# LAHORE HIGH COURT

# BULLETIN

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# FORTNIGHTLY CASE LAW BULLETIN

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

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

## JUDGMENTS OF INTEREST

## SELECTED ARTICLES

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

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

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

**Analysis:** Order XXII of the Code of Civil Procedure (CPC) deals with the death, marriage and insolvency of parties pending proceedings. Rule 4 provides the procedure in case of death of one or several defendants or sole defendant. By virtue of Rule 11, Order XXII has been made applicable to the appeals mutatis mutandis. From the analysis of the above referred provisions of law it becomes crystal clear that in case of death of one of the respondents in the appeal, if the right to sue survives against the surviving respondents, non-implement of legal representative of deceased respondent would have no adverse bearing on the merits of the appeal.
Application under Section 12(2) of CPC was highly misconceived and ill-founded, even at the face of it as it does not come within the purview of Section 12(2) of CPC. The petitioners should have availed remedy under Order XXII Rule 9(2)of CPC but even then if we treat the application of the petitioners under the said provision of law that too was not maintainable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Conclusion:** i) The examination in chief of witness without cross examination, due to his non availability, does not acquire status of a "legal statement.
ii) The accused cannot be convicted without proving "safe custody" of case property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Analysis:** The term "product" defined in Section 2(j) of the Act is mainly derived from movable property and land is specifically excluded from the "goods" under the Sale of Goods Act, 1930. Though word "immovable" also finds reference in Section 2(j) of the "Act, 2005" but it is clearly restricted to "product". The joint analysis of Section 2(j) of "Act, 2005" and Section 2(7) of the Sale of Goods Act, 1930 leads to an irresistible conclusion that land cannot be termed as a "product". The appellant has never hired any services for a consideration rather he had purchased plots from the respondents in lieu of a consideration. The term and conditions of allotment/purchase matured into an agreement inter se appellant and respondents. Thus in case of violation of contract the appellant may ask for specific performance of contract or damages if there is breach of contract on the part of respondents through a suit before the Civil Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## LIST OF ARTICLES

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Jurisprudence
   Right to die with dignity: an evolution of Indian Jurisprudence by K.Ramakanth Reddy

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

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

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

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

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

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

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

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

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

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