LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(15-10-2020 to 31-10-2020)

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

13.	Equality Before the Law: A Substantive Constitutional Principle
14.	Preservative or Transformative? Theorizing the U.K Constitution Using Comparative Method
15.	Artificial Intelligence and the Transformation of Humans, Law and Technology Interactions in Judicial Proceedings

1. **Supreme Court of Pakistan**
Civil Appeal No. 1698 of 2014
Manzoor Hussain (deceased) through L.Rs v Misri Khan v. Misri Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1698_2014.pdf

Facts: In a suit for pre-emption, the plaintiff produced copies of acknowledgement receipt of the Talb-i-Ishhad notice and revenue documents in evidence through his counsel and he did not produce postman to establish delivery of notice.

Issue: Whether copies of acknowledgment receipt and revenue documents could be produced by the counsel in his statement and was there no need to produce the postman?

Analysis: Copies of documents were produced and exhibited by the pre-emptor's counsel, but without him testifying. Copies of documents, having no concern with counsel, are often tendered in evidence through a simple statement of counsel but without administering an oath to him and without him testifying. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. The defendant had not admitted receipt of the said notice; therefore, the acknowledgement receipt (exhibit P4) could not be stated to be an admitted document and did not constitute an admitted fact. Therefore, delivery to and/or receipt by the respondent of the notice had to be established.

Since the defendant denied the receipt of the Talb-i-Ishhad notice it was necessary for the plaintiff to have established its delivery or receipt of it by the defendant. The defendant was not confronted with the acknowledgement receipt to establish that he had received the said notice. Even if it is accepted that the pre-emptor's counsel had received back the acknowledgement receipt, it would still not establish that the addressee (the defendant) had received it. The postman was also not produced to establish the delivery of Talb-i-Ishhad notice.

Conclusion: Documents which are not admitted cannot be produced by counsel in his statement.

When receipt of acknowledgment is denied by the defendant, it is necessary to produce postman to establish its delivery.

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2. **Supreme Court of Pakistan**
Civil Appeals No.1476 To 1485 Of 2018 etc
Federal Government Employees Housing Foundation (FGEHF), Islamabad v Malik Ghulam Mustafa & others
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1476_2018.pdf

Facts: The case is about the compulsory acquisition of land in the area of the Islamabad Capital Territory by the Federal Government Employees Housing Foundation in terms of the Land Acquisition Act, 1894. Some of the land owners challenged the

acquisition proceedings on the ground that the acquisition of the Land was not for a 'public purpose' and since the Land was situated in Islamabad its acquisition could only take place under the Capital Development Authority Ordinance, 1960 and not under the Land Acquisition Act, 1894.

Issue:

(i) How to determine the repeal, overriding effect, repugnancy, vires, intra-vires or otherwise of any competing or comparable statutes, or analogous provisions contained therein?
(ii) How implied repeal may be inferred by necessary implication?
(iii) When doctrine of occupied field, pith and substance and incidental encroachment may be invoked?
(iv) What is the Eminent Domain?
(v) Whether the acquisition of land for a housing society is recognized as a public purpose?
(vi) Whether the Capital Development Authority Ordinance, 1960 overrides the Land Acquisition Act, 1894

Analysis:

(i) To determine the repeal, overriding effect, repugnancy, vires, intra-vires or otherwise of any competing or comparable statutes, or analogous provisions contained therein, several litmus tests, tools of interpretations, and legal doctrines are applied. These accessories of interpretation are harvests of long drawn jurisprudential expositions and judicial interpretational wisdom culled by the superior courts. The tests to determine the validity of legislation are applied, inter-alia, on the touchstone of Constitution, legislative competency, limitation and distribution of legislative authority between Federal and Provincial legislature, doctrine of occupied field, pith and substance, special and general law, earlier and later law, delegated and subordinate legislation, directory or mandatory enactment or provisions, effect of obstante or non-obstante provisions in any enactment or otherwise. These are some of the illustrative and non-exhaustive tools of interpretation and doctrines applied by the superior courts to adjudge the legitimacy, vires, ultra-vires, repeal, overriding, or supremacy of one statute over the other……..In addition to the Constitutional filter, other tools such as legislative history, statement of object, and the preamble of a statute are important in deciphering intention, legitimacy, repugnancy, validity, and overriding or dominance of competing statutes, or provisions contained therein, which is relevant in the instant case.

(ii) Implied repeal is inferred by necessary implication when the provisions of the later law are so inconsistent with, or repugnant, to the provisions of the earlier law that the two cannot stand together. Although, if the two can be read together and some application can be made of the words in the earlier Act, repeal will not be inferred. The necessary questions to be asked are; (i) Whether there is direct conflict between the two provisions; (ii) whether the legislature intended to lay down an exhaustive Code in respect of the subject matter replacing the earlier law and (iii) whether the two laws occupy the same field.

(iii) When two or more competing laws or provisions contained therein, are seemingly similar or overlapping, then legislative intent of the parliament may be discernible from examining the Preamble, legislative history, doctrine of pith and substance, incidental encroachment, and occupied field to adjudge their co-existence in their respective domain or for one to nudge out and claim dominance over the other. The superior courts have expounded such doctrines, amongst others, as interpretive techniques, which are used to adjudge the predominance and constitutionality of a statute or of any provision contained therein….Doctrine of occupied field, which is auxiliary to the larger doctrine of pith and substance, and incidental encroachment, may be invoked by the courts to determine the extent of legitimacy only in cases where the competing statutes or any of the provisions contained therein are by different tiers of legislature.

(iv) In essence, the principle of Eminent Domain provides for the acquisition of land by the State for a Public Purpose or for company in exchange for compensation…….Eminent Domain of State over private property is subjected to three concomitant limitations. Firstly, that no person can be deprived of his property except in accordance with law, meaning thereby that, no property could be acquired through executive orders and actions. Secondly, a person could only be deprived of his property for public purpose. Thirdly, that acquisition of property of a person must be against compensation……

(v) The acquisition of land for a housing society is recognized as a public purpose.

(vi) In absence of overriding or superseding or 'non-obstante' provision within the CDAO, 1960, it does not override the provisions of the LAA, 1894.

Conclusion: Decision is intra court appeal was set aside.

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3. **Supreme Court of Pakistan**
Civil Petition No. 2231 of 2020
Abdul Rehman Malik v. Cynthia D. Ritchie
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2231_2020.pdf

Facts: Justice of Peace declined to issue direction for registration of case. High Court remanded the application under section 22-A Cr.P.C to Justice of Peace for decision afresh. Petitioner contended that since the Superintendent of Police reasonably suspected the veracity of the accusation, hence, under rule 24.4 of Police Rules, 1934 Officer Incharge of Police Station could decline to investigate the matter.

Issue: Whether Officer Incharge of Police can refuse to investigate the accusation of cognizable offence under Rule 24.4 of Police Rules, 1934 without recording F.I.R?

Analysis: Rule 24.4 of Police Rules, 1934 possibly suspends the mechanism to be followed under section 154 of Code of Criminal Procedure, 1898, however, commanding unambiguously to record a First Information Report upon receipt of information disclosing commission of cognizable offence… It does not tyrannically foreclose door to a complainant to voice his/her grievance nor it dogmatically empower Officer Incharge to terminate a prosecution before its inception on his subjective belief of its being false; its application is subservient to the scheme laid down in Part V of the Code ibid and thus has to be essentially read in conjunction with section 169 thereof. Therefore an Officer Incharge can possibly invoke the Rule, that too, for reasons strong and manifest after registration of First Information Report….However the said Rule certainly empowers the Officer Incharge to decline to take adverse action against an accused whom he justly and fairly considers being hounded on a trump up charge for motives obliquely calculated.

Conclusion: Officer Incharge of Police Station cannot refuse to investigate under Rule 24.4 before recording of F.I.R. However, he may decline to take adverse action against an accused that he justly and fairly considers being hounded on a trump up charge for motives obliquely calculated

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4. **Supreme Court of Pakistan**
Civil Appeal No. 1522 of 2013
Haji Wajdad v. Provincial Government
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1522_2013.pdf

Facts: Appellant filed a suit for declaration with all consequential relief validating his title and possession over the suit property. The learned trial court decreed the suit, which was maintained by the appellate court. However, on the revision petition the High Court set aside the judgments of the two courts passed in favour of the present appellant.

Issue: Whether the High Court while exercising revisional jurisdiction could set aside the determination made by the learned trial and appellate courts?

Whether limitation would run even against void order affecting rights of any person?

Analysis: There is no cavil to the principle that the revisional court, while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("CPC"), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate court is the last court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to

the above rule, as provided under section 115 CPC: gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity.

It has by now been settled that, limitation would run even against void order affecting rights of any person. And no one can seek condonation of delay by challenging solely on the said basis. The aggrieved person who files a belated claim against an alleged void order would have to first plead his knowledge thereof, and then prove the same by cogent and reliable evidence, so as to legally justify his such claim to be within the period of limitation from the date of his knowledge

Conclusion: In the present case, it is noted that the revisional court was correct in pointing out serious non-reading and mis-reading of evidence.

Limitation would run even against void order.

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5. **Supreme Court of Pakistan**
Civil Petition No. 686-K of 2019
Muhammad Jawed v. First Women Bank Ltd
https://www.supremecourt.gov.pk/downloads_judgements/c.p._686_k_2019.pdf

Facts: Suit for recovery of finance facility was decreed. In execution, mortgaged property was ordered to be auctioned. Just two days before auction, judgment debtor deposited the cheque of decretal amount and prayed for suspension of auction, however, his application could not be taken up due to leave of presiding officer. Auction was held and petitioner offered highest bid. Offer was placed before the court for confirmation but due to deposit of cheque/decretal amount by judgment debtor, court refused to accept offer of bidder/petitioner. Petitioner remain unsuccessful in High Court.

Issue: Whether the deposit of earnest money and the balance amount by bidder within stipulated time, created a vested interest in the auctioned property prior to confirmation of sale by court?

Analysis: Once a bid is accepted by the Court as adequate and thereafter the full purchase money is deposited in terms of Order XXI Rule 85 CPC, a qualified sale of the auctioned property comes into being which can only be defeated through an application made under Order XXI Rule 89, 90, or 91 CPC. If, however, no such application is made within the time limit prescribed by law, the Court mandatorily confirms the qualified sale under Order XXI Rule 92 CPC, thereby making it absolute and transferring the title of the auctioned property in the name of the successful bidder/purchaser, unless a delayed application is entertained in the circumstances. Once the sale is confirmed and made absolute, the Court grants a sale certificate to the successful bidder/purchaser under Order XXI Rule 93 CPC and gives the sale proceeds necessary for the satisfaction of the decree to the

decree holder under Order XXI Rule 64 CPC, thereby bringing the execution proceedings to an end…

The nature of a bid made in such auctions, notwithstanding whether it is the highest or the lowest, is that of an offer which does not by itself give rise to any rights, as the same is always subject to acceptance by the Court after proper application of its judicial mind followed by the deposit of full purchase-money under Order XXI Rule 85 CPC…….Since a bid, being an offer, standing alone does not create any such relationship, and neither does the aforesaid deposit, it logically follows that no rights can be said to arise out of the same……..in cases involving court auctions of immovable properties "the contract/sale comes into being when the bid is accepted by" the Court

Conclusion: Vested/third party rights accrue in favour of a bidder when the auction-sale becomes complete, i.e. when a bid is accepted by the Court and thereafter the full purchase-money is deposited in terms of Order XXI Rule 85 CPC. However, such vested rights again are defeatable and would not take away the right of the mortgagor to redeem his/her property if s/he brings his/her case within the parameters of Order XXI Rule 89, Rule 90, or Rule 91 CPC. If, however, no application under these provisions is made within the time limit prescribed by law or the same is rejected, the Court mandatorily confirms the qualified sale and makes it absolute under Order XXI Rule 92 CPC, transferring the title of the property in the name of the successful bidder/purchaser, unless a delayed application to set aside the sale is entertained. The property is then deemed to have been vested in the purchaser, per Section 65 of the CPC, since the time when sale became complete. Petition dismissed.

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6. **Supreme Court of Pakistan**
Criminal Petition No.105-K of 2020
Sidra Abbas v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._105_k_2020.pdf

Facts: In a case of double murder High Court enlarged the accused on bail by holding that the case was of further inquiry. Petitioner sought the cancellation of bail.

Issue: Whether bail can be cancelled on some other ground when the accused has not misused the concession of bail?

Analysis: It should not be ignored that the concept of setting aside the unjustified, illegal, erroneous or perverse order to recall the concession of bail is altogether different than the concept of cancelling the bail on the ground that the accused has misused the concession or misconducted himself or some new facts requiring cancellation of bail have emerged……it is a settled principle of law that a bail granting order can be cancelled if the same is perverse. In legal parlance, a perverse order

is defined as an order which is, inter alia, entirely against the weight of the evidence on record.

Conclusion: The impugned order, therefore, is found to be perverse and accordingly set aside.

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7. **Supreme Court of Pakistan**
Constitution Petition No.17 & 19 of 2019 etc
Justice Qazi Faez Isa v. The President of Pakistan etc
https://www.supremecourt.gov.pk/downloads_judgements/const.p._17_2019_detailed_reasoning.pdf

Facts: The petitioner was alleged to have certain undeclared properties in the name of his wife in the United Kingdom. On confirmation of this fact, a reference was filed against the petitioner in Supreme Judicial Council **(SJC)** alleging misconduct due to violation of Section 116 of the Income Tax Ordinance, 2001. The SJC issued a show cause notice to petitioner. Petitioner admitted that the properties were owned by his wife, who he claimed was a financially independent taxpayer, and his adult children. The petitioner categorically rejected being the owner, both actual and ostensible of said properties and further denied all knowledge of their particulars. Meanwhile petitioner filed a petition in Supreme Court under Article 184(3) of the Constitution for quashing the Reference inter alia on the grounds of it being illegal and based on mala fide claiming that there was no legal obligation on him to disclose the properties of his wife and children.

Issue:

i) Whether under any circumstance proceedings before the Supreme Judicial Council can be called into question in any court despite the bar placed by Article 211 of the Constitution?

ii) Whether a Reference against a judge can be struck down on ordinary judicial review grounds?

iii) Whether in view of Marcel Principle, searches made by ARU were a breach of the petitioner's and his family's right to privacy enshrined in Article 14(1) of the Constitution and thus amounted to covert surveillance?

iv) What the term "misconduct" imply?

v) Whether there is an obligation on a Judge to keep himself informed about the financial interests of his family members?

vi) What is mala fide and its nature? What proof is required to establish it?

vii) Whether publication of a notification in gazette is mandatory or directory?

viii) Whether the judges of superior courts are public servant?

ix) What consideration should weigh with the President to form an opinion for sending reference against a judge?

x) Whether approval of President is necessary for commencing an investigation into a complaint made against a Judge of the Superior Court?

xi) Who should be consulted by the President to form an opinion about reference against a judge?

xii) Whether Prime Minister or Cabinet shall advice the President to file a reference against a judge?

xiii) Whether reference against petitioner suffered from malice in fact or malic in law?

Analysis:

i) The ouster clause of Article 211 of the Constitution would not protect acts which were mala fide or coram non judice or were acts taken without jurisdiction…. However, the Court neither adjudicated upon the process of the SJC nor quashed its SCN issued to the petitioner. In fact, in view of the findings recorded in this judgment, the court has simply abated the SCN…….. Accordingly, Article 211 has no application to the available facts of the present case.

ii) A reference, which is an executive action under the Constitution, forwarded to the SJC cannot be struck down on ordinary judicial review grounds such as unreasonableness and proportionality. Holding so will be belittling its status, ignoring its competence and pre-empting its decisions based on appreciation of the record…..Even giving the power of judicial review to this Court to set aside pre-reference proceedings will be tantamount to rejecting the capacity and jurisdiction of the SJC to adjudicate upon any question of unreasonableness, proportionality or suitability raised in relation to the merits of the President's actions.

iii) (Marcel Principle: It is a well-established principle of the law of confidentiality that where information of a personal or confidential nature is obtained or received in the exercise of a legal power or in furtherance of a public duty, the recipient will in general owe a duty to the person from whom it was received or to whom it relates not to use it for other purposes)…. the 'Marcel Principle' is not absolute and can be deviated from… where information has been obtained under statutory powers the duty of confidence owed on the Marcel principle cannot operate so as to prevent the person obtaining the information from disclosing it to those persons to whom the statutory provisions either require or authorise him to make disclosure.

iv) The Code of Conduct primarily provides guidance to Judges of Superior Courts on the exemplary qualities they must possess. Therefore, conduct that diverges from these qualities would constitute misconduct…… Misconduct is any conduct of the Judge which damages the public perception about his ability to discharge his duties or which undermines public confidence in the institution of the judiciary regardless of whether such conduct occurs in the professional arena

or in the private life of a Judge……Word "misbehaviour" must be understood in its ordinary sense, viz. as implying misconduct, that is to say, conduct which is unbecoming of a Judge or renders him unfit for the performance of the duties of his office, or is calculated to destroy public confidence in him… Court cannot therefore accept the respondent's contention that it is only on proof of misconduct in respect of a judicial proceeding or in respect of office or on proof of conviction that a High Court Judge may be removed and that no other conduct, however infamous or scandalous, or whatever defect of character it might disclose, can ever be a ground for his removal."

v) It, therefore, becomes clear that Judges are supposed to have knowledge of the financial interests of their family members. However, if they do not, then they are expected to make reasonable efforts to acquire such information, more so when they are questioned by a competent forum to explain the financial interests of their family members. What constitutes 'reasonable effort' on the part of Judges will no doubt depend upon the circumstances of each case. However, a plea of lack of knowledge by a Judge in relation to the financial affairs of his family members is untenable in light of the general trend in international practice, the obligations imposed on a Judge under the CoC and the law relating to public office holders including Judges. Accordingly, there is a continuing obligation on a Judge to keep himself informed about the financial interests of his family members……. the family members of a Judge are required to be careful (financially, socially and politically), moderate and fair in their dealings and exchange with others so that no controversy arises which may embarrass the Judge.

vi) Traditionally, an action actuated with an ulterior purpose to harm another or benefit oneself is classified as an act that is malicious or malice in fact. However, in (relatively) recent times, this Court has recognised another category of mala fides, namely, mala fide in law. Even though both are a species of mala fide, yet each has distinct ingredients and consequences…….apart from the generally recognised category of actions driven by a foul personal motive described here as malice in fact, there is another category of reckless action in disregard of the law termed as mala fide in law. The first type of mala fide is attributed to a person whereas the second is leveled against the impugned action. While the former is concerned with a collateral purpose or an evil intention to hurt someone under the pretence of a legal action, the latter deals with actions that are manifestly illegal or so anomalous that they lack nexus with the law under which they are taken. Thus it becomes clear that malice in fact and mala fide in law have different ingredients, the former being comprised of factual elements with the latter being composed of legal features, that need to be established as such for the respective consequences to ensue. Secondly, it is clarified that an accusation of mala fide in law involves more than errors of misreading the record or non-application of the law or lack of proportionality in the impugned action. Instead, this is a serious allegation of wanton abuse or disregard of the

law…….imputing mala fide of either kind to a person or an action is a grave accusation. It should not be made lightly but can only be done when the facts or legal defects justify its use……a plea of malice in fact requires a high standard of proof. The rationale behind such an approach is that a plea of malice in fact frustrates the process of justice. After a complainant establishes malice in fact against a person, the entire proceeding by the latter is brought to an end. This results in the merits of the case being ignored. Moreover, the reputation of the person, against whom an allegation of malice in fact is made, becomes tarnished and if the said allegation is proved then his repute is forever ruined. He is made out to be a vicious individual who harbours ill-intentions against others.

vii) In ordinary circumstances, the non-publication of a Notification in the gazette does not affect its validity except for in limited situations such as when a statute makes publication in the gazette mandatory or where the rights and liabilities of other persons are involved.

viii) There are five main ingredients present in the office of a public servant. These are: **a**. The office is a trust conferred for a public purpose; **b**. The functions of the office are conferred by law; **c**. The office involves the exercise of a portion of the sovereign functions of Government whether that be executive, legislative or judicial; **d**. The term and tenure of the office are determined by law; and **e.** Remuneration is paid from public funds….When the office of a Judge of the Supreme Court is scrutinised against these ingredients, it becomes obvious that Judges of this Court are indeed public servants for the purposes of Income Tax Ordinance.

ix) Article 209(5) of the Constitution only requires the President to form an opinion that a Superior Court Judge may have been guilty of misconduct. He does not need to be certain that a Judge is guilty of the conduct alleged. Nevertheless, his opinion must be based on positive and affirmative material and on the assurance that necessary legal and procedural safeguards have been observed in the preparation of the reference. Therefore, for the President to even form a prima facie opinion about a Judge's guilt, the President needs to verify that there has been compliance with the settled rules on authorisation; he needs to obtain proper advice on the contents of the reference from competent persons; and he needs to ascertain that there is sufficient material before him which satisfies the high thresholds of care and proof expected in the preparation of a reference…….a reference sent by the President must contain authorised, serious, considered and verified information in both respects, legal and factual, in order to possess the gravity that should accompany a Presidential action.

x) The approval by the President of the advice of the PM is necessary for commencing an investigation into a complaint made against a Judge of the Superior Court…….The initial authorisation by the President on the advice of the PM to commence an investigation against a Judge in a complaint falling under

Article 209(5) is a legal requirement for sustaining the validity of a Presidential reference that is ultimately filed with the SJC.

xi) Although it is not for this Court to specify a list of persons from whom legal advice may be sought by the President, however, we can set out the persons who should not be approached by the President for legal advice on a reference under Article 209 of the Constitution. Fairness and objectivity dictate that those involved in the investigation and framing of the reference may brief the President but cannot advise him on whether it is maintainable and appropriate for inquiry by the SJC. This is because there is a clear conflict of interest for the architects of the reference to opine on the weaknesses of their work.

xii) Consequently, keeping in view the nature of cases which are deliberated upon by the Cabinet and the fact that the PM is consistently the single Constitutional authority who advises the President with regards to the removal of persons in Constitutional Posts, we hold that in the filing of a reference the President is bound to act on the advice of the PM and not the Cabinet.

xiii) Although the preparation and framing of the Reference against the petitioner is not patently motivated with malice in fact, the scale and degree of the illegalities are such that the Reference is deemed to be tainted with mala fide in law.

Conclusion: **i)** The ouster clause of Article 211 of the Constitution would not protect acts which were mala fide or coram non judice or were acts done without jurisdiction.

ii) A Reference against a judge cannot be struck down on ordinary judicial review grounds such as unreasonableness and proportionality.

iii) Searches made by ARU were not a breach of the petitioner's and his family's right to privacy.

iv) Misconduct is any conduct of the Judge which damages the public perception about his ability to discharge his duties or which undermines public confidence in the institution of the judiciary regardless of whether such conduct occurs in the professional arena or in the private life of a Judge.

v) There is a continuing obligation on a Judge to keep himself informed about the financial interests of his family members.

vi) Apart from the generally recognized category of actions driven by a foul personal motive described here as malice in fact, there is another category of reckless action in disregard of the law termed as mala fide in law. A plea of malice in fact requires a high standard of proof.

vii) The non-publication of a Notification in the gazette does not affect its validity except for in limited situations.

viii) Judges of Supreme Court are indeed public servants.

ix) Opinion must be based on positive and affirmative material and on the assurance that necessary legal and procedural safeguards have been observed in the preparation of the reference.

x) The approval by the President of the advice of the PM is necessary for commencing an investigation into a complaint made against a Judge.

xi) Those involved in the investigation and framing of the reference may brief the President but cannot advise him on whether it is maintainable.

xii) In the filing of a reference the President is bound to act on the advice of the PM and not the Cabinet.

xiii) Reference is deemed to be tainted with mala fide in law.

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8. **Supreme Court of Pakistan**
Civil Appeals No. 353-355/2010 etc
Gul Taiz Khan Marwat v. The Registrar Peshawar High Court, Peshawar & others
https://www.supremecourt.gov.pk/downloads_judgements/c.a._353_2010.pdf

Facts: A number of petitioners resorted to Supreme Court in constitutional jurisdiction with respect to their service relating grievances against High Courts, Federal Shariat Court and Punjab Judicial Academy after dismissal of their constitutional petitions. Of those one case was taken up suo motu and another one was contempt petition.

Issue: **i)** Whether the administrative, executive and consultative actions of the Chief Justices or Judges of the High Court were amenable to constitutional jurisdiction of High Court under Article 199 of the Constitution of 1973.

ii) Whether the judges of High Court in their administrative capacity act as persona designata?

iii) Whether the principle of comity overrides the provisions of the Constitution from which two fundamental principles emerges i.e power of judicial review and power to enforce the fundamental rights

iv) Whether the Federal Shariat Court does not fall within the definition of person under Article 199(5) of the Constitution.

Analysis: **i)** Article 192(1) and 176 of the Constitution describe what constitutes a High Court and the Supreme Court respectively….It is clear from their provisions that a High Court and Supreme Court both comprise the respective Chief Justices and judges, therefore, the reverse that there can be no court without the Chief Justice and judges is necessarily true. Furthermore the definition does not draw any distinction between judicial orders of a court and its administrative, executive

or consultative orders….Keeping in view of Articles 176, 192, 199 and 208 of the Constitution and upon a harmonious interpretation thereof, in the opinion of court, no distinction whatsoever has been made between various functions of the Supreme Court and the High Courts in the Constitution and the wording is clear, straightforward, clear and unambiguous. There is no sound basis on which judges acting in their judicial capacity fall within the definition of person and judges acting in their administrative, executive and consultative capacity do not fall within such definition….To bifurcate the functions of Court on the basis of something which is manifestly absent is tantamount to reading something in the Constitution.

ii) The Chief Justices or the judges of high courts exercising their administrative, executive or consultative actions in the context of instant matters do not act as persona designata, rather act for and on the behest of and as a High Court and are not amenable to constitution jurisdiction under Article 199.

iii) Principle of comity, albeit informal and discretionary is essentially the respect and deference that one court shows to another……Its purpose is to stimulate a national interest in the finality of judicial decisions through a concerted effort by the judiciary of maintaining their hierarchy. This instills faith in the public regarding the judiciary and in turn bolsters the rule of law which is essential for the functioning of any democracy. The importance of this principle cannot be understated.

iv) When the Constitution was enacted and brought into force in 1973, Article 199(5) thereof, as it reads to day was part of it. However, the Federal Shariat Court did not exist in the Constitution as originally passed and that explains why such court did not find mention in Article 199(5)…..The Federal Shariat Court alongwith the Supreme Court and High Courts forms part of superior judiciary and the principle judicial comity is fully applicable, thereto, the court considers the failure to add Federal Shariat Court in Article 199(5) to be of no real significance considering the meaning, scope and purpose of the said Article….there is absolutely no basis or reasonable justification for Federal Shariat Court to be treated differently when it undoubtedly forms part of superior judiciary.

Conclusion: **i)** Such actions and orders would be protected by Article 199(5) of the Constitution and thereby be immune to challenge under writ jurisdiction of High Court.

ii) Judges of High Court in their administrative capacity do not act as persona designata in the instant matters.

iii) This principle is invoked only as an aid to interpretation by explaining the purpose underlying the exclusion of the High Courts and Supreme Court from the

definition of person as given in Article 199(5) of the Constitution and not in derogation of true meaning of the said provision.

iv) Federal Shariat Court falls within the definition of person under Article 199(5) of the Constitution.

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9. **Lahore High Court**
Silk Bank Ltd v. SNGPL etc
W.P.No.27720/2019
2020 LHC 2182
https://sys.lhc.gov.pk/appjudgments/2020LHC2182.pdf

Facts: The petitioner assailed attachment order passed in execution of ex-parte judgment against it by Gas Utility Court Lahore for the recovery of amount Rs. 191,589,685/-, equal to the sum for which it issued Performance Bond Guarantee with reference to the agreement between the respondent and another party, and that other party filed a declaration against the respondent before Sindh High Court in which the interim order was passed and the matter was still pending.

Issue: Whether the Gas Utility Court has the jurisdiction in the case where guarantee issued by the petitioner under a contract was sought to be encashed and the matter is not about gas theft or for recovery of amount for the consumption of gas?

Analysis: The preamble of the Act and its provisions are clear that the Act seeks to vest jurisdiction in the Gas Utility Courts to recover amounts due to the Gas Utility Company for the consumption of gas and to prevent misuse of the supply of gas and any offence related to the supply, transmission and distribution of gas. *Ejusdem generis* is the rule of interpretation applicable in the case and the words should be interpreted in the same context with reference to the things provided for in the definition and the general words should not be given the widest meaning but should be applied in the context of the specific things provided in the definition.
The terminology ‘sums due’ will be seen in the context of any default by a consumer or a producer of gas or an offender as the case may be. However it does not give jurisdiction to the Gas Utility Court with respect to contractual disputes between SNGPL and any party and in this case specifically with respect to encashment of the Guarantee issued by the Petitioner in a supply contract for another party.

Conclusion: The Gas Utility Court only has got jurisdiction regarding supply, distribution and due amount with respect to consumption of gas and offenses related to the supply, transmission and distribution of gas only and it does not have jurisdiction with respect to contractual disputes between SNGPL and other parties.

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10. **Lahore High Court**
Prof. Dr. Asad Aslam Khan v. Government of Punjab & others
W.P. No. 256002 of 2018
2020 LHC 2407 (Full Bench)
https://sys.lhc.gov.pk/appjudgments/2020LHC2407.pdf

Facts: The first petitioner assailed the appointment of pro-vice chancellor in KEMU with assertion that he was eligible for appointment as pro-vice chancellor but was not considered for the post because he did not have three further years of service left on his record as held by Lahore High Court in Shoib's case as a mandatory requirement, which is not a good law.
The second petitioner sought a declaration that he was appointed as pro-vice chancellor of UOA despite having less than three years of remaining service in the light of judgment of Lahore High Court in Iqbal Zafar's case and since the tenure of post of pro-vice chancellor is three years, so now he be allowed to complete three years of the term despite his superannuation as per section 15-A of the University of Agriculture Faisalabad Act, 1973.

Issue: Whether view expressed in Shoib's case was correct and a senior professor who is otherwise eligible but doesn't have three years of service career to his credit does not meet the statutory requirements for appointment as pro-vice chancellor or the view expressed in Iqbal Zafar's case was true interpretation of the law and having less than three years service does not disqualify an otherwise eligible candidate?

Analysis: The language of Section 15-A of the University of Agriculture Faisalabad Act, 1973 is identical with that of Section 15 of the KEMU Act but nevertheless the interpretation made in the case of Muhammad Iqbal Zafar was contrary to the one which was expressed in Shoaib's case. Eligibility criteria for the post of Pro-Vice Chancellor is twofold: firstly, that a candidate should be a Professor; and, secondly, he should be amongst three senior most Professors of the University. This eligibility being in plain and clear words admits no further condition that the three senior most Professors must also have at least three years of remaining service and no principle of interpretation or statutory construction approves injection of a word of one's own choice where the language of the statute unmistakably points to the meaning and presents no difficulty in understanding. The post of Pro-Vice Chancellor is a tenure post and once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure but no right is conferred to hold the post for the entire period. The tenure could be curtailed on attaining the age of superannuation by the incumbent of the post.

Conclusion: Muhammad Iqbal Zafar's case reflects correct interpretation and having at least three years of remaining service is not an eligibility criteria for appointment as pro-vice chancellor. However, the fixed tenure attached to the office of Pro-Vice Chancellor, the incumbent thereof on attaining the age of superannuation before

the expiry of three years will have to retire. The first petition is accepted while the other is dismissed.

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11. **Lahore High Court**
Shumail Waheed v. Rabia Khan
R.F.A No. 764 of 2011
2020 LHC 2425
https://sys.lhc.gov.pk/appjudgments/2020LHC2425.pdf

Facts: Appellant challenged judgment of trial court, wherein his plaint under Defamation Ordinance, 2002 was rejected being beyond the prescribed period of limitation.

Issue: Whether limitation is always a mixed question of law and it must be decided after recording of evidence and not otherwise?

Analysis: Section 12 of the Ordinance laid down period of limitation as six months from the date of publication of defamatory matter or knowledge thereof but appellant filed the same after more than six months from the date of notice sent by him to the respondent, which manifest his date of knowledge.
Recording of evidence is not mandatory when the averments of the plaint are silent regarding the factum of suit being barred by limitation and recording of evidence cannot be permitted when the plaint did not disclose any disputed question of fact for application of mixed question of fact and law nor was there any factual controversy as to the limitation period, to be set at rest in the suit.

Conclusion: The appellant did not aver any disputed questions of facts in his plaint concerning the institution of suit beyond the limitation period, therefore, being a pure question of law, the suit of the plaintiff was barred by limitation and the plaint was liable to be rejected under Order VII Rule 11 C.P.C. Appeal dismissed.

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12. **Lahore High Court**
Mst. Sughran Begum etc. v. Malang Khan etc.
R.S.A. No. 103 of 1971
2020 LHC 2189
https://sys.lhc.gov.pk/appjudgments/2020LHC2189.pdf

Facts: Applicant through application sought permission to redeposit decretal amount in the court, which she deposited initially when her suit for preemption was decreed by trial court in 1969 but first appellate court reversed the decree and during the pendency of R.S.A before high court, she withdrew the deposited amount with permission of the court after giving undertaking that the same will be re-deposited when directed by the court.

Issue: What would be the effect of withdrawal of pre-emption money during the pendency of appeal in terms of Section 22(5)(a) of the Punjab Pre-emption Act, 1913 and whether he can re-deposit the amount?

Analysis: It is trite law that no court either court of first instance or appellate court is vested with the jurisdiction to pass an order for redeposit of *"zar-e-panjum"* or pre-emption money after withdrawal. Since the decree in the suit for pre-emption was conditional to deposit of the pre-emption money within prescribed period, therefore, the same can only remain in field, if the amount remained intact as per dictates of the decree. Soon after the withdrawal of the amount either with or without order of the court, decree would no more remain in field.

Conclusion: Effect of withdrawal of pre-emption money though with permission of the court but non-submission thereof despite lapse of more than a decade after decision of High Court is that the decree, which was conditional in nature, does not remain in field. Appeal dismissed.

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13. **Lahore High Court**
Al-Bakio International v. Federation of Pakistan and 8 others
W.P.No.27720/2019
2020 LHC 2439
https://sys.lhc.gov.pk/appjudgments/2020LHC2439.pdf

Facts: The petitioners being in the business of publishing textbooks for children assailed letters issued by Director Curriculum Punjab Curriculum & Textbook Board etc. to other related departments as a step towards preparation of Single National Curriculum for grade pre-I to V, an initiative taken by Federal Government, as being against the dictates of provincial autonomy after passing of Eighteenth Constitutional amendment wherein concurrent legislative list was abolished and education became an exclusive provincial subject.

Issue: **i)** Whether Federal Government can take initiative for preparation of Single National Curriculum which is within the exclusive domain of provinces after Eighteenth Amendment in the Constitution?
ii) Whether Writ is maintainable against apprehension of any adverse order or policy, which could probably affect fundamental right of business of the petitioners?

Analysis: Definition of State given under Article 7 of the Constitution, includes Federal Government and thus it has not been absolved from taking initiatives to secure the fundamental rights for the children or to promote their education and well-being as enshrined under Article 25-A. Moreover, "*inter-provincial matters and co-ordination*" is within the legislative and policy competence of the Federal Government under Entry 13, Part II, Fourth Schedule, Federal Legislative List and though education and preparation of curriculum is within exclusive domain of the provinces after abolition of concurrent legislative list from the constitution post Eighteenth Amendment yet co-operative and consultative federalism is a way

forward and if all the Provinces desire or agree to bring a sort of uniformity in curriculum for specified classes, such an idea can only be made to work through a well-articulated and comprehensive inter-provincial co-ordination and objective consultation which can be performed by the Federal Government while functioning within its domain as per Entry 13 of the Federal Legislative List.
Petitioners assailed letters of correspondence between the departments which are of consultative nature and no action detrimental to the interests of the Petitioners have been taken so far and the High Court in constitutional jurisdiction does not act upon mere apprehension.

Conclusion: **i)** Federal Government within its legislative competence under Entry 13, Part II, Fourth Schedule, Federal Legislative List is empowered to take initiatives for "*inter-provincial matters and co-ordination*" and taking steps for securing fundamental rights of compulsory education under Article 25-A through initiating Single National Curriculum is a step towards consultative federalism in matters, which falls within exclusive domain of provinces after the Eighteenth Amendment but are of national importance.
ii) The High Court in constitutional jurisdiction does not act upon mere apprehension.
Petition was disposed of with direction to the Secretary, School Education Department, Government of the Punjab, to convene a meeting with the Petitioners to hear and resolve their legitimate concerns within one month.

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14. **Lahore High Court**
Mehar Ali v. Karim Bakhsh
R.S.A 27 of 2012
2020 LHC 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC2019.pdf

Facts: The appellant filed second regular appeal against the judgment of first appellate court wherein decree of specific performance on the basis of agreement to sell passed in his favor by the trial court was set aside on the ground that the appellant failed to prove agreement to sell within the domain of Article 78 of QSO despite of the fact that he produced affidavit of the respondent, which was given by him before the court in bail petition of the appellant and the whole claim was admitted therein.

Issue: Whether an affidavit given by the respondent in bail petition of the appellant allegedly admitting the agreement to sell and receiving of consideration amount is sufficient to prove the case for specific performance of appellant when the respondent was not confronted with the said affidavit during cross-examination?

Analysis: The omission to confront the respondent with contents of affidavit and alleged signatures thereupon is fatal in terms of Article 140 of QSO 1984. Where a party

has gone into the witness-box on the point in issue and in the witness-box has made a statement inconsistent with the admission or the statement made in the witness-box involves the denial of the previous admission or runs counter to that admission, then the previous admission cannot be used as legal evidence in the case against that party unless the attention of the witness during cross-examination was drawn to that statement and he was confronted with the specific portions of that statement which were sought to be used as admissions. When the contents of the plaint and evidence led do not support each other, evidence beyond the pleadings was irrelevant and ineffective.

Conclusion: Mere submitting affidavit of respondent, which was given in another matter of bail wherein the whole claim of the appellant was allegedly admitted, cannot be made foundation of proof of agreement since the same was not put for confrontation to the respondent during cross examination and thus it does not form an admission in terms of Article 81of QSO 1984. Appeal dismissed.

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15. **Lahore High Court**
M/s. Digital Links (Pvt) Ltd, etc. v. M/s. Hangzhou Hikvision Digital Technology Co, etc.
R.F.A.No.258418 of 2018
2020 LHC 2027
https://sys.lhc.gov.pk/appjudgments/2020LHC2027.pdf

Facts: The appellant assailed the order of trial court wherein his suit was dismissed under order VII rule 10 of CPC that neither the court has jurisdiction to hear the parties nor the appellant could present their plaint to any court in Pakistan without recording evidence to determine the question of jurisdiction. As per appellant there was a clause in first agreement between the parties wherein it was mentioned that only court in China will have jurisdiction to adjudicate upon the dispute between the parties but subsequently second agreement was executed between the parties and there is no mentioning of exclusion of such jurisdiction, so local court has the jurisdiction to adjudicate upon the lis.

Issue: Whether second agreement between the parties, where there is no specific clause regarding exclusion of jurisdiction of courts in Pakistan to adjudicate upon the disputes, is a sequel of the first agreement where an exclusion clause stated that only courts in China will have jurisdiction in case of dispute and not a novation of contract so suit was rightly dismissed under Order VII rule 10 CPC by the trial court without recording of evidence?

Analysis: The question of returning the plaint under Order VII rule 10 CPC arises only when there is another Court in which the suit should have been instituted and when there is no other Court where the plaint can be presented, the suit will be dismissed. To prove a novation, four elements must be shown, that is, (a) the

existence of a previous valid agreement; (b), the agreement of the parties to cancel the first agreement; (c) the agreement of the parties that the second agreement replaces the first one; and, (d) the validity of the second agreement. The burden was upon the plaintiff to prove not only the alleged second agreement but also the place where it was accepted so as to establish the territorial jurisdiction of the Court through clear satisfactory evidence.

Conclusion: Appeal accepted. The question of jurisdiction, in the attending circumstances, was a mixed question of facts and law, which could only be resolved upon appraisal of evidence to be led by the parties to the suit. Case was remanded to the trial court with direction to decide the issue of jurisdiction after framing issues and allowing parties to lead evidence thereon. The trial court would also examine the exclusion of jurisdiction clause in first agreement in the light of section 28 of the Contract Act, 1872.

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16. **Sindh High Court**
C. P. NO. D-1329 / 2016
Byco Petroleum Pakistan Ltd v. Pakistan And Ors
2020 SHC 798
https://eastlaw.pk/cases/Byco-Petroleum-PakistanVSPakistan-and-Ors.Mzk2MTU2

Facts: Before issuance of the impugned Notice under Section 72-B of the Sales Tax Act, 1990 the Petitioner was confronted by the Department on various issues pursuant to some analysis report. The Petitioner responded to such notice and thereafter, on 17.04.2015 a Show Cause Notice was issued after which order in original dated 27.05.2015 was passed against the Petitioner; hence the petitioner impugned selection for audit being without jurisdiction and lawful authority.

Issue: Once the Petitioner was already subjected to audit and some analysis pursuant to which a Show Cause Notice and an order was passed; what remains the position of selection of the Petitioner's name for random balloting by FBR?

Analysis: Show Cause Notice and the order in original reflect that the tax period involved is the same i.e. July, 2013 to June 2014 and such fact has been admitted in the comments. The Petitioner thereafter, filed an Appeal before the Tribunal which also stands decided in favour of the Petitioner and again it is admitted in the comments that no further proceedings are pending. Basis of such proceedings was pursuant to some analysis as well as audit observations of the Department. While collecting data of the tax payers for random selection, such fact has apparently been ignored and not taken into consideration. The tax period involved is same, whereas, the department cannot be permitted to have benefit of their inefficiency or negligence, as apparently they have admitted in comments that no Reference Application was filed against the order of Appellate Tribunal; but only a rectification application. Therefore, if the impugned selection for audit is

maintained or permitted to be acted further, it would add premium to the casual attitude of the department.

Conclusion: Petitioner was subjected to a double jeopardy. The Hon'ble Court allowed this Petition and set aside the impugned Notice of selection and the proceeding(s) if any, conducted thereafter.

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17. **Sindh High Court**
C. P. NO. D-2983 / 2018
M/S Ahsan Enterprises v. Fed. Of Pakistan And Others
2020 SHC 790
https://eastlaw.pk/cases/M-s-Ahsan-EnterprisesVSFed.-of.Mzk2MTM2

Facts: Petitioner claimed that property in question was purchased by him through auction from the Evacuee Trust Property Board and thereafter, a proper Lease was executed and possession was handed over and construction was being raised when Karachi Development Authority (KDA) sought assistance and protection as well as security by the relevant department for demolition of the construction on the plot of the Petitioner. The petitioner has sought declaration about lawful possession over the plot in question under a lawful lease deed hence KDA are not legally competent to interfere in to lawful possession of petitioner over plot in question nor can interfere in lawful construction over plot in question unless and until the KDA get its title over plot in question adjudicated clear from proper and competent forum. KDA's stance is that the property belongs to them.

Issue: Property in question vested in the Evacuee Trust Board and was never challenged before the Federal Government; hence the position of KDA about notice in question?

Analysis: Lease of the property still subsists and vests in the petitioner and no steps have been taken by anyone to get it cancelled. When a valid, legal and unchallenged instrument in the form of a registered Lease duly executed in favor of the Petitioner after auction in accordance with law still subsists; no occasion arises for KDA to interfere in the matter including possession.

Conclusion: Impugned letter / Notice issued by KDA were set aside and petition was allowed.

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18. **Sindh High Court**
C.P. No. D – 8633 of 2017, C.P. No. D – 4165 of 2015, C.P. No. D – 8634 of 2017 Ghulam Ali Bhatia & Others v. Federation of Pakistan & Others
2020 SHC 784
https://eastlaw.pk/cases/Ghulam-Ali-BhatiaVSFederation-of-Pakistan.Mzk1OTk2

Facts: Petitioners are the manufacturers of steel products and importers of its raw material such as re-rollable and re-meltable iron and steel scrap. They have challenged the discriminatory treatment accorded to importers of re-rollable and re-meltable scrap viz-a-viz, the ship breakers, who according to the petitioners,

are allowed to pay the duty and taxes only on 72.5%, which is the "re-rollable scrap", whereas there is Nil duties and taxes on the "re-meltable scrap" pursuant to amendment in Rule 58H(4) of the Special Procedure Rules, 2007 vide SRO 583/2017 dated 01.07.2017.

Issue: Besides pressing the ground of discrimination, allegedly enunciated through Import Policy Order the authority to issue Notification/SRO with the approval of Federal Minister-in-Charge instead of Federal Government was also challenged for being ultra vires to the Constitution.

Analysis: Admittedly, re-rollable and re-meltable scrap imported by the petitioners is classifiable under PCT Heading 7204.4910, whereas, the ship (vessel) is classifiable under PCT Heading 8909.0000, therefore, prima facie it appears that both imported entities in its original form and stage of import are not of the same class, hence not comparable. Therefore, the element of discrimination among the same class, as alleged by the petitioners, is not attracted in the instant case. Moreover, while challenging the vires of any Law, Rule, Regulation or Notification on the ground of discrimination, particularly in tax matters, an aggrieved party has to establish that any tax, duty or levy imposed by the legislature or the Government is unjust and creates discrimination amongst the same class of persons, hence violative of Article 25 of the Constitution of Islamic Republic of Pakistan. It is a simple case of granting reduction of tax liability and to give incentive to ship breaking industry as a matter of Policy decision, whereas, there is no legal impropriety while making such amendment through above SRO.

Conclusion: Any incentive granted to the ship breaking industry, as in the instant case, does not amount to create any discrimination amongst the same class of persons. Accordingly, we do not find any substance in the instant petitions, which are hereby dismissed along with listed application(s).

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19. **Sindh High Court**
C.P. No.S-438 of 2020
Dheraj @ Wanio v. Sht. Surma & Others
2020 SHC 770
https://eastlaw.pk/cases/Dheraj-WanioVSSht.-Surma.Mzk1OTY4

Facts: The petitioner and respondent No.1 married in 2004. Out of said wedlock, three children were born. Their matrimonial life could not be flourished, compelling the respondent No.1 to institute Family before the learned Family Court for maintenance. Petitioner has impugned the judgment, whereby the learned Family Court disposed of the suit of the respondent No.1 for maintenance. The petitioner challenged the Judgment after lapse of limitation period and sought condonation of delay for filing of appeal due to prevailing COVID-19, but the learned appellate Court did not appreciate the reasons for delayed filing of appeal and dismissed it.

Issue: without discussing about delayed filing of first appeal due to prevailing COVID-19 the Hon'ble High Court decided the petition on merits. The moot point before the Hon'ble High Court was as if mere statement of a father that he is not earning much discharges him from the responsibility to pay maintenance allowance to the dependent children and wife?

Analysis: 'Maintenance' means and includes food, clothing, and lodging which is the responsibility of the father to pay to his children and wife. Object of determining maintenance is to ensure in all respect that the minor(s) is / are maintained by the father in a dignified manner with reasonable comfort, and the mother is not left to bear the financial burden of the minor(s). It is the responsibility of the Petitioner (father) to take care of his minor children as well as his estranged wife. The mere statement of Petitioner that he is not earning much does not discharge him from the said responsibility.

Conclusion: Decision of learned Family as well as Appellate Court was declared fair and just hence, the same was maintained and consequently, Petition was dismissed.

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20. **Sindh High Court**
CP No. S- 372 of 2020
Mst. Majdan & Another v. Province Of Sindh & Others
2020 SHC 772
https://eastlaw.pk/cases/Mst.-MajdanVSProvince-Of-Sindh.Mzk1OTY5

Facts: The petitioner contracted marriage with petitioner No.2 under valid Nikah nama on 29.7.2020. On the same day, petitioner No.1 also executed an affidavit of free-will, in which she stated that nobody had kidnapped / abducted her and she had married with petitioner No.2 as per her wish but due to this un-ceremonial marriage, the private respondents are not happy and have lodged FIR under Section 365-B PPC and the concerned police is chasing to arrest them. On inquiry, the petitioner No. 1 categorically stated that she does not want to join her parents; hence this petition.

Issue: Whether an extraordinary constitutional jurisdiction of High Court under Article 199 of the Constitution can be invoked by a person alleging harassment against private individuals or police officials, without availing the remedy provided under the law.

Analysis: The Hon'ble High Court relied upon the case titled ***Abdul Hameed & another vs. the Province of Sindh through the Secretary Home Department & 8 others (PLD 2019 Sindh 168)***; and directed the office to entertain only such petitions in which: i) the petitioner has already approached Ex-Officio Justice of Peace and his application / complaint has been finally decided by Ex-officio Justice of Peace, provided certified true copy of the final order is filed with the petition ; and ii) F.I.R. has been lodged against the husband in case of free will marriage, provided true copy of the F.I.R. is filed with the petition etc. Learned Ex-Officio Justice of Peace of all districts are directed that if any order of protection etc. is

passed by them in future on an application / complaint of a party, the S.H.O. concerned should be directed by them to submit compliance report to them within seven (07) days."

Conclusion: Captioned petition was disposed of in terms of the statement of petitioner with direction to the Investigation Officer to submit a summary report to the concerned Magistrate for disposal of the case as per law. The learned Magistrate on receipt of the summary report shall pass speaking order after hearing the parties within a reasonable time, leaving the aggrieved party to approach the proper forum for redressal of their grievances. Meanwhile, the official respondents shall act strictly as per law and ensure that no harassment shall be caused to the petitioners.

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21. **Sindh High Court**
Constitution Petition No. S- 363 of 2010
Pir Muhammad Hassan Qadir v. Muhammad S/O Amoon & Another
2020 SHC 774
https://eastlaw.pk/cases/Pir-Muhammad-HassanVSMuhammad-s-o-Amoon.Mzk1OTcw

Facts: According to the Petitioner he owns the properties viz. shops, open plot, rice factory and an open plot total admeasuring 02-13 acres situated in Deh Badin near Kazia wah Bridge, Badin Town; that the rice factory of the Petitioner was abandoned, as such Respondent No.1 approached and obtained the open area in front of the gate of rice factory on rent for fishing business. Subsequently, Respondent No.1 constructed shops on the demised premises and also failed to pay rent to the Petitioner. The Respondent No.1 filed his objection / written statement, wherein inter alia he denied the allegation of default in payment of rent and requirement of the rented premises by the Petitioner for personal use. The Petitioner has impugned Judgment passed by learned Additional District Judge, Badin, whereby the Appeal was allowed and order passed by learned Rent Controller, was set aside.

Issue: Point involved in this matter is about personal bonafide use of the subject premises by the Petitioner.

Analysis: Respondent No.1 blocked the main gate of the Petitioner's rice factory by erecting a shop in front of the gate of rice factory without any permission from the Petitioner. He also failed to pay monthly rent to the Petitioner since July 2008 and personal bonafide use of the subject premises by the Petitioner. Sole testimony of landlord is sufficient to establish personal bonafide need of the rented premises if the landlord's statement on oath is consistent with the averments made in the Ejectment Application. Testimony of the landlord if not rebutted in cross-examination discharges him from the burden of proof.

Conclusion: Petition was allowed. Decision of learned Appellate Court was set aside and the judgment of learned Trial Court was maintained. Resultantly, Respondent No.1 was directed to vacate the subject premises and hand over its vacant and peaceful

possession to the Petitioner within sixty (60) days from the date of receipt of the order.

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22. **Sindh High Court**
Criminal Misc. Appln. No.S-311 of 2020
Mst. Iqra and others v. Zubair Khan Jakhrani
http://202.61.43.34:8056/caselaw/view-file/MTQ3MzEwY2Ztcy1kYzgz

Facts: Through instant Criminal Miscellaneous Application, filed under section 561-A Cr.P.C, the applicants have called in question the orders, passed by Judicial Magistrate, moved by respondent No.1 for exhumation/disinterment of deceased and order passed by Additional Sessions Judge, whereby both the learned courts were pleased to direct D.G Health Services, Hyderabad for constitution of Medical Board for the post-mortem of deceased (after disinterment). The applicants pray that record and proceedings of both the courts below be called and after scrutinizing the legality, propriety and correctness, the said orders may be set-aside/quashed.

Issue: Is it legitimate right of every single person to know the ***'cause of death'*** of his loved one?

Analysis: For making an application under section 176(2) of the *Code*, nothing is necessary except that of satisfaction of Magistrate *only* to extent that ***'exhumation is expedient for knowing cause of death'.*** Since such order is always meant to remove the ***clouds*** therefore discretion needs to be exercised as such *even* if a single reasonable circumstance / suspicion so justifies because ***'cause of death'*** would do nothing but determines whether to set the criminal machinery into motion or otherwise?. The exercise, *even*, be not denied merely on count of request being made by a ***stranger*** if, otherwise, circumstances so justifies because for bringing the law into motion the requirement of *move* by blood-relation is never insisted.

Conclusion: Finding no illegality or infirmity in the impugned order, same was maintained and petition in hand was dismissed.

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23. **Peshawar High Court**
W.P No.4636-P/2019 with I.R
Bahramand Khan v. Govt. of Khyber Pakhtunkhwa
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-4636-2019-Bahramand-Khan-Dismissed.pdf

Facts: Petitioner had challenged the notification of the government through which it had detached a village council from a Tehsil and included that in the other.

Issues: Can decision of the government to detach any area of an existing Tehsil and its inclusion in another be challenged in constitutional jurisdiction of the High Court?

Analysis: According to Section 6 of the Land Revenue Act, 1967, each district may be divided into such Tehsils or Sub-Tehsils with such limits and such areas, as the government may by Notification specify. As per sub-section (2) of Section 6 of the Act ibid, the government may, by Notification, vary the number and limits of District and Tehsil in the province. As the government has been conferred an authority by the provisions of the Land Revenue Act, 1967 to carve out new Districts, Tehsils and Sub-Tehsils through a Notification, therefore, the respondents were well within their competence to detach any area of an existing Tehsil and include it in another or newly created Tehsil.

Conclusion: The creation of new Districts and Tehsils is purely a policy decision of the Government legality or otherwise of which cannot be questioned before this Court, through a writ petition which has a very limited scope.

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24 **Supreme Court of the United Kingdom**
Enka Insaat Ve Sanayi AS (Respondent) v OOO Insurance Company Chubb (Appellant) [2020] UKSC 38
https://www.bailii.org/uk/cases/UKSC/2020/38.html

Facts: The parties agreed that disputes between Russian insurance company (Chubb) and Turkish construction company (Enka) were to be finally and exclusively resolved by arbitration in accordance with the provisions of article 50.1 of the construction contract. The parties had chosen England as the seat of the arbitration in the contract.

Issue: Which system of national law will govern the validity and scope of the arbitration agreement when the law applicable to the contract containing it differs from the law of the seat of the arbitration?

Analysis: The Supreme Court of England in this judgment has laid down following principles, which determine the law applicable to the arbitration agreement.

i) Where a contract contains an agreement to resolve disputes arising from it by arbitration, the law applicable to the arbitration agreement may not be the same as the law applicable to the other parts of the contract and is to be determined by applying English common law rules for resolving conflicts of laws rather than the provisions of the Rome I Regulation.

ii) According to these rules, the law applicable to the arbitration agreement will be (a) the law chosen by the parties to govern it or (b) in the absence of such a choice, the system of law with which the arbitration agreement is most closely connected.

iii) Whether the parties have agreed on a choice of law to govern the arbitration agreement is ascertained by construing the arbitration agreement and the contract

containing it, as a whole, applying the rules of contractual interpretation of English law as the law of the forum.

iv) Where the law applicable to the arbitration agreement is not specified, a choice of governing law for the contract will generally apply to an arbitration agreement which forms part of the contract.

v) The choice of a different country as the seat of the arbitration is not, without more, sufficient to negate an inference that a choice of law to govern the contract was intended to apply to the arbitration agreement.

vi) Additional factors which may, however, negate such an inference and may in some cases imply that the arbitration agreement was intended to be governed by the law of the seat are: (a) any provision of the law of the seat which indicates that, where an arbitration is subject to that law, the arbitration will also be treated as governed by that country's law; or (b) the existence of a serious risk that, if governed by the same law as the main contract, the arbitration agreement would be ineffective. Either factor may be reinforced by circumstances indicating that the seat was deliberately chosen as a neutral forum for the arbitration.

vii) Where there is no express choice of law to govern the contract, a clause providing for arbitration in a particular place will not by itself justify an inference that the contract (or the arbitration agreement) is intended to be governed by the law of that place.

viii) In the absence of any choice of law to govern the arbitration agreement, the arbitration agreement is governed by the law with which it is most closely connected. Where the parties have chosen a seat of arbitration, this will generally be the law of the seat, even if this differs from the law applicable to the parties' substantive contractual obligations.

ix) The fact that the contract requires the parties to attempt to resolve a dispute through good faith negotiation, mediation or any other procedure before referring it to arbitration will not generally provide a reason to displace the law of the seat of arbitration as the law applicable to the arbitration agreement by default in the absence of a choice of law to govern it.

Conclusion: Applying these principles, the Court concluded that the contract from which a dispute has arisen in this case contains no choice of the law that is intended to govern the contract or the arbitration agreement within it. In these circumstances the validity and scope of the arbitration agreement (and in our opinion the rest of the dispute resolution clause containing that agreement) is governed by the law of the chosen seat of arbitration, as the law with which the dispute resolution clause is most closely connected. We would therefore affirm - albeit for different reasons - the Court of Appeal's conclusion that the law applicable to the arbitration agreement is English law.

25. **Supreme Court of India**
Criminal Appeal No.659 of 2020
Miss 'A' v. State of Uttar Pradesh and Anr.
https://main.sci.gov.in/supremecourt/2019/40475/40475_2019_34_1501_24291_Judgement_08-Oct-2020.pdf

Facts: Appellant, being victim of sexual assault case, had filed special leave petition against order of High Court, where High Court had allowed a certified copy of her statement recorded u/s 164 of Cr.P.C but certified copy was handed over to the respondent/accused before hearing of this appeal and counsel for the appellant requested to withdraw his appearance as no instructions were received by him from the appellant after issuance of certified copy of her statement.

Issue: Whether appeal may be withdrawn by a party if a question of law is involved?

Analysis: Supreme Court has delineated upon the proposition and has held that since the matter raised questions of law, we reject the prayer and proceed to hear the learned counsel for the parties.

Conclusion: Supreme Court has declined to allow such withdrawal and decided the matter on merit after hearing both the counsels.

LIST OF ARTICLES:-

1. **JUSTICE QUARTERLY**
https://www.tandfonline.com/loi/rjqy20

- *News Media Coverage of Crime and Violent Drug Crime: A Case for Cause or Catalyst? Viridiana Rıos & Christopher J. Ferguson Pages: 1012-1039*
- *Police Officers as Warriors or Guardians: Empirical Reality or Intriguing Rhetoric? Kyle McLean, Scott E. Wolfe, Jeff Rojek, Geoffrey P. Alpert & Michael R. Smith Pages: 1096-1118*

2. **STANFORD LAW REVIEW**
https://www.stanfordlawreview.org/

- *Reweighing Medical Civil Rights by Rabia Belt & Doron Dorfman*
- *Is Death Different to Federal Judges?An Empirical Comparison of Capital and Noncapital Guilt-Phase Determinations on Federal Habeas Review by Brett Parker*

3. **YALE LAW REVIEW**
https://www.yalelawjournal.org/

- *Commonsense Consent By Roseanna Sommers*
- *Competition Wrongs By Nicolas Cornell*
- *Judging Ordinary Meaning by Thomas R. Lee & Stephen C. Mouritsen*

4. **HARVARD LAW REVIEW**
https://harvardlawreview.org/
   - *Practice Makes Precedent Response by Michael J. Gerhardt*

5. **PUBLIC LAW** **(**Issue 4 October 2020)

   - *Judicial Review Evidence in the era of the Digital State Joe Tomlinson, Kay Sherldan and Adam Harkens*
   - *Judicial Review and Ombuds: A systematic Analysis Richard M Kirkham and Elizabeth A, O' Loughlin*