LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(16-06-2022 to 30-06-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Abbas Haider Naqvi & another v. Federation of Pakistan, etc.
Civil Petition No.620 of 2021
Yasser-ul-Haq Effendi & another v. Federation of Pakistan, etc.
Civil Petition No.444 of 2022
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._620_2021.pdf

Facts: One of the petitioners filed leave to appeal against the order passed by the High Court dismissing their constitutional petition against the order of the Accountability Court, whereby the Accountability Court had dismissed their application under Section 265-K of the Code of Criminal Procedure 1898 ("CrPC") while the other filed leave to appeal against the order passed by the High Court, dismissing their constitutional petition against the order of the Accountability Court, whereby the Accountability Court had dismissed their application for transfer of the case to the Court of Special Judge (Customs and Taxation).

Issues: i) Whether a trial court can entertain an application under Section 265-K, Cr.PC at a later stage of a trial?
ii) Whether an accused can be held to be entrusted with a property to constitute an offence of criminal breach of trust if the property belongs to and is owned by an accused in his own right?
iii) Whether the charge for the offences under Section 9(a)(x)&(xi) of the NAB Ordinance can sustain when the primary offence of criminal breach of trust under section 405 PPC is not made out?

Analysis: i) There can be no cavil to the rule of practice and propriety, referred to by the High Court, that when the trial is near completion, the fate of the case should not ordinarily be decided under Section 265-K of the Cr.PC. There may however be such exceptional circumstances which may justify departure from the said rule, as there is hardly any rule of practice which does not admit exception(s). Even otherwise, Section 265-K of the Cr.PC provides that the trial court can make an order of acquittal at any stage of the case, and such stage may be an initial stage of the case on taking cognizance before recording of the prosecution evidence, or it may be a later stage of the case after recording of some evidence of the prosecution. No absolute bar, in derogation of the law, can therefore be put on the statutory power of the trial court to entertain an application under Section 265-K, Cr.PC and decide upon its merits at a later stage of the trial if the exceptional circumstances of the case call for so doing to prevent the abuse of the process of court or to secure the ends of justice.

ii) Although the "entrustment" of property within the meaning of Section 405, PPC does not envisage the creation of a formal trust with all the technicalities of

the law of trust, it does contemplate that to constitute entrustment the accused must have held the property in a fiduciary capacity. The word "trust" has been used in Section 405 in the ordinary sense of that word, and covers not only the relationship of trustee and beneficiary but also that of bailer and bailee, master and servant, pledger and pledgee, guardian and ward, and all other relations that postulate the existence of a fiduciary relationship between the complainant and the accused. The entrustment of property implies that the ownership of the entrusted property vests in a person other than the one who is entrusted with it. If the property belongs to and is owned by the accused in his own right, it cannot be said that he was entrusted with that property and that by using or disposing of that property he committed the offence of criminal breach of trust . "Entrustment" is an essential ingredient of the offence of criminal breach of trust as defined in Section 405, PPC; therefore, where there is no entrustment of property, there can be no criminal breach of trust.

iii) When the primary offence of criminal breach of trust under section 405 PPC is not made out, the charge for the offences under Section 9(a)(x)&(xi) of the NAB Ordinance cannot sustain.

Conclusion: i) A trial court can entertain an application under Section 265-K, Cr. at a later stage of a trial only in exceptional circumstances.

ii) An accused cannot be held to be entrusted with a property to constitute an offence of criminal breach of trust if the property belongs to and is owned by an accused in his own right.

iii) When the primary offence of criminal breach of trust under section 405 PPC is not made out; the charge for the offences under Section 9(a)(x)&(xi) of the NAB Ordinance cannot sustain.

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2. **Supreme Court of Pakistan**

Commissioner Inland Revenue, Zone-II, Regional Tax Officer (RTO), Mayo Road, Rawalpindi and another v. M/s Sarwaq Traders, 216/1-A, Adamjee Road, Rawalpindi and another

Civil Petition No.4599 of 2021

Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik

https://www.supremecourt.gov.pk/downloads_judgements/c.p._4599_2021.pdf

Facts: The Commissioner (Appeals) decided the Appeal beyond the prescribed period of limitation under Section 45-B(2) of the Sales Tax Act, 1990 (Act) being 180 days. On this ground the Appellate Tribunal declared the order of Commissioner as void being a nullity in law. Hence the order of Appellate Tribunal is challenged.

Issues: i) Whether the provisions of Section 45-B(2) of the Act are mandatory or directory in nature?

ii) Whether the order of Commissioner (Appeals) is null and void if it is not decided within the prescribed time?

Analysis: i) The first time frame given under section 45-B(2) of Act is 120 days, which is extendable, meaning that, the Commissioner can exercise discretion and extend the time where required. The only caveat is that reasons have to be given in writing, so that the discretion is not misused and is not exercised arbitrarily. The second time frame under Section 45-B(2) is for extending 120 days by 60 days and nothing beyond 60 days. With the help of negative language, the legislature has created an obligation on the Commissioner (Appeals) to decide the appeal in a total of 180 days where the appeal is not decided within 120 days. This obligation renders the section mandatory as the Commissioner (Appeals) cannot go beyond 180 days, as the Commissioner's discretion is curtailed if the time needs to be extended beyond 120 days. Consequently, the obligation fixed on the Commissioner (Appeals) to decide the matter within 180 days is mandatory and not directory.

ii) The provisions of section 45-B(2) are mandatory, therefore, if a decision is made beyond the 180 days as prescribed under Section 45-B(2) of the Act, then such a decision made beyond the prescribed period is an invalid decision. .. where the public authority is empowered to create a liability against a taxpayer, then such exercise of power must be performed within the prescribed time.

Conclusion: i) The provisions of Section 45-B(2) of the Act are mandatory in nature.

ii) The order of Commissioner (Appeals) is null and void if it is not decided within the prescribed time.

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3. Supreme Court of Pakistan
Syed Zulfiqar Shah v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar.
Criminal Petition No. 518 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._518_2022.pdf

Facts: Through instant criminal petition the petitioner has sought leave to appeal against the concurrent orders of the Peshawar High Court, and of the learned trial court, whereby his applications for bail after arrest for commission of offence under section 9(d) of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 ("KPK Act of 2019") were dismissed.

Issues: i) Whether it is necessary to obtain requisite search warrant under section 27 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 ("KPK Act of 2019") before conducting raid and noncompliance has any effect upon trial?

ii) Whether provision of section 27 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 ("KPK Act of 2019"), are identical to the provisions of section 20 of the Control of Narcotics Substances Act, 1997 ("CNSA of 1997")?

Analysis: i) The provisions of section 27 of the KPK Act of 2019, which are identical to the provisions of section 20 of the CNSA of 1997, are also directory in nature, and their non- compliance though may entail departmental disciplinary action or penal action or both against the delinquent police official, but do not affect the admissibility of the fact of recovery of the narcotics in evidence before the trial court.

ii) The provisions relating to obtaining a warrant for the arrest of an accused and the search of the narcotics from a dwelling house are provided in section 27 of the KPK Act of 2019, which are identical to the provisions of section 20 of the Control of Narcotics Substances Act, 1997 ("CNSA of 1997").

Conclusion: i) It is not necessary to obtain requisite search warrant under section 27 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 ("KPK Act of 2019") before conducting raid and noncompliance has no effect upon trial.

ii) Yes, provision of section 27 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 ("KPK Act of 2019"), are identical to the provisions of section 20 of the Control of Narcotics Substances Act, 1997 ("CNSA of 1997").

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4. Supreme Court of Pakistan
Sohail Ahmad v. Government of Pakistan through Secretary of Interior Ministry at Islamabad and others
Civil Appeal No. 1684 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1684_2021.pdf

Facts: This Civil Appeal with leave of the Court is directed against the judgment passed by the Federal Service Tribunal, in Service Appeal, whereby the aforesaid Service Appeal of the appellant was dismissed.

Issues: i) Whether the delinquent can be punished twice for the one and same alleged offence?

ii) Whether a delinquent should be afforded a fair minded opportunity to converge, give explanation and contest the inquiry before he is found guilty and condemned?

Analysis: i) Under Article 13 of the Constitution of Pakistan, it is clearly provided that no person shall be prosecuted or punished for the same offence more than once or shall when accused of an offence, be compelled to be a witness against himself. In the case in hand, it is apparent that the appellant was vexed twice for the same alleged offence of making false complaint against his colleagues who were found innocent after inquiry. The punishment of transfer as well as declaring him junior while upsetting the seniority through another office order issued in continuation are for the one and the same cause is also hit by the doctrine of double jeopardy which provides a legal defence to shield a person from being tried again for the

same indictments after an acquittal or conviction. The word 'double jeopardy' originates from the rule 'Nemo bis punitur pro eodem delicto,' which means "no one should be punished twice for the same offence" and another common-law rule 'Nemo debet bis vexari,' which means "a man must not be put in peril twice for the same offence." It is also based on rule of conclusiveness and finality based upon the maxim of Roman jurisprudence 'Interest reipublicae ut sit finis litium' (it concerns the state that there be an end to law suits).

ii) Under Article 10A of our Constitution, the right to a fair trial is a fundamental right. On adding this fundamental right in our Constitution, the Court is bound to analyze in the facts and circumstances of the case to ascertain whether this indispensable right was afforded or deprived of. What is more, the principles of natural justice require that the delinquent should be afforded a fair minded opportunity to converge, give explanation and contest it before he is found guilty and condemned. It is an elementary rule of law that no decision which is affecting the right of any person should be taken without providing an opportunity of being heard.

Conclusion: i) For the one and same alleged offence, the delinquent cannot be punished twice.
ii) A delinquent should be afforded a fair minded opportunity to converge, give explanation and contest the inquiry before he is found guilty and condemned.

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5. Supreme Court of Pakistan
Muneer Malik and Nadeem Ahmed v. The State through P.C. Sindh
Crl.M.A.1581/2021 in/and Crl.A.193/2020
& Cri.A.194/2020 & Crl.A.195/2020
Mr. Justice Iiaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._1581_2021.pdf

Facts: Appellants have assailed their convictions under Sections 302/324/34 PPC read with Section 7 of the Anti-Terrorism Act, 1997 and 13(e) of the Arms Ordinance.

Issues: i) How a case becomes case of terrorism for the purpose of recording convictions and sentences under section 7 of the Anti-Terrorism Act, 1997?
ii) What is the value of joint recovery from the accused, particularly when it is not mentioned that who had first led to the recovery or pointed out the place of recovery?
iii) Whether the recoveries of the weapons of offence & the crime empties are admissible in evidence if they were sent jointly to Chemical Examiner after delay?

Analysis: i) An action can be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action is designed to create a sense of fear or insecurity in the society or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause. etc… Now

creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime.
ii) If nothing has been mentioned as to who had first led to the recovery or pointed out the place of recovery and in absence of the same, joint recovery of weapons of offence is of no evidentiary value.
iii) Recoveries of the weapons of offence & the crime empties are not admissible in evidence and cannot be relied upon, which were jointly sent to the office of Chemical Examiner with delay for which no plausible explanation has been given by the prosecution.

Conclusion: i) An action can be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc.
ii) When it is not mentioned as to which of the accused had first led to the recovery or pointed out the place of recovery and in absence of the same, joint recovery of weapons of offence is of no evidentiary value.
iii) Recoveries of the weapons of offence & the crime empties are not admissible in evidence and cannot be relied upon, which were jointly sent to the office of Chemical Examiner with delay for which no plausible explanation has been given by the prosecution.

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6. **Supreme Court of Pakistan**
Abdul Ghafoor v. The State Respondent(s)
Criminal Appeal No. 250 OF 2020
Mr. Justice Ijaz Ul Ahsan. Mr, Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/clr.a._250_2020.pdf

Facts: The appellant has filed the appeal against his conviction in murder case.

Issues: i) Whether delay in lodging FIR is sufficient ground to gauge the veracity of the prosecution witnesses?
ii) Whether the accused is entitled for the benefit of a single circumstance creating reasonable doubt about his guilt?

Analysis: i) This Court has repeatedly considered the delay in lodging the FIR a serious lapse unless and until it is plausibly explained. Delay per se is a valid ground to gauge the veracity of the prosecution witnesses. In the case of Mehmood Ahmad Vs. The State (1995 SCMR 127), there was a delay of two hours in lodging the FIR. This Court while holding that the delay of two hours in lodging the FIR has assumed great significance as the same can be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution may wish to implicate charge and put to trial.
ii) It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a

matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused.

Conclusion: i) Delay in lodging FIR is sufficient ground to gauge the veracity of the prosecution witnesses.
ii) The accused is entitled for the benefit of a single circumstance creating reasonable doubt about his guilt.

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7. **Supreme Court of Pakistan**
Kashif Ali @ Kalu v. The State and another.
Jail Petition No. 403 Of 2018
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._403_2018.pdf

Facts: Petitioner was tried by the learned Additional Sessions Judge for offences u/s 302/34 PPC. The learned Trial Court convicted the petitioner u/s 302(b) PPC, sentenced him to death and directed to pay compensation to legal heirs. He was also convicted under Section 394 & 449 PPC. In appeal, the learned High Court while maintaining the conviction of the petitioner under Section 302(b) PPC altered the sentence of death into imprisonment for life whereas other sentences were maintained, hence, this petition.

Issues: i) Whether the dying declaration can be given credence when time & place where it was recorded are not disclosed?
ii) What is effect of recovery of weapon of offence if same is not sent to office of chemical examiner?
iii) What is evidentiary value of recovery affected on pointation of accused without association of witnesses?
iv) Whether benefit of even a single doubt can be extended to accused?

Analysis: i) The dying declaration cannot be given any credence when the time and place where it was recorded are not disclosed which makes it highly improbable to rely upon.
ii) The weapon of offence if not sent to the office of Chemical Examiner, the recovery would be inconsequential and the same cannot be used against the accused.
iii) If the recovery is affected on the pointation of the accused, and articles were taken into possession by the police officials but the statement of said police officials is not recorded whereas no independent witness of the locality is associated in such process. In these circumstances, it would not be safe to rely upon such recovery to sustain conviction of the accused.
iv) It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a

matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused.

Conclusion: i) The dying declaration cannot be given credence when time & place where it was recorded are not disclosed.
ii) The weapon of offence if not sent to the office of Chemical Examiner, the recovery would be inconsequential and the same cannot be used against the accused.
iii) It would not be safe to rely upon recovery, affected without associating witness, to sustain conviction of the accused.
iv) A single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits.

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8. **Supreme Court of Pakistan**
Zaheer Ahmad (Crl. P.149-I/22), Shiraz Ahmed (Crl P.150 l/22) v. The State, etc
Criminal petition Nos. 149-L & 150-L of 2022
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._149_l_2022.pdf

Facts: Petitioners seek bail in offence under section 11 of the Prevention of Electronic Crimes Act, 2016 and sections 295A, 298C PPC (sections 295-B, 295-C, 34 and 109 PPC added later on).

Issue: Whether at bail stage, court can go to dig deep into the evidence or to scrutinize factual aspects of the case?

Analysis: Suffice it to observe that at bail stage we are not meant to dig deep into the evidence or to scrutinize factual aspects of the case, which certainly is the responsibility of the trial court and requires evidence to be adduced from both sides. In case this Court enters into the realm of the trial court during bail stage, it would be disadvantageous for both sides and would certainly prejudice the case of either side.

Conclusion: At bail stage, court cannot go to dig deep into the evidence or to scrutinize factual aspects of the case.

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9. **Supreme Court of Pakistan**
Rohan Ahmad (Crl. P.1313-I/21), Usman Ahmad (Crl P.1314 l/21), Tariq Ahmad Shahzad (Crl P.1315-l/21) v. The State
Criminal petition Nos. 1313-L, 1314-L & 1315-L OF 2021
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Jamal Khan Mandokhail

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1313_l_2021.pdf

Facts: Petitioners seeks his bail in offence under section 11 of the Prevention of Electronic Crimes Act, 2016 and sections 295B 298C, 120B, 34, 109 PPC.

Issue: Whether at bail stage, court can go to dig deep into the evidence or to scrutinize factual aspects of the case?

Analysis: Suffice it to observe that at bail stage we are not meant to dig deep into the evidence or to scrutinize factual aspects of the case, which certainly is the responsibility of the trial court and requires evidence to be adduced from both sides.

Conclusion: At bail stage, court cannot go to dig deep into the evidence or to scrutinize factual aspects of the case.

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10. Supreme Court of Pakistan
Mrs. Muhammad Akbar v. Abdul .JaIiI & others
Civil Appeal No. 999 of 2017
Mr.Justice Mazhar Alam Khan Miankhel, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._999_2017.pdf

Facts: The appellant and others have filed separate civil petitions while assailing the orders of Rent Controller and learned High Court wherein separate applications filed by the respondents have been allowed for vacation of houses, rented to the appellant and other tenants on the ground of personal bona fide use of the houses for non-residential purposes, after removing the intervening walls between the houses and their rooms.

Issues: Whether prior permission of the Rent Controller under section 11 of the Baluchistan Urban Rent Restriction Ordinance, 1995 is necessary for conversion of a residential building into a non-residential one?

Analysis: Section 11 of the Baluchistan Urban Rent Restriction Ordinance, 1959 relates to the conversion of the existing residential building into a non-residential building, without any structural change. However, after a material change in the structure of a residential building or after demolishing the building with a plan to reconstruct a non-residential building, the Controller loses its authority, therefore, under such circumstances, permission of the Controller under section 11 of the Baluchistan Urban Rent Restriction Ordinance, 195 is not required.

Conclusion: Prior permission of the Rent Controller under section 11 of the Baluchistan Urban Rent Restriction Ordinance, 1995 is not required after a material change in the

structure of a residential building or after demolishing the building with a plan to reconstruct a non-residential building.

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11. **Supreme Court of Pakistan**
Muhammad Din v. The Deputy Settlement Commissioner, etc.
Civil Appeal No. 730 of 2015
Mr. Justice Sajjad Ali Shah Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._730_2015.pdf

Facts: Appellant has challenged the judgment of the Lahore High Court passed in Civil Revision, whereby the judgment and decree passed in his favour by the Appellate Court was set aside and the judgment of the trial court dismissing his suit was restored.

Issues: i) What kind of matters relating to evacuee property can be decided by the officer notified u/s 2(2) of the Evacuee Property and Displaced Person Laws (Repeal) Act, 1975?
ii) What is remedy available to a person who wants to challenge the validity of PTO or PTD after the promulgation of the Repealing Act?
iii) Whether court can decline declaratory relief by virtue of conduct of person claiming the relief?
iv) What is limitation period for instituting a suit for setting aside any act or order of an officer of Government?
v) Whether consequential relief can be granted when main relief sought is time barred?

Analysis: i) In case any proceedings relating to evacuee property is pending on the cutoff date, that is, 30.06.1974, the officer notified under section 2(2) of the Repealing Act was competent to proceed and decide the same in accordance with the repealed laws.
ii) After the promulgation of the Repealing Act, the officers notified under that Act, do not possess the jurisdiction to declare any PTO or PTD regarding which no proceedings were pending on the cutoff date, that is, 30.06.1974 as null and void on the grounds of alleged fraud or forgery; they can only deal with and decide the pending proceedings and cannot initiate any new proceeding. The mere pendency of the application for transfer of the suit property cannot make the issue of the validity of the PTD alive and bring it within the scope of a "pending proceeding" under section 2 of the Repealing Act…. Anyone who wants to challenge any PTO or PTD issued under the repealed laws, and has locus standi to do so, is to knock at the doors of Civil Court, a court of plenary jurisdiction, for the redress of his grievance.
iii) Where the conduct of the person claiming declaratory relief is unconscionable or inequitable, the court may decline to grant him the relief on this sole ground.
iv) As per Article 14 of the First Schedule to the Limitation Act 1908, the period of limitation for instituting a suit to set aside any act or order of an officer of Government made by him in his official capacity, not otherwise expressly provided for in the said Act, is one year from the date of the act or order.
v) When the main relief sought in a suit is barred by time, the consequential relief, even if be within time, is of no legal avail.

Conclusion: i) After the promulgation of the Repealing Act, the officers notified under that Act can only deal with and decide the pending proceedings.
ii) Remedy available to a person who wants to challenge the validity of PTO or PTD is to knock at the doors of Civil Court.
iii) Yes, court can decline declaratory relief by virtue of conduct of person claiming the relief.
iv) Under Article 14 of First Schedule to Limitation Act, Limitation period for instituting a suit for setting aside any act or order of an officer of Government made by him in his official capacity is one year from the date of the act or order.
v) Consequential relief cannot be granted when main relief sought is time barred.

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12. **Supreme Court of Pakistan**
Badshah Zarnin & others v. Siraj Khan & others

Civil Appeals No. 290 to 297 of 2022

Mr. Justice Sajjad Ali Shah, Mr. Justice Jamal Khan Mandokhajl
https://www.supremecourt.gov.pk/downloads_judgements/c.a._290_2022.pdf

Facts: These civil appeals are directed against a consolidated judgment passed by the Service Tribunal whereby the appeal of the respondent No.1 was accepted and was given the seniority on the basis of regularization of service under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 by setting aside the seniority list issued by the department.

Issue: How the seniority of the candidates recommended by the KPPSC and the employees on contract and adhoc whose service was regularized through the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, would be determined?

Analysis: According to section 4 of the Act, the employees whose services are regularized pursuant to the Act, shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment… In clause (a) of sub-section (1) of section 35 of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2003, it has been clarified that where a large number of candidates apply for a large number of posts, the recommendations may not be pended till the finalization of the entire batch. In case the recommendation of any batch is made, in the first instance, following by recommending other batches of the candidates for their appointment, the inter se seniority shall be on the basis of their merits, determined by the KPPSC, without taking into account the dates of recommendations. The intention of the law-makers is very much clear that in case of more than one candidate, if the recommendation of the commission is withheld or delayed in respect of one or more candidates, for want of completion of the process or for any other reason, beyond the control of the candidates, the

recommendations of the commission made subsequently on different dates, are to be considered to have been made by the commission on the dates, when first recommendation was made. Under such circumstances, the date of the recommendations of the first batch, sent to the competent authority for the appointment shall be considered as the date of recommendation for all.

Conclusion: The candidates recommended by the KPPSC prior to promulgation of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, will be placed senior irrespective of the fact the recommendation of the commission is withheld or delayed in respect of one or more candidates, for want of completion of the process or for any other reason, beyond the control of the candidates.

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13. **Supreme Court of Pakistan**
Khawar Kayani v. The State, etc.
Criminal Petition No.345 of 2022
Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._345_2022.pdf

Facts: Petitioner seeks leave to appeal against the order whereby post arrest bail was denied to the petitioner by the High Court for the commission of offence of Qatl-i-amad punishable under Section 302/34 of the Pakistan Penal Code 1860.

Issues: i) Whether a juvenile can be detained in a police station or a jail in bailable offences, which include minor offences and major offences as defined under the Juvenile Justice System Act, 2018?
ii) Whether a juvenile more than sixteen years of age can be refused bail?
iii) Whether a juvenile over sixteen years of age can be released on bail who has been detained for a continuous period exceeding six months due to non-completion of trial?
iv) Whether the period of delay of six months in the conclusion of the trial is to be counted from the date of arrest of the juvenile or from the date of the detention of the accused?

Analysis: i) Section 6 of the Juvenile Justice System Act, 2018 deals with the release of a juvenile on bail falling under different categories of offences. Section 6(3) provides for treating the "minor offences" and "major offences" as bailable, while the provisions for release on bail of a juvenile accused of bailable offences are contained in subsection (1) thereof. These provisions though provide for placing a juvenile accused of a bailable offence under the custody of a suitable person or Juvenile Rehabilitation Centre under the supervision of probation officer if there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger, but categorically prohibit his detention in a police station under police custody or in a jail. Therefore, a juvenile cannot be detained in a police station or a jail in bailable offences, which include minor offences and major offences as defined under the Act.

ii) Section 6(4) of the Act provides that where a juvenile is more than sixteen years of age and is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.

iii) Section 6(5) of the Act provides for bail to the juveniles where they have been detained for a continuous period exceeding six months and whose trial has not been completed. Thus, it can safely be concluded that Section 6(5) of the Act does apply, rather solely applies, to a case involving a "heinous offence", irrespective of the age of the juvenile. Section 6(5) in effect works as a proviso to Section 6(4) and appears to have no other purpose under the scheme of the Act.

iv) Judgments of this Court delivered in the cases of Nadeem Samson, and Shakeel Shah relating to 3rd proviso to Section 497(1) CrPC, which contains similar provisions, and of Saleem Khan relating to Section 6(5) of the Act; this Court has held in these cases that the period of delay in the conclusion of the trial is to be counted from the date of the detention of the accused in the case. The period of six months mentioned in Section 6(5) of the Act is therefore to be counted from the date of arrest of the juvenile, after determination of his age and not from the date of such determination or adjudication by the Court.

Conclusion: i) A juvenile cannot be detained in a police station or a jail in bailable offences, which include minor offences and major offences as defined under the Juvenile Justice System Act, 2018.

ii) Under Section 6(4) of the Act a juvenile more than sixteen years of age can be refused bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.

iii) Under Section 6(5) of the Act a juvenile over sixteen years of age can be released on bail who has been detained for a continuous period exceeding six months due to non-completion of trial.

iv) The period of delay of six months in the conclusion of the trial is to be counted from the date of arrest of the juvenile after determination of his age and not from the date of such determination or adjudication by the Court.

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14. Supreme Court of Pakistan
Abdul Baqi, etc v. Haji Khan Muhammad, etc.
Civil Petition No. 34-Q of 2019
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._34_q_2019.pdf

Facts: The petitioners have sought leave to appeal against the order passed by the High Court of Baluchistan, whereby their Contempt Application was dismissed.

Issues: Whether the finding of a High Court refusing to initiate proceedings for civil contempt can be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution?

Analysis: The ultimate jurisdiction of this Court under Article 185(3) of the Constitution to grant leave to appeal against any judgment, decree, order or sentence of a High Court is not circumscribed by any limitation by the Constitution. The principles governing the exercise of this jurisdiction are of self-restraint, settled by the Court itself, keeping in view the considerations of propriety and practice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, then the same can be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution.

Conclusion: The finding of a High Court refusing to initiate proceedings for civil contempt can be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution.

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15. **Lahore High Court**
Ghulam Yasin v. The State, etc.
Criminal Appeal No.199788/2018
Imran Zafar v. The State, etc.
Criminal Appeal No.211790/2018.
Imran Zafar v. Ghulam Yasin, etc.
Criminal Revision No.211791/2018.
Murder Reference No.179 of 2018.
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC4500.pdf

Facts: That six accused persons faced trial before learned Additional Sessions Judge under section 302, 324, 337-F(i), 337-L(ii), 148, 149 PPC and on conclusion of trial, five accused persons were acquitted of the charges, whereas, one was convicted and sentenced to death etc. Aggrieved from same, the complainant filed appeal against acquittal, revision for enhancement of compensation and convicted person filed appeal against conviction and sentence. Murder reference has also been sent by the learned trial court.

Issue: i) Whether an accused can be singled out from the others?
ii) Whether delay in lodging the FIR is sufficient to disbelieve the prosecution case?
iii) Whether c**hance of survival of deceased does absolve the offender from criminal liability?**
iv) Whether dying declaration made before a private person can be made basis of conviction?

Analysis: i) It is trite law that on the principle of falsus in uno, falsus in omnibus, if the witnesses are disbelieved against one set of accused; their testimony cannot be

accepted qua other accused; yet under the principle of abundant caution, an accused can be singled out from the others.

ii) We are conscious of the fact that mere delay in lodging the FIR is never considered sufficient to disbelieve the prosecution case. Delay in lodging of the FIR only puts the Court on notice to undertake close scrutiny of evidence available on record to avoid false involvement of the accused. If evidence recorded in Court appears to be trustworthy and convincing, then delay in lodging of the FIR can be ignored.

iii) Mere chances of survival could not reduce the liability of the accused/appellant and death in the hospital after quite some time also could not be, as such, considered a mitigating circumstance.

iv) If dying declaration is made even before a private person, which is free from influence and the persons before whom such dying declaration was made were examined then it becomes substantive piece of evidence and for that no corroboration is required and such declaration can be made basis of conviction.

Conclusion: i) Under the principle of abundant caution, an accused can be singled out from the others.

ii) Delay in lodging the FIR is never considered sufficient to disbelieve the prosecution case.

iii) C**hance of survival of deceased does not absolve the offender from criminal liability.**

iv) Dying declaration made before a private person, which is free from influence and the person before whom such dying declaration was made was examined, such declaration can be made basis of conviction.

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16. **Lahore High Court**
Amjad Saeed & another v. Muhammad Saeed and 2 others

Civil Revision No.2175 of 2012

Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC4375.pdf

Facts: Through this civil revision, the petitioners challenged the concurrent judgments and decrees passed by learned Civil Court / Trial Court and learned first Appellate Court, whereby, their civil suit for declaration with permanent and mandatory injunction claiming their easement right of usage of passage has been dismissed.

Issue: i) What is an easement right and what are its essential ingredients?

ii) What pre-requisite conditions must be fulfilled before claiming a right of easement by prescription?

Analysis: i) An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to present something being done, in or

upon, or in respect of, certain other land not his own. The essential qualities of an easement generally are: (1) it is incorporeal; (2) it is imposed on corporeal property and not on the owner of it; (3) it confers no right of share in the profits from such property; (4) it is imposed for the benefit of corporeal property; (5) it involves two distinct tenements, the one which enjoys the easement, that is, to which the easement belongs or to which it is attached, called the 'dominant tenement' or 'dominant estate' and the other on which the easement rests or is imposed, called 'the servient tenement' or 'servient estate'.

ii) The following conditions must be fulfilled for the acquisition of a right of easement by prescription: (i) the right claimed must not be uncertain. (ii) The right claimed must have been enjoyed. (iii) It must have been enjoyed (a) peaceably, (b) openly, (c) as of right, (d) as an easement, (e) without interruption, (f) for twenty years or sixty years, if the right is claimed against Government. Out of the last six sub-conditions, (b) and (c) are not necessary in the case of easement of light and air or support. With this exception, all the conditions and sub-conditions must be fulfilled before the right of easement is acquired.

Conclusion: i) An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land.

ii) The conditions that easement right is certain and have been enjoyed peaceably, openly, without interruption for twenty years or sixty years if claim is against the government, must be fulfilled before claiming a right of easement by prescription.

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17. **Lahore High Court**
Ahmad and another v. Manzoor Ahmad
Civil Revision No.1611 of 2015
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC4369.pdf

Facts: The suit for declaration along with specific performance of contract filed by respondent against the petitioners was decree by trial and appellate courts; hence, the instant revision petition has been filed.

Issues: i) What is the pre-requisite for seeking declaratory decree?
ii) What is legal position of agreement when necessary ingredients of oral agreement are not pleaded, and whether the same is enforceable?
iii) Whether a party is allowed to lead evidence beyond its pleadings?

Analysis: i) Bare reading of section 42 of Specific Relief Act makes it vivid that declaratory decree can only be passed to the effect of a pre-existing right which is being denied by some person.
ii) When the particulars of the land and of the alleged oral agreement are not detailed in the plaint, which otherwise ought to have been pleaded and proved and when the position is as such the subject agreement is void for uncertainty in terms

of section 29 of the Contract Act, 1872 and consequently it cannot be specifically enforced as enunciated in section 21(c) of the Specific Relief Act, 1877.
iii) it is a settled and cardinal principle of law that no one can be allowed to prove his case beyond the scope of pleadings as enunciated by the August Court of country..(…) that none of the parties to a judicial proceeding can be allowed to adduce evidence in support of a contention not pleaded by it and the decision of a case cannot rest on such evidence.

Conclusion: i) Declaratory decree can only be passed to the effect of a pre-existing right which is being denied by some person.
ii) When necessary ingredients of oral agreement are not pleaded, such agreement is void and consequently it cannot be specifically enforced.
iii) Party cannot be allowed to prove his case beyond the scope of pleadings.

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18. **Lahore High Court**
Mr. Raza Ibrahim, etc. v. Mr. Nasir Ibrahim, etc.
Civil Revision No.80780 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC4538.pdf

Facts: In order to cater the additional contentions of the respondents/defendants taken in the amended written statement, the petitioners filed an application under Order VIII, Rule 9, Code of Civil Procedure, 1908 seeking leave for filing a rejoinder. The learned trial Court vide impugned order dismissed the said application; which has culminated in filing of the revision petition in hand.

Issues: i) Whether rejoinder/replication is a supplement of plaint and is also supposed to clarify such ambiguities which are left in the plaint or are pointed out by the defendant(s) in his written statement?
ii) Whether a party can lead evidence beyond its pleadings?

Analysis: i) It is a settled principle of law that rejoinder/ replication is a supplement of plaint and is also supposed to clarify such ambiguities which are left in the plaint or are pointed out by the defendant(s) in his written statement and that altogether new case cannot be allowed to be presented in the rejoinder/replication as there will be no opportunity for the defendant(s) to controvert such a new case, set up in the rejoinder/replication.
ii) It is also a settled principle of law that a party cannot lead evidence beyond its pleadings and if anything is brought on record beyond the pleadings, the same will not be considered and even the averments made in the pleadings do not constitute evidence.

Conclusion: i) Rejoinder/replication is a supplement of plaint and is also supposed to clarify such ambiguities which are left in the plaint or are pointed out by the defendant(s) in his written statement.

ii) A party cannot lead evidence beyond its pleadings.

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19. **Lahore High Court**
M/s Pride Associates (Pvt.) Ltd. etc. v. JS Bank Ltd.
E.F.A. No. 33799 of 2022
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4439.pdf

Facts: The respondent/plaintiff instituted a suit for recovery against the appellants/defendants which was decreed on consent. The appellants moved an application and prayed for declaring the consent decree as un-executable for the reason that a portion of decreed amount in the said decree was against the settled provisions of law. Said application was dismissed by the learned executing court. Aggrieved from the same, the appellants filed this first appeal.

Issues: i) Whether executing Court can go behind the decree?
ii) Whether successive applications on the same subject matter can be filed after decision of earlier application on merit?
iii) Whether a consent decree cannot be further challenged after it had attained finality?

Analysis: i) An Executing Court cannot go behind the decree. Reliance in this behalf may be placed upon judgments 2014 SCMR 1481 wherein it was held that Executing Court by creative interpretation cannot change decree; 2007 SCMR 818 wherein it was enunciated that Executing court cannot deviate from real controversy; and 2003 SCMR 1202 wherein it was laid down that Executing court cannot challenge correctness of decree.
ii) Subject to certain exceptions which are not available in the present case, filing of successive applications on the same subject matter even though on different grounds is not permissible under the law as the appellants were required to take all the grounds available to them at the time of filing first application and subsequent application after decision of earlier application on merits would be barred, inter alia, on the principle of res judicata.
iii) A consent decree cannot be further challenged after it had attained finality.

Conclusion: i) An Executing Court cannot go behind the decree.
ii) Subject to certain exceptions, successive applications on the same subject matter after decision of earlier application on merits would be barred.
iii) A consent decree cannot be further challenged after it had attained finality.

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20. **Lahore High Court**
Jamil Akhtar Khan, etc. v. Muhammad Saleem Sadiq, etc.
Writ Petition No.66426 of 2020.
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2021LHC9827.pdf

Facts: In a suit, the petitioners along with others jointly filed power of attorney of an Advocate. When the suit was fixed for submission of written statement, defendant no.1 of suit recorded his statement before court regarding appointment of new Counsel and withdrawal of earlier one. He also filed new power of attorney on his behalf as well as on behalf of petitioners. On the same day, the earlier counsel filed conceded written statement on behalf of some of defendants including petitioners. The petitioners filed application for submission of new written statement through their newly appointed counsel but the same was dismissed. Hence this petition.

Issue: Whether conceding written statement submitted by attorney whose power of attorney stood already withdrawn by one of defendants can be made basis for decision of suit on behalf of remaining defendants?

Analysis: Main suit cannot be straightaway decided on the basis of conceding written statement, which even to the extent of defendant (who has withdrawn the power of attorney prior to submission of conceding written statement) had not only been discarded, rather on his behalf contesting written statement also submitted and regular trial is necessarily to follow. In such panorama, it is appropriate for the ends of justice that another written statement be submitted by such defendants before Trial Court and genuineness, veracity or competency of earlier conceding written statement ought to be decided by framing of issue, so as to decide its fate and what would be its effect.

Conclusion: Main suit cannot be straightaway decided on the basis of conceding written statement, which even to the extent of defendant (who has withdrawn the power of attorney prior to submission of conceding written statement) had not only been discarded.

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21. Lahore High Court
Abdul Hameed (deceased) through L.Rs. v. Mst. Ghulam Fatima (deceased) through L.Rs. & others

Civil Revision No.602-D-2012

Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC4382.pdf

Facts: Through this civil revision, the petitioners challenged the judgment and decree passed by learned first Appellate Court, whereby, suit instituted by respondents for declaration & permanent injunction was partially decreed.

Issue: i) Whether non-production of original general power of attorney or its attested copy by the beneficiary adversely affects his case?
ii) Whether it is mandatory to produce the attesting witness and the principal of

the general power of attorney to prove its execution?
iii) If a general power of attorney is proved to be not valid, whether any transaction made on the basis of such instrument can be protected?
iv) Whether it is necessary to mention the details about time, place & witnesses etc. of oral sale in the plaint?

Analysis: i) The absence of the original hub document / general power of attorney was enough to compel the Court to draw adverse inference against the beneficiary/petitioners. The identical situation had already been clinched by this Court in Mst. Basri through L.Rs. and others vs. Abdul Hamid through L.Rs. and others (1996 MLD 1123) while concluding that, ".... Failure to produce the same in evidence as such will give rise to a presumption that the same if produced in evidence would have gone against the version of the respondents
ii) Whenever a document is executed with an authority to the Agent to deal with financial matters of the property on behalf of the Principal and also making him responsible for future obligations either to the Principal in respect of the affairs of his property or with a third person with whom he is dealing on behalf of the former, the document squarely falls within the categories of the instruments which are required to be attested by two men and one man and two women in terms of Article 17(2)(a) of the Order and before a Court of law contents of documents are required to be proved as per the methodology of Article 79 of the Order.
iii) Once the Court concluded that general power of attorney was not valid, then any further alienation on its basis was not liable to be protected, because the alleged Sale Deeds were neither executed on behalf of authorized person nor even an agent could transfer property of the Principal to his own son.
iv) In such state of situation, where plaintiffs were solely resting their claim upon oral sale, per law laid down by the honorable Supreme Court in catena of reported judgments it was imperative for them to specifically provide the essential detail viz time, venue & names of the witnesses so as to prove when, where and before whom the alleged oral transaction effected. The object behind settlement of said principle was to subvert the gate of frivolous litigation besides to discourage the production of shocking as well as surprising evidence.

Conclusion: i) Non-production of original general power of attorney or its attested copy by the beneficiary adversely affects his case.
ii) It is mandatory to produce the attesting witness and the principal of the general power of attorney to prove its execution.
iii) If Court concluded that general power of attorney was not valid, then any further alienation on its basis cannot be protected.
iv) It is necessary to mention the details about time, place & witnesses etc. of oral sale in the plaint.

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22. **Lahore High Court**
Allah Nawaz Khan v. Member (Judl.III) BoR Lahore.

W.P. No.3360 of 2018

Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2021LHC9830.pdf

Facts: The appointment of Lambardar is challenged through this petition.

Issues: i) What is nature of post of Lamberdar?
ii) How the right of heritage germinates for appointment as lumberdar?

Analysis: i) Lumberdar is purely an administrative post of its own class. It neither can be termed as profession nor a post against any profit, rather the Headman who holds an honorary post acts as bridge inter se the landowners and Revenue Authority, that is why, not a vested right of any person to claim his selection against said post. It, indeed, is the choice of Revenue Authority to appoint a suitable candidate per yardstick set out in rule 17 of the Land Revenue Rules, 1968 for discharging the obligations assigned to him via terms of its rule 22. The object thereof would be that person best suited for the said post should be committed to facilitate the administration, so that command & control over the State land, Exchequer besides other affairs could be maintained.
ii) Hereditary claim is not the sole criteria to select the lumberdar, rather basic object is to appoint the most suitable person among eligible. The right of heritage germinates, if a predecessor leaves his belongings, or he died or the said post remained with him. In case, process for appointment of new incumbent has been initiated/completed after removal of the outgoing lumberdar during his lifespan wherein he himself could not compete, then how the same could be demanded by any legal heir as legacy.

Conclusion: i) Lumberdar is purely an administrative post of its own class. It neither can be termed as profession nor a post against any profit
ii) The right of heritage germinates for appointment as lumberdar, if the predecessor leaves his belongings, or he died or the said post remained with him.

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23. **Lahore High Court**
First Punjab Modaraba (FPM) v. M/s Aftab (Pvt.) Limited etc.
EFA No. 117828/2017
Mr. Justice Shams Mehmood Mirza, Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC4443.pdf

Facts: Through this Execution First Appeal, order passed by the learned Judge Banking Court has been assailed by virtue of which an execution petition filed by the appellant was dismissed.

Issues: i) Whether the filing of an appeal would operate as stay of proceedings and there is embargo on the rights of decree holder to initiate execution proceedings?

ii) Whether the time of continuance of the stay order will be excluded from the period of limitation for filing an execution petition?

Analysis: i) A bare perusal of Order XLI Rule 5 CPC shows that mere filing of an appeal would not operate as stay of proceedings under a decree appealed from and there is no embargo on the rights of a decree holder to initiate execution proceedings against the judgment debtor, that too, from the date of accrual of right.
ii) Section 15 of the Limitation Act, 1908 signifies when a stay is granted by a court qua execution of a decree, the time of continuance of that order will be excluded from the period of limitation for filing an execution petition.

Conclusion: i) The filing of an appeal would not operate as stay of proceedings and during the pendency of an appeal there is no embargo on the rights of decree holder to initiate execution proceedings.
ii) Yes, the time of continuance of the stay order will be excluded from the period of limitation for filing an execution petition.

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24. **Lahore High Court**
Shaukat Iqbal v. Muhammad Shumail
R.F.A.No.1693 of 2014
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2022LHC4575.pdf

Facts: The respondent/plaintiff filed a suit for recovery of Rs.300,000/- under Order XXXVII CPC against the appellant/defendant on the basis of a cheque which was decreed by the trial court. The appellant has assailed the said judgment of the trial court.

Issues: i) What is the proper remedy available to holder of cheque in case of part payment of cheque by drawer?
ii) Whether the holder of cheque can opt to file a suit for recovery in civil court of plenary jurisdiction or to file a suit under order XXXVII CPC?

Analysis: i) Section 56 of Negotiable Instrument Act, 1881 specifically provides for an endorsement on a Negotiable Instrument with regard to part-payment and the instrument can thereafter be negotiated for the balance amount. If the drawer and payee of cheque adopt the procedure given in section 56 of Negotiable Instrument Act, then it would be open to the payee of the cheque to present the cheque for payment of only that much endorsed balance amount which is due to him. After the receipt of admitted part-payment from the amount of cheque before filing the suit, the payee can neither present the cheque for encashment without adopting procedure under Section 56 of Negotiable Instrument Act, 1881 nor can file suit for recovery of cheque amount while invoking special jurisdiction under Order XXXVII CPC in new circumstances/ situation which is a subsequent agreement

rather will file a suit for recovery of balance amount of cheque before an ordinary civil court of plenary jurisdiction.
ii) Generally, there is no cavil to the proposition that Order XXXVII CPC does not restrict person(s) /plaintiff(s) from filing an ordinary suit for recovery of cheque amount before an ordinary civil court of plenary jurisdiction rather provides discretion to either institute a suit by invoking special jurisdiction under Order XXXVII CPC or to file the same under ordinary procedure before ordinary civil court of plenary jurisdiction and there exists no legal compulsion to restrict the choice of person(s)/plaintiff(s).

Conclusion: i) In case of part payment of cheque, the suit for recovery of balance amount of cheque before an ordinary civil court of plenary jurisdiction is appropriate remedy while suit for recovery under order XXXVII CPC is not maintainable.
ii) The holder of cheque can opt to file a suit for recovery in civil court of plenary jurisdiction or to file a suit under order XXXVII CPC.

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25. **Lahore High Court**
Additional Collector, Model Customs Collectorate, Multan v. M/S Reliance Commodities (Pvt.) Ltd., etc.
Custom Reference No.12 of 2016
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC4400.pdf

Facts: Through the instant custom reference the petitioner has assailed the judgment passed by the Customs Appellate Tribunal wherein it was held that any demand created beyond three years of issuance of each of purchase invoices by the appellants local suppliers is barred by time under the provisions of Section 32 of the Customs Act, 1969 (Act).

Issues: i) How the period of limitation is governed for exercising adjudication under Rule 307-E of Customs Rules 2001?
ii) In what eventualities subsection 2 of Section 32 of Act attracts and in what eventualities subsection 3-A of Section 32 of Act attracts?
iii) Whether the "relevant date" would be "the date of payment of duty or charge or "the date of audit" for computing date under subsection 3-A of Section 32 of Act?
iv) Whether the limitation for recovery under sub-section 3-A of section 32 of Act is governed by Rule 307E of Rules?

Analysis: i) It is noticeable from perusal of rule 307-E that the said rule essentially relates to the discharge of a security instrument furnished by a DTRE user against his liability to pay duty and taxes and not proceedings post discharge of the security instrument. .. Although sub-rule (4) of rule 307E of the Customs Rules, 2001 provides for adjudication by the officer of competent jurisdiction wherein the post export audit if there arises any discrepancy, irregularity or violation of the

provisions of the rules or any law applicable in this behalf by the DTRE user, however, the period of limitation for the exercise of such adjudication is not governed by any provision in the aforementioned rule, meaning thereby that the limitation in such cases was to be governed by the relevant statutory provisions.

ii) Sub-section (2) applies only in cases where notice is issued for payment of any duty, taxes or charge not levied or short-levied or erroneously refunded on account of filing deceptive, false and fake declaration, notice, certificate, document or by reason of some collusion. While sub section (3-A) is applicable in cases where it is discovered as a result of an audit or examination of an importer's or exporter's accounts or by any means other than an examination of the documents provided by the importer or exporter at the time the goods were imported or exported that any duty, taxes or charge has not been levied or has been short-levied or has been erroneously refunded. For commencing with the expression "Notwithstanding anything contained in sub-section (3)", the provision of sub-section (3A) overrides sub-section (3) of Section 32 of the Customs Act, 1969 meaning thereby that in cases where the former is applicable, the latter shall not curtail, restrict or limit application thereof.

iii) The expression "relevant date", as used in the aforementioned provision, has been defined in sub-section (5) of Section 32 of the Customs Act, 1969. It is settled law that definition clause or a section in a statute is generally meant to declare what certain words or expression used in that statue shall mean.. The expression "date of payment of duty" occurring in clause (d) is the date on which payment of duty ought to have been made, otherwise the said provision would be rendered meaningless, redundant or superfluous and such construction is impermissible in law.

iv) Adjudication of liability and limitation for recovery of the same is provided by the relevant statutory regime and the same is not governed by Rule 307E of Rules, therefore, the same cannot be enlarged in disregard of the provisions of Section 32 of the Customs Act, 1969. Additionally, the clarification issued by the FBR vide letter dated 16.07.2014 on the issue of SED does not regulate the period of limitation for demand of the said duty.

Conclusion: i) The period of limitation for exercising adjudication under Rule 307-E of Customs Rules 2001 is governed by the relevant statutory provisions.

ii) Sub-section (2) applies only in cases for payment of tax etc not levied or short-levied or erroneously refunded by reason of some collusion. While sub section (3-A) of section 32 of that is applicable in cases where it is discovered as a result of an audit etc that any tax etc has not been levied or has been short-levied or has been erroneously refunded.

iii) The "relevant date" would be "the date of payment of duty or charge for computing date under subsection 3-A of Section 32 of Act.

iv) The limitation for recovery under sub-section 3-A of section 32 of Act is not governed by Rule 307E of Rules.

26. **Lahore High Court**
Mian Baber Rasheed v. Learned Addl. District Judge, Lahore, etc.
W.P.No.30990 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC4601.pdf

Facts: The petitioner claiming himself the landlord of the residential quarter filed ejectment petition which was dismissed. He preferred an appeal but the same was also dismissed. Feeling aggrieved, he filed this writ petition.

Issues: i) How "landlord" can prove that the person occupant of his property is his "tenant".
ii) Whether one can invoke the provisions of the "Act, 2009" while bypassing the other available remedies for seeking eviction?
iii) What are powers of High Court under the jurisdiction of writ of certiorari?
iv) What is character and scope of writ of certiorari?
v) Whether writ of certiorari can be used as a substitute of appeal or revision?

Analysis: i) After having an overview of the preamble of the "Act, 2009" and the definitions of the "landlord" and "tenant", it becomes crystal clear that for invoking the provisions of the "Act, 2009", the landlord has to establish that the person whose eviction is sought from the premises is occupying the same as tenant. Both these terms are interlinked and interconnected with each other. Mere fact that a person is a landlord is not sufficient to give a premium to him to get the eviction of the occupant of the premises while invoking the provisions of the "Act, 2009". The landlord has to establish that the person whose eviction is sought is occupying the rented premises as tenant. For the said purpose, the landlord has also to prove that the occupant is a person, who undertook or is bound to pay rent as consideration for the occupation of the premises by him/her or by any other person on his/her behalf.
ii) One cannot be allowed to invoke the provisions of the "Act, 2009" while bypassing the other available remedies for seeking eviction of a person even if such person is an illegal occupant, trespasser or encroacher, without establishing that he is occupying the premises as tenant. The provisions of the "Act, 2009" are not meant to short-circuit the process of relevant law allowing an owner to invoke the provisions of the Act ibid without demonstrating that status of the "respondent" is of tenant.
iii) Through a writ of certiorari, a High Court on the one hand is vested with the powers to correct the errors committed by the inferior Courts or Tribunals and on the other hand to annul the acts or proceedings taken by the inferior bodies without any lawful authority.
iv) As regards the character and scope, certiorari will be issued for correcting error of jurisdiction. In order to explain it more precisely, it can be said that writ of certiorari can be issued in the following circumstances:-
(i) When an inferior Court or tribunal acts without jurisdiction or in excess of

it or fails to exercise it.

(ii) When the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(iii) If there is an error apparent on the face of the record.

v) It is trite law that a writ of certiorari cannot be used as a substitute of appeal or revision as its scope is limited.

Conclusion: i) The landlord has to prove that the occupant is a person, who undertook or is bound to pay rent as consideration for the occupation of the premises by him/her or by any other person on his/her behalf.

ii) One cannot invoke the provisions of the "Act, 2009" while bypassing the other available remedies for seeking eviction.

iii) High Court has powers to correct the errors committed by the inferior Courts or Tribunals and annul the acts or proceedings taken by the inferior bodies without any lawful authority.

iv) As regards the character and scope, certiorari will be issued for correcting error of jurisdiction.

v) Writ of certiorari cannot be used as a substitute of appeal or revision.

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27. Lahore High Court

The State v. Abdul Hameed alias Kora
Murder Reference No.06 of 2021
Abdul Hameed alias Kora v. The State
Criminal Appeal No. 711 of 2020
Rehmat Gul etc. v. The State
Criminal Appeal No. 658 of 2020
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC4665.pdf

Facts: Appellants have filed criminal appeals against their convictions & sentences for offences u/s 302 & 392 PPC whereas learned trial court transmitted murder reference for confirmation or otherwise of death sentences.

Issues: i) Whether prosecution has to establish the source of light if incident occurred at night time?

ii) Whether presence at the time & place of occurrence of chance witness is necessary to be established?

iii) What is effect of delay in recording the statement of eye-witness on prosecution case?

iv) What is value of identification parade if role etc of accused persons have not been described by witness?

v) Whether identification parade conducted jointly can be relied upon?

vi) What is effect of withholding important witnesses on prosecution case?

vii) What is effect of violation of section 103 Cr.P.C. while affecting the recoveries?

viii) Whether conviction can be recorded in absence of direct or substantive evidence?

ix) What is nature of medical evidence?

x) Whether accused is entitled to benefit of a single circumstance creating doubt?

Analysis: i) The prosecution has to establish the source of light if the incident occurred at night time. If the prosecution fails to establish the fact of the availability of a light source the court cannot presume the existence of source of light at the place of occurrence…

ii) A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot.

iii) Even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon.

iv) Selection of the suspects, without any correlation with description of the accused in the first information report, raises doubts and makes the identification proceedings unsafe and doubtful rendering the identification evidence inconsequential.

v) Identification parade which is conducted jointly cannot be relied upon as the same is not recorded according to law.

vi) Withholding of important witnesses without any justifiable cause leads the Court to draw an adverse inference against the prosecution within the purview of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had they been produced before the learned trial court, they may have not supported the prosecution version.

vii) If investigating officer commits violation of section 103 Cr.P.C. while affecting recoveries, such violation creates doubt with regard to the recovery of weapons of offence.

viii) It is well settled that unless direct or substantive evidence is brought on record, conviction cannot be recorded on the basis of such type of evidence howsoever convincing it may be.

ix) It is well settled that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant.

x) It is well established principle of law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

Conclusion: i) Yes, prosecution has to establish the source of light if incident occurred at night time.
ii) Yes, presence at the time & place of occurrence of chance witness is necessary to be established.
iii) Even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal.
iv) Non describing of role of accused by witness will make the identification proceedings unsafe and doubtful rendering the identification evidence inconsequential.
v) Identification parade conducted jointly cannot be relied upon.
vi) Withholding of important witnesses without any justifiable cause leads the Court to draw an adverse inference against the prosecution within the purview of Article 129 (g) of Qanun-e-Shahadat Order, 1984.
vii) Violation of section 103 Cr.P.C. while affecting the recoveries creates doubt with regard to the recovery of weapons of offence.
viii) Conviction cannot be recorded in absence of direct or substantive evidence.
ix) Medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence.
x) A single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

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28. **Lahore High Court**
Shahzeb v. The State, etc.
Crl. Appeal No. 72 of 2017
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC4638.pdf

Facts: Through this criminal appeal, the appellant has assailed his conviction in offences u/s 9(c) of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether it is obligatory and prime duty of investigation officer to enter case property, recovered articles and sealed samples in daily dairy?
ii) Whether it is essential for the prosecution to establish through cogent and convincing evidence safe custody of contraband in the Malkhana at police station?
iii) Whether accused can be convicted in case of non-compliance of protocols given in the law for submission of its report by chemical examiner?
iv) Whether a single circumstance creating doubt would be sufficient to dent the prosecution story and favor the accused?

Analysis: i) It is the prime duty of the Investigating Officer to enter the factum of handing over the case property as well as sealed sample parcels and other recovered articles from the possession of the accused in the relevant register of police station i.e. register No.2. The first provision of law relating to daily diary is section 44 of the Police Act, 1861.

ii) The chain of custody begins with the recovery of the seized drug by the police and includes the separation of the representatives sample(s) of the seized drug and their dispatch to the narcotics Testing Laboratory. This chain of custody, is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst.

iii) A complete mechanism has been given in Rule 5 and 6 of The Control of Narcotic Substances (Government Analysts Rules, 2001), the Chemical Examiner is required to adopt complete procedure and then the report is to be submitted after referring necessary protocols and mentioning the tests applied and their results. If The Chemical Examiner has failed to provide the details that how much quantity, he has tested and when the report is not prepared in the prescribed manner then it may not qualify to be called a report in the context of section 36 of The Control of Narcotic Substances Act, 1997 and such report of Chemical Examiner would loses its sanctity and that cannot be relied upon for the purposes of conviction.

iv) It is by now well settled that a single circumstance creating reasonable doubt would be sufficient to cast doubt about the veracity of prosecution case and the benefit of said doubt has to be extended in favour of the accused not as a matter of grace or concession but as a matter of right.

Conclusion: i) It is obligatory and prime duty of investigation officer to enter case property, recovered articles and sealed samples in daily dairy.

ii) Yes, it is essential for the prosecution to establish through cogent and convincing evidence safe custody of contraband in the Malkhana at police station.

iii) Accused cannot be convicted in case of non-compliance of protocols given in the law for submission of its report as provided in Rule 5 and 6 of The Control of Narcotic Substances (Government Analysts Rules, 2001) by chemical examiner.

iv) Yes, single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

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29. **Lahore High Court**
Muhammad Riaz v. Collector of Customs & 2 others
W.P. No. 10728 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5016.pdf

Facts: Through this custom reference, filed u/s 196 of the Customs Act, 1969, the petitioner has called in question the judgment passed by the Customs Appellate Tribunal whereby appeal filed by the applicant was dismissed.

Issues: Whether an order which lacks valid lawful reasons is sustainable?

Analysis: It is now well-settled that an order passed by judicial or quasi-judicial authority, has to be supported by lawful reasons. An order which has been passed in violation of the section 24-A of the General Clauses Act, 1897 inasmuch as it lacks valid lawful reasons, is liable to be set aside.

Conclusion: An order which lacks valid lawful reasons is liable to be set aside.

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30. **Lahore High Court**
Commissioner Inland Revenue, Zone-II, Lahore v. Shazia Zafar
ITR No. 59534 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4360.pdf

Facts: Through instant Tax Reference the petitioner has assailed the order of learned Appellate Tribunal to annul the additions made by learned fora below on the ground of non-issuance of separate notice under Section 111 of the Ordinance of 2001 to the taxpayer.

Issues: i) What are pre-requisites to make addition u/s 111 of Ordinance of 2001?
ii) How the assessment can be amended if concealed income is to be added u/s 111 of Ordinance of 2001?
iii) Whether changes in substantive law have prospective or retrospective application?

Analysis: i) Albeit, specific word "notice" is not introduced in the provisions of section 111 of Ordinance of 2001 but words "…the person offers no explanation…" and "…or the explanation offered by the person is not, in the Commissioner's opinion, satisfactory…" connote that notice is the proper mechanism to call for explanation from taxpayer. Thus, notice and corresponding non satisfactory elucidation are prerequisites to make addition under Section 111 of the Ordinance of 2001 otherwise the addition would be legally unsustainable owing to non-compliance of said provision of law.
ii) Assessment cannot be amended until first the proceedings under section 111 had culminated in an appropriate order to allow the amendment of the deemed

assessment order as sub-section (2) of section 111 contains elaborate statutory instructions as to which is the tax year in which the concealed income is to be added; that it is possible for both steps, i.e., the finding under section 111 and the amendment of the deemed assessment order to be done together, and the notice under section 111 to be issued along with the notice to amend, however, in such a case, the proceedings and notice(s) must expressly so state on the face of it.

iii) Change in substantive law, which divested and adversely affected the vested rights of the parties should always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication, such law had been made applicable retrospectively. It is well-settled now that the Courts lean against giving retrospective operation where no vested rights or past transactions prejudicially affect or exist. A legislation does not operate retrospectively if it touches a right in existence at the time of passing of legislation. Rights of parties are to be decided according to law existing when action began unless provision made to contrary.

Conclusion: i) Notice and corresponding non satisfactory elucidation are prerequisites to make addition u/s 111 of the Ordinance of 2001.

ii) Finding u/s 111 and the amendment of the deemed assessment order to be done together, and the notice under section 111 to be issued along with the notice to amend.

iii) Change in substantive law, which affect the vested rights of the parties should always have prospective application, unless by express word of the legislation such law has been made applicable retrospectively.

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31. **Lahore High Court**
Muhammad Tariq v. Controller General of Accounts, Islamabad & others
Writ Petition No.66323 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC4356.pdf

Facts: Through instant petition, petitioner has challenged the vires of order passed by respondent No.3 / Accounts Officer (Admn.), whereby petitioner's services as Junior Auditor (BPS-11) were not regularized on account of not having minimum prescribed qualification of 2nd Class Bachelor Degree in Commerce, rather he was offered the post of Naib Qasid (BPS-01) on contract basis..

Issues: i) What should be prescribed qualification for the purpose of regularization of services of a contract employee?

ii) Whether notification/policy which purports to impair an existing or vested right apply prospectively or retrospectively?

Analysis: i) The prescribed qualification for the purpose of regularization of services of a contract employee should be that which was prevalent at the time of his\her

appointment.
ii) Right accrued to a person cannot be taken away on the strength of a subsequent notification / policy and any notification which purports to impair an existing or vested right, always applies prospectively in absence of any legal sanction. It is well-settled that effect of a notification / policy taking away certain rights would start from the date of its issuance and only beneficial notification can operate retrospectively.

Conclusion: i) The prescribed qualification for the purpose of regularization of services of a contract employee should be that which was prevalent at the time of his\her appointment.
ii) Notification/policy which purports to impair an existing or vested right applies prospectively.

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32. **Lahore High Court**
Hafiz Awais Zafar v. Judge Family Court etc.
Writ Petition No.21987/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC4594.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner assailed the order of executing court, whereby, it directed the National Database and Registration Authority (NADRA) to block his Computerized National Identity Card (CNIC).

Issues: i) Whether a person's CNIC can be cancelled, impounded or confiscated without taking section 18 of the National Database and Registration Authority Ordinance, 2000 into consideration?
ii) Whether courts are permitted to direct digital impounding of the CNIC?

Analysis: i) Section 18(1) of the Ordinance stipulates that all the cards issued by NADRA, including the CNIC, shall be the property of the Federal Government and it may cancel, impound or confiscate it by an order after giving a show cause notice to the holder. Section 18(2) enumerates the circumstances in which it may take such an action. Inasmuch as cancellation, impounding or confiscation of CNIC impacts the fundamental rights of a person, the provisions of section 18 of the Ordinance must be strictly construed and scrupulously followed. Any order passed or action taken on a consideration other than those stipulated therein cannot sustain.
ii) The courts frequently direct digital impounding of the CNIC because it is an effective means to secure presence of a person. Sometimes it even impels a fugitive from law to surrender. Notwithstanding the benefits, this cannot be permitted because it does not have the sanction of law. Such orders are contrary to Article 175(2) of the Constitution and the concept of rule of law.

Conclusion: i) A person's CNIC cannot be cancelled, impounded or confiscated without taking section 18 of the National Database and Registration Authority Ordinance, 2000 into consideration.
ii) Courts are not permitted to direct digital impounding of the CNIC because it does not have the sanction of law.

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33. **Lahore High Court**
Syed Amjad Ali Shah v. Deputy Controller, Pakistan Television Corporation Limited, etc.
Writ Petition No. 43795/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC4694.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), the petitioner has challenged the Office Order of Pakistan Television Corporation ("PTVC"), whereby, he was directed to proceed on Leave Preparatory to Retirement ("LPR") with immediate effect till the date of his superannuation in terms of Rules 10.20A & 10.22A of the Pakistan Television Corporation Limited Employees Service Rules of 1978 (the "Employees Service Rules").

Issues: i) Whether Pakistan Television Corporation (PTVC) is a "person" within the meaning of Article 199(1)(a) of the Constitution read with Article 199(5) thereof?
ii) Whether employees of organizations discharging functions in connection with the affairs of the Federation can invoke the constitutional jurisdiction of the High Court in service matters?
iii) Does the question as to whether the rules are statutory or non-statutory depend on the source from which they originate?
iv) Whether rules become statutory merely because an organization has adopted any rules framed by the Government or has made them applicable by reference?
v) Whether a suit or a writ petition for reinstatement of employees of an organization having non-statutory rules is competent?

Analysis: i) PTVC was registered under the Companies Act, 1913, but now is governed by the Companies Act, 2017. It is owned by the Federal Government and is run by a Board of Directors in terms of section 183 of the Companies Act, 2017, read with Article 89 of its Articles of Association. PTVC not only qualifies the "function test" mentioned above by all standards but also falls within the definition of "public sector company." It is, therefore, a "person" within the meaning of Article 199(1)(a) of the Constitution read with Article 199(5) thereof.
ii) The employees of only those organizations discharging functions in connection with the affairs of the Federation can invoke the constitutional jurisdiction of the High Court in service matters whose employment is governed by statutory rules.
iii) The question as to whether the rules are statutory or otherwise depends on the source from which they originate and not on their form or nomenclature.

iv) The rules do not become statutory merely because an organization has adopted any rules framed by the Government or has made them applicable by reference.
v) The distinction between statutory and non-statutory rules is important because where the organization itself prescribes the terms and conditions of service of its employees, the principle of master and servant applies. Resultantly, neither a suit nor a writ petition for the relief of reinstatement is competent.

Conclusion: i) Yes, Pakistan Television Corporation (PTVC) is a "person" within the meaning of Article 199(1)(a) of the Constitution read with Article 199(5) thereof.
ii) The employees of only those organizations discharging functions in connection with the affairs of the Federation can invoke the constitutional jurisdiction of the High Court in service matters whose employment is governed by statutory rules.
iii) The question as to whether the rules are statutory or otherwise depends on the source from which they originate and not on their form or nomenclature.
iv) The rules do not become statutory merely because an organization has adopted any rules framed by the Government or has made them applicable by reference.
v) A suit or a writ petition for reinstatement of employees of an organization having non-statutory rules is not competent.

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34. **Lahore High Court**
Tariq Aziz and others v. Makhdum Ahmed Mahmud and others
C.O.No.73846 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC4480.pdf

Facts: The petitioners have challenged the election of directors of Lahore Race Club, Lahore while seeking invalidation of Annual General Meeting under Section 136 and Section 160 of the Companies Act, 1913.

Issues: i) What are conditions which need to be fulfilled before seeking declaration from court u/s 130 of the Companies Act, 1913?
ii) What are mandatory requirements for invoking section 160 of the Companies Act, 1913?
iii) What is scope of memorandum and Articles of Associations?
iv) What is effect of deviation of Memorandum, Articles, agreement or resolution of the Company to the provisions of the Companies Act?
v) Whether a communication of intention through WhatsApp application to withdraw from earlier given notice for not contesting election can be termed as a proper revocation being validly communicated?

Analysis: i) Section 136 of the Act provides for the power of this Court to declare the proceedings of a general meeting as invalid subject to fulfilling of the conditions that persons seeking declaration must have at least ten percent of the voting power in the company, the meeting so held was tainted with material defect of omission

in the notice or irregularity in the proceedings of the meeting that prevented the members from using their rights effectively and petition shall be made within thirty days of the impugned meeting.

ii) For invoking section 160 of the Companies Act, 1913, the persons seeking declaration have to prove: (i) holding ten percent of the voting power in the company; (ii) irregularity in the holding of elections and matters incidental or relating thereto must have occurred; (iii) application shall be made within 30 days of the election.

iii) MOA provides and prescribes the object(s) and the purpose(s) for which the company has been established and constituted, with specific reference to the business and the avocations which it can conduct, carry on and undertake. While the AOA are the organizational and governance rules of the company which primarily deal with the management affairs.

iv) All the provisions contained in the Memorandum, Articles, agreement or resolution of the Company and held that any deviation, to the extent to which it is repugnant to the provisions of the Companies Ordinance (the Act now), become or be void under section 6 of the Companies Ordinance, 1984 (Section 4 of the Act).

v) Under Section 4 of the Contract Act, 1872 the only requirement for communication of revocation of a proposal is that the same came into knowledge of the person to whom it is made and by driving analogy from the said law, the communication of revocation of withdrawing from contesting the elections made through WhatsApp Application can be termed as a proper revocation being validly communicated if communicated to concerned person and came into his knowledge…

Conclusion: i) For invoking Section 139, the Petitioners must prove: (i) Ten percent of the voting power in the company; (ii) petition shall be made within thirty days of the impugned meeting; (iii) material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented members from using effectively their rights.

ii) For declaration u/s 160 the petitioners must hold at least ten percent of the voting power in the company, petitioned within 30 days from the date of election and satisfy the Court that there has been material irregularity in the holding of the elections.

iii) MOA provides and prescribes the object(s) and the purpose(s) for which the company has been established and constituted while the AOA are the organizational and governance rules of the company.

iv) Provisions of Memorandum, Articles, agreement or resolution of the Company would be void if same are repugnant to the provisions of the Companies Ordinance/Act.

v) A communication of intention through WhatsApp application to withdraw from earlier given notice for not contesting election can be termed as a proper revocation being validly communicated.

35. **Lahore High Court**
Abdul Haq Khan & another v. The Bank of Punjab & another
R.F.A. No.11 of 2022
Mr. Justice Jawad Hassan, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC4549.pdf

Facts: The instant appeal is preferred under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001), against the Judgment and Decree passed by the learned Judge Banking Court whereof it is sought that the suit was filed in absence of any authority, as necessitated by Section 9 of the Ordinance and the plaint does not fulfill the requirement of sections 9(2) and (3) of the Ordinance, therefore, the same is liable to be rejected under Order VII rule 11 of the Code.

Issues: i) What is the requirement for institution of a suit by a Financial Institution?
ii) Whether a Financial Institution can authorize its officer to institute a suit in the Court?
iii) Whether the words "or otherwise" mentioned in Section 9(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can authorize every officer of the bank to institute the suit or verify the plaint?

Analysis: i) Suit in the Banking Court is required to be instituted by presenting a plaint, which must be verified on oath and Section 9(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 requires that when the suit is instituted by a Financial Institution the same is required to be verified by Branch Manager or such other officer of the Financial Institution who is duly authorized to institute the suit by way of power of attorney or otherwise.
ii) A Financial Institution can authorize its officer to institute the suit and included the documents like special power of attorney, authority letter or board resolution on the strength whereof, an officer of Financial Institution can competently institute a suit in the Court and verify pleadings on oath.
iii) Section 9(1) of the Ordinance suggests that the words "or otherwise" cannot be stretched to the limit that without any instrument of authority every officer of the bank can institute the suit or verify the plaint. The word "otherwise" has to be restricted to the category or species of its former category or else it will be violative of the well-recognized rule of construction known as ejusdem generis. The words of general category when followed by specific can include genus in the former word(s), which have specific or narrow meanings.

Conclusion: i) When the suit is instituted by a Financial Institution the same is required to be verified by Branch Manager or such other officer of the Financial Institution who is duly authorized to do so.
ii) Yes, a Financial Institution can authorize its officer to institute a suit in the Court.
iii) The words "or otherwise" mentioned in Section 9(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 cannot authorize every

officer of the bank to institute the suit or verify the plaint.

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36. **Lahore High Court**
Sana Sohail Khan v. National Industrial Relations Commission, etc.
W.P. No. 32070 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4580.pdf

Facts: Through this constitutional petition, petitioner has called in question order passed by the learned full Bench of N.I.R.C., whereby appeal filed by respondent Nos. 2 to 4 against the petitioner has been allowed. Through the said impugned order, order passed by single member of N.I.R.C., whereby petitioner's grievance petition had been accepted to reinstate her into service with back benefits, has been set aside.

Issues: i) Whether a case can be decided on the basis of piecemeal appreciation of evidence?
ii) Whether improper appreciation of evidence and material available on record amounts to miscarriage of justice?
iii) Whether designation of a person can be considered a factor for determining status of employment?
iv) Whether High Court can interfere in constitutional jurisdiction where impugned order suffers any legal defect?

Analysis: i) To reach a just conclusion in the matter, the entire evidence is to be read as a whole and not in piecemeal and case should not be decided merely by relying upon one sentence or isolated portion in the statement of a witness. In the same way party cannot be permitted to resort to pick and choose favourable part of evidence and overlook detrimental evidence, for the reason that piecemeal appraisal is not permissible.
ii) An Order which does not appear to be based on proper appreciation of evidence and material available on the record in its true perspective and suffers from jurisdictional defect of misreading and non-reading of the same amounts to miscarriage of justice, therefore, is not sustainable..
iii) It is settled by now that designation of a person cannot be considered a factor for determining status of employment in an establishment to be that of an "officer" or a "workman" rather nature of duties and functions of a person were to be considered to be the relevant factor which would determine whether his status was that of a "workman" or not.
iv) High Court in exercise of constitutional jurisdiction can interfere where the impugned order suffers from jurisdictional defect or violates any provision of law or is in excess or abuse of jurisdiction.

Conclusion: i) A case cannot be decided on the basis of piecemeal appreciation of evidence.
ii) Yes, improper appreciation of evidence and material available on record amounts to miscarriage of justice.

iii) Designation of a person cannot be considered a factor for determining status of employment.
iv) Yes, High Court in exercise of constitutional jurisdiction can interfere where impugned order suffers any legal defect.

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37. **Lahore High Court**
Muhammad Muzamal Riaz v. Addl: District Judge, Shorkot, District Jhang & 6 others
WP No. 1126 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5005.pdf

Facts: The petitioner was surety of judgment debtor in execution proceedings. The judgment debtor was sent to civil prison upon his refusal to pay decretal amount. The petitioner/surety filed two applications before executing court for the summoning of the grandfather of the minors to pay the decretal amount and for setting aside the order of executing court directing the surety to pay decretal amount. The learned executing court dismissed his applications whereas revision petition was also dismissed. Hence this petition.

Issues: i) In what conditions, the grandfather is liable to maintain the minors?
ii) Whether the surety could be absolved of his liability to pay the decretal amount on the ground that grandfather is obliged to maintain the minors?
iii) Whether the surety can be discharged from his liability if he accepted it unconditionally?
iv) Whether the arrest of judgment debtor absolves the surety of his liability?
v) Whether the Family Court can adopt the procedure provided in the Code of Civil Procedure, 1908?
vi) Whether the surety can be proceeded against for the enforcement of his liability?
vii) How the surety can be substituted?
viii) Who can claim for the substitution of the surety?

Analysis: i) Para 370 of D.F.Mulla's principles of Muhammadan Law makes it clear that if the father of the minor is poor, it is the obligation of grandfather in easy circumstances to maintain his grandchildren and his grandchildren have a right to claim maintenance allowance from him which aspect of the matter is to be decided by the court on its own merits according to the material available before it.
ii) The provisions of Muhammadan Law provides an independent right to minors to claim maintenance allowance from their grandfather does not absolve either judgment debtor or the surety from making payment of the decretal amount to the minors in terms of surety bond by making himself liable to make the payment in case their father does not appear in the court or make the said payment… Besides, the surety has no right to claim that decretal amount be recovered from the

judgment debtor or anybody else or the decree holder may be directed to assert his right against any other party or stranger to the proceedings before recovery of the same from surety.

iii) Section 128 of the Contract Act, 1872 provides that the liability of surety is co-extensive with that of principal debtor unless it is otherwise provided by the contract as well as the surety cannot be discharged from his liability if there is no condition mentioned in it to avoid such liability.

iv) The arrest of the judgment debtor does not absolve the surety from making the payment of the decretal amount and his liability is joint and several with the judgment debtor for making such payment.

v) The provisions of the Code of Civil Procedure, 1908 have not been made applicable to the proceedings before Family Court by virtue of Section 17 of the Family Court Act, 1964. The said courts are empowered to adopt any procedure to regulate its own proceedings for the said purpose, may adopt principles of CPC as well.

vi) A surety may be proceeded against for enforcement of his liability as provided under section 145 of CPC to the extent to which he has rendered himself personally liable, in the manner provided for the execution of decrees.

vii) For substituting the surety there must be some person available in the court who agrees to stand surety for the payment of the decretal amount in his place and that too with the leave of the court.

viii) The judgment debtor himself with the permission of the court by producing another person who had agreed to stand as surety to the satisfaction of the court or in case the court required him to do so.

Conclusion: i) If the father is poor and the grandfather is in easy circumstances then he is liable to maintain the minors.

ii) The surety will not be absolved of his liability to pay the decretal amount on the ground that grandfather is obliged to maintain the minors.

iii) The surety cannot be discharged from his liability if he accepted it unconditionally and there is no condition mentioned in it to avoid such liability.

iv) The arrest of the judgment debtor does not absolve the surety of his liability.

v) The Family Court may adopt the procedure provided in the Code of Civil Procedure, 1908.

vi) A surety may be proceeded against for enforcement of his liability as provided under section 145 of CPC.

vii) For substituting the surety there must be some person available in the court who agrees to stand surety for the payment of the decretal amount in his place and that too with the leave of the court.

viii) The judgment debtor himself can claim for the substitution of surety with the permission of the court by producing another person.

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38. **Lahore High Court**
Ahmad Baksh v. ADJ etc.
WP No. 36507 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4532.pdf

Facts: A suit for possession under Section 9 of the Specific Relief Act 1877 was dismissed by the trial court but decreed by appellate court while a subsequent application of petitioner under section 12(2) CPC was also dismissed by the same trial court. The petitioner being owner of suit property has assailed both the said judgments of the appellate and trial court through instant writ petition.

Issues: i) Whether it is ground to entertain an application under section 12(2) CPC that the case was not decided on merit?
ii) Whether it is necessary to implead the owner of property as party to suit for possession under section 9 of the Specific Relief Act 1877?
iii) Whether non-impleading owner in suit for possession under section 9 of SRA amounts to fraud or misrepresentation envisaged in section 12(2) CPC?

Analysis: i) The ground that the case is not made out on merits might be a ground to challenge impugned order before higher forum but the same cannot be made basis for setting aside a decree by filing an application under section 12(2) CPC, wherein only the grounds of fraud, misrepresentation and absence of jurisdiction can be agitated and no ground beyond the same can be allowed. Decree could be set aside only on the grounds stated in section 12(2) CPC and where no case of fraud or misrepresentation was made out and ground for setting aside the decree was not at all such a ground as envisaged by section 12(2) CPC but pertained to merits of the case, application under section 12(2) CPC was liable to be dismissed
ii) The title to the suit property did not require owner to be impleaded as party to suit under Section 9 of the Act as the suit was required to be filed against persons who had dispossessed.
iii) Non-impleading of owner as party to suit for recovery of possession u/s 9 SRA cannot be held to be based on fraud and misrepresentation and the owner has also not been rendered remediless as he still has remedy of filing a suit for possession on the basis of title available to him, if he can establish the same….Mere claim based on ownership of the property and not being impleaded as a party of the case is not sufficient to set-aside the said order on the grounds raised by the petitioner as for the purpose of application under Section 12(2) CPC the petitioner had to show that he was not impleaded as a party through fraud or misrepresentation or the court lacked jurisdiction to decide the matter resulting in the impugned order, which is lacking in the present case.

Conclusion: i) It is not ground to entertain an application under section 12(2) CPC that the case was not decided on merit.

ii) It is not necessary to implead the owner of property as party to suit for possession under section 9 of the Specific Relief Act 1877.
iii) Non-impleading owner in suit for possession under section 9 of SRA does not amount to fraud or misrepresentation envisaged in section 12(2) CPC?

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39. **Lahore High Court**
Muhammad Riaz, etc v. The State and another
Crl. A. Nos. 46468, 47443 & C.S.R. No. 10-T of 2017
Mr. Justice Ch. Abdul Aziz, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC9836.pdf

Facts: Appellants challenged their conviction and sentence in case F.I.R under Sections 302, 324, 427, 337-F(iii), 337-F(iv), 337-F(v), 337-F(vi), 148, 149 PPC read with Sections 21-L and 7 of the Anti-terrorism Act, 1997 whereas the complainant filed criminal appeal against acquittal of respondents no 1 to 3 and the learned trial court sent reference under section 374 Cr,P.C for the confirmation or otherwise of the death sentence of the convicted accused. All these matters are decided together.

Issues: i) What sort of sentence be inflicted upon the accused when ocular account is not corroborated by the other source of evidence?
ii) What factors are supported by the medical evidence in prosecution case?
iii) What is the impact on the prosecution case if the motive remained unproved?

Analysis: i) This is the requirement of circumspective approach that the eye witness account be appraised by scrutinizing it in reference to corroboration from independent source of unimpeachable nature. If during this scrutiny ocular account is found confidence inspiring but is not corroborated from some other unshakeable source, resort should be had to alternate sentence of imprisonment for life instead of inflicting capital sentence.
ii) Medical evidence supports the case of prosecution about the time of incident, the kind of weapons used in the crime and the duration within which these were caused.
iii) Motive set out by the prosecution remained unproved and no reason is divulging from record behind the commission of instant crime. The failure of prosecution to prove the canvassed motive is always regarded a sufficient extenuating circumstance which warrants infliction of alternate sentence of imprisonment of life under section 302(b) PPC.

Conclusion: i) When ocular account is not corroborated by the other source of evidence, resort should be had to alternate sentence of imprisonment for life instead of inflicting capital sentence.
ii) Medical evidence supports the case of prosecution about the time of incident, the kind of weapons used in the crime and the duration within which these were caused.

iii) If the motive remained unproved it is a sufficient extenuating circumstance which warrants infliction of alternate sentence of imprisonment of life under section 302(b) PPC.

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40. **Lahore High Court**
Zain Qureshi v. Muhammad Salman and another
Election Appeal No.01 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC4474.pdf

Facts: This appeal under section 63 of the Election Act, 2017 (the "Act") calls into question order of the District Election Commissioner/Returning Officer whereby the objection of the appellant against the candidature of respondent No.1 to contest bye elections for the Punjab Assembly from the noted constituency was rejected and the nomination papers of respondent No.1 were accepted.

Issues: i) Whether declaration of defection shall ipso facto operate as disqualification from contesting the oncoming bye-election of the Provincial Assembly in light of the Order of the Honourable Supreme Court of Pakistan?
ii) Whether factual controversy can possibly be resolved in summary jurisdiction under section 63(2) of the Election Act 2017?

Analysis: i) The Honourable Supreme Court of Pakistan has most recently considered the question of defection in Order in Reference No.1 of 2022, C.P.No.2 of 2022 and C.P. No.9 of 2022 which is pointedly directed at authoritative interpretation of Article 63A of the Constitution. This provision, of course, deals specifically with defection from political party which is the substance of the objection at hand. From its direct enunciation of legal repercussions of defection in terms of disqualification for an individual from being elected or chosen as a member of the Provincial Assembly by the Supreme Court of Pakistan, as set down in its authoritative interpretation of the specific Constitutional provision on the subject of defection by Order dated 17.5.2022 supra, it may be understood that the legislative organ itself must structure the field by enactment of law on the statute book that provides for disqualification for defecting individual who by his action undermines political party's collectivity which is held to be a higher manifestation of Article 17 of the Constitution and which should be commensurate with its gravity and not amount to mere slap on the wrist if so enacted; but must be robust and proportionate response to the evil it is designed to thwart and eradicate. By careful reading of this Order it is clear that as things stand the legal consequences of defection, although characterized in most negative terms, could not translate into the formal consequence of disqualification till the legislature carries out enactment of a specific law that shall be expected to be more than a slap on the wrist in being carved out.
ii) For consideration of the matter in summary jurisdiction it required

determination by a court of competent jurisdiction by inquiry through trial and production of evidence. A valid declaration qua the respondent's conduct leaving the appellant with no preceding authoritative declaration that could enable this averment to be processed with any reliability which is neither appropriate nor possible in the summary jurisdiction of this Tribunal under section 63(2) of the Act.

Conclusion: i) Declaration of defection shall not ipso facto operate as disqualification from contesting the oncoming bye-election of the Provincial Assembly in light of the Order of the Honourable Supreme Court of Pakistan till the legislature carries out enactment of a specific law.
ii) Factual controversy cannot possibly be resolved in summary jurisdiction under section 63(2) of the Election Act 2017.

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41. **Lahore High Court**
Muhammad Ali Shamim v. Farah Idrees etc.
Civil Revision No. 37938 of 2019
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC4450.pdf

Facts: The petitioner has assailed the orders of learned trial and appellate court whereby the suit for specific performance of agreement to sell filed by the respondents was decreed while suit for declaration filed by petitioner was dismissed.

Issues: i) How the intention of parties to an agreement can be assessed?
ii) How the reciprocal promises in a contract are to be performed?
iii) Whether time is essence of contract in immovable properties?

Analysis: i) According to the definition of the agreement in Section 2 (e) of Contract Act, intention of the parties is very much relevant to interpret the conditions mentioned in the agreement to sell. These conditions cannot be independently discussed and un-dissolved. The intention can only be assessed from the conduct and act of the parties.
ii) Section 51 of the Contract Act 1872 clearly provides that when a contract consists of reciprocal promises to be simultaneously performed, no promisor need to perform his promise unless the promisee is ready and willing to perform his reciprocal promise whereas in Section 52 of the Contract Act it is mentioned that where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires. If section 52 of the Contract Act is kept in view, it says that nature of the contract should be kept in view while analyzing the fact that who could be at fault.
iii) It is settled principle of law that time is never essence of contract in immovable properties. The archaic rule that generally, time is not of essence in

contracts involving sale/purchase of immoveable property, could not be used as a ground to grant or otherwise specific performance, unless the circumstances that prove otherwise are highlighted and proved by the vendor and or vendee as the case may be.

Conclusion: i) The intention of parties to an agreement can only be assessed from the conduct and act of the parties.
ii) The reciprocal promises in a contract have to be performed in accordance with section 51 and 52 of Contract Act.
iii) Time is never essence of contract in immovable properties.

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42. **Lahore High Court**
Akhtar Ali. v. Post Master General
W.P. No. .2738 of 2018
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC4542.pdf

Facts: The respondent stopped the pension of petitioner because petitioner was sentenced to imprisonment for life along with compensation for offences u/s 302/34 PPC whereas the sentence of petitioner was suspended in appeal, hence, this petition.

Issues: i) Whether pension is grant of state to Government servant?
ii) Whether pension can be withheld and withdrawn by Government?
iii) What is procedure for restoration of pension forfeited under rule 40 of Pension Regulations Volume II (Army 1986) chapter VI?
iv) If sentence of the pensioner is suspended and released on bail during pendency of his criminal appeal whether he would be entitled to get pensionary benefits or not?

Analysis: i) It is settled law that a Government servant, who retires from service qualifying for retirement benefits, pension being a material part of it, does not get the same as bounty of the State but as a right acquired after earning satisfied record of service. However, in order to qualify for pension, the pensioner has to maintain his good conduct which is an implied condition for grant of pension.
ii) There are two conditions provided under Rule 2307 of General Conditions Governing Pension (C.S.R. 351) which empowered the Government to withhold or withdraw the pension or any part of it, where the pensioner is convicted in a serious crime or be guilty of a grave misconduct. In Pension Regulations Volume II (Army 1986) the Federal Government in exercise of the powers conferred by Section 176A of the Pakistan Army Act, 1952 (XXXIX of 1952) introduced rule 40 as amendments after Chapter V, with regard to reduction or forfeiture of pensions if a military pensioner is convicted in a serious crime by court of law and guilty of grave misconduct.
iii) Perusal of rule 41 of Pension Regulations Volume II (Army 1986) chapter VI

it appears that if a pensioner is sentenced to imprisonment by a lower court but is acquitted on appeal by a higher court, the pension withheld shall be restored forthwith. For suspension of a pension or release/restoration of a pension, the sanctioning authority shall decide the case in consultation with the Audit Officer, Controller of Military Pension and the civil authorities, if necessary.

iv) Rule 25 of Hand Book of instructions regarding payment of military pension through Post Offices provides that future good conduct shall be an implied condition of every grant of pensions or allowances. Rule 25 of Hand Book of instructions provides that on release/acquittal of the pensioner from imprisonment, the Postmaster will obtain an application from the pensioner for restoration of pension and submit to the Controller Military Accounts (Pension), Lahore Cantt along with required documents.

Conclusion: i) Pension is not a grant of state to Government servant.

ii) Yes, pension can be withheld and withdrawn by Government if pensioner is convicted in a serious crime by court of law and guilty of grave misconduct.

iii) For release/restoration of a pension, the sanctioning authority shall decide the case in consultation with the Audit Officer, Controller of Military Pension and the civil authorities, if necessary.

iv) If sentence of the pensioner is suspended and released on bail during pendency of his criminal appeal he would not be entitled to get pensionary benefits.

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43. **Lahore High Court**
M. Ali Farhan Hameed v. The State and another
Crl. Misc. No. 73736-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC4657.pdf

Facts: Petitioner sought pre-arrest bail in case FIR of an offence under section 406 PPC.

Issues: i) Whether broken promises constitute the offence under section 406 PPC?

ii) Whether mala fide or ulterior motive on the part of the complainant as well as police are conditions for the confirmation of pre-arrest bail?

iii) Whether the merits of the case can be touched upon while granting pre-arrest bail?

Analysis: i) A mere breach of a promise, agreement or contract does not ipso facto attract the definition of criminal breach of trust contained in section 405, P.P.C. and such a breach is not synonymous with criminal breach of trust without there being a clear element of entrustment therein which entrustment has been violated. Looked at from this perspective the allegation levelled regarding commission of an offence under section 406, P.P.C. surely calls for further probe at bail stage.

ii) Mala fide or ulterior motive on the part of the complainant as well as police are sine qua non for the confirmation of pre-arrest bail. A reference in this respect

may be made to the case of "Shahzada Qaiser Arfat alias Qaiser vs. The State and another" (PLD 2021 SC 708) wherein it has been observed:- "Malafide being a state of mind could not always be proved through direct evidence, and it often to be inferred from the facts and circumstances of the case."
iii) Although, it is a pre-arrest bail application and merits for grant of bail before arrest and after arrest are all altogether different but in a recent pronouncement of apex court of the Country in case titled as "Khair Muhammad and another Vs. The State through P.G.Punjab and another"(2021 SCMR 130) it has been held that while granting pre-arrest bail even the merits of the case can be touched upon. In the salutary judgment of this Court reported as "Meeran Bux v. The State and another" (PLD 1989 SC 347), the scope of the pre-arrest bail has been widened and as such while granting pre-arrest bail even the merits of the case can be touched upon…."

Conclusion: i) Mere broken promise does not constitute the offence under section 406 PPC.
ii) Mala fide or ulterior motive on the part of the complainant as well as police are sine qua non for the confirmation of pre-arrest bail.
iii) The merits of the case can be touched upon while granting pre-arrest bail.

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44. **Lahore High Court**
Sher Ali v. Inspector General of Police, Punjab and seven others
Writ Petition No. 1970 of 2022
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC4681.pdf

Facts: The petitioner has challenged the vires of order passed by Regional Police Officer for second application for change of investigation of criminal case for offences under sections 379 and 427, PPC.

Issues: i) Whether the investigating officer is vested with authority to declare guilt or innocence of accused person?
ii) Whether the investigating officer can prolong the investigation?
iii) What is meant by cognizance u/s 190 Cr.P.C?
iv) Whether after submission of report under section 173, Cr.P.C., investigation of criminal case can be changed or not?
v) Whether the competent officer for ordering change of investigation is duty bound to give reasons in writing of his order?
vi) Whether a Regional Police Officer can pass an order on a second application for change of investigation without setting aside the order passed by District Police Officer regarding first application for change of investigation?

Analysis: i) It has been well settled by now that investigating officer has no authority to issue a certificate of guilt or innocence of an accused person because it is the prerogative of the learned trial court. The prime duty of the investigating officer is

that he has to collect the evidence and produce the same before the court of competent jurisdiction in the shape of report under section 173, Cr.P.C.

ii) The bare reading section 173 Cr.P.C shows that every investigation shall be completed without any delay and, as early as possible, it will be completed the same shall be submitted before the court of competent jurisdiction through concerned quarter. Similarly, according to section 173 (1)(b), Cr.P.C. a period of 14 days from the date of registration of F.I.R. is given for the purpose of investigation and submission of report under section 173, Cr.P.C. and in case of non-completion of investigation, three more days can be given to the officer in charge of police station for the op-cit purpose. The wisdom can be derived from the bare reading of section 173, Cr.P.C. that investigating officer has no un-limited power to prolong the investigation with his own whish and whims, even otherwise, there was no reasoning to specify the period for the completion of investigation.

iii) The cognizance means the application of mind by the learned trial court with respect to facts, new facts and ascertainment about the seriousness and evidentiary value of such facts. It has also been established that the learned trial court is competent to take cognizance of an offence in case of even negative report is submitted by the police. Learned trial court is under legal obligation to see each and every effect of the matter pertaining to its jurisdiction while taking cognizance of the offence and summoning of the accused placed in column No. 02 of the Challan.

iv) When a court of competent jurisdiction has taken cognizance then it is sole prerogative of the learned trial court to adjudicate upon the matter after recording and evaluating the evidence. When the police has already submitted a report under section 173, Cr.P.C. and learned trial court has also issued bailable warrants of arrest of accused then there was no occasion for passing the impugned order for the change of investigation.

v) It has been well settled by now that public functionaries are duty bound to decide the matters in accordance with law after application of his own independent mind which should be a speaking order in the light of section 24-A of the General Clauses Act, 1897…. it is evident from perusal of Article 18(A) of Police Order, 2002 that while issuing an order for the change of investigation the competent officer is duty bound and under legal obligation to give reasons in writing for passing order for transfer of investigation.

vi) As per the scheme of Article 18(A) of Police Order, 2002, a Regional Police Officer cannot pass an order on an application for change of investigation without setting aside the order passed by District Police Officer regarding application for change of investigation.

Conclusion: i) The investigating officer has no authority to declare guilt or innocence of accused person.

ii) The investigating officer cannot prolong the investigation.

iii) The cognizance means the application of mind by the learned trial court with respect to facts, new facts and ascertainment about the seriousness and evidentiary value of such facts.
iv) After submission of report under section 173, Cr.P.C., investigation of criminal case cannot be changed.
v) The competent officer for ordering change of investigation is duty bound to give reasons in writing of his order.
vi) A Regional Police Officer cannot pass an order on second application for change of investigation without setting aside the order passed by District Police Officer regarding first application for change of investigation.

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45. **Lahore High Court**
Akbar alias Moshin v. The State
Criminal Appeal No.47718 of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC4615.pdf

Facts: The appellant filed appeal against convictions and sentences for offences under Sections 365, 302, 201 of PPC.

Issues: i) How prosecution can prove its case which relying upon circumstantial evidence?
ii) What is status of supplementary statement recorded for nomination of the accused?
iii) What is status of last seen evidence?
iv) What is value of evidence of a witness who makes dishonest improvement?
v) What would be status of confession if requisite procedure for recording for same is not adopted?
vi) What is evidentiary value of extra judicial confession?
vii) What is effect of an act done contrary to the requirements of law and rules?
viii) Whether prosecution is under obligation to prove the motive in every murder case?
ix) Whether benefit of doubt arising from a single circumstance can be extended to accused?

Analysis: i) Circumstantial evidence is normally considered as a weak type of evidence. It is well settled by now that prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the alleged offence and if any link is missing then obviously benefit is to be given to the accused.
ii) The Courts have always deprecated the supplementary statement, which is made with the purpose to strengthen the case of the prosecution in connivance with the police officials or some other ulterior motives to get the suspect convicted by hook or crook. Nomination through supplementary statement has always been deprecated and disliked by the Hon'ble Supreme Court and has never

been appreciated the same being afterthought.

iii) It is it is well settled by now that last seen evidence is always considered to be week type of evidence, unless corroborated by some other independent evidence.

iv) A witness is untrustworthy if he makes dishonest improvements in his statement on a material aspect of the case in order to fill up gaps in the prosecution case or to bring his statement in line with the other prosecution evidence.

v) If the requisite procedure is not adopted for recorded of confession then it cannot be treated as confession rather under the law, it may be treated as an admission, however, on the basis of admission alone, accused person cannot be awarded a capital punishment because admission, as has been defined by Article 30 of the Qanun-e-Shahadat Order, 1984, is only a relevant fact and not a proof by itself, as has been envisaged in Article 43 of the Order, 1984, where a proved, voluntary and true confession alone is held to be a proof against the maker.

vi) The evidence of extra judicial confession can be concocted easily and for this valid reason, it is always looked doubtful and suspicious. It could be taken as corroborative of the charge if it, in the first instance, rings true and then finds support from other evidence of unimpeachable character, but when other evidence lacks such attribute, it has to be excluded from consideration. Even otherwise, the evidentiary value of extra judicial confession has been declared a weak type of evidence by august Supreme Court of Pakistan.

vii) It is a bedrock principle of law that, once a Statute or rule directs that a particular act must be performed and shall be construed in a particular way then, acting contrary to that is impliedly prohibited. That means, doing of something contrary to the requirements of law and rules, is impliedly prohibited.

viii) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

ix) It is well established principle of law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

Conclusion: i) Circumstantial evidence is a weak type of evidence unless it form a complete, continuous and unbroken chain of circumstances.

ii) Nomination through supplementary statement has always been deprecated and disliked.

iii) Last seen evidence is always considered to be week type of evidence unless corroborated by some other independent evidence.

iv) A witness is untrustworthy if he makes dishonest improvements in his statement on a material aspect of the case.

v) If the requisite procedure is not adopted for recorded of confession then it cannot be treated as confession rather under the law, it may be treated as an admission

vi) Extra judicial confession can be concocted unless it rings true and then finds support from other evidence of unimpeachable character.
vii) Doing of something contrary to the requirements of law and rules, is impliedly prohibited.
viii) Prosecution is not under obligation to establish a motive in every murder case but if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
ix) If there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused

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46. **Lahore High Court**
Amir Hayat v. The State
Criminal Appeal No. 51224/2017
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC4393.pdf

Facts: Appellant being Cashier was tagged as delinquent for failure to re-deposit the public money in government treasury in time. Complaint was also forwarded to Anti-corruption Establishment where after inquiry FIR was registered and judicial action too was recommended against the delinquent/appellant.

Issues: i) In what cases "criminal misconduct" u/s 5 of Prevention of Corruption Act, 1947 will attract while "criminal breach of trust" u/s 405 etc of PPC will not attract?
ii) What is difference between dishonest act and fraudulent act?
iii) Whether a civil servant, who has committed misappropriation, may be held liable for criminal prosecution as well as disciplinary action?
iv) If the government money is kept by the civil servant for a longer period with him without misuse or misappropriation, then whether it will be a criminal breach of trust or criminal misconduct attracting respective penal provisions of PPC and Prevention of Corruption Act, 1947?

Analysis: i) The words 'fraudulently' and 'entrustment' are missing in the definition of dishonest misappropriation under PPC; and offence under Prevention of Corruption Act, 1947; under sec. 5 clause (c) deals with 'any property' while offence under PPC is confined to 'moveable property' only. The element of entrustment of property has been procured to convert an offence of 'dishonest misappropriation' to 'criminal breach of trust'. Section 5(1)(c) of Prevention of corruption Act, 1947 covers the misdemeanors like misappropriation committed either with dishonest intention or intention to defraud. Therefore, when the evidence discloses element of fraud only, section 405 PPC shall not be applicable for misappropriation, likewise rest of the sections for penal consequences

including 409 PPC shall not be attracted, and in that situation offence shall only be dealt with under section 5(1)(c) of Prevention of corruption Act, 1947.

ii) A doer of a dishonest act may not have any interest in causing loss to any rightful claimant yet does the act for his own interest either to usurp the property or to alienate it in consideration of bribe given to him and the consequences of his act cause either wrongful loss or wrongful gain to any party in interest. Whereas fraudulent act contains malice, grudge, deception against a particular person with a targeted mind to ruin him or to deprive him from the property and for that end property is obtained from him through deception under grab or with temptation like increased value of the property.

iii) Misappropriation commonly refers to situations in which the offending party has an added measure of responsibility, such as misconduct by a public official, a trustee of a trust, or an administrator of a deceased person's estate. An individual who has committed misappropriation may be liable to criminal prosecution for a form of theft as well as disciplinary action, if the person is a civil servant.

iv) To prove misappropriation, the use of misappropriated money for the purposes other than that for which it is intended is essential ..If the civil servant kept the government money with him for a longer period without his misuse or misappropriation cannot be termed as an offence falling under criminal breach of trust attracting section 409 PPC or Section 5(1)(c) of Prevention of corruption Act, 1947. However, act of the appellant if conforms to misconduct, this can be a good ground for initiating disciplinary proceedings under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA Act, 2006). This temporary embezzlement should not have been made subject for criminal misconduct or for offence under PPC as held in case reported as "NASEER AHMAD Versus THE STATE" (1985 P Cr. L J 2089).

Conclusion: i) When the evidence discloses element of fraud only, section 405 PPC shall not be applicable for misappropriation, likewise rest of the sections for penal consequences including 409 PPC shall not be attracted, and in that situation offence shall only be dealt with under section 5(1)(c) of Prevention of corruption Act, 1947.

ii) A doer of a dishonest act may not have any interest in causing loss to any rightful claimant while fraudulent act contains malice to deprive the rightful owner from the property.

iii) A civil servant, who has committed misappropriation, may be held liable for criminal prosecution as well as disciplinary action.

iv) If the civil servant kept the government money with him for a longer period without his misuse or misappropriation cannot be termed as an offence falling under criminal breach of trust attracting section 409 PPC or Section 5(1)(c) of Prevention of corruption Act, 1947.

47. **Lahore High Court**
Manzoor Ahmad v. Muhammad Zafar (deceased) through L.Rs, etc.
C. R. No. 823-D / 2018
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC4521.pdf

Facts: This Civil Revision assails the validity of the concurrent Judgments & Decrees passed by the Civil Judge and the Additional District Judge respectively, whereby, the suit for specific performance of the Petitioner was dismissed.

Issues: i) What is the purpose of Khasra Gardawari?
ii) Whether stating the date, time and venue of the transaction and naming the witnesses in the plaint or deposing to this effect is sufficient to prove execution of an oral agreement to sell?
iii) Whether it is required to deal with the grounds of Appeal abandoned during arguments or which were otherwise deemed unnecessary for disposal of the case or which were not urged at the hearing of the Appeal?
iv) Whether it is necessary to decide each and every issue separately when the primary point of determination was limited to the validity of the agreement?
v) Whether grant of specific performance is always a discretionary relief which can even be denied if the transaction is otherwise proved?

Analysis: i) One of the purposes of Khasra Gardawari is to record the nature and kind of crops cultivated on the land. It is done twice in a year through spot inspection. The crop and the name of cultivator are entered in the Register.
ii) Stating the date, time and venue of the transaction and naming the witnesses in the plaint or deposing to this effect although is essential to allege an oral agreement to sell yet it is by no means sufficient to prove its execution.
iii) It is not required to deal with the grounds of Appeal abandoned during arguments or which were otherwise deemed unnecessary for disposal of the case or which were not urged at the hearing of the Appeal.
iv) It is not necessary to decide each and every issue separately when the primary point of determination was limited to the validity of the agreement.
v) Grant of specific performance is always a discretionary relief which can even be denied if the transaction is otherwise proved, though discretion of the Court is not arbitrary but must be based on sound and reasonable grounds, guided by judicial principles and capable of correction by a Court of Appeal.

Conclusion: i) One of the purposes of Khasra Gardawari is to record the nature and kind of crops cultivated on the land.
ii) Stating the date, time and venue of the transaction and naming the witnesses in the plaint or deposing to this effect although is essential to allege an oral agreement to sell yet it is by no means sufficient to prove its execution.
iii) It is not required to deal with the grounds of Appeal abandoned during arguments or which were otherwise deemed unnecessary for disposal of the case

or which were not urged at the hearing of the Appeal.
iv) It is not necessary to decide each and every issue separately when the primary point of determination was limited to the validity of the agreement.
v) Grant of specific performance is always a discretionary relief which can even be denied if the transaction is otherwise proved, though discretion of the Court is not arbitrary but must be based on sound and reasonable grounds, guided by judicial principles and capable of correction by a Court of Appeal.

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48. **Lahore High Court**
Samman Maqbool v. Province of Punjab etc.
W.P No.10289/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC4431.pdf

Facts: The petitioner has challenged the refusal of the respondent i.e. Punjab Housing and Town Planning Agency (PHATA), to transfer her plot to her vendee on the pretext of pendency of litigation regarding the subject plot.

Issues: i) Whether Courts can resort to common dictionary meaning ascribed to such term or word if it has not been defined in that special legislation?
ii) Whether term "encumbrance" used in policy decision envisaged vide letter bearing No.SO(D-II)HP&EP-2-4/76 dated 10.12.198 of PHATA amounts to a clog on the alienation or transfer of property or any right/interest therein on account of pendency of civil suit?
iii) Whether mere pendency of a civil suit constitutes an encumbrance and concomitantly proprietary right of a citizen can be put under clog on account thereof?

Analysis: i) It is settled proposition of law that any term or word has to be construed and interpreted as the legislature has put it under some special and/or relevant legislation, however, the Courts may resort to common dictionary meaning ascribed to such term or word if it has not been defined in that special legislation
ii) The Dictionary definitions clearly indicate that the term encumbrance does not cover pending litigation and the interpretation given by the PHATA, to the term encumbrance mentioned in the policy decision if accepted, will tantamount to create a clog upon the proprietary rights of the citizens dealing with the PHATA or similar housing authorities. The purpose of recording the encumbrances by a housing authority or similar regulators and refusing the transfer of the property on the basis of such encumbrance is to warn the prospective buyers because they cloud the properties' titles, requiring the prospective purchasers to investigate or resolve the alleged encumbrance before deciding whether to move forward with a purchase or not. Clog on the alienation or transfer of property or any right/interest therein on account of pendency of civil suit is or may be placed by a Court of competent jurisdiction.

iii) The rule incorporated in Section 52 of the Transfer of Property Act, 1882 brings out legislative intent as well as the principle of law underlying the said provision that any vendee buying property during the pendency of the litigation does so at his own risk and peril and would be subject to the final decision of the Court and would step into the shoes of his vendor.. Provisions of Order XX of Supreme Court Rules, 1980 of the Hon'ble Apex Court contemplate that mere filing of a petition or an appeal would not be treated as a restraint order in the execution of a decree. Similarly, as per Order XLI, Rule 5, Code of Civil Procedure, 1908 preference of appeal against a decree and/or order does not ipso facto operate as stay, meaning thereby that unless there is restraining order, lawful rights in favour of a person cannot be halted.. Mere filing of a civil suit or pendency of the same without injunctive order cannot operate as an encumbrance or have the like effect just as mere filing of petition or appeal ipso facto does not operate as stay of the proceedings.

Conclusion: i) Courts may resort to common dictionary meaning ascribed to such term or word if it has not been defined in that special legislation.

ii) Term "encumbrance" used in policy decision does not amount to a clog on the alienation or transfer of property or any right/interest therein on account of pendency of civil suit.

iii) Mere pendency of a civil suit does not constitute an encumbrance and concomitantly proprietary right of a citizen cannot be put under clog on account thereof.

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49. **Lahore High Court**
Khadim Hussain v. Additional District Judge etc.
Writ Petition No.12080/2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC4419.pdf

Facts: Through the present writ petition, the petitioner in possession of disputed House "the rented premises" has laid challenge to judgment passed by the learned Additional District Judge, whereby order passed by the learned Rent Tribunal, in eviction petition filed by respondents No.03 to 07 (hereinafter referred as "the respondents") against the petitioner and respondents No. 8 to 13, was set aside and the eviction petition filed by the respondents was accepted.

Issues: i) Whether the "oral tenancy" is barred under the Punjab Rented Premises Act, 2009?

ii) What are the necessary constituents for establishing of tenancy relationship?

iii) Whether presumption of tenancy can be treated as a sole and conclusive ground for eviction?

iv) Whether settlement of rent is the basic requirement for establishment of landlord-tenant relationship in case of an oral tenancy?

Analysis: i) The Punjab Rented Premises Act, 2009 mandates that rented premises must be

rented out through a written tenancy agreement, however, an "oral tenancy" has not been barred under the Act, 2009.

ii) Section 2 of the Act, 2009 is the basic provision, which contemplates the definition of the most relevant terms. Under clause (d) of Section 2 of the Act, 2009, the term "landlord" means the owner of a premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises. A careful perusal of both the terms unequivocally depicts the payment and receipt of rent as sine qua non for establishing the relationship of tenancy between the parties. Thus, a "premises" and "agreed rent" with regards to such "premises" forms the necessary constituents of existence of tenancy relationship and the absence of either of the two would imply the absence of any tenancy relationship.

iii) The presumption emanating out of the title/ownership is merely one element of evidence, which has to be read with the rest of the evidentiary material as well. A presumption cannot be treated as a sole and conclusive ground for eviction in each and every case may not be safe administration of justice as every case has its own peculiar facts and attending circumstances and it is the preponderance of evidence and its weighing up, on the basis of which, the acceptance or rejection of eviction petition is to be determined and decided.

iv) Settlement of rent is one of the basic requirement for the establishment of landlord-tenant relationship and in the absence of the same there cannot be an oral tenancy. Similarly, in case where settlement of rent is not alleged in the eviction petition and thereafter not proved, an eviction petitioner cannot succeed merely on the ground of presumption that an eviction petitioner, being owner of the rented premises, is also the landlord.

Conclusion: i) The "oral tenancy" is not barred under the Punjab Rented Premises Act, 2009.

ii) A "premises" and "agreed rent" are necessary constituents for establishing of tenancy relationship.

iii) A presumption of tenancy cannot be treated as a sole and conclusive ground for eviction.

iv) Settlement of rent is the basic requirement for establishment of landlord-tenant relationship in case of an oral tenancy.

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50. **Lahore High Court**
Muhammad Asif v. Zeeshan Sarwar
Civil Revision No.200/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC4412.pdf

Facts: The respondent/plaintiff instituted a suit for recovery on the basis of cheque against the petitioner/defendant in which evidence of the petitioner was recorded. The petitioner moved an application for comparison of hand-writing upon the suit cheque, which was dismissed by the learned trial court. Aggrieved from the same, the petitioner filed this civil revision.

Issues: i) Whether the admission of signature on a cheque, ipso facto, amounts to execution of the cheque?
ii) Whether any evidence beyond pleadings can be read?

Analysis: i) Perusal of section 118 of Negotiable Instrument Act, 1881 brings out in unequivocal manner that the said provision merely creates a presumption with regards to certain aspects of a negotiable instrument, however, such presumption is rebuttable and can be proved to the contrary. This also implies that mere admission of signatures does not amount to admission of execution and the latter stands on a different pedestal from the former… the presumption under Section 118 of the Act can be drawn only when the execution of the cheque is admitted or proved. The admission of signature on a blank cheque, without insertion of date and amount therein, is not an admission of the execution of the cheque.
ii) In a civil dispute, pleadings lay the foundation rather forms the bedrock of the lis of the parties respectively more so when the parties are obligated to produce their evidence within the contours of the pleadings and any evidence beyond pleadings cannot be read.

Conclusion: i) Mere admission of signatures on cheque does not amount to admission of execution of cheque.
ii) Any evidence beyond pleadings cannot be read.

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51. **Lahore High Court**
Muhammad Ibrahim Qureshi v. Muhammad Aslam & 3 others
Civil Revision No.177-D of 2020
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC4561.pdf

Facts: The respondent no.1 filed suit for declaration wherein the petitioners filed written statement. The suit was dismissed on the ground that the facts alleged in the suit have not been controverted by defendants of suit. While the learned appellate court decreed the suit. After about six years, the petitioners filed application under section 12(2) CPC with the prayer to set-aside the same on the grounds of fraud and misrepresentation. The said application was dismissed by the additional district judge. Hence the instant revision.

Issues: i) In what eventualities of fraud and misrepresentation, an application under section 12(2) of the Code can be filed?
ii) Whether the framing of issues and recording the evidence is obligatory upon court while deciding application u/s 12(2) CPC?
iii) Whether the challenge to authority of authorized agent after a long time is permissible under the law?
iv) Whether the recording of evidence is necessary to decide limitation which only involves question of law?

v) What should be the basis to avail the facility regarding extension of time beyond prescribed limitation for challenging an order?

Analysis: i) Section 12(1) of the Code provides that when a person is precluded by rules in respect of any particular cause of action then on such cause of action he is not entitled to institute a further or separate suit in any Court. Sub-section (2) of section 12 of the Code is providing the remedy of filing application against the judgment and decree or order, if obtained by fraud, misrepresentation or want of jurisdiction. Combined reading of the two sub-sections makes it profusely clear that application under section 12(2) of the Code can only be made if the misrepresentation is made or fraud is committed with respect to the subject matter of the suit on which the order, judgment or decree is passed, as the aggrieved litigant is precluded under subsection 12(1) of the Code to pursue an independent remedy.

ii) Framing of issues and recording the evidence is obligatory when the Court considers that any such issue is raised in the application which is required to be resolved by leading evidence, however, when the learned Court dealing with the application is satisfied that the application can be decided even without framing the issues and the same does not involve any complicated question of fact, the framing of issue or recording evidence is not inevitable. It is primarily the satisfaction of the Court of first instance, dealing with the application under section 12(2) of the Code, which is important and no yardstick for the same is fixed and same varies from case to case.

iii) The law itself permits to contest cases through authorized agent or to consider the authorized agent when seeking denial or admission of allegations. The challenge to authorization after such a long time period is to frustrate the very object or the purpose of lawful proceedings which cannot be allowed. This law is laid down by the Honourable Supreme Court of Pakistan in case titled “Mst. Shabana Irfan versus Muhammad Shafi Khan and others ” (2009 SCMR 40).

iv) The Honourable Division Bench of this Court in case titled “Shumail Waheed versus Rabia Khan” (2021 MLD 252), has observed that recording of evidence is not mandatory when the pleadings do not disclose such mixed question of law and facts and it has been held that when the question of limitation is one which can be resolved purely on the basis of law, without adverting to the facts, the same can be resolved even without framing the issues.

v) The Hon’able Supreme Court of Pakistan has observed that facility regarding extension of time for challenging an order cannot be legitimately stretched to any length of unreasonable period at the whim’s, choices or sweet will of the delinquent party and date of knowledge of the challenged order must be established on sound basis.

Conclusion: i) Fraud and misrepresentation, which is ground for the application of 12(2) of the Code, should have been practiced during the proceedings in the court and not outside the Court.

ii) Framing of issues and recording the evidence is obligatory upon court while deciding application u/s 12(2) CPC. However, no yardstick is fixed and same varies from case to case.
iii) The challenge to authority of authorized agent after a long time is not permissible under the law.
iv) The recording of evidence is not necessary to decide limitation which only involves question of law.
v) There must be the sound basis to avail the facility regarding extension of time for challenging an order beyond prescribed limitation.

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52. **Lahore High Court**
Naeem Shehzad v. Additional District Judge, Arifwala and 2 others
Writ Petition No. 208019 of 2018
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4510.pdf

Facts: A family suit was decreed in favour of the respondent. Respondent filed an execution petition. During execution proceedings respondent moved an application to attach property which was allowed by the learned executing court and it was ordered to be attached. This led the petitioner before this court to file an objection petition maintaining that he had purchased the said property from his real brother.

Issues: i) How the selling of property by judgment debtor during execution proceedings becomes a sham transaction?
ii) Whether the family court has the power to execute its decree by adopting the modes provided for recovery of land revenue?

Analysis: i) Where innocence is claimed by a party causing loss to the other, "the rule of equity which applies to an innocent person signifies that the one who could prevent the loss must suffer and not the other who was powerless to do so… where an agreement to sell and subsequently a sale deed was executed to frustrate a judgment and decree passed by a Family Court, the sale deed was declared to be invalid and it was held that the sale deed was invalid having been effectuated only to frustrate the judgment and decree of the Family Court and was thus a fraudulent transaction.
ii) The technical trappings of execution provided in the Code of Civil Procedure were not strictly applicable to execution proceedings before a Family Court and that Section 13(3) of the West Pakistan Family Courts Act, 1964 empowered the Family Court to execute its own decree for payment of money by adopting modes provided for recovery of arrears of land revenue.

Conclusion: i) The selling of property by judgment debtor during execution proceedings becomes a sham transaction if executed to frustrate the judgment and decree.

ii) The family court has the power to execute its decree by adopting the modes provided for recovery of land revenue.

LATEST LEGISLATION/AMENDMENTS

1. The Elections Act 2017 is amended by Elections (Amendment) Act, 2022 wherein section 72-B is inserted while section 94 and 103 are amended.
2. The National Accountability Ordinance, 1999 is amended through National Accountability (Amendment) Act 2022 wherein Section 4, 6,7,8, 10, 15, 18, 21, 25, 26, 32, 33D and 36 are amended; Section 5, 5-A, 9, 16, 24, 28, 34 are substituted; Section 14, 23 are omitted; and Section 31DD, 33F, 33G are newly inserted.

SELECTED ARTICLES

1. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/how-to-make-most-multimedia-courtroom

How to Make the Most of Multimedia in the Courtroom by Adam Bloomberg

A great trial lawyer who knows how to use words to paint vivid pictures in the minds of jurors can probably try their case without any visuals. But with growing use of CGI, on-demand media, and shrinking attention spans, multi-generational jurors have become accustomed to content delivered in bright bursts of light, color, sound, and motion. Think of the millions of viewers of high-tech crime dramas—as jurors they expect sophisticated lawyers representing sophisticated clients to bring a little of that same graphics magic to the courtroom. In other words, in most cases it will be important to incorporate some form of multimedia into your presentation. But here's the inevitable kicker: it's equally important not to fall into the trap of overusing your media. You'll risk losing the direct, personal, powerful connection forged between a trial lawyer and the jury. You can't build rapport if there's always a computer in the way.

2. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s40318-022-00222-5

Examining procedural fairness in anti-doping disputes: a comparative empirical analysis by Shaun Star & Sarah Kelly

While the principles of procedural fairness apply in anti-doping disputes pursuant to Article 8 of the Word Anti-Doping Code, 2021 (the Code), there has been limited research assessing whether due process requirements are applied consistently by national anti-doping tribunals. This paper investigates the extent to which the procedural requirements set out under the Code are followed in practice, with a focus on India, New Zealand and Canada, facilitating comparison between developed and developing jurisdictions. By providing an evidence-based examination of first instance anti-doping procedures, this study

confirms existing theories on the overall lack of harmonization in anti-doping procedures. We undertook a frequency analysis on the full-text awards handed down by first instance anti-doping tribunals in the comparative jurisdictions and the findings highlight inconsistent application of timeliness requirements and access to legal representation. Critically, in India, disputes take significantly longer to be resolved than in Canada and New Zealand, while far fewer Indian athletes are represented by legal counsel. In all jurisdictions, athletes who were represented by counsel were more likely to see a reduction in their sanctions. The study provides empirical evidence of systemic issues associated with timeliness and access to justice in anti-doping tribunals across jurisdictions and reinforces the need to focus on capacity building and enforcement of procedural safeguards, especially in developing countries. Practical recommendations include strategies to better achieve compliance and harmonization in protecting the procedural rights of athletes, particularly those athletes affected by the current application of the Code where cultural and socio-economic barriers may exacerbate procedural issues.

3. MANUPATRA

https://articles.manupatra.com/article-details/Transfer-of-Actionable-Claims-under-the-Transfer-of-Property-Act-1882

Transfer of Actionable Claims under the Transfer of Property Act, 1882 by Priyanshi Garg

The code of contract with respect to the law of property was completed with the enactment of the Transfer of Property Act in the year 1882. It codified the laws pertaining to the transfer of property. However, the Act does not cover all kinds of properties and their transfer. Hence, it is not exhaustive in nature. It is attributable to the fact that before 1882, there already existed laws pertaining to "transfer by operation of law" under respective family laws, "transfer by order of Court" under Code of Civil Procedure, 1908 and sale of movable property under the Indian Contract Act, 1872 (now under the Sale of Goods Act, 1930). The Transfer of Property Act deals only with the transfer of property inter-vivos. Inter-vivos transfers mean the transfer of property by the Act of parties between living persons, and it may be through an express contract or an implied contract. This means that it does not deal with transfers through will, succession, etc. Furthermore, it is a wrong perception that the Act only deals with immovable property. Some of its provisions (like provisions from Ss. 5 to 37) also deal with the transfer of movable property. The Act, by way of a saving clause, states that if any of the provisions of Chapter II of the Transfer of Property Act are in contravention of the Muhammadan law, then the latter shall prevail.1 The same is the case with Chapter VII of the Act.2. Thus, the Act has its own limitations in terms of territory, nature of the property, nature of transfer and other aspects. Therefore, in order to have a clear understanding of the applicability of law, one must note the kind of transfer of property (e.g. sale, lease, etc.), the nature of property transferred (e.g. movable or immovable), the parties involved (e.g. inter-vivos transfer, transfer after death like will, inheritance, etc.) and other relevant factors. As regards the transfer of actionable claims, it is dealt with under Chapter VIII of the Act. The present work aims to evaluate the provisions for transferability of actionable claims under the Transfer of Property Act, 1882.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Legal-Incidents-of-Transferable-Properties

Legal Incidents of Transferable Properties by Dhairya Jain

Property of any sort may be transferred under Section 6 of the Transfer of Property Act, 1882, unless otherwise specified by this Act or any other legislation in effect at the time. It includes a number of different categories of property that aren't transferable.

5. **MANUPATRA**
https://articles.manupatra.com/article-details/Issues-and-Challenges-of-Well-known-Trademarks-in-21st-century

Issues and Challenges of Well-known Trademarks in 21st century by Shreya Singh

Intellectual Property is an extensive part that includes those works which are created out of the intellect of an individual, which includes trademark, copyright, and patent. Trademark is a mark such as a design, sign, combination of different colors, or any specific expression which briefly defines or symbolizes a product and makes it recognizable in the market which is related to particular goods and services. In this research paper, the discussion will be on the abuse of well-known trademarks and what Issues and challenges are being faced by them further the paper will focus on the various ways to protect these trademarks from infringement. A Well-known Trademarks in the 21st century through a clear understanding of cases of Protection of well-known trademarks in the 21st century, in several regions and to take a position on why it occurs.

6. **MANUPATRA**
https://articles.manupatra.com/article-details/Matter-of-Jurisprudence-Determined-An-Analysis

Matter of Jurisprudence Determined: An Analysis by Surbhi Chaudhary

John Austin, is both a positivist and an utilitarian. He is credited for founding analytical positivism for which he is considered as the 'father of English Jurisprudence'. As a positivist, Austin sought to show what law really is as opposed to what it ought to be. The term 'positivism' has been generally understood in the sense, law emanating from a real source which is obligatory, binding and involves sanction. Legal analysis and examination of man-made law that is of the law as it is or as it actually exists (posited) is known as positivism.