LAHORE HIGH COURT

BULLETIN

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

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FORTNIGHTLY CASE LAW BULLETIN

(01-01-2022 to 15-01-2022)

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

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammad Farooq v. Javed Khan
Civil Appeal No.1191 of 2014
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1191_2014.pdf

Facts: The land sold to the respondents in 1971 was found 19 marlas deficient upon demarcation conducted in the year 2010 due to mistake in preparing settlement record back in 1947-48 to which both parties were no aware. The trial Court ordered the appellant for return of consideration amount to the respondent to the extent of 19 marlas on market rate and the first and second appellate courts upheld the said order.

Issue: i) What is the effect of mutual mistake of fact on the basis of which parties made their transaction?
ii) Whether a court can grant such a relief which is not prayed by the plaintiff in the plaint?

Analysis: i) According to section 20 of the Contract Act 1872, a mistake of fact takes effect when the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, thus, rendering the agreement void. The judicial consensus that has developed on this common mistake of fact rendering an agreement void, is to discourage frequent intrusions by the court on the smallest of mistakes and to encourage positive exercise of jurisdiction on fundamentally apparent mistake of facts, so as to uphold freedom of contracts and certainty of terms of contracts.--- In essence, the underlying principle for grant of restitution to a claimant is the "unjust enrichment" of the opposing party. In order to positively avail restitution, the claimant is to fulfil the four condition precedents: firstly, that the opposing party has been enriched by the receipt of a benefit; secondly, that this enrichment is at the expense of the claimant; thirdly, that the retention of the enrichment is unjust; and finally, there is no defence or bar to the claim.
ii). The question as to the power of the courts to grant relief not expressly prayed for has earlier been agitated and decided by this Court in several cases. In the recent case of Akhtar Sultana v. Muzaffar Khan, it was held that in appropriate cases, the courts can mould the relief within the scope of the provisions of Order VII, Rule 7 of the Code of Civil Procedure Code 1908, and are empowered to grant such relief as the justice may demand, in the facts and circumstances of the case.

Conclusion: i) Once a common mistake of fact between the contracting parties is established, the legal consequence to ensue is that the agreement entered between the parties is to be declared void under section 20 of the Contract Act 1872. This vitiation of the agreement would then lead the aggrieved party to be able to seek restitution under section 65 of the Contract Act 1872.

ii) In appropriate cases, the courts can mould the relief within the scope of Order VII, Rule 7 of CPC , and are empowered to grant such relief as the justice may demand.

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2. **Supreme Court of Pakistan**
Nadeem Samson v. The State etc.
Criminal Petition. No. 1016 -L/ 2021
Mr.Justice Sardar Tariq Masood, Mr.Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1016_l_2021.pdf

Facts: The petitioner has challenged the order wherein his post arrest bail upon statutory ground was denied.

Issue: i) Whether withdrawal of earlier bail petition precludes the filling of subsequent bail petition?

ii) Whether the delay in trial attributed to the petitioner after the expiry of statutory period is relevant for determining his right to be released on bail on the statutory ground?

Analysis: i) Withdrawal of an earlier bail petition before addressing any argument on the merits of the case, as held by this Court in the Nazir Ahmed case, does not preclude filing of a subsequent bail petition for the same relief on the same grounds before the same court.

ii) When a continuous period of exceeding two years since the detention of the petitioner in the case had lapsed without conclusion of the trial; therefore, a right to be released on bail had prima facie accrued to the petitioner. Any delay attributable to the petitioner after the expiry of the said period is not relevant for determining his right to be released on bail on the statutory ground provided in the 3RD proviso to Section 497(1) CrPC.

Conclusion: i) Withdrawal of earlier bail petition does not preclude the filling of subsequent bail petition.

ii) The delay in trial attributed to the petitioner after the expiry of statutory period is not relevant for determining his right to be released on bail on the statutory ground.

3. **Supreme Court of Pakistan**
Khyber Medical University, etc v. Aimal Khan, etc
Civil Petition No.3429 of 20 21
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel and Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3429_2021.pdf

Facts: The respondent was disqualified for appearing in any examination for three years for being caught red handed while impersonating a female student and appearing on her behalf in the examination paper. The High Court reduced the penalty under Regulation 32 (c) from three years to one year by taking a 'lenient view' and holding that the penalty was a "little bit harsh and liable to rectification ".

Issues: Whether a penalty mentioned under Regulation 32(c) of the Khyber Medical University Examination Regulations, 2017 can be reduced?

Analysis: The Regulation 32(c) of the Khyber Medical University Examination Regulations, 2017 clearly states that in case a student is found guilty of impersonation , he (along with the candidate)shall be disqualified for a period of three years; it gives no discretion to the decision-making authority to fix the period of disqualification as it provides only one period, i.e., three years . Had the expression used been "for a period up to three years", the decision -making authority would have got the discretion to fix the period of disqualification for any period up to three years, but the law does not so provide; therefore, the decision -making authority (UFM Committee) or the appellate authority (UFM Appellate Committee) could not fix the period of disqualification for Respondent No.1 to a period less than three years. The High Court, however, has reduced the penalty of disqualification of the respondent No.1 from three years to one year on the ground of ' leniency', in disregard of the Regulation. The High Court has failed to appreciate that it cannot ignore the relevant law as everyone is to be treated in accordance with law under the constitutional command of Article 4 of the Constitution, and that under Article 199 (1)(a)(ii) of the Constitution it can declare only such act or proceeding of a public functionary to have no legal effect, which has been done or taken without lawful authority. In the present case, without finding that the public functionaries , i.e., the UFM Committee and the UFM Appellate Committee of the University, had acted without lawful authority in making their decisions dated 16.12.2020 and 03.02.2021, the High Court could not have interfered with and modified those decisions.

Conclusion: A penalty mentioned under Regulation 32(c) of the Khyber Medical University Examination Regulations, 2017 can be reduced.

4. **Supreme Court of Pakistan**
Zilla Muhammad etc v. Kifayat Ali (decd.) thr. LRs
Writ Petition No. 653 to 656 of 2014
Mr.Justice Munib Akhter, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._653_2014.pdf

Facts: The suit for possession through pre-emption was dismissed due to his purported failure to perform Talab-i-Muwatibat.

Issues: Whether concurrent findings of courts below are amenable to interference by High Court?

Analysis: When the view taken by the learned Civil Judge, affirmed by the learned Appellate Court on factual plane, being a possible view, does not appear to be unrealistic or bombastic and as such does not constitute an error or irregularity nor can be equated with non-reading or misreading of evidence, amenable to interference by the High Court in exercise of its revisional jurisdiction.

Conclusion: Concurrent findings of courts below are not amenable to interference by High Court on factual plane.

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5. **Supreme Court of Pakistan**
Muhammad Naeem Khan & another v. Muqadas Khan (decd) through LRs and others
Civil Appeal N.908 of 2015
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._908_2015.pdf

Facts: The petitioner has assailed the orders of learned trial and appellate court wherein the suit for cancellation of mutation was dismissed?

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Issue: i) What is effect of non-production of Parda Nasheen lady where she challenged the mutation on basis of fraud?
ii) Whether in the circumstances where one of the executants of a document was a parda-nasheen and illiterate lady, the burden of proof had not shifted upon the beneficiary of such transaction?

Analysis: i) The lady failed to appear for recording her evidence which was the best evidence to lead with regard to veracity and genuineness of her own thumb impression but no effort was made to produce her… Where a party keeps hold of the witnesses, the presumption would be that if such witnesses were produced, their testimony must have against him, therefore adverse inference of withholding evidence goes against the party who failed to call the concerned person engaged in the transaction who was in a better position to give firsthand and straight narrative of the matter in controversy. According to Article 129 of the Qanun-e-

Shahadat Order 1984, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Illustration (g) attached to this Article is quite relevant to the facts and circumstances of the case in hand in which the court may draw adverse inference or presumption that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it.

ii) In case of a document executed by a pardanashin lady, the burden of proof is on the party who depends on such a deed to persuade and convince the Court that it has been read over and explicated to her and she had not only understood it but also received independent and disinterested advice in the matter. The aforesaid parameter and benchmark is equally applicable to an illiterate and ignorant woman who may not be a pardanashin lady. If authenticity or trueness of a transaction entered into by a pardanashin lady is disputed or claimed to have been secured on the basis of fraud or misrepresentation, then onus would lie on the beneficiary of the transaction to prove his good faith and the court has to consider whether it was done with freewill or under duress and has to assess further for an affirmative proof whether the said document was read over to the pardanashin or illiterate lady in her native language for her proper understanding.

Conclusion: i) Non Production of Prda-Nasheen lady goes against the party who failed to call the concerned person engaged in the transaction. The presumption would be that if such witnesses were produced, their testimony must have against him.

ii) In the circumstances where one of the executants of a document was a parda-nasheen and illiterate lady, the burden of proof had shifted upon the beneficiary of such transaction.

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6. **Lahore High Court**
Syed Ali Akbar v. The State
Criminal Appeal No.73389 of 2017
The State v. Syed Ali Akbar
Murder Reference No.534 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8385.pdf

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

Issues: i) What is the circumstantial evidence and if any link is missing then what is its impact?
ii) What is the impact of delayed autopsy of the dead body?
iii) What is evidentiary value of the last seen evidence?
iv) What is evidentiary value of extra-judicial confession?

v) What is the importance of medical evidence in ocular account?
vi) Whether mobile phone data is conclusive proof against the accused?
vii) Whether the prosecution is under obligation to establish motive?

Analysis: i) Circumstantial evidence is a weak type of evidence, prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the alleged offence and if any link is missing then obviously benefit is to be given to the accused.

ii) An adverse inference to the prosecution's case can be drawn that the intervening period had been consumed in fabricating a story after preliminary investigation.

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

iv) Extra judicial confession has been declared a weak type of evidence as extra-judicial confession does not bear any credibility and that cannot be permitted to render any sort of help to the case of the prosecution.

v) The medical evidence may confirm the ocular account with regard to seat of injuries and its duration, nature of injuries and kind of weapon used for causing such injury but it cannot connect the accused with the commission of crime.

vi) CDR is not conclusive proof of involvement of accused in the commission of crime.

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

Conclusion: i) Circumstantial evidence is weak type of evidence and if single link is missing then the same is sufficient to give benefit of doubt to the accused.

ii) It has an adverse impact to the prosecution story.

iii) Last seen evidence is weak type of evidence.

iv) Extra Judicial confession has no credibility to prove prosecution case.

v) Medical evidence can confirm the ocular account but cannot connect the accused with the commission of crime.

vi) No, mobile data is not the conclusive proof against the accused.

vii) The prosecution is not under an obligation to prove the motive in every murder case.

7. **Lahore High Court**
The State v. Muhammad Shabbir
Murder Reference No. 635 of 2017
Muhammad Shabbir v. The State etc.
Crl. Appeal No. 119374 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8358.pdf

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

Issues: i) What is the impact of delayed autopsy of the dead body?
ii) Whether the prosecution is under obligation to prove motive when same was advanced by the prosecution?

Analysis: i) Gross delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time of occurrence and the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made witnesses subsequently, otherwise there was no justification for conducting post-mortem examinations on the dead bodies of the deceased.
ii) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

Conclusion: i) Gross delay in the post mortem examination has an adverse inference to the prosecution story.
ii) The prosecution is not under an obligation to prove the motive in every murder case and if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer

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8. **Lahore High Court**
Muhammad Usman v. Learned Additional Sessions Judge Rawalpindi and 3 others
Writ Petition No. 2594 of 2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC8399.pdf

Facts: Through petition under Article 199, the petitioner challenged order of Additional Sessions Judge/Ex-Officio Justice of Peace passed on a petition under section 22-A & 22-B of Cr. P.C directing the police to record the version under section 154 of the Cr. P.C and to act in accordance with law.

Issues: i) What is historical background and legal provisions for appointment of

Advocate General?

ii) Whether the office of the Advocate General and Assistant Advocate General are different in the eye of law?

iii) Whether notice to Attorney General or Advocate General under Order XXVIIA of CPC is mandatory?

iv) Whether personal appearance of Attorney General or Advocate General is necessary if notice under order XXVIIA of CPC is given?

v) Whether offence under Article 155 of Police Order, 2002 is cognizable?

Analysis: i) The historical background of the office of Advocate General is that for the purpose of management of the legal affairs of the United Punjab Province, under paragraph 1.5 of the Punjab Law Department Manual, 1938. Under the Government of India Act, 1935, the Governor of the Province was empowered to appoint the Advocate General in its discretion, however, after the independence, the situation became different. Under Article 140 of Constitution of the Islamic Republic of Pakistan, 1973 and earlier Constitutions, the Advocate General is appointed by the Governor on the advice of the Chief Minister as contemplated under Article 105 of Constitution.

ii) The office of the Advocate General is different in the eye of law than the office of Assistant of Advocate General. The appointment of the Advocate General is a constitutional appointment whereas appointment of an Assistant Advocate General is made under the statues/rules which also apply to the office of Additional Advocate General as well.

iii) It is apparent from the bare perusal of Order XXVIIA of CPC that in any suit in which it appears to the Court that any substantial question as to the interpretation of constitutional law is involved, the Court shall give a notice to the Attorney General for Pakistan if the question of law concerns the Federal Government and to the Advocate-General of the Province if such question concerns a Provincial Government, before proceeding to determine such question involved in the suit. It is trite law that notice in terms of Order XXVIIA of CPC is mandatory and non-compliance to the provision would render the judgment nullity in the eye of law.

iv) In terms of notice under Order XXVIIA of CPC, the personal appearance of the Attorney General for Pakistan if the question of law concerns the Federal Government and the Advocate General of the Province if the question of law concerns a Provincial Government as the case may be, is necessary.

v) The offence under article 155 of order is cognizable. The offence under Article 155 provides a punishment of imprisonment for a term which may extend to three years and with fine. It is trite law that when on a particular point of law or fact if a special statute is silent then the provisions of general law would prevail. The provisions of Cr.P.C. are admittedly not ousted by any of the provision of Police Order 2002. In terms of Schedule II of the Cr.P.C. relating to the offences against other laws any offence which is punishable with imprisonment of three years and upwards but not exceeding seven years becomes cognizable as the offender can be

arrested without warrant.

Conclusion: i) The office of Advocate General is for the purpose of management of legal affairs of Province and under Government of India Act 1935, the Governor of Province and under Article 140 of Constitution Governor is appointing authority.
ii) Office of the Advocate General and Assistant Advocate General are different in the eye of law.
iii)A notice to Attorney General or Advocate General under Order XXVIIA of CPC is mandatory.
iv) The personal appearance of Attorney General or Advocate General is necessary if notice under order XXVIIA of CPC is given.
v) The offence under Article 155 of Order is cognizable.

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9. **Lahore High Court**
Muhammad Khalid Mushtaq v. The Board of Revenue, Government of the Punjab etc.
Writ Petition No.45094 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC8284.pdf

Facts: The petitioners have challenged through the Constitutional petition the validity of order passed by the Member (J-V) / Incharge Settlement Wing / Administrator (Residual Properties) / Notified Officer, Board of Revenue, Punjab who validated the transfer of land in favour of PTCL/respondent No.5 on the basis of Writ petitions and declared the PTOs purportedly issued on 21.03.69 as well as subsequent PTDs dated 21.03.1969 as bogus, forged and fabricated and also held that the mutation No.3227 dated 30.11.2005 was allegedly got sanctioned without prior permission / verification from the office of the (S&R) Wing of the Settlement Department.

Issues: i) Whether effective decree can be passed without impleading the concerned department as a party?
ii) Whether service can be affected through a clerk of the concerned department and can he himself record any statement in the proceedings before a competent court?
iii) Whether any evacuee land can be allotted to any claimant if the said land falls into the category of "building site"?
iv) Whether the Chief Settlement Commissioner, Government of Punjab, has jurisdiction to decide the matter of lands of evacuee property?
v) Whether the subsequent purchasers have any protection under Section 41 of the Transfer of Property Act?

Analysis: i) Under Article 174 of the Constitution of Islamic Republic of Pakistan, 1973 as well as under Section 79, read with Order XXVII CPC, it was mandatory to implead Province of Punjab through Chief Settlement Commissioner /

Administrator (Residual Properties) / Notified Officer, Board of Revenue department as a party to the lis. Without arraying it as a party, no effective decree can be passed and if any decree was passed, the same shall be nullity in the eye of law and in-executable.

ii) Under Order XXVII Rule 4 C.P.C. the Government or its functionaries can be served through Government Pleader but not through the clerk and he cannot record the statement in the Court on his own without any written authority from the department. Conceding statement, if any, made by a Departmental Representative / Law Officer appearing on behalf of the State, in absence of any written instructions, has no binding effect.

iii) When the Chief Settlement Commissioner has already declared the land a "building site" it leaves nil space for any allotment of said land to any claimant and if any allotment was obtained in contravention of the notification that would be illegal and void ab initio.

iv) It is noted to see that section 21 of the General Clauses Act, 1897 confers an inherent jurisdiction to an authority which has passed the order to reverse the erroneous or illegal order earlier passed by it. Similarly if any benefit has been obtained from authority by practicing misrepresentation or fraud, the same forum is vested with inbuilt jurisdiction to decide the issue, therefore, Chief Settlement Commissioner, Government of Punjab, has exclusive jurisdiction to decide such matters.

v) The vendees have no independent right, title or interest in the allotted land as their rights have to soar and sink with the title of the original allottees, as such, it is clear that no protection is available to the petitioner under Section 41 of the Transfer of Property if very allotment of original allottee has been declared as bogus and illegal.

Conclusion: i) Effective decree cannot be passed without impleading the concerned department as a party and such decree is in-executable.

ii) The Government or its functionaries can be served through Government Pleader and not through any clerk and he cannot record any conceding statement without written statement in this regard.

iii) No order for allotment can be passed with regard to land falling into "building site".

iv) The Chief Settlement Commissioner, Government of Punjab has exclusive jurisdiction to decide such matters.

v) The subsequent purchasers have no protection under Section 41 of the Transfer of Property Act if very allotment of original allottee has been declared as bogus and illegal.

10. **Lahore High Court**
Sajida Rehmat Ullah v. Guardian Judge-II etc.
Writ petition no.15203/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021lhc8442.pdf

Facts: The petitioner adopted the minor soon after her birth from her real brother. Thereafter real parents snatched the custody of minor. So the petitioner filed custody petition in Guardian Court. When the case was about to be concluded, the petitioner moved an application for recording the statement of the minor to ascertain her preference in terms of section 17(3) of the Guardian and Wards Act, 1980. The said application was dismissed. Hence this petition.

Issues: i) What is the principle of "Welfare" of minor?
ii) What are the factors which the court is required to take into consideration for determination of welfare of the minor?
iii) Whether the preference of the minor also a relevant factor in terms of considering the "welfare" of the minor?
iv) Whether ascertaining the preferences of the minor and the weight to be attached to it is one and same thing?

Analysis: i) Section 17 of the Guardian and Wards act gives guidelines regarding the matters to be considered by the court in appointing a guardian. Section 17(1) of the Guardian and Wards Act, 1980 gives statutory recognition to the principle of "welfare" of the minor. It includes material welfare; both in the sense of "an adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained" as well as "the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents.
ii) Section 17(2) of Guardian and Wards Act, 1980 mentions some of the factors which the court is required to take into consideration for determination of welfare of the minor e.g., the court shall have regard to the age, sex and religion of the minor, the character and capability of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
iii) Section 17 (3) of Guardian and Wards Act, 1980 makes the preference of the minor also a relevant factor by stating that if the minor is old enough to form an intelligent preference, the court may consider that preference. It is this provision which is central to the controversy involved in this case.
iv) The minor's interview helps in the decision of the case. It may bring certain facts to the court's notice which may have been concealed or overlooked by the parties while getting their evidence recorded. It is, therefore, preferable that the court should quiz him in detail. However, it needs to be emphasized that while

questioning the minor the court should not only consider his age and maturity but also see whether he has been tutored or is under undue influence of the person with whom he is living for the time being. It should not allow itself to be swayed by emotions.

Conclusion; i) "welfare" is a question of fact and has to be determined on the basis of the materials placed before the judge and not on presumptions.
ii) Age, sex and religion of the minor, the character and capability of the proposed guardian etc are relevant factors for determination of welfare of the minor.
iii) The preference of the minor is also a relevant factor while considering the "welfare" of the minor.
iv) Ascertaining the preferences of the minor and the weight to be attached to it are two different things. The court may reject the minor's preference if it finds that he has been tutored or is acting against his interest.

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11. **Lahore High Court**
Zaheer Ahmed v. The State etc
Crl. Misc. No.27057/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC8499.pdf

Facts: The petitioners sought their bails in offences under sections 295-A, 298-C of the Pakistan Penal Code, 1860 ("PPC") and section 11 of the Prevention of Electronic Crimes Act, 2016 ("PECA") for sharing proscribed translation of the Holy Quran in Whatsapp group.

Issue: i) Whether section 9 of the Quran Act or section 5 of the Criminal Law Amendment Act, 1932 (XXIII of 1932) applies to offence of sharing proscribed translation of the Holy Quran through Whatsapp group?
ii) Whether an administrator can be held criminally liable for the objectionable material posted by the members of the group?

Analysis: i) The application of the Quran Act is limited to printers and publishers. Act XXIII of 1932 was enacted to supplement the criminal law and to that end to amend the Press (Emergency Powers) Act, 1931 (XXIII of 1931) and to further amend the Criminal Law Amendment Act, 1908 (XIV of 1908). A bare reading of section 5, above, evinces that it criminalizes dissemination of contents of proscribed document through any mode. It does not apply to the situation where the accused circulates the newspaper, or other document despite the ban and flouts the government's order.
ii) The preponderance of opinion is that the group administrator provides a platform to select persons and opportunity to share posts. If he does not contribute or is not directly involved in dissemination of objectionable material, he cannot be prosecuted unless there is a specific penal provision creating vicarious liability or

it is proved that there was common intention or pre-arranged plan and the group administrator and the members were acting in concert.

Conclusion: i) Section 9 of the Quran Act or section 5 of the Criminal Law Amendment Act, 1932 (XXIII of 1932) do not apply to the case of petitioner.
ii) Yes, an administrator can be held criminally liable for the objectionable material posted by the members of the group.

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12. **Lahore High Court**
Sardar Qurban Ali Dogar v. Pakistan Bar Council and others
Writ Petition No.228 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC1.pdf

Facts: The Petitioner being aggrieved from the orders passed by the Respondents i.e. Pakistan Bar Council and Executive Committee, Punjab Bar Council, challenged the same by invoking constitutional jurisdiction of the High Court.

Issues: Whether Pakistan Bar Council and Punjab Bar Council are amenable to constitutional jurisdiction of the High Court?

Analysis: Pakistan Bar Council is a statutory body which is autonomous and generates its own funds independently. The Government does not have any control over it. Likewise the Punjab Bar Council acts as a regulator for affairs of the Advocates in Punjab, admits Advocates to practice before the High Court and courts subordinate to the Lahore High Court and maintains rolls of such Advocates. The functions of the Council also inter- alia include initiating proceedings for misconduct against Advocates on its rolls and award punishment in such cases. That being so, neither the said Bar Councils nor any of its constituents or committees can be regarded as persons performing functions in connection with the affairs of the Federation, Provinces or Local Authority within the contemplation of the Article 199 of the Constitution of Islamic Republic of Pakistan.

The same principle was recently enunciated by the Hon'ble Supreme Court of Pakistan in "Syed Iqbal Hussain Shah Gillani Versus Pakistan Bar Council through Secretary, Supreme Court Bar Building, Islamabad and others" (2021 SCMR 425) by holding that "neither the Bar Council nor any of its committees could be regarded as persons performing functions in connection with the affairs of the Federation, Provinces or Local Authority within the contemplation of Article 199 of the Constitution of Pakistan. Accordingly, the Pakistan Bar Council and its Committees were not amenable to constitutional jurisdiction of the High Court".

Every judgment of the Supreme Court is binding on all Courts under Article 189 of the Constitution. The same words are used in Article 201 of the Constitution but subject to Article 189 to follow its principle for consistency therefore, the principles enunciated in aforesaid judgments are binding on this Court under Article 189 of the Constitution. Moreover, the Respondents do not fall within the meaning of 'persons' as per Article 199(5) of the Constitution as held by the Hon'ble Supreme Court in above referred judgment that neither the bar councils nor any of its committee could be regarded as persons hence the Pakistan Bar Council and Punjab Bar Council are not amenable to invoke constitutional jurisdiction of this Court.

Conclusion: Pakistan Bar Council and the Punjab Bar Council and its Committees are not amenable to constitutional jurisdiction of the High Court.

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13. **Lahore High Court**
Mst. Sameena Ashfaq Syed Amin Al v. Govt, of Pakistan etc.
Writ Petition No. 26065 of 2012
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5449.pdf

Facts: This constitutional petition challenges the Circular dated 27.07.2012 issued Government of Pakistan, Central Directorate of National Saving, Islamabad and Circular dated 31.07.2012 issued by the Directorate of National Savings, Lahore whereby Foreign Nationals who had made irregular investment in Bahbood Savings Certificates ("BSCs") were held, entitled to profit as admissible on regular income certificates only and the department was directed to recover, the difference of. profit vis-i-vis certificates to settle the matter.

Issues: i) What is applicability of principle of locus poenitentiae?
ii) Whether longstanding practice of any department cannot be deviated and attains the status of law?
iii) Whether the foreigners are entitled to profit on Bahbood Saving Certificates?

Analysis i) The principle of locus poenitentiae provides that a party can withdraw a representation made by it before it has been acted upon by the other party and the matter has not yet been finalized. However, after finalization of the same, the steps cannot be withdrawn. The principle of locus poenitentiae of receding back the steps is available only where an action or representation has been made erroneously.
ii) Although departmental, practice followed for a long time cannot be deviated and attains status of law but only when the same is not against any express provision of law… Where something is done which is against the law, even if a consistent practice has been followed by the department, that practice cannot unsettle the law. Besides it is settled by now that when a particular thing is required to be done in a particular manner, the same procedure must be followed

and cannot be treated as a mere technicality.
iii) As per rules, the purchase of BSCs were only limited to the citizens of Pakistan and a person not a citizen of Pakistan was not entitled to purchase the same except in case of a female prior to 01-08-2011.

Conclusion: i) The principle of locus poenitentiae of receding back the steps is available only where an action or representation has been made erroneously.
ii) Departmental, practice followed for a long time cannot be deviated and attains status of law but only when the same is not against any express provision of law.
iii) The foreigners are not entitled to profit on Bahbood Saving Certificates

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14. **Lahore High Court**
Engineer Bismillah Kakar v. Federation of Pakistan, through Secretary, Ministry of Industries & Production, etc.
W.P. No. 78024 / 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC8314.pdf

Facts: The petitioner challenges his transfer on the ground that the Petitioner is proposed President of PITAC Officers Welfare Association (POWA) and the matter of its registration is pending with the Registrar Trade Unions (RTU), at National Industrial Relations Commission (NIRC), Islamabad, therefore, during the pendency of the same, in view of Section 3 read with Section 17 of the National Industrial Relations Act, 2012 (the ACT), he cannot be transferred to any other place without his consent

Issue: i) Whether an employee who was not governed by statutory rules can approach High Court in its constitutional jurisdiction?
ii) Whether section 17 of National Industrial Relations Act applies to employer?
iii) Whether the High Court can decide under its Constitutional jurisdiction as to whether the petitioner falls under the definition of employer?
iv)Whether in the presence of availability of remedy in special law, one can directly file the Constitutional petition?

Analysis: i) When a service grievance was agitated by a person / employee, who was not governed by statutory rules of service, said employee cannot approach the High Court as a petitioner in its Constitutional jurisdiction under Article 199 of the Constitution of Pakistan, 1973 for redress of his grievance.
ii) The right under section 17 of the National Industrial Relations Act is available only to the members and officers of the trade union of workmen and not to the employer as the wording of the same is “save with the prior permission of the Registrar, no officer or member of a trade union of workmen shall be transferred, discharged, dismissed or otherwise punished during the pendency of an application for registration of the trade union with the Registrar, provided that the

union has notified the names of its officers and members to the employer in writing". It is pertinent to note here that the word officer used in the said section relates to the definition of officer provided in Section 2(xxii) of the Act, which in relation to a trade union, means any member of the executive thereof but does not include an auditor or legal adviser.

iii) The question whether the petitioner falls within the definition of employer or workman requires deeper appreciation of inside working of PITAC along with the detailed analysis of the charge of the post held by the petitioner and nature of duties performed by him, which is not permissible under the Constitutional jurisdiction of this Court especially when the parties are not concurring with each other as to the facts narrated by both the sides and disputed questions cannot be determined in constitutional jurisdiction of this Court.

ii) Where a special law provides a right and a corresponding remedy, then the remedy provided in the said law is to be availed prior to availing any other remedy available under the law.

Conclusion: i) An employee who was not governed by statutory rules cannot approach High Court in its constitutional jurisdiction.

ii) Section 17 of National Industrial Relations Act applies only to the members and officers of the trade union of workmen and not to the employer.

iii) The High Court cannot decide under its Constitutional jurisdiction as to whether the petitioner falls under the definition of employer

iv) In the presence of availability of remedy in special law, one cannot directly file the Constitutional petition.

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15. Corrigendum
Lahore High Court
Mst. Saira Fatima Sadozai v. D.I.G. Investigation, etc
Writ Petition No.64405 of 2021
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC7813.pdf

Facts: The petitioner has challenged the vires of order of DIG where in transfer of investigation was transferred from one circle to another circle after framing of charge.

Issues: i) Whether after framing of charge the re-investigation can be ordered?

ii) Whether the opinion of District Standing Board can be sole ground for change of investigation?

iii) What requisites should be followed while passing order of re-investigation?

Analysis: i) If after completion of investigation and sending challan report prepared under Section: 173 Cr.P.C. in the Court, it is felt or highlighted that during already conducted investigation, certain aspects regarding basic/constituting elements of

the offence or version of the accused could not be investigated, new facts/better evidence or further information has become available which has direct/essential/vital nexus with alleged crime, proclaimed offender in the case has been arrested and important piece of evidence like recovery of weapon of offence is to be collected and other allied matters to be investigated, defects of vital nature in already conducted investigation has been marked/detected/pointed out, already conducted investigation remained unsatisfactory due to non-availability of required evidence or through induction of false evidence due to corrupt behavior of Investigating Officer (concerned), then, non-conducting of further or fresh/reinvestigation would virtually amount to putting a seal on human error and with no opportunity to make amends although it be possible to do so.

ii) Opinion of District Standing Board cannot be made as a "sole" basis for change of investigation; District Police Officer is not bound to accept said opinion blindfoldly, rather after receipt of said opinion, he has to examine entire facts and then while giving express/valid reasons in writing to pass order regarding change of investigation or otherwise, as the case may be.

iii) D.I.G. Police (Investigation) after receipt of opinion of District Standing Board must examine the quality of already conducted investigation as well as conduct of first investigating officer and even without mentioning that which fact of the case has earlier not been seen/verified and now requires verification, transferred investigation through impugned order. Therefore, order does not carry valid/express reasons in writing by D.I.G. Police (Investigation), Lahore, hence, same is not fulfilling spirit of Article 18A of Police Order, 2002 as well as Section: 24-A of the General Clauses Act, 1897 and thus not sustainable.

Conclusion: i) After framing of charge the re-investigation can be ordered.

ii) The opinion of District Standing Board cannot be sole ground for change of investigation.

iii) The order must mention what has earlier not been seen/verified and now requires verification.

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16. **Lahore High Court**
Abid Farooq v. Federation of Pakistan, etc
Writ Petition No.79717 of 2021.
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC6.pdf

Facts: The petition through this writ petition sought pre arrest bail while sitting in abroad without putting his appearance before the court in several case FIRs registered against him by the local police in Punjab, Pakistan.

Issues: Whether the presence of accused is mandatory before the court while applying for pre-arrest bail?

Analysis: Pre-arrest bail is, as a matter of fact, an order to restrain police/investigating agency from arresting the accused in a case. It may be ad-interim pre-arrest bail, confirmed pre-arrest bail or protective/transitory ad-interim pre-arrest bail in a case. Concept of pre-arrest bail after going through the evolutionary process has now attained a definite shape/nomenclature and Section: 498-A Cr.P.C. is now holding the field regarding basic requirements for maintainability of petition for pre-arrest bail. Section: 498-A Cr.P.C. clearly reveals that presence of the accused before the Court for pre-arrest bail in the case is a must/mandatory and without his presence, pre-arrest bail cannot be granted

Conclusion: The presence of accused is mandatory before the court while applying for pre-arrest bail.

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17. **Lahore High Court**
Ghulam Mustafa v. Anila Shehzadi, etc
W.P. No.67276/2021
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC8266.pdf

Facts: The family court while passing decree disallowed the annual increment to respondent no. 1 while the executing court allowed 10% annual increment upon her application filed for seeking benefit of sub- section (3) of Section 17-A of Family Courts Act, 1964 ("the Act, 1964"). The petitioner has challenged the order of grant of increment.

Issues: Whether Section 17-A (3) of Family Court Act has retrospective effect?

Analysis: A bare perusal of sub-section (3) of section 17-A does not manifest any such intention. Legislature has not intended to make it applicable retrospectively– extending opportunity to re-open decrees passed and final. There is no cavil that substantive rights, accrued and vested, cannot be destroyed or impaired by a new law unless that law, by its express provision or by necessary intendment, is retrospective in operation. No such intent is evident or could be gathered from perusal of sub-section (3) of section 17-A, which cannot be stretched to disturb the rights created and obligations prescribed in terms of the decree.

Conclusion: The Section 17-A (3) of Family Court Act has no retrospective effect.

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18. **Lahore High Court**
Muhammad Amin etc. v. Muhammad Rafique
Civil Revision No. 1795/2011
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC8276.pdf

Facts: Respondents being owners have challenged the mutations on the basis of oral sale.

Issues: What is evidentiary value of mutation?

Analysis: Mutation by itself did not create or destroy an existing right but mere reflection of the revenue record, authenticity and validity thereof has had to be essentially ascertained qua the underlying transaction. Mutation merely records transfer, alleged to have taken place, which per se has no evidentiary value. Petitioners are required to prove the underlying transaction, no refuge can be taken behind impugned mutations on the premise of presumption of correctness.

Conclusion: Mutation has no evidentiary value.

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19. **Lahore High Court**
Mahmood Khan etc v. Bashir Ahmad etc
Civil Revision No. 1583/2010
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC8271.pdf

Facts: The suit for specific performance was filed after 18 years of execution of agreement on the ground that at the time of agreement the property in question was allegedly mortgaged and it was represented that upon redemption conveyance deed would be executed. That the other party surreptitiously redeemed the property and attempted to alienate the same which fact came to the knowledge of the petitioner, therefore he filed suit.

Issues: i) Whether mortgage of property is ground to take benefit of second part of section 113 of Limitation Act?
ii) Whether the production of Girdawari is proof of possession?

Analysis: i) It is clear that mortgage of the property, leaving equity of redemption with the mortgagor, does not restrict or bar enforcement of agreement to sell and the suit can be filed. In this case, alleged delay cannot be condoned on this ground that property was mortgage and right to seek enforcement was allegedly eclipsed or not available.
ii) When factum of possession was disputed; it obligates the respondents to prove their possession. Mere production of copies of Girdawari was not enough when no official witness was called for or record procured to prove possession. Mere placement of copies of Girdawari and shielding behind presumption of correctness, in respect thereof, is not enough when factum of possession was denied specifically.

Conclusion: i) Mortgage of property is not a ground to take benefit of second part of section 113 of Limitation Act.
ii) Mere production of Girdawari is not proof of possession.

20. **Lahore High Court**
Imran Gondal v. The State & another
Crl. Appeal No. 55479-J of 2017
Tanveer Ahmad Qamar v. The State & another
Crl. Revision No.43309 of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8374.pdf

Facts: The appellants have assailed their convictions in murder case.

Issue: i) When the prosecution witnesses once disbelieved with respect to a co-accused, can they be relied upon with regard to the other co-accused?
ii) What is effect of delay in postmortem examination?
iii) What is effect if motive behind occurrence is not proved?

Analysis: i) It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are supported by corroboratory evidence coming from independent source and shall be unimpeachable in nature.
ii) Inference regarding delay can be drawn that the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made witnesses subsequently.
iii) The law is settled by now that if the prosecution asserts a motive but fails to prove the same, then such failure on the part of the prosecution may react against a sentence of death on the charge of murder.

Conclusion: i) The prosecution witnesses once disbelieved with respect to a co-accused, cannot be relied upon with regard to the other co-accused
ii) Delay in postmortem examination creates doubt in prosecution story.
iii) Such failure on the part of the prosecution may react against a sentence of death.

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21. **Lahore High Court**
Saif Ullah v. The State & another
Crl. Appeal No. 208 of 2017
Ehsan Ullah v. The State etc.
Crl. Revision No. 388 of 2017
& Ehsan Ullah v. The State etc.
P.S.L.A No. 101 of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8347.pdf

Facts: The appellant has filed the titled appeal against his conviction and sentence in murder case whereas a criminal revision has been preferred by the petitioner/complainant for enhancement of sentence and has also filed Petition for Special Leave to Appeal against acquittal of co-accused.

Issues: i) What is evidentiary value of eye witnesses incorporated through supplementary

statements?
ii) How the evidence of a chance witness can be relied upon?
iii) Whether evidence of an eye witness relating to recovery can be trusted when his ocular account has already been discarded?

Analysis: i) The complainant has got recorded his supplementary statement after delay of one month and got incorporated names of eye witnesses. The prosecution has failed to justify delay of one month. Mere mentioning that due to anxiety he failed to mention the names of eye witnesses in FIR is not justifiable.
ii) A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. His evidence is not free from doubt. His evidence can only be relied upon if it is corroborated through other evidence.
iii) Ocular account of eye witnesses has been disbelieved due to their doubtful conduct and shaky evidence. So if the evidence of any eye witness has been discarded, then his evidence relating to recovery proceedings has no value and it shall have no worth.

Conclusion: i) The names of eye witnesses who were incorporated through supplementary statement have no value in the eye of law if their conduct is doubtful and they adduce shaky evidence.
ii) Evidence of a chance witness can only be relied upon if it has corroboration with available material.
iii) If ocular account has been discarded then evidence relating to recovery proceedings will have no credibility.

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22. **Lahore High Court**
Kamran v. The State, etc.
Criminal appeal no.38038/2019
Suleman Ali Shah v. Kamran, etc.
Criminal revision no.30079/2019
Suleman Ali Shah v. Barkat Ali, etc
Criminal appeal no.30076/2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC8332.pdf

Facts: The appellant has challenged his conviction in case of rape of a six years old school girl. The complainant filed criminal revision for enhancement of his sentence, whereas criminal appeal against acquittal of co-accused.

Issues: i) Whether there should more exceptions be created to the general rule of hearsay?
ii) Whether the statement of mother of victim has the relevance when minor

victim disclosed the occurrence to her?

Analysis: i) The august Supreme Court of Pakistan in case PLD 2020 Supreme Court 146 held that the hearsay rule has traditionally been regarded as an absolute rule, subject to various categories of exceptions, such as admissions, dying declarations, declarations against interest and spontaneous declarations. It has frequently proved unduly inflexible in dealing with new situations and new needs in the law. Because of the frequent difficulty of obtaining other evidence and because of the lack of reason to doubt many statements children make on sexual abuse to others, courts in the United States have moved toward relaxing the requirements of admissibility for such statements. This has been done in the context of the doctrine of spontaneous declarations. These developments underline the need for increased flexibility in the interpretation of the hearsay rule to permit the admission in evidence of statements made by children to others about sexual abuse. A tendency is apparent in cases of sex offences against children of tender years to be less strict with regard to permissible time lapse and to the fact that the statement was in response to inquiry. Although, the *res gestae* rule in sex crimes is the same as in other criminal actions, however, the rule should be applied more liberally in the case of children and allowed "tender years" exception to general rule and create a room for admissibility of such evidence particularly in child abuse cases.

ii) By all intents and purposes the statement of mother of the victim has the relevance and can be considered as "res gestae" evidence per force of Article 19 of the Qanun-e-Shahadat Order, 1984 because mother may not be a direct witness of the occurrence, but as shall be seen from her statement, the victim disclosed to her the entire details just on her reaching back at home. Her statement being natural and realistic inspires full confidence and lends credible support to the statement made by the victim. Moreover, the medical evidence was also a part of res gestae evidence in this case under the principle of "Contemporaneous Physical Condition".

Conclusion: i) There should be more exceptions created to the general rule of hearsay like "statements of victims of tender years" and "medical evidence".

ii) The statement of mother of victim has the relevance when minor victim disclosed the occurrence to her

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23. **Lahore High Court**
Fayyaz Hussain v. The State & another
Crl. Revision No.235/2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC8426.pdf

Facts: The petitioner has challenged the order wherein his right to cross examine the prosecution witnesses was struck off.

Issue: Whether a right provided under the statute can be abridged or taken away without an explicit provision of law?

Analysis: Right to confront one's accuser is integral component of right to fair trial as guaranteed under Article 10-A of the Constitution and provided under Article 133 of Qanoon Shahadat, 1984. Right to cross-examine a witness produced by the adversary cannot be struck off as it would amount to violation of right to fair trial. A right provided under the statute cannot be abridged or taken away without an explicit provision of law. A right provided under the law, in absence of provision to contrary, cannot be impliedly taken away. Even otherwise, after declaring that right to confront one's accuser is part of right to fair trial ensured under Article 10-A of the Constitution, had there been any provision to abridge such right, it would have been ultra vires being in conflict with constitution. However, accused cannot be allowed to hijack the trial proceedings in garb of safeguarding the right to fair trial. Accused at times attempts to linger on the trial proceedings with nefarious designs to temper with the prosecution evidence or avoid his expected conviction and penal consequences, which should not be permitted by the trial court. Trial court in this case was not helpless to proceed further without violating the right to fair trial, especially right to confront one's accuser. Under Rule 1, Part C, Volume 3, Chapter 24 of the High Court Rules and Orders, if an accused is unrepresented in a Sessions case and he cannot afford to engage a counsel, the Sessions Judge/Additional Sessions Judge is bound to make arrangement to employ a counsel at government expense for the said accused.

Conclusion: A right provided under the statute cannot be abridged or taken away without an explicit provision of law.

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24. **Lahore High Court**
Ameer Bakhsh. v. Additional Sessions Judge, etc.
Writ Petition No.16880/2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC8305.pdf

Facts: The petitioner seeks to register FIR against his ex-wife for committing Zina on the ground that his wife solemnized second marriage after khula without observing period of Iddat.

Issues: i) Whether marriage conducted during period of iddah is void (batil)?
ii) Whether spouses of irregular marriage are liable to be prosecuted for the offence of zina?

Analysis i) There are two kinds of invalid marriage i.e. irregular (fasid) and void (batil). Irregular (fasid) marriage is one where impediment to the validity of such marriage is temporary while in case of void (batil) marriage, such impediment is permanent. Without observing the period of iddah prescribed by Islam, the marriage will be an irregular marriage and not void as alleged by the petitioner.

ii) Situation has altogether been changed after the promulgation of Women (Criminal Laws Amendment) Act, 2006, by which word "validly" was consciously omitted by the legislature. Now after the above-said amendment, section 4 of the Ordinance, 1979 runs as follows: "4. Zina. A man and a woman are said to commit „zina" if they willfully have sexual intercourse without being married to each other." The legislature consciously omitted the word "validly" from section 4 of the Ordinance, 1979 and now spouses of an irregular marriage cannot be held guilty of offence of zina while relying upon the above-said precedents.

Conclusion: i) The marriage conducted during period of iddah is irregular.
ii) The spouses of irregular marriage are not liable to be prosecuted for the offence of zina.

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25. **Lahore High Court**
Fida Hussain & 3 others v. The State & another
Crl. Appeal No.476/2012
Abdur Rasheed v. The State & another
Crl. Appeal No.492/2012
Riaz Hussain & another v. The State & another
Crl. Appeal No.578/2012
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC8284.pdf

Facts: Through three different criminal appeals the appellants challenged their convictions and sentences in offences under Sections 364-A, 365-B, 376-II, 452, 148, 149 PPC.

Issues: i) What is effect of delay in reporting the incident to the police?
ii) How to determine competency of a child as a witness?
iii)What is *Voir Dire* in criminal trial?
iv) What are legal consequences of giving up of minor witness?
v) What is best evidence rule?
vi) What is duty of court regarding summoning of witness?
vii) What is evidentiary value of recovery of weapon of offence without recovery of empties?
viii) Whether a single circumstance creating reasonable doubt in a prudent mind regarding guilt of an accused is sufficient to extend such benefit?

Analysis: i) Extraordinary delay in reporting occurrence to police suggests that possibility of deliberation, consultation and concoction cannot be ruled out. It is an axiomatic principle of criminal jurisprudence that unexplained delay in reporting the incident to the police will badly affect the credibility of prosecution version.
ii) Court has to decide the competency of a child as a witness through 'rationality test' in accordance with Article 3 read with Article 17 of Qanoon Shahadat, 1984

after carrying out voir dire i.e. French term which means speak the truth.

iii) Voir dire is a French term which means speak the truth. Voir dire is an inquiry within a trial to decide relevant ancillary issues which are material for just decision of that trial.

iv) Giving up a witness as unnecessary is prerogative of prosecution. A child is fully competent to depose before a court of law subject to his/her capacity and intellect to understand what he/she deposes about. It is discretion of the trial court to determine the competence of a child witness through 'rationality test' and without opting such process, giving up a minor witness by prosecution is a sheer illegality and damage shall be suffered by prosecution.

v) Best evidence rule is one of the vital rules applicable in criminal cases. An accused is considered innocent until proven guilty and it is obligatory for the prosecution to come to court with the whole truth by making complete disclosure without withholding any substantial evidence.

vi) The purpose behind the entire mechanism of trial is to arrive at the truth and to discover the veracity of allegations leveled against the accused. The court is not left dependent on the prosecution or defense. Trial court is fully empowered to summon any witness or document which it thinks is available but not produced by the parties in order to conceal the truth and which is important for dispensation of justice. Summoning of already available evidence but withheld by the parties is within the domain of trial court but crafting new evidence is obviously prohibited, especially in an adversarial system.

vii) If crime empties are not secured from the place of occurrence so as to connect the recovered weapon with the occurrence, in such circumstances, recovery of crime weapons is of no avail to the prosecution.

viii) It is an established proposition of criminal justice system that a single circumstance creating reasonable doubt in a prudent mind regarding guilt of an accused is sufficient to extend such benefit to accused person(s) not as a matter of grace and concession but as a matter of right without slightest of hesitation.

Conclusion: i) Unexplained delay in reporting the incident to the police will badly affect the credibility of prosecution version.

ii) Competency of a child as witness is determined through 'rationality test' in the light of Article 3 read with Article 17 of Qanoon Shahadat, 1984 after carrying out voir dire.

iii) Voir dire is an inquiry within a trial to decide relevant ancillary issues which are material for just decision of that trial.

iv) Without determination of competence of a child witness through 'rationality test', giving up a minor witness by prosecution is a sheer illegality and damage shall be suffered by prosecution.

v) Prosecution has to come to court with the whole truth by making complete disclosure without withholding any substantial evidence.

vi) Trial court can summon any witness or document which it thinks is available but not produced by the parties in order to conceal the truth and which is

important for dispensation of justice.
vii) Without recovery of crime empties, recovery of crime weapon is of no help to prosecution.
viii) A single circumstance creating reasonable doubt regarding guilt of an accused is sufficient to extend such benefit to accused person(s) not as a matter of concession but as a matter of right.

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26. **Lahore High Court**
Attock Petroleum Limited (APL) v. National Highway Authority and another
Writ Petition No.2874 of 2014
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC8488.pdf

Facts: The Petitioner (an Oil Marketing Company) being aggrieved from notice for collection of fee/tax qua display of promotional material on G.T Road issued by respondent no.2 (Contractor of NHA) under the authority of respondent no.1 (NHA), challenged the same by invoking constitutional jurisdiction of the High Court.

Issues: What is the nature of impugned levy or charge on display of promotional material (i.e. whether it is a tax, fee or license fee)?

Analysis: Article 77 of the Constitution commands that no tax can be levied for the purpose of Federation except by or under the Authority of Act of *Majlis-e-Shoora* (Parliament). Article 142 governs the subject matters upon which *Majlis-e-Shoora* (Parliament) can legislate, which are, amongst others, specified in the Federal Legislative List. Entries 43 to 53 in the Federal Legislative List relate to jurisdiction of the *Majlis-e-Shoora* (Parliament) to levy taxes, which does not include any entry covering tax on display of promotional material which is subject matter of the instant writ petition. In the instant case, nothing has been specified in the National Highway Act, 1991 with certainty in terms of the taxable event, persons upon whom the incidence of tax falls, the rate of tax and the value to be taxed in relation to display of promotional material on or along the National Highways, Motorways or Strategic Roads. The impugned demand is, therefore, not a tax by any stretch of imagination… It is manifest from perusal of the Act that neither any specific provision for the levy of fee on display of promotional material has been legislated nor such fee is levied to meet an earmarked exigency spelt out therein. The Act, therefore, does not expressly provide for the levy on display of promotional material in either of the forms be it 'fee- simplicitor' or 'Cess-fee'. For the imposition of a license fee, it is imperative that there must be an enactment prohibiting the general public from the activity permitted under the license. The impugned demand is, therefore, not even a license or regulatory fee. There being no element of *quid pro quo* on part of the NHA in the instant case, the

impugned demand of fee/charge is manifestly without lawful authority and of no legal effect.

Conclusion: The impugned levy or charge on display of promotional material is neither a tax nor fee nor license fee.

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27. **Supreme Court of UK**
Her Majesty's Attorney General v. Crosland
[2021] UKSC 58
Lord Briggs Lady Arden Lord Kitchin Lord Burrows Lady Rose
https://www.supremecourt.uk/cases/docs/uksc-2021-0160-judgment.pdf

Facts: In an appeal before Supreme Court, Mr Timothy Crosland, an unregistered barrister, represented the charity Plan B Earth in those proceedings, in his capacity as a director of Plan B Earth. A copy of the Supreme Court's draft judgment was circulated to the parties' representatives, to enable them to make suggestions for the correction of any errors, to prepare submissions on consequential matters, and to prepare themselves for the publication of the judgment. It was stated on the draft judgment, and in a covering email, that the draft was strictly confidential. Nonetheless, the day before the judgment was due to be made public, Mr Crosland sent an email to the Press Association containing a statement in which he disclosed the outcome of the appeal. The statement was also published on Plan B Earth's Twitter account. These disclosures led to the publication of the outcome of the Heathrow appeal in the national media and on Twitter, prior to the judgment being delivered.

Issue: i) Did the Supreme Court wrongly decide that Mr Crosland's disclosure of the result of the Heathrow appeal, in breach of an embargo on the Court's judgment, constituted a contempt of court?

ii) Did the Court then wrongly impose a fine of £5,000 on Mr Crosland, and wrongly order him to pay the Attorney General's costs in the sum of £15,000?

Analysis: i) The First instance Panel began by considering whether the essential elements of a finding of criminal contempt of court had been proved to the criminal standard, and here they made findings that Mr Crosland was responsible for the disclosure of the draft Heathrow judgment in breach of the embargo; that when he made the disclosure, he was aware of the embargo; that his conduct was or created a risk of an interference with the administration of justice that was sufficiently serious to amount to a criminal contempt; and that he intended to interfere with the administration of justice. We would emphasise at this point that the requirement of strict confidentiality was imposed by the court, and the reasons for its imposition in relation to any draft judgment provided to the parties in advance of the hand down are and were well known and understood and were summarised by the First Instance Panel at paras 23-25. They are of the utmost importance to the administration of justice and the ability of the court to control its own proceedings. Yet, as the Panel found, Mr Crosland chose to issue statements in

terms which defied the authority of the court and were likely to encourage others to disobey the prohibition on publication of the draft judgment; and they had that effect, just as Mr Crosland intended. The outcome of the appeal and Mr Crosland's comments upon it were published widely in the hours before the judgment was handed down.

ii) The award of costs is a matter for the discretion of the court making the order and an appeal court should interfere only if there has been an error of legal principle. The principles governing the award of costs in contempt proceedings are not the same as those in other criminal law cases and the First Instance Panel correctly identified those principles and applied them in a manner that cannot be faulted. There was no rule imposing an arithmetical relationship between the costs and the penalty and it is up to the defendant to provide satisfactory evidence of his lack of means.

Conclusion: i) The Supreme Court did not wrongly decide that Mr Crosland's disclosure of the result of the Heathrow appeal, in breach of an embargo on the Court's judgment, constituted a contempt of court.

ii) The Court did not wrongly impose a fine of £5,000 on Mr Crosland, and did not wrongly order him to pay the Attorney General's costs in the sum of £15,000.

LATEST LAGISLATION/ AMENDMENTS:

1. Section 12 of Punjab Civil Servants Act, 1974 was amended through Punjab Civil Servants (Amendment) Ordinance 2021 (XXII of 2021), dated 03.05.2021. Subsequently, the Ordinance ibid was converted into The Punjab Civil Servants (Amendment) Act, 2021.
2. Rules 2,37,38,39,46,47 and 49 of "The Punjab Motor Vehicles Rules, 1969'' are amended while Rule 47-A is inserted.

LIST OF ARTICLES

1. **MANUPATRA**
   https://articles.manupatra.com/article-details/What-is-Jurisprudence
   What is jurisprudence? by Priya Singh & Raju Kumar

   The history of the concept of law shows that Jurisprudence has evolved from the period of classical Greece to the modern precedent of the 21st century with many changes in its nature at different stages of development.[1] Jurisprudence is a concept that puts theory and life at the center. It deals with the basic principles on which the superstructure of the law is based. The concept of jurisprudence basically helps to cultivate one's own ideas regarding a particular theory. Abstractly, jurisprudence is a discipline whose knowledge is the basis, the foundation of all legal studies. Case precedent is the name of a certain type of legal investigation, in which it is a matter of reflecting the nature of legal norms, the basic meaning of legal concepts, and the basic characteristics of legal

system. Jurisprudence is both idealistic and abstract and a study of human behavior in society. In jurisprudence, we ask what rule is, and what distinguishes law from ethics, etiquette, and other related phenomena.The term jurisprudence is derived from the Latin word "jurisprudential" which means "competence or knowledge of the law." In the first decades of the 19th century with the theories advanced by Bentham and Austin, the term Bentham is known as the father of Jurisprudence which was the first to analyze what the law is.[6] Jurisprudence is closely associated with other social sciences, as they all deal with human behavior in society. Roscoe Pound, who promoted legal theory as "social engineering," also says that jurisprudence is closely related to other social sciences, although distinct enough to be essential, but interrelated.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/The-Use-of-ICT-Technologies-in-Court
The use of ICT technologies in court by Priyanshi Aggarwal

"Now, for ITC enabled courts to be accessible by all, the basic prerequisite is internet accessibility, which is still a major problem when it comes to rural and under-developed areas. Hence, now the need of the hour is to devise solutions which ensure equitable distribution of these technology driven processes.The scope of the paper is limited to Online Dispute Resolution, which is one segment of ICT. The aim of this paper is to first talk about the benefits of using ODR in Indian courtrooms. The next segment will talk about how Indian legal system both in terms of legislative and judicial realm was always prepared to incorporate technology. The problem lies with the enforcement of these provisions which is why the last segment will talk about the challenges that are faced by the Indian courts and proposes solutions too which can help in overcoming these challenges.

3. **HAVARD LAW REVIEW**
https://harvardlawreview.org/2022/01/originalism-stan
Originalism: Standard and procedure by Stephen E. Sachs

Originalism is often promoted as a better way of getting constitutional answers. That claim leads to disappointment when the answers prove hard to find. To borrow a distinction from philosophy, originalism is better understood as a standard, not a decision procedure. It offers an account of what makes right constitutional answers right. What it doesn't offer, and shouldn't be blamed for failing to offer, is a step-by-step procedure for finding them. Distinguishing standards from decision procedures explains originalism's tolerance for uncertainty about history or its application; justifies the creation of certain kinds of judicial doctrines (though not others); clarifies longstanding battles over interpretation and construction; identifies both limits and strengths for the theory's normative defenders; and gives us a better picture of originalism's use in practice.

4. **MANUPATRA**
   https://articles.manupatra.com/article-details/Emerging-Challenges-in-Labour-Laws
   Emerging challenges in labour laws by Akshay Luthra and Akshita Singh

> *"Dignity of labour has to be our national duty, it has to be a part of our nature." Their rights, dignity, the standard of living, and even a better work environment, which are fundamental for a human being to survive, are often ignored. The new labour codes have tried to cover most aspects but still, challenges prevail. Also, their implementation is to be seen, since the Centre and the states have to work together, framing rules in conformity and implementing the codes in their true spirit. In this new era, new concepts have come around such as the gig economy, platform workers, freelancers, etc. In such cases, there is no contract with the employer and the traditional employer-employee relationship is bypassed making it impossible for the workers to get any remedy, in the case of a dispute or exploitation, against the employer. On the other hand, the invisible labour and gender inequality still prevail which is a matter of concern since it affects the growth of our economy and, most importantly, affects the lives of women who suffer and are forced to live undignified lives. The need of the hour is to look after the rights of the inter-state migrant labourers, who are affected by the COVID-19 pandemic. Most of them lost their livelihoods, their homes and are forced to move back to their villages since they have no other option. In this essay, we will briefly discuss the new labour codes and their issues; the challenges faced by the unorganized, gig and platform workers; the prevailing invisible labour and the gender inequalities; the conditions of the inter-state migrant workers and the implication of COVID-19 on their lives and, finally, concluding with the challenges which the current labour laws will face in the future.*