse of the target date. Moreover it was mandatory for the appellant to prove that their entire land owned or occupied was below the ceiling of subsisting holding as envisaged under Land Reforms Ordinance, 1972, but no believable and trustworthy record has been produced which flaw amounts to withholding of material information, thus an adverse presumption validly goes against them.

ii) Admittedly after the repeal of evacuee laws with effect from 01.07.1974 by promulgation of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 all the evacuee land under Section 3 of the Act ibid by operation of law stood vested with the provincial government against the paid consideration thus the said land has attained the status of public property and its disposal has to be made as prescribed under the law, scheme policy on the subject and it is settled that when law requires a thing/act to be done in a particular manner that must be done according to the described modus operandi otherwise it wears no sanctity and effectiveness in the eyes of law. Admittedly the jurisdiction of the Notified Officer has been restricted to the pending proceedings as envisaged under Section 2 of the Act, 1975 and he has no unlimited power rather he had to exercise its jurisdiction with the precincts prescribed under the law regulations, rules, policies and instructions on the subject. Any unwarranted act of a state functionary is liable to be set at naught without any hesitation. Undoubtedly the public functionaries are the ostensible custodians of the state assets and they cannot be allowed to dole the state assets upon their cherished / blue eyed persons at their own whims and fancies.

Conclusion: i) See above

ii) The Notified Officer has no jurisdiction to sell the evacuee agricultural land to sitting occupant through a private treaty?

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19. **Lahore High Court**
Abdul Hafeez v. The State etc.
Crl. Appeal No. 520 of 2012
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC6539.pdf

Facts: The appellant was convicted under Section 302 (b) PPC and sentenced to life imprisonment in a case of unseen murder.

Issue: What is the standard of proof in a case completely based upon circumstantial evidence and involves capital sentence?

Analysis: In order to rely upon circumstantial evidence, the apex Court in Naveed Asghar v. The State (PLD 2021 SC 600) has laid down stringent principles, in particular, in cases involving capital punishment. It has been time and again held that such type of evidence must be of the nature, where all circumstances, must be so inter-

linked, making out a single chain, an unbroken one where one end of the same touches the dead body of the deceased and the other at the neck of the accused. If, on the facts and circumstances proved, no hypothesis consistent with the innocence of the accused person can be suggested, the case is fit for conviction of the accused person on such conclusion; however, if such facts and circumstances, can be reconciled with any reasonable hypothesis compatible with the innocence of the appellant, the case is to be treated one of insufficient evidence, resulting in acquittal of the accused person.

Conclusion: If, on the facts and circumstances proved, no hypothesis consistent with the innocence of the accused person can be suggested, the case is fit for conviction of the accused person on such conclusion.

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20. **Lahore High Court**
Muzaffar Bhutta v. The State etc.
Crl. Misc No. 5754-B/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC6547.pdf

Facts: The petitioners sought post-arrest bail in a case registered under Sections 409, 420, 467, 468, 471 PPC and Section 5(2) of the Prevention of Corruption Act, 1947.

Issue: Whether allegations of preparing and using of a false report regarding status of land and reporting it as “null chahi” without any other proof of giving or receiving corruption is sufficient to deny bail to the petitioners?

Analysis: The petitioners are though named in the crime report yet no role whatsoever for demanding, receiving or extorting even a single penny from any corner has been brought on record. Though there was allegation of preparing and using forged documents in getting allotted the state land yet no forensic report is available on record in this regard and as such, the application of Section 467 PPC to the facts and circumstances of the case shall be taken into consideration by the learned trial Court after recording the evidence. The remaining offences, with which the petitioners have been charged, do not attract the prohibitory limb of Section 497 Cr.P.C.

Conclusion: Petitioners are entitled to bail since no evidence regarding receiving or extorting money for preparation of alleged forged report and forensic report in this regard is available.

21. **Lahore High Court**
Abid Hussain v. Additional Sessions Judge etc.
Transfer Application No.62606/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5616.pdf

Facts: This petition under section 526 Cr.P.C 1908 seeks indulgence of the Hon'ble Court to transfer application filed under section 22 A CrPC 1908 to some other Ex-officio Justice of Peace in the District.

Issue: Scope of Section 526(1) Cr.P.C qua the concept of a "court".

Analysis: In order to determine whether a particular forum is a court, it is necessary to consider the powers, functions and duties performed by it. The Hon'ble Court while referring to the chain of authorities from other jurisdictions as well as ours along with excerpts from acclaimed legal commentaries observed, inter alia, that pendency of lis, duty to hear the parties and pronouncement of definitive judgment are essential attributes of court. Hence the linchpin characteristic of a court is indeed exercise of judicial power. Pronouncement of a definitive judgment is the sine qua non of a court and a judgment which is in fact delivered by the presiding officer acting judicially. The definitions of "Judge" and "Court Justice" in sections 19 and 20 of the Pakistan Penal Code, 1860, are incorporated in it by reference through section 4(2) Cr.P.C. The terms "Judge" and "Court" are often used interchangeably but the distinction between them is subtle. A Judge is an individual while the Court is the seat of justice as an institution. The proceedings under sections 22-A & 22-B before the Sessions Judge or the Additional Sessions Judge do not become judicial merely because they are judges and exercise judicial power in other matters. The Hon'ble Court while referring to the celebrated judgments on this point reported as PLD 2016 SC 581 and PLD 2005 Lahore 470 observed that the functions of the Ex-officio Justice of Peace described in clauses (i), (ii) and (iii) of section 22-A(6) Cr.P.C. are quasi-judicial.

Conclusion: It was most aptly opined by the Hon'ble Court that the Ex-officio Justice of Peace is not a court within the meaning of section 20 PPC read with section 4(2) Cr.P.C. As section 526 Cr.P.C. empowers the High Court to transfer cases pending before the criminal courts only.

22. **Lahore High Court**
Shaheen Merchant v. Federation of Pakistan/National Tariff Commission and others
W.P. No. 62992 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC6366.pdf

Facts: The petitioner was aggrieved of Final Determination made by the Commission under Anti-Dumping Duties Act, 2015 and filed an appeal there against in a collective capacity before the Appellate Tribunal under Section 70 of the Act, which remained undecided for three years and the petitioner sought direction of the High Court to the Appellate Tribunal for decision on his pending appeal expeditiously and for grant of interim injunction meanwhile.

Issue: i) Whether the Anti-Dumping Act, 2015 is a time-specific legislation under which the Appellate Tribunal is bound to decide appeals in a time-bound manner?
ii) Whether a Final Determination made by Commission under Anti-Dumping Act is final and can be given effect when the same is subject matter of pending appeal before the Tribunal?

Analysis: i) Section 70 of the Act specifically stipulates that if an interested party files an appeal against the initiation of investigation or a preliminary determination as provided under Section 70(1)(i), the Tribunal shall issue its decision within thirty days of the filing of such an appeal as laid down under sub-section 3 of Section 70. On the other hand, sub-section 5 of Section 70 specifically stipulates that any other appeal filed by an interested party against an affirmative or negative final determination, against a final determination pursuant to a review, against an order of the Commission for termination of investigation and against a determination of the Commission under Section 52 of the Act, must be decided by the Appellate Tribunal as expeditiously as possible but not later than forty-five days from the date of receipt of such an appeal. The purpose of specifically providing a time-frame for the Tribunal to decide the appeal is to make the Appellate Tribunal function within the time-specific bounds because the purpose and intent behind codifying the duration of time-frame is to ensure that the appeal before the Tribunal must be decided expeditiously as mandated under Article 37(d) of the Constitution. A careful glance of Section 70 clearly unveils that time is essence of the Appellate procedure whether it be before the Appellate Tribunal or before the High Court against the decision of the Tribunal as sub-section (13) also requires that the High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal. The irresistible conclusion that the Tribunal under the Act is a time-specific forum with a time-bound mandate to decide the Appeals, finds further strength from the Sub-section (6) of Section 70 of the Act wherein it is provided that the Appellate Tribunal shall hear the appeal from day-to-day and its significance as such is further heightened from perusal of Section 69 of the Act, wherein it is provided that even the absence of a

Chairman, or the temporary incapacity of the Chairman, shall not affect the other members' ability to act as the Appellate Tribunal which remains competent to exercise its powers and authority under the Act.
ii) Section 70 of the Act is an exhaustive provision, which does not only provide the substantive right of appeal and time limitation for preferring and decision of the same but it also lays down the procedural requirements for carrying out the whole appellate procedure. It stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination and also provides limitation to as well as it also provides the procedure for hearing the same including chalking out the requirements for a decision of the Tribunal. Moreover, sub-section (13) lays down the substantive right of appeal against the decision of the Appellate Tribunal to the High Court. This whole scheme of remedial procedure is clearly suggestive of the fact that a Determination even though a Final Determination under Section 39 is not absolute and is open for scrutiny before the Appellate Tribunal if any interested party, dissatisfied with the same, prefers an appeal before it. It is further evident that the decision of the Appellate Tribunal pronounced under sub-section (9) of Section 70 is further open to judicial examination by the High Court under sub-section (13) if an interested party still feels dissatisfied prefers so.

Conclusion: i) The Appellate Tribunal under the Act is a time-specific forum with a time-bound mandate to decide the Appeals within specified time.
ii) When the statute has provided specific remedies of appeal against Final Determination, already impugned before the Appellate Tribunal and when right of another appeal is still available after the decision of the Appellate Tribunal, then in such a situation, the impugned Final Determination cannot be given effect because doing so will not only frustrate the pending appeal before the Tribunal but it will also jeopardize the whole purpose of provision of remedy of Appeal under the Act.

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23. **Lahore High Court**
Saghir Ahmed v. Ambassador USA Embassy Islamabad
Diary No. 139270 dated 20.09.2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC5948.pdf

Facts: This case put up as an objection case before Court filed by petitioner, seeking direction in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, to be issued to the Ambassador of USA Embassy Islamabad, Pakistan, who has been impleaded as sole respondent in the matter, to issue visa and provide air tickets to the petitioner and his family members to travel to the United States of America.

Issue: i) Whether under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 High Court can direct the Ambassador of USA Embassy, Islamabad, to issue visa to the petitioner?
ii) Whether immunity provided to the Ambassador as diplomatic agent in terms of Section 86 (A) *of CPC* against suits shall also be applicable to constitutional petitions filed against him?

Analysis: i) Court can only issue direction in the nature of mandamus to the persons mentioned in the definition of "person" under Article 199 (5) of the Constitution of Islamic Republic of Pakistan, 1973, which unless the context otherwise requires includes anybody politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or Tribunal, other than the Supreme Court, a High Court or a Court or Tribunal established under the law relating to Armed Forces of Pakistan. The afore-referred definition provides that constitutional petition can be exercised against the persons mainly working in connection with the affairs of the Federation, Province or Local Government or represent the State or its departments or courts subordinate to the superior courts whereas constitutional petition is not maintainable against Supreme Court of Pakistan, High Courts or Tribunals established under law relating to Armed Forces of Pakistan, which have been expressly excluded. Neither the Ambassador nor the Embassy fall in any category provided above that is subject to Writ jurisdiction of this Court. The petitioner's case does not fall within the jurisdiction of this Court provided under Article 199 of the Constitution, consequently, Writ of Mandamus cannot be issued.
ii) Subsection 6 of Section 86.A of CPC defines that diplomatic agent in relation to a State means the Head of the Mission of the Sending State in Pakistan and includes the members of the staff of that mission having diplomatic rank. This means that not only the Ambassador but also the staff members having diplomatic ranks are immune from being proceeded against in the jurisdiction of this Court except for the exceptions provided in the Section 86.A of the CPC and Article 31 of the Vienna Convention. The Diplomatic and Consular Privileges' Act, 1972, Vienna Convention and the CPC provide immunity to the diplomatic agents against being proceeded in the jurisdiction of the courts including Writ Petitions as the principles of the CPC, which unless specifically barred, are applicable to constitutional petitions as well, whatever may be the nature of jurisdiction, as laid down in PLD 1970 Supreme Court 1 which principle has been reiterated in PLD 1992 Supreme Court 723 and PLD 2004 Supreme Court 70 hence, the immunity provided to the Ambassador as diplomatic agent in terms of Section 86 (A) supra against suits shall also be applicable to constitutional petitions filed against him.

Conclusion: i) The petitioner's case does not fall within the jurisdiction of this Court provided under Article 199 of the Constitution, consequently, Writ of Mandamus cannot be issued.

ii) The immunity provided to the Ambassador as diplomatic agent in terms of Section 86 (A) of CPC against suits shall also be applicable to constitutional petitions filed against him.

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24. **Lahore High Court**
Zepyr Agro Chemical (Pvt) Ltd. v. East West Insurance Company Limited
R. F. A. No. 192 of 2019 / BWP
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5848.pdf

Facts: A fire broke out in the insured premises of the Appellant. The Appellant submitted an application for the recovery of an insurance claim under Fire Insurance Policy against respondent. But the application of the petitioner was dismissed by the Insurance Tribunal, relying upon Surveyor (appointed by respondent) report.

Issues: i) What is the meaning of term “Godown” in reference to insurance policy?
ii) Whether a document can be relied upon, which is not proved in accordance with law?

Analysis: i) The only logical inference is that all the insured stock which was stored or kept within covered areas in the insured premises was duly insured under the Policy. The word “Godown” would be given a general and plain meaning to cover all constructed rooms and halls where the insured stock was kept within four walls of the insured premises.

ii) The respondent did not produce the Surveyor, as a witness and as such the insurance report (prepared by Surveyor) was not proved in accordance with the requirements of Qanun-i-Shahadat Order, 1984. No opportunity was provided to the appellant to cross examine him regarding the interpretation put forward by him and confront him with the Survey Report regarding various allegations of fact recorded therein… Having observed as such, it is strange that the Insurance Tribunal without considering that the Surveyor was not produced at all based its judgment upon the Survey Report of the Surveyor which was neither admissible nor had any evidentiary value especially when the Appellant had consistently disputed the same.

Conclusion: i) The word “Godown” would be given a general and plain meaning to cover all constructed rooms and halls where the insured stock was kept within four walls of the insured premises.
ii) A document, which is not proved in accordance with law, cannot be relied upon.

25. **Lahore High Court**
Muhammad Yousaf v. The State, etc.
Cr. Appeal No.950 of 2016
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5816.pdf

Facts: Appellant has challenged his conviction and sentence awarded to him by the learned Additional Sessions Judge, in case registered u/s 302, PPC.

Issue: i) What is the effect of deliberate and dishonest improvement made by a witness in a statement to strengthen the prosecution?
ii)What is the evidentiary value of chance witness's evidence, who remained failed to explain the reasons of his presence at crime scene?
iii) What is the evidentiary value of recovery when no grouping of the blood is made with the bloodstained clothes of the deceased?

Analysis: i)There is no cavil with the proposition that deliberate and dishonest improvement made by a witness in a statement to strengthen the prosecution case, cause serious doubts in his veracity and makes him un-trustworthy and un-reliable. It is quite unsafe to rely on testimony of such witness even any fact deposed by him other than improvement, unless it receives some corroboration from other piece of reliable evidence.
ii) In all eventualities, the eye-witnesses are categorized as chance witnesses. Both the eye-witnesses were not only closely related but they were also chance-witnesses, who have failed to explain regarding the reasons of their presence at the crime scene. So, without having corroborative evidence to support the version of the chance-witnesses, it has to be excluded from the consideration.
iii) The august Supreme Court of Pakistan while highlighting the status of such like recovery in case of "Irfan Ali v. The State" (2015 SCMR 840) had observed that "When no grouping of the blood was made with the bloodstained clothes of the deceased to create a nexus between the two, the same is of no help to the prosecution". Similarly in case of "Khalid Javed v. the State" (2003 SCMR 1419), the august Supreme Court of Pakistan discarded the prosecution evidence of recovery of bloodstained weapon of offence i.e. dagger and knife and bloodstained clothes of the accused persons in absence of matching report of the bloodstained with the blood grouping of the deceased. Since no 'matching report' of the blood found on the recovery of weapon of offence danda)موھلہ)in this case with the clothes of the deceased and the bloodstained earth is available on record, so, the recovery in this case cannot be considered as the corroborative piece of evidence against the appellant.

Conclusion: i) Deliberate and dishonest improvement made by a witness in a statement to strengthen the prosecution case, cause serious doubts in his veracity and makes him un-trustworthy and un-reliable.
ii) Without having corroborative evidence to support the version of the chance-

witnesses, it has to be excluded from the consideration.

iii) When no grouping of the blood was made with the bloodstained clothes of the deceased to create a nexus between the two, the same is of no help to the prosecution.

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26. **Lahore High Court**
The State v. Muhammad Aslam
Murder Reference No.08 of 2017
Muhammad Aslam v. The State
Criminal Appeal No. 75 of 2017 etc
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6484.pdf

Facts: In an occurrence induced by a property issue, a person was murdered while others were injured on both sides. Complainant party put the entire blame on the accused side, while accused side put all the blame for occurrence on the complainant side.

Issue: How to deal with a murder case where there was free fight and it is not ascertainable that who was aggressor?

Analysis: The circumstances of the case do not prove the defence plea or the aggression of complainant party rather it being a free fight and a melee, which undoubtedly was not an arranged occurrence of either party rather both sides under compelled circumstances were to participate in it. It is common that in such like cases each party hesitates to bring the true facts on record to prove the aggression of his opponent. The prosecution has not brought satisfactory evidence to establish aggression of the accused to come to a definite conclusion to give verdict of the correctness of prosecution version or plausibility of defence plea. Exception 4 of the erstwhile section 300 of the PPC covered those cases where an offender causes death „without premeditation in a sudden flight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner'. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. It is to be noted that the word 'fight' occurring in Exception 4 contained in the erstwhile section 300, P.P.C. is not defined in PPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down. 'Sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is

difficult to apportion the share of blame which attaches to each fighter. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. Exception 4 provided in the erstwhile provisions of section 300, P.P.C. jurisprudentially must be reckoned as a humane provision accepting the fact that even the most rational of men may under the heat of passion do acts which they may not have done or would not do if saner faculties were to prevail. To such persons, law in a humane manner, permits mitigation if and only if it is proved that the passion happened to run in a sudden fight upon a sudden quarrel.

Conclusion: The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed.

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27. **Lahore High Court**
Muhammad Imran v. The State
Criminal Appeal No.176-J of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6443.pdf

Facts: For an occurrence of double murder, accused was tried and PW made a statement against the accused in evidence. However before cross examination, the PW died.

Issue: What is the evidentiary value of un-cross examined statement of a witness who died before cross examination?

Analysis: There is no provision in the Qanun-e-Shahadat Order which specifically makes such piece of evidence inadmissible…Appellant simply did not cross examine PW till he remained alive, though PW kept appearing before the learned trial court for the said purpose….The evidence of deceased PW in the form of examination-in-chief, was an admissible piece of evidence, which could be legally taken into consideration by the Court in the peculiar facts and circumstances.

Conclusion: The un-cross examined statement of deceased PW in the form of examination-in-chief, was an admissible piece of evidence.

28. **Lahore High Court**
Fakhar Abbas v. The State
Criminal Appeal No. 209 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6405.pdf

Facts: The brother of complainant was allegedly murdered when he was sleeping in cattle shed in the presence of witnesses.

Issue: What is rigor mortis?

Analysis: Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which rigor mortis disappears is called algor mortis. In Chapter 15 „POST-MORTEM CHANGES AND TIME SINCE DEATH", from page 351 to page 352 of Rai Bahadur Jaising P. Modi's A Textbook of Medical Jurisprudence and Toxicology (26th Edition 2018) it has been discoursed as under:-

> "Rigor mortis generally occurs, while the body is cooling. It is in no way connected with the nervous system, and it develops even in paralyzed limbs, provided the paralyzed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline. Owing to the setting in of rigor mortis all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away. Rigor mortis first appears in the involuntary muscles, and then in the voluntary. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration. The left chambers are affected more than the right. Postmortem delivery may occur owing to contraction of the uterine muscular fibres. In the voluntary muscles rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes off in the same sequence. However, according to H.A. Shapiro this progress of rigor mortis from proximal to distal areas is apparent only, it actually starts in all muscles simultaneously but one can distinguish the early developing and fully established stage, which gives an indication of the time factor. Time of Onset.- This varies greatly

in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. Duration-In temperate regions, rigor mortis usually lasts for two to three days. In northern India, the usual duration of rigor morts is 24 10 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is nineteen hours and twelve minutes, the shortest period being three hours, and the the longest forty hours." In Colombo, the average duration is 12 to 18 hours. When rigor mortis sets in early, it passes off quickly and vice versa. In general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discolouration, tense or taut state of the abdomen, disappearance of rigor on face and eye muscles. If on examination, the body is stiff, the head cannot be fixed towards the chest, then in all probability, the death might have occurred six to twelve hours or so more before the time of examination.

Conclusion: Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate.

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29. **Lahore High Court**
Muhammad Imran v. The State and another
Criminal Appeal No. 503 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6242.pdf

Facts: Appellant filed criminal appeal against the judgment wherein he was awarded death sentence in a murder case whereas learned trial court sent reference under section 374, Cr.P.C. for the confirmation or otherwise of death sentence awarded to him.

Issue: i) What is the effect if the name of witness is not mentioned in the inquest report who was present at the time of the preparation of it and also did not accompany deceased to the hospital for postmortem examination?
ii) Whether the presence of witnesses becomes doubtful when the witnesses despite the claiming their presence at place of occurrence made no effort to save the life of the deceased?
iii) What is the purpose and effect of causing delay in conducting the postmortem?

Analysis: i) The name of (PW-8) was not mentioned in column No.4 or at page 4 of the inquest report as prepared by the (PW-7) as being the person who was present near the dead

body at the time of the preparation of the inquest report Additionally, (PW-8) did not accompany the dead body of the deceased to the hospital for post mortem examination. This conduct of (PW-8) where he made no effort to take deceased to the hospital and also did not accompany the dead body of the deceased to the hospital, convincingly establishes that the said witness was not present at the place of occurrence, at the time of occurrence and arrived there subsequently.

ii) No person having ordinary prudence would believe that such closely related witnesses would remain watching the proceedings as mere spectators without doing anything to rescue the deceased or to apprehend the assailant. It is strange that when the witnesses had the desire to apprehend the accused after the occurrence and were not fearful of the assailant at that time, then why they could not stop him from committing the occurrence. The allowance of prosecution witnesses to the assailant of causing the death of their near and dear relative speaks loudly that if witnesses had been present at the place of occurrence, at the time of occurrence, then they would have definitely intervened and prevented the assailant from murdering their dear one. Such behavior, on part of the witnesses, runs counter to natural human conduct and behavior. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the witnesses, as deposed by PW-8, was opposed to common course of natural events, human conduct and that the witnesses were not present at the time of occurrence at the crime scene.

iii) No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that PW-8 claiming to have seen the occurrence was not present at the place of occurrence, at the time of occurrence and the delay in the post mortem examination was due to the time used to procure his attendance and formulate a false narrative after consultation and discussion. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person..

Conclusion: i) The name of witness is not mentioned in the inquest report who was present at the time of the preparation of it and also did not accompany deceased to the hospital for postmortem examination, convincingly establishes that the said witness was not present at the place of occurrence, at the time of occurrence and arrived there subsequently.

ii) See para (ii) of analysis.

iii) Delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

30. **Lahore High Court**
Sabir Hussain v. The State
Criminal Appeal No. 699-J of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6093.pdf

Facts: The appellant was tried by the learned Additional Sessions Judge in respect of an offence under section 302 PPC for committing the Qatl-i-Amd. The learned trial court vide judgment dated convicted him to death penalty on two counts with direction to pay compensation. He lodged Criminal Appeal assailing his conviction and sentence. The learned trial court submitted Murder Reference seeking confirmation.

Issue: i) Whether death of the unborn child with age of 32-34 weeks satisfies the provisions of section 338-B, P.P.C. or section 302 PPC?
ii) Whether quantum of sentence may be determined on the basis of mitigating circumstances?

Analysis: i) Admittedly section 338-B, P.P.C., deals with "Isqat-i-janain". If 32-34 weeks old child died in consequence of injuries sustained by mother in womb, it does not attract the provisions of section 338-B, P.P.C., because as per medical jurisprudence, heartbeat starts after 2 months, while after 180 days (six months) the child becomes mature and in our part of the world, often, even after seven months women give birth to healthy babies. Hence, in this view of the matter it can be ascertained that 'fetus' having remained more than 6 months in the womb of his mother falls within the definition of 'child'. Analogy in this regard can be drawn from Article 128(1) of the Qanun-e-Shahadat Order, 1984. From the above provision of the Article 128(1) of the Qanun-e-Shahadat Order, 1984 only inference can be drawn is that after six months of pregnancy, a female can give birth to a child. As far as Islamic concepts on this issue are concerned, from the books of 'Ahadiths' it is established that after 120 days, Allah (Almighty) blows soul into the fetus.
ii) It is well recognized principle by now that the question of quantum of sentence requires utmost attention and thoughtfulness on the parts of the Courts. The prosecution is bound by law to exclude all possible extenuating circumstances in order to bring the charge home to the accused for the award of normal penalty of death. If a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused.

Conclusion: i) If 32-34 weeks old child died in consequence of injuries sustained by mother in womb, it does not attract the provisions of section 338-B, P.P.C.
ii) Quantum of sentence may be determined on the basis of mitigating circumstances.

31. **Lahore High Court**
Zahid Murad v. The State and another
Criminal Appeal No. 76 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6014.pdf

Facts: In a murder occurrence, allegedly five accused participated. Only one was convicted on the basis of statements of eye witness.

Issue: i) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused can be believed against the convicted accused?
ii) What is evidentiary value of recovery, if no witness from the locality was associated with recovery proceeding?

Analysis: i) It is settled proposition once a witness is found to have lied about a material aspect of a case; it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

ii) The recovery of the repeater gun 12-bore from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery from the appellant which was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898.

Conclusion: i) The testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole.
ii) If at the time of recovery no private witness from the locality was associated with recovery proceedings, same cannot be relied upon.

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32. **Lahore High Court**
Azhar v. The State etc
Criminal Appeal No. 267 of 2017
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC5980.pdf

Facts: Complainant alleged that the accused who was annoyed with the deceased for her marrying with him confronted the complainant party when they were returning from field and made fire shots on the wife of complainant killing her.

Issue: i) What is effect of contradiction in ocular account and medical evidence?
ii) What is significance of motive in criminal case?

Analysis: i) Contradiction in the ocular account of the occurrence, as narrated by eye witnesses and the medical evidence clearly establishes that the prosecution witnesses miserably failed to prove their presence at the place of occurrence at the time of occurrence. Had the witnesses seen the occurrence then there did not exist any possibility that they would have fallen into error, stating wrongly that the appellant fired at the deceased hitting her on her back.

ii) It is settled law that motive is a double-edge weapon, which can cut either way; if it is the reason for the appellant to murder the deceased; it equally is a ground for the complainant to falsely implicate him in this case. It is an admitted rule of appreciation of evidence that motive is only corroborative pieces of evidence and if the ocular account is found to be unreliable then motive has no evidentiary value and loses its significance.

Conclusion: i) Contradiction in the ocular account of the occurrence, as narrated by prosecution witnesses and the medical evidence as furnished by Doctor, clearly establishes that the prosecution witnesses failed to prove their presence at the place of occurrence at the time of occurrence.

ii) Motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive has no evidentiary value and lose its significance.

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33. **Lahore High Court**
Muhammad Irshad v. The State and another
Criminal Appeal No. 85 of 2017 etc
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6152.pdf

Facts: The allegations narrated in graphic detail against a number of accused with the individual roles are that they committed murder of two sons of complainant by causing multiple firearm injuries when they were sleeping in their house and emergency light was on in view of suspicion of illicit relation of his one son with the daughter of one accused.

Issue: i) Whether prosecution is bound to establish the fact of availability of light source especially when occurrence had taken place in the dark hours of night?

ii) What is effect of photographic narrations of events by prosecution witnesses?

iii) Whether conviction can be based on abscondence alone?

Analysis: i) The prosecution witnesses failed to establish the fact of such availability of light source and in absence of their ability to do so, we cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in dark. It was admitted by the witnesses themselves that it was a dark night and they had used the light of the rechargeable tube-light, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such light source, their statements

with regard to them identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) It was humanly impossible to provide such minute details in such a photographic manner or to assign the specific roles and furnish detailed description of the same while getting the written application for the registration of the F.I.R submitted to the Investigating Officer of the case….. The photographic narration of the occurrence by both the witnesses by assigning specific injury to each of the accused in an extreme calamity and crunch situation was highly improbable and not believable, especially when the occurrence had taken place in the dark hours of the night. Over anxious photographic account of the occurrence by the prosecution witnesses vis-a-vis, the weapon of offence, number and locale of injuries allegedly caused by the appellants to the deceased is not only proved to be maneuvered but also improbable and preposterous.
iii) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence. Abscondence itself has no value in the absence of any other evidence. Abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. In the present case, substantive piece of evidence in the shape of ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone.

Conclusion: i) If prosecution witnesses failed to establish the fact availability of light source it put the whole prosecution case in dark.
ii) Photographic account of the occurrence by the prosecution witnesses was highly improbable and not believable.
iii) No conviction can be based on abscondence alone.

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34. **Lahore High Court**
Murder Reference No. 33 of 2019
The State v. Muhammad Rizwan etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC_6117.pdf

Facts: The two accused (brothers) caused murder of two women allegedly in revenge of registration of criminal case against them by one of them.

Issue: i) What is the effect of non-mentioning the name of witnesses in the inquest reports that were present at the time of its preparation t?
ii) What is the effect of failure on the part of chance witnesses to prove their presence at the place of occurrence, at the time of occurrence?
iii) Whether a single circumstance is sufficient to grant benefit of doubt to accused or there should be so many cirumstances?

Analysis: i) The alleged eye witnesses were not mentioned in column No.4 or page 4 of the inquest report relating to the deceased as being the ones who were present at the time of preparation of the said inquest report by the investigating officer and the alleged eye witnesses were also not mentioned in column No.4 or page 4 of the inquest report relating to the deceased namely Kiran Akbar as being the ones who were present at the time of preparation of the said inquest report by the investigating officer. These witnesses were also not the ones who had identified the dead body of the deceased at the time of the postmortem examinations of the dead bodies of the deceased These omissions strike at the roots of the case of the prosecution and lay bare the untruthful and false claim of the said witnesses to have been present at the place of occurrence, at the time of occurrence.

ii) It is an admitted fact that both the prosecution witnesses did not have their residences or their places of employment near or around the place of occurrence. Both the prosecution witnesses can be termed as "chance witnesses" and hence were under a duty to prove the reason and the circumstances for their presence at the place which they failed to do. In absence of any physical proof or the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon.

iii) Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellants in the present case. It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) If the name of witnesses is not mentioned in the inquest reports who were present at the time of the preparation of it, these omissions strike at the roots of the case of the prosecution and lay bare the untruthful and false claim of the said witnesses to have been present at the place of occurrence, at the time of occurrence.
ii) If chance witnesses failed to prove the reason for their presence at the crime scene, at the time of occurrence, the same cannot be relied upon.
iii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

35. **Lahore High Court**
Maqsood Ahmed alias Muneer Ahmed v. The State
Criminal Appeal No. 463-J of 2017
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC 6199pdf

Facts: The appellants were tried by the learned Sessions Judge Bahawalpur in respect of an offence under section 302, 394, 411, 324 and 337-F(iii) PPC for committing the murder of Muhammad Shafique son of Muhammad Rafique (deceased) during robbery. Wherein, they were awarded death.

Issue) i) What is effect of flaws /procedural defects in conducting identification parade?
ii) Whether evidence of injured witness has affirmative proof of his credibility and truth?
iii) What is evidentiary value of recovery?

Analysis: i) The test identification parade proceedings were not conducted as per the law and in violation of the Police Rules, 1934. The perusal of the test identification parade proceedings reveals that the said identification parade of the appellants namely was conducted jointly. It is further recorded in the proceedings of the test identification parade that both the accused were made to sit together in two different rows along with the dummies at different serial numbers. A joint test identification parade of both the appellants was held which has no evidentiary value. It is also settled principle of law that role of the accused was not described by the witnesses at the time of identification parade which is always considered inherent defect; therefore, such identification parade lost its value and cannot be relied upon.
ii) The stamp of injuries on the person of a witness can be a proof of their presence at the place of occurrence, however, it can never be held that they also will tell truth. It has been held that the facts which an injured witness narrates are not to be implicitly accepted rather they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.
iii) We have disbelieved the ocular account in this case; hence the evidence of recovery would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

Conclusion: i) The flaws in identification parade proceedings affect the prosecution case and such identification test lost its value and not relied upon.
ii) It is settled law that injuries of P.W are only indication of his presence at the spot but are not affirmative proof of his credibility and truth.
iii) It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

36. **Lahore High Court**
Muhammad Ismail vs. The State etc
Criminal Appeal No. 313 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6053.pdf

Facts: Appellant/convict filed the instant criminal appeal against the judgment wherein the appellant was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant or otherwise.

Issue: i) What will be effect if prosecution failed to prove any source of light at the place of occurrence?
ii) Delay in sending the blood stained churri/ weapon of offence for analysis?
iii) Whether accused can be convicted on the basis of medical evidence alone?

Analysis: i) The absence of any light source has put the whole prosecution case in a gloom cloaking the same with the shroud of obscurity, obscuring all its features. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements with regard to them identifying the assailant cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) Another aspect of the case is that the occurrence took place on 06.12.2015, whereas the Churri (P-4) was sent to the office of Punjab Forensic Science Agency, Lahore, on 20.01.2016 and was analyzed on 01.03.2016. During such a long period the blood available on the Churri (P-4), if any, would have disintegrated. It is not possible to believe that the blood had not disintegrated by then and was scientifically impossible to detect the origin of the blood.
iii) The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by a Dr. Sajid Ali (PW-11) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone.

Conclusion: i) The failure of the prosecution to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) Delay in sending weapon of offence(churri) to the office of Punjab Forensic Science Agency, fatal for prosecution because it was scientifically impossible to detect the origin of the blood after such a long period because human blood disintegrates in a period of about three weeks.

iii) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit." As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone.

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37. **Lahore High Court**
Ghulam Muhammad alias Gamoon v. The State
Crl. Appeal No. 716 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6320.pdf

Facts: Appellant/convict filed the instant criminal appeal against the judgment wherein he was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant or otherwise. During pendency of appeal appellant died?

Issue: Whether on the death of the appellant, the appeal shall abate under section 431, Code of Criminal Procedure, 1898 only to the extent of appeal against the sentence of death or also abate to the extent of awarding of the compensation under section 544-A Code of Criminal Procedure, 1898 which the appellant was directed to pay to the legal heirs of the deceased?

Analysis: The section 431, Code of Criminal Procedure, 1898 mandates that every appeal under section 411-A subsection (2), or section 417 shall finally abate on the death of the accused, under this Chapter i.e. Chapter XXXI of the Code of Criminal Procedure, 1898, except an appeal from a sentence of fine. Detailed perusal of section 302 of the Pakistan Penal Code, 1860 reveals that it does not include "compensation" as a punishment for the offence of Qatl-e-Amd. Similarly, "compensation" is also not included in the punishments provided under section 53 of the Pakistan Penal Code, 1860. The word "compensation" also does not find mention in the section 431 of the Code of Criminal Procedure, 1898 rather word "fine" has been specifically used therein. The section 544-A, Cr.P.C. was inserted in the Code of Criminal Procedure, 1898 through the Law Reforms Ordinance, 1972, however, no corresponding amendment to the extent of compensation has been brought in section 431 of the Code of Criminal Procedure, 1898. Had there been any intention of the legislature that the appeal on the death of the accused would not abate to the extent of compensation which the appellant had been ordered to pay, then definitely the section 431, Cr.P.C., would have also been amended to this extent, but such is not the position.

Conclusion: Every appeal under section 411-A subsection (2), or section 417 of CrPC shall finally abate on the death of the accused except an appeal against fine.

38. **Lahore High Court**
Muhammad Ismail v. The State and another
Criminal Appeal No. 53 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC 6284.pdf

Facts: Appellant/convict filed the instant criminal appeal against the judgment wherein the appellant was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant or otherwise.

Issue: Whether prosecution is bound to prove the reason for the presence of chance witnesses at the crime scene?

Analysis: It can be validly held that all the three prosecution witnesses were "chance witnesses" and therefore were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. Strangely enough all the three witnesses did not even offer any explanation as to why they found it necessary to go to the house of the deceased at the end of the day when there did not exist any reason for them to do so….In absence of physical proof or the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon.

Conclusion: Prosecution witnesses/chance witnesses were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. In absence the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon.

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39. **Lahore High Court**
Kafayat Ullah v. The State etc
Crl. Misc.2143-CB of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC6087.pdf

Facts: Through this petition, the petitioner is seeking cancellation of pre-arrest bail granted to respondent No.4 in respect of offences under sections 337-A(v), 337-A(i),337-F(i), 337-L(2) and 34 PPC.

Issue: Whether registration of a cross-version case alone does entitle any accused to be granted the extraordinary relief of pre-arrest bail?

Analysis: The concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police but not a word about this crucial aspect of the matter is to be found in the impugned order. Mere registration of a cross-version case does not entitle any accused to be granted the extraordinary relief of pre-arrest bail.

Conclusion Mere registration of a cross-version case does not entitle any accused to be granted the extraordinary relief of pre-arrest bail.

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40. **Lahore High Court**
Syed Riaz Husain Shah v. Government of Punjab etc
Writ Petition No. 15433 of 2021
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5807.pdf

Facts: The learned Special Court established under Anti Terrorism Act through a detailed order directed the Chief Secretary Punjab Lahore to constitute Joint Investigation Team (JIT).

Issue: i) Whether the Special Court established under Anti Terrorism Act is empowered to direct Government to constitute JIT?
ii) Whether the Challan in case of proclaimed offenders is filed u/s 512 Cr.P.C?

Analysis: i) The provision of Section 19 of the ATC Act undoubtedly gives no power or authority to the Special Court to constitute a JIT or to issue a direction to the Government in this regard. The words "if the government deems necessary JIT to be constituted by the government" are meaningful which have excluded the Special Court to exercise such powers therefore it is the exclusive domain of the government to or not to constitute JIT.
ii) The role of 512 Cr.P.C is post to submission of report (Challan) and that too when it is before the court of competent jurisdiction because of the words used 'the Court competent to try such person for the offence complained of'. As after the words 'offence complained of' the word 'may' has been used, therefore, discretion to proceed under Section 512 Cr.P.C also lies with the court to be performed keeping in view the facts and circumstances of each case and in particular if court finds that there is no immediate prospect of arresting the absconder…. These proceedings are called "trial in absentia" which is not the correct approach., proceedings under Section 512 Cr.P.C are exception to general rule with an aim to preserve the evidence so accused may not take advantage of his illegal act of absconding…. This interpretation is based on the plain reading of Section 512 Cr.P.C where it is provided that the evidence so recorded may be given against accused on trial for the offence with which he is charged, if the deponent (witness) is dead or incapable of giving evidence etc.

Conclusion: i) The Special Court established under Anti Terrorism Act is not empowered to direct Government to constitute JIT.
ii) The Challan in every case is to be filed u/s 173 Cr.Pc. The role of section 512 Cr.P.C is post to submission of challan.

41. **Lahore High Court**
Government of the Punjab & 3 others v. Muhammad Kamran Jamil
Intra Court Appeal No. 179 of 2020
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6399.pdf

Facts: The respondent is one of the persons with disability (blind), who pursuant to an advertisement for the posts of Elementary School Educators (ESE) issued by the Education department/appellants, applied and cleared the test through National Testing Service (NTS). He also passed the interview but could not get the appointment letter with the objection that he had disability to see.

Issue: Whether the refusal of job to a blind person was a justified act on part of Government?

Analysis: The Honourable Supreme Court on the question that if a particular post is not fit for a person with disability, was pleased to say that the establishment may shift the disability quota and adjust it against another post in the establishment so that the overall disability quota is not disturbed and maintained all the times….The respondent not only passed written test but he was also successful in interview therefore, the department should have considered the possibility of providing necessary technical and human support to ensure that respondent was able to perform as an Educator and was not discriminated on the ground of disability

Conclusion: The refusal of job to a blind person is not justified on part of Government. In such case the establishment may shift the disability quota and adjust it against another post in the establishment.

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42. **Lahore High Court**
Sadiq etc v. The State etc
Criminal Appeal No. 161 of 2013
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC5825.pdf

Facts: The appellants have challenged their convictions under section 302/324 PPC whereas, complainant pursuant to PSLA has called in question the acquittal of other accused persons.

Issue: i) Whether the credibility of injured witness cannot be taken to any exception?
ii) Whether the rule of 'sifting the grain from chaff' is applicable in Pakistan?
iii) How the defence plea is to be construed by the Court?

Analysis: i) No doubt that presence of an injured witness at crime scene cannot be disputed or doubted because of injuries on his body but at the same time this recognized principle cannot be skipped that injuries on the person of witness will not show that what he has stated in the court that is the truth and not less than truth and that said injuries do not give him a stamp of truth on his testimony. This principle also

cannot be kept out of sight that his testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution's witness.
ii) The rule of 'sifting the grain from chaff' is no more applicable in Pakistan as held by the Honourable Supreme court of Pakistan, where it has been finally resolved that Rule "falsus in uno, falsus in omnibus" shall henceforth be an integral part of our jurisprudence in criminal cases.
iii) The defence plea could not be construed on the basis of surmises and conjectures unless there had to be clear evidence helping the court to arrive at such decision. Once prosecution's version was disbelieved, there was no authority with the court to make pick and choose of defence plea and then to proceed to record the conviction.

Conclusion: i) The credibility of injured witness can be taken to exceptions.
ii) The rule of 'sifting the grain from chaff' is no more applicable in Pakistan.
iii) The defence plea could not be construed on the basis of surmises and conjectures.

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43. **Lahore High Court**
Muhammad Rizwan etc v. Zarai Taraqiati Bank etc
Execution First Appeal No. 01 of 2018.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5758.pdf

Facts: Zarai Taraqiati Bank/respondent No. 1 instituted a suit for recovery which was decreed. The decree was converted into execution petition. Through the instant Execution First Appeal (EFA), appellants have called in question the validity, legality and propriety of an order passed by the learned Banking Court on the basis of which objection petition submitted by appellants with regard to bank's auction proceedings was dismissed.

Issue: Whether auction proceedings are liable to be set aside in case of non-compliance of procedure given in section 19 of the Financial Institution (Recovery of Finances) Ordinance, 2001?

Analysis: Section 19(3) of the Financial Institution (Recovery of Finances) Ordinance, 2001 empowers the Financial Institution to auction the mortgaged property with or without the intervention of the Banking court either by public auction or by inviting sealed tenders. Section 19(4) of the Ordinance provides a procedure of sealed tenders. Section 15 of the Ordinance was declared unconstitutional by the Full Bench of this Court1 which was subsequently endorsed by the Honorable Supreme Court of Pakistan. In the light of dictum of the apex Court, Section 15 of the Ordinance (ibid) was substituted by Financial Institutions (Recovery of Finances) (Amendment) Act (XXXVIII of 2016). Section 19(5) of the Ordinance by reference has incorporated certain provisions of sub-sections 5 to 12 of Section

15 and made those applicable to the sale of mortgage, pledge, hypothecated properties by the financial institution. In case of any possible conflict and repugnancy i.e. Section 19(3) and Section 15 as adopted by Section 19(5), the latter in sequential will prevail. These are the mandatory requirements. The object and purpose of proclamation is nothing but to have a fair and transparent auction so as to eliminate all chances of any fraud, maneuver at the costs of rights and interest of the judgment-debtor. Law defines that how proclamation is to be drawn up and what measures are to be by taken so as to satisfy the decree without prejudicing rights and interest of the judgment-debtor or any other person, having interest in such property.

Conclusion: Auction proceedings are liable to be set aside in case of non-compliance of procedure given in section 19 of the Financial Institution (Recovery of Finances) Ordinance, 2001.

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44. **Lahore High Court**
Ashiq Muhammad (deceased) through L.Rs v. Abdul Majeed and others
R.S.A.No.35 of 2009.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5894.pdf

Facts: The predecessor of appellants instituted a suit for possession through preemption which was dismissed. Appeal was allowed by the learned appellate Court. Regular second appeal of the respondents was allowed and case was remanded for impleading respondent No.7. The trial court after recording evidence on new issue decreed the suit. Appeal of the respondents was allowed. Now the appellants/legal heirs of the plaintiff filed instant regular second appeal.

Issue: i) Whether the party is entitled to attack the findings of Courts below without even filing any appeal or cross objection, to establish and show that such findings are illegal, unlawful, and perverse and against the record?
ii) Whether pre-emptor must seek pre-emption of the whole of the subject matter of the sale?

Analysis: i) To do the complete justice a party may be allowed to support the judgment and decree under appeal on a ground which has been found against him. In regular second appeal the same rules are applicable as provided in Order XLI C.P.C. in the light of Order XLII Rule 1 C.P.C. This Court under Order XLI Rule 33 of C.P.C. has empowered to invoke the provisions of law to do complete justice between the parties or prevent the ends of justice from being defeated and adjust the right of the parties in accordance with the natural justice, equity, and good conscious. This Court has manifest power to set right any illegality committed in

law by courts below while deciding specific issue in such context by exercising corrective powers as contained in Order XLI, Rule 33 C.P.C.
ii) The pre-emptor must seek pre-emption of the whole of the subject matter of the sale and pay the entire price paid by the vendees. The rule of partial pre-emption is however subject to an exception that in the following three categories of cases partial pre-emption would be permissible provided the whole sale money is paid:-

a. When the pre-emptor himself claims title to a part of the lands sold to a share out of those lands.
b. When the pre-emptor assail the vendor's title to a part of the lands sold or the extent of his title thereto.
c. When the pre-emptor sets up the title of third persons to a part or share of the land sold…

In the case where one of the vendees is omitted from being impleaded as a defendant in a pre-emption suit to see whether a transaction of sale sought to be pre-empted is divisible or not, two requirements at least have to be met with, first, that there should be specified shares in which the vendees have purchased the land, secondly, that there is a positive proof of the specific and separate contribution made by each of the vendees towards the sale price.

Conclusion: i) The party is entitled to attack the findings of Courts below without even filing any appeal or cross objection, to establish and show that such findings are illegal, unlawful, and perverse and against the record.
ii) The pre-emptor must seek pre-emption of the whole of the subject matter of the sale and pay the entire price paid by the vendees.

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45. **Lahore High Court**
Ghulam Farid, etc. v. Ahmad Khan, etc.
Civil Revision No.213-D of 2004.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6528.pdf

Facts: Predecessors of petitioners instituted a suit for declaration and perpetual injunction and sought a declaration to the effect that they being legal heirs of his pre-deceased daughter were entitled to get share in his total legacy. Trial Court decreed the suit. Respondents preferred an appeal which was allowed by appellate Court. Through this civil revision, petitioners called in question legality and validity of judgment and decree of appellate Court.

Issue: i) Whether legal heirs of predeceased son/daughter, who died before the promulgation of Muslim Family Laws Ordinance, 1961 are entitled to inherit the estate of their grandfather who died after the promulgation of "Ordinance 1961" in terms of section 4 of the Ordinance, 1961?
ii) Whether limitation precludes a person to get his share from inheritance?

Analysis: i) Undeniably, under the Islamic Sharia, predeceased children are not entitled to any inheritance as only the survivors to a deceased are entitled to inheritance. In the year 1961, the Muslim Family Laws Ordinance, 1961 was promulgated on 15.07.1961 and was commenced after issuance of Notification which was published in PLD 1961 Central Statutes at Page 337, wherein section 4 was introduced, by virtue of which, legal heirs of pre-deceased son or daughter of propositus would be entitled to inheritance on re-opening of the succession. Admittedly, later on section 4 of Ordinance, 1961 was declared un-Islamic by the Federal Shariat Court in a case titled "Allah Rakha etc v. Federation of Pakistan etc (PLD 2000 FSC 1) and had also fixed cut-off date 31.03.2000 i.e., said section shall cease to have effect after the target date. The aforesaid judgment has been challenged by the Government before the august Supreme Court of Pakistan, therefore, said judgment of the Federal Shariat Court suspended automatically till the disposal of appeal in view of Article 203(D),1(A)(2) proviso of the Constitution of Islamic Republic of Pakistan, 1973. Hence, section 4 of the Ordinance, 1961 shall remain in field till the decision of appeal by the Hon'ble Supreme Court of Pakistan, Shariat Appellate Bench. There is no cavil with the proposition that section 4 of the Ordinance, 1961 has no retrospective effect. The words "In the event of death of any son or daughter of propositus before the opening of succession" appearing in Section 4 of the Ordinance, 1961 are very important. Therefore, there is no doubt that it is not the requirement of Section 4 of the Muslim Family Law Ordinance, 1961 that the occurrence of death of the son or daughter of propositus as well as opening of succession should both take place subsequent to the promulgation of the Ordinance, 1961. The only requirement of section is that succession should open after the Ordinance is brought into effect. Section 4 is made applicable when succession of propositus opens and it is an established principle of Muslim Law that the succession of a Muslim opens the moment he dies.

ii) It is settled law that no limitation runs against a wrong entry, mutation is also not a starting point of limitation. In a matter of inheritance, the limitation does not preclude a person to get his share from inheritance.

Conclusion: i) Legal heirs of predeceased son/daughter, who died before the promulgation of Muslim Family Laws Ordinance, 1961 are entitled to inherit the estate of their grandfather who died after the promulgation of "Ordinance 1961" in terms of section 4 of the Ordinance, 1961.

ii) The limitation does not preclude a person to get his share from inheritance.

46. **Lahore High Court**
Muhammad Sharif v. The State and another
Criminal Misc No.39561-B of 2021.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6347.pdf

Facts: Through this petition, petitioner, has filed post arrest bail for offences under sections 302, 148, 149, 427, PPC

Issue: Whether deeper appreciation of evidence is permissible while deciding post arrest bail petition?

Analysis: Now it stands settled by the judicial pronouncements that at the stage of bail the evidence or the material brought on record is not to be appreciated in its minute details rather the same is to be taken view of tentatively.

Conclusion: Deeper appreciation of evidence is not allowed at bail stage.

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47. **Lahore High Court**
Khizer Abbas etc. v. The State etc.
Crl. Appeal No.306 of 2018.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC5732.pdf

Facts: In a case registered under sections 302, 148 & 149 PPC, the trial court convicted an accused/appellant and awarded imprisonment for life, while acquitting the co-accused. Against the punishment, the appellant knocked at the door of Hon'ble Lahore High Court and preferred an appeal on the grounds, *inter alia*; the medical evidence is in conflict with the ocular evidence as signs of throttling are not available in the postmortem examination report of the deceased. On the other hand, the complainant filed revision for enhancement of sentence of the appellant and also filed an appeal against the acquittal of the co-accused.

Issues: i) What symptoms should appear to support a case of throttling?
ii) What alternative modes could cause neck hemorrhage?
iii) What essential detail is required to be produced by the prosecution in a case of unnatural death caused by strangulation?

Analysis: i) Though in some cases of throttling no apparent marks of violence are visible yet in such cases the death should have been caused immediately due to closure of the windpipe but it is not the case in the present matter. As per the facts of the case, the accused was alive on the way hospital but died after 20-25 minutes of the occurrence which shows that it was not a case of death due to immediate loss of breath. The opinions of forensic experts showed that evidence of violent compression of the neck during life is obtained from bruising due to thumb

fingers, nail marks, and swelling and lividity of the face. Besides, further evidence is provided by bruising and laceration of larynx, windpipe, and muscles and vessels in front and sides of the neck and fracture of the cornuae of the laryngeal and occasionally the hyoid. Therefore, in case of throttling, there must be some signs or marks of violence around the neck otherwise, it could be suspected that asphyxia was due to some other reasons like internal disease, so, medical evidence was not found supportive to ocular account. Accordingly, the prosecution failed to bring home the guilt against the appellant, who was acquitted. Besides, the appeal as well as the revision of the complaint failed.

ii) A study showcased that soft tissue hemorrhage of the neck occurs in some known causes of death like multiple traumas or asphyxia death, but it may happen in other causes of death without any direct trauma or neck compression. A study reflected that bruising, hemorrhage and abrasion on the face and neck could occur during CPR, which means Cardiopulmonary Resuscitation, that is an emergency procedure that combines chest compressions often with artificial ventilation in an effort to manually preserve intact brain function until further measures are taken to restore spontaneous blood circulation and breathing in a person who is in cardiac arrest. In the present case, to bring life back of the deceased, there is a probability that the complainant might have resorted to CPR which might have resulted in a little inside injury to the hyoid bone as observed by the histopathologist in his report.

iii) The following detail is essential to be produced by the prosecution in a case where death has been caused as a result of strangulation.

a). Whether deceased was strangled with one or two hands?
b). How long did the accused strangle the deceased?
c). How many time and how many different methods were used to strangle the deceased?
d). Was the deceased thrown against the wall, floor or ground?
e). How much pressure or how hard was the grip?
f). Did the deceased have difficulty breathing? And
g). Did the deceased attempt to protect herself?

Conclusion: i) In case of throttling, there must be some signs or marks of violence around the neck. Moreover, the forensic experts observed that the evidence of violent compression of the neck during life is obtained from bruising due to thumb fingers, nail marks, and swelling and lividity of the face.

ii) A CPR procedure could cause bruises, hemorrhage and abrasion on the face and neck of the deceased. Also, a neck hemorrhage could be caused by internal diseases like ischemic heart disease or cardiac failure.

iii) See above.

48. **Lahore High Court**
Riasat Ali v. The State etc.
Crl. Appeal No.35447 of 2017.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6561.pdf

Facts: Aggrieved by the judgment of a trial court whereby the accused/appellants were convicted and sentenced to imprisonment for life under sections 302, 148, 149 & 109 PPC, the appellants preferred an appeal before Hon'ble Lahore High Court. Amongst others, the appellant challenged the vires of the judgment on the premise that the medical evidence conflicted with the ocular evidence as the deceased met his fate by falling from an out-of-control bull-cart. The complainant, per contra, filed a revision for enhancement of sentence of the appellant and also filed an appeal against the acquittal of the co-accused.

Issue: Whether the spinal injury leading to the death of the deceased is always homicidal?

Analysis: The spinal injuries are generally accidental, rarely suicidal, and occasionally homicidal. To understand the whole scheme, it is vital to first explain that how injury can be caused. The studies of various forensic experts show that an injury can be caused by a blow from a blunt weapon or by, a fall, crushing, or compression. The studies further reflect that fractures are generally associated with dislocation causing compression, laceration, or crushing of the cord.
Moreover, falling from a height onto the buttocks is also one of the causes of fracture of the vertebral column; this has a matching sense with the injury that caused the death of the deceased wherein contusions were found near the area of right iliac crust and buttocks. So, hitting the deceased on the bull-cart and then falling on to the earth either on to his feet or buttock cannot be ruled out particularly when witnesses deposed about a jump of deceased from a bull-cart to save deceased's life; apparently, no other possibility of causing such injury could gauge from the record. Though instantaneous death due to said injury on the person of deceased was not possible yet a study showed that several bruises, though trivial individually, may cause death from shock, and the doctor has also observed the same in this case.

"……Doctor has cited the weapon of offence as آلہ دھار تیز و آلہ کندہ in postmortem report yet nature of injuries described in the postmortem gives somewhat different connotation. Thus, prosecution loses its limb of medical account to catch the offender with criminal liability, as such, the medical evidence is found to be contradicting the ocular account which cannot be relied upon…..." Coupled with other factors, such as the inability of the prosecution to prove the presence of witnesses at the place of occurrence, the recoveries being joint, the failure of the Doctor to explain as to how much damage was caused to the spinal cord and how

the injury was caused and under what circumstances, render that the prosecution failed to prove the case beyond any shadow of a doubt. Consequently, the appeal of the appellants was allowed and they were acquitted. Accordingly, the revision, as well as appeal of the complaint stood failed.

Conclusion: The spinal injuries are generally accidental, rarely suicidal, and occasionally homicidal.

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49. **Lahore High Court**
The Bank of Punjab v. Rizwan Akhtar & another
R. F. A. No. 41 of 2020 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC6688.pdf

Facts: Instant appeal was instituted under Section 22 of the Ordinance against the impugned Judgment dated 11.12.2019 and Decree dated 13.04.2020 passed by the Banking Court.

Issues: i) Whether an Appeal filed beyond the period of 30 days from the date of Judgment is barred by limitation, notwithstanding that an Appeal against Decree is filed within 30 days from the date of Decree under Section 22(1) of the Ordinance?
ii) Whether the Limitation Act is applicable to the provisions of the Ordinance in general and Section 22(1) of the Ordinance in particular to condone delay?

Analysis: i) It is apparent from the scheme of law encapsulated in the Ordinance that the terms “Judgment” and “Decree” are used at times separately and at times jointly. It is in this context that Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 with respect to Appeal provides that any person aggrieved by any “Judgment” or “Decree” or “Sentence” or “Final Order” passed by the Banking Court may file an Appeal within 30 days from the date of passing of such “Judgment” or “Decree” or “Sentence” or “Final Order”. The only logical conclusion derived from scheme of law as a whole is that conferment of concurrent right to Appeal against the “Judgment” or “Decree” necessarily implies that an aggrieved party does not have to wait for the drawing of a “Decree” upon pronouncement of a “Judgment” and must file an Appeal within the stipulated period from the date of passing of “Judgment” under Section 22(1) of the Ordinance. The period of limitation if allowed to be computed from the subsequent date of the Decree, as in the present case, would necessarily make the preceding period of limitation regarding the Judgment redundant leading to absurd results. It is universally accepted principle of interpretation of statutes that no provision of a statute or a specific meaningful word in a provision of the statute should be interpreted in a manner to render the same as meaningless or redundant. It is equally important that a provision of a special statute should be interpreted with reference to the special scheme of the law and the objective it endeavors to achieve… Under the provisions of the CPC an Appeal against an

original Decree cannot be instituted without a Decree.… From the comparative analysis of Section 22(1) of the Ordinance as well as relevant provisions of the CPC and case law discussed above, it can thus be safely concluded that the right of Appeal is always exercised in accordance with the provisions of the applicable statute since the right to Appeal, as such is not an inherent right but the creature of the statute. The right to Appeal shall, therefore, be always interpreted in the light of the text of the statute under which it is granted. Thus, under the provisions of Section 22(1) of the Ordinance, the remedy of Appeal is concurrently available against a Decree or a Judgment. Hence, our answer to query is that under Section 22(1) of the Ordinance, an Appeal not filed within 30 days from the date of Judgment becomes barred by limitation even though an Appeal against Decree following such Judgment is within time

ii) The Section 24 of the Ordinance clearly stipulates that the provisions of the Limitation Act are applicable to all cases instituted after the coming into force of this Ordinance except as otherwise provided in the Ordinance. Section 22(1) of the Ordinance clearly provides a limitation of 30 days with respect to filing of an Appeal. It is settled law that if a specific provision of law provides a specific period of limitation, the cause or action contemplated therein must be initiated within the prescribed period. Therefore, an Appeal filed beyond the period of limitation of thirty days under Section 22(1) of the Act shall be barred by time. Further, an application for condonation of delay under Section 5 of the Limitation Act would be excluded or prohibited in view of Section 29(2) of the Limitation Act. Hence, applications under Section 5 of the Limitation Act accompanying the titled Appeals were not competent.

Conclusion: i) An Appeal filed beyond the period of 30 days from the date of Judgment is barred by limitation, notwithstanding that an Appeal against Decree is filed within 30 days from the date of Decree under Section 22(1) of the Ordinance.
ii) The Limitation Act is not applicable to the provisions of the Ordinance in general and Section 22(1) of the Ordinance in particular to condone delay.

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50. **Lahore High Court**
Imtiaz Ahmad v. The State & another
Criminal Appeal No.191 of 2016
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC6702.pdf

Facts: The appellants have challenged their convictions under section 302/324/337F PPC whereas, complainant pursuant to PSLA has called in question the acquittal of other accused persons.

Issue: i) What is effect of nomination of accused through supplementary statement who were previously well known to the complainant?
ii) What is nature of motive?
iii) What is meaning of proof beyond reasonable doubt?

Analysis: i) In the crime report complainant mentioned the features of unknown assailants in detail therefore, supplementary statement got recorded by the complainant, seems to be result of deliberation and consultation, especially when it is an admitted fact that all the accused persons nominated through supplementary statement were previously very well known to complainant and other prosecution witnesses. This fact alone creates a serious dent in the prosecution story and nomination of accused subsequently through supplementary statement seems result of after-thought and concoction. Where crime report is registered against the unknown accused person and subsequently, those accused are nominated through supplementary statement, who are already well-known to complainant and prosecution witnesses, it can be considered a dishonest improvement and consequently not worthy of any credence.

ii) Even otherwise, motive is always considered as double edge weapon, at one hand if it gives a reason or motivation to the accused to commit the crime, on the other hand, it equally provides impetus to the complainant to falsely implicate the accused in the case..… Motive alone, as a corroborative circumstance to support the ocular evidence cannot be relied upon to convict an accused when the ocular testimony is neither credible nor worthy of reliance. It is an established proposition of law that motive is not substantive piece of evidence rather same is merely a circumstance, which might lead the accused to commit the occurrence.

iii) Proof beyond reasonable doubt means that prosecution should produce such evidence that no prudent mind would doubt about the guilt of the accused. A reasonable doubt may be described as a doubt that would make a prudent mind hesitant to act. Proof beyond a reasonable doubt, therefore, must be a proof of such a convincing character that a reasonable person would not be reluctant to rely and act upon it to convict an accused. However, it is to be understood that proof beyond a reasonable doubt does not mean proof beyond all possible doubts.

Conclusion: i) The nomination of accused through supplementary statement and in private complaint jolted the entire edifice of prosecution case when they were previously known to the complainant.

ii) The motive is not substantive piece of evidence rather same is merely a circumstance.

iii) The expression “beyond reasonable doubt” means proof of a convincing character but does not mean proof beyond all possible doubts.

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51. **Lahore High Court**
Muhammad Akram v. Muhammad Asif
R.F.A No. 14 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5858.pdf

Facts: Present Regular First Appeal has been filed against Judgment and Decree passed by learned Additional District Judge in Civil Suit filed under Order XXXVII of

the Code of Civil Procedure, 1908, whereby counter claim of Rs.3,700,000/- has been decreed against the Appellant.

Issue: i) Whether a counter claim of defendant can be treated as a plaint?
ii) What is the effect of not calling upon the plaintiff or putting the notice to file written statement or replication or rejoinder, to the claim of the defendant?
iii) If the set-off claim can survive upon break down of the main claim?
iv) When secondary evidence can be tendered?

Analysis: i) The Hon'ble Court while relying on (PLD 1983 Supreme Court 5) (1993 SCMR 441) (2009 SCMR 666) held that although a counter claim which is neither a legal set-off nor an equitable set-off, however, there is nothing in the statutory law or otherwise, precluding a Court from treating a counter claim as a plaint, provided it contains all the necessary requisites sufficient to be treated as a plaint.
ii) The case was never fixed for filing of written statement or rejoinder to the counter claim, as required under Order VIII Rule 10 of the Code of Civil Procedure, 1908. Without calling upon the Appellant or putting the notice to file written statement or replication or rejoinder, to the claim of the Respondent-Defendant, not just a negative inference is drawn by the learned trial Court but reading of paragraph No.20 of the impugned judgment, reveals that this failure to file the rejoinder or written statement has been taken as admission to the claim of respondent-defendant, which clearly caused prejudice to the case of the Appellant.
iii) Next point that came up for consideration is the survival of the claim in set-off, when the claim in the suit of the petitioner / plaintiff was dismissed. In my assessment, the claim of set-off survives even if the claim of the Plaintiff breaks down for any reason.
iv) Secondary evidence can only be tendered, if the document is in the possession of person against whom it is required to be proved or the person is out of reach or he is not subject to process of the Court or any person who is legally bound to produce it; and such person has not produced the same despite notice. The condition to produce the secondary evidence is the notice to the party in whose possession or power the document is, unless the case falls in the proviso of Article 77 of Qanun-e-Shahadat Order, 1984.

Conclusion: i) There is nothing in the statutory law or otherwise, precluding a Court from treating a counter claim as a plaint, provided it contains all the necessary requisites sufficient to be treated as a plaint.
ii) Not calling upon the plaintiff or putting the notice to file written statement or replication or rejoinder, to the claim of the defendant caused prejudice to the case of the plaintiff.
iii) The claim of set-off survives even if the claim of the plaintiff breaks down for any reason.
iv) The eventualities when secondary evidence can be tendered are discussed in para (iv) of analysis.

52. **Lahore High Court**
Muhammad Siddique v. Secretary Education, etc
W.P. No.15834 of 2014
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5915.pdf

Facts: The husband of a deceased civil servant applied for being appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Condition) of Service Rules, 1974 but he was refused on the pretext that the said Rule only allowed for appointing a widow of a deceased civil servant who dies while ins service and not a widower of a deceased female civil servant.

Issue: Whether the Rule 17-A of the Punjab Civil Servants (Appointment & Condition) of Service Rules is discriminatory in so far as it denies employment to a widower of deceased female civil servant?

Analysis: The underlying presumption is that a spouse of a female civil servant cannot be dependent on her (so as to be able to avail the benefit of Rule 17-A) since she is a female, and the spouse is a male. Such an interpretation is inherently discriminatory against females as a whole, and the deceased female civil servant in the instant matter….. Denial of a job under Rule-17-A is not a measure conforming with Article 25(3) but is rather outright discrimination (i) against female civil servants whose job does not carry the same perks and advantages and hence, points towards less recognition of their service to the state compared to their male counterparts i.e. terms and conditions of service of both genders are different (ii) against surviving husbands who despite being in similar position (surviving spouse of a civil servant) are treated differently than widows…. As a rule of interpretation, the words "wife/widow" used in Rule 17-A of the Rules of 1974 will necessarily include the male counterparts.

Conclusion: The Rule 17-A in its present form in so far as it denies employment to a widower is declared to be discriminatory and offensive to Articles 4, 25 and 27 of the Constitution and the respondents are directed to bring about suitable amendments in Rule 17-A so as to bring it in line with the constitutional mandate. In the meanwhile, respondents are directed to consider the case of the petitioner for compassionate employment in terms of Rule 17-A of the Punjab Civil Servants (Appointment & Condition) of Service Rules, 1974.

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53. **Lahore High Court**
Merck Sharp & Dhome Corp v. Hilton Pharma (Private) Limited and another
Civil Revision No. 589 of 2013
Mr. Justice Muhammad Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC6620.pdf

Facts: The instant revision petitions challenge separate orders passed by the learned

Additional District Judge in two identical suits instituted by the petitioner for the grant of perpetual injunction whereby the petitioner has been directed to deposit a sum of Rs. 15,000,000/- in cash or furnish bank guarantee equivalent to the same amount as a security for costs under rule 1 of Order XXV of the Code of Civil Procedure (V of 1908).

Issue: Whether the respondents were entitled to the security for costs under the provisions of rule 1 of Order XXV of the Code?

Analysis: The cases in hand do not relate to sub rule (2) & (3) but sub rule (1) of Rule 1 of Order XXV of the Code. On plain reading of rule 1 of Order XXV of the Code, it is manifest that an order of security for costs can only be made against plaintiff(s) and in favour of defendant(s). It applies in cases where plaintiff(s) are residing out of Pakistan and is subject to the condition that such a plaintiff or none of the plaintiffs possesses any sufficient immovable property within Pakistan other than the suit property. The court may make an order for security of costs at any stage of the suit. Such order may be made either on an application of the defendant or of its own motion by the court and the same may cover all costs incurred and likely to be incurred by any defendant but not the amount of any claim or decree. No amount is to be paid to the defendant and all that Order XXV of the Code does at this stage is to secure the costs incurred and likely to be incurred by a defendant in defending a claim filed by a foreign plaintiff who does not possess any sufficient immovable property within Pakistan. Sub rule (1) of Rule (1) of Order XXV of the Code applies to all kinds of suits and not just a suit for the payment of money, which restriction has been imposed by the legislature under sub rule (3) in relation to the suits where the plaintiff is a woman.

Conclusion: The petitioner in these cases is a company incorporated under the laws of State of New Jersy, United States of America, possessing no immovable property within Pakistan other than the property claimed to be subject matter of the suit. The learned trial court legitimately invoked the provision of rule 1 of Order XXV of the Code to direct the petitioner to give security for payment of all costs likely to be incurred by respondent No.1/defendant.

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54. **Lahore High Court**
Sheikh Haroon-ur-Rehman v. Muhammad Rafique and others
Writ Petition No.3433 of 2021
Mr. Justice Muhammad Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC6714.pdf

Facts: Learned Civil Judge without framing of issues and recording of evidence rejected application under Section 12(2) of the Code of Civil Procedure summarily.

Issue: Whether it is necessary to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code?

Analysis: Prior to insertion of sub-section (3) in Section 12 of the Code through Punjab Act

No. XIV of 2018 dated 20.03.2018, no procedure was prescribed for the disposal of an application under Section 12(2) of the Code, however, in cases where the determination of allegations of fraud and misrepresentation involved investigation into the question of fact, inquiry was ordinarily held to adjudicate upon the matter by framing an issue and recording evidence while invoking the provision of Section 141 of the Code. It was, however, held in various judgments of the apex Court to be not mandatory to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code as the court had to regulate its proceedings keeping in view nature of the allegations made in the application and adopt such mode as was in consonance with justice in the facts and circumstances of the case. It was further held that framing of issues in every case to examine merits of such application would frustrate the object of Section 12(2) of the Code which is to avoid protracted and time consuming litigation and to save the genuine decree holders from grave hardships, ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the courts.

Conclusion: The requirements of a regular trial vis-à-vis framing of issues and recording of evidence have been generally dispensed with by the legislature in adjudication of applications under Section 12(2) of the Code.

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55. **Supreme Court of the United States**
Timbs v. Indiana, 586 U.S. ___ (2019)
https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf
https://ballotpedia.org

Facts: It was a case in which the Court dealt with the applicability of the excessive fines clause of the Constitution's Eighth Amendment to state and local governments in the context of asset forfeiture. When Tyson Timbs pleaded guilty to a drug charge, he was ordered as part of his sentence to forfeit his Land Rover, on the grounds that he had transported drugs in the vehicle. A state appeals court ruled in favor of Timbs, who argued that the forfeiture was unconstitutional under the Eighth Amendment's clause prohibiting excessive fines. The Indiana Supreme Court reversed the decision, stating that the U.S. Supreme Court had never ruled that the excessive fines clause applied to state governments.

Issue: Whether the Eighth Amendment's Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment?

Analysis: The court vacated and remanded the opinion of the Indiana Supreme Court, holding that "the Eighth Amendment’s Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment’s Due Process Clause." The case clarified that the Eighth Amendment's clause prohibiting excessive fines applies to state governments. Justice Ruth Bader Ginsburg delivered the unanimous opinion of the court. The court vacated and

remanded the opinion of the Indiana Supreme Court, holding that "the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause." In her opinion for the court, Justice Ginsburg wrote, *[t]he Fourteenth Amendment's Due Process Clause incorporates and renders applicable to the States Bill of Rights protections 'fundamental to our scheme of ordered liberty,' or 'deeply rooted in this Nation's history and tradition.' McDonald v. Chicago, 561 U. S. 742, 767 (alterations omitted). If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires*. Justice Neil Gorsuch, who joined the court's opinion, wrote, *"There can be no serious doubt that the Fourteenth Amendment requires the States to respect the freedom from excessive fines enshrined in the Eighth Amendment*

Conclusion: The Court unanimously ruled that the Eighth Amendment's prohibition of excessive fines is an incorporated protection applicable to the states under the Fourteenth Amendment.

LATEST LEGISLATIONS/AMENDMENTS

1. Vide notification No. F. 2(1)/2021.Pub dated 01-11-2021, the **National Accountability (Third Amendment) Ordinance, 2021** has been promulgated, to amend the National Accountability Ordinance, 1999. Through this Ordinance section 4, section 5, section 6, section 9, section 16, section 32 of the Ordinance, 1999 have been amended.
http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npap1j-sg-jjjjjjjjjjjj

2. **THE PUNJAB COMMISSION ON IRREGULAR HOUSING SCHEMES (SECOND AMENDMENT) ORDINANCE 2021 (XXVI OF 2021)** has been promulgated by the Governor of the Punjab on 09 November 2021 to amend the Punjab Commission on Irregular Housing Schemes Act 2021, for better functioning of the Commission and for the ancillary matters. Through this Ordinance long title, preamble, section 2, section 4, section 5 and section 9 of Act XXXIII of 2021 have been amended and a section 5-A has been inserted in Act XXXIII of 2021.
https://punjabcode.punjab.gov.pk/en/show_article/ADBcalBgBzJQNw--

LIST OF ARTICLES:-

1. **MANUPATRA**
file:///C:/Users/LHC/Desktop/F5559251-3023-40F7-8B34-61E77BE6F559.pdf
AIR CARRIER LIABILITY FOR PASSENGER DEATH OR INJURY UNDER CARRIAGE BY AIR ACT 1972 by Dr. Sandeepa Bhat B
Carriers' liability for passenger death or injury during the transportation by air has become a major area of controversy in India especially post Mangalore air crash. The Carriage by Air Act 1972 dealing with carriers' liability in India incorporates Warsaw Convention, Hague Protocol and Montreal Convention, the

three international instruments ratified by India. The differences in scheme of liability adopted in these instruments have brought forward significant questions in terms of jurisdiction and computation of compensation. In addition, the application of international carriers' liability regime to domestic carriers with modifications has triggered the questions about justifiability of discrimination. In light of these factors, it is pertinent to address the issues concerning liability for passenger death or injury during the air transportation not only from an academic perspective but also from practical point of views……

2. **LUMS LAW JOURNAL**
   https://sahsol.lums.edu.pk/sites/default/files/hindu_marriage.pdf
   THE HINDU MARRIAGE ACT 2017: A REVIEW by Sara Raza

   Ever since Pakistan gained independence in 1947, the Hindu community has been subject to severe discrimination and marginalization. Hindu women, especially, have had to face the brunt of this unjust treatment and are regularly subjected to forced conversions, rape, and oppression within the domestic sphere.1 According to a report released by the Movement of Solidarity and Peace in Pakistan, up to 300 Hindu women are forced to convert and marry Muslim men every year in Pakistan.2 In this context, Hindu Personal Law and, specifically, law regulating marriages had been largely ignored as a legislative matter by the Parliament until two years ago, reflecting the Pakistani state's extended failure to provide legal protection to the basic social institution of family for its Hindu citizens. The Hindu Marriage Act 2017 marked a breakthrough as the first legislation dealing with personal law of Pakistani Hindus. This review will discuss ancient Hindu beliefs about marriage, problems that were caused by the lack of legislation in this respect, the Sindh Hindu Marriage Registration Act 2016, the Hindu Marriage Act 2017, its purpose, and analyze its provisions.

3. **YALE LAW REVIEW**
   https://www.yalelawjournal.org/pdf/1084_uyk4si82.pdf
   RECOGNIZING CHARACTER: A NEW PERSPECTIVE ON CHARACTER EVIDENCE by Barrett J. Anderson

   Courts have historically regulated the use of character in trials because of its potential to prejudice juries. In order to regulate this type of proof, courts must be able to recognize what is and is not character evidence, but past attempts to define character in the law of evidence have been unsatisfactory. This Note proposes a new framework to help courts unravel this age-old mystery. By considering legal scholarship in conjunction with psychological research and employing common tools of statutory interpretation, this Note contends that proof must have two components for it to be regulated by the character scheme in the Federal Rules of Evidence: propensity and morality. It then explains the elements of each component under the Federal Rules regime, examines several evidentiary examples drawn from real cases to illustrate how courts would apply the

proposed framework, and concludes by discussing the broader implications of this new perspective on character evidence.

4. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-2230.2011.00866.x
   'DELEGATED' LEGISLATION IN THE (NEW) EUROPEAN UNION: A CONSTITUTIONAL ANALYSIS by Robert Schˇtze

   This article brings classic constitutionalism to an analysis of delegated legislation in the European Union. To facilitate such a constitutional analysis, it starts with a comparative excursion introducing the judicial and political safeguards on executive legislation in American constitutionalism. In the European legal order, similar constitutional safeguards emerged in the last fifty years. First, the Court of Justice developed judicial safeguards in the form of a European non-delegation doctrine. Second, the European legislator has also insisted on political safeguards within delegated legislation. Under the Rome Treaty, 'comitology' was the defining characteristic of executive legislation. The Lisbon Treaty represents a revolutionary restructuring of the regulatory process. The (old) Community regime for delegated legislation is split into two halves. Article 290 of the Treaty on the Functioning of the European Union (TFEU) henceforth governs delegations of legislative power, while Article 291 TFEU establishes the constitutional regime for delegations of executive power.

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2021 to 30-11-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. Supreme Court of Pakistan
Secretary, M/o Finance, Islamabad, etc v. DG, FDE, Government of Pakistan
Civil Appeal No. 1546 of 2019
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1546_2019.pdf

Facts: Claim of respondents was that their services rendered on daily wages be counted towards pension.

Issue: i) Whether the service rendered on daily wages basis can be counted towards pension?
ii) What is a stop-gap arrangement?

Analysis: i) The respondents were not arbitrarily appointed as a stop-gap arrangement. Their services were utilized by the Appellants/ Petitioners for years on end till they reached the age of superannuation. Their services were substantive and permanent which were paid for on behalf of and with the consent or approval of the Government… Although the employment of the respondents was not permanent within the meaning of CSR 361, the establishment under which they were working was permanent and the fact that they rendered services for years shows that they were not employed on temporary basis as a stop-gap arrangement for short periods of time. Further, that the Federal Public Service Commission by recommending the Respondents for retention into service has confirmed their ability and qualification to hold these posts. It is an admitted fact that the Respondents have been working continuously for more than 5 years…. The Respondents have been performing their duties in their respective schools since long and such artificial breaks in their employment do not negate the fact that the Respondents had been continuously serving the Appellants/Petitioners for a long time… By no stretch of imagination can it be conceived that when the Respondents were working against their respective posts for long periods (in some cases for more than 10 years), the same can by any definition of the word be termed as a stop-gap arrangement.
ii) A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found. Such an arrangement is typically made until someone can be hired permanently through the process provided in the law, rules or regulations. The Respondents were admittedly employed for long periods of time running into years and cannot be termed as stop-gap.

Conclusion: i) Petitioner who was a proforma respondent, in the Writ Petition dismissed by the High Court could not competently file petition under Article 185(3) of the Constitution when he was not aggrieved person.

ii) A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found.

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2. **Supreme Court of Pakistan**
The Chief Secretary, Government of Baluchistan v. Hidayat Ullah Khan
Civil Petition No.22-Q of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.p._22_q_2020.pdf

Facts: Petitioner was a Field Program Officer. After devolution of departments in view of 18th amendment his services were placed at the disposal of Health Department and he was given charge of Law Officer in the Health Department of Province. Later on he wanted to his transfer and absorption in the post of Law Officer of P&D Department.

Issue: Whether change of cadre or absorption is permissible?

Analysis: Change of cadre and absorption is not permissible in law.

Conclusion: Change of cadre and absorption is not permissible in law.

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3. **Supreme Court of Pakistan**
Senior Superintendent of Police (Operations) v. Shahid Nazir
Civil Appeal No.608 of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._608_2021.pdf

Facts: Respondent/constable was issued a show cause notice that he failed to perform his duty efficiently and registration of some FIRs in different Police Stations exposes his involvement in criminal cases. Regular inquiry was dispensed with and he was dismissed from service.

Issue: When a regular inquiry may be dispensed with?

Analysis: There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regularly inquiry there must be some compelling and justiciable reasons assigned in writing... If the charge is founded on admitted documents/facts, no full fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the parties to cross-examine the witnesses.... The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the

alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with… It is not a hard and fast rule that where there are serious allegations against an employee which are denied by him the department is under an obligation to conduct a regular inquiry in all circumstances in case the departmental authorities come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

Conclusion: There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regularly inquiry there must be some compelling and justiciable reasons assigned in writing. In case the departmental authorities come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

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4. **Supreme Court of Pakistan**
Chief Executive, PESCO Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Afnan Khan and another
Civil Petition No. 443/2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.a._443_2021.pdf

Facts: The High Court dismissed the revision petition being barred by time since it was presented after expiry of time allowed to remove objections.

Issue: Whether revision petition under section 115 of the C.P.C can be dismissed being time barred?

Analysis: The Hon'ble Court in order to answer the question referred following para of judgment by a five member bench in case titled **Hafeez Ahmad and others v. Civil Judge, Lahore and others** **(PLD 2012 Supreme Court 400):-**

> Now question arises whether suo motu jurisdiction under section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefor. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor. Such petition, could be treated as an information even if it suffers from procedural lapses or

loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefor, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether.

Conclusion: The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor.

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5. Supreme Court of Pakistan
Hamza Sheraz and another v. Riaz Mehmood (deceased) through L.Rs.
Civil Appeal No. 183 of 2015
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._183_2015.pdf

Facts: In compliance with the order of the Court to deposit Zar-e-Soem, one third of the sale price in a suit for pre-emption, plaintiff deposited the amount which was slightly less than the one third. He contended that it was mistakenly calculated and shortfall being meager, he could be allowed to deposit the shortfall.

Issue: Whether plaintiff can be allowed to deposit the meager remaining portion of the one third Zar-e-Soem (required to be deposited in pre-emption case) where he could not deposit the whole due to mistaken calculation?

Analysis: This is also not a case where the Court had itself calculated the one-third amount and made a mistake which required correction. In this case the plaintiff/pre-emptor himself committed the mistake, the consequences whereof he had to suffer. The quantum of the mistaken amount was inconsequential. The plaintiff/preemptor did not deposit the stipulated one-third of the sale consideration amount within the prescribed period, as provided for in section 24 of the Act, and thus attracted the consequences thereof, which was the dismissal of the suit.

Conclusion: Plaintiff cannot be allowed to deposit the meager remaining portion of the one third Zar-e-Soem required to be deposited in pre-emption case where he could not deposit the whole due to mistaken calculation.

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6. **Supreme Court of Pakistan**
Rashid Hussain v Additional District Judge
Civil Petition No.1665 of 2020
Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1665_2020.pdf

Facts: Petitioner filed the petition for custody of his children who were in custody of their maternal grandfather while contending that he being father has preferential right of custody.

Issue: Whether general principle of "preferential right" in custody matter can be deviated from?

Analysis: As a general principle the degree of preference is confined to relationship depending upon the order of preference due to closeness of blood relationship and other aspects which are essential in upbringing of the minors within four corners of law. Any deviation from the general principle, where the blood relationship has to be departed, there should be very strong and compelling reasons to have a contrary view which includes upbringing, education, healthcare, congenial domestic atmosphere, physical and psychological advantages, sect, religion, character and capacity of the claimant to whom if it is assigned to take care of the minors. In short words, while ignoring/bypassing the general principle there must be very strong and exceptional circumstances which could be brought forth with reference to the intent of the legislature regarding the sole purpose of "welfare of minor".

Conclusion: Ignoring/bypassing the general principle there must be very strong and exceptional circumstances.

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7. **Supreme Court of Pakistan**
Muhammad Saeed Khan v. Malik Muhammad Ashraf and others
Civil Petition No. 1550 of 2017
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1550_2017.pdf

Facts: Petitioner was proforma respondent in writ wherein no claim was made against him. Writ petition was dismissed. Petitioner has filed leave to appeal against order of dismissal of writ petition.

Issue: Whether the Petitioner who was a proforma respondent, in the Writ Petition dismissed by the High Court could competently file petition under Article 185(3) of the Constitution?

Analysis: It is a settled principle of law that an aggrieved party can file an appeal or a petition for leave to appeal, whichever is maintainable, before this Court under Article 185 of the Constitution of the Islamic Republic of Pakistan, 1973… The Petitioner was respondent No. 4 before the High Court. He never challenged the order of the Appellate Authority or order of Excise and Taxation Officer/Motor Registering Authority before the High Court. If he was aggrieved by the orders of the Appellate Authority or Excise and Taxation Officer/Motor Registering Authority, Islamabad he was required to challenge the same before the available forum or the High Court in Constitutional jurisdiction and thereafter if his petition was dismissed by the High Court he would have been entitled to challenge the said order before this Court. By no stretch of imagination, it can be said that he is aggrieved by the order of the High Court when the Writ Petition filed by the Respondent was dismissed by the High Court. It is a settled view of this Court that if any person is a formal party as respondent before the High Court against whom no relief is claimed and the Writ Petition before the High Court is allowed even then the said formal respondent has no right to challenge the order of the High Court before this Court if the order does not prejudicially or adversely affects that person.

Conclusion: Petitioner who was a proforma respondent, in the Writ Petition dismissed by the High Court could not competently file petition under Article 185(3) of the Constitution when he was not aggrieved person.

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8. **Supreme Court of Pakistan**
Muhammad Iltaf Khan v. Basheer and others
Criminal Petition No.46-P of 2016
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._46_p_2016.pdf

Facts: A criminal complaint under section 500 of the Pakistan Penal Code, 1860 (P.P.C.), was directly filed in the Court of Session in the wake of addition of section 502-A in the P.P.C., contending that there was no need now to route the complaint through magistrate.

Issue: Whether there was no need to route the complaint u/s 500 PPC through magisterial court in view of insertion of section 502-A in the PPC?

Analysis: Section 193 of the Code places a complete and clear bar on taking of cognizance of any offence by the Court of Session in its original jurisdiction unless the case is sent up by a Magistrate under subsection 2 of section 190 of the Code. Offence

under section 500 of the P.P.C. is punishable with imprisonment that may possibly extend to a period of 5 years and as such, triable by a Magistrate. The legislature in its wisdom desired an expeditious trial of the offence with right of appeal going to the High Court and this appears to be the dominant purpose for insertion of section 502A in the P.P.C. with no bearings upon the procedure, otherwise provided for the institution of a complaint.

Conclusion: Section 502-A PPC only confers jurisdiction on the Sessions Court to try case u/s 500 PPC. It has no bearings upon the procedure, otherwise provided for the institution of a complaint. Therefore, a complaint u/s 500 PPC must be routed through the Magistrate.

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9. **Supreme Court of Pakistan**
Muhammad Jameel, etc. v. Abdul Ghafoor
Civil Petition No. 1890-L of 2017 and C.M.A.2295-L of 2017
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1890_l_2017.pdf

Facts: Government was owner of land, however, suit of plaintiff for declaration and possession against private defendants was decreed throughout.

Issue: Whether a person can file a suit for declaration without having a pre-existing right and without impleading real owner as party?

Analysis: When the plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent and the courts below should not have granted a declaratory decree when no pre-existing rights were available with the respondent-plaintiff in the suit "Ihata". If he was in possession of a portion of suit "Ihata" and was wrongly dispossessed by the petitioners-defendants who are admittedly in possession of a portion of suit "Ihata", the only remedy available with him was to file a suit under section 9 of the Specific Relief Act, 1877 and not a suit for declaration under section 42 of the Act, ibid, or he could file a suit for possession under section 8 of the Specific Relief Act, 1877.

Conclusion: When the plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent.

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10. **Lahore High Court**
Sardaran Bibi etc. v. Rehma etc.
Civil Revision No.1786 of 2012
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC6784.pdf

Facts: The petitioners filed suit for declaration along-with permanent injunction and during the pendency of the first suit, they filed second suit where after withdrew the first suit. In the second suit, respondents filed application under Order VII

Rule 11 CPC for rejection plaint, which was accepted and the plaint was rejected.

Issues: Whether second suit is barred by law and plaint of the said second suit is liable to be rejected under Order VII Rule 11 CPC, where the first suit has been withdrawn after filing second suit.

Analysis: Where a suit is already pending before the institution of fresh/ new suit and later on previous suit is withdrawn, the provision of Order XXIII, rule 1, CPC would not be applicable. Order XXIII, rule 1 CPC refers to permission to withdraw a suit with liberty to institute a fresh suit after the first one has been withdrawn. Order XXIII, rule 1 CPC cannot be read so as to bar a suit which has already been instituted before the other suit has been abandoned or dismissed… The bar of Order XXIII rule 1 applies only to suit instituted after withdrawal or abandonment of previous suit.

Conclusion: Where the first suit has been withdrawn after filing of second suit, the second suit is not barred by law and plaint of the said second suit cannot be rejected under Order VII Rule 11 CPC.

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11. Lahore High Court
Tayyaba Mehboob v. Additional Sessions Judge, Sarai Alamgir, and others
Writ Petition No.58868/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC7202.pdf

Facts: The petitioner filed application under section 491(1-A) Cr.P.C. for their recovery of her minor children. The Court directed the respondent SHO to produce the minors but reportedly respondents No.4 to 6 took them to Rawalpindi. At which the Petitioner's counsel withdrew the aforementioned application which she states was without her instructions. The Petitioner has now made this petition under Article 199 of the Constitution for the recovery of the minors.

Issues: i) Whether the Principal Seat of Lahore High Court has jurisdiction only to the extent of its assigned area?
ii) Whether Order XXIII Rule 3 CPC is applicable to the proceedings under section 491(1-A) Cr.P.C?
iii) Whether principle of res judicata applies to habeas corpus proceedings?
iv) Whether during pendency of guardianship petition, constitutional petition of habeas corpus is not proceedable?

Analysis: i) Rule 3 stipulates that all matters arising within the area assigned to a Bench have to be filed before that Bench and decided by it. Rule 5 empowers the Chief Justice to transfer any proceedings pending at the Principal Seat of the Court or a Bench to another Bench or the Principal Seat. The Hon'ble Supreme Court of Pakistan had the occasion to consider Rule 3, supra, in Syed Ahmed Ali Rizvi and another v. The State (PLD 1995 SC 500). The August Court held that "Rule 3 provides that all matters arising within the area assigned to a Bench shall be filed before and disposed of by that Bench. This may be the territorial limit of the

Benches administratively fixed by the Rule but it cannot curtail or limit the jurisdiction conferred on a Judge of the High Court by Constitution and law and he can exercise such jurisdiction throughout the territorial limits of the High Court. In spite of the above rule a Judge sitting at the Principal Seat of the High Court having Benches can exercise jurisdiction within the entire territorial jurisdiction of the High Court." Admittedly, this petition under Article 199 of the Constitution is in the nature of habeas corpus. Therefore, in view of the above-mentioned dictum of the Hon'ble Supreme Court, no objection can be taken to its institution at the Principal Seat.

ii) Order XXIII Rule 3 CPC stipulates that where the plaintiff withdraws from a suit or abandons part of a claim without the court's permission is precluded from instituting a fresh suit in respect of such subject-matter or part of the claim. The proceedings under section 491(1-A) Cr.P.C. are neither a suit nor proceedings in a suit. The Order XXIII Rule 3 CPC is not applicable to the proceedings under section 491(1-A) Cr.P.C.

iii) Res judicata, also known as claim preclusion, is the Latin term for "a matter decided". Generally, it postulates that a cause of action may not be agitated again once it has been adjudged. The doctrine of res judicata is not applicable to the facts and circumstances of the instant case because the Additional Sessions Judge never decided the matter on merits. Even otherwise, in a cornucopia of cases the courts have held that this doctrine does not apply to habeas corpus proceedings. reference may be made to Mst. Nazneen v. Judicial Magistrate, Larkana, and 2 others (1999 MLD 1250) in which a Division Bench of the Sindh High Court held that "technically an order passed on an application under section 491 Cr.P.C. has not been treated as judgment in terms of section 369 of the Code so as to attract the bar of res judicata."

vi) In Nisar Muhammad and another v. Sultan Zari (PLD 1997 SC 852) the apex Court observed that the proceedings under section 491 Cr.P.C. are summary in nature. The court only determines whether the custody of the child with the parent is illegal or improper and makes a provisional order in that respect leaving the matter to be decided by the Guardian Judge in appropriate proceedings. In Mst. Ghulam Fatima v. The State and 5 others (1998 SCMR 289) ruled that pendency of the guardianship matter before a Family Court does not bar proceedings under section 491 Cr.P.C. The above principle also applies to the habeas corpus petitions filed under Article 199 of the Constitution.

Conclusion: i) In spite of the rule 3 a Judge sitting at the Principal Seat of the High Court having Benches can exercise jurisdiction within the entire territorial jurisdiction of Lahore High Court.

ii) The Order XXIII Rule 3 CPC is not applicable to the proceedings under section 491(1-A) Cr.P.C.

iii) Principle of res judicata does not apply to habeas corpus proceedings.

iv) Pendency of the guardianship matter before a Family Court does not bar proceedings of constitutional petition of habeas corpus.

12. **Lahore High Court**
Muhammad Sajid alias Sajo v. The State etc.
Crl. Misc. No.59005/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC7211.pdf

Facts: The petitioner had sought pre-arrest bail in offence punishable u/s 377-B PPC. It was the allegation against the petitioner that he deceitfully took along the son of the complainant to nearby fields, removed his cloths and started to fondle him. Screams of the victim attracted the complainant and others persons to the crime scene, making the petitioner flee from there.

Issue: i) What are the various international conventions, declarations and targets of global sustainable goals on the protection of child rights?
ii) Can, at bail stage, adverse inference for delayed registration of FIR is drawn in cases related to Child Abuse?
iii) What the Courts are required to see at the time of deciding bail before arrest?

Analysis: i) The United Nations Universal Declaration of Human Rights (1948) recognizes the right of motherhood and childhood to "special protection and assistance" and the right of all children to "social protection". The United Nations Declaration of the Rights of the Child (1959) has enunciated ten principles for the protection of children's rights. The United Nations Convention on the Rights of the Child (CRC) , while appreciating that there is "need to extend particular care to the child" has enumerated a full range of rights to which they are entitled……… Articles 19 and 34 of the CRC obligate the States parties to protect the children from sexual abuse. The UN Committee on the Rights of the Child (hereinafter referred to as the "UN Committee") in General Comment No.13 (2011) has emphasized that the State parties should adopt a child rights approach at all levels – legislative, administrative, social and educational – which envisages that the child should be viewed as a right holder and not a beneficiary of adults' benevolence..... General Comment No.21 (2017) paragraph 10 further explains that a child rights approach ensures respect for dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a right holder. The United Nations' Sustainable Development Goals has set an agenda for global human development efforts from 2015 to 2030. Significantly, these Goals have added two new targets acknowledging child abuse as a fundamental obstacle to health, demanding concerted action. Target 5.2 aims to eliminate all forms of violence against women and girls, including sexual exploitation, and Target 16.2 aims to end abuse and exploitation of children. Governments are required to report on progress against these targets.

ii) It is true that the Complainant approached the police seven days after the happening but an adverse inference cannot be drawn against her on that score at the bail stage because in our society the people generally do not report such

incidents immediately. The overall impact of the delay, if any, is to be determined by the court on the conclusion of the trial when the testimony of all the witnesses is recorded and they are duly cross-examined.

iii) In “Shahzada Qaiser Arfat alias Qaiser v. The State and another” (PLD 2021 SC 708) the Hon’ble Supreme Court of Pakistan ruled that while deciding applications for pre-arrest bail the courts should see whether there is sufficient incriminating material against the accused. In the case before me there is plenty of such material against the Petitioner. The prosecution case is supported by the Complainant, PWs and the victim himself who have got their statements recorded under section 161 Cr.P.C. During investigation the police have also found that the Petitioner has committed the alleged offence.

Conclusion: i) The United Nations Universal Declaration of Human Rights (1948), The United Nations Declaration of the Rights of the Child (1959) and The United Nations Convention on the Rights of the Child etc.

ii) Adverse inference for delayed registration of FIR in matter related to child abuse cannot be drawn at the bail stage.

iii) The Courts, while deciding an application for pre-arrest bail, are required to see whether there is sufficient incriminating material against the accused.

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13. Lahore High Court
Jamshed Iqbal Cheema v. The Election Appellate Tribunal and others
W.P. No. 70103 of 2021
Mr. Justice Jawad Hassan, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6800.pdf

Facts: The Petitioners assailed the order passed by the Returning Officer and judgment passed by the Election Appellate Tribunal whereby their nomination papers for contesting bye-election for National Assembly were rejected and appeal against that was dismissed respectively.

Issue: i) Whether it is mandatory to be a registered voter in the electoral roll of a constituency for a person to propose and seconds a candidate for contesting election of National Assembly therefrom?

ii) Whether defect in nomination papers regarding the qualification of a Proposer and a Seconder can be cured at a subsequent stage?

Analysis: i) It is well founded that being a voter in any of electoral area of the constituency is mandatory requirement for a voter to propose and second the nomination of a candidate for becoming a Member of the National Assembly. Perusal of Section 2 (xli) of the Act evidently signifies that voter in relation to an Assembly is a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency. This definition makes it abundantly clear that enrollment in the electoral roll is basic and fundamental requirement for a person to be a voter of a particular electoral area and mere residing in an area or having a temporary or

permanent residence in any part of the electoral area of a constituency is not a determinative factor to term a person as voter within the meaning of the Act. Even though Section 27 of the Act postulates a criterion with respect to having place of residence in an electoral area as to be generally included within the electoral roll, however, the determinant factor is not being a resident of the constituency but being enrolled in the electoral roll of any of the electoral area which is part of the said constituency.
ii) Although under second proviso of Section 62(9) the Returning Officer is empowered to allow removal of any such defects in the nomination papers, which are not of substantial nature, yet the requirements that only a voter of a constituency is competent to propose and second a candidate to contest election for Assembly being the only criteria for a candidate to participate in the election for National Assembly speaks volume about the significance of the role of such a voter who proposes and seconds a candidate. It was therefore, quite logical that the proposer and the seconder must be a voter enrolled in the electoral roll of that very constituency, which is to be represented in the National Assembly by such a candidate so nominated. The statutory requirement imposed upon a candidate to be named by a proposer and seconder is definitive and substantial in nature, which cannot be remedied and rectified by the Returning Officer under second proviso of Section 62(9) of the Act.-- The statutory requirement imposed upon a candidate to be named by a proposer and seconder is definitive and substantial in nature, which cannot be remedied and rectified by the Returning Officer under second proviso of Section 62(9) of the Act.

Conclusion: i) A candidate in order to become a Member of the Assembly requires nomination from a *(i)* proposer and *(ii)* seconder who must be enrolled as a voter on the electoral roll of any electoral area in that constituency and proving the factum of having a temporary or permanent residence in the area falling within the constituency is not an alternative to the mandatory requirement of having enrolled in the electoral roll of the Commission.
ii) Provisions relating to proposer and seconder of a candidate in the Election Act, 2017 are mandatory in nature and any defect in respect thereof in nomination, is a defect of substantial nature, which cannot be cured at subsequent stage.

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14. **Lahore High Court**
Muhammad Ayyub Alam Khan. v. Addl. District Judge, Kot Addu, etc.
W.P. No. 4191 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC7144.pdf

Facts: Through this constitutional petition, the petitioner has called in question orders passed by both the courts below, whereby application filed by the petitioner for grant of permission to sell the property of his minor son before the Civil Judge, 1st Class, Kot Addu, District Muzaffargarh, has been dismissed on the ground that the petitioner was appointed as guardian of the minor by the Family Court at

Multan, therefore, the petition seeking afore-said relief was not maintainable in courts at Tehsil Kot Addu.

Issue: Whether permission to sell the property of minor may be granted by the court situated at different place other than the court which appointed guardian of the minor or property?

Analysis: The perusal of the Section 9 of the Guardian and Wards Act, 1890 shows that cases in which guardianship of person of minor only is required to be obtained then in terms of Section 9 subsection (1), the said application is to be filed in the District Court within jurisdiction of which the minor ordinarily resides but where the guardianship of 'property' of the minor is to be obtained then in terms of Section 9 subsection (2) in District Court of the places where the minor ordinarily resides and where the property is situated have the concurrent jurisdiction to entertain the same. Subsection (3) of Section 9 provides that in case the application for appointment of guardian of property of the minor is filed in the District Court of a place other than the place where the minor ordinarily resides, the said court can return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction. The perusal of Section 29 of the Act shows that where a person has been appointed or declared by the court to be the guardian of a ward, he shall not without the previous permission of the court transfer the property of the minor through modes mentioned in the said section which shows that the previous permission of the court that appointed him as the guardian is required for disposing/transferring of the property of the minor, which permission may be granted or refused in terms of Section 31 of the Act. Where petitioner was only seeking the relief of being appointed as guardian of property of the minor, which application in addition to the District Court within jurisdiction of which the minor resided, could have also been filed at the place where property is situated in terms of the afore-referred Section and in such situation the petitioner would have the option of choice of forum for filing guardianship on the basis of doctrine of election, which not only is applicable to the available remedies but also to the available forums, if they have concurrent jurisdiction to try a matter subject to exception of mala fide choice of forum. This position of law is fortified by the definition of court provided in Section 4 (5) of the Act. The perusal of Section 4 (5)(b) of the Act makes it clear that in cases where a guardian has been appointed or declared in pursuance of any such application for appointment of guardian of the minor, the court that can entertain further applications is the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian, which is subject to the only exception that in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides shall have the jurisdiction.. Even otherwise, where guardianship of person and property together are sought, then as per Section 9 subsection (1) of the Act, the place where the minor ordinarily resides would be of more significant value for determining the jurisdiction of the court than Section 9 subsection (2) of the

Act, which relates to guardianship of property and provides for concurrent jurisdiction to the courts of residence and situation of property of the minor. When a party opts to choose a forum it cannot be allowed to switch over to another forum qua the same grievance during the proceedings before the former.

Conclusion: Permission to sell the property of minor may not be granted by the court situated at different place other than the court which appointed guardian of the minor and property.

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15. **Lahore High Court**
Roshan Din v. Rashida Ilyas etc
WP No. 15138 of 2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6969.pdf

Facts: The petitioner called in question the judgment passed by Judge Family Court whereby a suit for recovery of maintenance allowance filed by respondent No. 2/minor (grand-daughter of the Petitioner) was decreed against present Petitioner for an amount of Rs. 3,000/- per month as maintenance allowance.

Issue: i) Whether a grandfather is liable to maintain his grandchildren?

ii) Whether Family Court has decreed the suit for maintenance allowance against grandfather of the minor on wrong premise by treating him as his father instead of grandfather?

Analysis: i) Whether or not a grandfather is liable to maintain his grandchildren came up for consideration in the case titled Muhammad Ramzan vs. Ali Hamza and others (PLD 2016 Lahore 622), the relevant portion of which is reproduced below: "The liability of a grandfather starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but the liability of grandfather to maintain his grandchildren is also dependent upon the fact that he is in easy circumstances. Thus in my humble view if the father and mother are alive, the grandfather cannot be held responsible for maintenance of his grandchildren unless it is first determined that he is in easy circumstances. In order to determine that grandfather is in a position to maintain his grandchildren it is incumbent upon the Family Court to first adjudicate and determine this fact which cannot be done unless he is a party to the suit, having a fair opportunity to explain his status and position…."

ii) It appears that son of the Petitioner/husband of Respondent No. 1/father of Respondent No. 2 died in a road accident in Saudi Arabia in 2016, whereas it is noticed that the trial court decided the matter on wrong premise by treating the Petitioner, who was defendant in the suit, as father of the minor Respondent No. 2 and has not considered that he was the grandfather.

Conclusion: i) See para (i) of analysis.

ii) It is noticed that the trial court decided the matter on wrong premise by treating the Petitioner, who was defendant in the suit, as father of the minor Respondent No. 2 and has not considered that he was the grandfather.

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16. **Lahore High Court**
Riaz Hussain v. The State etc.
Crl. Misc. No.1229-M of 2011
Mr. Justice Anwaarul Haq Pannu
https://sys.lhc.gov.pk/appjudgments/2021LHC4304.pdf

Facts: Through instant application the petitioner has questioned the vires of order passed by respondent No.3/Addl. Sessions Judge, D.G Khan, dismissing a criminal revision petition filed by him against the order passed by respondent No.2/Magistrate Section-30, D.G. Khan, whereby he ordered the petitioner to pay back/return the amount of Daman Rs.90,000/-, deposited by the convict and received by him being an injured witness in pursuance of the judgment.

Issue: Whether appeal against conviction is maintainable if the convict deposits the amount of daman immediately and secures his release?

Analysis: The moment, an order under Section 337-Y PPC permitting the convict to pay the requisite amount/daman either in installments or in lumpsum by the Court, is passed, by implication, the convict is barred from challenging his conviction by way of appeal as no-body can be allowed to approbate and reprobate in the same breath, rather he would be bound by his previous stance. Furthermore, under Section 412 Cr.P.C, except on the ground of its legality, no appeal is maintainable against a judgment of conviction, passed upon pleading guilty of the charge, by a convict. The seeking of a permission by a convict to pay Diyat, Arsh or Daman, while invoking the power of a court, which has passed the final judgment, infact amounts to accepting his conviction and sentence, foregoing his right of appeal. Upon passing an order by a court under Section 337-Y(1a) PPC, allowing prayer of the convict, the judgement of conviction attains finality.

Conclusion: Appeal against conviction is not maintainable if the convict deposits the amount of daman immediately and secures his release as sentence stands executed.

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17. **Lahore High Court**
Muhammad Fayyaz, etc. v. Addl. District Judge, etc.
W.P No.5899 of 2020
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2021LHC6761.pdf

Facts: Facts of the case are that respondent No.3 /daughter-in-law filed a suit for recovery of dower against her father in-law and same was decreed in her favour. The petitioners have called in question the vires of the judgment and decree.

Issue: Whether daughter-in-law can file a suit for recovery of dower against father-in-law if he is signatory of Nikah Nama as a Wakeel?

Analysis: There is no denial that it is primarily duty and obligation of the husband to pay dower to his wife, yet there is no bar or prohibition on another person to bind himself as a surety by way of putting his signature/thumb impression on the Nikah Nama, ensuring its payment and such surety cannot wriggle out from such legal obligation when a suit for the recovery of dower is brought against him by the wife, hence, there is no escape by father-in-law to wriggle out of his liability if being "Wakeel" of bridegroom, he had signed the prescribed column of nikahnama at the time of marriage. The suit filed by respondent No.3 for recovery of dower against her father-in-law, who had acted as a "Wakeel" of the bridegroom and had signed it, is held to be competent.

Conclusion: Suit for recovery of dower can validly be filed against father-in-law if he is signatory of Nikah Nama as a Wakeel.

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18. Lahore High Court
Rana Abid Hussain and two others v. National Highway Authority and three others
R. F. A. No. 100 of 2018 / BWP
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC7106.pdf

Facts: Appellants were owners-in-possession of the suit property. The property was acquired at the instance of the NHA for public purpose in connection with the construction of Motorway. Acquisition proceedings were initiated through issuance of the notification under Section 4 of the Act culminating into the award. The Appellants assailed the Award averring that they received inadequate compensation under protest.

Issues: i) What are the determining factors of adequate compensation for compulsory acquisition of land?

ii) Whether sale mutations of small portions of land are out of context and cannot be taken into consideration for determining compensation of bigger holding?

Analysis: i) The privilege to acquire, hold and dispose of the property is a fundamental right guaranteed under Articles 23 & 24 by the Constitution of the Islamic Republic of Pakistan, 1973 which emphatically declares that no person shall be deprived from his property save in accordance with law and with adequate compensation. Section 23 of the Act spells out various factors to be considered for determining market and potential value of the Property. The Apex Court of the country in view of unflinching dictate of the Constitution that citizens subject to compulsory acquisition of their properties are adequately compensated has consistently endeavored to liberally interpret the provisions of the Act. The law is now well developed that adequate compensation is not merely restricted to market value at the relevant time but also includes future potential value of the property. The

escalation in price during the period consummated from the date of the notification under Section 4 of the Act till the pronouncement of Award is also a relevant consideration. Even valuation of adjacent or nearby properties can be analyzed to reach a fair and just price.

ii) Most of the sale mutations brought on record consisted of small portions of land manifestly demonstrates that land in the area was a precious and scarce commodity being located close to two cities. Therefore, such sale mutations of small portions of land were not completely out of context and cannot be ignored altogether when transactions of bigger holdings were not available. This is especially so when the property had the potential of conversion into smaller residential or commercial units as was evident from the fact of emerging residential colonies and existence of a host of commercial ventures in close vicinity of the Property.

Conclusion: i) Adequate compensation is not merely restricted to market value at the relevant time but also includes future potential value of the property.

ii) Sale mutations of small portions of land are not completely out of context and cannot be ignored altogether when transactions of bigger holdings are not available, especially when the property has the potential of conversion into smaller residential or commercial units.

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19. **Lahore High Court**
Ahmad Waqas etc. v. Ishtiaq Ali etc.
R.F.A. No.114 of 2017
Mr. Justice Anwaarul Haq Pannun Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC6768.pdf

Facts: Facts of the case are that appellants filed Regular First Appeal, wherein, they challenged the judgment and decree on the ground that they are in possession of suit property and said possession of the appellants over the suit property is protected on the basis of equitable doctrine of part performance.

Issue: i) When possession on the basis of part performance u/s 53-A of Transfer of Property Act,1882 can be retained?

ii) Whether mere pendency of appeal or revision before the Hon'ble Supreme Court does operate as stay or restrain order?

Analysis: i) Section 53-A of the Act, 1882 is to protect interest of a buyer of the property who has satisfied his commitments and is also willing to honour his commitments, and in that eventuality the transferor cannot go against him and take back possession or cancel the sale. In case the buyer has made defaults or from his conduct it appears that he will not fulfill his promises which are required to complete the sale then the buyer may not get protection of Section 53-A of the Act, 1882 and the seller can cancel the sale and repossess the property. It can be

said that Section 53-A of the Act, 1882 will come into play for protection of the buyer only when the buyer has performed his commitments substantially and is willing to perform the remaining part of his promise, if any, and there is no other way in which the buyer can be considered to have committed breach or there is indication of the buyer breaching his promises when required to be met as per contract. If there is no sale, then Section 53-A of the Act, 1882 will not be helpful.

ii) The Hon'ble Supreme Court of Pakistan has held in its reported judgments that mere filing of appeal or revision does not operate as stay order and prohibition or restraint cannot be implied but must be clearly expressed and communicated.

Conclusion: i) Possession on the basis of part performance under section 53-A of Transfer Property Act, 1882 can only be retained if the vendee proves agreement to sell otherwise his possession deemed to be illegal and a penal action can be initiated.

ii) Mere filing or pendency of petition/appeal/revision before the Hon'ble Supreme Court does not operate as a stay or restraint order.

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20. **Lahore High Court**
Shagufta Sarwar ADPP v. Special Judge Anti Terrorism Court
Writ Petition No. 17809 of 2021
The State v. Judge Anti Terrorism Court & 4 others
Criminal Revision No. 311 of 2021
Mr. Justice Sohail Nasir, Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7050.pdf

Facts: An accused was produced before Duty Magistrate for physical remand wherein prosecution formed the opinion that section 387 PPC stated u/s 6(2)(k) under the definition of "Terrorism" of the Anti Terrorism Act, 1997 is attracted. The learned Duty Magistrate directed the IO to produce the accused before the ATC. Thereafter the ATC turned down the request of the Investigating Officer and directed him to produce the accused before the learned Area Magistrate. The judge ATC in his order criticized the working of Prosecution department and issued directions for strict actions against prosecutors. The Prosecution department challenged the order to the extent of these comments and directions.

Issue: i) What is judicial restraint?

ii) Whether the prosecutor was justified to give his opinion about the application of any other provision of law?

iii) Whether the comments of Court upon working of prosecutors and prosecution are justified or they should be expunged by applying principle of judicial restraint?

Analysis: i) While commenting upon judicial restraint, this Court had observed that:-

i. The courts can interpret the provisions of law but cannot change or substitute such provisions and also cannot go beyond the wisdom of law.
ii. When spoken about judicial review, it is also necessary to be alive to the concept of judicial restraint.
iii. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of powers.
iv. Judges are expected to interpret any law as per the limits laid down in the law.
v. It is the source of law which the judges are called upon to apply and that Judges, when apply the law, are constrained by the rules of language.

ii) The intervention of independent Prosecution Serving agency is not ceremonial or the role of the Prosecutor is not of a post office but to have a check on the working of the investigating officers at the right time and right place for the reason that the ultimate responsibility of the Prosecutors is to ensure effective prosecution. However, this cannot be disputed that finally the powers lie with the court to agree or disagree with the said opinion (in accordance with law) but under no circumstance it is within the domain of the court to sit over the powers of the Prosecutors.

iii) There was no material at all available with the learned Judge to make such derogatory, insulting and offensive remarks against any Prosecutor or the Prosecution department…. the learned Judge ATC has impinged upon the authority of the Prosecutors and crossed its' limits while giving unethical, biased and prejudiced observations in particular when there was no material at all in support of these remarks. We also find that the learned Judge was vested with no authority to restrain or restrict the statutory powers available to the Prosecutors. T

Conclusion: i) The courts can interpret the provisions of law but cannot change or substitute such provisions.

ii) The prosecutor was justified to give his opinion about the application of any other provision of law.

iii) The comments of Court upon working of prosecutors and prosecution are expunged by applying principle of judicial restraint.

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21. **Lahore High Court**
Mst. Nooran Mai deceased through legal heirs v. Shafqat Ali
Civil Revision No. 1367 of 2016
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC6792.pdf

Facts: The execution of sale deed and mutation were challenged by a lady on the ground of fraud. During pendency of suit, both the parties agreed to refer the matter to arbitrator with an undertaking that they will be bound by his decision. Thereafter name of arbitrator was changed on application of petitioner wherein they maintained that no further application for change of Arbitrator shall be moved.

Still the decision was awaited, when petitioners filed another application for withdrawal of her offer for decision of case through arbitration which was turned down. On the report of arbitrator the version of petitioner was false therefore her suit was dismissed.

Issue: i) What is scope of admissions as referred in Article 33 of QSO?
ii) Whether the arbitrator appointed during proceedings of suit is in terms of Section 22 of the Arbitration Act or his status was of a person expressly referred to by petitioners as mentioned under Article 33 of the QSO?
iii) Whether the court can straight away decide fate of suit on the report of arbitrator?

Analysis: i) The statement of person expressly referred for information with regard to matter in dispute is an admission. It, therefore, simply means that if a dispute is forwarded, the same has to be decided by the person on the basis of information that is already in his knowledge but he cannot inquire into the controversy, hear the parties and to decide the same. He has to simply make a statement about the fate of conflict on the basis of information, nothing more nothing less.
ii) Where parties had agreed for referring the matter with an undertaking that the decision will be binding on both the sides. The parties were obviously not seeking any information but a 'faisla', so despite the use of word 'Referee' in the joint application the real intention of the parties was to appoint an arbitrator for resolving the dispute.
iii) The decision of referee was an 'Arbitration Award' and the trial court could not have made it a rule of court without first giving an opportunity to the parties to file objections thereto and the matter was remanded back to the trial court.

Conclusion: i) If a dispute is forwarded, the same has to be decided by the person on the basis of information that is already in his knowledge without further inquiry into matter.
ii) The arbitrator appointed during proceedings of suit for decision falls under Section 22 of the Arbitration Act.
iii) The court cannot straight away decide fate of suit on the report of arbitrator.

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22. **Lahore High Court**
(Muhammad Ijaz & another v. The State
Criminal Appeal No. 1240-J of 2017
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC7190.pdf

Facts: The appeal is against the order of conviction in murder case.

Issue: What are the important features of identification parade?

Analysis: The important features for a valid identification parade are as under:

i. The proceedings shall be conducted under the supervision of a Magistrate.
ii. Proceedings shall be held inside the jail.
iii. Identification shall be carried as soon as possible after the arrest of suspect.
iv. Once the arrangements for proceedings have been undertaken, the Officer investigating the case and any Police Officer assisting him in that investigation should have no access whatever either to the suspect or to the witnesses.
v. List of all persons included in identification should be prepared, which should contain their names, parentage, address and occupation.
vi. The suspects shall be placed among other persons similarly dressed up, of the same religion and of same social status.
vii. There shall be proportion of 8 or 9 such person to one suspect.
viii. The identifying witnesses shall be kept separate from each other and at such distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called upon to make identification.
ix. Each witness shall be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communication to pass between witnesses who have been called up and those who have not

Conclusion: i) The identification Parade is to be conducted under supervision of Magistrate inside jail keeping in view the cautions discussed above.

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23. Lahore High Court
Vital Chemicals Corporation & 02 others v. Silk Bank Limited
Regular First Appeal No. 72 of 2019
Mr. Justice Sohail Nasir, Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6973.pdf

Facts: Appellants had applied for the sanction of renewal of finance facilities which was acceded to by the respondent Bank. Appellants again requested for the renewal of the existing financial facilities which was allowed. The appellants failed to liquidate their liabilities within stipulated time which compelled the respondent to file the suit for recovery of outstanding amount which was decreed by learned Banking Court. This Regular First Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is directed against the said

judgment and decree.

Issue: i) Whether mark-up levied is worked out on daily product basis if 'Running Finance facility' is availed and withdrawn at different intervals and paid back on various occasions?

ii) Whether facility of FIM is a banking facility?
iii) Whether pawnee/pledgee has the right either to bring a suit upon the debt or to sell the pledged stock after giving reasonable notice of sale?

Analysis: i) 'Running Finance facility' is the form of lending, where the customer is allowed to borrow money from a financial institution up to a certain limit either at once or as and when it is required. If it is availed and withdrawn at different intervals and paid back on various occasions, then mark-up levied thereon is worked out on daily product basis. The bank charges mark-up only to the amount availed by the consumer instead of buyback price. The formula to work out the mark up on 'daily product basis', in respect of Running Finances, according to recognized Banking practice is: - "Balance outstanding +Number of days+ rate 365 days in a calendar year"
ii) The facility of FIM is a banking facility which financial institution allows its customers for financing their import and local business. The customer when opens the LC , the bank on behalf of its customers gives an unconditional guarantee to the exporter that if the documents drawn under the letter of credit were in conformity with the terms of the letter of credit, the bank will pay the amount to the exporter without referring the demand to importer (LC opener). The bank after negotiating the documents creates a demand against the customer. The documents drawn under the LC are titled to goods. If the importer pays the amount of documents to the bank, the bank delivers the same to the importer and the importer on the basis thereof gets the delivery of imported goods from Port. After payments of the price of documents to bank, the FIM facility stands adjusted and transaction is over. But if the importer fails to pay the price of documents, the documents remain with the bank and the FIM facility in the books of the bank remains unadjusted and recoverable from the importer. The bank in this case had claimed that it allowed FIM facility to appellants and they opened two letters of credit but failed to liquidate that LC(s).
iii) When one person, in the light of a contract, delivers goods to another for some purpose with an understanding that when the purpose is accomplished he shall return the goods or otherwise dispose of according to the direction of the person delivering it, is called bailment as defined by Section 148 of the Contract Act, 1872. A bailee is a person to whom goods are deposited under a contract for a certain purpose and he is bound to return the goods so deposited when the purpose is accomplished. When the deposit of goods is for the purpose of security for payment of a debt or performance of a promise then such deposit is called pledge as defined under Section 172 of the Act. The slight difference between bailment and pledge is that in the case of bailment the deposit of goods is for a certain

purpose, to be returned after the purpose is accomplished but in the case of pledge, the goods are deposited as a security to be kept till the payment of debt is effected or a promise for which the goods were pledged is performed. In other words, the pledge is a kind of bailment and security . Section 151 of the Act provides that where the goods are bailed to the bailee he is bound to take as much care of the goods as a man of ordinary prudence, would under similar circumstances take of his own goods. Section 152 of the Act deals with the situation where the bailee is not responsible for the loss, destruction, or deterioration of the thing bailed. It provides that the bailee is responsible for the loss, destruction, or deterioration of the things bailed, if: - a) There is no special contract to the contrary; or b) The bailee has not taken the amount of care as described in section 151. where the goods are not actually delivered to the pledgee and only constructive possession of the pledged goods is handed over to the pledgee. In this form of pledge the pledgor wears two hats, one that of a pledgor and the other that of a person authorized by the pledgee to hold the pledged goods in trust for the pledgee with the freedom to deal with them in the ordinary course of business. Now the question arises that whether in that situation the right to sue and recover the debt remains alive or not to the respondent, to adopt the recourse of filing the recovery suit. The answer lies under Section 176 of the Contract Act, 1872 which provided that the Pawnee/pledgee has the right either to bring a suit upon the debt or to sell the pledged stock upon giving reasonable notice of sale. Both these rights are concurrent.. From bare reading, it appears that the keywords in Section 176 are “makes default in payment of the debt, or performance, at the stipulated time of the promise.” Thus, the right under Section 176 is triggered on the default at the stipulated time.

Conclusion: i) Mark-up levied is worked out on daily product basis if ‘Running Finance facility’ is availed and withdrawn at different intervals and paid back on various occasions.

ii) Facility of FIM is a banking facility.

iii) Pawnee/pledgee has the right either to bring a suit upon the debt or to sell the pledged stock upon giving reasonable notice of sale.

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24. **Lahore High Court**
MCB Bank Limited v. M/s Mushtaq & Company & 02 others
Execution First Appeal No. 01 of 2020
Mr. Justice Sohail Nasir, Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6989.pdf

Facts: Appellant instituted a suit for recovery which was decreed. Decree holder/bank (appellant) made a request that the bank had desired to auction the mortgaged property of its own under Section 19(3) of the Ordinance and requested for adjournment of the execution petition as sine-die. The learned trial court, vide an order instead of sine-die adjournment, dismissed the execution petition while holding that it was not pressed. Thereafter, an application was moved by appellant

for revival of the execution petition on the ground that the judgment debtors/respondents were failed to pay the amount under the decree but said application was dismissed for non-prosecution as well as for non-submission of correct/complete particulars of the case. Appellant again moved an application for revival of application for execution petition which was ultimately dismissed. This Execution First Appeal, (EFO) under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Ordinance) is directed against the said order of the learned Judge Banking Court.

Issue: i) Whether on choice to satisfy the decree without intervention of the court, the doors are permanently closed for decree holder to come forward for satisfaction of the decree through the intervention of the court if it is unable to materialize the amount under the decree?

ii) Whether the Financial Institutions (Recovery of Finances) Ordinance is a complete Code in itself and being a Special law it over rides the general law?

Analysis: i) The Ordinance provides a complete mechanism to carry out the execution. Section 19(1) of the Ordinance mandates that upon pronouncement of the judgment and decree by the Banking Court, the suit shall automatically stand converted into execution proceedings without filing separate application in this regard. The plain reading of the provisions (ibid) read with sub-Section (2) to (4) makes it clear that it empowers the decree-holder to adopt any mode for realization of its decree with or without the intervention of the Banking Court and it does not mean that on choice to satisfy the decree without intervention of the court, the doors are permanently closed for decree holder to come forward for satisfaction of the decree through the intervention of the court if it is unable to materialize the amount under the decree.

ii) There is no cavil with the proposition that Special law shall prevail over the provisions of general law. The Ordinance is a complete code in itself and being a Special law it overrides the general law. However, for the sake of arguments, if such provisions of law are applied in the case of appellant, even then the case was not hit by law of limitation. Article 181 of the Act, which says that where no period of limitation is mentioned for moving an application, then it will be three years. Under Section 7(2) of the Ordinance, the court in the matters in respect of which procedure has not been provided in the Ordinance, will follow the procedure laid down in C.P.C. However Section 24(1) of the Ordinance allows the application of the Limitation Act, 1908, It appears from the reading of above said provisions of the Ordinance that C.P.C and the Act, will apply, where any procedure or provision is not provided in the Ordinance itself. Part II (Section 36 to Section 74) and Order XXI of the Code of Civil Procedure, 1908 deals with execution of decree. Order XXI rule 10 C.P.C. provides that where a decree-holder desires to execute its decree, he shall apply to the court which passed the decree and rule 11 describes that in a money decree, on the verbal application of the decree-holder the Court may direct the arrest of the judgment debtor if he is within the precincts of the court, prior to the preparation of the warrant, whereas

otherwise every application for the execution of a decree shall be in writing, signed and verified by the applicant. But there is no such requirement in the Ordinance. As discussed above, the Ordinance is a complete code and provides absolute procedure for realization of the decree by converting the suit into execution proceedings, the moment suit is decided. The intention of the law maker is very much clear, not only to save the time but also erode the very object and purpose of this Special law from unnecessary technicalities. Under the Ordinance there is no requirement for decree holder to file separate execution petition and it is duty of the court itself to convert the suit into execution proceedings without waiting for any separate application for execution. The application filed by appellant cannot be treated as execution petition, which at the most can be pursued to trigger the machinery of the court into motion and to start the execution proceedings for realization of decree therefore the same is not hit by law of Limitation or Section 48 of the C.P.C.

Conclusion: i) On choice to satisfy the decree without intervention of the court, the doors are not permanently closed for decree holder to come forward for satisfaction of the decree through the intervention of the court if it is unable to materialize the amount under the decree.

ii) The Financial Institutions (Recovery of Finances) Ordinance is a complete Code in itself and being a Special law it over rides the general law.

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25. **Lahore High Court**
Muhammad Zameer and another v. The State and another
Criminal Misc No.47516-B of 2021.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6887.pdf

Facts: This is pre arrest bail for offences under sections 337-A (i), 354, 452, 34, PPC.

Issue: Whether in every case it is necessary for the accused to establish malafide/ulterior motive for getting pre-arrest bail?

Analysis: Insofar as principles for grant of pre-arrest bail, i.e. mala fide or ulterior motive of the complainant and police is concerned, it is not possible in every case to prove the same, however, these grounds can be gathered from the facts and circumstances of this case.

Conclusion: It is not necessary for accused to establish malafide/ulterior motive for getting pre-arrest bail in every case.

26. **Lahore High Court**
Saif Ullah v. The State, etc.
W.P.No.68262/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6917.pdf

Facts: Through this petition petitioner challenged an order whereby the recommendation of Regional Standing Board allowing second change of investigation of case under sections 324/337-A(i)/337-F(iii)/148/149 PPC has been approved by concerned Regional Police Officer.

Issues: i) What is difference between "Further investigation" and "Re-investigation" or "Fresh investigation"?
ii) When further investigation can be ordered?
iii) When transfer of investigation can be ordered?

Analysis: i) The meaning of "further" is additional, more or supplemental; "further investigation", therefore, is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started ab initio wiping out the earlier investigation altogether. Further investigation is done to find a concrete evidence or strong evidence against the person; whereas re-investigation is done when the case is in wrong track or the convicted is found not guilty and the criminal is on loose.
ii) Section 173 (2) Cr. P.C. clearly indicates that further investigation is subject to "pending the order of Magistrate". Proviso to Section 173(1) says that court shall commence the trial on the basis of interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence. Meaning thereby if the court does not commence the trial, it would be presumed that the police should continue on for further investigation… In every category, if some additional material or evidence is required to cater to the pre-charge requirement, case shall be entrusted for further investigation and it could conveniently be done by the superior or supervisory officers;
iii) Transfer of investigation should not be ordered except where serious allegations of corruption of any kind is leveled against the investigating officer; but If there are any apprehension that police are investigating the case on the wrong lines, re-investigation would be the best choice and it could be done through transfer of investigation because it now needs more talented and expert members to attend it on such sophisticated lines. Similarly, if investigation requires modern gadgetry involving forensic techniques or collection of evidence could only be possible through personal scientific knowledge of any expert. List is not exhaustive, yet transfer of investigation can also be allowed if the police have personal interest being complainant or case is registered against the illegal acts of police… Authority if convinced after going through the record that either the investigating officer is inefficient or incapable or has connived with one of the parties for any reason, may transfer the investigation after recording reasons therefor in writing and must propose action against the said investigating officer

for misconduct, inefficiency and corruption as the case may be.

Conclusion: i) Further investigation is done to find a concrete evidence or strong evidence against the person; whereas re-investigation is done when the case is in wrong track or the convicted is found not guilty and the criminal is on loose.
ii) If some additional material or evidence is required to cater to the pre-charge requirement, case shall be entrusted for further investigation.
iii) Transfer of investigation should not be ordered except where serious allegations of corruption of any kind is leveled against the investigating officer; But if there are any apprehension that police are investigating the case on the wrong lines, re-investigation would be the best choice.

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27. Lahore High Court
Muhammad Riaz vs The State, etc.
Criminal Appeal No.76975/2017
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6946.pdf

Facts: The appeal is against the order of conviction in murder case.

Issue: i) What does the expression "reasonable doubt" connotes?
ii) When statement of accused can be taken into consideration

Analysis: i) It is trite that there are different standards to prove a fact by prosecution and the defense. This expression can further be analyzed in the manner that standard of proof required from the prosecution is proof beyond reasonable doubt. Reasonable doubt means, something to which you can assign a reason…. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least possible', the case is proved beyond reasonable doubt and nothing short of that will suffice. The standard of proof put legal burden or the evidential burden on the parties to prove the facts. Legal burden refers to party to satisfy the court in respect of a fact in issue. It should be noted that the legal burden in respect of different facts in issue can rest on one or other of the parties within the same case.
ii) In the light of case reported as Ali Ahmad v. The State (PLD 2020 SC 201) wherein status of statement of accused u/s 342 Cr. P.C was declared as under:-

> "Status of a statement under section 342, Cr.P.C. 17. The words "taken into consideration" appearing in section 342(3), Cr.P.C are very wide. The statement of an accused recorded under section 342, Cr.P.C, has no less probative value than any other "matter" which may be taken into consideration against him within the

> contemplation of the definition of "proved" given in Article 2(4) of the QSO (previously section 3 of the Evidence Act, 1872), which states that a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

The august court further clarifies in supra case that if the accused takes a stance and such stance does not fulfill the requirement of law and his act is not completely covered in legal protection available under the law, he can well be convicted.

Conclusion: i) If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least possible', the case is proved beyond reasonable doubt and nothing short of that will suffice.

ii) The statement u/s 342 Cr.PC may be taken into consideration against accused within the contemplation of the definition of "proved" given in Article 2(4) of the QSO.

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28. **Lahore High Court**
Muhammad Yasin v. Additional District Judge, Burewala etc.
Writ Petition No.4785/2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC6819.pdf

Facts: Predecessor-in-interest of the respondents, after issuing a notice of eviction, filed an eviction petition in respect of suit property. The respondents also filed two connected petitions being aggrieved of the impugned decisions to the extent of quantum of rent determined by the courts below.

Issues: i) Whether an agreement to sell or a suit for specific performance instituted on the basis of the same debars the eviction?

ii) Whether the rate of rent calculated for the purposes of payment of fine in terms of Section 9 is to be considered conclusive determination with regard to rent agreed to be paid by and between the landlord and the tenant?

iii) Whether the amount of final rent due at the time of passing the final order cannot be less than the tentative rent determined under Section 24 of the Act or the amount taken as monthly rent for the purpose of calculation of fine under Section 9?

Analysis: i) It is settled law that an agreement to sell or a suit for specific performance instituted on the basis of the same does not debar the eviction in accordance with law. Insofar as the contention of learned counsel for the petitioner that the suit for specific performance was prior in time is concerned, it has been admitted during the course of arguments that notice for eviction and recovery of rent was sent by predecessor-in-interest of the respondents to the petitioner where the suit for

specific performance was filed. Hence, it appears that the suit was filed as a counterblast to circumvent the eviction proceedings. Even otherwise, it is settled principle of law that if the tenancy is not in writing, the owner of the premises will be presumed to be the landlord and occupier thereof as the tenant unless the contesting tenant like the petitioner can come up with a declaration to the contrary from the court of a competent jurisdiction.

ii) Perusal of Section 9 reveals that it is a penal provision for failure to bring the tenancy agreement in conformity with the provision of the Act qua its registration under Section 5 of the Act. Section 9 places a bar upon learned Rent Tribunal in entertaining any application under the Act including ejectment petition unless the fine by the landlord or the tenant, as the case may be, is paid in cases where the tenancy is not created in accordance with provisions of Section 5. The fine and its deposit is a step that enables learned Rent Tribunal to entertain the applications under the Act. For this purpose, the annual rent is determined in terms of Section 9 on the basis of the tenancy agreement if the same is written and in case of oral tenancy, the rent mentioned in the application made by a party. However, this does not mean that the rent so determined is final or conclusive, as determination under Section 9 is an exercise to be carried out by learned Rent Tribunal for assumption of jurisdiction only. Even otherwise, the determination of the rate of rent for the purpose of deposit of fine under Section 9 is a matter between the court and the applicant which could be either landlord or the tenant and the same cannot be construed as determination of the rights of the parties inter se. The rate of rent calculated under Section 9 for determination of amount of fine is not to be considered as rent agreed between the landlord and the tenant.

iii) A bare reading of Section 24 reveals that at the time of grant of leave to contest, learned Rent Tribunal is to direct the tenant to make payment of monthly rent till the adjudication of eviction petition. However, where there is a dispute as to the rate of rent, learned Rent Tribunal is to determine tentative rent to be paid by the tenant till the final decision of the eviction petition. The actual amount of rent due only surfaces at the time of passing of the final order… Perusal of the term ‘final order’, as defined in Section 2(b) of the Act, reveals that it is an order whereby the proceedings before learned Rent Tribunal come to an end and any amount paid prior or during the course of proceedings can be on higher or lower side and is to be finally adjusted in the final order. The tentative determination under Section 24 is neither conclusive nor final rather the same is for the interregnum period of grant of leave to contest and final adjudication of the petition and subject to final determination at the time when the lis is ultimately disposed of on the basis of evidence produced by the parties respectively.

Conclusion: i) An agreement to sell or a suit for specific performance instituted on the basis of the same does not debar the eviction in accordance with law.

ii) The rate of rent calculated for the purposes of payment of fine in terms of Section 9 is not to be considered conclusive determination with regard to rent agreed to be paid by and between the landlord and the tenant.
iii) Final rate of rent can be lesser or greater than the rent tentatively determined under Section 24 of the Act or the amount taken as monthly rent for the purpose of calculation of fine under Section 9.

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29. **Lahore High Court**
Mst. Tahira Parveen v. District Judge etc.
Writ Petition No.153/2014
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC6839.pdf

Facts: The respondent filed a guardian petition with the averments that the petitioner had contracted second marriage, with a person who was already married and now had children from the second marriage as well, due to which the petitioner could not look after the minor; The welfare of the minor lies with the respondent.

Issues: i) Whether a mother has right to the custody of her son only till the age of seven years?
ii) Whether a child has a right to choose between the parents?

Analysis: i) It is well settled that a mother has a right to the custody of her son till the age of seven years and thereafter it goes to the father. However, this is not an absolute and invariable rule as there is no cavil to the proposition that notwithstanding the right of the mother or father for the custody of male or female child under the personal law, welfare of the child is given paramount importance. This Court has to consider child's welfare and interest over that of parents' rights as the courts in the cases of custody and guardianship exercise parental jurisdiction. Section 17 of the Act declares the "welfare of a minor" as paramount consideration rather than the right of the parents. Welfare is to be determined by taking into account many factors including the choice of a minor provided such minor is capable of forming such preference. Welfare of a minor being a question of fact has to be determined on case to case basis after appraising evidence on record.

ii) Choice of a minor in matters related to his well-being is also recognized under the Convention on the Rights of the Child, 1989, which Pakistan signed and ratified in the year 1990, where under it has been clearly envisaged that the children have a right to be heard in all matters affecting them and their views should be given due weightage in accordance with their age and maturity. In addition to the fact that choice of a minor qua right of the parents for his or her custody has its traces during the period of Prophet (Sallallahu Alaihi Wasallam) and His Companions, as well as International Law, the argument of learned counsel for the respondent that on attaining the age of 7 years, the custody of a minor child is to be handed over to the father ipso facto is nothing but unbridled flight of fancy on part of the respondent and runs counter to the spirit of sub-

section (3) of Section 17 of the Act as well, which is reproduced as under: “If the minor is old enough to form an intelligent preference, the court may consider that preference.” Such statutory discretion vested in the court to consider the intelligent preference of the child where he is old enough to form it brings out the hollowness of the argument of learned counsel for the respondent. However, such preference of a minor does not underpin as an exclusive or only factor for handing over custody rather the same is one of the factors to be considered for determination of custody. However, their choice will be considered only if it is in their interest.

Conclusion: i) This is not an absolute and invariable rule that a mother has right to the custody of her son only till the age of seven years. Welfare of child is of paramount importance.

ii) Statutory discretion vests in the court to consider the intelligent preference of the child for his custody, where he is old enough to form opinion.

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30. Lahore High Court
Muhammad Saeed Akhtar v. Justice of Peace, etc.
W.P. No.17996 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC6829.pdf

Facts: The father of respondents, since deceased, issued cheque to petitioner but the same was dishonored. Now the petitioner seeks to lodge FIR against respondents on the ground that now they are managing the business of their late father through an authorized agent and were claiming under him.

Issue: Whether FIR can be lodged against the legal heirs for the cheque drawn by their late father?

Analysis: In this view of the matter, the term “whoever’ appearing at the start of Section 489-F PPC gains importance in the present context and it is obvious that unless and until an application for registration of a case is filed against a person who is the account holder and who has himself issued a cheque which has been dishonored, no criminal liability is attracted… It may also be noted that penal or criminal liability does not devolve upon legal heirs. While respondents No.4 and 5 may have inherited the business of their late father and while they may have inherited his estate, it does not mean that they become criminally liable for actions or activities allegedly undertaken by their late father. While a suit for recovery from the estate or inheritance may be in order, if at all, an application for registration of a criminal case against respondents No.4 and 5 on account of alleged deeds of their father cannot be countenanced.

Conclusion: The FIR cannot be lodged against the legal heirs for the cheque drawn by their late father.

31. **Lahore High Court**
Qasim Ali, etc v. Manzooran Bibi, etc.
C.R. No.869 of 2010
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7122.pdf

Facts: The petitioners have challenged gift mutations in favour of respondents on the premise that not only was their paternal uncle incapacitated to make such a gift but also because he did not have a son and the petitioners had been deprived of their inheritance.

Issue: i) Whether gift to daughters by the father having no male issue is justified circumstance in which gift could have been made?
ii) Whether non impleadment of revenue officials and the revenue hierarchy in the suit is fatal to the case?

Analysis: i) It is indeed par for the course for Muslim men without sons but with daughters to gift their properties to their daughters during their lifetime so as to not allow the sons of theirs brothers or sisters to lay a claim to the property after their death…. Therefore, there existed circumstances in which the gift could have been, and was, made.
ii) Where a public document or document sanctioned by a public officer is challenged, it cannot be left at the whims of the parties to produce the same before the Court. Particularly, this burden would fall upon the defendant, trying to defend the sanctity of the impugned mutation or registered document, to bring the revenue officer in the witness box. However, the principles of justice dictate that the person whose act is challenged before the court should be allowed an opportunity to defend his actions. Even if no direct interest of said officer is being affected, his acts as a public officer carry the presumption of regularity and correctness attached to them which needs to be actively rebutted; further, he must also be provided with an opportunity to defend the same. Therefore, the revenue officers and the Provincial Government are proper parties in cases where registered sale deeds and mutations have been challenged.

Conclusion: i) The gift to daughters by father having no male issue is justified circumstance in which gift could have been made.
ii) The non impleadment of revenue officials and the revenue hierarchy in the suit filed is fatal to the case.

32. Lahore High Court
Safeer Ahmad v. Mst. Gulshan Bibi, etc.
No. W.P No.3392 of 2021
Mr. Justice Muhammad Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC6901.pdf

Facts: The learned Judge Family Court partially decreed the suit for dissolution of marriage, recovery of maintenance allowance, iddat period allowance and dowry articles etc. The person aggrieved by the decree preferred an appeal before learned Additional District Judge, but the same was dismissed. Through this writ petition, the petitioner has challenged the judgments and decrees of the courts below.

Issues: i) Whether surrendering dower under section 10(5) of the Family Court Act is mandatory by wife in a case of dissolution of marriage through khula and what is a limit of the dower amount to be surrendered?

ii) Whether husband can claim full return of dower from the wife seeking khula after the introduction of the Punjab Family Courts (Amendment) Act 2015?

Analysis: i) As per section 10(5) of the Punjab Family Courts (Amendment) Act 2015, the surrender of dower by wife in a case of dissolution of marriage through khula is no more mandatory or as a matter of course rather it is discretionary. Such surrender is not automatic but depends upon direction of the Family Court. The surrender by the wife under Section 10(5) of the Act is only a part of the dower and not the whole of it. The scope of discretion of the Family Court in this regard covers not only whether or not to direct surrender of the dower by the wife but also how much or what part of the prompt or deferred dower. Such direction for surrender has to be within the ceiling prescribed by the legislature in either case i.e. up to fifty percent of the deferred dower or up to twenty five percent of the admitted prompt dower. Any direction by the Family Court to the wife for the surrender of dower has to be part of either of the two namely deferred dower or admitted prompt dower and not both. In a decree for dissolution of marriage, in case whole or part of the deferred dower is outstanding, subject to Section 10(5) ibid, it is mandatory for the Family Court under Section 10(6) of the Act to direct the husband to pay the same to the wife.

ii) After the introduction of section 10(5) through the Punjab Family Courts (Amendment) Act, 2015 (XI of 2015), the return of entire prompt dower mentioned in the Nikahnama has no legal basis.

Conclusion i) The surrender of dower by wife in a case of dissolution of marriage through khula is discretionary.
ii) A husband cannot claim return of dower from the wife seeking khula after the introduction of the Punjab Family Courts (Amendment) Act 2015.

LIST OF ARTICLES:-

1. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12669
   MEDICINAL CANNABIS PRESCRIBING: A STUDY OF BOUNDARY WORK AND MEDICO-LEGAL RISK by Paula Case

   The prescription of 'unlicensed' cannabis-based medicines was legalised in 2018. A 'boundary work' analysis of the post reform guidance issued for doctors reveals a discourse which frames the prescription of medicinal cannabis as a matter for clinical judgement, but also as fraught with medico-legal hazard. The article highlights a triad of rhetorical devices comprising the 'last resort' principle, 'personal responsibility' and the randomised controlled trial as an exclusive measure of 'safety and efficacy'. Having identified a pronounced signalling of medico-legal risk which is likely to have a chilling effect on prescribing, this article explores how the Bolam-Bolitho formulation of the legal standard of care in negligence litigation might respond to this new domain of prescribing. This article concludes with observations about the compatibility of innovative prescribing of unlicensed cannabis medicines with the standard of care in negligence law, notwithstanding the extreme caution inherent in the interim prescribing guidance.

2. **LUMS LAW JOURNAL**
   https://sahsol.lums.edu.pk/law-journal/criminal-defamation-laws-pakistan-and-their-use-silence-victims-sexual-harassment-abuse
   CRIMINAL DEFAMATION LAWS IN PAKISTAN AND THEIR USE TO SILENCE VICTIMS OF SEXUAL HARASSMENT, ABUSE, OR RAPE by Muhammad Anas Khan

   In Pakistan, the discourse around defamation laws in the context of sexual harassment and abuse cases is underdeveloped. With the #MeToo movement on a rise, several victims of sexual harassment and abuse have used social media to disclose their horrific stories. These claims are generally met with counter-claims of defamation by the alleged perpetrator or their supporters, which creates further hindrance for these victims trying to speak up. The victim, while fighting their own case of harassment, simultaneously has to defend themself against the defamation charges. This problem seems to be excerabated through criminal defamation laws where a First Information Report can also be registered against the victim speaking up under Sections 499 and 500 of the Penal Code of Pakistan 1860 ("Penal Code") and under Section 20 and 21 of the Prevention of Electronic Crimes Act 2016 ("PECA"). Therefore, it is imperative to revisit criminal defamation laws in Pakistan and to analyse their misuse in such claims. This paper aims to distinguish between civil and criminal defamation laws in Pakistan: the Defamation Ordinance 2002 ("2002 Ordinance"), the Penal Code, and the PECA. It analyses cases of harassment and defamation, both inside and outside the courtrooms. However, since the jurisprudence is underdeveloped, the caselaw alone might not be an adequate source to formulate a definitive argument. For this purpose, the paper includes interviews with lawyers, social activists, and law

enforcement personnel to gauge their understanding and views on the topic. Based on these interviews, this paper attempts to analyse the jurisprudential and practical lapses in the system that cause impediments in dispensation of justice. Thus, it will also look at criminal and civil defamation laws to determine whether they hinder sexual harassment claims, and violate consitutional rights to freedom of speech and expression.

3. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/rethinking-police-expertise
RETHINKING POLICE EXPERTISE by Anna Lvovsky

The courts' dual approaches to police expertise illuminate debates about institutional competency and deference in and beyond the criminal law. For one thing, they expose the moralistic assumptions undergirding our shared intuitions about expertise as a source of institutional authority, urging greater skepticism of a range of legal doctrines grounded on judicial self-abnegation to ostensibly more expert actors. At the same time, they complicate the conventional link between expertise and authority itself, revealing the ambiguous relationship between competency and legitimacy in a system administered by multiple, often conflicting agents of the law. Not least, they invite us to confront our commitment to certain government tasks, like so many apparently entrusted to the police, that inspire less controversy, ironically, the less masterfully they are performed.

Building on these insights, this Article contends that courts should take a technological view of expertise in all their encounters with law enforcement, a shift that will yield more rigorous scrutiny of a broad range of police behaviors. In a legal system populated by an increasingly professionalized police force, we must do away with the assumption that more expert policing is, invariably, more lawful policing, and recognize how this development raises new issues for—and imposes novel obligations on—judges committed to the protection of individual rights.

4. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/law-journal/use-ai-arbitral-proceedings
THE USE OF AI IN ARBITRAL PROCEEDINGS by Mahnoor Waqar

This research paper aims to explore, a concept once considered alien, the usage of artificial intelligence ("AI") in arbitral proceedings. The sphere of arbitration has, to date, been deemed inherently conservative, where change and development have been slow. However, this paper aims to illustrate that the new wave of the technological revolution has now made it difficult for arbitration to stay far behind, or follow obsolete practices. Although, this is not without its challenges, and therefore, the author seeks to strike a balance between the advantages and disadvantages of AI in arbitration, without undermining its very essence. Resultantly, it is argued that its usage needs to be slowly phased in. The discipline referred to in this paper mainly pertains to the realm of International Commercial Arbitration.

5. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/disparate-limbo
DISPARATE LIMBO: HOW ADMINISTRATIVE LAW ERASED ANTIDISCRIMINATION by Cristina Isabel Ceballos, David Freeman Engstrom & Daniel E. Ho

Article uncovers how modern administrative law erased antidiscrimination principles. This story begins with the Civil Rights Act of 1964, when Congress punted on questions about disparate impact and the relationship between Title VI and the Administrative Procedure Act (APA). But the plot thickened when the D.C. Circuit, in an opinion by then-Judge Ginsburg, held that § 704 of the APA barred civil rights plaintiffs from bringing an APA challenge because Title VI provided an alternative "adequate remedy."[1] Subsequent courts seized on the D.C. Circuit's § 704 dodge, using it to channel antidiscrimination claims away from the APA. Worse, courts have reflexively applied § 704 to oust civil rights claims, even after the Supreme Court's decision in Alexander v. Sandoval rendered Title VI demonstrably inadequate.

Lahore High Court
BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2021 to 15-12-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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1. Supreme Court of Pakistan
Government of the Punjab, through Secretary, Schools Education Department, Lahore etc v. Abdur Rehman
Civil Appeal No.414 & 817 of 2021
Mr. Justice Gulzar Ahmed, HCJ Mr. Justice Mazhar Alam Khan Miankhel. Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._414_2021.pdf

Facts: The respondents applied for the posts of AEOs but they were not considered for appointment as AEOs allegedly on the ground that their qualifications were not at par. The respondents filed complaint before the Complaint Redressal Cell (CRC which was accepted. The Appellant filed an appeal which was allowed. The respondents filed a Writ Petitions which were allowed on the ground that instead of filing a review petition before the Complaint Redressal Cell, directly an Appeal has been filed against the rules.

Issue: i) Whether appeal can be filed against the order of CRC without filing review petition before CRC?

ii) How quasi-judicial power is exercised by authority?

iii) What is scope of doctrine of "Ex Debito Justitiae"?

Analysis: i) In the TORs, right to file review petition was extended to the EDO or the complainant within thirty days and in Clause (d), it was further provided that the EDO or the complainant against the decision of CRC on the review petition may also file appeal to the Secretary School Education within thirty days. In paragraph No.22 of the Recruitment Policy, further emphasis were made that if any direction contrary to the Policy is passed by the CRC at Divisional level or any legal forum, the review petition shall be filed within the stipulated period. The composite effect of Clauses (c) & (d) of TORs jot down in Paragraph No.21 read with Paragraph No.22 makes it quite discernible without any ambiguity that before invoking appellate remedy, filing of review petition was mandatory before the CRC. In our comprehension and understanding, the right of filing of review petition was in fact allowed before the CRC for expeditious disposal of the matter and if some wrong recommendations were made by them, an opportunity was provided by way of review petition before CRC to revisit the decision as the matter pertained to the Recruitment of educators which could not be left unattended, dragged or uncompleted for an unlimited period of time. Unless the review petition was filed and CRC arrived at decision, no appeal could have been filed before the Secretary, School Education. The remedy of appeal before the Secretary was not provided against each and every order but for all intents and purposes, this right was available to invoke only to challenge the decision of review petition which could have filed by the CEO if in his understanding, some errors were apparent on the face of the record or the recommendations of CRC were beyond the scope of Recruitment Policy but he failed to fulfill the elementary requirement of the Policy.

ii) The quasi-judicial power is a duty conferred by words or by implication on an officer to look into facts and to act on them in the exercise of discretion and it lies in the judgment and discretion of an officer other than a judicial officer. A quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as incidental to the administration of matters assigned or entrusted to such officer or authority.

iii) The lexicons of law provide definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex-debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process…. We are sanguine to the well settled doctrine of "ex debito justitiae" entrenched and engrained in the legal system but each case has to be decided in its peculiar facts and circumstances therefore while applying this doctrine, the conduct of the parties is also very relevant and significant which cannot be ignored lightly under its domain and realm.

Conclusion: i) The appeal cannot be filed against the order of CRC without filing review petition before CRC.

ii) A quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion

iii) "Ex Debito Justitiae" (Latin) applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant

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2. **Supreme Court of Pakistan**
Divisional Superintendent, Quetta Postal Division and others v. Muhammad Ibrahim and others
Civil Appeal No. 508 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._508_2020.pdf

Facts: The respondent No. 1 was appointed as Postman and was also assigned as officiating postmaster. He was alleged to have misappropriated public money belonging to exchequer. The respondent was proceeded against the said accusation resulting into registration of a criminal case and departmental inquiry.

Issues: i) Whether a postman is a civil servant in terms of Section 2(b) of the Civil Servants Act, 1973, entitling him to avail remedy before the Service Tribunal?

ii) Being a worker, under which law the respondent will have remedy, i.e., the Balochistan Industrial Relations Act, 2010 or the Industrial Relations Act, 2012?

iii) Whether the Industrial Relations Act, 2012, will override the provisions of the

Balochistan Industrial Relations Act, 2010?

iv) Whether Section 1(4)(b) of Balochistan Industrial Relations Act, 2010, in so far as it deals with the workmen of Pakistan Post, has become ultra vires of the Constitution and the Industrial Relations Act, 2012?

Analysis: i) The term "civil servant" includes a person who is or has been a civil servant within the meaning of the Civil Servants Act, 1973. In the instant case sub-clauses (i), (ii) of section 2(1)(b) of the Act are not relevant as the respondent postman is neither a contract employee nor on deputation and, therefore, sub-clause (iii) would be applicable. …. The term "workman", as defined in Section 2(1)(n) read with Second Schedule of the Workman's Compensation Act, 1923, includes any person who is employed in any occupation ordinarily involving outdoor work in the 'Posts and Telegraphs Department', meaning thereby that such person will be excluded from the definition of "civil servant" and the Service Tribunal shall not have jurisdiction in respect of such person.

ii) The workmen of the Post Office Department are subject to the Industrial Relations Act, 2012 and not the Balochistan Industrial Relations Act, 2010.

iii) From the combined reading of Section 1(3) of the Industrial Relations Act, 2012, Section 1(4) of the Balochistan Industrial Relations Act, 2010 and Article 143 of the Constitution, it is clear that Section 1(3) of the Industrial Relations Act, 2012, where it has been applied to workmen employed in the administration of the State (which includes the Postal Service Department) will override the provisions of Section 1(4)(b) the Balochistan Industrial Relations Act, 2010.

iv) Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, insofar as it deals with the workmen of Pakistan Post, is repugnant and void in terms of Article 143 of the Constitution and the Industrial Relations Act, 2012.

Conclusion: i) A postman does not fall within the definition of civil servant in terms of Section 2(b) of the Civil Servants Act, 1973, thus the Service Tribunal shall not have jurisdiction in respect of such person.

ii) The workmen of the Post Office Department are subject to the Industrial Relations Act, 2012 and not the Balochistan Industrial Relations Act, 2010.

iii) Section 1(3) of the Industrial Relations Act, 2012, where it has been applied to workmen employed in the administration of the State (which includes the Postal Service Department) will override the provisions of Section 1(4)(b) the Balochistan Industrial Relations Act, 2010.

iv) Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, insofar as it deals with the workmen of Pakistan Post, is repugnant and void in terms of Article 143 of the Constitution and the Industrial Relations Act, 2012.

3. **Supreme Court of Pakistan**
Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another.
Civil Appeal No.764 of 2021
Mr. Justice Gulzar Ahmed, HCJ¸ Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._764_2021.pdf

Facts: The appellant/Principal (BPS-20) was extended monetization allowance under the Monetization of Transport Facility Policy dated 12.12.2011 meant for Civil Servants in BS20 to BS-22. However his Monetization Allowance was discontinued which action was challenged by the appellant on the ground that same is allowed to continue to doctors but discontinued for teachers is a discriminatory action.

Issue: i) What is monetization?
ii) What is austerity?
iii) What is object of monetization policy of transport facility?
iv) How doctrine of locus poenitentiae is applied?

Analysis: i) The word "monetization" exactly and plainly connotes to transform something into money which also expresses the transfiguration into revenue generating reformations and restructurings or conversion of something into source of income.
ii) The phrase "austerity" defines a launch of economic policies which in fact a government executes and embarks on to control public sector debts/liabilities. Austerity derives are in fact introduced for restoring financial health/stability and lowering government expenditures.
iii) The basic objective of the aforesaid Policy was to eliminate any possibility of misuse of official vehicles as well as to restrict the maintenance expenditure of the vehicles to the bare minimum in line with the observance of austerity measures and this policy was made applicable across the board in all Ministries, Divisions, Attached Departments and Sub-ordinate Offices and responsibility of compliance entrusted to all Principal Accounting Officers with the mandatory condition of obtaining Certificates from each entitled officer in BS-20 to BS-22 that he is not in possession or in use of any project vehicle or the departmental operational/general duty vehicle as well as any vehicle of an organization or body corporate in his ex-officio capacity as member of its Board, except the only vehicle allocated to him through the Monetization Policy.
iv) The doctrine of locus poenitentiae means an opportunity to repent. An opportunity for the parties to an illegal contract to reconsider their positions, decide not to carry out the illegal act, and so save the contract from being void. This Latin phrase is connected with contractual law which expresses an opportunity to withdraw from a contract or obligation before it is completed but in our comprehension, there is no hard and fast rule that if some benefit was wrongly extended due to some misunderstanding, error, misconception of law or without sanction of competent authority, that act should be treated so sacred and sacrosanct which could not be withdrawn to retrace or redo the wrong decision or action under the guise of locus poenitentiae principle. A wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of this doctrine depends on the circumstances of

each and every case and cannot apply universally or randomly without adverting to the merits of each case in its peculiar circumstances.

Conclusion: i) "monetization" exactly and plainly connotes to transform something into money
ii) "austerity" defines a launch of economic policies which in fact a government executes and embarks on to control public sector debts/liabilities
iii) The basic objective of the aforesaid Policy was to eliminate any possibility of misuse of official vehicles as well as to restrict the maintenance expenditure of the vehicles to the bare minimum
iv) A wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of doctrine locus poenitentiae depends on the circumstances of each and every case and cannot be applied universally.

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4. **Supreme Court of Pakistan**
Mamoon Wazir, etc. v. ABWA Knowledge Village (Pvt) Limited Faisalabad etc.
C.M.A. 5777/2021
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._5777_2021.pdf

Facts: The Judgment of the High Court in ICA was assailed by the petitioners, who were enrolled in medical and dental undergraduate program of the respondent/a private college but their admissions were subsequently cancelled due to their failure to pass the "medical and dental colleges admissions test" ("MDCAT"). They challenged the pre-admission requirement of MDCAT introduced through section 18 of the Pakistan Medical Commission Act, 2020 on the ground that it is violative of Regulations No.13 and 14 of the Admission Regulations (Amended) 2020-2021 in as much as the admissions to a private medical college is governed by the respective prospectus of the medical college, which in this case, did not require the petitioners to take MDCAT. The petition was not allowed by

.

Issue: Whether requirement of MDCAT is also mandatory for admission in a Private Medical College?

Analysis: Section 18 of the Act clearly mandates that the Authority (i.e., the National Medical Authority constituted under section 15 of the Act) shall conduct MDCAT, which shall be a mandatory requirement for all students seeking admission to medical or dental undergraduate program anywhere in Pakistan. Sub-section 2 provides that no student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining the admission in a medical or dental college in Pakistan. MDCAT is the basic minimum mandatory requirement, across the board, for admission to all medical and dental colleges, both public or private, in Pakistan. This requirement has been made applicable to students who have enrolled in the medical and dental

undergraduate program for the year 2021 and onwards. Section 8(3) of the Act when read with sections 8(1) & (2) shows that while the private colleges enjoy the flexibility of setting their own admission criteria including an entrance test (detailed in their prospectus) any such criteria or entrance test are over and above the basic statutory minimum requirement of MDCAT, which is mandatory for admission to both the private or public medical and dental colleges. Proviso to section 18(3) lays down that public colleges are to assign 50% weightage to MDCAT, while no such weightage requirement is provided for the private colleges. However, for the enrollment in the year 2021 (as in this case) the weightage of 50% was retained by the private colleges and is not in dispute or under challenge in this case.---Regulation 13 reiterates the mandatory requirement of MDCAT for private colleges and is, therefore, in sync with section 18.

Conclusion: Regulations 13 and14, in no manner authorize the private colleges to dispense with the requirement of MDCAT or are inconsistent with section 18 of the Act. The criteria, as well as, other entrance tests devised by private colleges are in addition to MDCAT, which is the basic minimum statutory requirement for admissions to any medical college in Pakistan, be it private or public.

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5. **Supreme Court of Pakistan**
Hasnain Raza etc. v. Lahore High Court, Lahore & others
CPLAs No.1862-L & 1863-L of 2021.
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1862_l_2021.pdf

Facts: The Petitioners, being civil judges, sought expunction of the stricture and directions passed against them by the High Court in its judgment passed in appeal against their judicial orders which was impugned before the High Court on the ground of being contrary to the principles enunciated by the Honorable Supreme Court in *Nusrat Yasmin v. Registrar, PHC (PLD 2019 SC 719)* and *Aijaz Ahmed v.State (PLD 2021 SC 752)*

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Issue: i). Whether a High Court, or any other appellate court, can record in its judgment a stricture against the judge of the lower court whose judgment or order is impugned before it, relating to his or her efficiency or conduct.

ii) What is the binding effect of an earlier decision of the Supreme Court on a particular question of law?

Analysis: i). Public reprimand of a judge of the lower court regarding his judicial conduct by an appellate court while sitting in judgment over his or her judicial decision, either by recording a stricture or a censorious remark in its appellate judgment or by summoning the judge and reproaching him orally in open court, does not behove the judiciary of a constitutional democracy which boasts of the independence of judiciary as its salient pillar. Any such public condemnation of a

judge lowers the public trust in the judicial institution, besides the harmful effect it has on the morale and confidence of the judge concerned as well as of his colleagues.

The District Judiciary is the backbone of our judicial system, and the judges of the District Judiciary perform the onerous task of dispensing justice at the frontline by dealing with a large number of cases in a difficult and demanding environment. The judges of the higher courts must appreciate the stressful and challenging conditions in which these judges perform. Our judicial system acknowledges the fallibility of judges, and hence provides for appeals and revisions. Higher courts everyday come across orders of the lower courts which are not justified either in law or in fact and modify or set them aside; that is the function of an appellate court. It is often said that a judge who has not committed an error is yet to be born. This applies to all judges, no matter how high or low in rank they maybe. The intemperate or extravagant criticism on the ability of a person having a contrary view is often founded on one’s sense of his own infallibility. This must be avoided, and the judicial approach should always be based on the consciousness that everyone may make a mistake.

ii). To appreciate the scope and extent of the binding force and authority of judicial precedents, they may be classified into two categories: vertical and horizontal precedents. Vertical precedents mean the decisions of a higher court, and horizontal precedents mean the decisions of the same or coordinate court. All courts are absolutely bound by the vertical precedents of a higher court. This binding tie is often said to be a matter of “owing obedience”. Articles 189 and 201 of our Constitution also reinforces the binding effect of the vertical precedents. Judges are therefore obliged to follow a vertical precedent even when they disagree with it; this ensures a degree of national uniformity in judicial decisions. The judges have little room to decide how much weight or value is to be given by them to that precedent. Unless we wish anarchy to prevail within the judicial system, a precedent of the apex Court of the country must be followed by all other courts of the country who owe unflinching fealty to its decisions under the Constitution.4 Ignoring or refusing to follow the controlling precedent of this Court amounts to judicial effrontery, offends the constitutional mandate, and weakens the public confidence in the decisions of the apex Court of the country.------a higher court generally adheres to horizontal precedents-its own earlier decisions - but it may depart from or overrule any of its own decisions by sitting as a larger bench if there is a compelling justification to do so.

Conclusion: i). While examining the decision of a court below, the higher court is to assess the reasoning and the legality of the decision challenged before it and not the ability or conduct of the author judge. The latter is the function of the disciplinary authority. The higher court, if so decides, can refer the matter to the disciplinary authority, in the manner elucidated in *Nurat Yasmin case,* only on the administrative side.

ii). A decision of Supreme Court, to the extent it decides a question of law or enunciates a principle of law, is binding on all other courts of the country including the High Courts, under the mandate of Article 189 of the Constitution of the Islamic Republic of Pakistan 1973.

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6. **Supreme Court of Pakistan**
Principal Public School Sangota v. Sarbiland and others
Civil Appeal No. 71-P & 864/2014
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._71_p_2014.pdf

Facts: A suit in representative capacity was filed by the respondent in the year 2002 that land was *shamilat*, village common land, but its ownership was wrongly shown in the settlement records of 1985-86 as that of the Provincial Government, and the possession of it was wrongly with the appellant school since 1964. The Suit was decreed by the civil court but the decree was set aside by the first appellate court, however, civil revision thereagainst was allowed by the High Court.

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Issue: Whether periodical updating and the preparation of every fresh *Jamabandi* gives rise to a fresh cause of action?

Analysis: It is true that in case of mere correction of an entry in the revenue record, every new adverse entry in the revenue record of rights (*Jamabandi*) gives rise to a fresh cause of action to the person aggrieved of such an entry if that person is in possession of the land regarding which the entry is made. But, this was not only a matter of correction of an adverse entry having been made in the settlement/revenue record with regard to the ownership of the land but also a case in which possession had been assumed or, as alleged by the plaintiffs they were dispossessed. The suit was filed thirty-eight years after possession of the land was taken over by the School and sixteen years after the entry was made in the *Jamabandi*. The suit was clearly time barred and, leaving aside the other contentions which have been raised, it would fail on this ground alone.

Conclusion: Every new adverse entry in the revenue record of rights (*Jamabandi*) gives rise to a fresh cause of action to the person aggrieved of such an entry if that person is in possession of the land regarding which the entry is made.

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7. **Supreme Court of Pakistan**
Jehangir v. Mst. Shams Sultana and others
Civil Appeal No. 177-P of 2020
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._177_p_2020.pdf

Facts: On the death of predecessor his estate was inherited by the appellant, his four sisters and mother. Three sisters sold some land to the appellant through impugned mutation, which was challenged by one sister by filing a suit. which

was decreed by the High Court primarily on the ground that the sale was not established and merely because the transaction/sale mutation was thirty years old would not by itself validated it.

Issues: i) Whether Qanoon Shahadat Order, 1984 will be applicable to prove a document, executed prior to its promulgation?

ii) Whether it is necessary to call an attesting witness in proof of the execution of a document, where its execution is not specifically denied by its executant?

Analysis: i) The sale mutation is of the year 1975 when the Qanun-e-Shahadat Order, 1984 and its Article 79 prescribing two attesting witnesses was not applicable. Instead, the Evidence Act, 1872 held the field, and its section 68 provide mode to Prove execution of document required by law to be attested.

ii) According to the Proviso of section 68 of the Evidence Act, 1872 it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

Conclusion: i) Qanoon Shahadat Order, 1984 will not be applicable to prove a document, executed prior to its promulgation. Such document will be proved according to the Evidence Act, 1872.

ii) It is not necessary to call an attesting witness in proof of the execution of a document, where its execution is not specifically denied by its executant.

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8. **Supreme Court Of Pakistan**
Muhammad Ismail v. The State & others
Criminal Petition No.275 of 2021
Mr. Justice Maqbool Baqar, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._275_2021.pdf

Facts: The accused was nominated as a suspect of murder through supplementary statement. He was admitted to anticipatory bail for the reason that some other co-accused persons were granted post arrest bail by the High Court.

Issue: Whether protection of pre-arrest bail is an entirely different regime, governed by considerations hardly applicable to post arrest bail?

Analysis: An accused of a cognizable offence scheduled as non-bailable can only claim protection of pre-arrest bail by reasonably demonstrating his intended arrest being planned by considerations mala fide and sinister, designed to abuse process of law. It is a judicial protection rooted into equity; whereas an accused in custody after completion of investigation can be released on bail on the touchstone of consideration statutorily enumerated in subsection 2 of section 497 of the Code of Criminal Procedure, 1898, these two have no parallels. Admission to pre-arrest bail is a huge concession to an accused, required to be arrested in a cognizable

offence as it exempts him from remission into custody, irreversibly foreclosing avenues for the prosecution to possibly secure further evidence, consequent upon disclosures, therefore, such a relief must only be extended in the face of considerations fairly convincing.

Conclusion: Protection of pre-arrest bail is an entirely different regime, governed by considerations hardly applicable to post arrest bail and such a relief must only be extended in the face of considerations fairly convincing.

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9. **Supreme Court of Pakistan**
Muhammad Amjad Khan Afridi v. Shad Muhammad
Civil Appeal No.263 of 2014
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._263_2014.pdf

Facts: The appellants were minor and their father was appointed as their guardian for the suit (guardian ad litem) to represent and defend them in the suit. When the case was fixed for evidence, the appellants along with other defendants were proceeded against ex-parte and ultimately the suit was decreed ex parte. The appellants filed application for setting aside ex-parte decree but their application was dismissed.

Issue: Whether the application for setting aside ex-parte decree should be allowed in view of the fact that applicants were at that time minors?

Analysis: Rule 11 of Order XXXII leaves little room to speculate as to what a Court is to do if the guardian *ad litem* appointed by it does not do his duty. As per the said Rule, where the guardian for the suit does not do his duty, the Court is to remove him and appoint a new guardian in his place. The failure of a guardian *ad litem* to appear in Court to defend the minor is by itself a clear proof of the fact that he has failed to do his duty of protecting the interests of the minor. The Court, in such circumstance, must act in accordance with Rule 11 of Order 32 of the CPC, remove that guardian, and appoint a new guardian in his place, for the protection of the interests of the minor.

Conclusion: The application for setting aside ex-parte decree should be allowed in view of the fact that applicants were at that time minors.

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10. **Lahore High Court**
Mst. Khanai and others. v. Ghulam Rasool and others.
Civil Revision No.2374 of 2012
The Chief Justice Mr. Justice Muhammad Ameer Bhatti HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC7468.pdf

Facts: The transfer of property through gift mutation in favour of one daughter was challenged by the legal heirs of other daughter on the ground of fraud.

Issues: i) What are the essential constituents of a valid gift?

ii) What specifications/particulars are necessary to bring forth to prove a valid gift transaction?
iii) Who is bound to prove a transaction wherein a gift mutation has been challenged on the premise of fraud and misrepresentation?
iv). What particulars are required to be entered by a Patwari Halqa in Roznamcha Waqiati (Daily Diary) before sanctioning a gift mutation?
v). What is the significance of Roznamcha Waqiati within the dictates of section 42 of Land Revenue Act 1967 and Rule 34 of the Land Revenue Rules 1968?
vi). Can a party lead evidence beyond pleadings?

Analysis: i) The essential constituents of a valid gift are offer, acceptance, and handing over of the possession. If any of these ingredients is found missing, it would be fatal for the claimant's case.
ii) To prove a valid gift transaction, the beneficiary is required to bring forth the information regarding time, date, and the place where the transaction entered into *inter se* the parties. Moreover, where a transaction took place at any other place, at a different time and date, then all the particulars of that transaction should, on their narration, be incorporated in the Roznamcha Waqiati.
iii) Any transaction of a land/property made through a gift wherein a fraud or misrepresentation has been alleged, the burden to prove its authenticity and validity lies on the beneficiary. In such a scenario, the beneficiary is bound to produce direct and confidence-inspiring evidence relating to the fulfillment of basic ingredients of valid transaction of gift, i.e., offer, acceptance, and delivery of possession.
iv) Roznamcha Waqiati is the most important evidence/document to find-out particulars of performance of a valid gift to transfer the land on the terms settled *inter se* the parties. Before sanctioning a mutation, the Patwari has to incorporate the desire of the parties in the form of a report in the Roznamcha Waqiati. It signifies that the parties have made their offer, acceptance, and handing-over the possession before the Patwari about completion of transaction along with all the particulars narrating the detail of the transaction in the Roznamcha.
v) Section 42 of the Land Revenue Act 1967 makes it obligatory upon a person who acquires a right in the immovable property within an estate as a landowner by way of gift or otherwise to report this factum to the concerned Patwari within three months from the date of acquisition of such right, and Patwari is bound under the law to record the same in Roznamcha Waqiati. The culmination point in the form of sanctioned mutation is always an outcome of the initial entry duly recorded in the Roznamcha Waqiati by the Patwari and there is no other option except to follow the procedure provided under the Land Revenue Act, 1967.

"….Rule 34 of West Pakistan Land Revenue Rules also stipulates that Patwari is to maintain Roznamcha Waqiati (Daily Diary) under clause (a) of sub section (1) of section 42, in accordance with the Form XX, wherein five columns are provided to specifically state serial number, date, heading of entry, occurrence

and remarks. In order to further ensure correctness and authenticity of the information recorded in the said Diary, Sub-Rule 3 also made it obligatory that the Patwari shall prefix to every entry, in the Roznamcha a separate serial number, in large and clear figures. Every entry shall be closed by an asterisk, and no blank line shall be left between two consecutive entries. It also stipulates that such orders and instructions as relate to rules of practice, shall be entered in red ink and the date of each day's entries shall be given according to the official calendar…."

vi) It is settled law that no party could be allowed to lead evidence beyond pleadings and, if brought, it could not be read in evidence.

Conclusion: i). The essential constituents of a valid gift are offer, acceptance, and handing over of the possession.

ii) To prove a valid gift transaction, the beneficiary is required to bring forth the information regarding the date, time, and the place where the transaction took place between the parties.

iii) It is a well-established principle of law that where a transaction of gift mutation has been challenged on the premise of fraud and misrepresentation, the burden of proof lies on the beneficiary of the gift.

iv) Roznamcha Waqiati is the first document wherein the fact of acquiring any right and ownership in the immovable property through any mode, including gift, is ought to be recorded.

v) Roznamcha Waqiati is the most important evidence/document to find-out particulars of performance of a valid gift to transfer the land on the terms settled between the parties as per the statutory command of Section 42 of the Land Revenue Act 1967 and that of Rule 34 of the Land Revenue Rules 1968.

vi) A party cannot lead evidence beyond pleadings.

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11. Lahore High Court
Ghulam Ullah deceased through L.Rs. v. Ghulam Hassan and others.
Civil Revision No.3788 of 2016
The Chief Justice Mr. Justice Muhammad Ameer Bhatti HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC6847.pdf

Facts: During pendency of appeal a referee was appointed and accordingly the appeal was decided in terms of the conclusion drawn by the referee. This order was challenged by the present petitioners through application under Section 12(2), C.P.C. alleging therein that on the statement of Advocate the referee was appointed whereas they never appointed Advocate as their counsel nor any Power of Attorney was executed in his favour. The said application was dismissed summarily without recording evidence.

Issues: Whether it is necessary to frame the issues and record evidence if fraud is alleged in the application under Section 12(2), C.P.C?

Analysis: For determination of such fraud and misrepresentation not only the framing of issues was essential but recording of evidence was also obligatory in order to provide the opportunity to the parties to prove the factual dispute elaborately inserted in the application under Section 12(2), C.P.C. as envisaged under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which stipulates that while deciding the matter fair trial and due process shall be granted to the litigant.

Conclusion: It is necessary to frame the issues and record evidence if fraud is alleged in the application under Section 12(2), C.P.C

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12. Lahore High Court
Meezan Bank Limited v. Wapda First Sukuk Company Limited etc.
RFA No. 54274/2017
Mrs. Justice Ayesha A.Malik, Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7308.pdf

Facts: The Wapda First Sukuk Company (Sukuk Company) issued sukuk certificates for the purpose of raising money for the Mangla Dam Project. NFC purchased 300 physical sukuk certificates (each having 5000 sukuk units) of total value Rs 750,000,000, for which Ijara Rentals were to be paid semi-annually. On 12-02-2009, Sukuk Company received a letter from NFC for transfer of its 72 out of 300 sukuk certificates (36000 sukuk units) of value Rs 180, 000,000 in name of SES. Upon this letter, Wapda after compliance of all inter-se formalities transferred the sukuk certificates in name of SES. Thereafter upon request of SES, 72 sukuk certificates (each of 5000 sukuk units) were replaced with 6 new sukuk certificates (each of 6000 sukuk units). Afterwards the 6 new sukuk certificates were sold by SES to AIMC after converting 6 physical certificates into CDS. AIMC sold its 1000 sukuk units to Bank Islami, 4000 sukuk units to Soneri Bank Limited and 22000 sukuk units to Meezan Bank Limited who purchased sukuk units through the CDC. In April 2009, NFC informed Wapda that they have not received Ijara rentals for sukuks of 180,00,000/-. Upon their inquest. Wapda informed NFC that they have sold the same to SES through letter dated 12-02-2009 but NFC denied the execution of this letter and transfer of sukuk and produced original sukuks in their possession. So presuming a fraud, Wapda lodged FIR in FIA wherein it was found during investigation that SES was a fake entity and some employees of Wapda were involved in the fraudulent activities. So there arose rival claimants for sukuk certificates of 180,000,000/- i.e. NFC & AIMC etc. All rival claimants filed different suits against Wapda for recovery etc. Meanwhile Wapda filed interpleader suit in civil court, without impleading SES, to decide as to who is lawful owner of sukuk certificates either NFC or AIMC (and their subsequent purchasers)

Issue: i) What are general principles relating to fraud in civil cases?
ii) What is standard of proof in civil cases and when does the burden of proof loses its significance?

iii) Whether forensic report can be relied in civil case without production of its author?
iv) Whether judgment of criminal court is binding on civil court?
v) What is impact of Section 11 of the Central Depositories Act, 1997 in fraud cases?
vi) What is scope of interpleader suit and whether the alternative prayers can be granted in the interpleader suit?

Analysis: i) In a civil case where fraud is alleged, the general rule is that the person who pleads fraud must establish fraud. So the burden is on the person alleging fraud. The requirement of law is that the alleged fraud must be detailed, such that the person alleging fraud must set out all the details of the fraud that was committed with clarity and certainty. This is because the allegation of fraud is a serious allegation with significant consequences. Fraud is a term with wide connotations and cannot be construed within a strict definition. It has to be appreciated within the set of facts it is alleged and it has to be asserted through evidence. … In a case of fraud, the pleadings have to clearly spell out a case of fraud. Further we find that when a deed is fraudulent it is a void transaction but if it is a voidable transaction then the court has to decide the matter accordingly.
ii) The standard of proof in civil cases is on the balance of probabilities that is what fact is more likely to have happened based on the evidence. This means every fact becomes relevant, its falsity is relevant, the deceitor's intent is relevant and the injury is relevant. The court will first ascertain the facts and once the facts are established decide whether they amount to fraud. …. the issue is to be decided on the basis of the evidence produced and placing onus to produce on one or the other party looses significance as the issue has to be decided on the preponderance of evidence… it is mandatory for the court in a civil trial to look at the entire evidence and decide the case on the basis of the evidence before it. Hence the overall appreciation of evidence is relevant and the burden of proof looses significance as that is relevant only to set out who is to adduce evidence. Also relevant is that the civil courts need to determine what facts are 'proved' or 'disproved' because it is on the basis of the facts that a case of fraud is to be established.
iii) The forensic report cannot be relied upon because the author of the report was never examined in court. For the purposes of the trial court, the author of the report had to appear in court as a witness and had to be subjected to cross examination. Without this, the evidence is inadmissible as this fact has not been proven.
iv) That a court has to judge upon the facts in the case before it, established by evidence and cannot rely on the findings in some other case. The august Supreme Court of Pakistan also held that the findings in a criminal case are not binding on a civil court because the findings in a criminal case are not relevant for a civil dispute which has to be decided on the preponderance of probabilities.

v) Section 11 of the CD Act prohibits any rectification on the CD Register and requires the aggrieved party to approach the court for relief in the form of damages. However the CD Register cannot be ordered to be rectified. Clearly this means that even in a case of fraud at best, the aggrieved party can damages but cannot seek rectification of the CD Register.

vi) The person filing the suit being the stakeholder should be neutral so far as the rival claims to the debt or property are concerned for which the parties have been interpleaded. However claims that are incidental to the title dispute must be addressed because if they are not decided in the interpleader suit, one consequence of the decision in the interpleader suit is that it will discharge the stakeholder of all liabilities towards the debt or property and the decision will operate as res judicata against all claims. This is detriment to the rights of the claimants. It also means that multiple cases can be filed with reference to allegations of negligence, breach of fiduciary duty and capacity which may lead to decisions in various claims which are inconsistent with one another. Furthermore the stakeholder cannot use the interpleader suit to protect itself from any liability, meaning that a valid interpleader action cannot be a shield for the stakeholder from counter claims, where the stakeholder is not free from blame with reference to the disputed claimant. In this context while reading Section 88 of the CPC, the words "for the purposes of obtaining a decision" means that an interpleader suit shall be filed where a person fears multiple claims for the same debt or money or property so as to ensure that ownership or title is decided in one suit, where all parties are interpleaded. So the person filing the suit has some obligation to discharge with reference to the debt, money or property and needs to know whom to discharge it against. This being the primary purpose of the suit will not restrict a decision on liabilities that are related to the title dispute. There is nothing in Section 88 CPC which prevents a decision on claims against the person filing the suit which are related to its obligation to pay the debt, money or property…. No doubt there are conflicting claims for the same debt or property, however the plaintiff cannot escape the outcome of its liability simply by electing to file an interpleader suit. Hence the interpleader suit will not discharge the plaintiff from allegations of negligence, fraud or on fiduciary duty which go to the duties and obligations and capacity of the plaintiff and gives rise to a counter claim of damages and loss.

Conclusion: i) The general rule is that the person who pleads fraud must establish fraud.

ii) The issue is to be decided on the basis of the evidence produced and placing onus to produce on one or the other party looses significance as the issue has to be decided on the preponderance of evidence.

iii) The forensic report cannot be relied in civil case without production of its author.

iv) The judgment of criminal court is not binding on civil court.

v) Under section 11 of CD Act, even in a case of fraud at best, the aggrieved party can be awarded damages but cannot seek rectification of the CD Register.

vi) The alternative prayers can be granted in the interpleader suit.

13. Lahore High Court
Three Stars Hosiery Mills Pvt. Limited etc v. Federation of Pakistan etc
I.C.A. No.66182 of 2021
Shadab Textile Mills Limited & others Vs. Federation of Pakistan & another
I.C.A. No.66178 of 2021
Mr. Justice Shahid Waheed, Mr. justice Ch. Muhammad iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC7732.pdf

Facts: The appellants were the consumers of natural gas. They have not paid some dues in view of interim orders passed by the learned Single Bench of this Court in the writ petitions filed by them challenging the Notification enhancing the natural gas tariff rates. After dismissal of their writ petition, they were charged with late payment surcharge (LPS).

Issue: Whether the late payment surcharge (LPS) can be charged if payment of dues was not made on or before the due date in view of interim orders passed by the court?

Analysis: The quintessence of the maxim "Actus Curiae Nemi-nem Gravabit" is to undo the wrong done to a party by the act of the Court, for, by the law of nature it is fair that no one becomes richer by the loss and injury of another. In legal parlance, this is called restitution and sometimes this is expressed as reversing a transfer of value. This is a tool of corrective justice. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been, had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim order. The injury, if any, caused by the act of the Court then shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so, otherwise the party would continue to get benefit of the interim order even after losing the case in the Court.

Conclusion: The late payment surcharge (LPS) can be charged if payment of which was not made on or before the due date in view of interim orders passed by the court.

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14. Lahore High Court
The State. v. Muhammad Hafeez.
Criminal Appeal No.616 of 2013
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC6869.pdf

Facts: The appellant/State challenged the order passed by Special Court CNS, Lahore whereby vehicle/car used in commission of offence was given to the brother of convict who was owner of vehicle.

Issue: Whether the vehicle can be given on superdari to its registered owner, who is brother of convict?

Analysis: Since the respondent had shown to the learned trial court that he was the legal owner of the vehicle, its possession was rightly handed over to him after due verification. Moreover, person seeking possession of such vehicle should not be an associate or a relative of the accused or an individual having nexus with the accused. The respondent was although the real brother, but was the owner prior to the commission of the offence and as per record had no knowledge that offence under CNSA, 1997 could be committed in that vehicle.

Conclusion: Respondent being the registered owner of the vehicle prior to the commission of crime, though real brother of accused, having no knowledge of the offence could be given possession of subject vehicle.

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15. Lahore High Court
Tereze Hluskova v. The State etc.
Criminal Appeal No.19382 of 2019
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Muhammad Sarfraz Dogar,
https://sys.lhc.gov.pk/appjudgments/2021LHC6856.pdf

Facts: The appellant was convicted under section 9 (c) of the Control of Narcotic Substances Act, 1997.

Issues: Why it is necessary for prosecution to establish the safe custody of sample parcel and the case property?

Analysis: The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

Conclusion: Chain of safe custody is necessary to establish because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner.

16. Lahore High Court
SEPCOIII Electric Constructions Co. Ltd Vs. Federation of Pakistan etc
ICA No.68823 of 2021
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi,
https://sys.lhc.gov.pk/appjudgments/2021LHC7689.pdf

Facts: The appellant participated in a bid through letter and bid security in the form of Bank Guarantee whereas appellant was required to furnish unconditional credit line which the appellant submitted but concerned bank withdrew the same and respondent no. 02, after withdrawal by bank assumed withdrawal of bid by appellant and proceeded for encashment of bid guarantee which was declined by the bank. The appellant filed writ against said demand of respondent no. 02 which was dismissed, thereafter, appellant filed this intra court appeal.

Issues: i) Whether matters of contractual obligation can be adjudicated in constitutional petition?
ii) What is obligation of Banker regarding bank guarantee?

Analysis: i) The superior Courts should not involve themselves into investigations of disputed question of facts which necessitate taking of evidence. The normal remedy under law regarding eventualities/ disputes/controversies arising out of a contract can be availed by a suit for enforcement of contractual rights and obligations instead of invocation of Art.199 of the Constitution merely for the purpose of enforcing contractual obligations.
ii) A Bank Guarantee is an independent/autonomous contract between the Bank and Customer and Bank authorities must construe it independent of the principle/primary contract. When Bank Guarantee furnished by the Bank contains undertaking and imposes absolute obligations on the Bank to pay the amount then irrespective of any dispute between the parties to the principle contract, there is an absolute obligation upon the banker to comply with the terms as enumerated in the bank guarantee and to pay the amount stipulated therein and Bank cannot be prevented by the party at whose instance Guarantee was issued, from honoring the credit guaranteed.

Conclusion: i) Contractual rights etc. have to be enforced through courts of ordinary jurisdiction and not be adjudicated in constitutional petition.
ii) Bank guarantee being independent contract of the principle contract, bank cannot be prevented by the party to pay, at whose instance guarantee was issued.

17. **Lahore High Court**
Ijaz Ahmad and others v. Khizar Hayat and others
R.S.A. No.123 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC6957.pdf

Facts: Through this second regular appeal, the appellants have challenged two concurrent findings of courts below whereby his suit for declaration and permanent injunctions was dismissed on the ground that he failed to prove the contents of plaint through reliable evidence.

Issue: i) What is legal value of recitals of pleadings and admission in the written statement?
ii) Whether limitation run against fraudulent transaction specially in inheritance matters and whether the ingredients of oral gift were fulfilled?

Analysis: i) Recitals of plaint and written statement have no value in the eye of law until the same are proved by trustworthy and confidence inspiring evidence. Mere admission in the written statement that too, in joint written statement, is not sufficient to prove the factum of gift to the donee, unless the maker thereof records and owns such statement by appearing in person before court. Hence, the principle "admitted facts need not be proved" does not apply in this case.
ii) Limitation does not run against fraudulent transaction especially when question of deprivation of some legal heirs from the inheritance is involved, because fraud vitiates the most solemn transaction.

Conclusion: i) Recitals of plaint and written statement have no value in the eye of law until the same are proved by trustworthy and confidence inspiring evidence.
ii) Limitation does not run against fraudulent transaction specially in inheritance matters and whether the ingredients of oral gift were fulfilled.

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18. **Lahore High Court**
Muhammad Rafiq v. Hussain and another
R.S.A. No.132 of 2013
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC6963.pdf

Facts: The appellant instituted a suit for specific performance of agreement to sell and cancellation of three sale mutations by alleging that he purchased the suit property through agreement to sell by paying the earnest money but during the pendency of execution of this agreement, the property was sold to a subsequent vendee without notice and without making any inquiry of prior sale to him.

Issue: Whether the protection under section 27(b) of the Specific Relief Act, 1877 is available to subsequent vendee who purchased without inquiry?

Analysis: Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property in question, he would not be deemed to have purchased property in question for value, in good faith and without notice of original contract/sale.

….The initial onus to prove was on the subsequent vendee who did not make inquiry even in a summary manner regarding the prior sale in favour of appellant.

Conclusion: The protection under section 27(b) of the Specific Relief Act, 1877 is not available to subsequent vendee who purchased without conducting inquiry.

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19. **Lahore High Court**
Sawera Ikram V Amir Naveed
Transfer Application No. 71691of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7744.pdf

Facts: The petitioners filed transfer applications seeking transfer of execution petitions from one district to another district etc. Hence above captioned transfer application too.

Issue: What should be the procedure for execution of decree passed by family Court?

Analysis: The following directions are issued to be followed by the District Judges of the Punjab and the Family Courts in future:-
1. While passing the money decree in respect of maintenance allowance, alternate prices of dower or dowry articles, the provisions of section 13(3) of the Family Courts Act, 1964 should be adhered to, which provides that, „Where a decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court [not exceeding thirty days] the same shall, if the Court so directs, be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.‟
2. The District Judge will designate a Civil Judge as Executing Court in the District as well as Tehsils, as the case may be, where the execution petitions for satisfaction of decrees passed by the Judge Family Court will be filed and executed/satisfied in accordance with law by adopting all measures in this regard.
3. In case the judgment debtor resides in some other District and owns property, precept will be transmitted for attachment purposes and further proceedings will be taken in accordance with law

Conclusion: Money decree is to be executed as arrears of land revenue. And in case judgment debtor is resident of other district the precept will be transmitted and there is no need to transfer the execution proceedings to other district.

20. **Lahore High Court**
SME Bank Limited v. M/s Punjab Store & another
RFA No.40272 of 2021
Mr. Justice Abid Aziz Sheikh, and Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7673.pdf

Facts: The default, to clear their repayment obligations by the respondents, prompted the appellant/bank to institute suit for recovery. However during the proceedings of that suit, the respondents paid the principal debt amount, along-with mark up, upon which the Banking Court dismissed the suit as being infructuous and disentitled the bank to get cost of funds as well as costs of the suit.

Issue: Whether under section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the defaulting customer is liable to pay the costs of funds even after making payment of the principal amount and mark-up to the bank?

Analysis: It is provided in Section 3 of the Ordinance that customer at default in fulfillment of obligations shall be liable to pay cost of funds for the period from date of default till realization. The aforesaid provision is not procedural in nature as it imposes a pecuniary burden on a defaulting customer and entails a substantive obligation. Banking Court has been empowered to the award cost of funds as compensation to the financial institution for the finance blocked/stuck up due to breach in the fulfilment of obligation by the customer, after determining the date of default. It is well settled principle of interpretation of statutes that when a statute creates rights and obligations and prescribes the mode of its enjoyment or enforcement, such provision is considered mandatory and that the Legislature intends compliance of such provision to be essential to the validity of the act or proceedings. Earl T. Crawford in his book The Construction of Statutes Chapter XXIV Mandatory and Directory Or Permissive Statutes (Published by Pakistan Law House, 2014) stated that a statute which creates a new right, privilege or immunity, and regulates the manner of its exercise, will be construed as mandatory; such right can be exercised only in the manner and within the time prescribed; and similarly, when a statute gives a new right and prescribes a particular remedy for its recovery, such remedy must be strictly pursued. Under Section 3 of the FIO, 2001, it is the duty of the customer to fulfil his obligations to the financial institution. In case of default he being principle debtor along with his surety / guarantor would be under legal obligation to discharge the debts along with cost of funds. Section 3 of the FIO, 2001, being mandatory in nature, is required to be strictly adhered to, followed and enforced without interpreting / construing it in any manner liberally.

Conclusion: U/s 3 of the Ordinance it is obligatory upon the defaulting customer to pay cost of funds to the bank.

21. **Lahore High Court**
Muhammad Saleem & others v. Pak Brunei Investment Company Ltd.
FAO No.40322 of 2020
Mr. Justice Abid Aziz Sheikh, and Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7667.pdf

Facts: The appellants filed a suit for declaration against the respondent inter alia to the effect that the act of respondent to claim existence of mortgage in respect of the suit properties was illegal and that the respondents be permanently restrained from taking possession of said properties and alienating them. The respondent had filed the application for leave to defend the suit, when the learned Judge Banking Court, returned the plaint of the suit under Order VII Rule 10 C.P.C., on the ground that it lacked pecuniary jurisdiction in the matter.

Issue: i) What a Court is supposed to do when it disagrees with the valuation of the suit made in the plaint?
ii) Whether it is legal for the banking Court to return or reject a plaint under the Code of Civil Procedure, 1908 when it had already summoned the defendant pursuant to which he had filed the leave application?

Analysis: i) Under the law, the pecuniary jurisdiction of the Court has to be determined with reference to the valuation given in the plaint. In the plaint, the appellants have valued the suit for the purpose of jurisdiction and Court Fee as Rs.15,000/-, therefore, if the Court disagrees with the value assessed by the appellants, it should fix value of the suit under the provisions of the Suits Valuation Act, 1887 after holding such inquiry and collecting such material as may be deemed expedient by the Court and thereafter, matter could have been referred to the Court of competent jurisdiction for decision in accordance with law.

ii) The Banking Court is well within its legal right to reject or return a plaint by invoking any provision under the C.P.C. before summoning the defendant under section 9(5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the Ordinance) or before fixing a specific date of hearing of the leave application. However, once the Banking Court, after examining the plaint, is satisfied that the same is in order as per the requirements of Section 9 and has proceeded to issue summons to the defendant under section 9(5) ibid, pursuant to which a defendant has filed the leave application and a date of hearing of the leave application has been fixed, it ceases to take any further step under the provisions of the C.P.C. without first deciding the leave application in accordance with the requirements of Section 10 of the Ordinance. The Banking Court, in such circumstances, is duty bound to first grant or reject the leave application in terms of Sections 10(9), 10(11) or 10(12) of the Ordinance before taking any other step towards the progress and continuation of the suit.

Conclusion: i) If a court disagrees with the valuation made in the plaint, it should determine the correct valuation of the suit under the provisions of the Suits Valuation Act, 1887 after holding such inquiry and collecting such material as may be deemed expedient.

ii) Once the Banking court summons the defendant under section 9(5) of the Ordinance, pursuant to which the leave application is filed, it ceases to take any further step under the provisions of the C.P.C, without first deciding the leave application in accordance with the requirements of Section 10 of the Ordinance.

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22. **Lahore High Court**
Atta Muhammad & another v. Mst. Farrukh Batoo
Review Application No.3 of 2019
Mr. Justice Ch. Muhammad Masood Jahangir, **Mr. Justice Sultan Tanvir Ahmad**
https://sys.lhc.gov.pk/appjudgments/2021LHC6881.pdf

Facts: The Civil Revision was dismissed on merits without deciding a pending miscellaneous application.

Issue: Whether the failure to decide the miscellaneous application vitiates the judgment or decision of the main case?

Analysis: The Courts in discharge of their legal and judicial duties are emphatically required to decide the miscellaneous applications before or at the time of final disposal of the lis and omission to do so can ipso facto nullify the decision in the main case. However, in performance of such function, it is also the responsibility of the learned appellate or revisional Courts or the learned higher foras to keep in mind the object of filing such unattended application, its relevance and any bearing on the merits of the case. When miscellaneous application is totally irrelevant and/or does not have any bearing on the merits of the case as well as when unattended application, on face of it, is an attempt by a delinquent to cause delay by misuse of process of law, the non-disposal of miscellaneous application alone, cannot be a reason to interfere with a judgment, which otherwise is as per the law and is based on sound reasoning.
Even otherwise, to bring the case within the ambit of Order XLI, Rule 1 of the Code of Civil Procedure, 1908, it is incumbent upon the applicant to establish that the mistake apparent on the face of record, if considered will effect decree or order as well as error must be so manifest that no Court could permit it to remain on record. The Court cannot commence to hear the matter as an appeal against its own judgment, which would akin to infringing the principle of finality firmly embodied in our judicial system as well as Order XX Rule 3 of the Code of Civil Procedure, 1908.

Conclusion: The failure to decide the miscellaneous application does not vitiates the judgment or decision of the main case if miscellaneous application is totally irrelevant and/or does not have any bearing on the merits of the case.

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23. **Lahore High Court**
Syed Gul Hassan Gillani etc. v. House Building Finance Corporation Ltd.
RFA No.180 of 2015.
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Muhammad Raza Qureshi,
https://sys.lhc.gov.pk/appjudgments/2021LHC7539.pdf

Facts: The suit for recovery of Bank was decreed after dismissal of PLA of appellants.

Issue: Whether the non observance of requirements of section 10(3) and (4) of the FIO, 2001 is fatal to PLA leading to its dismissal?

Analysis: The FIO, 2001 is a special law which, inter alia, provides its own procedure for determination of a banking suit. A careful perusal of PLA exhibits that it lacks framing of questions of law as well as facts, which may require recording of evidence and therefore, is bereft of mandatory requirements contained in Section 10(3) of the FIO, 2001 and failure of the Appellants to comply with such mandatory provisions entails legal consequences such as rejection of their PLA and non-entitlement under Section 10(1) to claim a permission to defend the suit.

Conclusion: The non observance of requirements of section 10(3) and (4) of the FIO, 2001 is fatal to PLA.

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24. **Lahore High Court**
Muhammad Ejaz @ Aju v The state etc.
Cr. Appeal no. 452/2016
The state v. Muhammad Ijaz @ Aju
C.S.R. No.01 of 2016
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC4908.pdf

Facts: The appellant assailed his conviction in offences under sections 302/148/149 of PPC read with section 7 of Anti-Terrorism Act, 1997. The appellant filed criminal appeal against his conviction whereas learned trial court sent C.S.R for confirmation of his death sentence.

Issues: i) When offence of firing in court becomes triable by an Anti-Terrorism court?
ii) When a case becomes case of terrorism for the purpose of recording convictions and sentences under section 6 read with section 7 of the Anti-terrorism court?

Analysis: i) By virtue of item no. 04(iii) of the 3rd Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism court if use of firing or explosive including bomb blast in the court premises is involved in the case.

ii) The entry of item no. 04(iii) in the 3rd schedule only makes a case triable by an Anti-Terrorism court if use of firing or explosive including bomb blast in the court premises is involved in the case but such a case does not ipso facto becomes a case of terrorism for the purpose of recording convictions and sentences under section 6 read with section 7 of the Anti-terrorism court unless there was a design or object contemplated by section 6 of Anti-Terrorism Act, 1997. Mere firing at one's personal enemy in the backdrop of a private vendata or design does not ipso facto bring the case within the purview of section 6 of Anti-Terrorism Act, 1997, so as to brand the action as terrorism.

Conclusion: i) Offence of firing in court becomes triable by an Anti-Terrorism court.
ii) A case does not ipso facto becomes a case of terrorism for the purpose of recording convictions and sentences under section 6 read with section 7 of the Anti-terrorism court unless there was a design or object contemplated by section 6 of Anti-Terrorism Act, 1997.

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25. **Lahore High Court Lahore**
Aqeel Hasnain v. The State & another
Crl. Appeal No.472/2016
Ghulam Shabbir v. The State & 2 others
Crl. Appeal No.616/2016
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC7173.pdf

Facts: The appellant has assailed his conviction in offence under Sections 336-B, 336, PPC, read with Section 7 of the Anti-Terrorism Act, 1997.

Issue: i) What is nature of the medical evidence to the extent of locale and specification of injury, cause of injury and time when injury was caused?
ii) Can improvements once found deliberate and dishonest cast serious doubt on the veracity of prosecution story?
iii) Whether motive is a proof of a crime?
iv) Where few co-accused are acquitted discarding the testimony of prosecution witnesses, conviction of other co-accused can be based on the testimony of same set witnesses?

Analysis: i) The medical evidence neither pin point the perpetrator of the crime nor corroborative in nature, rather a confirmatory piece of evidence to the extent of locale and specification of injury, cause of injury and time when injury was caused.
ii) Where a witness who makes dishonest improvements while deposing before the court on material aspect is not worthy of reliance. Deliberate and dishonest improvement made by the prosecution witnesses, while deposing before the court on oath departing from his previous statement made under section 161 Cr.P.C. or

any other previous statement, make their statements highly doubtful and unreliable. Deliberate and dishonest improvements made by a witness in his statement to strengthen the prosecution case cast serious doubts on his truthfulness and makes him untrustworthy and unreliable.
iii) Motive itself is not proof of a crime rather a cause of a crime, which needs to be proved through coherent and tangible evidence. Existence of motive/enmity is neither a substantive nor a direct evidence. It is not a corroborative piece of evidence either. The motive/enmity is only a circumstance, which may lead to the commission of an offence.
iv) Few co-accused are acquitted discarding the testimony of prosecution witnesses, conviction of other co-accused cannot be based on the testimony of same set of witnesses in absence of strong and independent evidence.

Conclusion: i) Medical evidence is a confirmatory piece of evidence to the extent of locale and specification of injury, cause of injury and time when injury was caused.
ii) Improvements once found deliberate and dishonest cannot cast serious doubt on the veracity of prosecution story.
iii) Motive itself is not proof of a crime rather a cause of a crime.
iv) Where few co-accused are acquitted discarding the testimony of prosecution witnesses, conviction of other co-accused cannot be based on the testimony of same set of witnesses in absence of strong and independent evidence.

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26. **Lahore High Court**
Muhammad Shabbir Ahmed Minhas Versus Lahore High Court, Lahore through Registrar etc.
Service Appeal No.13 of 2004.
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC7714.pdf

Facts: The appellant assailed order imposing major penalty of removal from service.and his departmental representation was also dismissed.

Issues: i) Whether delay in completion of inquiry proceedings vitiates the inquiry proceedings?
ii) Whether regular inquiry can be dispensed with?

Analysis: i) If the delay in concluding the inquiry proceedings causes the prejudice to the concerned accused person then it would vitiate the inquiry proceedings. However, if no prejudice has been caused rather the delay is on the part of the accused person then such delay would not vitiate the inquiry proceedings.
ii) When there is sufficient documentary evidence available, regular inquiry could be dispensed with to secure expeditious conclusion of departmental proceedings after confronting the delinquent officer with the available evidence and providing him an opportunity to explain his position.

Conclusion: i) If the delay in concluding inquiry causes prejudice to accused person then it would vitiate the inquiry proceedings.
ii) Regular inquiry could be dispensed with to secure expeditious conclusion of departmental proceedings.

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27. **Lahore High Court**
Gulzar Hussain Versus The Registrar, Lahore High Court, Lahore
Service Appeal No.08 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC7706.pdf

Facts: The appellant assailed order imposing major penalty of removal from service.and his departmental representation was also dismissed.

Issues: i) Whether the interaction of judicial officer with litigant falls under definition of misconduct?
ii) What factors a competent authority is required to consider while awarding punishment?

Analysis: i) Article 12 of the Principles of Judicial Ethics framed by the General Council of The Judiciary specifically prohibits the judges from maintaining any contact with the parties appearing in their Courts. Article 111 of the Bangalore Principles of Judicial Conduct clarifies that speaking privately to the litigants by a judge, even when the conversation is on an unrelated topic, is against the propriety of his office. The interaction of a Judicial Officer with a litigant is questionable as it is against service discipline or conduct unbecoming of an officer and comes within the definition of 'misconduct' provided in Rule 2(e) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999
ii) The penalty should commensurate with the magnitude of the misconduct committed. The extreme penalty for an act of a lesser degree would definitely defeat the reformatory concept of punishment in administration of justice. While punishing an employee found guilty of misconduct, the employer / competent authority is required to take into account the total length of service of the delinquent officer and his past record, the gravity of misconduct found proved and its impact on the organization or department.

Conclusion: i) A judicial officer is required to avoid interaction with litigant.
ii) The penalty should commensurate with the magnitude of the misconduct committed.

28. **Lahore High Court Lahore**
Adnan Pervaiz & another v. The State & another
Criminal Appeal No.349 of 2019
The State v. Adnan Pervaiz & another
Murder Reference No.25 of 2019
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC7753.pdf

Facts: The appellants assailed his sentence in offence under Sections 302, 201 & 34 PPC.

Issue: i) Whether for securing conviction, the incriminating circumstances must be interwoven with each other so as to make an unbroken chain?

ii) To what extent an exculpatory retracted confession can be used against a co-accused and in what circumstances?

Analysis: i) For securing conviction, the incriminating circumstances must be interwoven with each other so as to make an unbroken chain, the one part of which must be touching the corpse and other end the neck of accused. Each circumstance of such chain must be comprising upon an impeccable event and should not be inadmissible in evidence. The inadmissible evidence invariably breaks the chain of incriminating circumstances rendering the prosecution case unworthy of any credence.

ii) According to Article 43 of the Qanun-e-Shahadat Order, 1984, a proved confession can be used against its maker as a proof and against other accused as circumstantial evidence only. The confession of an accused is to be used only as a circumstantial evidence against co-accused after subjecting it to a strict and cautious appraisal. The confession of a co-accused is generally regarded as weak type of incriminating circumstance and solely cannot be used for awarding conviction to another accused. In Islamic Jurisprudence, there is a consensus that since after making confession about the commission of crime, an accused becomes fasiq, thus his deposition loses purity and cannot solely be used for the conviction of another accused.

Conclusion: i) For securing conviction, the incriminating circumstances must be interwoven with each other so as to make an unbroken chain, the one part of which must be touching the corpse and other end the neck of accused.

ii) The confession of a co-accused is generally regarded as weak type of incriminating circumstance and solely cannot be used for awarding conviction to another accused.

29. **Lahore High Court**
Rai Muhammad Ashraf v. Additional District Judge, Nankana Sahib & others
W.P. No.44985 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7645.pdf

Facts: The petitioner failed to submit written statement despite getting five opportunities, so the trial court closed his right to file the written statement u/s 26 -A of the Code of Civil Procedure 1908. Said order was upheld by the revisional court.

Issue: Whether the provision of section 26-A CPC is directory or mandatory?

Analysis: The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that the usage of the word "shall" generally carries the connotation that a provision is mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision. In the above provision, not only the word "shall" has been used, but penal consequences for failure of the defendant to file the written statement within the specified period have been prescribed. The legislative intent behind this provision appears to cut short the unnecessary delay that occurs at the time of submission of written statement, therefore, the provisions of section 26-A CPC, being mandatory in nature, are required to be complied with.

Conclusion: Provision of section 26-A CPC is mandatory in nature.

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30. **Lahore High Court**
Muhammad Yousaf v. Additional District Judge, Fereozewala, District Sheikhupura & others
W.P. No.30112 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7641.pdf

Facts: The petitioner filed a suit against the respondent No,3 for specific performance of agreement to sell of immovable property. Respondent No.4 claiming himself to be a co-owner in the joint Khewat filed an application u/o I rule 10 of the Code of Civil Procedure, 1908, (CPC) requesting that he should also to be impleaded as a party in the suit. His request was turned down by the trial court; however the revisional court accepted that application.

Issue: i) What is the difference between the terms 'necessary party' and 'proper party'?

ii) Whether in a suit for specific performance of contract regarding immovable property, the other co-sharer(s) in the joint Khewat could be considered as a necessary or proper party?

Analysis: i) A party, without whose absence a suit cannot be proceeded with and a final and binding decree cannot be passed, is called "necessary party". A person whose presence is necessary for the adjudication of all issues and matters involved in the suit and whose interest in or against the relief or the subject matter of the suit may be marginal, nominal, limited or none, is a "proper party". A person against whom no relief is asked for could hardly be a necessary party but may be a proper party. Another difference between the effect of non-impleadment of a necessary or a proper party is that a suit in which a necessary party is not impleaded, is bad while a suit in which a proper party is not impleaded, is not bad.

ii) In the case in hand, if petitioner succeeds in getting a decree of specific performance, it would not prejudice ownership rights of respondent No.4. Furthermore, there is no legal hurdle in proceeding with the suit without impleading respondent No.4 and his presence is also not necessary to settle points of controversy between petitioner and respondent No.3, thus, he is neither necessary nor proper party to the suit.

Conclusion: i) There could be following differences between a necessary and proper party:

1. Necessary party is the main interested party in the suit while the proper party may have marginal, nominal or no interest at all in the matters involved.
2. One against whom no relief is asked could be a proper party but not a necessary party.
3. Non-impleadment of a necessary party is bad while it is not the case if proper party is not impleaded in the case.

ii) Co-owner in joint Khewat would ipso facto is neither a necessary nor a proper party.

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31. **Lahore High Court**
Rahim Dad v. Saeeda Khanum
Civil Revision No.30037 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7661.pdf

Facts: The petitioner was previously a tenant of the agricultural property of the respondent. He filed a suit against the respondent for specific performance of agreement to sell, whereas the respondent filed a counter suit for possession of the suit property along with recovery of mesne profits. However both the suits were dismissed by the civil court. The appellate court upheld the order of dismissal of petitioner's suit; however it decreed the suit of possession by the respondent against the petitioner.

Issue: i) Whether a suit for possession of agricultural land by a person against his former tenant could be maintainable before a civil court when the tenant had himself

denied his status of being a tenant and had also filed a suit for specific performance qua that property against the landlord?
ii) What are the essential conditions for the applicability of the doctrine of judicial estoppel?

Analysis: i) The petitioner by filing a suit for specific performance of contract has himself denied his status of a tenant. Similarly, in the suit for possession against him, he reiterated his position to be owner of the suit land rather than holding that under the landlord. Therefore, at this stage, the petitioner, under principle of estoppel, is estopped from claiming that Revenue Court is required to decide the eviction suit against him under the Act of 1887, with the admission that relationship of landlord and tenant was existing between the parties.

ii) Estoppel is a collective name given to a bunch of legal doctrines whereby a person is prevented from making assertions, which are contradictory to his prior position on certain matters before the Court. According to the Supreme Court of United States in case cited as New Hampshire v. Maine (**532 U.S. 742**), for the applicability of the doctrine of judicial estoppel, three conditions are required to be satisfied: (i) the party's later position must be clearly inconsistent with its earlier position; (ii) whether the first Court had accepted the earlier position; and (iii) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. Nevertheless, the two crucial conditions are the first and the third. If they are met, even if the second condition is unsatisfied, still the doctrine of judicial estoppel would apply.

Conclusion: (i) The suit would be maintainable before a civil court as the tenant will be estopped from claiming himself to be a tenant when he had himself denied that relationship.

(ii) Judicial estoppel would apply if the following two conditions are satisfied:

1) the party's later position must be clearly inconsistent with its earlier position;
2) the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

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32. **Lahore High Court**
Sui Northern Gas Pipelines Ltd v. M/s Aliz International (Pvt.) Limited & others
W.P. No.60974 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7656.pdf

Facts: The petitioner made an application u/o XIII rule 3 of the Code of Civil Procedure, 1908 (CPC) for determining the admissibility of certain documents already exhibited by the Gas Utility Court. However the court rejected the application by observing that it would decide that at the time of final judgment.

Issue: Whether the question of admissibility of documentary evidence is required to be decided when it is raised, or the court can postpone its decision to a subsequent date?

Analysis: The Court relying upon the provisions of Order XIII Rules 3, 4 & 6 of CPC, and case law from the Indian jurisdiction i.e. [1961 AIR (SC) 1655], [2008(6) ALL MR 352], & [1978 AIR (SC) 1393], concluded that a Trial Court is required to decide the objection of admissibility of a document as and when such objection is raised in the first instance instead of deferring it for future. However, only exception of postponing is that if admissibility of such document is dependent on receipt of further evidence.

Conclusion: The question of admissibility of a document is required to be decided by the Trial Court as and when raised instead of deferring it to future date unless admissibility of said documents is dependent upon further evidence.

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33. **Lahore High Court**
Nirma Shahzadi v. The State etc.
Writ Petition No. 57738/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC7699.pdf

Facts: The petitioner through a writ petition challenged the vires of order passed by the Judicial Magistrate, First Class, Lahore, whereby, he dismissed the second application of petitioner for recording of her statement u/s 164 Cr.P.C., being without justification.

Issue: Whether section 164 Cr.P.C. expressly or impliedly prohibit recording of statement for second time?

Analysis: Section 164 Cr.P.C. does not prohibit the Magistrate from taking down the statement of a person if he has got one recorded earlier. However, the person making the request must give good reasons for it and the Magistrate may decline it if he is not satisfied. Such decision must depend on the facts of each case. Nevertheless, it may be emphasized that where a person alleges that his previous

statement was involuntary or procured through coercion, the onus is on him to prove that it was so. There should be exceptional circumstances to justify the reasons for recording the statement u/s 164 Cr.P.C. for second time.

Conclusion: Section 164 Cr.P.C. does not prohibit the Magistrate from taking down the statement of a person if he has got one recorded earlier. However, the person making the request must give good reasons for it and the Magistrate may decline it if he is not satisfied.

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34. **Lahore High Court**
Malik Azmat Ullah Vs. Federation of Pakistan etc.
Writ Petition No. 49287of 2021
Mr. Justice Tariq Saleem Sheikh,
file:///C:/Users/lhc/Downloads/Writ%20Petition%20No.49287-2021.pdf

Facts: Through this writ petition the petitioner sought protective/transitory bail who was nominated in criminal case for offences u/s 302,148, 149 PPC in year 2016 and petitioner left Pakistan shortly after registration of FIR. The accused was declared proclaimed offender and his name was placed in the ECL.

Issues: i) When access to justice is deemed to be denied?
ii) What are responsibilities of state regarding access to justice?
iii) What is purpose of protective bail?

Analysis: Access to justice is defined as the ability of the people to seek and obtain a remedy through formal or informal institutions of Human Rights. There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system.

ii) States not only have a negative obligation not to obstruct access to those remedies but, in particular, a positive duty to organize their institutional apparatus so that all individuals can access those remedies. To that end, States are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice.

iii) The high court, while invoking the provisions of section 561A of Cr.P.C. and Article 199 of constitution of Pakistan deals with request for protective bail and does not touch the merits of the case. The protective bail has a limited purpose and is for a fixed period. It is not in the nature of anticipatory or pre-arrest bail granted under section 498 Cr.P.C. Importantly, when the accused appears before the concerned court it deals with him independently and protective bail does not entitle him to pre-arrest bail as of right.

Conclusion: The concept of protective/transitory bail must be examined in the constitutional context of liberty, dignity, access to justice and fair trial and the right to be treated in accordance with law.

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35. **Lahore High Court Lahore**
Rizwan Baig Rubi v. Khurram Shahzad, etc.
I.C.A.No.70693 of 2021
Mr. Justice Jawad Hassan, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6774.pdf

Facts: Through a Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order passed by learned Single Judge-in-Chambers, whereby contempt of court petition filed by the appellant against the official respondents No. 1 to 7 and 10 and private respondents No. 8 and 9 for non-compliance of order passed by the same learned Single Judge in Writ Petition.

Issue: i) Whether the order passed by the learned Single Judge-in-Chambers had merged in the order passed by the Hon'ble Supreme Court of Pakistan?
ii) Whether an appeal in the contempt of court matters lies only against such orders in which a party is proceeded against for committing contempt of court and some final order is passed against him/her?

Analysis: i) The doctrine of merger is duly applied to the reversal and modification cases and also to all those cases in which the judgment etc. of a lower forum has been affirmed in appeal or revision by a higher forum. The rule of merger shall also extend to the writ jurisdiction of the learned High Court(s) where the decisions of the lower fora, such as Tribunals and special Courts etc. when challenged have been affirmed by the court in exercise of its constitutional jurisdiction.
ii) An appeal in the contempt of court matters lies only against such orders in which a party is proceeded against for committing contempt of court and some final order is passed against him/her but appeal is not maintainable when the court does not feel it necessary to proceed further in the matter of contempt of court.

Conclusion: i) The order passed by the learned Single Judge-in-Chambers had merged in the order passed by the Hon'ble Supreme Court of Pakistan.
ii) An appeal in the contempt of court matters lies only against such orders in which a party is proceeded against for committing contempt of court and some final order is passed against him/her.

36. **Lahore High Court**
Sohail Shahzad. v. Chief Election Commission of Pakistan, etc.
W.P. No. 75594 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC7454.pdf

Facts: The District Monitoring Officer (DMO) imposed fine on rival candidates of petitioners for persistently violating mandatory conditions mentioned in Para-25 of the Code of Conduct. The petitioner challenged the order on the ground that DMO must have declared the rival candidates as disqualified instead of imposing fine.

Issue: Whether the remedy of appeal provided under Section 234 of Elections Act, 2017 only meant to be available to the persons upon whom fine was imposed or to any other aggrieved person?

Analysis: The perusal of the sub-section (5) of Section 234 of the Act shows that any person aggrieved from order of the nominated officer (i.e., DMO in this case) has remedy of appeal available to him, which phrase 'any person' includes not only the persons against whom fine was imposed but also the person (i.e., a contesting candidate) who was seeking modification of the order, therefore, the ground raised by the petitioner that his constitutional petition is maintainable due to non-availability of alternate remedy, is not spelt out from perusal of the afore referred sub-section (5)…… Without availing the remedy of appeal, the petitioner could not circumvent the procedure provided under the law to directly approach this Court through the constitutional petition as it is settled by now that party complaining of some violation of statue/law, must first avail remedy / particular mechanism for impugning a particular action provided by the statue before applying for any other remedy.

Conclusion: The remedy of appeal provided under Section 234 of Elections Act, 2017 is available to "any person" aggrieved by order of DMO therefore the petitioner has alternate remedy and constitutional petition is not maintainable.

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37. **Lahore High Court Lahore**
M. Haroon Ashraf v. Dr. Fayyaz Ranjha, etc.
W.P.No.62143 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6874.pdf

Facts: The petitioner was a medical officer and through a writ petition, he claims that he was removed from his job on the basis of baseless and mala fide allegations levelled against him relating to his habitual absence and harmful presence for the patients.

Issue: Whether factual disputes can be resolved in constitutional jurisdiction of High Court?

Analysis: Facts narrated in a confused manner, the authenticity of which cannot be determined in constitutional jurisdiction of this Court as the same requires deeper probe into the disputed factual aspect of matter and recording of evidence for its resolution, which is not permissible in ordinary circumstances. High Court is not to resolve disputed question of facts in exercise of Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: Factual disputes cannot be resolved in constitutional jurisdiction of High Court.

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38. **Lahore High Court Lahore**
Amir Saleem v The State
Criminal Appeal no. 231377/2018
Abdul Rehman. etc v The State
Crminal Appeal No. 231407/2018
Mr. Justice Ch. Abdul Aziz, <u>Mr. Justice Amjad Rafiq</u>
https://sys.lhc.gov.pk/appjudgments/2021LHC7219.pdf'

Facts: The appellants have challenged their convictions and sentences through two separate criminal appeals.

Issue: i) Whether the prosecutors can propose proper sentencing?
ii) How the punishment should proportionate to the seriousness of crime?

Analysis: i) By insertion of sub section 8 to section 9 in Punjab Criminal Prosecution Service (Constitution, Function and Power) Act, 2006, the prosecutors have been given a say even to speak for accused in the matters of sentencing and this Act has an overriding effect, requires the prosecutor to assist the court with proposals for proper sentencing during the trial.
ii) The principle of sentencing emerged from different sentencing theories; 1. Deterrence, 2. Incapacitation,3. Rehabilitation, 4. Retribution. The first three theories broadly look to the consequences of punishment. They focus more on the future benefits that may convert a loathsome to a useful citizen. The shared goal of all three is crime prevention. The fourth theory is about "Let the punishment fit the crime" captures the essence of retribution which is based upon the principle of just deserts; it advocates the proportionality of sentence with acclaimed crime. It defines justice in terms of fairness and proportionality. Ideally, the harshness of punishments should be proportionate to the seriousness of crimes. Retribution is a backward-looking theory of punishment. It looks to the past to determine what to do in the present. No legislated mitigating factors for reduction in sentence is available in our criminal justice system to meet the situations except some judicial precedents of superior courts which are usually followed; However, section 75 of PPC, section 382-C of Cr. PC hold the field for enhance sentence. Provincial

legislature has attempted to fill out this vacuum through promulgation of the Punjab Sentencing Act, 2019, yet it has not been operationalized so far.

Conclusion: i) The prosecutors are required to assist the court with proposals for proper sentencing during the trial.
ii) The harshness of punishments should be proportionate to the seriousness of crimes.

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39. **Lahore High Court**
M/s 3N-LIFEMED Pharmaceuticals v. Government of Punjab
W.P.No.65575/2021
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC7445.pdf

Facts: The Petitioner being aggrieved of certain conditions and requirements referred in pre-qualification of interested applicants for participation in the bid challenged them on the premise that inclusion of such conditions / requirements besides being unnecessary and irrelevant are prejudicial and detrimental to the interests of local manufacturers of medical devices/drugs and were introduced specifically to exclude local manufacturer from the procurement process.

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Issue: Whether the policy decisions, whereby certain conditions / requirements were incorporated to pre-qualify the bidders / applicants attracts exceptional situation, requiring indulgence by courts?

Analysis: Incorporation of the conditions of pre-qualification, prescribing fiscal limits for prospective firms / bidders, to ascertain their financial capability to honour potential commitments undertaken, are not unreasonable. Placement of condition of showing strong financial position – meeting desired business / financial turnover benchmarks – is otherwise not violative of Article 18 of the Constitution of Islamic Republic of Pakistan 1973 – which too permits lawful qualifications upon conduct of trade or business. ---There is no legal objection that why cannot the conditions be introduced in lawful exercise of authority by the executive, for ensuring high quality and efficiency standards qua manufacturing and procurement of required medical devices / drugs. This court, while exercising judicial review jurisdiction, cannot assume the role of healthcare expert to probe into the efficacy and relevance of certification / approval, with reference to the drug/device let the responsibility befalls on the relevant persons, having expertise, experience, and requisite knowledge / know-how. This court otherwise lacked finesse and expertise. Judicial Review jurisdiction cannot be stretched to delve into and adjudge policy decision / administrative policies to ascertain their validity, relevancy, and rationality in this case conditions prescribed requiring approvals / certifications and ascertaining requisite financial capacity – and unwarranted assumption and exercise of jurisdiction has social, political and fiscal costs.

Conclusion: When the condition imposed is a policy decision, relevance, rationality and effectiveness thereof cannot be reviewed or adjudged by invoking judicial review jurisdiction – unless it is shown that policy decision or conditions prescribed do infringe any of the constitutionally provided fundamental rights, found deficient in meeting legislative competence test or manifest erroneous assumption and exercise of powers / jurisdiction.

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40. **Lahore High Court**
Syed Riaz Husain Shah v. Government of Punjab & 2 others
Writ Petition-Civil Misc (Writ)-12(2) CPC 15433 of 2021.
Mr. Justice Sohail Nasir ,Mr. Justice Ahmad Nadeem Arshad,
https://sys.lhc.gov.pk/appjudgments/2021LHC7528.pdf

Facts: Through the instant application under Section 12(2) CPC applicant has called in question the legality of transfer order of criminal cases from courts of ordinary jurisdiction to the Special Court.

Issue: i) What is object of trial by one court in cross cases or cases outcome of one and the same FIR?
ii) Whether the transfer of cross and cases outcome of same FIR from court of ordinary jurisdiction to ATC court means that the accused persons will face the charges under any of the schedule offences?

Analysis: i) The provisions of the Code of Criminal Procedure, 1898 (Code) are silent on procedure of trial of cross cases or cases outcome of one and the same FIR. Therefore, in such situation the court has to see that what can be the best way to come out from the said challenge because the ultimate duty of the court is to do the complete justice that means justice for all concerned to the cases without causing any miscarriage of justice or prejudice. The sole object of side by side trials in such cases is to give the trial Judge a complete picture of the whole situation with a view to help him in a proper assessment and appreciation of the evidence in each case, which must be decided on its separate evidence and record without any importation of the evidence of the other case.
ii) The cases were sent to ATC not for the reason that these are exclusively triable by that court but only by following the rule of propriety so as to avoid the conflict judgments.

Conclusion: i) The sole object of trial by one court is to give the trial Judge a complete picture of the whole situation with a view to help him in a proper assessment and appreciation of the evidence in each case.
ii) The transfer of cross and cases outcome of same FIR from court of ordinary jurisdiction to ATC court does not mean that the accused persons will face the charges under any of the schedule offences

41. **Lahore High Court**
Muhammad Younas vs. The State & another
Criminal Revision No. 285 of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC7395.pdf

Facts: The petitioner has assailed his conviction in offence u/s 324 PPC.

Issue: i) Whether question of substitution do arise in case of single accused?
ii) What does blackening injuries depicts in medical jurisprudence?

Analysis: i) It is not a universal principle that in case of single accused question of substitution does not arise. It may be a case of single accused or otherwise, the duty of prosecution shall remain there to prove its case beyond reasonable doubt, who cannot take benefit from weakness of defence.
ii) It is an admitted proposition under the medical jurisprudence that blackening occurs on a wound when fire is made from a close contact that is not more than three feet.

Conclusion: i) The question of substitution do arise in case of single accused.
ii) That blackening occurs on a wound when fire is made from a close contact.

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42. **Lahore High Court**
Province of Punjab, through D.O.(R) Sahiwal.v District Judge, etc.
Writ Petition No. 7044 of 2008.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7773.pdf

Facts: The suit for declaration of ownership was decreed by the court on the basis of consent statement of defendant.Feeling aggrieved the petitioner/Province of Punjab filed an application under section 12(2) C.P.C. with the contention that respondents got decreed the suit through fraud and collusiveness in order to evade payment of Government dues such as capital tax, value tax, registration fee and municipality fee etc. The said application was allowed by the court.

Issue: i) Whether the petitioner/Province of Punjab has locus standi to file application u/s 12(2) CPC in case of declaratory decree between private parties?
ii) What is the legal value of the declaratory decree obtained on the basis of agreement to sell?
iii) Whether the decree should be set aside if it is obtained to avoid the payment of government dues?

Analysis: i) If the lawmaker had intended to restrict the right of filing application only to the person who was party to the suit, then the word party ought to have been used. … When the petitioner was deprived of collection of government's dues, which were otherwise received if a decree for specific performance was passed or a sale deed

was executed, therefore, valuable rights of the petitioner were directly affected through the decree under challenge and petitioner has every right to file an application under section 12(2), C.P.C.

ii) According to section 42 of Specific Relief Act, a person could seek a declaratory decree where his legal character or any right to any property was either denied or necessity arose to deny any such claim or interest if raised by another person. A declaratory decree procured by any person on the basis of agreement to sell is void ab-initio; therefore, the same is of no avail to him to use as a plank. An agreement to sell would not confer any proprietary right on the vendee, therefore, a declaratory decree as envisaged by Section 42 of the Specific Relief Act, 1877 could not be awarded to a vendee because declaration could only be given in respect of a legal right of the character.

iii) The respondent instituted suit for declaration instead of suit for specific performance of an agreement, only just to evade payment of Government dues, etc. at the time of the decree of the suit and in this way from the conduct of respondent No.3 fraud is very much clear and instituting of a declaratory suit instead of suit for specific performance of the agreement will absolve respondent No.3 from the payment of Government dues such as registration fee, capital value tax, transfer of immovable property fee as well as Municipal Committee's fee etc. Hence, the suit for declaration and permanent injunction was not maintainable in peculiar circumstances of the present case.

Conclusion: i) The petitioner/Province of Punjab has locus standi to file application u/s 12(2) CPC in case of declaratory decree between private parties.

ii) The declaratory decree obtained on the basis of agreement to sell is void ab initio.

iii) The decree should be set aside if it is obtained to avoid the payment of government dues.

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43. **Lahore High Court**
Sardar Ali. v Abdul Ghafoor and others.
Civil Revision No.269 of 2020.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7380.pdf

Facts: During the execution proceedings a sale deed was executed and registered and consequently possession was also delivered to the decree holder. Respondent No.1 who claimed to be the owner of suit property prior to the institution of the suit, filed an objection petition and an application for cancellation of that sale deed before the learned Executing Court, after taking its replies, both petitions were accepted, consequently the registered sale deed was cancelled and the execution petition was dismissed. Feeling aggrieved, the petitioner preferred an appeal which was dismissed by the learned appellate court. Having dissatisfied with regard to both the judgments/ orders of learned courts below he filed the

instant civil revision.

Issue: i) What is the meaning of word execution under Section 47CPC and when executing court becomes functus officio?
ii) What is difference between representative and legal representative?

Analysis: i) The word "execution" means to carry out and perform and it derived from the word "execute" which means command. As is evident from the word "determine" the Executing Court possesses jurisdiction to finally dispose of all questions, arising out of execution, discharge or satisfaction of a decree and to grant a relief. An Executing Court becomes functus officio once the decree is fully discharged. The term "discharge or satisfaction" has not been defined, and a flexible and liberal interpretation should be given to these words in keeping with the object behind section 47 CPC, however that words in their context would be limited to the matters arising after the passage of the decree and arising in course of or in connection with the execution of the decree.
ii) The term used 'representative' has a much wider connotation than the term 'legal representative' and means any representative in interest of a party to the suit by assignment etc.

Conclusion: An Executing Court becomes functus officio once the decree is fully discharged.

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44. **Lahore High Court**
Nazir Ahmad v. CCPO, Lahore, etc.
Criminal Misc No. 68909-H of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC7155.pdf

Facts: The petitioner filed instant habeas petition for recovery of his son from unlawful custody of police official in which direction was issued to SHO to produce detenue before court on 08-11-2021. As per police, the alleged detenu was arrested on 06.11.2021 and his physical remand was obtained on 07.11.2021. The SHO and investigating officers were directed to produce the register roznamcha of police station before the Court and the same was produced and examined by court.

Issue: i) Whether the investigation officer has power to get drafted the case diaries from his subordinates?
ii) What are prime considerations for grant of physical remand?

Analysis: i) The investigation officer has no power to get drafted the case diaries from his subordinates. Similarly, it amounts to delegate his power to someone else which is not a mandate of law. In this case the investigation officer concerned has not described any reason due to which he was incapable to write down the case diary himself.
ii) Physical remand of an accused person in a criminal case can only be granted when sufficient incriminating material is available which connect him with the commission of crime. It is prime duty of the learned Magistrate seized with the matter to pass a well-reasoned and speaking order after going through the record

of the case for the grant of physical remand. In this case neither the contention of accused has been mentioned nor any plausible reasoning has been given by magistrate concerned for granting physical remand.

Conclusion: i) The investigation officer has no power to get drafted the case diaries from his subordinates.

ii) Physical remand of an accused person in a criminal case can only be granted when sufficient incriminating material is available.

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45. **Lahore High Court Lahore**
Muhammad Shahzad v The State, etc.
Criminal Appeal no. 642/2017
Irfan Ullah V Muhamad Shahzad and another
Criminal revision no. 380/2017
Mr. Justice Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC7503.pdf

Facts: The appellant was absconder in murder trial and during his abscondance all accused persons were acquitted. Appellant was re-arrested and put to trial. The complainant and two witnesses were dead. The prosecution procured previous statement of complainant and one witness whereas a witness as secondary evidence of one witness (investigating officer) was produced. The appellant was convicted and he challenged his conviction.

Issues: i) How location of fatal firearm injury affects physical activity?

ii) Whether the statement of dead witness (complainant) recorded in earlier trial could be read against accused?

iii) Can copies of previous statement be transposed into trial?

iv) When procedure of “Shahada ala al-Shahadah” can be resorted to?

Analysis: i) The location of fatal fire arm injury and organ involved are important facts to throw light on possibility of physical activity and condition of victim during the duration between injury and death.

ii) Article 154 of Qanun-e-Shahadat Order, 1984 requires that previous statement under Article 46 & 47 would first be proved and then its corroboration would be taken up.

iii) Unlike code of Civil Procedure, 1908, there is no specific provision in Cr. P.C which deals with transposition of statements in subsequent trial; nor any provision exist relating to calling for record of any criminal court for the purpose of inspection and using it as evidence. Order XIII rule 10 of CPC gives power to court to send for either from its own record of any other suit proceedings. This provision of CPC cannot be stretched for inspection of court record by a criminal court in a criminal trial. Though section 94 of Cr. P.C and Article 158 & 161 give power to the criminal court to call for any document yet it does not include court record. In the circumstances, right course would be resort to certified copies of such statements for using as evidence because statements recorded in an earlier trial are termed as public documents as per Article-85 (3) of Qanun-e-Shahadat Order, 1984.

iv) "Shahada ala al-Shahadah" a principle of evidence highlighted under Article 71 of Qanun-e-Shahadat Order 198, by which a witness can appoint two witnesses to depose on his behalf, except in the case of Hudood, is an exception to hearsay evidence and can successfully be used to prove the case in a situation when witnesses could not appear as being dead or for any other reason stated in the proviso under discussion.

Conclusion: i) Condition of victim during the duration between injury and death depends upon location of fatal fire arm injury.

ii) Article 154 of Qanun-e-Shahadat Order, 1984 requires that previous statement under Article 46 & 47 would first be proved and then its corroboration would be taken up.

iii) There is no specific provision in Cr. P.C which deals with transposition of statements in subsequent trial.

iv) "Shahada ala al-Shahadah" is an exception to hearsay evidence.

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46. Lahore High Court
Mehmood Idrees v. Khalid Hussain etc.
W.P. No. 9926 / 2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC7480.pdf

Facts: Co-owner of property instituted a suit for the partition and recovery of mesne profit against the petitioner alleging that parties are co-owner in the suit property and the petitioner has rented out the whole suit property to different persons and receiving rents.

Issue: Whether the court can order for deposit of interim mesne profit under section 7 of the Punjab Partition of Immovable property Act, 2012 even if there is a dispute of title and ownership between the parties as per section 8 of the Act, 2012?

Analysis: Section 7 calls upon the court to determine interim mesne profits pending adjudication of the suit. Section 7 is an interim arrangement whereby the co-owner in possession of immovable property is to be directed to deposit in the court the interim mesne profits pending adjudication of the suit. On the other hand, where there is a dispute as to title or share, the court is to decide such question before proceeding further in terms of Section 8. This implies that the determination of the title or share under Section 8 is to be through a full-fledged trial as the same is to be deemed as a decree under the Act, 2012. Bare perusal of the provision indicates that purpose is to ensure that a person who is deprived of his possession, as well as income being derived from the property forming subject matter of the suit under the Act, 2012 can obtain such compensation by way of approximate rental of the suit property. As interim mesne profits are to be determined at the first date of hearing, the dispute as to title or share amongst the parties may arise in myriad manner variable with the facts of each case all of which may not be conceived and which requires full fledge trial. The stage of the suit at which such dispute as to title or share may arise can vary and differ in each case. Therefore, the legislature

does not seem to have intended to render the operational scope of Section 7 subservient to Section 8 or to ring-fence and put Sections 7 and 8 in a bracket or in other words to make applicability of Section 7 contingent upon Section 8, rather both of them operate independent of each other.

Conclusion: The court may direct the party in possession to deposit interim mesne profit under section 7 of the Punjab Partition of Immovable property Act, 2012 even if there is a dispute of title and ownership between the parties.

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47. **Lahore High Court**
Hameedan Bibi etc. v. Manzoor ul Haq Malik etc.
Civil Revision No.769/2010
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC7489.pdf

Facts: Predecessor-in-interest of respondent instituted a suit for declaration with the prayer to declare the registered sale deed executed in favour of predecessor-in-interest of the petitioner as ineffective, illegal, void, based on fraud and misrepresentation as the vendor had less entitlement in whole joint *khata* than she transferred through the impugned sale deed. Predecessor-in-interest of the petitioner also instituted a suit for possession and through the consolidated judgment, the suit for declaration was decreed whereas that of possession was dismissed and the two separate appeals of petitioner thereof were also dismissed. The petitioner then challenged the concurrent findings of both courts through this civil revision.

Issue: i) Whether the *Chaant* prepared by the *Patwari* / revenue department can be relied upon by the court?

ii) Whether the plea of cancellation of any instrument is prayed under section 39 or section 42 of the Specific Relief Act, 1877?

iii) Whether the concurrent findings of two courts below can be interfered in the exercise of revisional jurisdiction?

Analysis: i) The *Channt* is prepared by a *Halqa Patwari*, who works in one or more *Patwar* circle by maintaining various registers including Register *Daakhil Kharij* (*inteqalaat*), which primarily is the transfer record in a *patwar* circle that archives all land transactions. Said register is record of the total quantity of land a seller owns in a *khata*, the exact area of the land sold by the seller from that *khata* and also the area of land the seller is left with after a transaction takes place in that *khata*. It is on the basis of this Register *Daakhil Kharij* (*inteqalaat*) that a *Chaant* is prepared, as a part of practice, so as to ascertain the exact status of transactions, which a seller made in his entire *khata*. Perusal of the *Chaant* prepared in fact enables the third parties to understand and examine the status of share of a person in a *khata* before dealing with the same and hence, cannot be termed as something in violation of any provision of law.

ii) An instrument can be declared void and its cancellation can be prayed under

Section 39 of the Specific Relief Act, 1877 whereas suit for declaration is filed under Section 42 of the Act, 1877. A suit for cancellation of an instrument by a third party, which is not executant of the instrument, is not maintainable. It has been held that proper remedy in such like case is a suit for declaration by the person to declare his document or possession to be lawful.

iii) As a general, the High Court has avoided interference into concurrent findings of courts below in the exercise of revisional jurisdiction, but this is not a legally impervious position rather concurrent findings can be interfered and pierced through if they are found to be perverse and result of non-reading and/or misreading.

Conclusion: i) The *Chaant* prepared by the *Patwari* / revenue department is not in violation of any provision of law and it can be relied upon by the court.

ii) The plea of cancellation of any instrument can be prayed by the executant under section 39 of the Specific Relief Act, 1877. Other person may file suit for declaration under section 42 of the Act, 1877 to declare his document or possession to be lawful.

iii) The concurrent findings of two courts below can be interfered in the exercise of revisional jurisdiction if they are found to be perverse and result of non-reading and/or misreading.

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48. **Lahore High Court Lahore**
Nadeem Akhtar v. The State & another
Crl. Appeal No.94/2017
Mr. Justice Ali Zia Bajwa, Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC6747.pdf

Facts: The appellant assailed his conviction in offence under Section 9(c) of the Control of Narcotic Substances Act, 1997.

Issue: Whether the prosecution is under bounden duty to establish every limb of safe custody of the recovered contraband?

Analysis: The law on the subject is very much settled that the prosecution is under bounden duty to establish every limb of safe custody of the recovered contraband and in case it is not established beyond doubt, the same cannot be used against the accused.

Conclusion: Where chain of safe custody and transmission for forensic analysis is compromised, the benefit of doubt is extended to the accused.

49. **Lahore High Court**
Khan Muhammad v. Muhammad Aslam
R.F.A No. 64 / 2018
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC7414.pdf

Facts: The suit for recovery upon execution of promissory note was decreed by trial court.

Issue: i) Whether upon signatures by the marginal witnesses, the promissory note stood converted into a Bond and summary proceedings under Order XXXVII of the Code of Civil Procedure, 1908 are not attracted to the case?
ii) Whether any presumption is attached to promissory note?

Analysis: i). Perusal of section 4 of Negotiable Instruments Act, 1881 (NIA) reflects that promissory note is an instrument having following ingredients: (i) Must be in writing, and (ii) contains undertaking of payment of money, and (iii) undertaking must be unconditional, and (iv) sum should be determined, and (v) such instrument must be signed by the maker. Section 4 and 13 of NIA do not provide for any requirement of attestation by witnesses or attestation if made by witnesses having some consequences and bearing on the nature of the instrument. Not necessitating attestation by witness on the promissory note simply has effect that requirement of Article 17(2)(a) of the Qanun-e-Shahadat Order, 1984, is not mandatory to be fulfilled. It does not mean that if attestation is made, it automatically stands converted into a Bond, which by its own nature and characteristics and purpose is distinct from promissory note. The characteristics of bonds include being conditional, not payable to order or to bearer etc.
ii) Section 118 of NIC 1881 clearly provides that until contrary is proved it is to be presumed that the holder of the instrument is a holder in due course and the same is drawn for consideration. Once the instrument is exhibited and brought on record as well as evidence is led in the support thereof, the forgery or fraud with respect to the instrument or want of consideration or challenge that holder is not holder in due course is on the person who is challenging the holder's rights.

Conclusion: i) Upon signatures by the marginal witnesses, the promissory note does not stand converted into a Bond and summary proceedings under Order XXXVII of the Code of Civil Procedure, 1908 are not attracted to the case
ii) The presumption is that the holder of the instrument is a holder in due course and the same is drawn for consideration.

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50. **Lahore High Court**
Muhammad Abdul Rehman Versus Additional District Judge and 2 Others
W.P.No. 16168 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC7553.pdf

Facts: The suit for recovery of dower was partially decreed. During execution proceedings, the petitioner filed objection petition, pleading that payment has already been paid out of the Court, for the satisfaction of the decree and the matter has been settled. Decree holder contested the said objection while denying any payment for the satisfaction of the decree as well as any settlement out of the Court. This objection petition was rejected.

Issue: i) How plea of out of court payment can be proved before court?
ii) Whether affidavit of stranger to lis regarding out of court payment can be taken into consideration for deciding the question of satisfaction of decree out of court?

Analysis: i) Combined reading of Order XXI Rule 1 & 2 does not leave a lurking doubt that plea of out of Court payment, if not supported by proof of payment through banking instrument, postal money-order or clearly evidenced in writing carrying signatures of the decree-holder or his authorised agent, the executing Court cannot accept such an out of Court payment, unless it is confirmed by the decree-holder to the executing Court. Order XXI Rule 1 and 2 while requiring a decree to be satisfied before the Court or the payment through irrefutable instrument or supported by unquestionable evidence, contains clear wisdom to avoid another round of litigation with respect to the satisfaction of decree and multiplicity of litigation.
ii) The affidavits are given by the strangers to the lis or the decree in question. Also the receipt does not contain the signatures of the decree-holder and it is purportedly issued by the brother of the decree-holder, without any proof of the fact that he was recognized and authorised agent of the decree-holder. .. Such documents cannot satisfy the requirements laid down by Order XXI Rule 1 and 2 of the Code.

Conclusion: i) Plea of out of court payment can be proved before court only in accordance with the provisions of Order XXI Rule 1 & 2 and not otherwise.
ii) The affidavit of stranger to lis regarding out of court payment cannot be taken into consideration for deciding the question of satisfaction of decree out of court.

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51. **Lahore High Court**
Muhammad Aslam v. Mst. Tahira Parveen
First Appeal against Order No. 29 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7515.pdf

Facts: The Respondent instituted a suit for possession with partition of suit property, which was partially decreed against which both parties preferred their separate appeals before a District Judge. During the pendency of such appeals, the appellant filed two applications, one for production of additional evidence and the other for seeking amendment in the written statement but a learned Addl. District Judge dismissed the appeal filed by the appellant without deciding the applications while partially allowed the appeal filed by the respondent. The appellant preferred Civil Revision and the matter was remanded to the 1st Appellate Court for its decision on merit. The Appellate Court again dismissed the application for production of additional evidence, which necessitated the appellant to file an appeal against the said order.

Issue: Whether application for additional evidence can be filed before appellate court U/O XLI, Rule 27 CPC, at belated stage, that too, without disclosing sufficient grounds?

Analysis: Inadvertence of a competing party, ignorance of law, second opportunity to adduce evidence and negligence of a competing party are not recognized and acknowledged grounds for allowing an application for additional evidence. The requirement of additional evidence must be the requirement of the court and not of a party. Since the appellant has not mentioned why these documents are essential; since the appellant has not mentioned as to why these were not sought to be produced earlier and since the appellant has not cited any reason why these were not relied upon or produced at the time of trial, and application does not at all reveal why production of these documents is necessary now. The application filed by the appellant mentions no ground whatsoever, alludes to no reason whatsoever and likewise provides no other substantial cause for being allowed to produce such documents at this belated stage.

Conclusion: The facility of allowing additional evidence to be brought on record is not meant to allow a litigant to fill up a lacuna in his case or to make good his omission in the trial especially and particularly when no ground whatsoever is taken in the application filed for such a purpose.

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52. **Lahore High Court**
Shahid Akhtar v. Muhammad Azam Abbas
Regular First Appeal No. 24 of 2017
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7427.pdf

Facts: The appellant filed the suit U/O XXXVII CPC 1908, for the recovery of money lent to respondent through cheque. The District Court, after appraising evidence, dismissed the suit.

Issue: Whether presumption under Section 118 of the Negotiable Instruments Act 1881 is not a conclusive presumption rather it is rebuttable in nature and initially burden of proving that the Negotiable Instrument is executed against consideration is on the plaintiff?

Analysis: The claim of the appellant is so outrageous in its defiance of logic that this court would ever draw the conclusion that the appellant loaned an amount of Rs.15,00,000/- to the respondent and which appellant neither maintained a bank account, was an electrician by profession, had no other source of income, had no property or landed property in his name, whose main witness had resiled, whose evidence was full of contradictions and whose other witness did not give trustworthy evidence. It may also be added here that the presumption attached with Negotiable Instruments contained under section 118 of the Negotiable Instruments Act 1881, is always rebuttable if the plaintiff fails to produce trustworthy evidence as was held in "Salar Abdur Rauf v. Mst. Barkat Bibi" (1973 SCMR 332).

Conclusion: When a plaintiff fails to prove his source and capacity to advance a loan, the presumption contained in Article 118 stands rebutted since the court has to act on the basis of preponderance of evidence.

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53. **Lahore High Court**
Mst. Haseena Bibi v. Civil Judge Ist Class Vehari and another.
Writ Petition No. 18067 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7404.pdf

Facts: Through this constitutional petition, the petitioner/decree holder has challenged an order passed by executing court wherein it framed issues while deciding an objection petition filed by respondent/judgment debtor in an execution petition in consequence of judgment/decree of Family Court.

Issue: Whether an executing court can take benefit of the provisions of the Code of Civil Procedure, 1908 while executing a judgment and decree passed in terms of the family law jurisdiction.

Analysis: Family Court is a quasi-judicial forum which can organize and has been implicitly authorized to adopt and pursue any procedure which is not specifically barred or prohibited. As long as there is no conflict between the provisions of CPC, 1908, and those of the Family Courts Act, 1964, such provisions and procedure can be employed and adopted. A Family Court can, therefore, proceed on the premise that every procedure is permissible unless a clear prohibition is forthcoming. The impugned order has been passed so as to address and resolve the issue existing between the parties and that there is no other way for the executing court to determine questions pertaining to the execution of judgment and decree in question; that in the absence of any procedure envisaged by the Family Court Act itself, wisdom and nuances of procedure may be borrowed by the Family Court from the CPC, 1908 and that section 47 CPC invests the executing court with the jurisdiction and power to determine all questions pertaining to a decree.

Conclusion: Family Court is well within its jurisdiction to borrow procedure from available avenues stipulated by statute and there is no embargo on a Family Court to employ provisions contained in Order XXI of Code of Civil Procedure, 1908, which itself acknowledges an executing court to frame issues, record evidence and adjudicate objection petitions.

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54. **Lahore High Court**
Times Institute (Al-Syal Education Trust) V FOP etc.
Writ Petition No. 19914 of 2019
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7560.pdf

Facts: Different petitioners filed 21 constitutional petitions to challenge decisions of the Executive Board of National Highway Authority taken in its meeting and consequently issued demand notices on various dates.

Issues: Whether the court can take away the authority and power of determination of public body through medium of judicial review?

Analysis: Where the existence or determination of a fact is left to discretion of a public body and such determination involves analyzing the obvious as also the debatable, it is the duty of the court to leave such a decision to the public body to whom Parliament has entrusted the decision making power save in a case where it is obvious that the public body is acting perversely. Therefore, while greater latitude conferred by Parliament must be respected, it is unimaginable to allow it to be ousted from the purview of the judicial review. It must be remembered that in case of greater statutory latitude, a higher threshold of judicial review based on doctrines of restraint, deference, mutual respect and the forbidden substitutionary approach is adopted and employed In considering whether a public body has abused its powers, the courts must not abuse theirs. The aim of judicial review is to uphold and implement the intent of the Parliament as contained in a statute.

Conclusion: Where determination is entrusted to the primary decision maker, the court through medium of judicial review cannot take away from the Authority the power and discretion properly vested in it by law and substitute its own opinion.

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55. **Lahore High Court**
Riaz Ahmad v. Maula Bakhsh.
C.R. No.891-D of 2011
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7803.pdf

Fact: The petitioner assailed the dismissal of his suit for pre-emption.

Issued: i) Whether it is necessary to fulfill the statutory requirements pertaining to the performance of Talbs in terms of Section 13 of the Punjab Preemption Act, 1991?
ii) How Talb-e-Muwathibat is proved?

Analysis: It may be straightaway observed that for a suit of preemption to be successful the Talbs have to be proved in accordance with law and even if one of the Talbs is not proved in accordance with law then the entire foundational basis of the right to assert preemption stands defeated.
ii) In order to prove Talb-e-Muwathibat, besides the date, time and place of performance of Talb-e-Muwathibat the preemptor also has to prove beyond doubt that the Talb-e-Muwathibat had been performed in a Majlis/meeting…. 8. It may also be added here that in order to prove Talb-e-Muwathibat it is necessary that two independent witnesses in addition to an informer must be produced

Conclusion: i) It is necessary to fulfill the statutory requirements pertaining to the performance of Talbs in terms of Section 13 of the Punjab Preemption Act, 1991.
ii) The date, time and place of performance of Talb-e-Muwathibat is to be proved.

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56. **Supreme Court of UK**
R (on the application of Majera (formerly SM (Rwanda)) v. Secretary of State for the Home Department
On appeal from: [2018] EWCA Civ 2838
<u>LORD REED</u>, Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose
https://www.supremecourt.uk/cases/uksc-2020-0008.html

Facts: In this case SM, a Rwandan national, is challenging the Court of Appeal's decision that the purported grant of bail by the Tribunal was void from the outset. SM served a prison sentence for robbery between 17 December 2005 and 30 March 2015. The Parole Board recommended his release on licence and he was moved into immigration detention. On 30 July 2015 First-tire Tribunal Judge Narayan decided SM could be released on immigration bail. Although no one notice this at the time, Judge Narayan's order did not comply with the Immigration Act 1971 because it did not require SM to surrender to an

immigration officer at a specified time and place of at all. The Home Secretary imposed restrictions on SM. On a judicial review by SM, Judge Peter Lane held that SM remained on bail granted by Judge Narayan and therefore the Home Secretary's restrictions (save for the restriction prohibiting SM from entering employment paid or unpaid) had no legal effect. On appeal, however, the Court of Appeal decided the defects in Judge Narayan's order made it unlawful from the outset, so SM was never validly bailed and the Home Secretary was free to impose her own restrictions.

Issue: Whether an unlawful act or decision can be described as void independently of, or prior to, the court's intervention?

Analysis: If an unlawful administrative act or decision is not challenged before a court of competent jurisdiction, or if permission to bring an application for judicial review is refused, the act or decision will remain in effect. Equally, even if an unlawful act or decision is challenged before a court of competent jurisdiction, the court may decline to grant relief in the exercise of its discretion, or for a reason unrelated to the validity of the act or decision, such as a lack of standing or an ouster clause. In that event, the act or decision will again remain in effect. An unlawful act or decision cannot therefore be described as void independently of, or prior to, the court's intervention. Even where a court has decided that an act or decision was legally defective, that does not necessarily imply that it must be held to have had no legal effect. A court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation).

Conclusion: An unlawful act or decision cannot therefore be described as void independently of, or prior to, the court's intervention

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LATEST LEGISLATION/AMENDMENTS

https://na.gov.pk/en/acts-tenure.php

1. Section 94 & Section 103 of "The Elections Act 2017" is amended by "The Election (Second Amendment) (LV of 2021)"
2. "The International Court of Justice (Review and Re-consideration) Act, 2021" is enacted to provide for the right of review and reconsideration to foreign nationals, in relation to orders and judgments of military courts
3. "The Islamabad Capital Territory Charities Registration, Regulation and Facilitation Act, 2021 (XXV of 2021)" is enacted to regulate the registration, regulation and facilitation of charities in the Islamabad Capital Territory
4. Sections 5,9, 13, 24 & 28 of "The SBP Banking Services Corporation Ordinance, 2001 are amended through "The SBP Banking Service Corporation (Amendment) Bill, 2021 (XXVI of 2021)".
5. "The National College of Arts Institute (XXVIII of 2021)" is enacted to reconstitute National College of Arts.

6. Section 7 of "The Muslim Family Laws Ordinance, l96l (VIll of 1961)" is amended through "The Muslim Family Laws (Amendment) 2021 (XXVIII of 2021)".
7. Section 7 of Muslim Family Laws Ordinance, l96l (VIll of 1961) is amended through "The Muslim Family Laws (Amendment) 2021 (XXIX of 2021)
8. "The Anti-Rape (investigation and Trial) Act (XXX of 2021) is enacted to ensure expeditious redressal of rape and sexual abuse crimes
9. "The Hyderabad Institute for Technology and Management Sciences Act 2021" is enacted to provide for the establishment of institute of Hyderabad institute for Technology and Management Sciences
10. "The Corporate Restructuring Companies Act. 2016" is amended by "The Corporate Restructuring Companies (Amendment (XXXII of 2021) wherein Section 4, 5, 6, 10 are amended while Section 6-A, 6-B, 7-A, 7-B, 8-A, 8-B & 19 are inserted.
11. "The Financial institutions (Secured Transactions) Act, 2016 (XXXI of 2016)" is amended by "The Financial Institutions (Secured Transactions) (Amendment((XXXIII of 2021) wherein Sections 1, 2, 5, 6,8,9,10,14,15,18,19,20,21,22,23,24,25, 26, 28, 30, 31, 32, 33, 34, 38, 42, 46, 47, 48, 49, 50, 52-A, 55, 59, 61, 63, 68, 70, 73 are amended. Section 66 & 72 are substituted. Section 55-A, 56-A, 56-B, 65-A, 65-B are inserted.
12. "The Federal Public Service Commission (Validation of Rules) Act 202l" (CCCIV of 2021) is enacted to validate the rules for regulating the competitive examination conducted by the Federal Public Service Commission in the year,2016 and 2017
13. "The University of Islamabad Act 2021 (XXXV of 2021)" is enacted to provide for establishment of the University of Islamabad, Islamabad and for the matters connected therewith and ancillary thereto.
14. Section 3 & 4 of "The loans for Agricultural, Commercial and Industrial Purposes Act, l971 (XLll of 1973) is amended by the "The loans for Agricultural, Commercial and Industrial Purposes (Amendment) (XXXVI of 2021)"
15. "The Companies Act, 2017 XIX of 20l7)" is amended through "The Companies (Amendment) (XXXVII of 2021). Sections 2, 6, 17, 18, 23, 31, 37, 62, 83, 83 -A, 86, 88, 137, 140, 179, 201, 203, 227, 287, 337, 435 are amended. Section 23 & 234 are omitted. Section 458-A is inserted.
16. Section 21 is added in "The National Vocational and Technical Training Commission Act, 2011 (XV of 2011) through amendment "The National Vocational and Technical Training Commission (Amendment) (XXXVIII of 2021).
17. Sections 2, 4, 7, 8, 10, 12, 13, 16, 18, 19 of "The Pakistan Academy of Letters Act 2013 (lV of 2013) are amended through "The Pakistan Academy of Letters (Amendment) (XXXIX of 2021)"
18. Section 2, 6, 7,8,10,11,12,13,14,25,26,30,31,32,51,56,57,63,69,70 of "The Port Qasim Authority Act, 1973 (XLIII of 1973) are amended through "The Port Qasim Authority (Amendment) Act, 2021"
19. Sections 2, 13, 14, 15, 17, 18, 19, 20, 29, 30, 32, 38 & 40 of "The Pakistan National Shipping Corporation Ordinance, 1979 (XX of 1979) are amended through "The Pakistan National Shipping Corporation (Amendment) Act, 2021".

20. Sections 2,6,7,8,13,14,20,25,26,29,30,31,32,51,52,53,60,66,70,71,72,73,75,77 of "The Gwadar Port Authority Ordinance, 2002 (LXXVII of 2002) are amended through "The Gwadar Port Authority (Amendment) Act, 2021"

21. Sections 3,4,5,15,17 & 19 of "The Maritime Security Agency Act, 1994 (X of 1994)" are amended through "The Maritime Security Agency (Amendment) Act, 2021".

22. "The Privatization Commission Ordinance, 2000 (LII of 2000) is amended through "The Privatization Commission (Amendment) Act, 2021". Section 7 is amended while section 19 is substituted.

23. "The COVID-19 (Prevention of Hoarding) Act, 2021" is enacted to provide for the prevention of hoarding in respect of scheduled articles in an emergent situation resulting from the outbreak of the Corona virus pandemic (COVID-19) and for matters connected therewith and ancillary thereto.

24. "The Pakistan Penal Code, 1860 (Act XLV of 1860)" and "The Code of Criminal Procedure, 1898" are amended through "The Criminal Laws (Amendment Act 2021). Section 375, 376 of PPC are amended while section 375-A is inserted. Similar changes are made in Schedule II of Cr.P.C.

25. "The Islamabad Rent Restriction Ordinance, 2001 (IV of 2001) is amended through "the Islamabad Rent Restriction (Amendment) Act, 2021". Section 2, 5, 8, 21, 23 are amended. Section 10 & 16-A are substituted.

26. "The Al-Karam International Institute Act, 2021" is enacted to provide for the establishment of the Al-Karam International institute in the private sector for promotion of special studies and for matters ancillary thereto.

27. "The Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021" is enacted to make provisions for the protection of children against corporal punishment by any person, at work place, in all types of educational institutions including formal, non-formal, and religious both public and private, in child care institutions including foster care, rehabilitation centers and any other alternative care settings both public and private, and in the Juvenile Justice System.

28. "The Islamabad Capital Territory Food Safety Act 2021" is enacted to protect public health, to provide for the safety and standards of food, to establish the Islamabad Food Authority and for other connected matters:

29. "The Unani, Ayurvedic and Homoeopathic Practitioners (Amendment) Act 2021 is enacted to bring meaningful and significant amendment in the Unani Ayurvedic and Homoeopathic Practitioners Act, 1965.

30. Section 2, 5, 5B, 5C of "The Prevention Of Corruption Act. 1947 are amended through "The Prevention of Corruption (Amendment) Act, 2021."

31. Section 112AA is inserted in "The Provincial Motor vehicles Ordinance, 1965" Through "The Provincial Motor Vehicles (Amendment) Act 2021"

32. "The Protection of Journalists and Media Professionals Act, 2021" is enacted ta promote. protect and effectively ensure the independence, impartiality, safety and freedom of expression of journalist and media professionals.

33. Sections 3, 5 of "The Regulation of Generation, Transmission and Distribution of Electric Power Act, I 997" are amended through "The Regulation of Generation, Transmission and Distribution of Electric Power (Second Amendment) Act 2021".

34. Section 8 of "The National Accountability Ordinance, 1999" is amended through "The National Accountability (Amendment) Act, 2021".

35. Section 6, 11 of "The Higher Education Commission Ordinance,2002" is amended through "The Higher Education Commission (Amendment) Act 2021 (XXI of 2021)"

36. Section 2, 6 & 3 of "The Higher Education Commission Ordinance,2002" are amended through "The Higher Education Commission (Second Amendment) Act 2021 (XXII of 2021)"

LIST OF ARTICLES

1. **COLUMBIA LAW REVIEW**

https://columbialawreview.org/content/the-goals-of-class-actions/

THE GOALS OF CLASS ACTIONS by Andrew Faisman

Class actions for monetary relief have long been the subject of intense legal and political debate. The stakes are now higher than ever. Contractual agreements requiring arbitration are proliferating, limiting the availability of class actions as a vehicle for collective redress. In Congress, legislative proposals related to class actions are mired in partisan division. Democrats would roll back mandatory arbitration agreements while Republicans would restrict class actions further. This Note explains that many of the battles over class actions for monetary relief can be understood as disagreements over what goals they are supposed to serve. It examines two broad justifications for class actions: efficiency and representation. It then offers a taxonomy of the goals of class actions. The efficiency justification is associated with the goals of compensation and monetary deterrence; the representation justification is associated with the goals of providing access to justice and shaping laws and norms. An analysis of recent legislative proposals demonstrates that congressional Republicans prioritize the goal of compensation while congressional Democrats prioritize both representational goals.

2. **STANFORD LAW REVIEW**

https://www.stanfordlawreview.org/print/article/policing-under-disability-law/

POLICING UNDER DISABILITY LAW By Jamelia N. Morgan

This Article centers disability theory as a lens for understanding the problems of policing and police violence as they impact disabled people. In doing so, the Article examines how federal disability law addresses these ongoing problems. Disabled plaintiffs have alleged disability discrimination and challenged policing and police violence under both Title II of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973, another federal disability law and the precursor to the ADA. The Supreme Court has yet to decide whether Title II of the ADA applies to arrests, and federal appellate courts are split on whether and to what extent Title II's antidiscrimination provisions apply to street encounters and arrests. Although the Court granted certiorari to a case presenting the question, City & County of San Francisco v. Sheehan, it subsequently dismissed that question as improvidently granted. There is no telling when the question will reach the Supreme Court again, but before it does, it is important to develop a

theory not just of liability but also of disability under Title II that is consistent with the text, history, and animating goals of the ADA.

3. **HAVARD LAW REVIEW**
https://harvardlawreview.org/2021/12/the-incoherence-of-prison-law/
THE INCOHERENCE OF PRISON LAW by Emma Kaufman & Justin Driver

In recent years, legal scholars have advanced powerful critiques of mass incarceration. Academics have indicted America's prison system for entrenching racism and exacerbating economic inequality. Scholars have said much less about the law that governs penal institutions. Yet prisons are filled with law, and prison doctrine is in a state of disarray.
This Article centers prison law in debates about the failures of American criminal justice. Bringing together disparate lines of doctrine, prison memoirs, and historical sources, we trace prison law's emergence as a discrete field — a subspeciality of constitutional law and a neglected part of the discipline called criminal procedure. We then offer a panoramic critique of the field, arguing that prison law is predicated on myths about the nature of prison life, the content of prisoners' rights, and the purpose of penal institutions. To explore this problem, we focus on four concepts that shape constitutional prison cases: violence, literacy, privacy, and rehabilitation. We show how these concepts shift across lines of cases in ways that prevent prison law from holding together as a defensible body of thought.

4. **HAVARD LAW REVIEW**
https://harvardlawreview.org/2021/12/structural-deregulation/
STRUCTURAL DEREGULATION by Jody Freeman & Sharon Jacobs
Modern critics of the administrative state portray agencies as omnipotent behemoths, invested with vast delegated powers and largely unaccountable to the political branches of government. This picture, we argue, understates agency vulnerability to an increasingly powerful presidency. One source of presidential control over agencies in particular has been overlooked: the systematic undermining of an agency's ability to execute its statutory mandate. This strategy, which we call "structural deregulation," is a dangerous and underappreciated aspect of what then-Professor, now-Justice Elena Kagan termed "presidential administration."

5. **HUMAN RIGHTS LAW REVIEW (OXFORD ACADEMIC)**
https://academic.oup.com/hrlr/advance article/doi/10.1093/hrlr/ngab027/6457966?searchresult=1
INTERPRETING THE RIGHT TO INTERPRETATION UNDER ARTICLE 6(3)(E) ECHR: A CAUTIOUS EVOLUTION IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS? By Nikos Vogiatzis

This article explores how the European Court of Human Rights has interpreted the right to interpretation under Article 6(3)(e) ECHR—a topic which, despite its significance for the rule of law and access to justice, has received, to date, very

limited scholarly attention. The key finding is that we are witnessing a 'cautious evolution': the Court has progressively—yet simultaneously cautiously—developed the standards and guarantees of this right, which is one of the rights of defence under Article 6(3) ECHR and a requirement of the fair trial. The analysis focuses, in particular, on (i) how general interpretative techniques that have been developed by the Strasbourg Court were applied by the Court in its jurisprudence concerning the said provision; (ii) on the interplay between the overall fairness of the trial and Article 6(3)(e) ECHR; and (iii) on Article 6(3)(e) ECHR and the relationship between legal assistance/legal aid and the right to interpretation. In addition, the article identifies possible areas of further development of this right.

6. COURTING THE LAW

https://courtingthelaw.com/2021/11/03/commentary/pakistani-law-and-online-marketplaces-an-enigma/

PAKISTANI LAW AND ONLINE MARKETPLACES – AN ENIGMA by Zealaf Shahzad

The current gaps and flawed nature of the existing laws continue to be ignored in Pakistan. As a result, any company seeking to provide e-commerce software or, more specifically, establish an online marketplace shall be subject to the payment systems law and licensing requirements. Moreover, the enforceability of the PS&EFT Act and PSO/PSP Rules remains questionable as various leading players in the e-commerce and digital market of Pakistan continue to operate without licensing. In order for the legislative and regulatory framework to be potent, it is pertinent for the State Bank of Pakistan to address the perplexed nature of the payment systems law. Until this is achieved, the disparity in licensing and operations of the online marketplace sector shall remain disordered and hinder the growth of e-commerce in Pakistan. It remains to be seen whether the SBP shall take heed in this regard.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-12-2021 to 31-12-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department, Peshawar and another v. Bacha Alam Khan and another
Civil Petition No.132-P of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._132_p_2021.pdf

Facts: Through the civil petition, judgment of High Court was challenged whereby Writ Petition filed by the respondent was allowed with the directions to consider his appointment on vacant post as recommended by KPK Service Commission despite of the fact that the respondent did not have second division in matriculation as required under the advertisement.

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Issue: Whether KPK Public Service Commission was competent to recommend a candidate who did not fulfill basic requirement of second division in matriculation but otherwise had higher qualifications more than what is prescribed under the advertisement?

Analysis: Though the eligibility criteria mentioned in Regulation 22 of the Punjab Public Service Commission Regulations 2000 is pari materia to some extent with Regulation 11 of KPK, Public Service Commission Regulations 2017 but the condition “No relaxation in this regard shall be allowed” is nonexistent and lacking in the KPK Regulations 2017. Further in the Punjab Public Service Regulation, there is also no provision that candidates who possessed qualification higher than the prescribed qualification in the relevant field of studies shall also be considered eligible. In view of clear provision incorporated in Regulations 19 (f) (ii), it is within the dominion of KPK Public Service Commission to forward the recommendations of candidate who possessed qualification higher than the prescribed qualification and in exercise of such powers, the name of respondent No. 1 was rightly recommended for consideration.

Conclusion: As per Regulations 19 (f) (ii), of KPK Public Service Commission Regulations 2-17, it is within the dominion of KPK Public Service Commission to forward the recommendations of candidate who possessed qualification higher than the prescribed qualification.

2. **Supreme Court of Pakistan**
The Chairman Agriculture Policy Institute, Ministry of National Food Security & Research, Government of Pakistan, Islamabad and another v. Zulqarnain Ali
Civil Petition No.2892 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2892_2020.pdf

Facts: Through the civil petition, judgment of Federal Service Tribunal was assailed whereby respondent was re-instated in service with back-benefits.

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Issue: Whether a daily wager employee of government can be terminated through verbal order?

Analysis: There is no provision under the Labour Laws or the Service Laws permitting the employer to terminate the services verbally without a written order containing the explicit reasons or cause of termination even in the case of termination simpliciter and for disciplinary proceedings on account of misconduct, obviously separate procedure is laid down which accentuates the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after personal hearing, appropriate action may be taken in accordance with the law. The termination of service by a verbal order is alien to the labour and service laws of this country and also against the principle of good governance which is a process of gauging whether the Government, its departments/institutions and authorities are conducting their affairs lawfully and performing their duties honestly, conscientiously and transparently including their process of decision making in accordance with rules and regulations.

Conclusion: The verbal termination order is illegal and against the principles of natural justice. Even in the case of contractual or temporary engagements, the employees should be issued appointment letters in writing with the terms and conditions of engagement and in the case of termination, explicit reasons of termination should be assigned.

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3. **Supreme Court of Pakistan**
Capital Development Authority through its Chairman, Islamabad and others v. Shabir Hussain and others
Civil Petition No.3455 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3455_2020.pdf

Facts: The respondents were regular employees of CDA and on recommendation of DPC, they were promoted to the post of Assistant Director in Engineering Cadre on acting charge and then subsequently on regular basis but after some time, the

order of promotion was withdrawn on the ground that the posts were to be filled through direct recruitment after written test and interviews and not through promotion. The writ of respondents was allowed by the High Court but the same was assailed through the civil petition.

Issue: i) Whether promotion to the next grade in accordance with recommendations of DPC can be subsequently cancelled/withdrawn by the competent authority?
ii) Whether withdrawal of promotion orders under the grab of future amendments of rules/regulations is justified?

Analysis: Once the recommendations of DPC were acted upon and respondents were promoted, a vested right was created in their favour which could not have withdrawn in such a inconsiderate and casual manner… The doctrine of vested right is quite applicable which conserves that once a right is lawfully created, its existence should be recognized and acknowledged, therefore the benefit of promotions earned on DPC recommendations have become an undeniable and incontrovertible right of the respondents which could not be cancelled or withdrawn.
ii) The existing Rules or Regulation if amended and notified by CDA will obviously come into field prospectively and not retrospectively. No such ground or reason was assigned in the withdrawal/cancellation order, albeit, the alleged intention or idea to amend the rules or regulation could not justify to undo or withdraw the promotion orders of the respondents under the garb of future amendments of rules/regulation which are non est. Even the rules are amended, the CDA would not be able to upset or disturb the past and closed transaction.

Conclusion: i) The promotion to the next grade in accordance with recommendations of DPC cannot be subsequently cancelled/withdrawn by the competent authority.
ii) The withdrawal of promotion orders cannot be made under the grab of future amendments of rules/regulations.

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4. **Supreme Court of Pakistan**
Uzma Manzoor Hameed-ur-Rehman Vice Chancellor Khushal Khan Khattak University, Karak and another v. Vice Chancellor Khushal Khan Khattak University, Karak and others
Civil Petition No.2913, 3224 & 3628 of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2913_2021.pdf

Facts: The University advertised some positions, and against some of the vacancies no precondition of past experience was mentioned as requirement in the advertisement, however, in short-listing the candidate, one petitioner was awarded 10 additional marks for past experience, which was challenged before the High Court by another petitioner who does not have any such past experience. The High Court allowed the petition and appointment of first petitioner was declared

null and void. The order was challenged by the university and the said aggrieved petitioner again before the High Court, who remanded the matter to the University for deciding it afresh. The same was assailed through civil petition.

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Issue: Whether it is justified to award extra marks for past experience in favor of a candidate against a post for which no precondition of past experience is mentioned in the advertisement?

Analysis: Obviously before finalizing a fit candidate by the competent authority or Selection Board, the testimonials and antecedents of each candidate shall be considered in accordance with the prescribed benchmarks but in order to maintain level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness should have been considered and adjudged in accordance with the qualification notified to apply in the advertisement and to extend any preference or favourable treatment, the settled terms and conditions cannot be disregarded. The selection process should be within the specified spectrum and attributes and due to breach of this protocol, the doctrine of legitimate expectation will come into sight for rescuing and ventilating the sufferings of the candidates who were under the bona fide belief that their applications for appointment will be considered without experience marks being not the precondition and if any additional marks are added or considered beyond the conditions to apply or contrary to the aforesaid Schedule that would be highly discriminatory to those candidates who applied as fresh candidates after completing their required education with the hope of securing jobs.

Conclusion: Though under the marking formula, the benchmark of 10 marks were dedicated to consider against the past experience of candidate which is not an offence but it would obviously apply only for those positions for which the experience was required as condition precedent to apply.

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5. **Supreme Court of Pakistan**
Aam Loeg Itehad & another v. The Election Commission of Pakistan and others
Civil Petition No.479-K of 2020
Mr. Justice Maqbool Baqar, Mr. Justice Sajjad Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._479_k_2020.pdf

Facts: The petitioner challenged in writ petition before High Court that the retired Judges could not have been appointed as members of the Election Commission on account of the bar contained in clause (2) of Article 207. The High Court declared that Commission is quasi-Judicial body therefore bar under Article 207 is not applicable and retired judges can be appointed so.

Issue: i) Whether the office of a member of the Election Commission is of a quasi-judicial nature?

ii) Why was an exception created in Article 207(2) in favour of the office of the CEC only and not for a member of the Commission?

Analysis: i) The nature of the office of a member of the Commission (or the CEC for that matter) must be determined by looking at the constitutional position… The conferment of the jurisdiction on the Commission cannot be part, or even indicative, of the true nature of the office of a member. It was, and is, simply an additional power, latterly conferred and ancillary to the essence of the office… This is one of the many reasons why, as noted above, the jurisdiction conferred by s. 9 is actually quite complex in nature, not easily resolvable by resort to the "normal" division into the three well known categories, which ordinarily work well enough.) We need not resolve the tension here, nor iron out the apparent contradiction. It suffices to note that clearly the legislature itself was, and remained, acutely aware that the jurisdiction could not be directly conferred on the Commission per se, i.e., acting as such. It could only be given under cover of a legal fiction requiring, for purposes of the jurisdiction, for the Commission to be regarded as that which it patently is not, i.e., an Election Tribunal. But if this is so (and the very constitutionality of a provision such as s. 9 can be regarded as being open to question) then one point is clear: it is not of the essence of the office of a member and does not, and cannot, touch upon the core or inherent nature of that office. …. that there is nothing in the would establish that the nature of the office of a member is quasi judicial.

ii) The present case is an example of the clearest of cases where the intent behind the constitutional amendments is so obvious, and so patently requires appropriate action so as not to defeat the manifest objective thereof, that the constitutional rule of "reading in" can and ought to be invoked in the narrow and limited sense. Accordingly, we hold that from the 22nd Amendment (2016) onwards, the words "or member of the Election Commission" are to be read in into clause (2) of Article 207 after the term "Chief Election Commissioner" so the two-year bar contained in Article 207(2) is not applicable to the member of Election Commission.

Conclusion: i) The office of member of Election Commission is not a quasi-judicial office.

ii) Two-year bar contained in Article 207(2) is not applicable to the member of Election Commission.

6. **Supreme Court of Pakistan**
Abdul Majid Afridi v. The State and another
Criminal Petition No.632 of 2019
Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._632_2021.pdf

Facts: The petitioner through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, sought cancellation of bail granted to the respondent by the Peshawar High Court.

Issue: i) Whether a person can directly approach to the High Court for pre-arrest bail without exhausting the remedy of approaching the court of first instance?
ii) Whether statement of one accused can be used against the other accused?
iii) What are the ingredients essential to dub any person as conspirator?

Analysis: i) There is no denial to the fact that the jurisdiction of Sessions Court and the High Court is concurrent in nature and the learned High court while adjudicating the matter has given cogent reasons especially when it is admitted that one of the deceased was himself a District & Sessions Judge. Even otherwise, the respondent has not availed one remedy, which was available to him while agitating his grievance before the High Court; therefore, he lost one opportunity causing no prejudice to complainant party.
ii) The statement of one of the assailants recorded under Section 164 Cr.P.C in all fairness is a statement of co-accused, hence, no deviation can be made against the established principle of law that statement of one accused cannot be used against the other in absence of any attending material produced by the prosecution.
iii) Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment

Conclusion: i) A person can directly approach the High Court for grant of pre-arrest bail because there is no denial to this fact that the jurisdiction of the Sessions Court and the High Court is concurrent in nature.
ii) The statement of one accused cannot be used as against the other in the absence of any attending material produced by the prosecution.
iii) instigation, engagement with co-accused and intentional aid are ingredients to dub any person as conspirator.

7. **Supreme Court of Pakistan**
Usman Ghani v. The Chief Post Master, GPO, Karachi and others
Civil Appeal No.1-K of 2021
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1_k_2021.pdf

Facts: The appellant was awarded punishment of stoppage of next annual increment etc on the basis of report of inquiry committee.

Issue: i) What is nature of Service Tribunal?
ii) How the authority conducting departmental inquiry should act?
iii) What is standard of proof in departmental inquiry?
iv) What is distinction between a regular inquiry or preliminary/fact finding inquiry
v) What is duty of service tribunal if order on the basis of inquiry report is challenged before it?

Analysis: i) The wisdom of setting up Service Tribunal under Article 212 of the Constitution is to deal and decide the matters relating to the terms and conditions of service of Civil Servants. Under Section 5 (2) of the Services Tribunal Act 1973, the Tribunal for the purposes of deciding any appeal be deemed to be a Civil Court and have the same powers as are vested in such court and even under Rule 18 of the Services Tribunals (procedure) Rules 1974, framed by the Federal Government in exercise of powers conferred by Section 8 of the Services Tribunals Act, 1973, the Tribunal may if it considers necessary, appoint an officer of the Tribunal to record evidence of a witness for and on behalf of the Tribunal and the parties and their Advocates may suggest any question to the witness and a Member may, besides such questions, put any other question to the witness.
ii) The foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution… The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and delinquent civil servant should be provided fair opportunity of being heard.
iii) The standard of proof looked-for in a departmental inquiry deviates from the standard of proof required in a criminal trial. In the departmental inquiry conducted on the charges of misconduct, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not a "proof beyond reasonable doubt", which strict proof is required in criminal trial.
iv) A distinction also needs to be drawn between a regular inquiry or preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show

cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defense and if any 5 witness is examined against him then a fair opportunity should also be afforded to cross examine the witnesses, whereas a discrete or fact finding inquiry is conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct is made out to initiate disciplinary proceedings.
v) If the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach just conclusion before confirming, reducing or setting aside the penalty.

Conclusion: i) Tribunal for the purposes of deciding any appeal be deemed to be a Civil Court.
ii) The authority conducting the departmental inquiry should be impartial and delinquent delinquent civil servant should be provided fair opportunity of being heard.
iii) The standard of proof is that of "balance of probabilities or preponderance of evidence"
iv) A regular inquiry is triggered after issuing show cause notice with statement of allegations whereas a discrete or fact finding inquiry is conducted at initial stage.
v) It is the legal duty of the Service Tribunal to give some reasons and discuss evidence.

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8. **Supreme Court of Pakistan**
Federation of Pakistan and others v. Muhammad Farhan
Civil Appeal No.3-K of 2021
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._3_k_2021.pdf

Facts: The appellant was awarded punishment of stoppage of next annual increment etc on the basis of report of inquiry committee.

Issue: How the tribunal should evaluate evidence in matters of departmental inquiry?

Analysis: The Court decisions are to be based on truth founded on evidence which is an indispensable obligation. The purpose of producing all material evidence is to assist the Court or Tribunal for reaching just conclusion in the matter, hence it is crucial for the parties to put forward all relevant and convincing evidence in support of case for meeting the standards of proof. The Court or Tribunal has to examine whether the evidence led in the matter was confidence inspiring or not... Even in the departmental inquiry the general principle of burden of proof is quite significant and whenever the matter is reached to the Tribunal arising out of the

case of misconduct in which major penalty has been imposed, the Court or Tribunal has to see in depth whether the charges against the delinquent has been proved in the inquiry or the inquiry was conducted in cursory or slipshod manner or in violation of principles of natural justice as in all fairness, due process of law is to be followed and respected.

Conclusion: Tribunal has to see in depth whether the charges against the delinquent has been proved in the inquiry.

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9. Lahore High Court
Ghulam Qasim and others. v. Member Board of Revenue Punjab and others
Civil Revision No.2486/2012.
The Chief Justice Mr. Justice Muhammad Ameer Bhatti
https://sys.lhc.gov.pk/appjudgments/2021LHC8002.pdf

Facts: The property was mortgaged and the mortgagor did not apply for the redemption of land-in-dispute within the stipulated period of sixty years, however, the honorable Supreme Court in a judgment (1991 SCMR 2063) declared the provisions of Section 28 of the Limitation Act, 1908, repugnant to the Injunctions of Islam and target date for the commencement of its effect was given as 31.08.1991 directing the Government to amend/promulgate the law accordingly. The respondents filed application to DDOR for redemption of mortgage which was accepted and revisions etc against said order were dismissed. The petitioners filed suit challenging the validity of orders passed by the revenue hierarchy. But the plaint was the plaint was rejected holding that the petitioners have no cause of action.

Issues: i) What is legal effect of removing the condition of sixty years for applying to get the mortgaged land redeemed?
ii) Whether evidence is required to prove limitation in cases of redemption of mortgaged land?

Analysis: i) By removing the condition of sixty years for applying to get the mortgaged land redeemed leaves no room for the mortgagees to oppose redemption process initiated on applying even after sixty years. Even otherwise before the judgment of apex Court in Maqbool Ahmad"s case, came in the year 1991, declaring the condition to apply for redemption of mortgaged land within sixty years repugnant to Injunctions of Islam. Therefore, the respondents who were facilitated by the judgment of the apex Court were at liberty to move application for redemption of their mortgaged land at any time provided the mortgagors had not got its full ownership by obtaining any decree before 1991.
ii) Since the limitation imposed by the Limitation Act for redemption of mortgaged land had already been waived off by the honourable Supreme Court, therefore, question of limitation neither could be framed nor condensed in issue nor any evidence in this regard was required to be produced.

Conclusion: i) The mortgagees were at liberty to move application for redemption of their mortgaged land at any time provided the mortgagors had not got its full ownership by obtaining any decree before 1991.
ii) No evidence is required to prove limitation in cases of redemption of mortgaged land.

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10. **Lahore High Court**
Pacha Khan v. The State etc.
Criminal Appeal No. 1503 of 2015
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC8008.pdf

Facts: The appellant has assailed his conviction in offence u/s 9 of CNSA.

Issue: Whether the report by Chemical Examiner prepared into casual manners could be discarded.

Analysis: As general rule a report of Chemical Examiner being an expert's report has to be accepted as a whole but if it not prepared and written according to the prescribed procedure and law, it can be discarded by the court. The report of chemical examiner must mention each aspect regarding narcotics substance like chemical formula, percentage of intoxicant material i.e morphine and colour etc and such report always prepared upon a special type of paper having printed insignia/monogram bearing PFSA serial number and a stamp. Further, it also has to elaborate the intoxicating effect of such narcotics substance in the report. In this regard section 36 of the Control of Narcotic Substances Act, 1997 has mentioned the effects of imperfect report.

Conclusion: Incomplete report of chemical examiner cannot be tendered in evidence and ultimately its effect will be acquittal of accused person.

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11. **Lahore High Court**
Ali Ikram v. Mian Muhammad Ikram etc.
Crl. Revision. No. 55303/2021
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2021LHC8013.pdf

Facts: The Petition is filed before Deputy Commissioner by the father against his son with the averment that he has been illegally dispossessed from his house. The son replied that there was a civil suit for possession and permanent injunction is pending in the court of law between the parties, hence they were directed to seek the remedy from the court of law.

Issue: When the procedure is available in both laws under Special Law and General Law, which law shall be followed?

Analysis: This petition was filed under The Protection of Parents Ordinance, 2021 before the Deputy Commissioner. By giving special status to the Special Law, jurisdiction of the Deputy Commissioner is well intact. The observation is given in this judgment that the matter under discussion does not attract the procedure contained in Chapter XX of the Code of Criminal Procedure 1898, as well as the Deputy Commissioner has wrongly interpret the law. As far as the order of the Deputy Commissioner is concerned, it is noted that he has failed to exercise his jurisdiction on the pretext that the father should have his title declared from the civil court where the civil suits were pending. This appears to be a misinterpretation of sub-section 4 of Section 4 wherein the word “irrespective of any defence put up by the child” was mentioned with further word “including the defences about the construction or purchase of house the property”. This word excludes the pendency of civil suit on the said subject before the civil court.

Conclusion: If the petition is filed under special law then the special law will prevail and the authorities have to exercise their jurisdiction remaining in the domain of that special law.

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12. **Lahore High Court**
Defence Housing Authority through its Secretary v. The learned District & Sessions Judge, Lahore & others
Writ Petition No.17688 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8055.pdf

Facts: The present petitioner(DHA) filed the writ petition during the pendency of the execution proceedings being aggrieved the orders of the learned executing court and the court of revisional jurisdiction u/s 47 read with order XXI of The Code of Civil Procedure 1908. The petitioner stated that the learned trial court issued robkar for the implementation of decree passed in favour of the respondents having no details of the files and without details the decree cannot be implemented.

Issues: Whether the executing court can go beyond the decree and judgment passed by the trial court when there is no specification of property in plaint?

Analysis: No doubt the executing Court cannot go behind or beyond the decree, but at the same time all ancillary questions arising out of the decree have to be decided by the learned executing Court as has been enunciated under section 47 of the Code, 1908. The learned Executing Court has powers to decide all ancillary questions submitted before it by the petitioner or the decree holder(s) as well as consider whether the decree is executable or not and then proceed further in accordance with law…. No detail of the plots with specification except 13 plots has been incorporated in the agreement to sell, on the basis of which the ex parte decree dated 20.03.2008 was passed; thus, before proceeding further, the learned

executing Court should have considered and determined that which plots were agreed to be transferred in favour of the decree holder(s) and whether the decree is executable or not, in the given circumstances.

Conclusion: The executing court has the powers to decide the questions arise out of the execution petition and should have considered and determined that which plots were agreed to be transferred and whether the decree is executable or not.

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13. Lahore High Court
Mst. Azizan Bibi v. Nasir Mehmood
Civil Revision No.547 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8041.pdf

Facts: This is appeal against decree passed in suit for specific performance.

Issue: i) Whether the failure on the part of the promisor/vendor to perform her part of contract could put her into a position of rescinding or revoking the contract?
ii) What is evidentiary value of document "marked" but not exhibited?

Analysis: i) The agreement between parties contained reciprocal promises on the part of vendor as well vendee and both the parties were required to perform their respective part of the contract in order to accomplish the sale transaction; however, the vendor failed to perform her part of reciprocal obligations. …. The failure on the part of the promisor/vendor to perform her part of contract could not put her into a position of rescinding or revoking the contract in terms of section 51 of the Contract Act, 1872. Moreover section 54 of the Contract Act, 1872 even makes the promisor liable to make compensation to the promise for any loss suffered by him due to non-performance of a reciprocal promise on the part of promisor.'
ii) The document which has not been produced and proved in evidence but only "marked" cannot be taken into account by the Courts as a legal evidence of a fact.

Conclusion: i) The failure on the part of the promisor/vendor to perform her part of contract could not put her into a position of rescinding or revoking the contract.
ii) Relying upon "marked" documents would be illegal.

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14. Lahore High Court
Muhammad Akhtar v. Abdul Rehman
Civil Revision No.13326 of 2019.
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8048.pdf

Facts: The petitioner has challenged dismissal order of the learned trial Court upon his application under Order XXXVII, Rule 4, of the CPC, 1908 alongwith an application for leave to contest as well as application for suspension of operation

of the ex-parte decree against him.

.Issues: i) Whether it is necessary to explain each and every day of delay for condonation?
ii) What is effect of delay in receiving certified copies while dealing with condonation of delay.

Analysis: i) That the Limitation Act is a substantive law and after lapse of prescribed period provided under law valuable right accrues in favour of the opposite party in whose favour an order or judgment is passed and the party aggrieved has to explain delay of each and every day showing sufficient cause.
ii) The appellant applied for certified copy and he waited for a period of nearly eight months to inquire about the copy and after applying went into a deep slumber and did not enquire from the copying agency about copies. The appellant was extremely negligent in securing the certified copy of the judgment. The lethargic attitude adopted by the petitioner cannot be ignored because ignorance of law is no ground for condoning delay.

Conclusion: i) It is necessary to explain each and every day of delay for condonation?
ii) Delay in receiving certified is extremely negligent and cannot be ignored because ignorance of law is no ground for condoning delay.

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15. **Lahore High Court**
Dr. Muhammad Azeem Khan v. Federation of Pakistan etc.
W.P. No. 26387/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC8164.pdf

Facts: The petitioners are BPS-19 & BPS-20 Officers of the Police Service of Pakistan. The Central Selection Board (CSB) held its meeting for considering promotions wherein various officers including the petitioners were considered for promotion from BPS-19 to 20 and BPS-20 to 21 respectively, who earlier were superseded, however, the CSB again recommended "supersession" of the petitioners and did not promote them to BPS-20 or BPS-21. The petitioners being aggrieved of the supersession decisions by the CSB have filed these constitutional petitions.

Issue: i) Whether the High Court of a province has territorial jurisdiction in the matters where order is passed or action is taken by the authority established under the federal law which is performing function in connection with the affairs of the federation?
ii) Whether the time period of one year for reconsideration of a superseded civil servant as provided under the Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 is mandatory and must be observed by the CSB?

Analysis: i) If an authority was established under a federal law and performing functions in connection with the affairs of the federation, then regardless where the authority is

situated, if it passes any order or undertake any proceedings in relation to any person living or posted in any of the Province, then the High Court of that Province in whose territory, the order would effect that person, would be competent to exercise jurisdiction in the matter. No doubt the meeting of CSB took place in Islamabad and the impugned decisions and communication letters were also written at Islamabad. However, admittedly the petitioners are resident of Lahore and are posted at Lahore & Faisalabad. The impugned letters have been issued by respondent No.1 (Federal Government), which functions all over the country and the petitioners (who are aggrieved and effectee of the said impugned orders/letters) being residents of Lahore and posted at Lahore or Faisalabad, can agitate their grievance within the territorial jurisdiction of this High Court, in which the impugned orders have affected them.

ii) In view of explicit language and mandatory requirement of rule 10(5) of the Rules, the superseding civil servant can only be reconsidered for promotion after he earns one more PER of full one year. Mere fact that CSB in its two different meetings considered two different years' PERs, will not absolve it from following the mandatory requirement of rule 10(5) of the Rules. The obvious purpose of rule 10(5) of the Rules is to give sufficient opportunity and time to the superseded officer to improve and bring to an end the reasons on the basis of which the deferment took place. Therefore, the consideration for promotion of superseded officer must be from the date of supersession decision by CSB, so that he/she could know the reasons for supersession and may improve in one year if possible for his/her promotion in next meeting of CSB. Any other interpretation of this rule will render it redundant and purposeless.

Conclusion: i) The High Court of a province where the affectee of an order or proceedings is resident or posted has territorial jurisdiction in the matters where order is passed or action is taken by the authority established under the federal law which is performing function in connection with the affairs of the federation.

ii) The time period of one year for reconsideration of a superseded civil servant as provided under the Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 is mandatory and must be observed by the CSB and any other interpretation of this rule will render it redundant and purposeless.

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16. **Lahore High Court**
Shafqat Ali etc. v. Chairman, Pakistan Electronic Media Regulatory Authority, etc
ICA. No.213 of 2020
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC8186.pdf

Facts: The appellant and respondent no. 6 were issued license by authority under PEMRA. The appellant filed writ for cancellation of license of respondent no. 6 on the ground of alleged jurisdictional encroachment in his licensed area. The writ

petition was dismissed in limine, interalia, on the grounds; that the controversy raised by the appellant was factual in nature and same cannot be entertained in exercise of constitutional jurisdiction of this Court.

Issues: i) Where nature of controversy relating to domain of licensees can be resolved in exercise of constitutional jurisdiction?
ii) Whether Intra Court Appeal is maintainable against the Order passed by the learned Single Judge when law provided for one appeal?

Analysis: i) Under the Scheme of PEMRA Ordinance and rules framed thereunder a comprehensive mechanism has been provided to resolve the controversies in relation to the issuance of licenses, their respective operational domains and dispute resolution mechanism through Complaint Cells. The nature of controversy agitated before us itself concede that the ambit and scope of the prayer actually involves factual determination relating to domain of licensees requiring technical expertise, which this Court cannot resolve in exercise of its constitutional jurisdiction.
ii) The approval/order for issuance of License in proceedings under PEMRA Ordinance, Rules and Regulations framed thereunder was appealable under applicable provisions of law and the action/License impugned in Writ Petition was subject to appeal. Section 3(2) of the Law Reforms Ordinance, 1972 provides that no appeal will be available before a Bench of two or more Judges of a High Court from an order passed by a learned Single Judge in a constitutional jurisdiction if the petition arises out of proceedings in which the law applicable provided for at least one appeal., therefore, this Intra Court Appeal is not competent

Conclusion: i) Factual determination relating to domain of licensees requiring technical expertise, which this Court cannot resolve in exercise of its constitutional jurisdiction.
ii) Intra Court Appeal is not maintainable against the Order passed by the learned Single Judge when law provided for atleast one appeal.

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17. **Lahore High Court**
Board of intermediate & Secondary education v. Ayesha & three others.
ICA No. 96 of 2016
Mr. Justice Shams Mehmood Mirza, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5413.pdf

Facts: The minimum age of 12 years was fixed for enrollment/registration of students in Class 9 in terms of rules of calendar of Board of Intermediate and Secondary Education, Lahore and Board of Intermediate and Secondary Education, Gujranwala. Due to such rule the students who passed 8th class examination but did not meet the criteria of such rule were refused admission in 9th class which resulted into filling of Constitutional petitions.

Issue: Whether the minimum age requirement set down by the Board offends the fundamental right of education as enshrined in the Constitution of Islamic Republic of Pakistan, 1973?

Analysis: Right to education is a fundamental right as is described "an integral part of right to life" under Article 9 of Constitution of Islamic Republic of Pakistan, 1973. Article 25 of the Constitution provides the manner of providing of education and it does not call for restricting the right of children to receive education by imposing age restrictions. Imposing age restrictions on right to receive education would be negation of the right to life and to receive education as provided in Article 9 and 25-A of the Constitution as right to life includes the right to receive education… Although the Board has the power to organize, regulate, develop and control Intermediate Education and Secondary Education and to lay down conditions for admission to its examination, to determine the eligibility of candidates and to admit them to such examinations in terms of the Act but the Act cannot regulate the primary and elementary educational system and cannot prevent a student from receiving education at any age.

Conclusion: The rule restricting age for seeking admission to class 9 is considered ultra vires the Constitution is set aside.

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18. **Lahore High Court**
Muhammad Aslam etc. v. The State
Criminal Appeal No.197314 of 2018
Muhammad Akmal v. The State etc.
Criminal Revision No.135870 of 2018
Muhammad Ashraf v. Muhammad Aslam etc.
Criminal Revision No.185427 of 2018
The State v. Muhammad Akmal
Murder Reference No.32 of 2018
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Sardar Ahmad Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8084.pdf

Facts: The appellants filed criminal appeals against their convictions in murder case, the complainant filed criminal revision for enhancement of sentence awarded to respondents and trial court sent murder reference for confirmation or otherwise of the sentence awarded to the convict.

Issues: i) What is effect of late transmission of police papers to Medical Officer?
ii) How the joint identification parade of accused persons loses its credibility?
iii) What is effect of delay in sending the crime empties for forensic??

Analysis: i) The delay in submission of police papers i.e., inquest report, drafting, receiving and dispatch of complaint required for initiation of postmortem of dead body, creates doubt about availability of eyewitnesses at the relevant time. Such delay

normally happens when the occurrence is un-witnessed and the police during the intervening time usually remains busy in procuring the names of the witnesses or the complainant to cite them so in the police papers.
ii) If the identification parade is conducted jointly and all accused persons are placed in same number of row i.e. each at serial no. 04, this can possibly be a mark of help to witnesses for their identification. No credibility can be attached to such identification parade proceedings.
iii) If the crime empties are taken into possession prior to arrest of accused persons but sent for forensic with delay of eight days without any reasonable explanation and that also after arrest of accused persons, such act renders the veracity of positive forensic report doubtful and consequently, makes the evidence of the recovery inconsequential.

Conclusion: i) Delay in transmission of police papers to Medical Officer creates doubt about preparation of such papers in citing names of witnesses etc.
ii) No credibility attached to joint identification parade when all accused persons are placed in same number of row.
iii) The crime empties should be sent for forensic at earliest after taking them into possession.

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19. **Lahore High Court**
Chand Iqbal, etc. v. Province of the Punjab, etc
W. P. No. 26883 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC7833.pdf

Facts: The petitioners were appointed as Deputy Accountants (BS-16), in Finance Department, however, were terminated on withdrawal of recommendation by PPSC on the apprehension of using unfair means during recruitment examination. The termination is challenged along with the withdrawal of recommendations.

Issue: i) Whether after issuance of appointment letters against a permanent post, the appointees are considered as “Civil Servants”
ii) How the termination of probationer takes place with or without notice?
iii) Whether the fault on the part of PPSC, during conduct of recruitment examination falls in definition of “terms and conditions of service” thereby precluding High Court under article 212 to exercise jurisdiction?
iv) Whether PPSC has become functus officio after issuance or implementation on the recommendations for appointments?

Analysis: i) Since petitioners were appointed initially against permanent/sanctioned posts through prescribed procedure, therefore, are Civil Servants on probation.
ii) The termination of service for all kind of appointments is dealt with under Section 10 of the Act of 1974…. If no stigma of misconduct, inefficiency or corruption is attached with the termination of a probationer‟s service then it is a

"termination simplicitor", therefore, no Show Cause Notice and subsequent procedure is required… However, if stigma is attached to termination, Show Cause Notice and proceeding thereafter are necessary
iii) When the petitioners have been terminated for a fault on the part of PPSC, during conduct of recruitment examination, which was prior to the issuance of appointment letter, therefore, cannot be construed to have any relation with the terms and conditions of petitioners" service. Nor the fault or consequent withdrawal by PPSC accrued during service after appointment letter, therefore, the disciplinary matters, if any, has no nexus with the service…. Since the termination in question does not involve terms and conditions of service after appointment as Deputy Accountants (BS-16) nor disciplinary proceeding during this service is in question, therefore, it can safely be held that "bar of jurisdiction, under the Article 212, is not attracted merely because petitioners are civil servants"
iv) PPSC does not become functus officio, in its stricto sensu, after sending the recommendations for appointment, because Regulations 26 and 63 allow withdrawal of recommendations. But where a decisive step had been taken, therefore, under the general principle of locus poenitentiae, the Commission was debarred from withdrawing the recommendations.

Conclusion: i) After the issuance of appointment letters against a permanent post, the appointees are considered as"Civil Servants".
ii) The termination of service for all kind of appointments is dealt with under Section 10 of the Act of 1974.
iii) The fault on the part of PPSC, during conduct of recruitment examination do not falls in definition of "terms and conditions of service". Therefore High Court is not precluded under article 212 to exercise jurisdiction.
iv) PPSC has become functus officio after issuance or implementation on the recommendations for appointments.

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20. **Lahore High Court**
Muhammad Liaqat Ali v. Majid Ali, etc
Writ Petition No.221102 of 2018.
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC8193.pdf

Facts: Through the present petition a challenge has been thrown to two separate orders of Rent tribunal passed on the same date on one hand, by virtue of a detailed order ALTC filed by respondent was rejected and the eviction of the said respondent was ordered and through the other order, issues were framed for determination of arrears of rent and utility bills.

.Issues: Whether in case application for leave to contest (ALTC) is rejected, the Rent Tribunal is bound to pass a final order rather framing of issues?

Analysis: Rent tribunal. While granting leave to contest, under Section 24 of the Punjab Rented Premises Act 2009 (Act) will direct the tenant to pay the rent due from him and also to deposit the future monthly rent as well as the outstanding utility bills. In case there is any dispute regarding the amount or rate of rent, the Tribunal has to tentatively determine the same.in case the ALTC is refused, the Rent Tribunal is bound to pass a final order. Cumulative reading of the above law would show that where an ejectment petition is filed by a landlord against a tenant ultimate result or a final order in that would be order of eviction of the tenant or the dismissal of the ejectment petition. "final order" instead of "ejectment order", leaves room for the Rent Controller to apply his judicial mind before passing a final order as required under the circumstances of each case may it be ejectment of a tenant or otherwise." Although Rent tribunal under section 26(3) of the Act could have passed any interim order before passing a final order, however, when refused the ALTC filed by respondent and passed a final order of ejectment on the ground of expiry of tenancy (and not as default), it had no jurisdiction, especially through an interim order to frame issues or to further adjudicate upon the matter, especially so when there was no rebuttal to the contents of the ejectment petition.

Conclusion: When application for leave to contest (ALTC) is rejected, the Rent Tribunal is bound to pass a final order and had no jurisdiction for framing of issues.

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21. **Lahore High Court Lahore**
Mst. Erum Latif v. Imtiaz Khan etc.
R.F.A. No.86 of 2017
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8226.pdf

Facts: This appeal was directed against judgment and decree of learned Civil Judge, Lahore whereby the suit of the appellant was dismissed.

Issue: i) Whether the legal heirs have locus standi to challenge the validity of a transaction after the demise of the owner?
ii) Whether the pleadings of the parties are substitute of evidence?

Analysis: i) It is a settled rule that if the owner of a property, despite knowledge of transactions, did not challenge the transaction in his/her lifetime for years, the legal heirs shall have no locus standi to challenge the validity of those transactions after the demise of the owner.
ii) It is a settled rule that pleadings of the parties are not substitute of evidence and that the averments made in the pleadings would carry no weight unless proved through evidence in court or admitted by the other side and that written statement filed by a defendant who was not later examined in the case could not be utilized nor any admission therein could be taken into the consideration unless proved through evidence.

Conclusion: i) The legal heirs have no locus standi to challenge the validity of a transaction after the demise of the owner.
ii) The pleadings of the parties are not substitute of evidence.

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22. **Lahore High Court**
Wasif Ali, etc. v. Mrs. Fakhra Jabeen, etc.
W.P.No.2111 of 2013
Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC7858.pdf

Facts: The wife claimed a plot/house as mentioned in column no. 16 of her Nikah Nama in lieu of her dower as mentioned in column no. 13 of Nikah Nama.

Issues: i) Whether columns No.13 and 16 of Nikahnama are to be read separately or in conjunction with each other?
ii) Whether entries in Nikahnama can operate against a person not privy to the document/Nikahnama.

Analysis: i) In construing a document, one has to read the same as a whole and not by picking and choosing a particular paragraph or portion thereof. It is trite law that deed of contract has to be construed strictly and literally without deviating or implying anything which was not supported by the intention of the parties and the language of the document. The dower specified in any Nikahnama, being consideration of the marriage, is an essential condition of the contract that has to be construed keeping in view the aforementioned principle. The wording of column no.16 is crystal clear to indicate that it refers to past transaction. It never covenants between the parties for some future liability, rather the same is considered as an explanation for an act done in compliance and in furtherance to agreed amount of payable dower. The entry in column No.13 is rider to entries in columns No.14, 15 and 16, so a bride in the first instance can lay her claim with regard to dower mentioned in column No.13 and if due to any reason, dower is not paid to her then she would become entitled to the property mentioned in column No.16 in lieu thereof.
ii) As far as operation of entries of a Nikah Nama against a person not privy to such contract is concerned, it is oft repeated principle that no one can be deprived of his property without due course of law. If the property mentioned in Nikahnama is not owned by the bridegroom, rather it is ownership of his father, mother or brother, who is neither signatory to the Nikahnama nor had agreed to transfer the same in favour of bride, entries in Nikahnama cannot be enforced against him/her and he/she cannot be deprived of his/her property. The situation, however, would become different when on behalf of bridegroom, his father, mother or any other person being owner of such property find mentioned in the Nikahnama becomes signatory of the Nikahanama, he/she binds himself/herself to

the terms and conditions and as such, he/she parts with the ownership rights of the property in favour of bride. In case any such property is jointly owned by a bridegroom and his father, mother or bother etc. who also becomes signatory of the Nikahnama, then the bridegroom along with said person would be equally liable.

Conclusion: i) The Columns No.13 and 16 of Nikahnama are to be read in conjunction with each other.
ii) The entries in Nikahnama cannot operate against a person not privy to the document/Nikahnama unless he is signatory on behalf of bridegroom.

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23. **Lahore High Court**
Mubashar Javed etc v. Province of Punjab etc
Writ Petition No.51104 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7944.pdf

Facts: The Petitioners invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution with the prayer that the term of office of a local government formed under Article 140A of the Constitution read with Section 30 of the Punjab Local Government Act, 2013 (the "Act of 2013") be declared illegal and unconstitutional.

Issue: i) Whether there is a difference between "term" and "tenure" of elected representatives under the Act?
ii) Whether the term of office mentioned in Section 30(1) of the Act is date specific or time specific or whether such time is inclusive or exclusive?

Analysis: i) In political theory, "term of office" and "tenure of office" are terms oftentimes contrasted with each other. Term of office refers to the period, either fixed by the Constitution or a Statute, within which a public official may hold office. Tenure of office, on the other hand, is the period within which a public official actually held office within a prescribed term. In other words, term of office is fixed, while tenure of office is variable.
ii) A combined reading of Section 30(1) and Section 126 of the Act of 2013 referred above makes it quite clear that if any local government is elected for a period of five years, the said period would be governed by Section 30(1) of the Act of 2013 and it would start on the date when first meeting of the elected local government was held and that too is subject to other provisions of the Act of 2013 which empowers the Government to dissolve the local government under Section 126 of the Act of 2013. The word 'term' mentioned in Section 30(1) of the Act of 2013 is fixed and definite in its nature. For the benefits of aforesaid term, it has to be read with other provisions of the Act of 2013 and the time for holding an office for a period of five years is not extendable by any means which would commence

on a date on which the members/representative of local government hold its first meeting.

Conclusion: i) Yes, there is a difference between "term" and "tenure" of elected representatives under the Act.
ii) The term of office mentioned in Section 30(1) of the Act is date specific and such time is inclusive.

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24. **Lahore High Court**
Crescent Jute Products Limited through Chief Executive Officer, Lahore v. Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 4 others
Writ Petition No.225428 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7898.pdf

Facts: The Petitioner Company impugned the order passed by the Executive Director, Corporate Supervision Department, Company Law Division, Securities and Exchange Commission of Pakistan, Islamabad whereby it was held that the Company is liable to be wound up as its business has been suspended since 2011 and the Registrar of Company Registration Office Lahore was authorized to present a petition for winding up of the Petitioner Company. Later on, the Petitioner filed an appeal before the learned Appellate Bench of the SECP against the impugned order which was held as not maintainable due to proviso of Section 33(c) of the of the Securities and Exchange Commission of Pakistan Act 1997.

Issues: i) Whether the order by a commissioner or an officer of SECP to commence legal proceedings for winding up of company falls in definition of a sanction?
ii) Whether the appeal against sanction of commence legal proceedings for winding up of company is barred under Section 33 (1) (c) of the SECP?
ii) Whether the Petitioner has an alternate remedy under Section 485 of the Ordinance and the instant Writ Petition is not maintainable within the parlance of Article 199 of the Constitution?

Analysis: i) Perusal of clause (o) of sub-section (4) of section 20 of the SECP Act reveals that the Commission is empowered to perform any such functions which the Federal Government delegates to it or any other law enforced for the time being confers upon it. Serial No. 23 of the Schedule under the SECP Act, which has enlisted the powers and functions conferred on the Authority under the Ordinance to be exercised by the Commission clearly provides as under:- "23. To make application to the Court for winding up a company (section 309 of the Ordinance)." … Similarly, Section 309 of the Ordinance provides in an unequivocal term that an application to the High Court for the winding up of a company can be made by the Registrar, or by the Commission or by a person

authorized by the Commission in that behalf. However, sub-section (b) of Section 309 imposed a statutory condition that the Registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition. It is thus undeniably established that it is well within the power and competence of the Commission to pass a sanction authorizing the Registrar to petition for winding up of a Company if it has committed any default well within the meaning and instances of Section 305 of the Ordinance

ii) The literal interpretation of the expression 'sanction' well denotes that it is an official permission, an approval, authorization or ratification and while applying the same to case in hand, it cannot be equated with or even compared to a decision or prejudicial act since it is not a sort of final or definite outcome but an administrative official measure to draw up an action or cause before the appropriate forum and nothing more. This sanction is not a decision or judgment rather authorization to initiate legal proceedings before the Court, which is a forum to decide the matter in accordance with law and principles of legal justice.

By applying principle of literal interpretation, no inference can be drawn other than that the impugned sanction order falls well within the exception clause of Section 33 and appeal against such sanction authorizing initiation of legal proceedings before competent court of law is not amenable to appellate jurisdiction of Appellant Bench of SECP.

iii) Section 485 of the Ordinance clearly provides that any aggrieved person by an original order, directive or judgment of SECP, other than an order, directive or judgment passed on a revision or review application, may prefer an appeal before a bench of two (2) judges of the High Court within whose jurisdiction the order, directive or judgment is passed. This appeal has to be preferred as an alternative to making an application for revision or review to SECP… Now in view of Section 485 of the Ordinance, the Petitioner had an alternative efficacious remedy available, which was far from illusory and therefore this Petition has failed to meet the mandatory criterion necessary for justifying exercise of such extra-ordinary constitutional jurisdiction under Article 199 of the Constitution. In the light of aforesaid, the instant Petition is meritless hence dismissed.

Conclusion: i) The order passed by a commissioner or an officer of SECP to commence legal proceedings for winding up of company falls in definition of a "sanction".

ii) The appeal against sanction of commences legal proceedings for winding up of company is barred under Section 33 (1) (c) of the SECP.

iii) The Petitioner has an alternate remedy under Section 485 of the Ordinance therefore the instant writ petition is not maintainable within the parlance of Article 199 of the Constitution.

25. **Lahore High Court**
Akhtar Hussain v. Muhammad Jamal & 4 others
CR No. 64239 of 2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC7938.pdf

Facts: An application for restoration was filed for the restoration of an application which was already pending for the restoration of an appeal.

Issues: What would be the limitation period for filing of application for restoration of an early application for restoration of appeal?

Analysis: An application for restoration was filed for the restoration of an application, is an application under Section 151 CPC, therefore, neither provisions of Order XLI Rule 19 CPC nor provisions of Article 168 of the Limitation Act, 1908 are applicable to the same. It is observed that as no timeframe is provided under the law for filing application under Section 151 CPC for restoration of an earlier application for restoration of appeal that had been dismissed in default, therefore, the residuary Article 181 of the Limitation Act, 1908 would be applicable which provides limitation of three years for filing such applications, for which no specific Article provides any limitation.

Conclusion: The limitation period for filing of application for restoration of an early application for restoration of appeal will be three years in accordance with article 181 of Limitation Act.

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26. **Lahore High Court**
Asad Ali Khan v. Special Judge Rent etc.
Writ Petition No. 252439 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4969.pdf

Facts: The petition/tenant challenged the judgement of the Special Judge (Rent), whereby he was ordered to be evicted from the rented premises, on the ground that the said order of the Special Judge (Rent) is liable to be set aside as it did not determine the question of *Pagri* while deciding the said rent petition. The petitioner has challenged the said order/judgement despite the fact that the said order of rent controller was modified on appeal by the petitioner/tenant and the matter was remanded to the Special Judge (Rent) for decision afresh only to the extent of the payment of *Pagri*.

Issues: i) How the extension of period of tenancy is dealt with in law?
ii) Whether the determination of question of *Pagri*, taken as defence by a tenant in an eviction petition, is *sine qua non* for deciding an ejectment petition?

Analysis: i) Where the period of tenancy has expired, the tenant who relies upon its extension has to establish through cogent evidence the time period for which it has been extended otherwise, oral extension would be tantamount to extension of one month only and such tenancy has got to be extended on each and every successive month and terminable at one month's notice.
ii) It is for the petitioner to establish that as per terms and conditions of the agreement; tenancy could not be terminated without refund of *Pagri.* However the agreement in the present case is silent to that effect and Pagri is claimed to have been subsequently paid, therefore the question of *Pagri* cannot be clubbed with the question of expiry of period of tenancy in this case and both are to be dealt with separately.

Conclusion: i) The extension of period of tenancy has to be established through cogent evidence.
ii) An eviction order of a rent controller cannot be held liable to be set aside on the sole ground that the impugned order/judgement did not decide the question of *Pagri* raised by the petitioner/tenant in defence to the ejectment petition.

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27. **Lahore High Court**
Muhammad Riaz v. ASJ etc.
Writ Petition No. 126598 of 2017
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5432.pdf

Facts: The petitioner through constitutional petition challenged an order passed by the District and Session Judge as Court of Protection constituted under Mental Health Ordinance, 2001 vide which Court of Protection recalled its earlier order whereby petitioner was appointed as guardian of respondent no. 02 who was stated to be suffering from mental disorder.

Issues: i) Whether it is mandatory to keep a person under observation in a psychiatric facility for the assessment of his mental health?
ii) Whether the Court of Protection can appoint guardian of person on the basis of reports only?
iii) Whether the Court of Protection becomes *functus officio* after appointment of Guardian?
iv)What is the status of an order passed by a competent court but without following proper procedure?
v) If an order cures a manifest illegality whether extraordinary/constitutional jurisdiction can be exercised?

Analysis: i) For assessment of the mental health of a person, it is not mandatory requirement to keep him under observation in a psychiatric facility for forming a medical

opinion relating to assessment of his mental health. The medical practitioners/doctors can adopt the procedure most suitable on the case to case basis and if they require admission of patient for assessment or treatment is required he may be admitted to a psychiatric facility.
ii) When originally the guardian has to be appointed, the Court of Protection has to observe the procedure mentioned in section 30 of Mental Health Ordinance, 2001 according to which the Court of Protection has to refer the matter to any Medical Board or examine the concerned person itself before passing the order.
iii) No finality is attached to the order of appointment of guardian of a person allegedly suffering from mental disorder as the court always retains the power to amend, modify, set aside and recall such order to determine the welfare of such person and secondly, the Court of Protection is entitled to get a person suffering mental disorder re-examined in order to see whether the said person has attained his mental health in the light of section 45 of the Mental Health Ordinance, 2001.
iv) An order passed by a court of competent jurisdiction without following the procedure cannot be said to be an order passed with proper exercise of jurisdiction especially when the result reached therein has caused prejudice to any of the party and is negated by the material that has later on been brought on record. A court should not prejudice any person and where any court did not comply with the mandatory provisions of law or omitted to pass an order required by law in the prescribed manner then the litigant/parties cannot be taxed, much less penalized for the act or omission of the court.
v) When any order, even passed without jurisdiction, cures a manifest illegality and substantial justice has been done then extraordinary jurisdiction ought not to be invoked. Object of constitutional jurisdiction is to foster justice and not to perpetuate illegality and the jurisdiction must be exercised in aid of justice.

Conclusion: i) It is not mandatory to keep a person under observation in a psychiatric facility for the assessment of his mental health
ii) Court of Protection has to refer the matter to any Medical Board or examine the concerned person itself before passing the order regarding mental disability of a person.
iii) Court of Protection always retains the power to amend, modify, set aside and recall its order to determine the welfare of person.
iv) An order passed by a court of competent jurisdiction but without jurisdiction is not sustainable in the eye of law if it cased prejudice to any party.
v) If an order cures a manifest illegality then extraordinary/constitutional jurisdiction ought not to be invoked to set a side such order even the same has been passed without jurisdiction.

28. **Lahore High Court Lahore**
Akbar Ali v. Shahid Hayat Khan
F.A.O. No.36/2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2020LHC4347.pdf

Facts: A suit for recovery was filed on the basis of cheque in the district where the cheque was presented and dishonored. The defendant filed application under order VII Rule 10 CPC for return of plaint to presented before a court in the district within whose jurisdiction the cheque was issued. The said application was dismissed.

Issue: Which court will have territorial jurisdiction when a cheque is issued in one district and dishonored in other district?

Analysis: Where the cheques were issued in one district and dishonoured in other district, the suit can not only be filed at the place where the defendant resides or carries on business or works or has a branch office where cause of action has accrued but the same can also be filed in the district in the territorial jurisdiction of which the said cheques were presented in the other Bank by the plaintiff for encashment and were dishonoured as courts at both the places would have concurrent jurisdiction. In such situation, the respondent would have the option of choice of forum for filing recovery suit on the basis of doctrine of election, which not only is applicable to the available remedies but also to the available forums, if they have concurrent jurisdiction to try a matter within its jurisdiction subject to exception of mala fide choice of forum which has to be established by pleading details of such mala fide.

Conclusion: Courts at both the places would have concurrent jurisdiction.

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29. **Lahore High Court**
Nargis Naureen. v. Judge Family Court, Multan, etc.
W.P.No.5927 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC3965.pdf

Facts: The petitioner has filed a family suit for recovery of dower, maintenance etc and along with suit filed an application under order XXXIX Rule 1 & 2 to restrain the defendant to alienate the property which is given to her in Nikahnama. The said application for temporary injunction was dismissed by family court.

Issues: i) Whether application under order XXXIX Rule 1 & 2 can be treated as an application u/s 21 of Family Court Act?
ii) Whether dismissal of an application under Section 21-A of the Family Courts

Act, 1964, amounts to a final determination of claim and appeal will lie against this order?

Analysis: i) Besides mere wrong citing or relying on wrong provision of law would not be of any consequence for the court to assume jurisdiction, provided the court otherwise had jurisdiction under the Constitution, statue or any other provision of law to pass the order… The application filed by the petitioner for temporary injunction/interim relief was in fact for all intents and purposes an application under Section 21-A of the Act (which is a remedy provided under the law) and the court had jurisdiction to entertain and decide the same.

ii) Appeal under Section 14 of the Act is not barred against every interlocutory order and remedy of appeal, unless specifically barred, would be available against a decision relating to a right or a remedy provided under the law subject to the condition that finality is attached to such an order or decision and nothing remains to be further decided between the parties on the said issue. In view of the above, without commenting upon the merits of the case, the dismissal of application filed under Section 21-A of the Act is tantamount to declining the relief of preservation and protection of property that may be available to a party (if it was otherwise entitled for the same) during the pendency of suit, which amount to final determination of claim to that extent and hence, cannot be treated as an interlocutory order that does not finally determine anything. Thus such order would amount to 'a decision given' in terms of Section 14 of the Act, hence, an appeal against the same would be available before the appellate court. Consequently, this constitutional petition is not maintainable due to availability of alternate remedy and the same is dismissed as such.

Conclusion: i) The application under order XXXIX Rule 1 & 2 can be treated as an application u/s 21 of Family Court Act.

ii) Dismissal of an application under Section 21-A of the Family Courts Act, 1964, amounts to a final determination of claim and appeal will lie against this order.

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30. **Lahore High Court**

Dr. Manzoor Hussain Malik v. Mahar Muhammad Khalid Ahmad, Additional Commissioner (Revenue), Bahawalpur and two others

I.C.A. No. 174 of 2021 / BWP

Malik Ahmad Nawaz. v. Ashraf Bhatti and two others

I.C.A. No. 81 of 2020 / BWP

Mr. Justice Anwaarul Haq Pannun, Mr. Justice Abid Hussain Chattha

https://sys.lhc.gov.pk/appjudgments/2021LHC8059.pdf

Facts: The petitioners seek the initiation of contempt proceedings for non-implementation of injunctive orders.

Issues: i) What are the principles for initiation of contempt proceedings and appeal against orders passed in contempt proceedings?
ii) What is the distinction between civil contempt, criminal or judicial contempt?

Analysis: The principles deduced from the above deliberations are as follows:

(i) Civil contempt can only be initiated if there is an order which is duly served upon the alleged contemnor and that there is „willful‟ and „mala fide’ non-compliance of the said order by the contemnor who is a party in the proceedings in his personal capacity;
(ii) Contempt proceedings are between the contemnor and the Court which provide no vested right to any aggrieved person to press for enforcement of contempt proceedings against the alleged contemnor;
(iii) Contempt proceedings can be initiated suo motu by the Court or at the instance of any party who has the status of a mere informer. However, once the information is laid before the Court, the informer loses his further right to pursue the same;
(iv) Contempt proceedings or an appeal there against does not lie at the desire of the litigant party;
(v) The primary purpose of civil contempt is always vindication of dignity of the Court and administration of justice but it is also an additional tool for the implementation and clarification of Court orders employed in the manner and to the extent in the sole discretion of the Court;
(vi) Further directions in contempt proceedings do not constitute contempt but their „willful disobedience‟ may give rise to fresh contempt and may eradicate bona fide as a defense;
(vii) Appeal is only competent as of right against an order of conviction or sentence but not against an order refusing to convict or resulting in exoneration;
(viii) As a general and normal rule, appeal is not maintainable regarding orders refusing to initiate or dropping the contempt proceedings at any stage after due satisfaction of the Court;
(ix) As an exception to the general rule, an appeal is competent regarding orders passed in contempt proceedings which are inherently without jurisdiction or void or coram non judice or for multiple reasons in the discretion of the appellate Court are of the nature requiring exercise of jurisdiction in appeal;
(x) Any observations made by the Court in original or appellate proceedings have no bearing or effect on the merits of any pending adjudication between the parties to the lis before any judicial forum; and
(xi) In exceptional and testing times, inherent discretion of the Court can be enlarged and invoked to thwart any real threat to judicial

authority and constitutional disorder.

ii) Criminal contempt brought the moral authority of the Court into disrepute and encompasses a host of situations which the Court by exercising its contempt jurisdiction is required to deal effectively to ensure due process regarding all aspects of free and fair trial as ordained by applicable law without causing prejudice to the rights and interests of all stakeholders. Judicial contempt aims to protect, preserve and uphold the authority, sanction and dignity of the Court. However, civil contempt is conspicuously different and is deliberately expanded in terms of its manifestations and ramifications. It is the only type of contempt that speaks of an „order" and includes the expression „interim" or „final", a „judgment" or „decree", or a „writ or order" passed in constitutional jurisdiction within the contemplation of the overarching term „order" employed in Section 2(a) of the Ordinance.

Conclusion: i) Contempt proceedings are between the contemnor and the Court.

ii) Criminal contempt brought the moral authority of the Court into disrepute. Judicial contempt aims to protect, preserve and uphold the authority, sanction and dignity of the Court. Civil contempt that speaks of an „order" and includes the expression „interim" or „final",

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31. **Lahore High Court**
Mst. Saira Fatima Sadozai v. D.I.G. Investigation, etc
Writ Petition No.64405 of 2021
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC7813.pdf

Facts: The petitioner has challenged the vires of order of DIG where in transfer of investigation was transferred from one circle to another circle after framing of charge.

Issues: i) Whether after framing of charge the re-investigation can be ordered?

ii) Whether the opinion of District Standing Board can be sole ground for change of investigation?

iii) What requisites should be followed while passing order of re-investigation?

Analysis: i) If after completion of investigation and sending challan report prepared under Section: 173 Cr.P.C. in the Court, it is felt or highlighted that during already conducted investigation, certain aspects regarding basic/constituting elements of the offence or version of the accused could not be investigated, new facts/better evidence or further information has become available which has direct/essential/vital nexus with alleged crime, proclaimed offender in the case has been arrested and important piece of evidence like recovery of weapon of offence is to be collected and other allied matters to be investigated, defects of vital nature in already conducted investigation has been marked/detected/pointed

out, already conducted investigation remained unsatisfactory due to non-availability of required evidence or through induction of false evidence due to corrupt behavior of Investigating Officer (concerned), then, non-conducting of further or fresh/reinvestigation would virtually amount to putting a seal on human error and with no opportunity to make amends although it be possible to do so.

ii) Opinion of District Standing Board cannot be made as a "sole" basis for change of investigation; District Police Officer is not bound to accept said opinion blindfoldly, rather after receipt of said opinion, he has to examine entire facts and then while giving express/valid reasons in writing to pass order regarding change of investigation or otherwise, as the case may be.

iii) D.I.G. Police (Investigation) after receipt of opinion of District Standing Board must examine the quality of already conducted investigation as well as conduct of first investigating officer and even without mentioning that which fact of the case has earlier not been seen/verified and now requires verification, transferred investigation through impugned order. Therefore, order does not carry valid/express reasons in writing by D.I.G. Police (Investigation), Lahore, hence, same is not fulfilling spirit of Article 18A of Police Order, 2002 as well as Section: 24-A of the General Clauses Act, 1897 and thus not sustainable.

Conclusion: i) After framing of charge the re-investigation can be ordered.

ii) The opinion of District Standing Board can be sole ground for change of investigation.

iii) The order must mention what has earlier not been seen/verified and now requires verification.

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32. **Lahore High Court**

Rao Khalid Iqbal v. State, etc.

Crl. Rev. No.94/2018

Mr. Justice Muhammad Waheed Khan

https://sys.lhc.gov.pk/appjudgments/2021LHC7894.pdf

Facts: The petitioner filed criminal revision petition against an order of trial court vide which application of petitioner, filed for recalling of order of closing right of cross examination on PW, was dismissed.

Issues: i) What is duty of court regarding cross examining, in case the accused is not legally represented?

ii) What is worth of cross examination conducted by the accused?

Analysis: i) There is no denial to the fact that in matters other than entailing capital punishment, no right is explicitly available by Statute or rules to the accused to secure legal representation at State expenses, however, in such like cases it becomes the duty of the trial judge himself to put up a cross examination on behalf of an unrepresented accused.

ii) The cross-examination is a specialized job, which can only be made by a

counsel and the accused having no sufficient expertise to cross-examine witnesses which cannot be considered as substitute to the cross-examination conducted by a defence counsel. The right of cross-examination is the right of the accused, which right he/she may forgo but one which he/she cannot be deprived of.

Conclusion: i) In case of unrepresented accused, the trail judge under obligation to put up a cross examination.
ii) The cross examination conducted by the accused cannot be considered substitute of cross examination conducted by the counsel

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33. Lahore High Court
C.R. No.3542 of 2014
Rajan v. Amjad Ali and others
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC7819.pdf

Facts: A blind female challenged the mutation on the basis of oral sale being fraudulent.

Issue: i) Upon whom onus to prove shifts in case of denial of mutation by a blind female?
ii) Whether evidence can be allowed regarding facts not mentioned in pleadings?
iii) What should be precautionary measures while entering into sale with blind female?
iv) What should be the responsibilities of public functionaries in sanctioning mutation of blind female?

Analysis: i) When the existence of transaction of sale and payment of consideration were outright denied by the lady who was a septuagenarian and blind. The moment she appeared before the court and made her statement on oath that she had not transacted for the sale of her property nor did she receive any valuable consideration and specifically denied having ever appeared before the concerned functionaries for attestation of mutation; heavy onus shifted upon the respondents to prove, not only the claim of genuineness of mutation proceedings but also the original transaction of sale itself.
ii) It is settled rule that material facts shall be mentioned in the pleadings and that evidence could be led to amplify the same. In a case where a material fact is not pleaded in the written statement neither any evidence could be allowed nor, if recorded, shall it be admissible in law.
iii) In case of blind female, it was also necessary for the respondents to ensure that she was duly represented and had the independent advice of some near one and dear one like son, brother, husband or father if alive, who should have been present at the time of transaction to make a blind old lady fully and reliably comprehend the alleged arrangement of oral sale as well as to ensure the security of cash if paid at that time. Before it could be convincingly claimed that she had

thumb-marked the document, it was necessary for the respondents to prove that she entered the deal with her free-will and volition.

iv) Where the alleged vendor is a blind person, extraordinary care is expected of the public functionaries, i.e. revenue officers in this case, to ensure the authenticity of the transaction by making necessary inquiry that the vendor was accompanied by some close male relative and that independent advice was available and the person concerned was made to understand the transaction which they understood with its clear impact.

Conclusion: i) Onus to prove, in case of denial of mutation by a blind female, shifts to the beneficiary made her statement on oath.

ii) Evidence cannot be allowed regarding facts not mentioned in pleadings?

iii) What should be precautionary measures while entering into sale with blind female?

iv) Extraordinary care is expected of the public functionaries, i.e. revenue officers in the case of blind female, to ensure the authenticity of the transaction.

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34. **Lahore High Court**

Nazir Ahmed (deceased) through L.Rs. v. Shaukat Ali (deceased) through L.Rs. and others

C.R. No.2452 of 2011

Mr. Justice Rasaal Hasan Syed

https://sys.lhc.gov.pk/appjudgments/2021LHC7926.pdf

Facts: An application for making arbitration award as rule of court and an application for setting aside award was filed.

Issues: i) Whether arbitrators can assume jurisdiction if real owner is not party to arbitration agreement?

ii) Whether Court can approve an award issued by arbitrators in respect of property not owned by either party but owned by Municipal Committee?

Analysis: i) Real owner was not party or signatory to the Arbitration Agreement. Being not a privy to the Arbitration Agreement, Arbitrators could not assume jurisdiction to settle any question of title qua the property. In view of this inherent jurisdictional defect, the entire proceedings for alleged Award stood vitiated.

ii) Ownership being vested in Municipal Committee, it is surprising that the respondent claimed that in terms of the Award he was declared to be entitled to the transfer the ownership of shop which at that time did not vest in the petitioner. Obviously without the consent or permission of the real owner neither rights could be assigned, nor any third person could be transferred the permissive right of occupation without the prior written permission of the Municipal Committee. It could be only after impleadment of Municipal Committee and hearing the said authority that any determination could have been made which was not the case at

hand. The Arbitrators did not give any reason as to how they could assume jurisdiction firstly in respect of the property that did not belong to the petitioner or respondent or in respect of the shop which was not owned by the petitioner and was still the ownership of the Municipal Committee which was not a party to the so-called Reference. In view of the reasons supra,

Conclusion: i) Arbitrators cannot assume jurisdiction if real owner is not party to arbitration agreement?
ii) The court cannot approve an award issued by arbitrators in respect of property not owned by either party but owned by Municipal Committee.

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35. **Lahore High Court**
Khuda Bakhsh v. Province of Punjab
Civil Rivision. No.2489 of 2012
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8116.pdf

Facts: The petitioner filed suit for declaration on the basis the High Court in a constitutional petition allowed the vendees from Chotu a right to purchase the land. The grievance voiced in the suit was that the order in the Constitutional petition was not implemented by the concerned functionaries, in result, some of the purchasers instituted civil suits which were allowed and they were granted relief while the petitioner was not accorded the same relief. In this backdrop the petitioner claimed a declaration to the effect that he was owner in possession of the land as purchaser and that he shall be allowed to purchase the land @Rs. 100/- per unit regarding average price of the year 1962. Suit was contested by the Province of the Punjab and ultimately dismissed.

Issues: i) Whether the petitioner is bound to suffer consequential results of not accepting/challenging the offer or depositing the requisite amount assessed by Settlement Department?
ii) Whether the judgment in personam has any universal application like judgment in rem?

Analysis: i) The petitioner was offered to purchase the land in compliance with Order in writ petition but the petitioner admits to have not paid or deposited the amount nor challenged the price assessed in appeal for anywhere in the hierarchy of jurisdiction. Instead the suit was filed after 14 years which obviously was barred by time. Be that as it may, the petitioner did not make necessary compliance to the Order of this Court for the purchase of land and it was the petitioner who was himself to blame for not availing the option and, therefore, the grievance voiced by the petitioner as to the non-implementation of the Order was ill-founded. If the offer could not materialize the petitioner shall fault himself for the consequential results of not accepting the offer or depositing the requisite amount.

ii) The plea of discrimination was also misconceived and untenable. If in other cases with different facts some indulgence was sought from the court and relief was granted for the implementation of the earlier order that will not extend any help to the petitioner who had to make out his own case on the strength of the material or evidence produced in his own suit. The other judgments being judgments in personam could not have any universal application unlike judgments in rem, therefore, the petitioner was rightly non-suited by the courts below by properly analyzing his conduct from the evidence on record.

Conclusion: i) The petitioner is bound to suffer consequential results of not accepting/challenging the offer or depositing the requisite amount assessed by Settlement Department

ii) The other judgments being judgments in personam could not have any universal application unlike judgments in rem.

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36. **Lahore High Court**
Anjum Sarwar Butt and another v. Addl. District Judge, Gujranwala and others
W.P. No.54744 of 2019
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC7797.pdf

Facts: After one month of filling of suit for pre-emption the court ordered for deposit of zar-e-soim. The same was deposited but defendant filed application claiming therein that the suit was liable to be dismissed for violation of the mandatory provision of section 24(2) of the Punjab Pre-emption Act, 1991 as zar-e-soim had not been deposited within time i.e. within one month of filling of suit.

Issues: Whether suit for pre-emption is liable to be dismissed if the court omits to pass the order of deposit of zar-e-soim?

Analysis: True that the provisions of section 24 are mandated to verify the bona fide of the preemptor and that is why a consequential penalty in the event of violation of the order is provided; nevertheless, the provision of law pre-requires a direction for deposit of the amount of zar-e-soim with a view to attract the consequential penalty and obviously the party cannot suffer on account of any omission on the part of the court to give such direction.

Conclusion: The suit for pre-emption not to be dismissed if the court omits to pass the order of deposit of zar-e-soim.

37. **Lahore High Court Lahore**
Senior Air Hostess Samina Saleem Qureshi v. Pakistan International Airlines and others
Civil Revision No.76153 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8221.pdf

Facts: The petitioner was appointed as airhostess but her decree was found bogus hence she was dismissed. She filed suit for declaration to challenge the order of termination/dismissal wherein her plaint was rejected under Order VII, Rule 11, C.P.C.

Issue: Whether the suit for declaration to challenge the order of termination/dismissal from service of an employee in a statutory corporation having no statutory rules is maintainable.?

Analysis: It is a settled rule that in the absence of any statutory rules the employee cannot claim the rights and privileges as are available to civil servants. Instead the rule of master and servant would attract which is to the effect that unwilling employer cannot be compelled to accept the services of an employee who had been removed from service and if the employee feels that the order was not just or fair or suffered from any mala fide, the remedy will be to sue for damages and not for declaration for subsistence of service as no declaration could be issued as to the subsistence of a contract that by its own terms and conditions was terminable at the option of the employer.

Conclusion: The suit for declaration to challenge the order of termination/dismissal from service of an employee in a statutory corporation having no statutory rules is not maintainable.

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38. **Lahore High Court**
Murder Reference No. 17 of 2018 2
Mst. Ramzana Bibi v. the State &another
Criminal Appeal No. 117-J of 2018
Muhammad Ashraf @ Anwar Sayyal & another v. The State & another
Criminal Appeal No. 96-J of 2018
Inayat Ali v. The State & another
Criminal Revision No. 84 of 2018
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7877.pdf

Facts: The appellants assailed their conviction and sentence in murder case.

Issue: i) Under what circumstances evidence of a chance witness is accepted?

ii) Whether identification parade proceedings missing essential requirement can be relied upon?

Analysis: i) The evidence of a chance witness requires very cautious and close scrutiny. He must adequately explain his presence at the crime scene. In case of a chance witness, the prosecution is burdened to show that what were those special reasons that instead to be at his ordinary place he was present at a point where he was not supposed to be? If the reasons are sound, convincing, logical and corroborated from other circumstances, the statement of a chance witness can be accepted otherwise not.

ii) The important features for a valid identification parade are that the proceedings shall be conducted under the supervision of a Magistrate; proceedings shall be held inside the jail; identification shall be carried as soon as possible after the arrest of suspect; once the arrangements for proceedings have been undertaken, the Officer investigating the case and any Police Officer assisting him in that investigation should have no access whatever either to the suspect or to the witnesses; list of all persons included in identification should be prepared, which should contain their names, parentage, address and occupation; the suspects shall be placed among other persons similarly dressed up, of the same religion and of same social status; there shall be proportion of 8 or 9 such persons to one suspect; the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called upon to make identification; each witness shall be brought up separately to attempt his identification; care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communication to pass between witnesses who have been called up and those who have not; the Magistrate conducting the proceedings must take an intelligent interest in the proceedings and not be just a silent spectator of the same bearing in mind at all times that the life and liberty of someone depends only upon his vigilance and caution and that he is required to record in his report all the precautions taken by him for a fair conduct of the proceedings

Conclusion: i) If the reasons regarding presence of chance witness at alleged place of occurrence are sound, convincing, logical and corroborated from other circumstances, the statement of a chance witness can be accepted otherwise not.

ii) Identification parade proceedings missing essential requirement cannot be relied upon.

39. Lahore High Court
Muhammad Shakeel & 03 others v. Muhammad Tariq & 04 others.
Writ Petition No. 3610 of 2014
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC8127.pdf

Facts: During the pendency of suit for pre-emption, plaintiff died and his legal heirs were impleaded as party. The defendants filed application for rejection of plaint on the ground that after death of the predecessor-in-interest of petitioners, the petitioners have lost their alleged right of pre-emption as they have no personal property at the time of sale and the suit is not maintainable.

Issues: Whether the right of pre-emption is transferable and inheritable to the legal heirs of the deceased plaintiff?

Analysis: According to 'Hanfi' School of thought, right to sue with regard to pre-emption extinguishes after the death of the pre-emptor and the suit cannot be prosecuted by the heirs of the deceased. In Pakistan every Muslim presumes to be 'Hanfi Muslim' except pleaded contrary to it. The august Supreme Court of Pakistan and Hon'ble High Courts, keeping in view above mentioned facts, frequently held that pre-emptive right is not inheritable and the legal heirs will have no right to continue with the pre-emption suit on the death of pre-emptor during the pendency of pre-emption suit. The position altogether altered with the promulgation of the Punjab Pre-emption Act, 1991 and North-West Frontier Province Pre-emption Act, 1987 which repealed the past law and introduced section 16. Per section 16 thereof, makes the right of pre-emption heritable in all circumstances where a pre-emptor had died after making any of the demands contemplated by section 13 of the same Act. The Federal Shariat Court also declared that the provision of Section 16 is not repugnant to the injunction of Islam. Therefore, in presence of Section 16, right of pre-emption is heritable.

Conclusion: The right of pre-emption is transferable and inheritable to the legal heirs of the deceased plaintiff.

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40. Lahore High Court
Suba through L.Rs and others v. Mst. Halima Bibi etc.
Civil Revision No.683-D of 2009.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7961.pdf

Facts: The respondent filed suit which was dismissed and appeal was preferred. During pendency of appeal suit was withdrawn with permission to file fresh. The fresh suit was filed and dismissed. Against order of dismissal, appeal was filed which was allowed. The petitioner challenged the order of appellate court on the ground that suit was barred by limitation.

Issues: Whether after withdrawal of earlier suit limitation will be counted from the date of institution of earlier suit or of subsequent suit?

Analysis: There is no cavil to the legal proposition that after withdrawal of earlier suit limitation will be counted from the date of institution of that suit as once limitation starts on the same cause of action, it does not discontinue. The object of permission to file a fresh suit is that technicalities of law may not create hurdle in the way of the plaintiff but in no case, the Rule discussed (supra) gives protection to a plaintiff from the bar of limitation. Furthermore keeping in view the said Rule, a plaintiff will be responsible for the time he/she consumed in the earlier suit as the said period shall be counted against him/her. In case of the institution of a fresh suit on the basis of permission granted under Rule 1 of Order XXIII, C.P.C. the plaintiff is bound by the law of limitation in the manner as if the first suit had not been instituted. Therefore, it will be seen that not only the period consumed in the form of earlier suit instituted by the plaintiff is to be counted and not to be excluded for the purpose of limitation and applicability of section 14 of the Limitation Act has also been excluded as it is to be deemed that no first suit had earlier been instituted.

Conclusion: After withdrawal of earlier suit limitation will be counted from the date of institution of earlier suit.

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41. **Lahore High Court**
Ghulam Dastgeer v. The State and another
Criminal Appeal No. 2323 of 2015
Mr. Justice Muhammad Tariq Nadeem.
https://sys.lhc.gov.pk/appjudgments/2021LHC8201.pdf

Facts: The appellant/accused was convicted in a trial under section 302/34 PPC on the basis of his plea of self-defence in his statement before trial court under section 342 PPC despite the fact that the trial court disbelieved the prosecution evidence.

Issues: i) Whether the defence version of an accused in his statement recorded under section 342 Cr.PC is to be accepted or rejected as a whole
ii) Whether accused can be convicted on the statement of accused u/s 342 Cr.P.C when the prosecution failed to prove its case beyond shadow of doubt?

Analysis: i) The defence plea can be accepted or rejected in *toto* and the practice of picking and choosing some sentences favoring the prosecution in isolation of those favoring the accused/appellant is strictly prohibited by the law.
ii) It is the primary duty of the prosecution to establish its own case independently instead of depending upon the weaknesses of defence. In this case, the prosecution miserably failed to discharge its duty and did not produce sufficient

incriminating evidence to connect the appellant with the commission of offence rather tried to get favorable decision from the court only on the basis of inculpatory portion of defence plea…. If the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. The instant appeal is accepted in the given facts and circumstances.

Conclusion: i) The defence version of an accused in his statement recorded under section 342 Cr.PC is to be accepted or rejected as a whole.
ii) Accused cannot be convicted on the statement of accused u/s 342 Cr.P.C when the prosecution failed to prove its case beyond shadow of doubt.

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42. **Lahore High Court**
Muteen-ur-Rehman etc. v. The State etc.
Crl.Misc.No.67507-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8213.pdf

Facts: The petitioner seeks pre-arrest bail for an offence under section 365 PPC.

Issues: i) What is the effect of inordinate delay qua time of occurrence and registration of FIR?
ii) What is the effect of leveling an oral allegation of torture and beating without MLC of the victim?
iii) Whether merits of the case can be touched while granting pre-arrest bail?
iv) Whether it is to be proved in each and every case of pre-arrest bail that there is malafide on the part of complainant ?

Analysis: i) Delay without disclosing any exegesis by the complainant with respect to such delay, indicates the lodgment of such FIR with due deliberation and consultation.
ii) Leveling of allegations of torture and beating without having any MLC of the victim in such circumstances when admittedly there are criminal as well as civil litigation between the parties, false involvement of the petitioners in the case at the hands of the complainant party cannot be ruled out.
iii) While granting extraordinary relief of pre- arrest bail, merits of the case can be touched upon. This aspect of the law lends support from the bare reading of provisions of Section 497, 498 Cr.P.C. The word 'further inquiry' has wide connotation. Interpretation of criminal law requires that the same should be interpreted in the way it defined the object and not to construe in a manner that could defeat the ends of justice. Otherwise, an accused is always considered a 'favorite child of law'. When all these aspects are considered conjointly on the touchstone of principles of criminal jurisprudence enunciated by superior courts from time to time, there is no second thought to this proposition that the scope of

pre-arrest bail indeed has been stretched out further which impliedly persuade the courts to decide such like matters in more liberal manner.

iv) It is well settled by now that it is not possible in each and every case to prove the malafide but same can be gathered from the facts and circumstances of the case. Even otherwise, if an accused person has a good case for post arrest bail then mere at the wish of complainant, he cannot be sent behind the bars for few days by dismissing his application for pre-arrest bail.

Conclusion: i) Delayed FIR without disclosing exegesis indicates its lodgment with due deliberation and consultation.

ii) Allegations of torture and beating without having any MLC of the victim causes serious doubt upon the version of the complainant.

iii) While granting extraordinary relief of pre- arrest bail, merits of the case can be touched upon.

iv) It is not possible in each and every case to prove the malafide but same can be gathered from the facts and circumstances of the case.

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43. **Lahore High Court**
Waqas alias Kashi v. The State
Criminal Revision No.71763/2021
Muhammad Amin v. The State,etc.
Criminal Revision No.68819/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC7971.pdf

Facts: The court has summoned two witnesses, who were not cited in the report u/s 173 Cr. P.C, on the ground that evidence of these witnesses was essential for the just decision the case.

Issues: i) Whether witnesses can be called at the final stage proceedings of trial within the parameter of sec-540 Cr. P.C?

ii) Whether it is duty of the court to provide copy of statements of witnesses?

iii) What is status of witness called and examined or recalled or reexamined u/s section 540 Cr.P.C?

Analysis: i) Court while summoning any witness must bear in the mind that a witness called and examined or recalled or reexamined u/s section 540 Cr.P.C. retains his character as a prosecution or defence witness and he would be a court witness simpliciter if he was cited neither a prosecution witness nor a defence witness…. If any given up prosecution witness or defence witness is recalled, court can allow the respective party to put question to their own witnesses under Article 150 of Qanun-e-Shahadat Order, 1984 which is not meant for asking questions only to hostile or resiled witnesses… When the court summoned a witness both parties have right to cross examine such witness; therefore, no prejudice is caused to

either of them.

ii) The object and purpose of this section 540 Cr. P.C is very clear, it gets a status of overarching component of criminal justice system being a brainchild of inherent right of fair trial and due process, which now is part of constitutional regime for fundamental rights. This is the only section which is so responsive to all lame excuses in the system for non- collection of evidence and missed prosecution of the offenders. The section authorizes the court to use discretion for summoning of any person as witness at any stage of an inquiry, trial or other proceedings. The phrase "at any stage" mentioned in the section is obliviously encompasses the stage of final arguments or later if the case is pending for decision.

iii) It is trite that complainant can obtain the copies of statement of witnesses recorded u/s 161 of Cr. P.C, and court cannot refuse supply of such statement. If any given up prosecution witness or defence witness is recalled, court can allow the respective party to put question to their own witnesses under Article 150 of Qanun-e-Shahadat Order, 1984 which is not meant for asking questions only to hostile or resiled witnesses

Conclusion: i) The witnesses can be called at the final stage proceedings of trial within the parameter of sec-540 Cr. P.C.

ii) It is duty of the court to provide copy of statements of witnesses?

iii) What is status of witness called and examined or recalled or reexamined u/s section 540 Cr.P.C

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44. **Lahore High Court**

Muhammad Ghazanfar Naveed. v. The State, etc.

Writ Petition No.43081-Q/2021

Mr. Justice Muhammad Amjad Rafiq

https://sys.lhc.gov.pk/appjudgments/2021LHC8241.pdf

Facts: Second FIR was lodged with respect to second marriage of husband without permission of first wife.

Issues: i) Whether High Court can quash the FIR in constitutional jurisdiction?

ii) Whether Second FIR on same facts is permissible?

iii) Whether FIR can be lodged for forgery regarding permission letter for second marriage or the matter falls within the jurisdiction of family court?

Analysis: i) Subordinate criminal courts are authorized to acquit the accused at any stage of the case and this power is synonymous to one the High Court exercise u/s 561-A Cr. P.C., but if they fail to exercise powers then High Court either under Article 199 of the Constitution of Islamic Republic of Pakistan or under section 561-A of Cr. P.C. can either quash the proceedings pending in the court subordinate thereto or quash the FIR…. Similarly, FIR being false owing to mistake of law stands

quashed.

ii) It is trite that second FIR is not permissible under the law as per dictum laid down in the case "Mst. Sughran Bibi v. The State" (PLD 2018 SC 595) that every version in an FIR put forward by the same complainant or different parties to the proceedings, would be recorded in the same FIR and if the first had stood cancelled, the concerned party may file a private complaint or may file an application for review of cancellation order

iii) The permission letter, whether forged or genuine, is a fact in issue to be decided by the family court. The petitioner is claiming that permission letter is genuine allowing him to contract second marriage, whereas, his first wife is alleging it to be forged one. Both the claims stand on the one point i.e. question of second marriage contracted with or without the permission of the first wife and there is no cavil to the proposition that entry in the Nikah Nama also contain a condition about second marriage and according to section 5 read with section 20 of the Family Court Act, 1964 it is only the family court that could decide any matter relating to terms asnd conditons of Nikah Nama and fate of such permission letter touches that condition whether it is genuine or otherwise. …. The learned Magistrate was not justified in taking cognizance of the case, which was exclusively triable by family court.

Conclusion: i) The High Court can quash the FIR in constitutional jurisdiction.

ii) The Second FIR on same facts is not permissible.

iii) The FIR cannot be lodged for forgery regarding permission letter for second marriage and the matter falls within the jurisdiction of family court.

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45. **Lahore High Court**
Faiz Ahmad v. Haji Abdul Sattar
C.R. No. 363 / 2014
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC7993.pdf

Facts: The petitioner has challenged the order wherein his application under Section 12(2) CPC seeking to set aside the ex-parte Judgment & Decree in suit for recovery based on a cheque under Order XXXVII, Rules 1 & 2 of the CPC was dismissed.

Issue: i) Whether quoting of wrong provision of law is a hurdle to decide a lis?

ii) Whether defendant can be burdened with the duty to file application for leave to defend within ten days in summary proceedings when the mandatory requirements regarding service are violated?

Analysis: i) Mere quoting of wrong provision of law is not a hurdle to decide a lis if on the basis of the contents of the application and the relief sought, a party is entitled for the same. All rules of procedure are meant to advance the cause of justice. If the

Court is vested with the jurisdiction to hear and decide the lis, it must not hesitate to decide the matter on merits if the occasion so warrants. Hence, the Courts have liberally resorted to the doctrine of „conversion‟ to treat one kind of proceedings into another or condone misdescription in the title of the proceedings or wrong mentioning of a provision of law with the objective to dispense substantive justice.

ii) There is no cavil to the proposition that Rule 4 of Order XXXVII of the CPC implies that an application for setting aside an ex-parte Judgment and Decree should be accompanied with an application for leave to defend where the summons in the manner stated as aforesaid are duly served upon the defendant. In other words, the Rule is attracted when it can be shown that the defendant was duly served through summons in Form 4 of Appendix B along with a copy of the plaint. Importantly, Rule 4 of Order XXXVII of the CPC does not specify a period of limitation to file an application for setting aside an ex-parte Judgment & Decree and bestows a wide discretion to the Trial Court to deal with peculiar facts and circumstances of each case by employing the test of „special circumstances‟ to meet the ends of justice. Therefore, residuary provision contained in Article 181 of the Limitation Act, 1908 prescribing a period of limitation of three years from the date of knowledge is attracted to compute the period of limitation regarding an application under Rule 4 of Order XXXVII of the CPC seeking to set aside the Judgment and Decree. Article 164 of the Limitation Act, 1908 is not applicable unless it can be shown that Judgment and Decree was passed after the suit had become an ordinary suit after the special procedure encapsulated in Order XXXVII of the CPC had been exhausted.

Conclusion: i) Mere quoting of wrong provision of law is not a hurdle to decide a lis.

ii) Defendant cannot be burdened with the duty to file application for leave to defend within ten days in summary proceedings when the mandatory requirements regarding service are violated.

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46. **Lahore High Court**

Mst. Anam Abid and 7 others. v. Government of the Punjab and 4 others.

Writ Petition No. 3076 / 2021

Mr. Justice Abid Hussain Chattha

https://sys.lhc.gov.pk/appjudgments/2021LHC8031.pdf

Facts: The petitioners were appointed as Junior Clerks in BS-11 on the recommendation of District Selection Committee under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (the "Rules"). In response to multiple public complaints, the Deputy Commissioner / Administrator, DEA after inquiry declared all recommendations as null and void ab initio on account of various illegalities carried out during the overall recruitment process.

Issue: i) What is principle of locus poenitentiae?

ii) Whether executive can inquire into process of recruitment upon complaint of malpractice etc?

Analysis: i) Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. Locus poenitentiae conceptually connotes, that authority which has the jurisdiction to pass an order and take an action, has the due authority to set aside, modify and vary such order / action, however there is an exception to this rule i.e. if such order / action has been acted upon, it creates a right in favour of the beneficiary of that order etc. and the order / action cannot thereafter be set aside / modified etc., so as to deprive the person of the said right and to his disadvantage. However, no valid and vested right can be founded upon an order, which by itself is against the law.

ii) The executive was well within its right to inquire into the process of recruitment amidst public complaints of malpractices, corrupt practices, illegalities and irregularities committed in the recruitment process with the objective to cure illegalities and remedy the wrong within a reasonable time frame. In fact, equal application and treatment of law, fairness, good governance and merit are indispensable dictates of the Constitution that must make way and prevail in the last resort vis-à-vis unequal treatment of law, corrupt and unfair practices and illegal processes. The rights and interests of several other applicants who were ousted from the process of recruitment on account of unfair means were equally important and precious in contrast to the claimed right of appointment by successful applicants. The impugned withdrawal orders did not cause any prejudice to the Petitioners who are free to take part in the fresh process aimed to bring transparency and fairness in the process of recruitment which would be just and equitable to the Petitioners as well as to all other eligible persons.

Conclusion: i) Locus poenitentiae conceptually connotes, that authority which has the jurisdiction to pass an order and take an action, has the due authority to set aside, modify and vary such order / action.

ii) Executive can inquire into process of recruitment upon complaint of malpractice etc.

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47. **Lahore High Court**
Noor Muhammad v. Niaz Ahmad etc.
Civil Revision No.852-D/2003
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC8093.pdf

Facts: The petitioner instituted a suit for declaration against the respondents that he was owner-in-possession of the suit property and the Permanent Transfer Order in favour of predecessor-in-interest of the respondents is liable to be set aside being inoperative against his rights to the extent of half of its portion which is the suit property. After the complete trial, the suit was dismissed and the appeal thereof was also dismissed on the ground that since the matter related to allotment of the suit property under the Displaced Persons (Compensation and Rehabilitation) Act,

1958, the civil courts had no jurisdiction by virtue of Section 25 thereof. Thereafter, the petitioner moved a revision/application with the Additional Commissioner (Revenue)/Settlement Commissioner for cancellation of the Impugned Transfer Order, which was dismissed on the ground that after promulgation of Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975, Settlement Authorities had no role to play in the matter of allotment. The petitioner then filed a second civil suit with same prayer but that was also dismissed on the basis of res judicata and the appeal was also dismissed. The respondents also instituted as suit for possession of the suit property which was decreed by the Civil Court and the appeal of the petitioner was dismissed. The petitioner filed three different civil revisions to challenge the dismissal of his two suits and the decree in suit of respondents.

Issue: i) Whether the civil court has no jurisdiction in the matter of allotment by the Settlement Authorities even after the promulgation of Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975?
ii) Whether the case should be remanded or must be decided by the Revisional Court if the oral and documentary evidence is already on record and the parties have satisfactorily availed the opportunity of leading evidence?
iii) Whether the Revisional Court can appraise the evidence of parties dully recorded in trial for the first time in its revisional jurisdiction when earlier the trial court or appellate court below has not appreciated or analyzed it?

Analysis: i) After promulgation of the Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975, Settlement Authorities have no jurisdiction to decide the matter. In view of the ratio laid down in Ghafoor Bukhsh case, it is clear that the learned court erred in deciding the suit only on the basis of jurisdiction rather the civil court has jurisdiction to decide the matter.
ii) Remand of a case amounts to replay of an agonizing and protracted trial already undergone by the parties for a long period and would demonstrate an empirical evidence of oft-used maxim justice delayed is justice denied. Moreover, remanding the matter would serve no purpose if the complete evidence of the parties has been recorded and is sufficient to sift the chaff from the grain and bring out the truth to the surface to reach a just conclusion. Remanding the matter after a long period would not only take its toll on the finance of the parties by causing further holes in the pocket but also while away the time of the parties as well as judicial apparatus of the state. This Court while exercising its revisional jurisdiction needs to remain pivoted to the object of remanding a case. Where this Court finds that sufficient material and evidence has been brought on record, remanding the matter would not serve any useful purpose. Remand of a case needs to be resorted to only in a situation where this Court feels handicapped and is unable to reach a just conclusion on the basis of material and evidence available on record. It is settled principle of law that where oral and documentary evidence is already on record and the parties have satisfactorily availed the opportunity of

leading evidence, the case must be decided and should not be remanded.
iii) This Court can do the appraisal of the evidence duly recorded in the trial for the first time in revisional jurisdiction, which admittedly was not appreciated and analyzed either by the trial court or the appellate court below. In this regard, there is no impediment, under the law, qua power of this Court to appraise the evidence for the first time in its revisional jurisdiction inasmuch as powers of this Court under Section 115, CPC are not limited in nature.

Conclusion: i) The civil court has jurisdiction in the matter of allotment by the Settlement Authorities after the promulgation of Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975.
ii) The case should not be remanded rather must be decided by the Revisional Court if the oral and documentary evidence is already on record and the parties have satisfactorily availed the opportunity of leading evidence.
iii) The Revisional Court can appraise the evidence of parties dully recorded in trial for the first time in its revisional jurisdiction even when earlier the trial court or appellate court below has not appreciated or analyzed it.

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48. **Lahore High Court**
Bashir Ahmed v. Shaheen Waheed etc.
FAO No.8/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC8153.pdf

Facts: The appellant/tenant challenged the judgement/order of Rent Controller whereby he dismissed an application filed by the appellant for extension of time to deposit the rent and accepted the application filed by the respondents for closing the right of defence of the appellant under Section 17(9) of the Cantonment Rent Restriction Act 1963 on account of failure on part of the appellant to comply with order of the rent controller and directed the appellant to vacate the rented premises. Appellant claimed that the default in payment of rent is not wilful rather COVID-19 lockdown caused complete disruption of all the business activities and the school being run by the appellant was also closed as per order of the government and therefore, the same falls under the purview of *force majeure* and the entire purpose for which the rented premises was taken by the appellant was frustrated.

Issues: i) Whether the doctrine of *force majeure* applies to a case being governed by the Rent Act when there is no *force majeure* clause in the agreement between the parties
ii) Whether mere temporary disruption or closure of a business can exempt a tenant from not making the monthly rental payments as per agreed terms?

Analysis: The availability of the relief on the basis of doctrine of *force majeure* is contingent on the availability of the relevant clause in the contract and the interpretation of applicable law on the subject. Therefore, the term *force majeure* as well as its applicability in the present case needs to be analysed in the light of relevant provisions of the Contract Act 1872 and the terms and conditions of the Rent Agreement on the basis of which the appellant was inducted as a tenant in the first place. In the absence of a *force majeure* clause in the agreement between the parties, a party thereto may attempt to invoke the doctrine of frustration embedded in Section 56 of the Act 1872, which deals with impossibility of performance and applies to cases where a *force majeure* event occurs outside the contract. Section 56 of Act 1872 does not apply to lease agreements as there is a distinction between a 'completed conveyance' and an 'executory contract' and a lease or a tenancy created under a rent deed is a completed conveyance though it involves monthly payment and hence, Section 56 cannot be invoked to claim waiver, suspension or exemption from payment of rent.

ii) The contract is not discharged merely because it turns out to be difficult or onerous for one party to perform and no one can resile from a contract for the said reason. Temporary disruption in enjoyment of demise premises is not a ground to avoid and delay the payment of rent when the tenant does not chose to avoid the lease/tenancy. In the present case, the Rent Agreement does not contain a clause providing for some sort of waiver/suspension/ delay of payment of the rent on account of force majeure, hence, the appellant cannot claim the same and plead that the default on this ground was not wilful. Doctrine of frustration, in the instant case, has not been specifically pleaded in the application for leave to defend filed before the trial court or in the present appeal and it is only during the course of arguments, learned Counsel for the appellant avers that COVID-19 lockdown frustrated the contractual obligations for the time being, however, the case of the appellant does not fall within the scope of doctrine of frustration as examined above. In view of the settled legal position, temporary non-use of premises due to the lockdown, which was placed by the government, due to the COVID-19 crisis cannot be of any help to the appellant to invoke force majeure situation under the TPA as well. Even on equitable grounds, the appellant never gave a notice of force majeure to obtain any relief for non- performance or delayed performance and only pleaded the same when the eviction petition was filed by the respondents, thus the contract should be performed in strict compliance with the terms and conditions of the Rent Agreement regarding payment of rent.

Conclusion: i) The doctrine of *force majeure* does not applies to a case being governed by the Rent Act when there is no *force majeure* clause in the agreement between the parties.

ii) Mere temporary disruption or closure of a business cannot exempt the tenant from not making the monthly rental payments as per agreed terms.

49. **Lahore High Court**
Malik Muhammad Altaf. v. Muhammad Ashraf (Deceased) through Legal Heirs and another.
R.S.A No. 226 of 2016
Mr. Justice Sultan Tanvir Ahmad.
https://sys.lhc.gov.pk/appjudgments/2021LHC7914.pdf

Facts: Appellant filed a suit for specific performance on the basis of agreement. The said suit was contested by the Respondents by filing written statement in which they admitted some points for consideration but afterwards resile from statement by filing amended written statement. The learned trial Court decreed the suit. The Judgment and Decree was challenged by way of Civil Appeal, which was accepted and Judgment and Decree passed by trial court was set aside. Aggrieved from the same, this Regular Second Appeal has been filed.

Issues: Whether through amendment in written statement one can resile from the admission if made earlier in his written statement?

Analysis: That defendant does not acquire unfettered rights to change the written statement in toto or substitute it by a completely new written statement and the Court is entitled to apply the principles relating to amendment of pleading while examining the amendment in written statement as well as without permission of the Court no party has any inherent right to amend the pleading at its own discretion.

Conclusion: Through amendment in written statement one cannot resile from the admission if made earlier in his written statement.

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50. **Lahore High Court**
Naveed Ishaq v. Ex-Officio Justice of Peace, etc.
Writ Petition No. 4190 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7979.pdf

Facts: A Justice of Peace has ordered for the registration of a criminal case against the petitioner on the basis of a "self" dishonoured cheque" on which no endorsement whatsoever in favour of the eventual bearer has been recorded.

Issues: Can a dishonoured 'self' cheque i.e. a cheque issued by an account holder i.e. drawer to 'himself' (payee) ever result in attracting criminal liability under Section 489-F PPC?

Analysis: If the payee is "self", it can be reasonably and correctly presumed that the money for which the cheque was issued was to be paid to the drawer himself and it is

also reasonable to presume that a person would not *dishonestly* issue a cheque to pay money to himself and that the cheque was not issued towards the repayment of a loan or towards the fulfillment of some legal obligation one has towards oneself. Therefore, some documentation would be required to prove that a self cheque was endorsed in favor of the holder so as to make him a holder in due course, otherwise, it shall be presumed that it was a self cheque in its true essence and not one that was endorsed in favour of the holder**.** It is also declared that a "self" dishonored cheque" (even if the reference on the cheque to a bearer is not crossed) does not entitle a bearer to request for registration of a criminal case unless and until there is a positive endorsement in favour of the bearer either on the back of the cheque in question or by means of a separate document which would make the bearer a "holder in due course".

Conclusion: A dishonored 'self' cheque i.e. a cheque issued by an account holder i.e. drawer to 'himself' (payee) cannot attract criminal liability under Section 489-F PPC.

LATEST LEGISLATION/AMENDMENTS

1. "The Punjab Local Government Ordinance 2021" is promulgated to reconstitute local governments in the Punjab.
2. In rule 6, after sub rule 2 of the "Punjab Local Council Servants (Service) Rules, 1997", a rule (3) is added.
3. "The Punjab Local Government Service (Appointment and Conditions of Service) Rule 2018" amendments are made in rule 3 sub-rule 2 clause c,d,e; rule 10, sub rule 1 clause a. In the schedule at Sr. No. 15 in column 7.

LIST OF ARTICLES

1. INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION
https://www.tandfonline.com/doi/full/10.1080/09695958.2021.2020657
The effects of basic psychological needs satisfaction and mindfulness on solicitors' well-being by James J. Walsh, Almuth Mcdowall, Kevin R.H. Teoh

Rising reports of poor mental health and well-being in lawyers across multiple jurisdictions, notably the United States of America, Australia, and the United Kingdom (UK), have led to a growing international focus on this topic. Yet there remains a paucity of empirical data on the well-being of solicitors practising in England and Wales. Framed by self-determination theory (SDT), we undertook a cross-sectional survey of 340 trainee and qualified solicitors in England and Wales to (1) benchmark the psychological well-being of solicitors against other UK occupational groups and adult population norms; and (2) test relationships between mindfulness, satisfaction of basic psychological needs (perceived autonomy, relatedness, and competence at work) and psychological well-being. The SDT components positively and significantly related to well-being. Mindfulness partially mediated the pathway between basic psychological needs

satisfaction and well-being, suggesting that satisfaction of these needs may in themselves facilitate higher mindfulness, thereby contributing to greater levels of well-being. We conceive that autonomy, relatedness, and competence at work provide the psychological space necessary for mindfulness to be cultivated, within which well-being can thrive. These findings support the importance of a systemic approach to solicitors' well-being to safeguard basic psychological needs in the workplace.

2. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/8-esg-legal-risks-to-consider-transaction-documents

8 ESG Legal Risks to Consider in Transaction Documents by Kyle Kroeger

According to the consulting firm Bain, "Covid-19 was a dress rehearsal for climate change". Unfortunately, this statement stands true, and we can't deny the impact of the pandemic on the lives of millions around the world. But while 2020 was a year of pandemic and a havoc situation, it was also a time when the environmental, social and governance (ESG) agenda became an essential topic of discussion among businesses worldwide. ESG is a complex topic that covers various areas. But majorly, it revolves around a primary aspect: the identification and mitigation of ESG legal risks. If you haven't come across such risks before, this article will help you understand them. So, dig in to explore eight main ESG legal risks to consider in transaction documents.

***3.* COLUMBIA LAW REVIEW**

https://columbialawreview.org/content/first-amendment-limitations-on-public-disclosure-of-protest-surveillance/

First amendment limitations on public disclosure of protest surveillance by Tyler Valeska

This Piece argues that wholesale dumps of unedited footage likely violate the First Amendment in at least some circumstances, including those of last summer's Black Lives Matter protests. While the Supreme Court has insulated governmental collection of protest surveillance from First Amendment challenges via its standing doctrine, public dissemination of such surveillance creates a cognizable injury that avoids standing obstacles. That injury is inflicted by governmental distribution of protest surveillance despite the public nature of protests, as protestors retain certain privacy interests in the public square. And despite the strong governmental interest in transparency surrounding police–protestor interactions, blanket dumps of footage likely fail under exacting scrutiny when they render individual peaceful protestors publicly identifiable. Threat of identification chills protestors' speech and assembly rights by subjecting them to threats of private retaliation like adverse actions by employers and violence by extremist militias. Bonta's narrow tailoring requirement likely requires police to avoid identifying peaceful protestors by blurring out faces before releasing (or while livestreaming) protest footage and by not zooming in surveillance cameras for extended, close-range livestreaming of individuals.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Rethinking-the-Prohibition-on-Advertising-for-Advocates
Rethinking the Prohibition on advertising for Advocates by Harshima Vijaivergia and Smita Pandey

The Legal Profession is one of the highly regarded professions. The profession has also been protected against commercialization by prohibiting its advertisements. However, barring the lawyers from advertising their services is proved to be futile in the present competitive scenario. The paper begins with the explanation of what exactly advertising means and briefly presents the views of the professionals in the light of this prohibition. It also supports the 'against' views in the COVID-19 crisis and the prohibition has proved to be harmful, in an attempt to save sanctity. Further, the author outlines the legal provisions that deal with 'Advertisement of services by Advocates' and emphasizes Rule 36. Furthermore, the article will encapsulate the judicial view and opinion on the ban through several Judicial pronouncements. The author discusses the status- quo of advertisement ban in different nations. The opportunities and weaknesses have been analysed in an attempt to highlight the pros and cons. The concluding part recommends changes in the laws to protect the right and profession of the lawyers, whilst upholding the sanctity of the legal profession.

5. **MANUPATRA**
https://articles.manupatra.com/article-details/Innocent-Behind-Bars-Challenges-and-Remedies
Innocent Behind Bars: Challenges and Remedies by Ritendra Gaur and Dheeraj Diwakar

The concept of Justice forms a very integral part of any civil society. Courts are primarily responsible for the proper channelization of Justice. It is the Court's behavior towards a truth that determines how much faith will people retain in them. This concept becomes more important while dealing with Criminal Justice System. There are instances when an innocent is wrongly convicted, and the real culprit is set free. This is called a miscarriage of Justice. Miscarriage of Justice is not a recent phenomenon but has been there since a long time ago. There are many instances in History where innocents were punished by the then judicial system while the main culprits were set aside. The innocent behind bars is a "SCAPEGOAT" in the Criminal Justice System. The "SCAPEGOAT" is punished due to the faulty Judicial Process. That fault may be from the side of the Police or Prosecutor or the Court itself. These kinds of mis happenings leave a very bad impression of the Criminal Judicial System on the General Public and International Image of any Nation. Other than this it also questions the rationality of the Courts.

6. **MANUPATRA**
https://articles.manupatra.com/article-details/An-Extensive-study-of-Rape-Laws-in-India
An Extensive study of Rape Laws in India by Tejaswini Mallick

This paper gives a theoretical understanding of anti-rape laws and its evolution, from being a property crime to crime against the bodily integrity of a woman. This paper traces its origin form the English common law and goes on to analyze the landmark cases from Mathura rape case to the recent Kathua rape case which brought about the progressive amendments in anti- rape laws under the Indian Penal Code. It discusses in detail the reforms made by the criminal law amendment act of 1983, 2013 and 2018. It looks into the recommendations made by the Justice Verma Committee on the controversial aspects of gender neutrality, capital punishments etc. It analyzes a series of judgments highlighting the misogynistic approach taken by courts which act as impediment for women while seeking justice even after progressive reforms. It concludes with the suggestion for change from not just the legislative level but also from the social and cultural level.

7. **MANUPATRA**
https://articles.manupatra.com/article-details/Addressing-the-Threat-of-Autonomous-Weapons-Maintaining-Meaningful-Human-Control
Addressing the Threat of Autonomous Weapons: Maintaining Meaningful Human Control by Raashi Agarwal

Autonomous Weapons is a concept which has been emerging in the debates nowadays. It is very essential to consider the boom in technological advancements which have directly affected the technological advancements worldwide in relation to war fare. The force used by some countries has advanced rapidly and has been dominated by remote warfare. Autonomous weapon means a weapon system with minimized human control or by artificial intelligence. This poses a lot of questions with regards to international relation between different member countries in regards to human decision making in war fare. This research paper examines the importance of human control on Autonomous weapons as well as impact of autonomous weapons in international law. The paper also focuses on the link between autonomous weapons to international humanitarian law.