LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2022 to 28-02-2022)

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

$ELECTED ARTICLE$

1. **Supreme Court of Pakistan**
Sher Hassan and others v. Gul Hassan Khan and others.
Criminal Petition No. 1091 of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1091_2021.pdf

Facts: Through the instant petition, the petitioners have called in question the vires of the judgment of the learned Peshawar High Court, Peshawar whereby the Criminal Revision filed by the petitioners was dismissed and the orders of the learned Courts below were upheld by which the right of the petitioners to cross-examine the PWs was struck down.

Issue: Whether the fundamental right of fair trial is violated if any accused is deprived of the opportunity to cross-examine a witness deposing against him?

Analysis: Article 10A of the Constitution of Islamic Republic of Pakistan 1973 speaks about right of fair trial and due process both in civil as also in criminal proceedings. While deciding a criminal lis, the recording of evidence including the right of cross-examination of the witnesses, hearing of arguments and a reasoned judgment are the essential attributes of criminal justice system based on the Constitutional command. The statements of witnesses and cross-examination is a vital part of that material, which form part of evidence, therefore, in absence of such an important piece of evidence, the Court could not come to a just and fair conclusion. In Muhammad Bashir Vs. Rukhsar (PLD 2020 SC 334) this Court has held that "right to cross-examine is the right of the adverse party which right he/she may forego but one which he/she cannot be deprived of. Criminal trial of an accused must be conducted with utmost fairness. Fundamental right of fair trial which the Constitution guaranteed is violated if any accused is deprived of the opportunity to cross-examine a witness deposing against him."

Conclusion: The fundamental right of fair trial is violated if any accused is deprived of the opportunity to cross-examine a witness deposing against him.

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2. **Supreme Court of Pakistan**
Mst. Rabia Gula, etc v. Muhammad Janan, etc.
Civil Appeal No. 139-P of 2013
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._139_p_2013.pdf

Facts: The respondent filed suit for declaration wherein she challenged the gift on the ground of fraud. The appellants challenges the judgment passed by the Peshawar High Court, whereby the concurrent judgments of the trial and appellate courts have been set aside, and the suit of the respondent has been decreed.

Issue: i) Whether the benefit of section 18 of the Limitation Act can be extended to a party who despite obtaining knowledge of such fraud and his right to sue, as mentioned in section 18, the injuriously affected person does not institute the suit within the prescribed limitation period?

ii) When does the right to sue accrue to a donor, to seek a declaration of his ownership right over the property shown to have been gifted?

iii) Whether option to delay the filing of a suit is available in case of "actual denial" of right?

Analysis: i) Section 18 of the Limitation Act, 1908 ("Limitation Act") postpones the commencement of the limitation period in cases where a person is by means of fraud kept from the knowledge of his right to institute a suit. The "fraud" envisaged in section 18 only relates to concealing, not creating, the right to sue, and thus affects only the limitation period, and has nothing to do with the cause of action and the relief prayed. It would, thus, be safe to hold that, when despite obtaining knowledge of such fraud and his right to sue, as mentioned in section 18, the injuriously affected person does not institute the suit within the prescribed limitation period, no fresh period of limitation can be available to his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person). Therefore, it is the date of knowledge of the "person injuriously affected" of the fraud mentioned in section 18, and of his right to sue that is relevant for computing the limitation period, not of his legal heir(s), unless he asserts and prove that his predecessor (the person injuriously affected) never came to know of the fraud, whereby his right to institute the suit was concealed, in his lifetime; in the latter eventuality, it is, of course, the knowledge of the present plaintiff (his successor) that would be the starting point for the limitation to run.

ii) The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. It thus postulates two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

iii) A person may ignore an "apprehended or threatened denial" of his right taking it not too serious to dispel that by seeking a declaration of his right through instituting a suit, and may exercise his option to institute the suit, when he feels it necessary to do so, to protect his right. However, this option to delay the filing of the suit is not available to him in case of "actual denial" of his right; where if he does not challenge the action of actual denial of his right, despite having knowledge thereof, by seeking declaration of his right within the limitation period provided in the Limitation Act, then his right to do so becomes barred by law of limitation.

Conclusion: i) The benefit of section 18 of the Limitation Act can be extended to a party who despite obtaining knowledge of such fraud and his right to sue, as mentioned in

section 18, the injuriously affected person does not institute the suit within the prescribed limitation period.
ii) The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right.
iii) The option to delay the filing of the suit is not available in case of "actual denial" of right.

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3. **Supreme Court of Pakistan**
Nazar Hussain and another v. Syed Iqbal Ahmad Qadri (deceased) through his L.Rs and another.
Civil Petition No. 2832/2018
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2832_2018.pdf

Facts: The petitioner through this Civil Petition has challenged the concurrent judgments of the learned three Courts through which the suit of the petitioner for specific performance of the agreement to sell was dismissed.

Issue: i) What is the buyer's primary obligation in a contract of sale?

ii) Whether the contract of sale regarding the plot of Government Employees Housing Scheme is opposed to public policy?

Analysis: i) A buyer's primary obligation in a contract of sale is to make payment of the balance sale consideration as stipulated in the contract. If the seller refuses to receive payment the buyer must establish that he had the required money which was kept aside for the seller, for instance, by making a pay order or cashier cheque in his name. This would show that the buyer no longer had access to the sale consideration. Alternatively, the buyer could have deposited it in court and if a buyer does not fulfill his primary obligation to secure/tender the sale consideration and files suit, and does so without depositing the sale consideration in court, the buyer is placed in an advantageous position.

ii) In our opinion the agreement was also opposed to public policy as the Housing Scheme was meant to provide land to eligible Federal Government employees. The very purpose of the Housing Scheme is negated if the petitioners, who were not Federal Government employees, can benefit therefrom. And, to do so by putting forward an eligible Federal Government employee to obtain a plot which they are not otherwise entitled to. Those not eligible and entitled to get such plots could also not do indirectly what they could not do directly, by for instance finance the purchase of a plot which would not go to the Federal Government employee. If finance is provided it would constitute a loan agreement, and not a contract for the sale of a plot.

Conclusion: i) A buyer's primary obligation in a contract of sale is to make payment of the balance sale consideration as stipulated in the contract.

ii) The contract of sale regarding the plot of Government Employees Housing

Scheme is opposed to public policy.

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4. **Supreme Court of Pakistan**
The Commissioner Inland Revenue, (In all cases) Lahore and others v. M/s PEPSI Cola International, Lahore and others.
Civil Petition Nos. 682-L to 684-L and 768-L of 2017
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._682_l_2017.pdf

Facts: Petitioners through this leave to appeal assailed the order of Lahore High Court Lahore, whereby, High Court allowed writ petitions in which show cause notices were challenged and the matter was referred to Valuation Committee to make a determination of the value of the concentrate on which the duty under the Sales Tax Act, 1990 is to be assessed.

Issue: Who shall determine the value/price of the concentrate when it is not properly assessed?

Analysis: The law had provided for determination by a Valuation Committee in cases such as the present when value/price could not be easily ascertained. However, the petitioners had arbitrarily determined value, without recourse to the Valuation Committee, and the High Court exercised its constitutional jurisdiction to ensure that the law was followed, and did so by referring the matter for determining value/price to the statutory Valuation Committee. The show cause notices issued under the Sales Tax Act, the Excise Act and the Ordinance were dependent on the correct ascertainment of value/price; the learned Judge had deferred action, if any, thereon till after the matter had been determined by the Valuation Committee.

Conclusion: When value/price could not be easily ascertain, it shall be determined by the Valuation Committee.

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5. **Supreme Court of Pakistan**
Sardar Muhammad Kamal-ud-Din Khan v. Syed Munir Syed and others.
Civil Petition No. 4222/2018
Mr.Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4222_2018.pdf

Facts: This petition assailed the judgment of a Single bench of the High Court which in exercise of revisional powers under section 115 of the Code of Civil Procedure, 1908 set aside concurrent orders of the Civil Judge and of the Additional District Judge and held that, 'the Arbitrator named in the agreement shall proceed expeditiously with the reference.'

Issues: i) Under what circumstances, High Court can exercise powers of revision under section 115 of the Code of Civil Procedure, 1908?

ii) Whether a party has been debarred from instituting arbitration proceedings once its suit was dismissed?

Analysis: i) The exercise of revisional powers is circumscribed by section 115 of the Code of Civil Procedure, 1908. Clauses (a) and (b) are attracted when jurisdiction, which is vested in a court, is not exercised or when jurisdiction is not vested in a court yet the court assumes jurisdiction. And, clause (c) is with regard to a court exercising jurisdiction illegally or with material irregularity. Conversely, when the order of a subordinate court is within its jurisdiction and such court has not exercised jurisdiction illegally or with material irregularity, revisional jurisdiction cannot be exercised. The power of revision cannot be used by a higher court to substitute its own discretion or authority.

ii) Under the Arbitration Act, arbitration may be initiated without intervention of a court (Chapter II) or with intervention of a court (Chapter III) or recourse may be had to arbitration in suits (Chapter IV). … Once a party has instituted a suit with respect to the subject-matter of the agreement, and having done so he could not, after the dismissal of his suit, resort to arbitration unilaterally and by disregarding the procedure prescribed by section 20 of the Arbitration Act, 1940.

Conclusion: i) High Court can exercise powers of revision under section 115 of the Code of Civil Procedure, 1908 when jurisdiction, which is vested in a court, is not exercised or when jurisdiction is not vested in a court yet the court assumes jurisdiction or court has exercised jurisdiction illegally or with material irregularity.

ii) A party is debarred from instituting arbitration proceedings once its suit was dismissed.

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6. **Supreme Court of Pakistan**
Noor Zaman v. The State.
Criminal Petition No. 406 of 2017
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel and Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._406_2017.pdf

Facts: The Petitioner was convicted by trial court for offence under section 302 PPC and his conviction was maintained by the High Court. The Petitioner has filed the instant petition for leave to appeal against the said conviction.

Issues: Whether the alternate plea of lesser penalty of an accused can be entertained in view of mere omission to put motive to the accused in his examination under section 342 of the Code of Criminal Procedure, 1898 or dispatch of casings on the day of his arrest?

Analysis: Examination of accused under section 342 of the Code is not a dogmatic ritual involving vitiating impact. The fundamental purpose of such examination is to enable the accused to explain any circumstance appearing in the evidence against him and that may be done at any stage of inquiry or trial without

previous warning and the accused is under no obligation even to respond to that. It is essentially a communication between accused and the Judge. The underlying purpose is not to take the accused by surprise. He must be aware of the accusation and material being adduced in support thereof. The record shows that the petitioner was fully aware of the motive set up by the prosecution as his counsel specifically cross-examined the witnesses about the ongoing dispute. Thus, it is not open to the defence that the petitioner did not know as to why he was in the dock. Similarly, presumption of genuineness is attached to the official acts both under article 129 (e) of the Qanun-i-Shahadat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973, supreme law of the land and, thus, in the absence of a positive proof to the contrary, pleaded specifically, a delayed dispatch by itself cannot be viewed with suspicion.

Conclusion: The alternate plea of lesser penalty of an accused cannot be entertained in view of mere omission to put motive to the accused in his examination under section 342 of the Code of Criminal Procedure, 1898 or dispatch of casings on the day of his arrest.

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7. **Supreme Court of Pakistan**
Bashir Muhammad Khan v. The State.
Criminal appeal no. 293 of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._293_2020.pdf

Facts: The appellant has assailed his conviction in murder case.

Issue: Whether benefit of doubt must be given to the accused, as a matter of right?

Analysis It is a settled law that 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's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt.

Conclusion: The accused is entitled to the benefit of doubt as a matter of right

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8. **Supreme Court of Pakistan**
Khalid Mehmood @ Khaloo v. The State.
Criminal Appeal No. 437 OF 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi and Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._437_2020.pdf

Facts: The appellant along with three other accused was tried but due to subsequent abscondance of the appellant the other co-accused were tried separately and acquitted while the instant appellant was tried subsequently and convicted by

trial court for offence under sections 302/34 PPC and his conviction was maintained by High Court. The appellant has challenged his conviction through the instant appeal.

Issues: Whether a trial court can rely upon the medical evidence that was brought on record in the earlier trial of the co-accused of the appellant?

Analysis: The Trial Court while convicting the appellant had relied upon the medical evidence comprising the post-mortem report and the statement of the doctor in the earlier trial of the three co-accused of the appellant but the same was never exhibited during the current trial of the appellant. This Court in the case of Nur Elahi vs. Ikram ul Haq and State (PLD 1966 SC 708) has categorically held that "witnesses should be examined only once and their statements read out as evidence in the other case is not supportable in law". It was further held that "every criminal proceeding is to be decided on the material on record of that proceeding and neither the record of another case nor any finding recorded therein should affect the decision and if the court takes into consideration evidence recorded in another case or a finding recorded therein the judgment is vitiated. "The judgment in Nur Elahi supra case was further reiterated by this Court in Muhammad Sarwar Vs. Khushi Muhammad (2008 SCMR 350) wherein it has been held that " the evidence recorded in one case may not hold good for the other case. " In view of the law laid down by this Court, it can safely be said that the learned Trial Court could not have relied upon the medical evidence that was brought on record in the earlier trial of the three co-accused of the appellant.

Conclusion: A trial court cannot rely upon the medical evidence that was brought on record in the earlier trial of the co-accused of the appellant.

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9. **Supreme Court of Pakistan**
Muhammad Samiullah v. The State
Criminal Petition No. 91 -K of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi and Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._91_k_2020.pdf

Facts: Petitioner was convicted by trial court for offences under Sections 409 PPC and Section 5(2) of Prevention of Corruption Act -II, 1947 on the allegation that he being in charge of Laboratory misappropriated some of the equipment. In appeal, the learned High Court of Sindh, maintained the conviction and sentences recorded by the learned Trial Court.

Issues: Can a trial court itself compare the admitted signature of an accused with his disputed signature and base his conviction on the same specially when there is no other direct evidence against the accused?

Analysis: Although Article 84 of the Qanun-e-Shahadat Order, 1984 empowers the Courts to compare the disputed signatures in order to ascertain whether the same is that of the person by whom it purports to have been written or made but in the matters where no direct evidence is available and the prosecution case exclusively rests on indirect evidence especially like the present case, then as an abundant caution the Courts while convicting an accused must adopt a safest way, which glorifies the true behind the safe administration of criminal justice. The conviction must be based on unimpeachable, trustworthy and reliable evidence.

Conclusion: Although courts can compare the admitted signatures of an accused with his disputed signatures but when there is no other direct evidence against the accused, the courts are not to base their finding merely on expert opinion.

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10. **Lahore High Court**
Rabeah Hussain and 3 others v. Nusrat Aftab and 6 others.
F.A.O. No. 73598 of 2021
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC854.pdf

Facts: The appellants filed a suit for declaration, rendition of accounts etc. The learned trial court after hearing both parties dismissed their application for grant of temporary injunction in the said suit. Hence, this appeal.

Issue: i) Whether the partnership stands dissolved in the event of death of a partner?
ii) Whether monetary loss constitutes irreparable loss?

Analysis: i) In the event of death of a partner, partnership stands dissolved, however, when a special clause has been incorporated in the Partnership Deed regarding continuation of the partnership in the event of death of a partner, the partnership would continue irrespective of section 42 of Partnership Act 1932.
ii) Monetary loss does not constitute irreparable loss rather in case a party is found entitled to any fiscal benefit, at the time of final adjudication of the matter, the court would be empowered to order in that regard but no relief can be granted under Order XXXIX rule 1 & 2 CPC.

Conclusion: i) The partnership stands dissolved in the event of death of a partner unless otherwise has been mentioned in the Partnership Deed.
ii) Monetary loss does not constitute irreparable loss.

11. **Lahore High Court**
Syed Ghazi Shah v. The State and another.
Crl. Appeal No.62165 of 2021
Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC1314.pdf

Facts: The appellant assailed his conviction for offences under sections 11-H, 11-I, 11-J and 11-N of the Anti-Terrorism Act, 1997.

Issues: Whether giving or receiving of fund for terrorism falls in category of offences under Anti-Terrorism Act?

Analysis: Any Terrorist Organization cannot run without economical support/finance and fund raising is back bone of the same. Hence section 11-H was incorporated in Anti-Terrorism Act, 1997 through Ordinance No. XXXIX of 2001 and both acts i.e. giving and receiving of fund were made offences. There is no two ways about it that if no one will give fund then there will be no question about receiving the same and both acts i.e. giving and receiving fund are inter-connected, bonded, co-related. Therefore, catching fund donor first is more necessary than fund receiver. When it is not the case of prosecution that someone was forcibly collecting fund then both i.e. fund donor as well as collector were to be jointly booked.

Conclusion: Yes, giving or receiving of fund for terrorism falls in category of offences under section 11-H of Anti-Terrorism Act.

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12. **Lahore High Court**
Zahoor Ahmed v. Zafar Abbas and another.
Civil Revision No. 232332 of 2018
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC1263.pdf

Facts: The petitioner through this revision petition assailed the order of appellate court, whereby, his application under section 12(2) CPC was rejected.

Issue: Whether factual controversy can be decided summarily without framing issues and recording evidence, especially when the application filed has been adorned with affidavits of the witnesses?

Analysis: It is the requirement of law that each and every party should be provided with open field to prove his stance by leading evidence, obviously, by adhering to the procedural law i.e. Qanun-e-Shahadat, 1984 and Code of Civil Procedure, 1908, in civil nature cases, because it is desired by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 that for determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process. Besides, the doctrine of promissory estoppel also plays a significant role, as after alleged out of Court settlement, the parties cannot go

aside and if any suchthing happened in between the parties and the respondents have stepped back, the petitioner can only prove the same by leading evidence.

Conclusion: Factual controversy cannot be decided summarily without framing issues and recording evidence, especially when the application filed has been adorned with affidavits of the witnesses.

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13. **Lahore High Court**
Rana Muhammad Ausaf v. House Building Finance Company Limited
RFA NO.17.2021,
Mr. Justice Abid Aziz Sheikh and Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC1347.pdf

Facts: Appellant assailed judgment & decree of learned Banking Court whereby suit for recovery filed by respondent was decreed against the appellant.

Issue: i) When the customer is liable to pay cost of fund?
ii) What is "date of default" for the purposes of cost of fund?

Analysis: i) From the plain reading of subsection (3) of section 3 of the Ordinance, it is evident that a judgment against a customer under the Ordinance would tantamount to declaration that he is in default of his duties under subsection (1) of section 3 of the Ordinance and decree obtained against customer shall provide for payment of cost of fund as determined under sub section (2) of section 3 of the Ordinance. Consequently, the customer who defaulted in discharge of his obligation under subsection (2) of section 3 of the Ordinance shall be liable to pay cost of fund from the date of default till the realization of amount.
ii) No precise definition of "date of default" has been provided in the Ordinance, however, from the conjunctive and holistic reading of provisions of sections 3, 9 and 17 of the Ordinance, it is manifest that when the finance facility is for specified period and not only the finance facility but also due date of payment has expired, than the "date of default" will be the date when the said facility and due date of payment has expired. This is also for the reason that as per settled law, no mark up can be allowed after expiry of finance period and at best only cost of fund can be allowed. However, when the finance facility and due date of payment of installments is still in field, than the "date of default" shall be the date when the financial institution triggered the incident of default and filed the suit under section 9 of the Ordinance for customer "default" in fulfillment of financial obligations, provided the suit is decreed and not found to be premature.

Conclusion: i) Upon default, the customer is liable to pay the cost of fund.
ii) When not only the finance facility but also due date of payment has expired, than the "date of default" will be the date when the said facility and due date of payment has expired. However, when the finance facility and due

date of payment of installments is still in field then "date of default" is date of institution of suit.

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14. **Lahore High Court**
M/s Three Star Hosiery Mills (Pvt.) Limited v. Mubarak Ali and others.
Writ Petition No.1436/2015 Along With Other Petitions.
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC1368.pdf

Facts: Through instant writ petition as well as other constitutional petitions, the petitioner has assailed the orders passed by the Authority under the Payment of Wages Act, 1936 along with challenging the vires of section 17(1)(a) of the said Act.

Issues: Whether non-deposit of wages or compensation as directed by the Authority under the payment of wages Act 1936, bars to file appeal by the aggrieved person?

Analysis: The right of appeal is not a natural or an inherent right of litigants but is a statutory right granted by different laws under different enactments and such a right had to be considered and examined in the light of the conditions prescribed by the law granting the said right. Plain reading of proviso to section 17(1)(a) of the Payment of Wages Act, 1936 manifests that no appeal under section 17 of the Act shall lie unless the memorandum of appeal is accompanied by a certificate of the Authority to the effect that the appellant has deposited with the Authority, the amount payable under the direction appealed against.

Conclusion: Non-deposit of wages or compensation directed by the Authority under the payment of wages Act 1936, bars to file appeal by the aggrieved person.

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15. **Lahore High Court**
Mst. Ghulam Fatima (deceased) through L.Rs. v. Muhammad Khan etc.
C.R.No.466-D of 2012
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC1355.pdf

Facts: The lady donor has questioned the gift mutation on the basis of fraud. The suit was dismissed and the appeal filed by the petitioners met the same fate. The petitioners through this civil revision assailed the judgment and decree of appellate court, whereby, his appeal was dismissed.

Issue: i) Whether it is necessary for the beneficiary of mutation to prove the transaction?
ii) Whether a party is allowed to lead evidence beyond its pleadings?
iii) Whether each entry in the revenue record gives fresh cause of action to an aggrieved person?

Analysis: i) There is no cavil with the settled legal proposition that mutation is not the document of title rather the beneficiary is to prove the transaction as mentioned in the mutation when challenged through independent evidence. However, each case is to be decided on its own merits. Likewise, it is the duty of the beneficiary to prove the factum of disputed gift.
ii) It is also well settled by the superior courts that no party is allowed to lead evidence beyond its pleadings, if produced, cannot be considered.
iii) Each entry in the revenue record gives fresh cause of action to an aggrieved person and adverse entries in the revenue record, even if allowed, but remained unchallenged, do not have the effect of extinguishing the rights of a party against whom such entries had been made. Even otherwise, any transaction of the document which is the result of fraud or misrepresentation can neither be perpetuated nor can it be protected on the ground of expiry of the period of limitation, whenever such transaction is assailed in a Court of law.

Conclusion: i) When the mutation is challenged, the beneficiary has to prove the transaction through independent evidence.
ii) A party is not allowed to lead evidence beyond its pleadings.
iii) Each entry in the revenue record gives fresh cause of action to an aggrieved person.

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16. **Lahore High Court**
Commissioner of Income Tax v. M/s Grays Leasing Ltd.
PTR No.354 of 2008
Mr. Justice Shahid Jamil Khan & Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC9393.pdf

Facts: This Tax Reference and connected reference applications are directed against consolidated order of the Income Tax Appellate Tribunal wherein the Tribunal held that the lease rental income was assessable u/s 12(19) of the repealed Income Tax Ordinance,1979 on actual receipt basis and not on the accrual basis.

Issues: Whether Income Tax Appellate Tribunal was justified to hold that the lease rental income was assessable u/s 12(19) of the repealed Income Tax Ordinance, 1979 on actual receipt basis and not on the accrual basis?

Analysis: It is the case of the department that amounts of lease rentals, either paid or payable by the lessee against the leased assets – either owned by the assessee or not – shall be the deemed income of the assessee, treatable as income from business in terms of sub- section (19) of section 12 of the Repealed Ordinance. Textual and literal reading of the sub-section (19) of section 12 of the Repealed Ordinance affirms that lease rentals, received and receivable, are to be the deemed income of the assessee, which have had to be accounted for while submitting return of income.

Conclusion: Income Tax Appellate Tribunal was not justified to hold that the lease rental income was assessable u/s 12(19) of the repealed Income Tax Ordinance, 1979 on actual receipt basis and not on the accrual basis.

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17. **Lahore High Court**
Zahid Mehmood v. The State, etc.
Crl. Misc.No.64960-B of 2021
Mr. Justice Sardar Ahmad Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC9373.pdf

Facts: The petitioner seeks pre-arrest bail in offences under sections 419, 420, 506, 353, 186, P.P.C, mainly under allegation of quackery.

Issues: i) What is difference between malpractice and quackery?
ii) What steps should be taken to eliminate quackery?
iii) How the matters of quackery should be dealt with at bail stage?

Analysis: i) According to Oxford learner's dictionaries, malpractice is defined as a "careless, wrong or illegal behavior while in a professional job". In other words, it is an unlawful, unprofessional and unethical behavior of a professional of a particular field… The terms "quackery" is entirely different from "malpractice" with regards to its definition, implications and legal consequences. Quackery is defined as, "the promotion of fraudulent or ignorant medical practices". A "quack" is an individual who practices quackery. In other words, a quack is someone who is involved in medical malpractice without possessing required qualifications, professional authority and legal right to undertake such activities in the first place.

ii) The relevant regulatory bodies and licensing authorities have legal duty to lay down clear guidelines with regard to the professional's competencies in relation to qualifications. It should be made very clear what is expected from a registered professional and what is considered as unprofessional and unethical so that in the event of a malpractice and quackery, appropriate legal action may be taken in line with the set standards. All such bodies should categorically prohibit quackery in all circumstances and recommend legal action against those who are found guilty. Like registered doctors with Pakistan Medical Council (PMC), there should be up to date registers for other health professionals providing the details of their credentials, scope of practice and permitted professional duties… In order to achieve these goals, a close collaboration between various licensing bodies is required. There is a desperate need that all health related institutions and governing bodies come up with a collective policy to stop quackery in Pakistan. It is understood that any policies and guidelines would only become effective if they are implemented according to the required standards. The law enforcement agencies and the judicial system need to appreciate the gravity of quackery and its impact on people's lives in Pakistan. Quackery should be classed as a serious crime. The perpetrators should be brought to justice and be held responsible for

compensation to the losses incurred by quackery.
iii) The act of quackery is not only against society rather humanity, thus, bail matter in such like cases should be decided by the Court with dynamic approach.

Conclusion: i) Malpractice is defined as a "careless, wrong or illegal behavior while in a professional job" while the term "quackery" is defined as, "the promotion of fraudulent or ignorant medical practices".
ii) It is collective responsibility of health professionals, health institutions, and governing bodies, law enforcement agencies to take clear, urgent and practical steps to stop this crime of quackery against humanity.
iii) The Court should deal the matters of quackery at bail stage with dynamic approach.

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18. **Lahore High Court**
Commissioner Inland Revenue v. M/s Niagra Mills (Pvt.) Ltd.
ITR No.34199/2019
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC1362.pdf

Facts: The petitioner assailed the order of Appellate Tribunal Inland Revenue, Lahore Bench, Lahore, relating to Tax years 2014 and 2015.

Issues: i) Whether the tax payer's income which is subjected to final taxation under income Tax Ordinance, 2001 is required to furnish a return of income u/s 114?
ii) Whether there is any bar on power of commissioner to amend a deemed assessment order?

Analysis: i) In terms of sub-section (3) of section 169 of the Ordinance, 2001, the taxpayer's, with respect to such income as subjected to final taxation under the Ordinance, 2001, is not required to furnish a return of income under section 114 of the Ordinance, 2001 but, in the alternative, shall furnish statement of final tax in terms of section 115(4) of the Ordinance, 2001, declaring tax due. The assessment made by the taxpayer regarding income, subject to final taxation, furnished through the statement shall be treated as deemed assessment order under section 120 of the Ordinance, 2001.
ii) Commissioner is competent and eligible to examine, consider and review the deemed assessment order and to determine the real character / status of the income and classify its identity, either falling under the FTR or NTR. It is pertinent to mention that deemed assessment order, based on statement of income furnished under section 115(4) of the Ordinance, can be altered / amended by the Commissioner under section 122 of the Ordinance, 2001. This exercise of jurisdiction, under section 122 of the Ordinance, 2001, cannot be construed to offend the protections and privileges otherwise extended to the income, subject to final tax under the provisions of the Ordinance, 2001.

Conclusion: i) The tax payer's income which is subjected to final taxation under income Tax Ordinance, 2001 is not required to furnish a return of income u/s 114 of Ordinance 2001.
ii) No bar has been placed upon the power of the Commissioner to proceed to amend deemed assessment order, be it a return of income tax filed under section 114 or a statement under section 115(4) of the Ordinance, 2001.

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19. **Lahore High Court**
Commissioner Inland Revenue v. Toyota Walton Motors, etc.
PTR No.268 of 2014
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC1282.pdf

Facts: The department filed Reference Application against order of learned Appellate Tribunal Inland Revenue, Lahore Bench.

Issues: i) Whether revised return(s) filed after amendments introduced through Finance Act 2009 & 2010 must meet pre-conditions imposed through amendments?
ii) Whether amendments made in sub-sections (6) and (6A) of section 114 of the Income Tax Ordinance 2001 are to be applied retrospectively or prospectively?

Analysis: i) Firstly by Finance Act 2009 and secondly through Finance Act 2010 amendments were made and sub-section (6-A) of section 114 of the Ordinance, 2001 was added. Second proviso thereto imposes pre-conditions upon furnishing of revised return once notice under section 122(9) was issued. Taxpayer cannot claim any substantive right to submit revised return unconditionally, for five years, after furnishing of original tax return. Legislature has imposed conditions upon the privilege of filing revised return(s), which revised returns if filed after the amendments introduced through Finance Act 2009 and Finance Act 2010, have had to comply with and fulfill pre-conditions.
ii) There is no cavil that amendments made in sub-sections (6) and (6A) of section 114 are not applied retrospective but prospectively.

Conclusion: i) Revised return(s) filed after amendments introduced through Finance Act 2009 & 2010 must meet pre-conditions imposed through amendments.
ii) Amendments made in sub-sections (6) and (6A) of section 114 of the Income Tax Ordinance 2001 are applied prospectively.

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20. **Lahore High Court**
Waqar Hussain Bhatti v. The State etc.
Crl. Misc. No. 25327/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC1464.pdf

Facts: The Petitioner seeks pre-arrest bail in offence under section 489-F of PPC.

Issue: i) Whether delay in registration of FIR is not always fatal for the prosecution?

ii) Whether the Petitioner being an agent of principal can be held liable under section 489-F PPC?

Analysis: i) It is trite that delay in registration of FIR is not always fatal for the prosecution, more particularly in cases involving white collar crimes or where the entire evidence is documentary. The court considers the impact of delay in every case with reference to its peculiar facts and circumstances. The same holds true of the offence under section 489-F PPC though, generally speaking, delay in these matters is of little consequence as they are based on dishonor of a cheque.
ii) The foundational elements to constitute an offence under section 489-F PPC are: (a) the cheque should be valid; (b) it should be issued with dishonest intent; (c) it should be for repayment of a loan or fulfillment of an obligation; and (d) it should have been dishonored. The offence of issuing a bad cheque in Pakistan is governed by section 489-F PPC. Since it employs the terms "whoever" and "issues", it would include the duly authorized agent/attorney who draws the cheque. Nevertheless, the prosecution would be required to establish dishonesty on his part to make him liable to criminal sanction.

Conclusion: i) The delay in registration of FIR is not always fatal for the prosecution.
ii) The Petitioner being an agent of principal can be held liable under section 489-F PPC.

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21. **Lahore High Court, Lahore**
Mst. Sana Khursheed v. Government of the Punjab through Chief Secretary and 9 others.
W.P. NO. 30364 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8826.pdf

Facts: Being quadriplegic and facing obstacles in her access to the public, educational & commercial places, petitioner approached the Respondents to make arrangements for construction of ramps, lifts & toilets for Petitioner's alike disabled persons (PWDs) but no action in this regard was taken by Respondents despite of earlier directions passed in another writ petition in the light of the judgments of the August Supreme Court of Pakistan, which omission of respondents according to petitioner infringed her fundamental rights of life, dignity & freedom of movement. The connected Writ Petition is also aimed at seeking directions to the concerned quarters to provide special facilities, recreational activities, special institutions, special libraries & other basic facilities for Special Children and to formulate policies & mechanisms as well as to enact laws for the said purpose.

Issue: How the justice has walked by delivering writ of mandamus and appreciating the role of civil society, Government to draft Punjab Empowerment of Persons with Disabilities Act, 2021 which gives rights to people with disability

including rights of privacy, accessibility & mobility, equity in education, right to home & family, access to justice and right to inherit & own property etc?

Analysis: Under the Constitution, Part-II, Chapters 1 & 2, the fundamental rights are provided to the citizens of Pakistan. While examining Articles, 3, 9, 14, 25 and 35 of the Constitution, the State should embrace its citizens like a mother, guardian & protector who do not apply unified standards to provide children similar kind of things that she gave to one child but diversify the provisions with respect to particular requirements of each child. Article 38 of the Constitution states that the State shall secure the well-being of the people irrespective of sex, caste, creed or race, by raising their standard of living. While Article 38(d) of the Constitution deals with provision of basic necessities of life such as medical relief. Article 4 of the Constitution clearly provides inalienable right of every citizen to be treated as per law and no action detrimental to the life, liberty & body shall be taken except as per law and this Article has to be read with Articles 9 & 25 of the Constitution. The Article 25 of the Constitution reaffirmed this pledge with an unequivocal & definite declaration that all citizens are equal before law and are entitled to equal protection of law. However, it further delineates that the state shall even then be permitted to make special provision for mother & children. This exclusivity of the subject with respect to the women & children further emphasized that equality does not denote equal in accordance with all but equal in accordance with the subject and most importantly as per the object, which is to be achieved. Since Article 35 of the Constitution deals with protection of marriage, family, the mother and the child, therefore, similar is the case with PWDs. Like women & children, they require special attention of the State and its institutions in order to claim equal protection of law, which is their fundamental right under Article 25. Moreover, Article 26 of the Constitution also dictates that there shall be no discrimination against any citizen on the ground of race, religion, caste, sex & place of residence in respect of access to places of public entertainment or resort and PWDs are well within their fundamental right to claim protection of this Article and it is the duty of Government, government agencies, regulatory bodies and other establishments offering public to access for the purposes of entertainment, shopping, eating, recreation etc to fulfill this solemn pledge by provision of adequate means to access those places by the PWDs because under Article 14 of the Constitution, they have an inviolable right to dignity and a dignified access to the public places is their inviolable fundamental right and an provision that of is a fundamental duty of the State and the relevant authorities accordingly. Moreover, under Article 37(f) of the Constitution it is the duty of State to enable PWDs, like all other citizens, through education, industrial development and all other methods to participate fully in all forms of national activities, including employment in the service of Pakistan. The State must therefore, distinguish and address the abilities and inabilities of citizens to

obliterate the challenges which hampers their meaningful exercise of fundamental rights as provided and guaranteed to them by the Constitution.

Conclusion: State being provider, the Government being executor and the Judicature being custodian of the fundamental rights cannot absolve from their responsibilities towards the PWDs. In view of the constitutional provisions mentioned above and by following the judgment of the Hon'ble Supreme Court of Pakistan and the judgments of Hon'ble High Court, the Government Departments, performing their functions within jurisdiction of this Court, in connection with the affairs of Province of Punjab, and other local authorities under the respective laws were directed that The Punjab Empowerment of Persons with Different Abilities Act, 2021, once enacted and notified by the Assembly, shall be implemented in letter and spirit in order to protect the fundamental rights of PWDs.

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22. **Lahore High Court**
Mst. Alia Shameem v. National Bank of Pakistan etc.
E.F.A. No.05 of 2016
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC1231.pdf

Facts: The appellant through this Execution First Appeal has challenged the judgment of the learned Banking Court whereby her objection petition was dismissed.

Issue: i) Whether the duty of the court under Order XXI Rule 66 of the CPC can be delegated to learned court-auctioneer?

ii) Whether in case of fraud in auction proceedings, time against the victim runs from the definite knowledge or from the date of auction?

Analysis: i) Order XXI, Rule 66 of the CPC imposes the duty upon the Court to ensure that the proclamation of sale is in the language of the Court, when the Property is to be sold by the public auction, which at the same time should be drawn after notice to the concerned Judgment Debtor and the provision of Order XXI, Rule 66 of the CPC have been held mandatory in nature. The unbridled delegation of such powers to the learned court-auctioneer is not permissible in law.

ii) It is settled preposition of law that when auction is challenged on the ground of fraud in publication and the conduct of sale, the time can only run against the victim upon gaining a clear and definite knowledge of the facts which constitutes the fraud. The following extract of the Judgment in case titled Nur Ahmed Chowdhury Vs. Ruhul Amin Chowdhury"(PLD 1961 Dacca 589) is highly relevant. "In a case to have the sale set aside under Order XXI, rule 90 of the Civil Procedure Code on the ground of fraud in the publication and conduct of the sale, the judgment-debtor must have knowledge not merely of the fact of sale but a clear and definite knowledge of the facts which constitute the fraud before time can run against him. It is not sufficient to know about some hints and clues which, if vigorously and actively followed up, might have led to a complete knowledge of the fraud."

Conclusion: i) The duty of the court under Order XXI Rule 66 of the CPC cannot be delegated to learned court-auctioneer and is not permissible in law.
ii) In case of fraud in auction proceedings, time against the victim runs from the definite knowledge of the facts which constitute the fraud.

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23. **Lahore High Court**
Meezan Bank Ltd. & others v. Syed Hassan Mehmood Shah.
RFA No.176 of 2021
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC1241.pdf

Facts: The respondent filed suit for declaration and permanent injunction with respect to "leased vehicle" against purported repossession of the leased vehicle. Appellants filed application in terms of section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Ordinance 2001) for grant of unconditional leave to defend the suit. Upon filing of this application, learned Banking Court forthwith proceeded to dispose of the suit without deciding the application for leave to defend the suit.

Issues: Whether Banking Court is bestowed with the power to grant final relief in the suit without considering the application for leave to defend?

Analysis: Banking Court is obliged to consider application for leave to defend and to accept or reject the same, keeping in view if any question of law and facts requiring evidence is raised therein as well as if the conditions given in sub-sections 3 to 5 of section 10 of the Ordinance, 2001 are fulfilled. The Banking Court is required by law to examine application for leave to defend before proceeding to decide the suit. If learned Banking Court has opted to dispose of the case without considering any plea raised in application for leave to defend, then it is not tenable in law.

Conclusion: Banking Court has not been bestowed with the power to grant final relief in the suit without considering the application for leave to defend.

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24. **Lahore High Court**
Qasim Ali v. The State
Criminal Appeal No.363/2020
Mr. Justice Muhammad Waheed Khan, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC1268.pdf

Facts: The appellant was convicted in case under section 9(b) of the Control of Narcotics Substances Act, 1997 and he was placed on probation. He preferred the instant appeal with the sole intention that the conviction recorded against him may not jeopardize his future prospects.

Issues: i) Whether right of appeal provided under section 8 of Probation of offenders Ordinance, 1960 (Ordinance 1960) is available to an accused who was convicted upon his confession?

ii) If right of appeal is not available then what would be the remedy to a person aggrieved of order of probation?

iii) Whether the conviction under the Ordinance 1960 can jeopardize the future prospects of the convict?

iv) What is the object of section 11 of the Ordinance, 1960?

Analysis: i) The right of appeal granted under section 8 of Ordinance, 1960 is obviously to assail any terms of probation that affects the right of accused. This section is dealing with conviction one passed on merits and not on the basis of confession; therefore, legal position would stand as incorporated u/s 412 of Cr.P.C

ii) When appeal is barred, remedy of revision is available to the affected person and even this remedy is available to the persons who are convicted on the basis of confession.

iii) Sub-section (2) of Section 11, of the Ordinance, 1960 makes it clear that where any law imposes any disqualification or disability upon a convicted person then such conviction of an offender under the Ordinance, 1960 shall stand disregarded for the purpose of such law which imposes any disqualification or disability upon convicted persons.

iv) Effect of section 11 of Ordinance 1960 reflects the intention of legislature to destigmatize the one who had once been trapped or caught into a penal regime should become a useful citizen and to urge his social contribution and participation in the economic life .This intention should be given a broader touch even for those who are already in the public service to save their families from starvation or like sufferings.

Conclusion: i) Section 8 of Ordinance 1960 deals with conviction one passed on merits and not on the basis of confession.

ii) If the appeal is barred then remedy of revision is available to the aggrieved person.

iii) The conviction under the Ordinance, 1960 cannot jeopardize the future prospects of the convict.

iv) The intention of legislature regarding section 11 of the Ordinance 1960 is to de-stigmatize the one who had once been trapped or caught into a penal regime so to enable him to become a useful citizen.

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25. **Lahore High Court**
Tanveer Ahmad and another v. Addl. District Judge and others
W.P. No.10298 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC1456.pdf

Facts: Petitioners in this Constitutional petition have assailed orders of the courts below whereby application under Order IX, Rule 7, C.P.C. for setting aside of ex parte proceedings order was allowed and civil revision was dismissed.

Issue: What does "adjourned the hearing of suit" mean for the purpose of filing of application for setting aside ex-parte proceedings under Order IX Rule 7 C.P.C?

Analysis: Rule 7 of Order IX C.P.C. contemplates that where the court adjourned the hearing of the suit ex parte, the defendant at or before such hearing and assigning a "good cause" for his previous non-appearance may upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the date fixed for his appearance. The opening phrase of Order IX, Rule 7, C.P.C. "where the court had adjourned the hearing of the suit ex parte" is wide enough to include not only the adjournment as a matter of right or the first adjournment in the case where the summons had been issued for framing of issues only; but also includes successive adjournments given under Order XVII, Rule 1, C.P.C. and that terminus a quo for an application to set aside the ex parte order will be the date when the case is actually heard.

Conclusion: Under Order IX Rule 7 C.P.C., "adjourned the hearing of suit" includes not only the first adjournment but also includes successive adjournments given under order XXVII Rule 1 of CPC.

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26. **Lahore High Court**
Ayesha Sajid v. Federation of Pakistan.
W.P. No.78490 of 2021.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC8858.pdf

Facts: This constitutional petition seeks grant of injunctive/ restraining order against the recovery of outstanding amounts, adjudged being payable under relevant tax statute, on the premise that appeal against said determination is still pending adjudication in terms of the statutory remedy prescribed in relevant law.

Issues: i) Whether interim injunction can be granted against the recovery of outstanding amounts, adjudged being payable under relevant tax statute, on the premise that appeal against said determination is still pending?
ii) What is distinction between ratio decidendi and obiter dicta?

Analysis: i) One of the elemental principles is that no irreparable damage or injury would occasion or claimable when alleged / threatened loss is ascertainable in monetary terms. The plea of alleged / threatened financial loss is otherwise misleading, as no monetary loss or injury would occasion to the petitioner upon payment of claimed tax liability during the pendency of appeal, which if decided in favour of the petitioner would result in annulment of the disputed liability, entitling petitioner taxpayer to claim refund(s), in monetary terms or by way of adjustments by resorting to statutory mechanism provided for allowing refunds,

and monetary compensation thereupon, in case of delayed payment, subject to the conditions. Consequently, upon absence of satisfaction that injunction solicited would not have the effect of impeding collection of public revenues, this court cannot grant injunction when no case of any jurisdictional error is otherwise made out.

ii) What was necessary for the decision of the issue in the case is ratio decidendi and is binding but what was said 'by the way' and was entirely unnecessary for the decision of the case or what is a mere gratuitous statement of the law is obiter dicta and is not binding.

Conclusion: i) Interim injunction cannot be granted against the recovery of outstanding amounts payable under relevant tax statute, on the premise that appeal against said determination is still pending when no case of any jurisdictional error is otherwise made out.

ii) What was necessary for decision of case is ratio while what entirely unnecessary for the decision of the case is obiter dicta.

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27. **Lahore High Court**
Ilyas Ahmad v. Additional District Judge, Sialkot and seven others.
Civil Revision No. 1122 of 2011.
Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2019LHC4975.pdf

Facts: The suit for declaration and permanent injunction was decreed. The appeal and civil revision against said decree was also dismissed.

Issues: In what situation the certified copy is not admissible in evidence?

Analysis: In the absence of original document, its certified copy if not admissible evidence and notwithstanding the presumption of correctness being attached with the certified copy of a document pertaining to the official record, if the validity or the existence of the document is disputed and original is not produced, its certified copy would not be admissible in evidence without proving the non-availability of the original.

Conclusion: Certified copy is not admissible in evidence without proving non-availablity of original if it its validity and existence is disputed.

28. **Lahore High Court**
Dr. Qurban Ali. V. Province of Punjab and others
Writ Petition No.41383 of 2020
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC1204.pdf

Facts: Through writ petition, the petitioner sought declaration to be promoted to BS-19, pursuant to enforcement of merger effected through Notification No. SO(A-I)7-63/2017 of 05.06.2018.

Issues: i) How posts in BS 19 & above are filled through promotion?
ii) Whether any grievance with respect to the terms and conditions of service can be invoked through Constitutional Jurisdiction of High Court?

Analysis: i) Posts in BS-19 and above for the purpose of promotion(s) are deemed as selection posts, which are required to be filled on selection-cum-merits basis, and petitioners could not claim promotion to the selection posts, simplicitor upon purported merger / upgradation, in the guise of Notification – which per se subjected promotions to the upgraded posts in accordance with the amended service rules.
ii) This court will not embark up on an exercise to review the terms and conditions of service, in garb of plea for enforcement of Notification. Any grievance with respect to terms and conditions of service can be raised through invoking remedies provided by law – no such remedy is available before this Court in the wake of jurisdictional limitation placed in terms of Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) Posts in BS 19 & above are required to be filled on selection-cum-merits basis in accordance with the service rules.
ii) Any grievance with respect to the terms and conditions of service cannot be invoked through Constitutional Jurisdiction of High Court and can be got redressed by invoking remedies provided by law.

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29. **Lahore High Court**
The State v. Muhammad Arshad
Murder Reference No.16 of 2019
Muhammad Arshad v. The State.
Criminal Appeal No. 440–J of 2019
Mr. Justice Sadiq Mahmud Khurram Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC8952.pdf

Facts: The appellant has assailed his conviction in murder case. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant/convict.

Issues: i) Whether prosecution is bound to prove the motive, if alleged and in case prosecution fails to prove motive, the same could be taken as mitigating

circumstance?
ii) What is the evidentiary value of recovery which is effected in violation of section 103 Cr.P.C.?

Analysis i) If a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused.
ii) If the Investigating Officer of the case did not join any witness of the locality during the recovery then it is clear violation of section 103 Code of Criminal Procedure, 1898 and therefore cannot be used as incriminating evidence, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

Conclusion: i) Non-proof of motive may be considered a mitigating circumstance in favour of the accused.
ii) Evidence collected in violation of section 103 Cr.P.C. cannot be used as incriminating evidence and is hit by the exclusionary rule of evidence.

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30. **Lahore High Court**
The State v. Abdul Rehman
Murder Reference No.10 of 2019
Abdul Rehman v. The State.
Criminal Appeal No. 353-J of 2019
Mr. Justice Sadiq Mahmud Khurram & Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC8978.pdf

Facts: The appellant has challenged his conviction for offence under section 302 PPC through the instant appeal while the trial court sent reference under Section 374 Cr.P.C. for the confirmation or otherwise of death sentence awarded to the convict.

Issues: i) Whether in the absence of physical proof or the reason for the presence of chance witnesses at the crime scene, the same can be believed?
ii) Whether the non-intervention of the witnesses present at the scene of occurrence to save the life of their near one casts doubt on the presence of witnesses at the spot?
iii) Whether the delay in registration of FIR can cast doubt regarding the non-presence of alleged witnesses of the occurrence at the place of occurrence at the time of occurrence?
iv) Whether the non-production of inhabitants of the place of occurrence cast doubt on the veracity of the prosecution case?
v) Whether the delay in conduct of post mortem can also cast doubt on the presence of witnesses at the place of occurrence?

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and are also under a duty to prove their presence by producing some physical proof of the same.

ii) The allowance of prosecution witnesses to the assailant of causing the death of their near and dear relative speaks loudly that if they had been present at the place of occurrence, they would have definitely intervened and prevented the assailant from murdering their dear one. Such behavior, on part of the witnesses, runs counter to natural human conduct and behavior. Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) When no reason, much less plausible, has been given by the prosecution at any stage for such deferral in reporting the matter to the police, sufficient doubts arises and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.

iv) If the Investigating Officer of the case failed to include in investigation, the inhabitants of the house where the occurrence had taken place and the failure of the prosecution to produce the said inhabitants of the place of occurrence, reflects poorly upon the veracity of the prosecution case. Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

v) When no explanation was offered to justify the delay in conducting the post mortem examination, it clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant escaping from the place of occurrence while armed were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative after consultation and concert.

Conclusion: i) In the absence of physical proof or the reason for the presence of chance witnesses at the crime scene, the same cannot be believed.

ii) The non-intervention of the witnesses present at the scene of occurrence to save the life of their near one casts doubt on the presence of witnesses at the spot.

iii) The delay in registration of FIR can cast doubt regarding the non-presence of alleged witnesses of the occurrence at the place of occurrence at the time of occurrence.

iv) The non-production of inhabitants of the place of occurrence cast doubt on the veracity of the prosecution case.

v) The delay in conduct of post mortem can also cast doubt on the presence of witnesses at the place of occurrence.

31. **Lahore High Court**
The State v. Abdul Wahid alias Budho
Murder Reference No.18 of 2019
Abdul Wahid alias Budho v. The State.
Criminal Appeal No. 436-J of 2019
Mr. Justice Sadiq Mahmud Khurram Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9090.pdf

Facts: The appellant has assailed his conviction in murder case. The trial court submitted murder reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) What is effect of delay in lodging the FIR?
ii) What is effect of delay in conducting post mortem examination?
iii) What is the evidentiary value of recovery which is effected in violation of section 103 Cr.P.C.?
iv) Whether conviction could be based on the medical evidence alone?
v) Whether report of DNA is per se admissible? If so, what is its evidentiary value?
vi) Whether accused can claim benefit of doubt as a matter of right?

Analysis i) It can be easily inferred that the FIR was registered with a delay for the simple reason that no witnesses of the occurrence were available…. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences there absence at the time of occurrence, at the place of occurrence.
ii) When no explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant escaping from the place of occurrence while armed were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative after consultation and concert.
iii) When the Investigating Officer of the case, did not join any witness of the locality during the recovery then it is clear violation of section 103 Code of Criminal Procedure, 1898 and therefore cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.
iv) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit.
v) A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding DNA analysis is per se admissible in evidence under Section 510, Cr.P.C. Since DNA analysis report is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis. Credibility of the DNA test inter alia

depends on the standards employed for collection and transmission of samples to the laboratory. Safe custody of the samples is pivotal. Thus, in every case the prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable,safe and secure. Any break in the said chain or lapse in the control of the sample would make the DNA test report unreliable.

vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) If FIR is registered with a delay, sufficient doubts arise and inference against the prosecution is drawn.

ii) Delay in the post mortem examination has an adverse inference that the prosecution witnesses were not present at the time of occurrence and the sole purpose of causing such delay is to procure the presence of witnesses and to advance a false narrative to involve any person.

iii) Evidence collected in violation of section 103 Cr.P.C. cannot be used as incriminating evidence and is hit by the exclusionary rule of evidence.

iv) When all the other pieces of evidence are disbelieved and discarded, then conviction cannot be based on medical evidence alone.

v) PFSA report regarding DNA analysis is per se admissible in evidence under Section 510, Cr.P.C., however it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration.

vi) Benefit is to be extended to an accused not as a matter of concession but as of right.

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32. **Lahore High Court**
The State v. Muhammad Awais
Murder Reference No.14 of 2017
Muhammad Awais v. The State
Criminal Appeal No. 168-J of 2017
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9201.pdf

Facts: Appellant assailed his conviction in murder case while the learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the convict.

Issue: i) Whether in a case of circumstantial evidence, is it necessary for the prosecution to establish each instance of incriminating circumstance?

ii) What are the pre-requisites for believing last seen evidence?

iii) What does the term “rigor mortis” mean?

iv) Whether the DNA analysis report can be treated as primary evidence?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each

instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof.

ii) Pre-requisites for believing last seen evidence are that proximity of time and nearness of the place of occurrence. Interpreting these two principles, it is required that deceased shall be seen in the company of the accused by the witnesses some short time before happening of the incident and the place of murder may not be far away from the place of lastly seeing the deceased in the company of the accused by the prosecution witnesses. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which rigor mortis disappears is called algor mortis.

iv) DNA analysis report is reckoned as a form of expert evidence in criminal cases; it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis. Credibility of the DNA test inter alia depends on the standards employed for collection and transmission of samples to the laboratory. Safe custody of the samples is pivotal. Thus, in every case the prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the said chain or lapse in the control of the sample would make the DNA test report unreliable.

Conclusion: i) In a case of circumstantial evidence, is it necessary for the prosecution to establish each instance of incriminating circumstance.

ii) The pre-requisites for believing last seen evidence are that proximity of time and nearness of the place of occurrence.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death.

iv) DNA analysis report is reckoned as a form of expert evidence in criminal cases; it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration.

33. **Lahore High Court**
The State v. Muhammad Fayyaz.
Murder Reference No. 04 of 2018
Muhammad Fayyaz v. The State etc.
Crl. Appeal No. 70 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9162.pdf

Facts: The appellant has assailed his conviction in murder case and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellant being originated from the same judgment.

Issues: i) Whether credit of a witness is impeached through improvement in previous statement?
ii) Whether blood stained clothes of witnesses of place of occurrence are necessary to be taken into possession by the investigation officer?
iii) Whether delay in lodging FIR is fatal to the prosecution case?
iv) Whether delay in the post mortem examination is reflective of the absence of witnesses?
v) Whether same evidence can be used either for convicting accused or acquitting some of them facing trial in the same case?
vi) Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused?

Analysis: i) Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence and it is not safe to place reliance on their statements.
ii) The I.O of the case must take the clothes of witnesses which were stained with blood, into possession for its examination and grouping with that of the blood-stained clothes of the deceased. The same would have provided the strongest corroboration to the testimony of the eye witnesses. Omission to do the same strikes at the roots of the case of the prosecution and lays bare the untruthful and false claim of the said witnesses to have been present at the place of occurrence, at the time of occurrence.
iii) The delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station, in such circumstances chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out.
iv) Delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.To repel any adverse inference for such a delay, the prosecution has to provide justifiable reasons therefor.
v) If a witness is not coming out with the whole truth, then his evidence is liable

to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

Conclusion: i) Yes, credit of a witness is impeached through improvement in previous statement.

ii) Yes, blood stained clothes of witnesses of place of occurrence is necessary to be taken into possession by the investigation officer.

iii) Yes, delay in lodging FIR is fatal to the prosecution case.

iv) Yes, delay in the post mortem examination is reflective of the absence of witnesses.

v) No, same evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

vi) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused.

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34. **Lahore High Court**

The State v. Muhammad Shahbaz alias Amir Shahbaz alias Shahbazi.
Murder Reference No.19 of 2019
Muhammad Shahbaz alias Amir Shahbaz alias Shahbazi v. The State etc.
Criminal Appeal No. 534 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9132.pdf

Facts: The learned trial court convicted the appellant for the offence of murder. Feeling aggrieved, the appellant assailed his conviction and sentence whereas the learned trial court submitted Murder Reference seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) What is plea of alibi?

ii) Upon whom the burden to prove the plea of alibi lies?

iii) Whether plea of alibi is an exception under PPC or under any other law?

Analysis: i) The word 'alibi' is a Latin expression which means and implies in common acceptation 'elsewhere'. It is a defence based on the physical impossibility of participation in a crime by an accused by placing the latter in a location other than the scene of the crime when an offence was committed.

ii) When a plea of alibi is taken by the accused, the burden is upon him to establish the same by positive evidence after onus, as regards presence on the spot, is established by the prosecution and strict proof is required for establishing

the plea of alibi.

iii) Plea of alibi is not an exception (special or general) envisaged in the Pakistan Penal Code, 1860 or any other law. It is only a rule of evidence recognized under Article 24 of the Qanun-e-Shahadat 1984 that facts which are inconsistent with the fact in issue are relevant.

Conclusion: i) The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place.

ii) It is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty.

iii) Plea of alibi is not an exception under PPC or under any other law.

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35. **Lahore High Court**
The State v. Khadim Ali.
Murder Reference No.23 of 2018
Khadim Ali and another Vs. The State and another.
Criminal Appeal No. 418 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr.Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC8907.pdf

Facts: The appellants have assailed their conviction in murder case while Murder reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentences of death awarded to the appellants was submitted.

Issue: i) When the testimony of a witness can be believed?

ii) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of the appellants can be believed against the appellants?

iii)What is evidentiary value of Recovery?

iv) Whether motive is only a corroborative piece of evidence?

v) Whether accused is entitled to the benefit of doubt as a matter of right?

Analysis: i) A witness to be relied upon, apart from being independent and disinterested, must be truthful and his evidence must be confidence inspiring and the mere fact that a witness is disinterested or having no motive to falsely implicate an accused in the case, can never be the sole reason to believe his testimony.

ii) Once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in uno falsus in omnibus.

iii) Recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

vi) Motive is a corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction.
v) It is settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The witness to be relied upon, apart from being independent and disinterested, must be truthful and his evidence must be confidence inspiring
ii) If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole.
iii) Recovery is only a corroborative piece of evidence.
vi) Motive is only a corroborative piece of evidence.
v) Benefit od doubt is to be extended to an accused not as a matter of concession but as of right.

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36. **Lahore High Court**
The State etc. v. Shabbir Ahmad alias Shabru alias Asim etc.
Capital Sentence Reference No.4 of 2017 etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9306.pdf

Facts: Through the Criminal Appeals the convicts assailed their convictions and sentences u/s 302, 324, 337 F(v) ,337-A(i), 337-F(i), 337-F(ii), 337-F(iii), 337-F(iv), 148 and 149 PPC, sections 7(a) ,7(c) and 7(ff) of the Anti-Terrorism Act, 1997 and under section 3 of the Explosive Substances Act, 1908. The learned trial court submitted Reference u/s 374 Cr.P.C. read with section 30(2) of Anti-Terrorism Act, 1997, for confirmation or otherwise of the death sentences awarded to the convicts.

Issues: i) What does the term "identification parade" means with regard to criminal law?
ii) What is the evidentiary value of recovery when requirement provided under section 103 of Code of Criminal Procedure is not fulfilled?
iii) What is importance of medical evidence in case of an unobserved incidence?
iv) Whether a single circumstance is sufficient to extend the benefit of the doubt to the accused?

Analysis: i) The term 'identification' means proving that a person before the Court is the very same that he is alleged, charged or reputed to be. Identification is almost always a matter of opinion or belief. With regard to a criminal offence identification has a two-fold object: first, to satisfy the investigating authorities, before sending a case for trial to Court, that the person arrested, but not previously known to the witnesses, was the one or those who committed the crime; second, to satisfy the Court that the accused was the real offender concerned with the

crime.

ii) Investigating Officer did not join any witness of the locality during the recovery it was clear violation of section 103 Cr.P.C, therefore the same cannot be used as incriminating evidence against the appellants, being evidence, which was obtained through illegal means and is hence hit by the exclusionary rule of evidence.

iii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence and the same is of no assistance in this case.

iv) It is settled principle of law that for giving benefit of doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) With regard to a criminal offence identification has a two-fold object: first, to satisfy the investigating authorities, that the person arrested was not previously known to the witnesses and second, to satisfy the Court that the accused was the real offender concerned with the crime.

ii) When requirement provided under section 103 Code of Criminal Procedure is not fulfilled it cannot be used as incriminating evidence against the accused.

iii) In case of an unobserved incidence medical evidence is of no assistance.

iv) Only a single circumstance is sufficient to extend the benefit of the doubt to the accused.

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37. **Lahore High Court, Lahore**
The State v. Muhammad Abid.
Murder reference No. 09 of 2019
Muhammad Abid v. The State and another.
Criminal Appeal No.272 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC902.pdf

Facts: The appellant has assailed his conviction in murder case.

Issues: i) What is effect of statement U/S 161 Cr.P.C of eye-witness recorded with delay?

ii) What is effect of not collecting blood stained clothes of witnesses?

iii) What is effect of non-association of independent witnesses in investigation?

iv) What is effect of not sending crime empties collected from spot to PFSA immediately after recovery from place of occurrence?

Analysis: i) The delay in recording of the statement of a prosecution witness reduces its value to nothing unless there is a plausible explanation for such delay. No explanation has been given by the prosecution witnesses not getting his statement recorded immediately.

ii) If the blood stained clothes had been taken in custody and sent to the PFSA for examination and grouping with that of the blood stained clothes of the deceased, the same would have provided the strongest corroboration to the testimony of complainant. This omission strikes at the roots of the case of the prosecution and lays bare the untruthful and false claim of witness to have been present at the place of occurrence, at the time of occurrence.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced, the same would have been gone against the party producing the same…

iv) The crime-empties having been allegedly found at the place of occurrence and having been retained for so long the police station and having been sent to the F.S.L. along with the crime weapons after its recovery. These recoveries, therefore, cannot offer any corroboration to the ocular testimony.

Conclusion: i) No value can be attached to his statement and presumption would be that he was not present at the place of occurrence at the time of occurrence and the delay was used for procuring his arrival.

ii) The omission of collecting blood stained clothes creates doubt as to presence of witnesses at the place of occurrence.

iii) Non production of independent witness of the locality where the incident took place made case of the prosecution doubtful.

iv) The crime empties not sent to PFSA immediately after the occurrence loses their significance.

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38. **Lahore High Court**
The State v. Muhammad Saifal.
Murder Reference No.12 of 2019
Muhammad Saifal v. The State.
Criminal Appeal No. 413 –J of 2019
Hazoor Bakhsh v. The State.
Criminal Appeal No. 414 –J of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa.
https://sys.lhc.gov.pk/appjudgments/2022LHC863.pdf

Facts: The appellant has assailed his conviction in murder case.

Issues: i) Why substitution is a phenomenon of a rare manifestation?

ii) Whether the evidence of a witness loses its significance upon his mere relationship with deceased?

iii) Whether non-proof of motive may be considered as a mitigating circumstance?

Analysis: i) Substitution is a phenomenon of a rare manifestation because even the interested witnesses would not normally allow real culprits for the murder of their relations let off by involving innocent persons.

ii) The mere relationship of the prosecution witnesses with the deceased and inter-se is not sufficient to discredit their testimony.
iii) If a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused

Conclusion: i) Substitution is rare because no one would normally let off real culprits for murder of their relation and involve innocent persons.
ii) The evidence of a witness does not loses its significance upon his mere relationship with deceased.
iii) Non-proof of motive may be considered as a mitigating circumstance.

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39. **Lahore High Court**
The State v. Muhammad Zeeshan
Murder Reference No.58 of 2016
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC1080.pdf

Facts: The learned trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the convict in a private complaint in respect of offences under sections 302, 338 C and 34 PPC.

Issue: i) Whether it is necessary for the prosecution to prove the source of light if the occurrence took place in dark night?

ii) Whether the person in whose home the offence of murder is committed, can be presumed to be the accused?

iii) On whom burden to prove in criminal case lies and whether it shifts?

Analysis: i) The absence of any light source has put the whole prosecution case in murk. It was admitted by the witnesses themselves that it was a dark night and the eye witness needed the light of the electric bulb, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such light source, the statement of eye witness with regard to her identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.

ii) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, then the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would

have committed that murder.

iii) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged and it enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction.

Conclusion: i) It is necessary for the prosecution to prove the source of light if the occurrence took place in dark night.

ii) The person in whose home the offence of murder is committed cannot be presumed to be the accused rather prosecution is to prove its case beyond a reasonable doubt.

iii) The burden is placed on the prosecution to prove beyond doubt the guilt of the accused which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.

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40. **Lahore High Court**
The State v. Noman Liaqat.
Murder Reference No.24 of 2019
Noman Liaqat v. The State
Criminal Appeal No. 463-J of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC1011.pdf

Facts: The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant under section 302(b) PPC whereas the appellant lodged Criminal Appeal through jail assailing his conviction and sentence.

Issues: i) Whether delay in reporting the matter to police can make a dent with regard to presence of witnesses at the place of occurrence?

ii) Whether any inference can be drawn when the mouth and eyes of the deceased were found open?

iii) Whether a "chance witness" is under a bounden duty to provide a convincing reason for his presence at the place of occurrence?

iv) What is the effect of delay in conducting the post mortem examination of the dead body?

v) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused can be believed against the appellant?

Analysis: i) The reason for any inordinate delay in reporting the matter to the police by the prosecution can make the presence of witnesses doubtful at the place of occurrence, at the time of occurrence and the delay was used to procure their attendance. Further, inordinate delay in reporting the matter conclusively proves that the written application was prepared after probe, consultation, planning, investigation and discussion and the delay was used for procuring the arrival of witnesses.

ii) If the mouth and eyes of the deceased were found open at the time of preparation of the inquest report, it can be inferred that the witnesses were not present. Had the witnesses were present, at least after the death, they would have closed the eyes and mouth of the deceased on expiry as it is a consistent practice of such close relatives,. Thus, the open eyes and mouth of the deceased can force a hostile interpretation against the prosecution's version regarding the presence of the witnesses at the place of occurrence, at the time of occurrence.

iii) A “chance witness” is under a bounden duty to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and was also under a duty to prove his presence by producing some physical proof of the same.

iv) Delay in conducting the post mortem examination of the dead body casts doubt about the details of the occurrence and the said time was usually used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. In the absence of any reasonable explanation, it clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant escaping from the place of occurrence were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a dishonest account, after consultation and planning.

v) Once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case however it can only be sustained if there is independent corroboration to the said witness who had been disbelieved. It is settled that "the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

Conclusion: i) Delay in reporting the matter to police can make a dent with regard to presence of witnesses at the place of occurrence, at the time of occurrence.

ii) When the mouth and eyes of the deceased were found open, it proves absence of witnesses at the place of occurrence as it is a consistent practice of closing the eyes and mouth of the deceased on expiry.

iii) A "chance witness" is under a bounden duty to provide a convincing reason for his presence at the place of occurrence.

iv) Delay in conducting the post mortem of the dead body casts doubt about the details of the occurrence and the presence of the witnesses.

v) Evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused cannot be believed against another accused.

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41. **Lahore High Court**
The State v. Muhammad Naeem.
Murder Reference No.22 of 2019
Muhammad Naeem v. The State
Criminal Appeal No. 467-J of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC1158.pdf

Facts: The appellant has assailed his conviction in murder case while the learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the convict.

Issues: i) Whether it is the duty of the chance witness to prove his presence at the place of occurrence?

ii) What is the effect of delay in conducting post mortem?

iii) What is the evidentiary value of the recovery of weapon if the ocular account is disbelieved?

iv) Whether it is necessary that there should be many circumstances for creating doubt for extending benefit of the same to an accused?

Analysis: i) Chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same.

ii) Delay in the post mortem examination of the dead body is reflective of the absence of witness and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

iii) It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

iv) It is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Yes it is the duty of the chance witness to prove his presence at the place of occurrence.
ii) Delay in the post mortem examinations of the dead body is reflective of the absence of witness.
iii) If the ocular account is found to be unreliable then the recovery of weapon has no evidentiary value.
iv) It is not necessary that there should be many circumstances for creating doubt for extending benefit of the same to an accused.

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42. **Lahore High Court, Lahore**
Muhammad Ajmal v. The State and another.
Criminal Appeal No. 385 of 2017
Irshad Ahmad v. The State and another.
Criminal Revision No.163 of 2017
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC943.pdf

Facts: The appellant has assailed his conviction in murder case while complaint of FIR seeks enhancement of sentence of co-accused.

Issues: i) What is impact of improvement in statements by witnesses in trial of a criminal case?
ii) What inference would be drawn if witnesses appear to have not rescued deceased during course of occurrence?
iii) What is impact of non-production of family members & witnesses of locality available at spot?
iv) Is it necessary for convict to establish circumstances regarding death of deceased in his house?

Analysis: i) Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. It only proves that the deceased was at the mercy of assailants and no one was there to save him/her.
ii) No person having ordinary prudence would believe that such closely related witnesses would remain watching the proceedings as mere spectators for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant.
iii) The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but nonproduction of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of

material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence.

iv) On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction.

Conclusion: i) In light of Article 151 of the Qanun-e- Shahadat Order 1984, credit of witnesses stands impeached and they cannot be relied upon on being proved to have deposed to mislead the court.

ii) By virtue of the Article 129 of the Qanun-e-Shahadat, 1984, the conduct of the witnesses, as deposed by them, was opposed to common course of natural events, human conduct and that the witnesses were not present at the time of occurrence at the crime scene.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) It is not necessary for accused to establish circumstances' regarding death of deceased in his house until prosecution has proved his case.

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43. **Lahore High Court**
Malik Imam Din v. Additional Sessions Judge, Liaquatpur, District Rhim Yar Khan and six others.
Criminal Miscellaneous No. 3635-Q of 2021/BWP
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC989.pdf

Facts: Through instant petition, petitioner has assailed orders of learned ASJ & learned Magistrate, whereby his move for exhumation of his daughter's grave was declined.

Issues: Whether there existed any limitation for proceeding under section 174 Cr.P.C read with section 176 Cr.P.C?

Analysis: It is apparent that the provisions of the section 176, Cr.P.C., are not to be read in isolation from the provisions of section 174(1), Cr.P.C. and instead are to be considered in conjunction with it. Moreover, from the plain reading of section 176(2), Cr.P.C. it evinces that the order of post mortem examination of the dead body after disinterment can be passed by the Magistrate, if he considers it expedient to do so and there exist circumstances with regard to the suspicious death of any individual. The question of expediency relates to the facts and circumstances of the case and is inflexible in nature.

Conclusion: Medical jurisprudence does not provide any time limit for the exhumation of a dead body.

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44. **Lahore High Court**
Mst. Rashida Bibi alias Khanam v. The State and another etc.
Criminal Appeal No. 241 of 2021 etc.
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC9059.pdf

Facts: Petitioner lodged Criminal Appeal assailing her conviction and sentence under sections 302, 324, 34 and 109 PPC. The complainant of the case also filed Petition for Special Leave to Appeal seeking permission to file an appeal against the acquittal of the co-accused of the convict, all since acquitted. The complainant of the case also filed a Criminal Revision seeking the enhancement of sentence awarded to convict.

Issues: i) What is the fate of the case when prosecution withholds the best available evidence?
ii) What is the evidentiary value of recovery when requirement provided under section 103 of Code of Criminal Procedure is not fulfilled?
iii) Whether a single circumstance is sufficient to extend the benefit of doubt to the accused?
iv) What is the principle of the criminal administration of justice of double presumption of innocence?

Analysis: i) According to illustration (g) of Article 129 of the Qanun-e-Shahadat, 1984 if any evidence available with the parties which could be produced, is not produced, then it shall be presumed that if such evidence have been produced the same would have been gone against the party producing the same.
ii) If the Investigating Officer, did not join any witness of the locality during the recovery it was clear violation of section 103 Code of Criminal Procedure, 1898 and therefore cannot be used as incriminating evidence against the appellant, being evidence, which was obtained through illegal means and hence hit by the exclusionary rule of evidence.
iii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single

circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

iv) According to the established principle of the criminal administration of justice once an acquittal is recorded in favor of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion: i) If the prosecution withholds the best available evidence then the inference is drawn in negative.

ii) When requirement provided under section 103 Code of Criminal Procedure is not fulfilled it cannot be used as incriminating evidence against the accused.

iv) Only a single circumstance is sufficient to extend the benefit of the doubt to the accused.

v) According to the established principle of double presumption of innocence the courts should be slow in converting the acquittal into conviction.

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45. **Lahore High Court**
Muhammad Imtiaz v. The State & another.
Crl. Misc. No. 4817-B of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC896.pdf

Facts: The instant petition is filed under section 497 Cr.P.C.

Issues: i) What could be considered by the court as the "reasonable grounds" for believing that the accused has committed a bailable or non-bailable offence and it has the discretion to release him on bail or not?

ii) Whether the sentence of rigorous imprisonment is mandatory under provisions of Section 23 of the Foreign Exchange Regulation Act, 1947 as amended by the Foreign Exchange Regulation (Amendment) Act, 2020?

Analysis; i) In order to ascertain whether reasonable grounds exist or not, the Court should confine itself to the material placed before it by the prosecution to see whether some perceptible evidence is available against the accused, which if left un-rebutted, may lead to inference of guilt. Reasonable grounds are not to be confused with mere allegations or suspicions nor with tested and proved evidence, which the law requires for a person's conviction for an offence. The term "reason to believe" can be classified at a higher pedestal than mere suspicion and allegation. Mere involvement in a heinous offence is no ground for refusing bail to an accused who otherwise becomes entitled for the concession of bail.

ii) Section 23 of the Foreign Exchange Regulation Act, 1947 provides for the penalty for contravening the provisions of sections 4, 5 and 8 of the Foreign Exchange Regulation Act, 1947 and the sentence which may be awarded to an accused has been determined as imprisonment for a term which may extend to two years or with fine or with both. The insertion of the word "or" in Section 23 of the Foreign Exchange Regulation Act, 1947 as amended by the Foreign Exchange Regulation (Amendment) Act, 2020 by the Legislature, means that the sentence of rigorous imprisonment is not mandatory and it has been left at the discretion of the court of law to either sentence the accused with imprisonment or with fine or both. The application of this discretion, while sentencing the accused, can only be undertaken by the learned trial court after recording of the evidence. The law provides for the possibility that if the petitioner is convicted after recording of evidence, he may be sentenced to payment of fine only.

Conclusion: i) In order to ascertain whether reasonable grounds exist or not, the Court should confine itself to the material placed before it by the prosecution to see whether some perceptible evidence is available against the accused, which if left un-rebutted, may lead to inference of guilt.
ii) The sentence of rigorous imprisonment is not mandatory under provisions of Section 23 of the Foreign Exchange Regulation Act, 1947 as amended by the Foreign Exchange Regulation (Amendment) Act, 2020.

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46. **Lahore High Court**
Umar Din v. The State and anothers.
Crl. Appeal No. 59 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC1065.pdf

Facts: The appellant through this criminal appeal has assailed the judgment passed by the learned Trial Court whereby he was convicted and sentenced for an offence punishable under Section 9(c) of the Control of Narcotics Substances Act, 1997.

Issue: i) What does the term "Protocol" mean?
ii) What should be the contents of the report of Chemical Examiner?
iii) Whether the report of Chemical Examiner which does not give details of protocol and tests have any evidentiary value?
iv) Whether the sole ground of non-mentioning of protocol/full detail of the tests in the report of Chemical Examiner is sufficient for acquittal of the accused?

Analysis: i) The term "protocol" has not been defined in the Control of Narcotic Substances (Government Analyst) Rules, 2001. Its dictionary meaning is: A plan of scientific experiment or other procedure. It is also referred to as the precise method for carrying out or reproducing a given experiment. It is clarified that "protocol" is, therefore, a recognized standard method or plan for carrying out the test applied to ascertain the nature of the substance under examination.

ii) The Report of the Government Analyst must show that the test applied was in accordance with a recognized standard protocol. Any test conducted without a protocol loses its reliability and evidentiary value. Therefore, to serve the purposes of the Act and the Rules, the Report of the Government Analyst must contain (i) the tests applied (ii) the protocols applied to carry out these tests (iii) the result of the test(s).

iii) It is settled by now that any report failing to describe in it, the details of the full protocols applied to carry out the tests as required under the law will be inconclusive, unreliable, suspicious and untrustworthy and will not meet the evidentiary presumption attached to a Report of the Government Analyst under section 36(2) of the Act.

iv) We have noted that the august Supreme Court of Pakistan in the case of "*Khair-ul-Bashar Vs. The State*" (2019 SCMR 930), acquitted the accused of the said case on the sole ground of non-mentioning of protocols/full details of the tests applied in the report of the Punjab Forensic Science Agency, Lahore. Even otherwise, 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) The term "protocol" is a recognized standard method or plan for carrying out the test applied to ascertain the nature of the substance under examination.

ii) The Report of the Government Analyst must contain (i) the tests applied (ii) the protocols applied to carry out these tests (iii) the result of the test(s).

iii) The report of Chemical Examiner which does not give details of protocol and tests have no evidentiary value.

iv) The sole ground of non-mentioning of protocol/full detail of the tests in the report of Chemical Examiner is sufficient for acquittal of the accused.

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47. **Lahore High Court**
Qasim Khan v. SHO p/s Zahir Pir Rahim Yar Khan and others.
Writ Petition. No.9760-Q of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC1000.pdf

Facts: Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks quashing of FIR in respect of offences under sections 371-A and 371-B PPC.

Issues: i) Whether police can raid a dwelling house without obtaining search warrants or putting an effort in this regard?

ii) When does the provisions of Sections 371-A and 371-B, P.P.C. are attracted against an accused?

Analysis: i) A dwelling house is not a public place, rather it is owned and in the possession of a private individual. Raid of the police without obtaining search warrants or putting any effort in this regard, and without associating respectable from the locality is illegal and unconstitutional. So, in such a situation, the alleged police raid cannot be better termed other than an "intrusion" and violative of the provisions of Article 14 of the Constitution of Islamic Republic of Pakistan, 1973 and also repugnant to the provisions of the Holy Qur'an and Sunnah. Privacy of home after all also enshrines the dignity of man. Violation of the privacy of one's house through arbitrary intrusion by the police, without the authority of law is certainly condemnable being repugnant to the concept of human rights relatable to both the dignity of man and privacy of the home.

ii) From the perusal of Sections 371-A and 371-B, P.P.C., it is very much clear that these provisions would only apply to persons who sell or purchase any person with the intent that such person would be used for the purpose of prostitution or illicit intercourse.

Conclusion: i) Police cannot raid a dwelling house without obtaining search warrants or putting an effort in this regard.

ii) Sections 371-A and 371-B, P.P.C. will apply only to persons who sell or purchase any person with the intent that such person would be used for the purpose of prostitution or illicit intercourse.

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48. **Lahore High Court**
Muhammad Tahreem v. The State and another.
Crl. Misc. No.88-B of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC1058.pdf

Facts: Through this petition under section 498 Cr.P.C., the petitioner seeks pre arrest bail in case FIR in respect of an offence under section 489-F PPC.

Issues: i) Who can be said to be a holder of the cheque?

ii) Who can present a cheque for encashment?

Analysis: i) Indorsement on cheque can be in blank or in full. It is said to be blank if the indorser signs his name only and it is said to be in full, if the indorser also mentions the name of the person to whom, the payment is to be made. The person who has not been mentioned as either "Payee" or "indorsee" on the said cheques, he cannot be said to be the holder of the said cheque in due course.

ii) Only the person who is holder of cheque in due course, either as being "Payee" or "Indorsee", can present the cheque for clearing.

Conclusion: i) Holder of the cheque is a person who has been mentioned as either "Payee" or "indorsee".

ii) Either "Payee" or "Indorsee" can present the cheque for encashment.

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49. **Lahore High Court**
Muhammad Wasim v. The State and another.
Criminal Appeal No. 917 of 2019
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2022LHC841.pdf

Facts: Through this petition, the petitioner has assailed the impugned judgment in which he was convicted by the Learned Trial Court under Section 311 PPC and sentenced to imprisonment for life.

Issues: i) What is the mandatory procedure to be adopted by the magistrate while recording statement u/s 164 Cr.P.C?
ii) Whether conviction can be based upon confession under Section 164 Cr.P.C recorded without proper application of due procedure?

Analysis: i) Sufficient time shall be granted to the accused to dispel or dislodge any impression of fear and undue influence on him. The entire court staff shall not be retained inside the court. Only those members of his staff shall be allowed to stay who are necessary for security inside the court room. Handcuffs of the accused shall be removed before he makes the statement and thereafter he can be again handcuffed. Oath of the Stenographer shall be administered to show that he had typed every fact in accordance with the dictation made to him by the learned Magistrate. In case of translation of confession into another language, it is duty of learned magistrate to give a specific note that all the questions and answers were translated into English language. The learned Magistrate shall give certificate about those compelling reasons which made him unable to record the confession in his own hand writing. After recording the confession, the accused shall be sent to Jail and his custody cannot be handed over to the police.
ii) The confession under Section 164 Cr.P.C without application of due procedure is just a piece of paper having no evidentiary value and the same shall be discarded. Therefore, conviction cannot be based upon such confession.

Conclusion: i) The provision u/s 164 Cr.P.C and case law developed has laid down the mandatory procedure to be adopted by the magistrate while recording statement u/s 164 Cr.P.C.
ii) Conviction cannot be based upon confession under Section 164 Cr.P.C recorded without proper application of due procedure.

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50. **Lahore High Court**
Asima Shehzadi v. Director General, Pakistan Post & 3 others
Writ Petition No.17563 of 2019
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2022LHC1259.pdf

Facts: The petitioner's husband was serving as peon in 'Pakistan Postal Services. The petitioner was appointed against deceased quota. Thereafter she remarried but the

respondent department terminated her contract on account of her remarriage under the policy. The petitioner has assailed the said order.

Issues: Whether in case of remarriage, a widow who got the appointment against deceased quota shall cease to have her right to remain in service?

Analysis: The purpose of making beneficial policies by the State like in the case in hand with regard to appointment of widow against deceased quota, in fact is to minimize the miseries which a widow or orphan on the death of serving employee has to face in society. However by introducing such policies a citizen cannot be deprived from his/her protected rights. Under Article 35 of the Constitution of the Islamic Republic of Pakistan, 1973 *(the Constitution)*, the State is under obligation to protect the marriage, the family, the mother and the child. Therefore, any policy which is in violation of guaranteed rights cannot sustain. If such policies are approved, it will amount to defeat another constitutional guarantee provided under Article 34 of the Constitution that the State has to take the steps to ensure full participation of women in all spheres of national life.

Conclusion: In case of remarriage, a widow who got the appointment against deceased quota shall retain her right to remain in service.

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51. **Lahore High Court**
Muhammad Saqib v. SHO and another.
Writ Petition No. 12 of 2022.
Mr. Justice Muhammad Tariq Nadeem, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC1216.pdf

Facts: Through this writ petition, the petitioner sought deletion of the offence u/s 7-ATA, 1997 in the case registered against his subordinates under sections 342, 353, 186, 506-B, 148, 149, PPC and section 7 of the Anti-Terrorism Act, 1997.

Issues: i) Whether only aggrieved person has locus-standi to seek constitutional remedy of High Court against the impugned action?
ii) Whether an offence can be added or deleted while invoking the constitutional jurisdiction of High Court?
iii) Whether constitutional jurisdiction of Hon'ble High Court can be invoked as a matter of right?

Analysis: i) FIR was registered against subordinates of the petitioner, thus, the petitioner do not fall within the definition of "aggrieved party" or "aggrieved person". Under Article 199 of the Constitution only an aggrieved person should have a locus-standi to the relief prayed for or in other words the petitioner should be an aggrieved person or aggrieved party from the impugned action.
ii) The prosecutor has the power to scrutinize the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case and as such the addition or insertion of any offence falls

within the exclusive domain of the prosecutor. The question whether the Prosecutor has rightly deleted and added the section will better be seen and adjudged by the learned trial court at the time of framing of the charge but the petitioner cannot invoke the constitutional jurisdiction of Hon'ble High Court for the relief prayed for as it amounts to interfering with the process of investigation which is not the mandate of law.

iii) The constitutional jurisdiction of Hon'ble High Court in all the cases cannot be invoked as a matter of right, course or routine, rather such jurisdiction has certain circumventions which the Court is required to keep in view while exercising its extraordinary discretionary powers, as the conditions mentioned in Article 199 of the Constitution are obviously meant for the purposes of regulation of the Court's jurisdiction and the availability of "other remedy" is one of such limitations.

Conclusion: i) Only aggrieved person has a locus-standi to seek constitutional remedy of High Court against the impugned action.

ii) An offence cannot be added or deleted while invoking the constitutional jurisdiction of High Court as it amounts to interfering with the process of investigation which is not the mandate of law.

iii) Constitutional jurisdiction of Hon'ble High Court cannot be invoked as a matter of right.

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52. **Lahore High Court**
Muhammad Javed etc v. The State etc.
Crl. Misc. No. 4531-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC1224.pdf

Facts: The petitioner filed this petition for seeking post arrest bail.

Issues: i) Whether deeper appreciation of evidence is permissible at bail stage?

ii) Whether benefit of doubt can be extended to the petitioner at bail stage?

iii) Whether evidentiary value of the supplementary statement can be considered at bail stage?

Analysis: i) In a post arrest bail only tentative assessment is to be made and deeper appreciation or evaluation of evidence at this stage is neither desirable nor permissible.

ii) Benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrants.

iii)The evidentiary worth of supplementary statement of the alleged abductee would be determined by the learned trial court after recording of evidence

Conclusion: i) Deeper appreciation of evidence is not permissible at bail stage.

ii) Benefit of doubt can be extended to the petitioner at bail stage.

iii) Evidentiary value of the supplementary statement cannot be considered at bail stage.

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53. **Lahore High Court**
Muhammad Nazim v. The State etc
Criminal Appeal No.105079-J of 2017
Muhammad Ilyas v. The State etc.
Criminal Revision No.105522 of 2017
Muhammad Ilyas v. The State etc.
P.S.L.A. No.105523 of 2017
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC810.pdf

Facts: The appellant assailed his conviction in murder case while complainant has preferred criminal revision seeking enhancement of sentence.

Issues: i) Whether "unused material of evidence", can be used by the accused to rebut or contradict the facts stated by the PW during his evidence?
ii) When secondary evidence can be produced by the accused?
iii) Whether visual and audio recordings may be regarded as documents? If yes, whether they are admissible in evidence?

Analysis: i) Rebuttal can be in both ways, either to produce evidence by production of witnesses or the documents by the party at response or through contradicting the witnesses from the record of the case, either in the form of statements u/s 161 & 164 Cr.P.C or any previously recorded deposition which was collected during investigation, affidavits, written statements, any agreement/contract or a document in the form of deed, last but not the least any electronic document. The material evidence which though was collected from both the parties during investigation if not selected by the prosecution for production before the court, it becomes an "unused material". Law has developed that accused would have right to obtain record of such unused material so as to use it for the purpose of contradiction. Once such material, document or statement is delivered to the accused u/s 265-C Cr.P.C or u/s 162 Cr.P.C or in response to an application made by the accused, such document/material or statement can be used for the purpose of contradiction or rebuttal. Such a document can only be used for the purpose of contradiction if they were duly produced in an investigative process and not otherwise and if the accused returns successful to contradict a material fact, burden to dislodge clouds cast over such fact lies on the prosecution, which would only be discharged by producing material evidence and not mere raising objection about authenticity of document used for contradiction.

ii) Article 159 of QSO bound the calling party to produce the document in evidence only if the other party requires him to do so which means that if producing party does not require him to produce the document in evidence, he still has option to produce or not to produce. What would happen if the party refused

to produce the document against whom subpoena was issued. It is clear that in the event of failure to produce document, calling party can give secondary evidence as per illustration attached to above Article and party refusing to produce cannot use such document afterward as evidence for the purpose of contradicting the secondary evidence so produced except with the consent of other party or the order of the Court.

iii) In the book "Murphy on EVIDENCE" by Peter Murphy, about the status of tapes, photographs, films etc. it was also taken to light in para 19.22 at page 531 with following observations; "Although in modern law visual and audio recordings may be regarded as documents, at least for some purposes they have a further, important potential to supply matter of evidential value, because of the possibility of direct perception. A tape or film may yield detail and nuances over and above the mere text of matters recorded therein. Some detail of the circumstances of the recording, some visible characteristics, some inflexion of the voice may put a different complexion on the recorded matter, as compared with a mere transcript of the words spoken or the things done. The sound or accent of a voice, the physical appearance of a thing or person may resolve some ambiguity or clothe with meaning some unexplained passage in the text. The recordings are, therefore, to that extent "real evidence" and often have an effect similar to a view or the production of a material object. To the extent that recordings are admissible as real evidence, it is no objection to admissibility that the evidence is meant to, and does in fact, convey information because it is offered for direct observation by the court, and not as a species of hearsay."

Conclusion: i) The unused material of evidence can be used as the evidence for the purpose of contradiction or rebuttal.

ii) Secondary evidence can be produced by the accused if producing party fails to produce the evidence.

iii) Visual and audio recordings may be regarded as documents and they are admissible in evidence.

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54. **Lahore High Court**
Qudratullah v. The State etc.
Crl. Misc. No. 9264-B/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC825.pdf

Facts: Through this petition, the petitioner has sought post arrest bail in a case registered under sections 9(c)/15 of the Narcotic Substances Act, 1997.

Issues: i) Which Court can take the matter of unsoundness of accused?

ii) Which Court is authorized to release the accused on bail under Section 466 Cr.P.C?

Analysis: i) Section 466 of Cr.P.C. authorizes that Court of Session or High Court shall take the matter of unsoundness of accused only if case is being tried by these Courts and it is very much clear from the reading of said section that during trial such Courts shall also try the fact of such unsoundness and incapacity of an accused.

ii) The words "whenever an accused is found to be unsound mind and incapable of making his defence" used in Section 466 Cr.P.C. are of worth value because an accused can be found as such only if the Court has tried the fact of his unsoundness and incapacity during the trial as mentioned in Section 465 Cr.P.C. Therefore, Court of Session or the High Court shall only be authorized to release the accused on bail under Section 466 Cr.P.C. if they are the trial Courts and in no other case High Court can exercise powers under this section.

Conclusion: i) Court of Session or High Court can take the matter of unsoundness of accused only if case is being tried by these Courts.

ii) Court of Session or the High Court shall only be authorized to release the accused on bail under Section 466 Cr.P.C. if they are the trial Courts and in no other case High Court can exercise powers under this section.

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55. **Lahore High Court**
Muhammad Zaman v. Additional Sessions Judge etc.
Writ Petition No.6132 of 2018
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC1274.pdf

Facts: The petitioner challenged the direction for lodging of FIR against him on the ground that vehicle was taken into custody u/s 550 Cr.P.C. by the petitioner and he being a subordinate officer immediately through Rapt, intimated the high ups and as such has discharged his function in accordance with law.

Issues: i) Whether police has the authority to seize a non-custom vehicle?

ii) If a police official mistakenly confiscate the non-custom vehicle then what is the procedure to correct the wrong?

iii) Whether police can carry non-custom vehicles to the police station or court?

iv) Whether area magistrate ought to be informed regarding the seizure of a non-custom vehicle?

Analysis: i) Police has no authority to stop or seize a non-custom paid vehicle because Customs Act, 1969 does not authorize police to take such action which authority rests with Custom Officers.

ii) If it is mistakably taken, then subordinate officer is bound to inform the Officer Incharge of Police Station and not the Magistrate. Meaning thereby he has performed his duty and no breach or violation can be attributed to him. Then it is the duty of Officer Incharge of Police Station to inform the Magistrate if it is necessary as per law, otherwise he is under duty to inform the Custom officers for further proceedings which is in consonance with the Customs Act, 1969.

iii) Police can carry such vehicles to any police-station or court at which a complaint connected with the stealing or receiving of such things has been made and can kept under custody till the conclusion of inquiry or trial but not otherwise and they are bound to inform the nearest custom-house.

iv) The information regarding the seizure of non-custom vehicle would be given to the authorized Magistrate under the law to deal with property so taken and not the Area Magistrate, similar is the case for all other special laws.

Conclusion: i) Police has no authority to seize a non-custom vehicle.

ii) Police official is bound to inform the Officer Incharge of Police Station who has to inform the magistrate, if necessary, otherwise to the custom officer.

iii) The police can carry non-custom vehicles to police station or court.

iv) Area magistrate need not to be informed regarding the seizure of non-custom vehicle.

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56. **Lahore High Court**
Mst. Anayatan Bibi & another v. Maqsood Ahmad & another
C. R. No. 1358 / 2017
Shabbir Hussain alias Bagga v. Additional District Judge, Sahiwal & 03 others
W. P. No. 9055 / 2019
Shabbir Hussain alias Bagga v. Additional District Judge, Sahiwal & 03 others
W. P. No. 483 / 2020
Mr. Justice Abid Hussain Chatta
https://sys.lhc.gov.pk/appjudgments/2022LHC1405.pdf

Facts: The Petitioners preferred this Revision against the Judgments and Decrees passed by Civil Judge, and Additional District Judge whereby, the suit for specific performance with permanent injunction instituted by Respondent No. 1 against the Petitioners was concurrently decreed.

Issue: i) Whether specific performance of the Agreement is a discretionary relief under the Specific Relief Act, 1877?

ii) Whether agreement is enforceable when terms cannot be found with reasonable certainty?

iii) Whether a contract not scribed by a licensed Deed Writer rather drafted by an Advocate could be treated at par?

iv) Whether there is no bar in the law for an Advocate to be a witness to the transaction or the Agreement?

v) Whether an innocent subsequent purchaser has independent right?

Analysis: i) Section 12 of the SRA stipulates that specific performance of a contract is a discretionary relief. The relief is permissible in terms of its Clauses (b) and (c), when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done or when the act agreed is such that

pecuniary compensation caused by nonperformance would not be considered as an adequate relief.
ii) The Agreement did not fall under Section 21(c) of the SRA which stipulates that a contract cannot be specifically performed whose terms the Court cannot find with reasonable certainty.
iii) The argument that the Agreement scribed by a lawyer instead of a licensed Deed Writer is not worthy of evidentiary value, is misconceived.
iv) The mere fact that most of the witnesses were Advocates does not by itself lead to any adverse inference as Advocates are not barred to witness a transaction.
vii) The subsequent purchaser is merely a representative of the seller and has no independent right or footing.

Conclusion: i) Specific performance of the Agreement is a discretionary relief under the Specific Relief Act, 1877.
ii) An agreement is not enforceable when terms cannot be found with reasonable certainty.
iii) Where a contract was not scribed by a licensed Deed Writer rather drafted by an Advocate, the latter could be treated at par with the former.
iv) There is no bar in the law for an Advocate to be a witness to the transaction or the Agreement.
v) An innocent subsequent purchaser has no independent right.

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57. **Lahore High Court**
Ejaz Iqbal v.Additional District Judge etc.
Writ Petition No.3075/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC9385.pdf

Facts: The suit for recovery of maintenance allowance, dowry articles and dower is decreed by Family Court. Both the parties have assailed the decree through the instant petition.

Issues: i) Which *pert* of a *nikahnama* has presumption of truth attached to it, being a public document, in a case, where contradictory *pert* of the same *nikahnama* are adduced before the court in evidence?
ii) What is the role played by the presumption of truth in fixing and shifting burden of proof?
iii) What is pre-requisite for a public document so that the presumption of truth can be attached to it?

Analysis: i) *Nikahnama* is in quadruplicate (having four *pert*). Under Rule 10, original *pert* is kept intact in the register whereas the second *pert*, filled and signed is given to bride, the third *pert* is given to the bridegroom and the fourth *pert* is forwarded to the Union Council concerned. There is no cavil to the proposition as it has become a stone-etched legal position that *nikahnama*, being a public document carries

with it presumption of truth as has been held by the superior courts in catena of judgments**.** Since second and third *pert* of the *nikahanama* are with the parties, hence, possibility that they may tamper with the same by addition or deletion of an entry cannot be ruled out; however, the fourth *pert* duly forwarded to the Union Council concerned or one that is kept in the original register is the document, which carries the presumption of truth as these two *pert* are kept in the official custody.

ii) There is a very fine and delicate interplay of law of presumption and burden of proof. Presumption of a specific fact shifts the burden on the other party. Presumption implies that a certain fact is deemed to be true or proved on the basis of some other relevant fact which is proved to be true. In other words, the existence of a fact or set of facts is considered as proof of the existence of some other fact. Such presumptions may be presumptions of fact or presumptions of law. Similarly, presumption can be conclusive or rebuttable. Rebuttable presumptions are such presumptions which involve the use of words "shall presume". Such rebuttable presumptions have been embodied in Article 90, 95 and 99 of the Qanoon-e-Shahadat Order, 1984 (hereinafter 'the QSO') whereas irrebuttable presumptions involve the use of words such as "conclusive proof" or "conclusive evidence".

iii) Perusal of the Article 90 of QSO in general and proviso attached to Article 90(1)of QSO in particular reveals that inference of presumption of truth to any document involves an in-built declaration that such document has been substantially in the form and manner as directed by the law in that behalf.

Conclusion: i) The fourth *pert* of *Nikahnama* duly forwarded to the Union Council concerned or one that is kept in the original register is the document, which carries the presumption of truth.

ii) Presumption implies that a certain fact is deemed to be true so the presumption of a specific fact shifts the burden on the other party.

iii) In order to carry presumption of truth attached to a public document, it is imperative that such document is substantially in the form and purports to be executed in the manner directed by law.

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58. **Lahore High Court**
Wajid Rasool v. Registrar Cooperative Societies, etc.
Writ Petition No.1320/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC1429.pdf

Facts: Through this writ petition the petitioner has assailed the order of Secretary Cooperatives in which he upheld the earlier order of Registrar, Cooperative Societies who has approved the election schedule of the Society by adding office of the Secretary as one of the offices to be filled through election.

Issues: i) Whether the office of the Secretary is to be filled through election or through appointment as per By-laws of the Cooperative Society?

ii) Whether the Courts are allowed to interpret a law in a manner to defeat its object when intention of the legislature for which the law had been enacted is clear?

iii)Whether departmental construction of a statutory instrument having legitimate expectancy can be deviated?

iv) Whether Bye-Laws of the Society are in the nature of contract between members of Cooperative Society?

v) When a thing is required to be done in a particular manner then whether it is to be done in the same manner or not?

Analysis: i) Bye-Law No. 31(1) reveals that the Managing Committee (MC) consists of 9 to 15 members including a President, Vice President, a Secretary, a Treasurer and other persons nominated by the Registrar from amongst the members or officers of the department. Bye-Law No.31(2) states that the MC shall be elected for a term of three years.

ii) It is settled principle of law that the courts must avoid a head on clash of seemingly contradicting provisions of law and must harmonize the same.when the intention of the legislature and the object for which the law had been enacted were clear, the Courts were not allowed to interpret such a law in a manner which could defeat the object for which such law had been enacted.

iii) It is settled law that departmental construction of a statutory instrument consistently followed for a long time gives rise to legitimate expectancy and the same cannot be deviated or departed from, unless new development in the form of clarification by the legislature comes out.

iv) Membership in a co-operative society only brings about a contractual relationship among the members forming it subject of course to the Act and the Rules. The Bye-Laws of the Society are in the nature of contract between members of Cooperative Society which is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

v) It is settled principle of law that when a thing is required to be done in a particular manner it must be done in the same manner or not at all. The addition of the office of the Secretary through election at a belated stage through corrigendum is in violation of Rule 5 of the Election Rules as it is mandatory thereunder to issue 15 days' notice prior to the commencement of the election schedule and intimation through UPC (under postal certificate) was to be given to the members of the Society has force.

Conclusion: i) The office of the Secretary is to be filled through election as per By-laws of the Cooperative Society.

ii) The Courts are not allowed to interpret a law in a manner to defeat its object when intention of the legislature for which the law had been enacted is clear.

iii) Departmental construction of a statutory instrument having legitimate expectancy can not be deviated.

iv) Yes, Bye-Laws of the Society are of contractual nature between members of Cooperative Society.
v) When a thing is required to be done in a particular manner then it must be done in the same manner.

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59. **Lahore High Court**
Allah Ditta v. The State.
Crl. Appeal No.298-J/2017
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC1320.pdf

Facts: The appellant has assailed his conviction and sentence in a murder case.

Issues: i) What is the last seen theory and its evidentiary value?
ii) What is evidentiary value of extra judicial confession?
iii) What are the essential conditions in order to sustain conviction in case of circumstantial evidence?

Analysis i) The last seen theory comes into play where the time-gap between the point of time when the deceased was last seen alive in the company of accused and when the deceased is found dead is so small that possibility of any person other than the accused being the culprit of the crime becomes impossible. Evidence of last seen is considered a weak type of evidence which is not sufficient to sustain punishment in cases pertaining to capital punishment without corroboration from other circumstantial evidence available on the record.
ii) Evidence of extra-judicial confession is universally regarded as inherently weak evidence which does not present a brighter picture of prosecution case. As evidence of extra judicial confession is a weak type of evidence, which can easily be crafted to strengthen the weak prosecution case, therefore, courts must consider it with abundant caution before relying upon it.
iii) In order to sustain a conviction in a case of circumstantial evidence, following conditions must be fulfilled:

(i) The facts and circumstances from which an inference of guilt is pursued to be drawn must be established through cogent and convincing evidence of unimpeachable character.
(ii) Those circumstances should be of a conclusive nature having propensity accurately pointing towards the guilt of the accused.
(iii) The entire evidence available on the record when taken cumulatively should be in form of a chain, which is compact enough to establish that there is no escape from the conclusion that within all probabilities the crime was authored by the accused and none else. It should also be incapable of explanation on any other hypothesis than that of the guilt of the accused by excluding all the hypothesis of his innocence.

Conclusion: i) The evidence of last seen is a weak type of evidence which can easily be crafted

to strengthen the weak prosecution case.

ii) Extra-judicial confession is universally regarded as inherently weak evidence.

iii) In cases of circumstantial evidence, there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

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60. **Lahore High Court**
Shabbir Ahmad v. Punjab Public Service Commission, etc.
Writ Petition No.561 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC1382.pdf

Facts: The petitioner was an employee of an autonomous body i.e. Punjab Emergency Services Rescue 1122 on the closing date of submission of his application for the post of Lecturer. The Secretary Punjab Public Service Commission (PPSC) rejected the application of the petitioner without conducting any interview by stating that the petitioner is over age and the age concession is not applicable to petitioner being an employee of an autonomous body. The petitioner filed a representation against rejection of his application which was again rejected by the Chairman PPSC, hence the instant petition.

Issues: Whether an employee employed with an autonomous body of the province performing functions, indubitably, in connection with the affairs of the Province was not a government servant so as to be allowed the benefit of Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976?

Analysis: Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976 were framed under Section 23 of Punjab Civil Servants Act, 1974. Rule 3(v) thereof provides that a candidate already working as Government servant, the period of his continuous service as such shall for the purpose of upper age limit prescribed under any service rules of the post for which he is a candidate, be excluded from his age. These rules clearly provide the advantage of upper age relaxation to a "Government Servant" and not only a Civil Servant". This Court in "Punjab Government and others v. Saleem-ur-Rehman and others" (1985 PLC (CS) 112) clarified that Rules of 1976 intend to encompass and provide advantage to all servants of Government of the Punjab even those who are excluded from the definition of Civil Servants in Section 2(b) of the Act, 1974. The view has been reiterated in "Saleem-ur-Rehman and others v. Government of Punjab through Secretary, S&GAD, Lahore and others" (1986 SCMR 747) and in "Muhammad Iqbal v. Government of the Punjab through Secretary Education Schools, Punjab, Lahore and 4 others" (2020 PLC(C.S.) 747.

The question that gains relevance is whether service of the petitioner with Punjab Emergency Services, Rescue 1122, an autonomous body at the time, will entitle him to be treated as a "Government Servant" under the Rules of 1976. Prior to the

promulgation of Punjab Emergency Service (Amendment) Act 2021, Punjab Emergency Services, Rescue 1122 was mentioned as an Autonomous Body of Home Department in Column 4 of the First Schedule. So provision of Emergency and rescue service is business of the Government of the Punjab, which business is tasked to be performed by the Home Department and Punjab Emergency Services is the vehicle and tool through which such business of the Government is conducted. Employees of autonomous bodies are recognized by the Government as employees in its service since they are governed by the provisions of Punjab Employees Efficiency, Discipline and Accountability Act 2006. The Punjab Emergency Services has been established by the legislature to conduct business of the government of Punjab. Its financial, administrative and disciplinary matters are regulated by the Government of Punjab. Autonomous Public Bodies are an emanation of the government and are clearly a limb of the government or even an agency of the State and recognized by and clothed with rights and duties, either by or under a Statute and thereby become extended arms of the government. The PPSC's contention is not that the Petitioner is not a Government Servant but that its Policy Decision No. 8.2 (b) does not allow him to be considered so. The effect of this Policy Decision has already been adjudicated in W.P.No.47449/2021 (Muhammad Jahangir Iqbal Khan Vs. PPSC & another).This Policy decision is, therefore, read down.

Conclusion: An employee employed with an autonomous body of the province performing functions in connection with the affairs of the Province is a government servant so he is entitled to the benefit of Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976.

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61. **Lahore High Court**
Nadeem Sadiq Bhatti v. President National Bank of Pakistan and 3 others.
W.P. No. 15360/2017
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC830.pdf

Facts: The petitioner at time of his appointment in a bank concealed his criminal record and upon inquiry, he was removed from service. His departmental appeal was also dismissed and he has challenged his dismissal through this Constitutional Petition.

Issue: i) What is the effect of concealment of criminal record by a candidate at the time of his appointment in public domain?

ii) Whether a person who makes false statement for securing his job can be a trustworthy in his duty?

Analysis: i) Not coming out clean with relevant information for the purpose of securing employment in the public domain is an act unbecoming of a person seeking employment as a public servant and, therefore, deplorable and not worthy of being treated with leniency.

ii) Where, at the inception of his career the petitioner had made a false statement for the purpose of seeking recruitment he could not be expected to perform his duties honestly, diligently or in a manner even remotely trustworthy. Concealment of facts and misstatement on the part of the petitioner before entering into service itself shook the credibility of his character and disentitled him from seeking any relief.

Conclusion: i) The concealment of criminal record by a candidate at the time of his appointment shows his conduct of unbecoming an officer eligible to work in public domain.
ii) A person who makes false statement for securing his job cannot be a trustworthy in his duty and it shook the credibility of his character.

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62. **Lahore High Court**
Abdul Rauf etc v. Muhammad Mushtaq etc.
Civil Revision No.955 of 2019 converted into Writ Petition No. 2570 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC1247.pdf

Facts: Petitioners' mother was deprived from inheritance of her father after his death. Civil revision was filed which was converted into constitutional petition because the civil revision was not maintainable after the amendment made in Section 115 CPC by the Province of Punjab by means of adding sub clause 5 to the section.

Issues: i) What is prima facie case?
ii) Whether son of predeceased daughter is entitled to share in inheritance of his grand maternal father?

Analysis: i) Prima facie case, in its plain language signifies a triable case where some substantial question is to be investigated and this phrase should not be confused with 'prima facie title'. Also in order to make out a prima facie case the plaintiff need not establish its title. It is enough if the plaintiff can show that he has raised a fair question as to the existence of right in the property in dispute and which should be preserved until such question is determined.
ii) If a person dies and leaves behind issues of such of his sons or daughters who were dead in his life time, the issues of the deceased sons and daughters will be entitled to inherit the shares that their father or the mother would have inherited had, they been alive at the time of death of that person.

Conclusion: i) A prima facie case means a triable case where some substantial question is to be investigated.
ii) Section 4 of the Muslim Family Laws Ordinance, 1961, clearly entitles the grandson for receiving the share which his mother/father would have inherited, had she/he been alive.

63. **Lahore High Court, Lahore**
Bahawalpur Medical & Dental College v. Pakistan Medical Commission through its Secretary and others
Writ Petition No. 910 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC1342.pdf

Facts: Petitioner through the writ petition challenge the order whereby recognition granted to petitioner by the Pakistan Medical Commission has been suspended?

Issue: i) What is scope of remedies provided under sections 36 & 37 of Pakistan Medical Commission Act, 2020 (Act)?
ii) Whether the remedy provided in section 37 of Act is also available to employees of the Commission?
iii) How the ouster clause of any enactment is to be construed?
iv) Whether the writ is maintainable in presence of alternate and efficacious remedy u/s 36 & 37 of the Act??

Analysis: i) Section 36 of The Pakistan Medical Commission Act, 2020 in it's sub-section (1) ousts jurisdiction of any other court to take cognizance of any offence or matter under the Act to which jurisdiction of the Medical Tribunal extends, sub-section (2) thereof confers original jurisdiction upon the Medical Tribunal to provide remedies of a complaint or claim to any person aggrieved by an act which is an offence under the Act. Needless to observe here that the original jurisdiction conferred under Section 36(2) of the Act provides remedies to an aggrieved person on criminal as well as civil sides. It is apparent from the plain reading of Section 37(1) of The Pakistan Medical Commission Act, 2020 that it confers appellate jurisdiction upon the Medical Tribunal in contradistinction to the original jurisdiction visualized under Section 36 of the Act. The remedy of appeal under that Section is available to any aggrieved person including an employee of the Commission. Such remedy is available against any order or direction of the Commission including the Council, Authority or Disciplinary Committee under any provision of the Act or Rules or Regulations. The remedies provided under Sections 36 and 37 of the Act are meant to be efficacious in view of constitution of the Medical Tribunal.
ii) It is apparent from the plain reading of Section 37(1) of the Act that it confers appellate jurisdiction upon the Medical Tribunal in contradistinction to the original jurisdiction visualized under Section 36 of the Act. The remedy of appeal under that Section is available to any aggrieved person including an employee of the Commission.
iii) Legislature is competent to exclude jurisdiction of a court, however, there exists a presumption against the ouster of jurisdiction. Any law or statutory provision which denied access to courts was to be construed strictly. Ouster of jurisdiction must either be explicitly expressed or clearly implied and is not to

be readily inferred. Language used by the legislature in this regard ought to show express and unequivocal manifestation of legislative intent to exclude jurisdiction of the courts. If language of an ouster clause is so clear and unmistakable that it left no doubt as to intention of the legislature in ousting jurisdiction in all circumstances, then the same should be given effect. If an ouster of jurisdiction clause is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.

iv) The remedies provided under sections 36 and 37 of the Act are meant to be efficacious in view of constitution of the Medical Tribunal. Therefore the writ is not maintainable.

Conclusion: i) The remedies provided under sections 36 & 37 of Pakistan Medical Commission Act, 2020 are available against any order or direction of the Commission including the Council, Authority or Disciplinary Committee under any provision of the Act or Rules or Regulations.

ii) Yes, the remedy provided in section 37 of Act is also available to employees of the Commission.

iii) Any law or statutory provision which denied access to courts was to be construed strictly. However if an ouster of jurisdiction clause is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.

iv) The writ is not maintainable in presence of alternate and efficacious remedy u/s 36 & 37 of the Act.

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64. **England and Wales Court of Appeal (Civil Division) Decisions**

R (on the application of O (a minor, by her litigation friend AO)v. Secretary of State for the Home Department

[2021] EWCA Civ 193

LORD JUSTICE DAVID RICHARDS, LORD JUSTICE SINGH, LADY JUSTICE NICOLA DAVIES

https://www.bailii.org/ew/cases/EWCA/Civ/2021/193.html

Facts: The Appellants, through this appeal, assailed the orders of High Court and Court of Appeal, whereby, the argument that, as the fee is unaffordable for a significant number of children, and so makes their statutory right to be registered as British citizens meaningless in practice, the Regulations must be unlawful was rejected.

Issue: Can the Secretary of State lawfully make the exercise of a child's right to be registered as a British citizen conditional on their payment of £1,012?

Analysis: Under the Immigration and Nationality (Fees) Regulations 2018 ("the Regulations"), the Secretary of State charges a mandatory fee of £1,012 to all children applying to be registered as British citizens under various provisions of the British Nationality Act 1981.

Conclusion: The Secretary of State cannot lawfully make the exercise of a child's right to be registered as a British citizen conditional on their payment of £1,012.

LATEST LAGISLATION/AMENDMENTS:

1. A new section 181-A is inserted in "The Elections Act, 2017" through the "Elections (Amendment) Ordinance, 2022"
2. Sections 2, 20, 43 of "Prevention of Electronic Crimes Act, 2016 (XL of 2016) are amended while Section 44-A is inserted through "Prevention of Electronic Crimes (Amendment) Ordinance, 2022.

LIST OF ARTICLES

1. **SPRINGER LINK**
   https://link.springer.com/article/10.1007/s10609-022-09431-x
   Digitised Justice: The New Two Tiers? by Jane Loo & Mark Findlay

   Prevailing conditions of access to justice and due process in the Singapore courts are criticised through McBarnet's two-tier lens and Carlen's dramaturgical understandings of criminal court realities. More than an interest in the structural separation of the Singapore judiciary, the paper interrogates the dualism between the imagined workings of justice and the daily operational experience for users of the Singapore courts. The scene is set to understand ideologies of triviality and irrelevance and their impact on justice service delivery in subordinate courts where legal representation and offender participation are the exception. To speculate on novel influences of triviality and irrelevance through machine-learned automation, an audit of Singapore's present-day court technologies and its increasingly digitised court processes and format is detailed in the second part. The administrative benefits of digitisation notwithstanding, the paper reasons that digitalisation motivated by convenience, cost-cutting and emergency exigencies presents additional dangers to justice access and due process delivery above those already at play. These further challenges are deciphered through considerations of how justice service delivery is depersonalised and routinised in disruptive digital models. Digitized justice suggests a new 'two tiers' duality between physical and virtual frames of service delivery and contestation. The 'on-line' screen shifts the theatre from the courtroom to the 'zoom room'. This exploration of two tiers of justice and theatre of the courtroom re-imagined through digitisation offers the opportunity to appreciate and activate automated decision processes and data management as part of the solution, rather than conceding their exacerbation of the 'injustice' posed by this two tiers ideology and courtroom drama exclusionism.

2. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s12027-022-00702-z
Cybercrime and Artificial Intelligence. An overview of the work of international organizations on criminal justice and the international applicable instruments by Cristos Velasco

The purpose of this paper is to assess whether current international instruments to counter cybercrime may apply in the context of Artificial Intelligence (AI) technologies and to provide a short analysis of the ongoing policy initiatives of international organizations that would have a relevant impact in the law-making process in the field of cybercrime in the near future. This paper discusses the implications that AI policy making would bring to the administration of the criminal justice system to specifically counter cybercrimes. Current trends and uses of AI systems and applications to commit harmful and illegal conduct are analysed including deep fakes. The paper finalizes with a conclusion that offers an alternative to create effective policy responses to counter cybercrime committed through AI systems.

3. **HAVARD LAW REVIEW**
https://harvardlawreview.org/2022/02/data-federalism/
Data Federalism by Bridget A. Fahey

Private markets for individual data have received significant and sustained attention in recent years. But data markets are not for the private sector alone. In the public sector, the federal government, states, and cities gather data no less intimate and on a scale no less profound. And our governments have realized what corporations have: It is often easier to obtain data about their constituents from one another than to collect it directly. As in the private sector, these exchanges have multiplied the data available to every level of government for a wide range of purposes, complicated data governance, and created a new source of power, leverage, and currency between governments.This Article provides an account of this vast and rapidly expanding intergovernmental marketplace in individual data. In areas ranging from policing and national security to immigration and public benefits to election management and public health, our governments exchange data both by engaging in individual transactions and by establishing "data pools" to aggregate the information they each have and diffuse access across governments. Understanding the breadth of this distinctly modern practice of data federalism has descriptive, doctrinal, and normative implications.In contrast to conventional cooperative federalism programs, Congress has largely declined to structure and regulate intergovernmental data exchange. And in Congress's absence, our governments have developed unorthodox cross-governmental administrative institutions to manage data flows and oversee data pools, and these sprawling, unwieldy institutions are as important as the usual cooperative initiatives to which federalism scholarship typically attends.Data exchanges can also go wrong, and courts are not prepared to navigate the ways that data is both at risk of being commandeered and ripe for use as coercive leverage. I argue that these constitutional doctrines can and should be adapted to police the exchange of data. I finally place data federalism in normative frame and argue that data is a form of governmental power so unlike

the paradigmatic ones our federalism is believed to distribute that it has the potential to unsettle federalism in both function and theory.

4. **INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION**
https://www.tandfonline.com/doi/full/10.1080/09695958.2022.2032082
Relationships between workplace characteristics, psychological stress, affective distress, burnout and empathy in lawyers. By Nora Clap & Rhonda Brown

Recent studies indicate that lawyers are at greater risk of experiencing stress, anxiety, depression and burnout symptoms than other occupational groups and the general population. Opinion pieces have suggested that workplace culture and law practice characteristics can explain the distress. However, no empirical studies have considered the potential impact of the factors on lawyer's mental health or evaluated the potential impact of lawyer's mental health on their clients. Empathy is an essential component of legal practice especially during client interactions; and prior research in doctors has shown that stress, anxiety, depression and burnout are associated with low empathy. This study examined the relationship between workplace characteristics, psychological stress, affective distress (i.e. anxiety, depression), burnout and empathy in lawyers. Private practice and in-house lawyers (n = 200) completed a questionnaire asking about work-stress, supervisor and organisational support, stress, affective distress, burnout and empathy. Analyses showed that psychological stress and burnout in lawyers was related to greater work-stress and a lack of perceived organisational support, and in turn, psychological stress and burnout were associated with low empathy in lawyers. Results suggest that stressful and unsupportive workplaces may contribute to stress, affective distress and burnout in lawyers that may have implications for lawyer-client interactions.

5. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/will-employees-may-sue-their-employer-misrepresentation-intended-job-duties
At-Will Employees May Sue Their Employer For Misrepresentation of Intended Job Duties; by **Mark Theodore & Wesley C. Shelton**

A recent California Court of Appeal decision confirms that a California employer may be liable to an at-will employee who relocates to accept a new employment position, when the employer's description of the kind or character of the job was misleading. In the case Kenneth Allen White v. Smule, Inc., the Court of Appeal reversed a trial court decision to grant summary judgment in favor of the employer, after the trial court found that an at-will employee could not rely on an employer's assurances of long-term employment. The Court of Appeal found that, although an at-will employee may not relocate with an expectation of long-term employment, an at-will employee could rely on an employer's misrepresentations concerning other aspects of the promised employment, including the kind and character of the job.