LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update ***Online Edition***

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FORTNIGHTLY CASE LAW BULLETIN

(15-12-2020 to 31-12-2020)

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

Corrigendum

In the Lahore High Court Fortnightly Bulletin, Volume I, Issue V, the title of the judgment of Hon'ble Supreme Court of Pakistan at Sr. No. 1 be read as following title along with link.

Supreme Court of Pakistan
Dr. Zohara Jabeen v. Muhammad Aslam Pervaiz etc.
C.A.762-L to 766-L of 2012
https://www.supremecourt.gov.pk/downloads_judgements/c.a._762_l_2012.pdf

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1. **Supreme Court of Pakistan**
Muhammad Hayat Wakeel etc. v.The State
Criminal Shariat Appeal No.12 of 2017
https://www.supremecourt.gov.pk/downloads_judgements/crl.sh.a._12_2017.pdf

Facts: Appellants' were convicted and sentenced by the learned trial Court for committing Qatl-i-Amd of three persons during a robbery at night which judgment was upheld by Federal Shariat Court.

Issue: The Identification Parade was conducted at Police Station and assailants' features were also not mentioned in the crime report. Whether such an ID Parade is legally valid?

Analysis: Argument that police station was not an appropriate place for the holding test identification parade is entirely beside the mark inasmuch as the law does not designate any specific place to undertake the exercise…. A combined reading of rule 26.32 of Police Rues with Article 22 of the Qanun-e-Shahdat Order, 1984, does not restrict the prosecution to necessarily undertake the exercise of test identification parade within the jail precincts.

Reference to omission of assailants' features in the crime report as a ground to discard the test identification parade is equally inconsequential; Part C of the Lahore High Court Rules and Orders Volume-III (adopted by the High Court of Baluchistan) does not stipulate any such condition. In the natural course of events, in an extreme crisis situation, encountered all of a sudden, even by a prudent onlooker with average nerves, it would be rather unrealistic to expect meticulously comprehensive recollection of minute details of the episode or photographic description of awe inspiring events or the assailants. The pleaded requirement is callously artificial and, thus, broad identification of the assailants, in the absence of any apparent malice or motive to substitute them with the actual offenders, is sufficient to qualify the requirement of Article 22 of the Order ibid.

Conclusion: Law does not designate any specific place to undertake the exercise of identification parade. Reference to omission of assailants' features in the crime report as a ground to discard the test identification parade is inconsequential since Part C of the Lahore High Court Rules and Orders Volume-III does not stipulate any such condition. Hence the ID Parade is valid.

2. **Supreme Court of Pakistan**
Province of Punjab v. Javed Iqbal
C.P.1554-L to 1573-L of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1554_l_2020.pdf

Facts: Respondent while working as Forest Guard was departmentally proceeded against under the Act by way of show cause notice dated 19.12.2009 and was awarded major penalty vide order dated 23.10.2012. During the course of the said inquiry the petitioner retired from service on 15.04.2010. The departmental proceedings initiated against the petitioner on 19.12.2009 continued and were finalized on 23.10.2012, more than two years after his retirement.

Issue: Under the proviso to section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 departmental proceedings initiated against a retired employee shall be finalized not later than two years of his retirement.Whether the proviso is directory or mandatory?

Analysis: In order to determine whether a provision is directory or mandatory, the duty of the court is to try to unravel the real intention of the legislature. The ultimate test is the intent of the legislature and not the language in which the intent is clothed. The object and purpose of enacting the provision provide a strong and clear indicator for ascertaining such intent of the legislature. Intention of the legislature is to be ascertained not only from the phraseology of the provision but also by considering its nature, its object, and the consequences which would follow from construing it one way or the other..…. A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding. One of the important test that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, the court would say that that provision must be complied with and that it is obligatory in its character. There are three fundamental tests, which are often applied with remarkable success in the determination of this question. They are based on considerations of the scope and object, sometimes called the scheme and purpose, of the enactment in question, on considerations of justice and balance of convenience and on a consideration of the nature of the particular provision, namely, whether it affects the performance of a public duty or relates to a right, privilege or power – in the former case the enactment is generally directory, in the latter mandatory…….a statute which regulates the manner in which public officials exercise the power vested in them is construed to be directory rather than mandatory, especially when neither private or public rights are injured or impaired thereby. But if the public interest or 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 peremptory or mandatory as a general rule…..where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such

a duty within the specified timeframe is mandatory….Where a public official can impose liability on a retired employee if the power is exercised within a certain statutory timeframe and there is a delay in the exercise of such power on the part of a public official, no such liability can be imposed after the lapse of the statutory period…..The word shall, used in the proviso, is commonly construed as mandatory. The phrase not later than two years in the proviso passes for a negative phrase and gives an imperative effect. Such negative phrases or words are prohibitive in essence, and are ordinarily used as a legislative device to make a provision in a statute mandatory. Therefore, negative words used in a provision that prescribes some statutory requirement makes, as a general rule, that requirement mandatory even if no penalty is prescribed for non-compliance of that requirement.

Conclusion: On the above considerations, the court concluded the proviso as mandatory.

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3. **Lahore High Court**
Mrs. Azra Riaz v. Addl. District Judge & others
Writ Petition No. 32552/2015
https://sys.lhc.gov.pk/appjudgments/2020LHC3278.pdf

Facts: The petitioner/owner of premises rented it out through oral tenancy. The said tenant stopped the payment of agreed rent and without permission of the petitioner, sublet the rented premises to another person/respondent. The petitioner filed ejectment petition before Rent Controller, which was accepted. The order was assailed by the respondent with the plea that petitioner is not owner of the premises and the appellate court accepted the appeal and remanded the matter to Rent Tribunal for framing additional issue about relationship of tenancy between the petitioner and respondent.

Issue: Whether a tenant, who does not claim himself to be an owner of the rented premises, can deny the title of landlord and refuse to pay rent?

Analysis: It is a settled principle of law that once a tenant is always a tenant. During the subsistence of tenancy, tenant has no right to challenge the title of landlord. It is a settled proposition of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal circumstances in absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as tenant under the law.

Conclusion: A tenant cannot deny the title of the landlord and cannot challenge the same, unless he is a rival claimant himself, and in such case he must seek a declaration of the competent court to that effect.

4. **Lahore High Court**
Muhammad Khalid Javed and others v. Lahore Development Authority and others
Writ Petition No.48219 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3294.pdf

Facts: The petitioners were joint owners of land measuring 27 kanals. In 1985 at the time of launching Johar Town Housing Scheme by respondents, an agreement was executed between petitioners and respondents wherein the petitioners were allowed division of the property inter se, as per their own settlement, to raise construction thereon and also to erect a boundary wall across the area. However, on the pretext of constructing road for the public, the respondents demolished that boundary wall without issuing any show cause notice and affording opportunity of hearing to the petitioners, despite of the fact that a civil suit was already pending regarding the intended action of respondents LDA.

Issues: **i.** Whether writ is maintainable regarding a lis which is already subject matter of a civil suit?

ii. Whether LDA can demolish a boundary wall erected upon privately owned land in consonance with agreement executed between them, for the purpose of construction of a road without giving notice and affording opportunity of hearing to the affectees?

Analysis: The *lis* before civil court is regarding title, declaration and mandatory injunction whereas this constitutional petition has been filed against "the illegal action" of the respondents, which not only violates petitioners' fundamental right to privacy of home guaranteed under Article 14 of the Constitution but at the same time infringed their fundamental right of holding property as provided under Article 23 of the Constitution as well as undermined protection of their property rights as guaranteed by Article 24 of the Constitution. More so, the actions of the respondents have seriously jeopardized the constitutional protection of due process of law provided under Article 10-A of the Constitution, therefore, actions of the respondents which clearly breached the fundamental rights of the petitioners provided and protected under the Constitution, was amenable before the High Court within the meaning of Article 199 of the Constitution, which mandates that High Court on the application of any aggrieved person can make an order or give such directions for the enforcement of any of the fundamental rights.

In this case, the property is owned by the petitioners therefore, they cannot be termed as unauthorized occupants of the property as provided under Section 39 of the LDA Act and thus the provision to eject them under Section 39 is not applicable, hence action taken by the respondents is unwarranted and uncalled for. On the other hand, perusal of section 40 of the Act reveals that it deals with the removal of buildings but this is also subject to providing opportunity of hearing as per Section 40(2) of the Act. The respondents-LDA under this section can only

take an action of removal of building, structure, work or land if it is erected, constructed or used in contravention of the provisions of the Act or of any rule, regulation or order made thereunder. The Act does not provide or give mandate to LDA for taking law in their own hands and demolish the property or land without hearing out the parties and fulfilling the mandatory requirements of the Act.

Conclusion: **i.** Where civil suit does not provide an alternative effective remedy then pendency of civil suit does not bar exercise of writ jurisdiction by the High Court.

ii. The respondents bypassed the requirements of law and did not give any notice to the petitioners and without providing them an opportunity of hearing arbitrarily took recourse to drastic measures, which is though provided in law but not intended to be adopted in such a manner which negates not only the mandatory requirements provided under the Act but also hampers the petitioners' fundamental right of due process of law.

Petition is allowed and respondents' actions are declared contrary to law.

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5. **Lahore High Court**
Abdul Qadir v. The State
2020 LHC 3120
I.C.A. No.38 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3120.pdf

Fact: Appellant lodged FIR under Sections 395, 365, 170, 171 PPC with the allegation that the respondent along with his co-accused hijacked the Oil Tanker driven by him&abducted its crew. The respondent challenged his arrest in writ jurisdiction of High Court, which was accepted and the respondent was ordered to be released and all the proceedings taken by police during his physical remand were quashed. Appellant challenged that order through the Intra Court Appeal.

Issue: Whether Intra Court Appeal is competent against an order passed in writ jurisdiction of the High Court whereby a person was ordered to be released from custody and proceeding taken by the police during his physical remand were quashed?

Analysis: The Court observed that under Section 3 (1) of the Law Reforms Ordinance, 1972 Intra court appeal is competent when a decree or final order is passed by a Single Judge in the exercise of his original civil jurisdiction and under section 3 (2) of the Ordinance when order is passed under article 199 of the constitution except an order under sub-paragraph (b)(i) of that Article (relating to habeas corpus). The Court with the help of a number of judgments including AIR 1923 PC 148, PLD 1968 SC 171, PLD 1993 SC 109, PLD 1996 SC 543, [1921] 2 AC 570, [(1943) AC 147], PLD 1996 SC 543, elaborated the term 'original civil jurisdiction' and deduced that the proceedings in which the impugned order was passed was

criminal in nature, therefore Intra-Court appeal under sub-section (1) of Section 3 of the ordinance was not competent.

The Court rejected the argument that the second part of the impugned order regarding quashment of proceedings fell in the domain of article 199(a) (ii); so intra court appeal was maintainable against it**.** The Court relying upon the decision of Lahore High Court reported as PLD 1975 Lah. 1372 held that Writ Petition, where impugned order was passed, was filed under Article 199(1) (b) (i) and not under Article 199(1)(a) of the Constitution and the learned Single Judge had also passed the impugned order under the former; therefore appeal was barred even under Section 3(2) of the LRO.

Conclusion: Intra Court Appeal against the decision of single judge passed in writ jurisdiction whereby a person was ordered to be released from custody and proceeding taken by the police during his physical remand were quashed, was not competent.

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6. **Lahore High Court**
Dr. Jamshed Dilawar etc. v. Government of the Punjab through Chief Secretary etc.
ICA No. 15249/2020
2020LHC 3130
https://sys.lhc.gov.pk/appjudgments/2020LHC3130.pdf

Facts: During their ad-hoc appointment as medical Officers, the appellants appeared before the Punjab Public Service Commission against the regular posts but remained lower in merit, hence they were not appointed. They submitted before the Hon'ble Court that a direction may be passed to the respondents to send a requisition for their regularization as they have been working with the respondents for a considerable period of time and have already undergone the process of recruitment before the PPSC and qualified the same.

Issues: Whether the appellants can seek regularization on the basis of their earlier attempt and without fresh recourse to the PPSC?

Analysis: Appellants' contention that they are not required to go before the PPSC is misguided because although they earlier participated in the recruitment process, but did not come on merit. Ad-hoc appointees cannot seek regularization as of right rather they are dependent on following the process undertaken by the appointing authority. Subsequent appearance of the appellants before the PPSC in the year 2019 does not liberate them from the requirement of undergoing the process for selection by the PPSC. Even if the department goes to consider them for regularization, they have to be selected by the PPSC for appointment on merit.

Conclusion: The Hon'ble Court held that for regularization the appellants have to undergo thefresh process for selection by the PPSC on merit.

7. **Lahore High Court, Lahore**
Ghulam Rasool v. M/s Jam Brothers & Company etc
Intra Court Appeal No.198 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3153.pdf

Facts: Investigation was conducted and cancellation was recommended before the Anti-Corruption Court which disagreed with the direction of reinvestigation u/s 5(6) of Pakistan Criminal Law Amendment Act 1958. The said order was challenged and the petition was set aside to the extent of issuance of direction for reinvestigation of the case.

Issue: Whether the Anti-Corruption Court was competent to pass the direction for the reinvestigation of the case?

Analysis: Under sub section 6, of section 5 of the Act, the Anti-Corruption Court is competent to direct for investigation. It also, cannot be restrained from asking to recollect further or more evidence.

Conclusion: Anti-Corruption Court was competent to pass the direction for the reinvestigation of the case.

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8. **Lahore High Court Lahore**
Muhammad Ashfaq @ Nanna v. Additional Sessions Judge etc.
Writ Petition No: 1903-Q of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3159.pdf

Facts: Accused persons/respondentswere convicted and sentenced. The respondents had preferred appeal against the said judgment. During pendency of the appeal, the respondents had moved an application for recording of additional evidence. The learned appellate court, through the order in question dated 10.02.2020, had accepted the said application and while setting aside the above said judgment of the learned trial court, had remanded the case, with a direction to record the additional evidence and decide it afresh. The said order was challenged by the present petitioners.

Issue: Whether the learned appellate court has rightly accepted the application for production of additional evidence while setting the judgment of conviction?

Analysis: The findings of the learned appellate court, regarding setting aside of conviction of the respondents, being totally unjustified and against the procedure laid down u/s 428 of Cr.P.C, are turned down. However, as the document intended to be brought on the record, is public record, surely beneficial to reach at the just conclusion, therefore, the above said application has rightly been allowed.

Conclusion: The appeal was partly accepted to the extent of production of additional evidence; however, it was dismissed to the extent of setting aside conviction.The learned trial courts was directed to record additional evidence and transmit the same to the

learned appellate court, which on the basis of whole of the record, shall decide the appeal, in accordance with law, which shall be deemed to be pending there.

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9. **Lahore High Court, Lahore**
The State v. Qari Ahmed Khan etc.
Capital Sentence Reference No.4-RWP of 2009
Criminal Appeal No.250-Tof2006
https://sys.lhc.gov.pk/appjudgments/2020LHC3162.pdf

Facts: On 30.07.2004 the then finance Minister Mr. Shaukat Aziz had addressed a jalsa at Jafer in connection with by-election in NA59Attock City in which he was a candidate. The car of the Minister travelled about ten yards distance when a young man suddenly dashed himself with the leftdoor of the car. It was driving seat of the car. There was a loudexplosion. The said person had explosive on his body. The driverof the car namely Abdul Rehman was seriously injured in theexplosion. He expired at the spot. The suicide attacker was also killed. Some others were seriously injured and from them the four succumbed to the injuries.

Issue: i. Whether the evidence which has been disbelieved qua the acquitted co-accused of the appellants, can be believed against the appellants.
ii. Whether the fact of abscondence of an accused can be used as a corroborative piece of evidence.

Analysis: (I) If a witness is not coming out with a whole truth 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. This proposition is enshrined in the maxim falsus in unofalsus in omnibus. The august Supreme Court of Pakistan in Criminal Miscellaneous Application No. 200 of 2019 in Criminal Appeal No. 238-L of 2013 reported as PLD 2019 Supreme Court 527 has also affirmed the above view. Therefore, the prosecution witnesses who were disbelieved with regard to their assertion that Qari Muhammad Suleman son of Muhammad Azam (since acquitted) was also a part of the criminal conspiracy, cannot be believed in this respect with regard to the appellants.

(II) In the cases of Muhammad Arshad v. Qasim Ali (1992 SCMR 814), Pir Badshah v. State (1985 SCMR 2070) and Amir Gul v. State (1981 SCMR 182) it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive pieces of evidence in the shape of ocular account and the alleged confessions, judicial and extrajudicial, have been disbelieved, therefore, no conviction can be based on abscondence alone. Reliance is also placed on the cases of "Muhammad Farooq and another Vs. The State" (2006 SCMR 1707) and "Nizam Khan and 2 others Vs. the State" (1984 SCMR 1092) and Rohtas Khan vs. The State (2010 SCMR 566).

Conclusion: **i.** No.If a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole against all accused persons facing trial in the same case.

ii. Yes. The abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence.

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10. **Lahore High Court, Lahore**
Muhammad Saleem v.The State etc.
Crl. Appeal No. 36 of 2015
Crl. Misc. No. 3260 of 2020 21.10.2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3268.pdf

Facts: A direction has been sought for fixation of the titled criminal appeal, before a learned Single Bench. It is contended that the appeal relates to the judgment dated 28.01.2015, of the learned Additional Sessions Judge, Bahawalpur, towards imprisonment for life, to the petitioner, hence it is proceed able before a learned Single Bench. Therefore, its fixation before the Division Bench is totally unjustified.

Issue: Whether all the matters, arising out of the same judgment, should be fixed before and decided by one forum or otherwise.

Analysis: In the situation in hand, the principle that one forum should adjudge a judgment of a subordinate court and challenged through different modes, would only be applicable, if an appeal against acquittal, filed under Section 417 of Code of Criminal Procedure, 1898 is admitted for regular hearing and notice(s) to acquitted accused is/are, issued. Prior to that, the respective matters shall proceed in respective forums.

Conclusion: It was held that, till happening of the above mentioned occasion i.e. admission of the above mentioned appeal, Crl. Misc. No. 3260 of 2020 in Crl. Appeal No. 36 of 2015 4 against acquittal and issuance of notice to acquitted accused, the titled appeal is proceed able before a learned Single Bench. Resultantly, the application in hand is allowed and request made therein for sending the titled appeal to the learned Single Bench is accorded.

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11. **Lahore High Court**
Altamush Saeed v. Govt. of Punjab etc.
2020 LHC 3336
ICA No.55556 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3336.pdf

Facts: Through Public interest petition the petitioners sought strict enforcement of the Punjab Compulsory Teaching of the Holy Quran Act, 2018 (The Act) to enable

the Muslims, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to understand the meaning of life according to the Holy Quran and Sunnah.

Issues: Whether the Holy Quran Act, 2018 is not being implemented in its letter and spirit by the Government?

Analysis: The Secretary School Education Department Government of the Punjab and the Chairman, Punjab Curriculum & Textbook Board got recorded their separate statements pledging that the Act shall be enforced in letter and spirit and implemented in all educational institutions. From the next academic year a notification shall be issued that no private or public school shall prescribe or suggest any kind of book or reading material without getting its approval from the Government or its authorized officer/department/ organization and in case of its violation all kind of legal actions shall be taken. All steps shall be taken to ensure that every book that is to be taught in any school does not contain any offensive material about the teaching of Holy Quran & Sunna, Islamic Ideology and pious personalities of Islam.

Conclusion: Keeping in view the respective statement of both the respondents the Hon'ble Court directed them to submit compliance report before the commencement of next academic year about strict implementation of the Act.

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12. Sindh High Court

Peoples University of Medical & Health Sciences for Women & Othersv. Pakistan & Others
C.P. Nos.D-4953, 5036, 5158, 5237 of 2020
2020 SHC 1312
http://43.245.130.98:8056/caselaw/view-file/MTQ4MTc2Y2Ztcy1kYzgz

Facts: The petitioners brought under question the vires of Section 4 and 18 of the Pakistan Medical Commission Act, 2020 (PMC Act, 2020) and the position of notification issued by the respondents for withholding of the admission process already initiated by the medical colleges under the Pakistan Medical and Dental Council Ordinance 1962. According to them, Medical and dental colleges admissions tests (MDCAT) could not be conducted until the academic board is set-up and a national curriculum is issued under the PMC Act, 2020. They also alleged that the Regulations framed by the erstwhile PMDC and decisions taken by the Ad-hoc Council were saved and cannot be undone by inserting the provisos to Section 50 (2) in PMC Act, 2020.

Issues: i. Whether Sections 4 and 18 of the PMC Act, 2020 are ultra vires the Constitution and have no legal effect?

ii. Whether Section 50 of PMC Act, 2020 actually repealed the Pakistan Medical and Dental Council Ordinance, 1962?

iii. Whether until the setting-up of academic board and a national curriculum, MDCAT may not be conducted under the PMC Act, 2020?

Analysis: Under Section 4 of the PMC, Act, 2020 the Council is to be notified after approval of the Prime Minister. Though the qualification and experience of each member to be appointed is clearly mentioned in this section, but no guiding principle, procedure or modus has been assimilated to structure the discretionary powers or to begin with the recruitment or appointment process of members of the council is provided. However, keeping in view of the Section 15 of the PMC Act 2020 and on the basis of doctrine of reading down of a statute, this very section appears intra vires. The Hon'ble Court directed the Ministry of National Health Sciences, Regulations and Coordination, Government of Pakistan to frame Rules within 90 days for the appointment of members of the Council so that future appointments may be made in accordance with prescribed procedure.

Before the PMC Act, 2020, MDCAT was being taken by "Admitting University" of a Province but in fact the matter was being regulated by PMDC constituted under the Federal piece of legislation and not by any Provincial law. Under Article 142 of the Constitution, Parliament shall have exclusive power to make laws with respect to any matter in the FederalLegislative List. Under the Federal Legislative List, the Parliament is competent to make legislation according to entry No.11 as it pertains to the legal, medical and other professions, whereas Entry No.12 relates to the standards in institutions for higher education and research, scientific and technical institutions. No doubt that qualifying the MDCAT is also a gateway to the higher education i.e. the medical profession. So Section 18 or 4 of the PMC Act 2020 have not been enacted beyond the legislative competence. No fundamental right of any student/candidate is infringed if a centralized or unified MDCAT is conducted under the PMC Act, 2020 nor it is a vested right of any student to claim MDCAT to be continued under the old regulations of PMDC/PMC through Admitting University of Province despite centralized policy.

Section 50 of the PMC Act, 2020 repealed Pakistan Medical and Dental Council Ordinance, 1962. While discussing different principles of interpretation about a 'Proviso' as enunciated through case law, the Hon'ble Court observed that Section 50 is not contrary to established principles of law.

Neither Academic Board was constituted nor the National Medical Authority, but the date of MDCAT was announced in absenteeism of basic components of PMC, Act, 2020. Since the connotation and magnitude of above sections were found quite meaningful with great weightage therefore the Hon'ble Court restrained the Pakistan Medical Commission from holding the MDCAT and directed to first appoint National Medical & Dental Academic Board and the National Medical Authority to review and formulate the examination structure and standards for the MDCAT and announce common syllabus for conducting MDCAT.

Conclusion: While holding that Section 18 is neither discriminatory nor beyond the legislative competence of the Parliament and no illegality or ultra-vires attaches to section 4 and 50 of the PMC, Act, 2020, the Hon'ble Court disposed of the petitions and directed the Pakistan Medical Commission to proceed for mandatory structuring of the National Medical & Dental Academic Board and the National Medical Authority and also to formulate the examination structure and develop common syllabus, before the MDCAT.

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13. **Sindh High Court**
Irshad Ali Shah, Ubaid ullah & Others v. Province of Sindh & Others
C.P.No.S-484 of 2020
2020 SHC 1372
https://eastlaw.pk/cases/Ubaidullah-OthersVSProvince-Of-Sindh.Mzk3MDYx

Facts: The petitioners contended that they are respectable persons but Police is harassing them while involving in false cases, therefore they may be protected from such harassment by ordering the police to get permission from High Court, if they are required to be involved in any criminal case.

Issues: Whether any condition may be attached with the police to seek permission from High Court for registration of FIR against an accused?

Analysis: No condition could be attached with the police to seek permission from High Court for registration of FIR against the accused persons. If such condition is imposed, it would be contrary to law and illegal. The registration of FIR is a legal course, same could hardly be said to be harassment, which could be prevented by this Court in exercise of its constitutional jurisdiction.

Conclusion: No condition could be attached with the police to seek permission from High Court for registration of FIR. The registration of FIR is a legal course, same could hardly be said to be harassment, which could be prevented by this Court in exercise of its constitutional jurisdiction.

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14. **Supreme Court of Azad Jammu And Kashmir**
Azad Govt. & others v. Barrister Adnan Nawaz and others
Civil Review Petition No.22/2020
http://ajksupremecourt.gok.pk/wp-content/uploads/2020/12/Azad-Govt.-others-v.-Barrister-Adnan-Nawaz-and-others.pdf

Facts: Petitioners have sought the review of judgment dated 17.07.20 wherein the appointments of the private petitioners as judges of Azad Jammu and Kashmir High Court have been declared ultra vires the constitution and without lawful authority.

Issue: I Whether the office of President comes within the definition of aggrieved person?

ii Whether the Government can contest the case of private petitioners?
Iii Whether the rule of primacy is attracted in present case?

Analysis: i As no observations relating to the office of President have been made in the judgment under review so he does not come within the definition of an aggrieved person.

ii There was no legal justification for the Government to come forward for contesting the case of the private petitioners. Similarly, the private petitioners cannot be associated with government for filing review petition. They should have filed the independent review petition.

iii The Rule of Primacy has not been applied. As under law in case of difference of opinion between the consultees, the primacy shall be given to the opinion of the Chief Justice of Azad Jammu and Kashmir and it is not the discretion of the Executive to pick the names of the candidates at his own choice. In view of the contents of the summary, it becomes crystal clear that the Rule of Primacy was neither attracted nor applied.

Conclusion: It was held that:

i The office of President does not come within the definition of an aggrievedperson.
ii Government cannot contest the case of Private Petitioners rather they should have had filed independent review petitions.
iii Rule of Primacy does not attract in this case.

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15. **Islamabad High Court**
W. P. No. 3808/2020
Capt. (Rtd) Muhammad Safdar v. Federation of Pakistan through Secretary Interior, Islamabad
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-3808-2020%20|%20Citation%20Awaited&cseTle=Capt%20Ret%20Muhammad%20Safdar%20VS%20FOP%20&%20others&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Athar%20Minallah&jgmnt=/attachments/judgements/123910/1/WP-3808-2020_637435576386304657.pdf

Fact: Petitioner is seeking a direction to the Ministry of Interior to liaison with the Inspector Generals of Police of the respective provinces to provide him with security.

Issue: Whether High Court has jurisdiction to direct executive to provide security to petitioner?

Analysis: The function to provide security exclusively falls within the executive domain and petitioner has already informed the concerned authorities. It is for the authorities to assess the requirements of providing security and no direction can be given by a High Court while exercising jurisdiction under Article 199 of the Constitution.

Conclusion: The petition is dismissed. Needless to mention that this Court expects that the State will fulfill its constitutional obligation and provide security to every citizen of Pakistan without discrimination.

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16. **Islamabad High Court**
W.P.No. 194/2020
Mrs. Nusrat Rasheed and another Versus Federation of Pakistan through Secretary, M/o Education and others
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-194-2020%20|%20Citation%20Awaited&cseTle=Nusrat%20Rasheed%20&%20others-%20VS%20-FOP,%20etc&jgs=Honourable%20Mr.%20Justice%20Miangul%20Hassan%20Aurangzeb&jgmnt=/attachments/judgements/112516/1/W.P-194-2020_____637432878816664306.pdf

Fact: The petitioners have been serving as teachers in the Federal Directorate of Education (FDE) on deputation basis for several years. They have assailed notifications issued by the FDE whereby they were repatriated to their respective parent departments. According to them, since their absorption in FDE is under process and theirparent departments had issued NOC for their absorption, so they had acquired a vested right and had a legitimate expectation for their absorption in the FDE.

Issue: i. Whether a process of selection is necessary for appointment on deputation?
ii. Whether a person can be appointed by transfer to any post in the F.D.E. other than the post of elementary school teacher (BPS-14)
iii. Whether appointment by transfer reserved for 10% posts of elementary school teacher (bps-14) in the FDEis to be made only by absorbing the deputationists serving against the said post?
iv. Whether a person can be appointed on deputation to any post in the FDE which the recruitment rules require to be filled by promotion or initial appointment?
v. Whether a deputationist is liable to be repatriated to his/her parent department upon completion of maximum deputation period of five years?
vi. Whether the petitioners' lien with their respective parent departments had terminated upon the issuance of N.O.C for their absorption in the F.D.E.

Analysis: 1.Adeputationist is a government servant, who is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs.A person cannot be appointed on deputation unless he or she has been subjected to a process of selection. An

appointment of an officer on deputation basis would be void if such appointment is not preceded by a process of selection of the officer in question.

As far as issue no. 2 is concerned,a post which is required by the rules to be filled by initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules.

As far as issue no. 3 is concerned, although the APT Rules do not expressly provide for the absorption of a deputationist to be one of the modes of an appointment by transfer, in the case reported as 2013 SCMR 1752 (In the matter of contempt proceedings against Chief Secretary, Sindh and Others), the Hon'ble Supreme Court, held inter alia that "absorption" itself is an appointment by transfer.

As far as issue no. 4 is concerned, Establishment Division's O.M. No.1/28/75-D.II/R.3/R.I dated 11.04.2000 makes it clear that "where a post proposed to be filled is reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC / Selection Board." Furthermore, it is provided that "in such cases, deputation may be approved till such time a suitable person becomes available for promotion. "Additionally, Establishment Division's O.M. No.1/28/75-R.I dated 14.03.1995 (Serial No.29 of the Esta Code) provides inter alia that "no deputation proposals will be entertained which will adversely affect the method of appointment to the post as laid down in the recruitment rules." The mere fact that the post required by the recruitment rules to be filled by promotion or initial appointment is occupied by a deputationist shall not pose as an obstacle in the initiation of the process for filling up the post in accordance with the method of appointment envisaged by the recruitment rules.

As far as issue no. 5 is concerned, upon completion of the maximum permissible deputation period of five years, it is obligatory upon the borrowing department to repatriate a deputationist to his/her parent department. Failure on the part of the borrowing department to repatriate a deputationist who completes the maximum permissible deputation period of five years would be an actionable wrong. The only exception to the said rule is that where the posting of a deputationist is on the basis of the wedlock policy.In such situation, if the borrowing department does not want to repatriate a deputationist appointed under the wedlock policy or the parent department is inclined to extend the deputation period of such deputationist beyond five years, such deputationist can continue serving for a reasonable period beyond the maximum permissible period of five years by virtue of the proviso to Rule 20A of the A.P.T. Rules. However, neither the parent department nor the borrowing department is under an obligation to keep the exempted categories on deputation for the complete five years or beyond.To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts that no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.

As far as issue no. 6 is concerned, Rules provides that on confirmation in a permanent post, a civil servant shall acquire a lien in that post and shall retain it during the period when he holds a temporary post other than the post in the service or cadre against which he was originally appointed.

Conclusion:

A person cannot be appointed on deputation unless he or she has been subjected to a process of selection. Otherwise such appointment would be void.

1. The deputationists appointed to posts in BPS-16 and above in the F.D.E. cannot be considered for appointment by transfer in the F.D.E. since they do not hold an appointment on regular basis under the Federal Government.
2. The APT Rules do not make absorption of deputationists to be the only mode of appointment by transfer. Therefore, the 10% quota reserved for appointment by transfer to the post of EST (BPS-14) under the F.D.E. is not to be filled only by the absorption of deputationists.
3. Appointments on deputation in the F.D.E. without the fulfillment of the conditions laid down in the said O.M. would be unlawful and the incumbents would be liable to immediate repatriation to their respective parent departments so as to pave the way for appointment by promotion or initial appointment, as the case may be, strictly in accordance with the recruitment rules.
4. Deputationist can continue only on the basis of wedlock policy but this exception does not create any legal or vested rights to a deputationist to serve his entire period of deputation in borrowing department. An order for the repatriation of a deputationist would imply that the process initiated for the permanent absorption of the deputationist had been brought to an end.
5. A deputationist retains his/her lien in the parent department until he/she is confirmed in the borrowing department. The lien of a permanent civil servant cannot be terminated even with his consent, and that the same could be terminated only when he was confirmed against some other permanent post.

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17. **Supreme Court of India**
Civil Appeal No. 3100 of 2020
Samir Agrawal v. Competition Commission of India &Ors.https://main.sci.gov.in/supremecourt/2020/16963/16963_2020_33_1502_25089_Judgement_15-Dec-2020.pdf

Facts: Appellant has filed application with Competition Commission of India against UBER India and OLA rides by alleging that Uber and Ola provide radio taxi services and essentially operate as platforms through mobile

applications ["apps"] which allow riders and drivers, that is, two sides of the platform, to interact. A trip's fare is calculated by an algorithm based on many factors. The apps that are downloaded facilitate payment of the fare by various modes and due to algorithmic pricing, neither are riders able to negotiate fares with individual drivers for rides that are booked through the apps, nor are the drivers able to offer any discounts. Thus, the pricing algorithm takes away the freedom of riders and drivers to choose the best price on the basis of competition, as both have to accept the price set by the pricing algorithm.

Issue:

i. Whether the pricing algorithm used by Ola and Uber artificially manipulates supply and demand, guaranteeing higher fares to drivers who would otherwise compete against one and another?

ii. Whether Ola and Uber apps function akin to a trade association, facilitating the operation of a cartel and since Ola and Uber have greater bargaining power than riders in the determination of price, whether they are able to implement price discrimination?

iii. Whether such pricing appears to be similar to the 'hub and spoke' arrangement as understood in the traditional competition parlance?

Analysis:

Supreme Court approved/upheld the following reasons/analysis of Competition Commission of India:

i. In case of app-based taxi services, algorithm pricing seemingly takes into account personalised information of riders along with other factors e.g. time of the day, traffic situation, special conditions/events, festival, weekday/weekend which all determine the demand-supply situation etc. Resultantly, the algorithmically determined pricing for each rider and each trip tends to be different owing to the interplay of large data sets. The dynamic pricing can and does on many occasions drive the prices to levels much lower than the fares that would have been charged by independent taxi drivers. Thus, there does not seem to be any fixed floor price that is set and maintained by the aggregators for all drivers and the centralized pricing mechanism cannot be viewed as a vertical instrument employed to orchestrate price-fixing cartel amongst the drivers.

ii. Ola and Uber are not an association of drivers, rather they act as separate entities from their respective drivers. In the present situation, a rider books his/her ride at any given time which is accepted by an anonymous driver available in the area, and there is no opportunity for such driver to coordinate its action with other drivers. This cannot be termed as a cartel activity/conduct through Ola/Uber's platform. Further, there is absence of an agreement, understanding or arrangement, demonstrating/indicating meeting of minds, which is a sine qua non for establishing a contravention under Section 3 of the Act

iii. In the present case, the drivers may have acceded to the algorithmically determined prices by the platform (Ola/Uber), this cannot be said to be

amounting to collusion between the drivers. In the case of ride-sourcing and ridesharing services, a hub-and-spoke cartel would require an agreement between all drivers to set prices through the platform, or an agreement for the platform to coordinate prices between them.

Conclusion: Supreme Court after making reference to above discussed reasons given by Competition Commission of India in its decision, has upheld its decision by holding that Ola and Uber do not facilitate cartelization or anti-competitive practices between drivers, who are independent individuals, who act independently of each other, so as to attract the application of section 3 of the Act, as has been held by both the CCI and the NCLAT.

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18. **Supreme Court of India**
Civil appeal no. 611 of 2020
Pradeep Kumar Sonthalia. V. Dhiraj Prasad Sahu @ DhirajSahu&Anr.
https://main.sci.gov.in/supremecourt/2017/32813/32813_2017_33_1501_24824_Judgement_25-Nov-2020.pdf

Facts: On 23.03.2018, the biennial elections for two seats in the Council of States from the State of Jharkhand was held between 9.00 A.M. and 4.00 P.M. at the Vidhan Sabha. A total of 80 members of the Legislative Assembly of the State of Jharkhand cast their votes. One Shri Amit Kumar Mahto who was an elected member of the Assembly belonging to Jharkhand Mukti Morcha Party (JMM) admittedly cast his vote at 9.15 A.M. on 23.03.2018 but he was convicted by the Court of the Additional Judicial Commissioner XVIII, Ranchi, in Sessions Trial No.481 of 2010, for the offences punishable under Sections 147, 323/149, 341/149, 353/149, 427/149 and 506/149 IPC, on the same day, but the conviction and sentence were handed over at 2.30 P.M. An objection was lodged at 11.20 P.M. requesting the Returning Officer to declare the vote cast by ShriAmit Kumar Mahto invalid, on the basis of the conviction and sentence imposed in the afternoon on the same day by the Criminal Court but his objection was dismissed and his election petition and Writ Petition in High Court also failed, so he approached the Supreme Court to get declare the election nullity.

Issue: Whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?

Analysis: Section 8(3) of the Representation of the People Act, 1951 is comprehensive in that it indicates both the commencement of the period and its expiry. The date of conviction is prescribed to be the point of commencement of disqualification and the date of completion of a period of six years after

release is prescribed as the point of expiry of the period of disqualification. Once the period of disqualification starts running, the seat hitherto held by the person disqualified becomes vacant by virtue of Article 190(3) of the Constitution. While speaking about the seat of the disqualified person becoming vacant, Article 190(3) uses the expression "thereupon". We may have to keep this in mind while interpreting the words "the date of such conviction". An election dispute lies in a special jurisdiction and hence it has to be exercised without importing concepts familiar to common law and equity, unless they are ingrained in the statute itself. It is contended by Appellant that wherever the statute uses the words "on the date", it should be taken to mean "on the whole of the day" and that law disregards as far as possible, fractions of the day.

- We must point out at this juncture that even in criminal law, there is a vast difference between (i) the interpretation to be given to the expression "date", while calculating the period of imprisonment suffered by a person and (ii) the interpretation to be given to the very same expression while computing the period limitation for filing an appeal/revision. Say for instance, a person is convicted and sentenced to imprisonment and also taken into custody pursuant thereto, on 23.03.2018, the whole of the day of March 23 will be included in the total period of incarceration. But in contrast, the day of March 23 will be excluded for computing the period of limitation for filing an appeal. Though one contrasts the other, both interpretations are intended to benefit the individual.

- We have no doubt that disqualification is not a penal provision and that the object of disqualification is to arrest criminalisation of politics. But what triggered the disqualification in this case, under Section 8(3) was a conviction by a criminal Court, for various offences under the Penal Code. Therefore, the phrase "the date of conviction" appearing in Section 8(3) should receive an interpretation with respect to the penal provisions under which a person was convicted. The rule that a person is deemed innocent until proved guilty is a long-standing principle of constitutional law and cannot be taken to be displaced by the use of merely general words. In law this is known as the principle of legality and clearly applies to the present case.

- In our view to hold that a Member of the Legislative Assembly stood disqualified even before he was convicted would grossly violate his substantive right to be treated as innocent until proved guilty.

- In the present case, it would be significant to add that it is not necessary to make a declaration incompatible in the use of the word "date" with the general rule of law since the word "date" is quite capable of meaning the point of time when the event took place rather than the whole day.

- The well-known presumption that a man is innocent until he is found guilty, cannot be subverted because the words can accommodate both competing circumstances. While it is known that an acquittal operates on nativity, no case has been cited before us for the proposition that a conviction takes effect even a minute prior to itself. Moreover, the word "date" can be used to denote occasion, time, year etc. It is also used for denoting the time up to the present when it is used in the phrase "the two dates". Significantly, the word "date" can also be used to denote a point of time etc.

- To say that this presumption of innocence would evaporate from 00.01 A.M., though the conviction was handed over at 14.30 P.M. would strike at the very root of the most fundamental principle of Criminal Jurisprudence.

- Inasmuch as a conviction for an offence is under a penal law, it cannot be deemed to have effect from a point of time anterior to the conviction itself. Legal fiction cannot prevail over facts where law does not intend it to so prevail.

- The disqualification arising under Section 8(3) of the Act, is the consequence of the conviction and sentence imposed by the criminal Court. In other words, conviction is the cause and disqualification is the consequence. A consequence can never precede the cause.

- In any case the principle that the acts of the officers de facto performed within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally regarded as valid and binding as if they were the acts of the officers de jure. "Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are concerned." So long as he is clothed with the insignia of the office and exercises its powers and functions, the acts performed by him were held by this Court to be valid.

Conclusion: Supreme Court has held that we hold that the vote cast by Shri Amit Kumar Mahto at 9:15 a.m. on 23.03.2018 was rightly treated as a valid vote. To hold otherwise would result either in an expectation that the Returning Officer should have had foresight at 9:15 a.m. about the outcome of the criminal case in the afternoon or in vesting with the Election Commission, a power to do an act that will create endless confusion and needless chaos.

19. **Supreme Court of Canada**
C.M. Callow Inc. v. Zollinger, 2020 SCC 45
https://www.canlii.org/en/ca/scc/doc/2020/2020scc45/2020scc45.html

Facts: In 2012, a group of condominium corporations ("Bay crest") entered into a two-year winter maintenance contract and into a separate summer maintenance contract with C.M. Callow Inc. ("Callow"). Pursuant to clause 9 of the winter maintenance contract, Bay crest was entitled to terminate that agreement if Callow failed to give satisfactory service in accordance with its terms. Clause 9 also provided that if, for any other reason, Callow's services were no longer required, Bay crest could terminate the contract upon giving 10 days' written notice.

In early 2013, Bay crest decided to terminate the winter maintenance agreement but chose not to inform Callow of its decision at that time. Throughout the spring and summer of 2013, Callow had discussions with Bay crest regarding a renewal of the winter maintenance agreement. Following those discussions, Callow thought that it was likely to get a two-year renewal of the winter maintenance contract and that Bay crest was satisfied with its services. During the summer of 2013, Callow performed work above and beyond the summer maintenance contract at no charge, which it hoped would act as an incentive for Bay crest to renew the winter maintenance agreement.

Issue: Whether exercise of termination clause by Bay crest constituted the breach of duty of honest performance of a contract?

Analysis: The duty of honest performance in contract, formulated in Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494, applies to all contracts and requires that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract. … Even though Bay crest had what was, on its face, an unfettered right to terminate the winter maintenance agreement on 10 days' notice, the right had to be exercised in keeping with the duty to act honestly. Bay crest's deception was directly linked to this contract, because its exercise of the termination clause was dishonest. It may not have had a free-standing obligation to disclose its intention to terminate, but it nonetheless had an obligation to refrain from misleading Callow in the exercise of that clause. Bay crest had to refrain from false representations in anticipation of the notice period. If someone is led to believe that their counterparty is content with their work and their ongoing contract is likely to be renewed, it is reasonable for that person to infer that the ongoing contract is in good standing and will not be terminated early. Having failed to correct Callow's misapprehension that arose due to these false representations, Bay crest breached its duty of good faith in the exercise of its right of termination.

Conclusion: In the instant case, Bay crest knowingly misled Callow in the manner in which it exercised clause 9 of the winter maintenance agreement and this wrongful exercise of the termination clause amounts to a breach of contract.

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20. **Supreme Court of the United States**
New York State Rifle & Pistol Association Inc. v. City of New York, New York, 590 U.S. (2020)
https://www.supremecourt.gov/opinions/19pdf/18-280_ba7d.pdf

Facts: It is a case addressing whether the gun ownership laws of New York City, which restrict the transport of a licensed firearm out of one's home, violated the Constitution's Second Amendment, Commerce Clause, and right to travel. A group of New York City residents challenged the former provisions of the city's premises license, arguing that not being able to travel outside of the city limits with a handgun violated their Second Amendment right, the dormant Commerce Clause, the First Amendment right of expressive association, and the fundamental right to travel.

Issue: Whether the City's ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the Commerce Clause, and the constitutional right to travel?

Analysis: In a concurring opinion, Justice Brett Kavanaugh agreed that the case was moot, but wrote that he agreed with Justice Samuel Alito's concern that some federal and state courts may not be properly applying the principles mentioned in the cases of *Heller* and *McDonald.* Former case recognized the right of US Citizens to own guns within the privacy of their homes and in the latter affirmed the constitutional right to be incorporated to the states and so prohibited regulations that completely prevented gun ownership. In a lengthy dissent joined by Justice Neil Gorsuch in full and Justice Clarence Thomas in part, Justice Alito wrote that "*This case is not moot. The City violated petitioners' Second Amendment right, and we should so hold.*" He opined that the Court should have evaluated the city's laws in light of the cases of *Heller* and *McDonald* and that by rendering the case moot, they have allowed the docket of the Supreme Court to be "*manipulated*".

Conclusion: The court vacated the 2nd Circuit's decision in a 6-3 *per curiam* ruling, holding the petitioners claim was moot. The case was remanded to lower courts to consider whether petitioners may still add a claim for damages in this lawsuit with respect to New York City's old rule.

LIST OF ARTICLES:-

1. **THE CHINESE JOURNAL OF COMPARATIVE LAW**
   https://doi.org/10.1093/cjcl/cxaa023
   COVID-19 in Civil or Commercial Disputes: First Responses from Chinese Courts
   By: Qiao Liu

2. **JOURNAL OF LAW AND THE BIOSCIENCES**
   https://doi.org/10.1093/jlb/lsaa011
   The United Kingdom's Coronavirus Act, deprivations of liberty, and the right to liberty and security of the person
   By: Jonathan Pugh

3. **The All Pakistan Legal Decisions (PLD)**
   http://www.plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J7
   Video Recording as a Piece of Evidence
   By: Jawad Hussain Aadil,

   http://plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J1
   Honour Killings in Pakistan and Status of Women in Islamic Law
   By: Muhammad Sher Abbas, Senior Research Officer, Lahore High Court, Lahore