# LAHORE HIGH COURT

# BULLETIN

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# FORTNIGHTLY CASE LAW BULLETIN

**(01-04-2022 to 15-04-2022)**

**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


| Sr. | Court | Subject | Area of Law | Page |
|---|---|---|---|---|
| 1. | Supreme Court | Participation in Election and making political party are constitutional rights; Authority to proceed with matters regarding nomination papers of candidate u/s 62(9)(c) of Election Act, 2017 | Civil Law | 1 |
| 2. | | Initiation of inquiry etc u/s 31-C of NAO 1999 | | 2 |
| 3. | | No retrospective effect of section 177(1) of ITO, 2001 upon cases where action been taken | Tax Law | 2 |
| 4. | | Prerequisites for valid execution of power of attorney for sale by parda nashin lady | Civil Law | 3 |
| 5. | | Exception u/s 41 of Transfer of Property Act, 1882 | | 4 |
| 6. | | Effect of non-mentioning penalty when suit stands dismissed; Questioning the allotment or sale of specific performance by subsequent purchaser | | 5 |
| 7. | | Effect of not proving talabs; Powers of court while exercising the revisional jurisdiction u/s 115 CPC | | 6 |
| 8. | | Reliance of testimony of police officials in evidence; Sending of samples by IO within 72 hours | Criminal Law | 7 |
| 9. | | Effect of minor discrepancies in testimony of witness; Effect of relation of prosecution witness with deceased on testimony | | 8 |
| 10. | | Filing of cross-appeal or cross objection by defendant in appeal; Proving notice of talb e ishhad; Power of appellate court to grant appropriate relief; Fard intekhab not substitute of | Civil Law | 8 |

| | | register haqdaran zameen | | |
|---|---|---|---|---|
| 11. | Supreme Court | Starting point of limitation U/A 113 of Limitation Act, 1908 to institute legal proceedings; Co-sharer cannot bind another co-sharer without his consent; Objective of law of limitation; comparison of handwriting and signature by court itself; Scribe as attesting witness; proving execution of document | Civil Law | 9 |
| 12. | | Purpose of promulgation of Punjab Rented Premises Act, 2009; Format of application presented before rent tribunal; Effect of order when remained unchallenged | Tenancy Law | 11 |
| 13. | Lahore high Court | Issuance of certificate for authentication of duration of period for investment of principal amount in profit bearing scheme by bank to non-account holder | Civil Law | 13 |
| 14. | | Procedure for filling the vacant office of chief Minister; Curtailing of powers of deputy speaker by dis functioning speaker; Effect no confidence motion on powers of speaker and deputy speaker | Constitutional Law | 14 |
| 15. | | Exercise of powers by deputy speaker U/A 53(3) of Constitution; Conduct of session of Assembly through panel of chairman; Presiding of session of assembly by deputy speaker when motion of no confidence moved against him; Challenging validity of proceedings in parliament before court of law | | 16 |
| 16. | | Essential factors for framing charge; Effect of omission/error in contents of charge; Consequences when particulars of offence not proved during trial; Deletion of offence at premature stage by trial court | Criminal Law | 18 |
| 17. | | Principle of acquiescence when attracts; legal consequences of not impleading revenue officials as party | Civil Law | 19 |
| 18. | | Authority of special attorney of party to appear and argue | | 20 |
| 19. | | Occasion for 'change of opinion' under scheme of ITO, 2001 & The Sales Tax | Tax Law | 21 |

| | | Act, 1990 | | |
|---|---|---|---|---|
| 20. | Lahore high Court | Determination of recovery of tax as arrears or otherwise; Recovery of arrears of tax by mentioning in column of recovery of arrears of supply gas charges; Recovery of tax though utility bills | Tax Law | 22 |
| 21. | Lahore high Court | Jurisdiction of civil court to adjudicate matter under order XXXVII Rules 1 & 2 CPC; Relevant provisions for sending reference of ace to superior authority; Entertaining of reference by District Judge sent by Civil Judge | Civil Law | 23 |
| 22. | Lahore high Court | Purpose of Mental Health Ordinance, 2001; Permission for sale for transfer the land of mentally disordered person; Plea of bona fide purchase by vendee of land owned by mentally disordered person | Civil Law | 24 |
| 23. | Lahore high Court | Conversion of one type of proceedings into another by Supreme Court & High Court; Protection against arbitrary detention part of right to liberty & fair trial | Criminal Law | 25 |
| 24. | Lahore high Court | Maintainability of constitutional petition not filed by aggrieved person; Jurisdiction to constitute a special medical board for examination of a prisoner | Civil Law | 26 |
| 25. | Lahore high Court | Idea of 'fair chase'; Efforts of wildlife department to maintain wildlife conservation; Restrictions imposed by wildlife department on hunting; Authority to add, amend etc any notification issued | Civil Law | 27 |
| 26. | Lahore high Court | Invocation of section 257 with reference to section 256 of companies Act, 2017; Power conferred on commission to investigate company's affairs; issuance of show cause notice by commission u/s 257 of Companies Act, 2017 | Civil Law | 29 |
| 27. | Lahore high Court | Meeting of company by order of court; Right of shareholder to know the agenda of meeting; Proxy & his right to vote; Jurisdiction of Court when majority of members of both companies approved resolution of merger | Civil Law | 30 |

| | | | | |
|---|---|---|---|---|
| **28.** | **Lahore high Court** | **Authority of counsel to represent the company on death of executant of power of attorney; revocation of power of attorney; Party bound by statement recorded by engaged counsel; Recall of order on mere assertion of non-authorization of counsel** | **Civil Law** | **31** |
| **29.** | | **Appointment of police officials in compliance of Article 11 of Police Order, 2002; Appointment of grade-21 officer to the rank of Inspector General of police; Appointment and promotion to post of Provincial Police Officer** | **Service Law** | **33** |
| **30.** | | **Maintainability of constitutional petition against order passed by High Court in administrative capacity** | **Constitutional Law** | **34** |
| **31.** | | **Requirement of initiating proceedings for contempt of court against a contemnor** | **Civil Law** | **35** |
| **32.** | | **Admissibility in evidence u/s 265-J of CrPC of statement recorded u/s 164 CrPC; Value of examination in chief of a witness without cross examination; Applicability of Article 47 of QSO, 1984 to statement recorded u/s 164 CrPC** | **Criminal Law** | **35** |
| **33.** | | **Revision before session court against administrative order passed by magistrate; Powers of police and magistrate for cancelling a criminal case; Obligation of Superintendent of police to dispatch the cancellation report** | | **37** |
| **34.** | | **Permission of additional evidence by appellate court; Suit for declaration on the basis of agreement to sell** | **Civil Law** | **38** |
| **35.** | | **Evidence beyond pleading; Concept of landlord in rent matters; Establishing relationship of landlord & tenant** | **Tenancy Law** | **39** |
| **36.** | | **Establishing of gift by done; Effect of registration on establishing execution of document** | **Civil Law** | **40** |
| **37.** | | **Mere pendency of litigation not ground for non-filing of suit within period of limitation; computation of limitation on withdrawal of suit; Framing of issue for deciding point of limitation** | | **41** |
| **38.** | | **Recording of confession after beginning of trial** | **Criminal Law** | **42** |

| | | | | |
|---|---|---|---|---|
| 39. | Lahore high Court | Parameters for grant of bail; Purpose of insertion of word 'or' in section 23 of Foreign Exchange Regulation Act, 1947 | Criminal Law | 43 |
| 40. | | Condonation of delay in filing appeal | Civil Law | 44 |
| 41. | | Interference of High Court through constitutional petition into concurrent orders of Revenue authorities | | 44 |
| 42. | | Jurisdiction of revenue courts regarding matters of lease of agricultural land; Procedure to be adopted when matter falling under jurisdiction of revenue court submitted before civil court | | 45 |
| 43. | | Delivery of notice u/s 7 of Muslim Family Law Ordinance; Obligation of chairman on receiving notice of divorce; interpretation of 'disobedience'; Entitlement of ex-wife to maintenance after divorce; When oral divorce given thrice becomes operative | Family Law | 46 |
| 44. | | Necessity of presence of all three ingredients to constitute an offence; Bar of application of section 489-f of PPC to Microfinance Banks | Criminal Law | 48 |
| 45. | | Bar of jurisdiction in matters which fall under jurisdiction of Service Tribunal; | Service Law | 50 |
| 46. | | Reservation of quota for minorities in all services; Interpretation of beneficial bread and butter legislation; Restriction of minority quota to specific jobs reflects general bias within workplace against minorities | Civil Law | 51 |

## LATEST LEGISLATION/AMENDMENTS


| | | |
|---|---|---|
| 1. | Amendments in the subsidiary Treasury Rules under the Treasury Rules(Punjab) | 52 |
| 2. | Amendments in Punjab Financial Rules Volume I | 52 |
| 3. | The University of Kamalia Ordinance, 2022 | 52 |
| 4. | The University of Taunsa Sharif Ordinance, 2022 | 52 |


## SELECTED ARTICLES


| | | |
|---|---|---|
| 1. | Amendment Of Pleadings After Commencement Of Trial: Right Of The Party Or Discretion Of The Court Under Order Vi Rule 17? by Samarth Kapoor and Abhijeet Kumar | 53 |
| 2. | The Antitrust Duty to Deal in the Age of Big Tech by Erik Hovenkamp | 53 |
| 3. | Condonation of delay application not required in case of delayed filing of Charge-sheet before Courts: Explained by Jamshed Ansari | 54 |
| 4. | Tokenization and the Law: Legal Issues with NFTs by Sheppard, Mullin, Richter & Hampton LLP | 55 |
| 5. | Trials by video link after the pandemic: the pros and cons of the expansion of virtual justice by D. L. F. de Vocht | 55 |

**1. Supreme Court of Pakistan**
**Rana Muhammad Asif Tauseef v. Election Commission of Pakistan through its Chairman, Islamabad and others**
**Civil Appeal No.937 Of 2018**
**Mr. Justice Umar Ata Bandial CJ, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._937_2018.pdf

**Facts:** This appeal with leave of the Court under Article 185(3) of the Constitution is directed against the judgment passed by the learned Division Bench of the Lahore High Court, Lahore vide which learned Bench reversed the findings of both the courts below, resultantly, the nomination papers filed by the appellant were ordered to be rejected, he was further declared to be in-eligible to contest elections.

**Issues:** i) Whether participation in Elections and making a political party are constitutional rights?
ii) Who has authority to proceed with matters regarding nomination papers of candidate u/s 62(9)(c) of Election Act, 2017?

**Analysis:** i) According to Article 17(2) of Constitution every citizen, who is not in service of Pakistan, has a right to form a political party or he can become member of any party. Every party is made up of several individual persons. If one individual is not allowed to contest elections imposing upon him certain restrictions, then the question of forming a political party does not arise, because these are the individuals who collectively form a party.
ii) Perusal of the Section 62(9)(c) of Election Act, 2017 clearly reveals that the said provision revolves around the Returning Officer and its authority to proceed with the matter of his own or on the objection raised by any of the objector before it. The said provision further authorizes the Returning Officer a discretionary power to conduct preliminary inquiry while exercising the authority of the office to ascertain the facts and circumstances to arrive at a just conclusion in order to satisfy the spirit of Section 62(9)(c) of the Act.

**Conclusion:** i) Yes, participation in Elections and making a political party are constitutional rights.
ii) Under section 62(9)(c) of Election Act, 2017 Returning Officer has authority to proceed with matters regarding nomination papers of candidate.

2. **Supreme Court of Pakistan**
**Abid Amin etc. v. National Accountability Bureau etc.**
**Civil Petitions No.3236, 3283 & 3494 to 3496 of 2019**
**Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3236_2019.pdf

**Facts:** The petitioners, sought leave to appeal against the judgment of the Sindh High Court, whereby the High Court had declined to quash the Reference filed against them under the National Accountability Ordinance, 1999 despite quashing the same Reference against four of their co-accused, the bank employees while the National Accountability Bureau has, by its petitions, challenged the quashment of the Reference against the co-accused, bank employees , by the impugned judgment.

**Issues:** Whether an inquiry, investigation or proceedings under section 31-C for restructuring of loans can be initiated against an accused without a reference from the Governor State Bank of Pakistan under section 31-D of the NAO 1999?

**Analysis:** The bare reading of sections 31-C and 31-D shows that under Section 31-C, the Accountability Court cannot take cognizance, under the NAB Ordinance, of an offence against an officer or an employee of a bank or financial institution for *writing off, waving, restructuring or refinancing* any financial facility, interest or mark-up, without prior approval of the State Bank of Pakistan. While under Section 31-D, no inquiry, investigation or proceedings in respect of *imprudent loans, defaulted loans or rescheduled loans* can be initiated or conducted by the NAB against any person, company or financial institution without reference from the Governor, State Bank of Pakistan. Unlike Section 31-C that relates to only taking cognizance of an offence by the Accountability Court, Section 31-D provides protection even against initiation of inquiry, investigation or proceedings against a person or a company in respect of *imprudent loans, defaulted loans or rescheduled loans.*

**Conclusion:** An inquiry, investigation or proceedings under section 31-C for restructuring of loans cannot be initiated against an accused without a reference from the Governor State Bank of Pakistan under section 31-D of the NAO 1999.

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3. **Supreme Court of Pakistan**
**Commissioner Inland Revenue, Lahore v. M/s HNR Company (Pvt) Limited, Lahore**
**Civil Petition Nos. 593-L, 594-L & 595-I. of 2021**
**Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._593_l_2021.pdf

**Facts:** The Inland Revenue filed Income Tax Reference before the High Court

contending that the Tribunal had relied upon Section 177(10) of the Income Tax Ordinance, 2001 that amendments had retrospective effects; however, it would not be applicable to cases of income tax returns for the tax years 2005 and 2006 in respect whereof action has been taken. Learned Division Bench of the High Court in various petitions held that amendments do not take effect retrospectively and Section 121(1)(d) of the Ordinance did not apply to cases of tax year 2004 to 2006. Hence, these petitions for leave to appeal.

**Issues:** Whether the incorporation of section 177(10) of the Income Tax Ordinance, 2001 has retrospective effect upon the cases where action has been taken?

**Analysis:** Admittedly, the respondent had submitted its income tax returns for the Tax Years 2005 and 2006. These returns were deemed to have been accepted under section 120 of the Ordinance and, as held in the cited precedent, section 121 of the Ordinance would not apply. There is also an additional ground which prevented action to be taken which was the 'five years' limitation period provided in section 122(2) of the Ordinance, and since five years had expired action could not be initiated. The contention that because Chapter X of the Ordinance is titled Procedure it attends to purely procedural matters is not correct nor that section 177(10) of the Ordinance brought about procedural changes. This Court in the cited precedent had made it clear that recourse to section 177(10) of the Ordinance could not be made retrospectively.

**Conclusion:** Incorporation of section 177(10) of the Income Tax Ordinance, 2001 did not have retrospective effect upon the cases where action has been taken.

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**4.** **Supreme Court of Pakistan**
**Haq Nawaz etc. v. Banaras etc.**
**Civil Appeal No. 221/2018**
**Mr. Justice Maqbool Baqar, Mr. Justice Munib Akhtar, Mr. Justice Qazi Muhammad Amin Khan**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._221_2018.pdf

**Facts:** Some of the respondent's filed regular second appeal against judgment of the Lahore High Court, whereby the appeal against the concurrent Judgments of the fora below was allowed.

**Issue:** What are the prerequisites for a valid execution of power of attorney for sale by a *Parda Nashin* lady?

**Analysis:** It is an admitted fact that Mst. Channan Jan was an old illiterate village dweller, with ill health. The lady was not able to even move on her own, and had been carried to the Registrar's office for the execution of the power of attorney by someone. Ghulam Rasool, the purported attorney, while deposing before the trial Court, also has not denied the suggestion that she was a *parda nashin* lady. It was not even pleaded that she received any independent advice and/or that

contents of the power of attorney were read over and explained to her before she executed it. Channan Jan's stance throughout has been that she appointed Ghulam Rasool, who was her tenant in occupation, as her attorney, merely to manage the affairs of her land and for nothing more, and therefore, given the status of the lady, it was imperative for the appellants No.1 and 2 to have demonstrated and proved that at the time of the execution of the power of attorney, she was fully conscious of the fact that the document also contained power to sell and that the entire document was read out and explained to her fully and truly, and further that she executed it under an independent advice. They had also to prove that the lady was fully aware and conscious of the consequences and implications of executing the said document. However neither did they prove, nor even pleaded any of it. It therefore cannot be held that Ghulam Rasool, was in fact authorized by Mst. Channan Jan to sell the suit land. The impugned sale/transfer was thus liable to be set-aside on this ground alone.

**Conclusion:** For valid execution of a power of attorney for sale by a *parda nashin* lady, it must be established that she was fully conscious of the fact that the document also contained power to sell and that the entire document was read out and explained to her fully and truly, and further that she executed it under an independent advice. It was also required to be proved that the lady was fully aware and conscious of the consequences and implications of executing the said document.

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**5. Supreme Court of Pakistan**
**Intelligence Bureau Employees Cooperative Housing Society thr. its Secretary. v. Shabbir Hussain & others.**
**Civil Appeal Nos. 1079 and 1080 of 2015**
**Mr. Justice Maqbool Baqar, Mr. Justice Qazi Muhammad Amin Ahmed**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1079_2015.pdf

**Facts:** The instant appeal with leave of the Court has arisen out of judgment of the Islamabad High Court, whereby the learned Judge in Chambers dismissed the Civil Revisions filed by the appellant and maintained the judgment and decrees of the fora below.

**Issues:** What exception is provided under Section 41 of the Transfer of Property Act, 1882 to the general rule that a right or a title cannot transfer upon another person?

**Analysis:** Section 41 of the Transfer of Property Act, 1882, provides an exception to the rule as embodied in the maxim, *he gives not who hath not*, and thus, nobody can transfer to or confer upon another a right or a title better than he himself possesses. Generally, a purchaser cannot take more than the vendor has to sell however, section 41 of the Transfer of Property Act provides an exception to

the rule. It underpins the principle of equity that whenever one of the two innocent person has to suffer by the act of third person, he who has enabled that person to occasion the loss, must sustain it, or where one of the two innocent persons suffer from the fraud of thirty party, the loss should fall on him who has created, or could have prevented the opportunity for fraud. However, in order to invoke the protection of the provisions of section 41, a transferee is essentially required to demonstrate that (a) the transferor is the ostensible owner (b) He was so by consent, express or implied, of the real owner (c) The transfer is for consideration (d) The transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer. Whereas in the facts and circumstances of the present case as discussed hereinbefore, one can clearly see that all the above ingredients are available to the appellant to seek protection of the impugned transactions.

**Conclusion:** Section 41 of the Transfer of Property Act, 1882 provides an exception to the general rule under the principle of equity that where one of the two innocent persons suffer from the fraud of third party, the loss should fall on him who has created, or could have prevented the opportunity for fraud.

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**6.** **Supreme Court of Pakistan**
**Mah Jabeen Ashfaq v. Noor Mahi and others**
**Civil Petition No.3367/2018**
**Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3367_2018.pdf

**Facts:** Petitioner questioned the order of the learned Judge-in-Chambers of the Islamabad High Court, Islamabad whereby the civil revision, filed by the petitioner and respondent No.4 ('Proforma Respondent'), was dismissed by upholding the concurrent findings of dismissal of their suit for specific performance.

**Issues:** i) What is the effect of non-mentioning of penalty i.e. double payment of sale consideration when the suit stands dismissed?
ii)Whether the subsequent purchaser or Proforma respondent can question the allotment or sale of specific performance?

**Analysis:** i) When the suit is held to fail for want of proof and also being barred by time then burdening the respondent No.1 with payment, double the sale consideration actually paid, stands automatically set aside. When the suit is dismissed in toto, the penalty of double payment also gets buried with the suit. Such findings of the High Court, visibly against the proforma respondent, have not been challenged by him which means that the same have attained finality between the parties. So, the proforma respondent, after the findings of the High Court, cannot claim the payment of double sale consideration from respondent No. 1. If already received, he is bound to repay the same to respondent No. 1.

ii) The status, as apparent from the record, of the present petitioner is the subsequent purchaser of the suit plot from proforma respondent and the success of the petitioner is dependent on the success of proforma respondent. The present petitioner, falling in the steps of proforma respondent, cannot question the allotment or its sale to respondent No.2 and she, as such, has no cause of action and locus standi in this regard.

**Conclusion:** i) When the suit stands dismissed and the observations of penalty are not mentioned in the judgment, the penalty of double payment get buried with the suit.
ii) Subsequent purchaser or Proforma respondent cannot question the allotment or sale of specific performance as he has no cause of action and locus standi in this regard.

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**7.** **Supreme Court of Pakistan**
**Ijaz Ahmed v. Noor ul Ameen**
**Civil Petition No. 2222 of 2019**
**Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2222_2019.pdf

**Facts:** This Civil Petition for leave to Appeal is directed against the judgment passed by learned Lahore High Court in Civil Revision whereby the Civil Revision was dismissed while upholding the concurrent findings of learned trial and appellate court.

**Issues:** i) What will be the fate of suit of pre-emption when any of the talabs is not proved as per law?
ii)What are the powers of the court while exercising the revisional jurisdiction under Section 115, C.P.C.?

**Analysis:** i) It fell upon the Appellant/pre-emptor in the case to prove that the notice had been delivered. The Court further held if Talb-i-Muwathibat is not proved to have been made then the performance of Talb-i-Ishhad and all other requirements for a successful demand of pre-emption cannot be proven. Similarly, even if Talb-i-Muwathibat has been made in accordance with the law if any of the requirements for the performance of Talb-i-Ishhad are not fulfilled the suit for possession through pre-emption is bound to fail.
ii) The language used under Section 115 of C.P.C. unequivocally visualizes that the revisional court has to analyze the allegations of jurisdictional error such as exercise of jurisdiction not vested in the court below or a jurisdiction vested in it by law was failed to exercise and/or the court has acted in exercise of its jurisdiction illegally or with material irregularity or committed some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision but it is also ground reality that while exercising the revisional jurisdiction under Section 115, C.P.C., the powers of the court are limited.

**Conclusion:** i) The suit of pre-emption would fail when any of the talabs is not proved as per law.

ii) While exercising the revisional jurisdiction under Section 115, C.P.C; the powers of the court are limited.

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**8.** **Supreme Court of Pakistan**
**Liaquat Ali and Shad Muhammad v. The State.**
**Jail Petition No. 637 of- 2016**
**Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**
https://www.supremecourt.gov.pk/downloads_judgements/j.p._637_2016.pdf

**Facts:** The petitioners called into question the conviction and sentences recorded against them u/sec.9(c) of the Control of Narcotic Substances Act,1997 by the learned Trial Court which was subsequently upheld by the learned High Court. Hence this jail petition moved by the petitioners.

**Issues:** i) Whether testimony of police officials can be relied upon in evidence?

ii) Whether the Control of Narcotic Substances (Government Analysts) Rules, 2001 place bar on the Investigating Officer to send the samples beyond 72 hours of the seizure?

**Analysis:** i) Reluctance of general public to become witness in criminal cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remains un-shattered during cross- examination. Testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused.

ii) The Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples beyond 72 hours of the seizure. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell out that if there is any lapse and the time is consumed beyond 72 hours, it would automatically become instrumental to discard the prosecution case in all manners.

**Conclusion:** i) The police officials are as good as any other private witness and could be relied upon, if their testimony remains un-shattered during cross-examination.

ii) The Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples beyond 72 hours of the seizure.

**9.** **Supreme Court of Pakistan**
**GuI Zarin S/O Abdul Hakim etc. v. Kamal-ud-Din and another**
**Cr.P. 53-QJ2020**
**Kamal-ud-Din v. The State**
**Cr.P. 66-0J2020**
**Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar,Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._53_q_2020.pdf

**Facts:** The petitioner has filed petition against conviction and sentence given by the trial court while the learned High Court maintained the conviction while altered death into life imprisonment whereas the complainant has filed Criminal Petition seeking enhancement of the sentence awarded to the petitioner-convict.

**Issues:** i) Whether minor discrepancies can discard the testimony of a witness?
ii) Whether mere a relation with the deceased can be a ground to discard the testimony?

**Analysis:** i) As far as minor contradictions in the statements of the PWs are concerned, the some are natural as admittedly the petitioner remained absconder for a period of 12 long years and the trial begun after his arrest. After such a lapse of time, some minor discrepancies may occur but the some are neither dishonest nor are sufficient to discard the testimonies of the PWs of the ocular account.
ii) So for as the question that the PWs were closely related to the deceased, therefore, their testimony cannot be believed to sustain conviction of the petitioner-convict is concerned, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case but no such thing could be brought on record.

**Conclusion:** i) Minor discrepancies which are not dishonest are not sufficient to discard the testimony of witness.
ii) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony.

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**10.** **Supreme Court of Pakistan**
**Mst. Bibi Fatima v. Muhammad Sarwar**
**Civil Appeal No. 1683 of 2014**
**Mr. Justice Sajjad Ali Shah, Mr. Justice Amin-Ud-Din Khan**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1683_2014.pdf

**Facts:** Learned trial court dismissed the suit of pre-emption of respondent. Respondent/ Plaintiff preferred an appeal which too was dismissed. Revision petition filed by the plaintiff was allowed by the single judge of Peshawar High Court and the suit was decreed.

**Issues:** i) Whether in every suit which is dismissed, the defendant is required to file cross-

appeal or cross-objection or he can argue against the findings recorded against him without filing cross-appeal or cross-objection before the appellate court?
ii) Who is duty bound to prove the notice of Talab e Ishhad?
iii) Whether appellate court has powers to allow appropriate relief to non-appealing parties?
iv) Whether Fard Intekhab can be the substitute of Ragister Haqdaran Zameen?

**Analysis:** i) When no part of decree is against the defendant the defendant can argue against the said findings before the appellate court in the appeal filed by the plaintiff without filing cross-appeal or cross objections and in case a partial decree is passed against the defendant and rest of the suit is dismissed if the plaintiff files appeal against the portion of dismissal of suit then it is incumbent upon the defendant to file cross-appeal or cross objections to challenge the part of grant of decree against him.
ii) It was the duty of the plaintiff/ respondent to prove not only the issuance of notice of Talab-e-Ishhad in accordance with law and sending of notice to the vendee/defendant through registered post, acknowledgment due but also the service of notice upon vendee/defendant or refusal thereof by producing the Postman and acknowledgment receipt.
iii) The appellate Court is empowered, in the interest of justice, to allow appropriate relief to non-appealing parties where the appeal is with regard to whole of the decree in terms of Order XLI Rule 33, C.P.C. The Court has also inherent powers under section 151, C.P.C., to make such orders, as may be necessary for the ends of justice and to prevent the abuse of the process of the Court.
iv)"Fard Intikhab" of Register Haqdaran Zameen is not a substitute of the complete Register Haqdaran Zameen which carries the presumptions of correctness in the light of judgments of this Court.

**Conclusion:** i) In every case that is dismissed while recoding some findings against the defendant, it is not necessary for defendant to file cross-appeal or cross-objection, he can argue against the findings recorded against him without filing cross-appeal or cross-objection before the appellate court.
ii) It is the duty of the plaintiff to prove Talb e Ishhad.
iii) Appellate court has powers to allow appropriate relief to non-appealing parties.
iv) Fard Intekhab cannot be the substitute of Ragister Haqdaran Zameen

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**11.** **Supreme Court of Pakistan**
**Khudadad v. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others**
**Civil Appeals No.39-K To 40-K Of 2021**
**Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._39_k_2021.pdf

**Facts:** These Civil Appeals by leave of the Court are directed against a common

judgment passed by learned High Court of Sindh, in Revision Applications, whereby both the Revision Applications were dismissed. Trial Court and the Appellate Court both concurrently held that the suit for specific performance filed by the appellant was time barred.

**Issues:** i) What is starting point of limitation under Article 113 of Limitation Act, 1908 for institution of legal proceedings?
ii) Whether a co-sharer can bind other co-sharers of property while entering into agreement for entire land without consent of other co-sharers?
iii) What is objective of law of limitation?
iv) Whether court can itself conduct the exercise of comparing the handwriting or signature?
v) How the execution of a document can be proved?
vi) Whether scribe can be an attesting witness?
vii) When High Court ought to exercise power under section 115 of CPC?

**Analysis:** i) The starting point of limitation under Article 113 of Limitation of Act, 1908 for institution of legal proceedings enunciates two limbs and scenarios. In the first segment, the right to sue accrues within three years if the date is specifically fixed for performance in the agreement itself whereas in its next fragment, the suit for specific performance may be instituted within a period of three years from the date when plaintiff has noticed that performance has been refused by the vendor.
ii) A co-sharer cannot bind other co-sharers of the property and if a co-sharer enters into any deal or agreement for the entire land without the consent and authority of other co-sharers, then any such agreement would be illegal to the extent of the shares of the rest of the co-sharers.
iii) The objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for the redress.
iv) Article 84 of the Qanun-e-Shahadat Order, 1984 is an enabling stipulation entrusting the Court to reassure itself as to the proof of handwriting or signature. It is true that it is undesirable that a Presiding Officer of the Court should take upon himself the task of comparing signature in order to find out whether the signature/writing in the disputed document resembled that of the admitted signature/writing but the said provision does empower the Court to compare the disputed signature/writing with the admitted or proved writing.
v) The execution of document attributes signing in presence of attesting witnesses including all requisite formalities which may be necessary to render the document valid. While the fundamental and elemental condition of valid attestation is that two or more witnesses signed the instrument and each of them has signed the instruments in presence of the executants. This stringent condition mentioned in Article 79 is uncompromising. So long as the attesting witnesses are alive, capable of giving evidence and subject to the process of Court, no document can

be used in evidence without the evidence of such attesting witnesses. The provision of this Article is mandatory and noncompliance will render the document inadmissible in evidence.
vi) The scribe of a document can only be a competent witness in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 if he has affixed his signature as an attesting witness of the document and not otherwise; his signing the document in the capacity of a writer does not fulfill and meet the mandatory requirement of attestation by him separately, however, he may be examined by the concerned party for the corroboration of the evidence of the marginal witnesses.
vii) Powers u/s 115 cannot be invoked against conclusion of law or fact which do not in any way affect the jurisdiction of the court but confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law, but interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction.

**Conclusion:** i) Starting point of limitation under Article 113 of Limitation Act, 1908 for institution of legal proceedings is the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
ii) A co-sharer cannot bind other co-sharers of property while entering into agreement for entire land without consent of other co-sharers.
iii) The objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right.
iv) Court can itself conduct the exercise of comparing the handwriting or signature under Article 84 of the Qanun-e-Shahadat Order, 1984.
v) As per Article 79 of QSO, execution of a document has to be proved by producing two marginal witnesses.
vi) The scribe of a document can only be a competent witness in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 if he has affixed his signature as an attesting witness of the document and not otherwise.
vii) Powers u/s 115 can be exercised for misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case.

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**12. Supreme Court of Pakistan**
**Malik Muhammad Arif v. Zafar Iqbal etc.**
**Civil Petition No. 2743 of 2018**
**Mr. Justice Amin Ud Din Khan, Mr. Justice Jamal Khan Mandokhail**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2743_2018.pdf

**Facts:** Petitioner filed an application for eviction of the respondent/ tenant from the shop and in the title of the application, the Court of Civil Judge, was mentioned, therefore, it was registered as a civil suit. The case was proceeded after rectifying

the error, and the application was registered as an application for ejectment, instead of a civil suit. On conclusion of the trial, the application was allowed and an appeal against the same was also dismissed. The respondent feeling aggrieved filed a constitution petition before the learned Lahore High Court, which was allowed on, dismissing the application of the petitioner, hence this petition.

**Issues:** i) What was the purpose of promulgation of Punjab Rented Premises Act, 2009?
ii) What is the format of an application presented before Rent Tribunal?
iii) What is the effect of non-mentioning or addressing the court as Rent Tribunal?
iv) What is the effect of an order when it remained unchallenged by a party?

**Analysis:** i) To regulate the relationship of landlord and tenant, and for the settlement of their disputes in an expeditious and cost effective manner, the Act of 2019 was promulgated by the Provincial Assembly of Punjab. Under section 16 of the Act of 2019, the government shall establish a Rent Tribunal in a District or any area as it may deem necessary.
ii) Section 19 of the Act of 2019 deals with the territorial jurisdiction and the format of an application to be presented before the Tribunal in respect of disputes, arising out of rented premises between landlord and tenant. The above provision of the Act of 2019 provides that in case of a dispute in respect of rented premises, a simple application shall be submitted before the concerned Rent Tribunal. The application shall contain a concise statement of facts, the relief claimed and shall be accompanied by copies of relevant documents in possession of the applicant.
iii) The application contained concise statement in respect of the premises rented out by the petitioner to the respondent and the relief for eviction of the tenant and recovery of rent claimed for. Thus, it was clear enough to consider that it was a rent application, instead of a civil suit. Though the application was addressed to the Civil Court, but the contents of the same were sufficient to believe that it was for the eviction of a tenant. The Presiding Officer having dual capacity of a Civil Judge as well as a Special Judge (Rent) ought to have admitted and registered it as a rent application, instead of treating it as a civil suit, but the needful was not done. By treating the ejectment application as a plaint and registering the same as a suit, is an error committed by the Presiding Officer. However, subsequently the error was rightly rectified and the application was re-registered as an application for eviction of the tenant by the Special Judge (Rent). Mere not mentioning or addressing the court as rent Tribunal should not be ground to non-suit the ejectment petitioner.
iv) Through this order, the Special judge has further clarified the situation and declared that the application was actually for ejectment of the tenant, which has been treated by the Special judge as an ejectment petition. The said order remained unchallenged, as such it amounts to acceptance of the verdict of the Special judge by the respondent, therefore, he is estopped under the law to raise such objection subsequently.

**Conclusion:** i)The purpose of promulgation of Punjab Rented Premises Act, 2009 was to

regulate the relationship of landlord and tenant, and for the settlement of their disputes in an expeditious and cost effective manner.
ii) The application shall contain a concise statement of facts, the relief claimed and shall be accompanied by copies of relevant documents in possession of the applicant.
iii) Mere non mentioning or addressing the court as Rent Tribunal will not be a ground to non-suit the ejectment petitioner.
iv) An order when remained unchallenged then it amounts to acceptance of the verdict of the judge by the respondent, therefore, he is estopped under the law to raise such objection subsequently.

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**13.** **Lahore High Court**
**M/s Crescent Jute Products Ltd. v. Bank Alflah Ltd. & another**
**Writ Petition No.3115/2022**
**Mr. Justice Muhammad Ameer Bhatti CJ**
https://sys.lhc.gov.pk/appjudgments/2022LHC2738.pdf

**Facts:** In proceedings of a recovery suit an amount was deposited by the petitioner in an account maintained in the name of High Court with respondent in pursuance of and compliance with a direction of the Court. Amount deposited in the like case is always invested in profit-bearing schemes as a remedial mechanism against inflation etc., and readily finds support by the parties. This suit underlines an identical situation as it involves withdrawal of the amount along with profit in terms of order passed by the trial Court on the basis of settlement arrived at between the parties of the suit. The Bank has already released the said amount to the petitioner in keeping with the permission granted by the Court. The petitioner had approached the office of this Court and the Bank for obtaining the certificate (with a view to authenticate the duration of period for the investment of the principal amount in profit bearing scheme and consequent profit thereof) but he failed to persuade the office of this Court in this regard, to eventually constrain him to file this constitution petition.

**Issues**: i) Whether the Bank had rightly declined to issue the desired certificate in the name of the petitioner as he was not its account holder?

ii) Whether the Bank is under legal obligation to provide information qua the quantum of profits earned and tax paid to the depositor?

**Analysis:** i) The Bank had rightly declined to issue the desired certificate in the name of the petitioner as he was not its account holder, and the issuance of any such document in his name was not consistent with the established practice and policy/SOPs of the Bank. The respondent Bank has to abide by its own policy as regards payment of tax, in accordance with law, on the basis of profits earned by the party found entitled, on account of the principal amount so deposited and invested in the given scheme.

ii) The Bank is under no legal obligation to provide information qua the quantum of profits earned and tax paid to the depositor, however, it is permissible to share such details to the account holder according to the Bank SOPs. Such a situation entails unwarranted hardships for the party concerned whenever they need to render their liabilities of tax payment before the concerned revenue / tax collecting forum.

**Conclusion:** i) The Bank had rightly declined to issue the desired certificate in the name of the petitioner as he was not its account holder
ii) The Bank is under no legal obligation to provide information qua the quantum of profits earned and tax paid to the depositor.

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**14.** **Lahore High Court**
**Muhammad Hamza Shahbaz Sharif v. Province of Punjab and 04 others**
**Writ Petition No.21710/2022.**
**Sardar Dost Muhammad Mazari v. Provincial Assembly of the Punjab and 03 others**
**Writ Petition No.21711/2022**
**Mr. Justice Muhammad Ameer Bhatti CJ**
https://sys.lhc.gov.pk/appjudgments/2022LHC2735.pdf

**Facts:** After resignation of the then Chief Minister, two members of the Assembly came forward as candidates among whom one was the Speaker of the Assembly. Therefore, the Speaker notified the Deputy Speaker for summoning of Session of Provincial Assembly for holding election for the office of Chief Minister under Article 130 of the Constitution. Hence, this petition and another Writ Petition filed by the Deputy Speaker asserting therein that though Session has been adjourned but it should be re-scheduled to be held promptly under Article 130(3) of the Constitution read with Rules 17 to 20 of the Rules of Procedure even excluding all other business. Moreover, the action of the Speaker of withdrawal of powers of Deputy Speaker relating to Rule 25 of the Rules of Procedure, has been called-in-question.

**Issues:** i) Whether after election of the Speaker and the Deputy Speaker, the Provincial Assembly has been given the mandate of election of the Chief Minister by using the words, “exclusion of any other business” directing the prompt exercise to elect the Chief Minister?
ii) Whether adjourning the sitting of assembly for the purpose of holding of election of Chief Minister is curable?
iii) Whether speaker by issuing notification can withdraw powers of deputy speaker provided under Article 53(3) of the Constitution?
iii) Whether the pending no-Confidence motion against the Speaker and the Deputy Speaker, debars the Deputy Speaker to preside over the session for election of Chief Minister?
iv) Whether the act/decision of the Speaker or Deputy Speaker will be reviewable excluding the immunity provided under Article 69 of the Constitution?

**Analysis:** i) Article 130(3) of the Constitution demonstration whereof indicates that after election of the Speaker and the Deputy Speaker, the Provincial Assembly has been given the mandate of election of the Chief Minister by using the words, “exclusion of any other business” directing the prompt exercise to elect the Chief Minister. The mandate of this Article manifests the importance of earliest election of the Chief Minister. From this analogy it can safely be concluded that whenever the office of the Chief Minister falls vacant, the same shall be filled promptly by election keeping in view the desire of the Constitution and Rules 17, 18, 19 & 20 of the Rules of Procedure framed under the mandate of the Constitution in terms of Article 67 read with Article 127 which provide the procedure for completion of the election within two unified days from summoning of the Session.

ii) Sub-rule (2) of Rule 17 of the Rules of Procedure requires the filing of nomination papers before 5:00 pm preceding the day on which the Chief Minister is to be elected. It means the election of the Chief Minister shall be completed within two unified days. The framers of the Rules of Procedure were clear in their mind while fixing the two unified days for completion of the election of the Chief Minister in contemplation of Article 130(3) of the Constitution, which occupies its pedestal higher than the statutory rules promulgated under delegated exercise of power, therefore, it is held that the Deputy Speaker, who was performing the functions of Presiding Officer because of exclusion of Speaker being nominee in the election of the Chief Minister, adjourned the sitting and fixed it firstly for 06.04.2022 and subsequently for 16.04.2022 beyond the mandate of the Constitution and Rules of Procedure, however, in such like situation the Constitution has provided rescue provision of Article 254. So, taking the benefit of the curable provision of Article 254, this Court has no option except to validate the act of fixing of the day of sitting of the Provincial Assembly for 16.04.2022 as valid for voting for election of the office of Chief Minister.

iii) Demonstration of Article 53 of the Constitution whereof adequately gives the understanding that when the Speaker is absent or unable to perform his functions due to any cause, the Deputy Speaker shall act as a Speaker. When this Article of the Constitution entrusts all the powers to the Deputy Speaker in the absence of Speaker, the rules framed under the Constitution, which empower the Speaker to entrust his powers to the Deputy Speaker by notifying it, does not mean absence of any such Notification or by issuing any Notification he can take away or curtail any power of the Deputy Speaker to act as a Speaker. The Rules of Procedure are subservient to the Constitution and when the Constitutional provisions itself, in a clear and unequivocal manner, entrust all the powers of the Speaker to the Deputy Speaker on account of his non-availability or dis-functioning, it does not demand from the Speaker to notify in this regard. Moreover, if the Speaker has no right of issuing Notification to entrust any power while exercising the provisions of Rules of Procedure then recalling or withdrawing of any power, which is otherwise within the domain of the Deputy Speaker by virtue of Article 53(3) of the Constitution, the same is unconstitutional and unlawful, therefore, any order

issued by the Speaker withholding of any power of the Deputy Speaker for the purpose of this Session particularly when he is contesting candidate of Chief Minister himself, is unwarranted and against the Constitution.

iii) According to mandate of Article 130(3) of the Constitution and Rule 17 of the Rules of Procedure, the election of the Chief Minister is to be given priority. Even otherwise prohibition contained in the Constitution for presiding over the Session by the Speaker and the Deputy Speaker against whom No-Confidence is pending, is with regard to preside the Session in which that resolution will be considered; meaning thereby the other Sessions will not affect the powers of the Speaker or Deputy Speaker to preside over.

iv) On the touchstone of determination of this immunity attached to the Ruling of the Speaker, suffice it to say that only if he performs his duties within the parameters of the Constitution. If he crosses the limits determined by the Constitution or misapplies the applicable law or misuses his discretion then the act/decision of the Speaker or Deputy Speaker will be reviewable excluding the immunity provided under Article 69 of the Constitution.

**Conclusion:** i) After election of the Speaker and the Deputy Speaker, the Provincial Assembly has been given the mandate of election of the Chief Minister by using the words, "exclusion of any other business" directing the prompt exercise to elect the Chief Minister.

ii) Adjourning the sitting of assembly for the purpose of holding of election of Chief Minister is curable under Article 254 of the Constitution.

iii) Speaker by issuing notification cannot withdraw powers of deputy speaker provided under Article 53(3) of the Constitution.

iii) Pending no-Confidence motion against the Speaker and the Deputy Speaker, does not debar the Deputy Speaker to preside over the session for election of Chief Minister.

iv) The act/decision of the Speaker or Deputy Speaker will be reviewable excluding the immunity provided under Article 69 of the Constitution, if he crosses the limits determined by the Constitution or misapplies the applicable law or misuses his discretion.

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**15.** **Lahore High Court**
**Pakistan Muslim League. V. Sardar Dost Muhammad Mazari etc.**
**ICA No. 23122 of 2022**
**Mr. Justice Shujaat Ali Khan, Mr. Justice Jawad Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC2789.pdf

**Facts:** The Petitioners have filed the ICAs against the consolidated order followed by even dated detailed judgment, passed by learned Judge in Chamber and other allied matters, whereby, dismissed one writ petition and disposed of other writ petition by declaring order passed by the Speaker, Provincial Assembly, Punjab, as illegal with the further direction to the Deputy Speaker, Provincial Assembly of Punjab to ensure holding of elections for Chief Minister on 16th instant in terms

of Article 130 (3) of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") read with Rule 20 of the Rules, 1997.

**Issues:** i) When the Speaker is unable to preside the assembly, shall the Deputy Speaker exercise the powers of Speaker in terms of Article 53(3) of the Constitution?
ii) When question relating to conduct of the Session of the Assembly through Panel of Chairmen arises?
iii) When the motion of No-Confidence has been moved against, Deputy Speaker, Provincial Assembly of Punjab, can he preside over the Session of the Assembly?
iv) Whether validity of any proceeding in the Parliament can be called in question before the Court of law?

**Analysis:** i) Article 53(3) of the Constitution demonstrates the performance of Speaker and Deputy Speaker in case of vacancy of office, absence or his/her inability to perform functions due to any cause. The said Article is divided into two parts. According to first part, when the office of the Speaker is vacant, or he is unable to perform his functions due to any cause, the Deputy Speaker shall act as Speaker. While second part deals with the office of the Deputy Speaker with the condition that if his office has become vacant, or he is unable to perform his functions due to any cause, then a member, as determined by the Rules, 1997 shall preside at the meeting of the Assembly. Under Rules 5, 12 and 14 of the Rules, 1997, in absence of Speaker, the Deputy Speaker shall chair the Session.
ii) The question relating to conduct of the Session of the Assembly through Panel of Chairmen only arises when the Speaker or the Deputy Speaker are not present due to any reason.
iii) According to Rule 12(4) of the Rules, 1997 a Speaker or a Deputy Speaker cannot preside over a Session of the Assembly wherein a resolution for his removal is being considered.
iii) Provision of the Constitution it is crystal clear that validity of any proceeding in the Parliament cannot be called in question before the Court of law but the order passed by Speaker, Provincial Assembly, Punjab withdrawing the delegated powers of the Deputy Speaker did not fall within the category of orders which are immune from change before this Court.

**Conclusion:** i) When the Speaker is unable to preside the assembly, the Deputy Speaker shall exercise the powers of Speaker in terms of Section 53(3) of the Constitution.
ii) The question relating to conduct of the Session of the Assembly through Panel of Chairmen only arises when the Speaker or the Deputy Speaker are not present due to any reason.
iii) A Deputy Speaker cannot preside over a Session of the Assembly wherein a resolution for his removal is being considered and not otherwise.
iv) Validity of any proceeding in the Parliament cannot be called in question before the Court of law.

**16.** **Lahore High Court**
**Tamoor Ahmad v. The State, etc.**
**Crl. Revision No. 18677 of 2022**
**Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider**
https://sys.lhc.gov.pk/appjudgments/2022LHC2634.pdf

**Facts:** Through this Revision Petition; petitioner sought amendment of charge by deleting section 7 of ATA, 1997.

**Issues:** i) What are the essential factors for framing of the charge?
ii) Whether any omission/error in the contents of charge makes it defective in nature?
iii) What is the effect of omission in particulars of the offence when accused is convicted for said offence?
iv) What are the consequences when particulars of the offence are mentioned in the charge but not proved during the trial?
v) Whether trial court can make conclusive finding of deletion of offence at a premature stage before recoding of evidence?

**Analysis:** i) The whole object of framing charge is to enable the accused to know that what is precise accusation against him and concentrate his attention on the case that he has to meet i.e. to ensure that the accused had sufficient notice of the nature of accusation with which he was charged and secondly to make the Court concerned conscious regarding the real points in issue. Although charge must contain facts which are essential factors of the offence in question, however, no yardstick can be fixed qua the particulars which should be mentioned in the charge as it depends upon facts/circumstances of each case.
ii) Accused must not be misled in his defence by omission/error in the charge. If contents of charge are not misleading the accused in his defence then there is no defect of material nature in the charge; in other words, if nature of accusation has been incorporated in the charge with relevant provision of law applicable in categorical manner eliminating possibility of any confusion or prejudice then such charge cannot be termed as defective.
iii) If particulars of the offence are not mentioned in the charge and accused is convicted for said offence then it can be said that such omission caused prejudice to the accused in his defence.
iv) If particulars and provision of law are mentioned in the charge and subsequently same is not proved during trial then accused certainly gets the benefit of acquittal and practically speaking no prejudice is caused to the accused i.e. in simple words, framing of charge does not mean conviction and if it is not proved then of course, it results into acquittal and accused does not suffer from any prejudice.
v) In this case, occurrence does not took place in some abandoned area/jungle i.e. away from public view or in a room of some house i.e. not visible to public similarly occurrence in this case was not result of personal vendetta/enmity rather

in this case, occurrence comprises of burning the dead body by accused at the public road after blocking the same in view of public at large on the pretext that he outraged their religious feelings which resulted striking of terror, creating of sense of fear and insecurity in the people and said allegation stood established during investigation, therefore, charge has been rightly framed under Section: 7 of Anti-Terrorism Act, 1997. Now learned trial court would not be ready to hand down a conclusive finding at a premature stage that Section: 7 of the Anti-Terrorism Act, 1997 was not made out because evidence was still being recorded.

**Conclusion:** i) Facts of the offence are essential factors for framing of the charge.
ii) Any omission/error in the contents of charge which did not mislead the accused in his defence does not makes it defective in nature.
iii) When the accused is convicted due to omission in particulars of the offence then it can be said that such omission caused prejudice to the accused in his defence.
iv) When particulars of the offence are mentioned in the charge but not proved during the trial then accused certainly gets the benefit of acquittal.
v) Trial court cannot make conclusive finding of deletion of offence at a premature stage before recoding of evidence.

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**17.** **Lahore High Court**
**Mst. Sahib Khatoon alias Saban v. Muhammad Ramzan (deceased) through L.Rs.**
**Civil Revision No.1167 of 2013**
**Mr. Justice Shahid Bilal Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC2726.pdf

**Facts:** The suit of the petitioner was decreed by the trial court and the said decree was set aside by the appellate court while framing additional issues, the case was remanded to the learned trial Court for decision afresh after recording evidence of the parties on additional issues and giving independent findings on reframed issues. After remand, the petitioner did not produce additional evidence whereas the respondent(s) produced additional oral as well as documentary evidence. The learned trial Court again decreed the suit and the learned appellate Court while accepting the appeal, set aside the judgment and decree of the trial court which resulted in filing of the instant revision petition.

**Issues:** i) When the principle of acquiescence is attracted?
ii) What are legal consequences when a party fails to implead revenue officials as party?

**Analysis:** i) When a party allows another party to remain in possession of the suit property thereby allowing him to deal with it as exclusive owner and to develop it at his own expense over a period of time while having the knowledge then the principle of acquiescence is attracted.

ii) It is necessary for a party to implead revenue officials as party in the suit if it has been alleged that fraud has been committed with their connivance. In case, a party fails to implead and bring evidence with regards to alleged connivance of revenue officials, it fails to prove its case.

**Conclusion:** i) The principle of acquiescence is attracted when a party allows another party to remain in possession of the suit property.
ii) When a party fails to implead revenue officials as party then alleged connivance of revenue officials cannot be proved.

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**18.** **Lahore High Court**
**Mst. Sana Aslam v. Ali Imran etc.**
**Review Application No. 18987/2022**
**Mr. Justice Abid Aziz Sheikh**
https://sys.lhc.gov.pk/appjudgments/2022LHC2578.pdf

**Facts:** Applicant filed this review application through her real brother as Special Attorney against the consolidated judgment passed by this Court whereby in a family matter, the concurrent findings of the learned two courts below were upheld.

**Issue:** Whether Special Attorney of a party can appear in the Court and argue the matter?

**Analysis:** Plain reading of Rule 1 of Order III CPC shows that a recognized agent can appear, file applications or act in or to any Court on behalf of any party. Rule 2 of Order III CPC refer to class of persons, who could be treated as recognized agents of parties, which include person holding power of attorney authorizing him to make and do such appearance, application and act on behalf of the parties. The words “appearance”, “application” and “act” used in Rules 1 and 2 of Order III CPC are not defined therein. However, applying ordinary meaning to these words, the word “appear” means, to be present and to represent the party at various stages of litigation. The words “application” or “act” means necessary steps, which can be taken on behalf of the parties in the Court or in the offices of the Court in the course of litigation. However, the words “appearance”, “application” and “act” under Rules 1 and 2 ibid do not include pleadings. Thus, the recognize agent is entitled to appear, file application and act for party but he is not entitled to plead in Court. Such right is only available to pleader under Order III, Rule 4 CPC. When right of pleading is not available to a recognized agent, it follows that he has no right of audience in Court, as such right is a natural and necessary concomitant of the right to plead.

**Conclusion:** Special Attorney is entitled to appear, file application and act for party but he is not entitled to plead in Court and cannot argue the matter.

**19.** **Lahore High Court**
**M/s Asian Food Industries etc v. Federal Board of Revenue and others.**
**Writ Petition No.39650 of 2019**
**Mr. Justice Shahid Jamil Khan**
https://sys.lhc.gov.pk/appjudgments/2022LHC2486.pdf

**Facts:** The petitioners have filed instant petition and assailed show cause notice whereby charging of further tax is proposed on the supplies, alleged to have been made to unregistered persons.

**Issues:** i) Whether occasion for 'change of opinion' arises under the scheme of existing Income Tax Ordinance, 2001?
ii) Whether occasion for 'change of opinion' arises under the scheme of The Sales Tax Act, 1990?

**Analysis:** No occasion for 'change of opinion' arises now under the scheme of existing Income Tax Ordinance, 2001, because the return filed under the Section 114 is taken to be an assessment order under Section 120 for all purposes of the Ordinance, without application of mind by any officer/authority under the Ordinance of 2001. After filing return, the record supporting declarations in return, is to be kept by taxpayer for six years under Section 174(3), which can be called for audit under Section 177 to verify the declarations in the return and ensure compliance of different provisions under the Ordinance of 2001. The issues/audit observations are required to be confronted to taxpayer before preparing audit report under Section 177(6). Under its sub-section (6A); after issuance of audit report, Commissioner may proceed under Section 122 for amendment of the assessment order passed by operation of law.

ii) Under the scheme of Act of 1990, as the person, registered under this Act is obliged to make declaration of the taxable supplies in a tax period and is authorized to adjust input tax paid from the amount due as output tax, while filing the return. Such declarations are subject to audit under the Section 25 and consequent proceedings under the Section 11. Provisions of Section 11 can be invoked in absence of audit also, if tax due on supplies is not paid, short paid, wrongly adjusted or refunded etc., which in this case, assertively, is non-payment of further tax. Since Taxation Officer would apply its conscious mind for the first time on the issue of charging further tax under the facts and circumstances of this case, therefore, the law on 'change of opinion', as enunciated in Edulji Dinshaw Case, is inapplicable.

**Conclusion:** i) No occasion for 'change of opinion' arises under the scheme of existing Income Tax Ordinance, 2001.
ii) Under the scheme of Act of 1990, the law on 'change of opinion', as enunciated in Edulji Dinshaw Case, is inapplicable.

**20.** **Lahore High Court**
**M/s Masco Spinning Mills Limited v. Federation of Pakistan, etc.**
**W. P. No. 160280 of 2018**
**Mr. Justice Shahid Jamil Khan**
https://sys.lhc.gov.pk/appjudgments/2022LHC2784.pdf

**Facts:** Petitioners in this and connected petition are aggrieved of charging arrears of tax in utility bills for natural gas against a column titled; "Arrears/Aging".

**Issues:** i) How recovery of tax as arrears or otherwise can be determined?
ii) Whether arrears of tax can be recovered by mentioning in column of recovery of arrears supply of natural gas?
iii) Whether arrears of tax can be recovered through utility bills?

**Analysis:** i) Provisions under a taxing statute are divisible into three categories; charging, assessment and recovery. For recovery of tax, as arrears or otherwise, it should be determined, by invoking assessment provisions. If the determination brings the transaction within the mischief of charging provisions, the tax can be recovered by adopting the procedure prescribed under relevant recovery provisions, which may be regular or special.
ii) The column titled "Arrears/Aging" through which tax arrears are recovered is meant for arrears supply of natural gas. Even if, after amendment in the special procedure, law authorizes to recover tax arrears through bills, it has to be through an independent column showing that the arrears are of tax. The practice of charging arrears of tax in column of arrears of gas supply charges, besides being without lawful authority, is a misrepresentation. Full disclosure of the particulars and necessary information for the recovery is now fundamental right under Article 19A of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the impugned practice is highly deprecated and declared illegal.
iii) As there is no special procedure for recovery of tax not charged by distribution company, therefore, the impugned recovery of tax arrears through utility Bills is declared without lawful authority. Nevertheless, if tax is determined in accordance with law and instructions are issued, under the law for recovery of any tax through utility Bill, the bill issuing authority must satisfy itself that the instruction is based on an order, determining tax, by the competent officer and that particulars of the recoverable tax are fully disclosed.

**Conclusion:** i) For recovery of tax, as arrears or otherwise, it should be determined, by invoking assessment provisions.
ii) Arrears of tax cannot be recovered by mentioning in column of recovery of arrears supply of natural gas.
iii) If tax is determined in accordance with law and instructions are issued, under the law for recovery of any tax through utility Bill, the bill issuing authority must satisfy itself that the instruction is based on an order, determining tax, by the competent officer and that particulars of the recoverable tax are fully disclosed.

**21.** **Lahore High Court**
**M/s.Gibraltar (SMC-Pvt.) Limited etc v. M/s.Samad Rubber Works (Pvt.) Ltd. etc.**
**Writ Petition No.28102 of 2017**
**Mr. Justice Ch. Muhammad Iqbal**
https://sys.lhc.gov.pk/appjudgments/2022LHC2778.pdf

**Facts:** Through this writ petition the petitioners have challenged the legality of orders passed by the learned Civil Judge whereby he made a reference of the case for recovery of amount under Order XXXVII Rules 1 & 2 CPC and sent the same to the learned District & Sessions Judge for its entrustment to the court of competent jurisdiction who entrusted the case to the learned Addl. District Judge for adjudication.

**Issues:** i) Whether Civil Judges 1st Class in District, Lahore are also competent to adjudicate the matter under Order XXXVII Rules 1 & 2 CPC?
ii) What are the provisions for sending reference of a case to Superior authority?
iii) Whether District Judge can entertain the reference made by the Civil Judge?

**Analysis:** i) In terms of letter dated 21.10.1974 written by the Member, Inspection Team, Lahore High Court, Lahore the District Judge as well as the Civil Judges 1st Class of Lahore are competent to adjudicate suits under Order XXXVII CPC. Where the procedure under Order XXXVII was being claimed by a plaintiff and was not available the trial Court could proceed with the case as an ordinary suit. Order XXXVII relates to the procedure and not the jurisdiction. The amendments introduced by the High Court only identified the Courts where resort can be had to Order XXXVII for the purpose of trial of a suit of a particular category. The Civil Judges 1st Class in District, Lahore is also competent to adjudicate the matter, however, for safe administration of justice, the learned Civil Judge may make reference to the learned District Judge, for adjudication of the case by an Additional District Judge.
ii) Under Chapter 13 Volume I of the Rules and Orders of the Lahore High Court, Lahore, the Civil Courts are also competent to make a reference of a case to superior authority for its entrustment to any other Court of competent jurisdiction.
iii) The learned District & Sessions Judge being the head of the District Judiciary, under Section 15 of the Punjab Civil Courts Ordinance, 1962, is competent to entrust/distribute the cases among the Courts of competent jurisdiction. In the same way under Section 24 C.P.C, the District Judge on the application of any of the parties and after notice to the parties or of its own motion, without such notice, can transfer any case or withdraw any case or appeal etc. pending before court subordinate to it.

**Conclusion:** i) Yes, Civil Judges 1st Class in District, Lahore is also competent to adjudicate the matter under Order XXXVII Rules 1 & 2 CPC however, for safe administration of justice; they might make reference to the learned District Judge,

for adjudication of the case by an Additional District Judge.
ii) Chapter 13 Volume I of the Rules and Orders of the Lahore High Court, Lahore contain relevant provisions for sending reference of a case to Superior authority.
iii) Yes, District Judge can entertain the reference made by the Civil Judge being the head of the District Judiciary.

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**22.** **Lahore High Court**
**Azhar Ali v. Khalid Iqbal etc.**
**C.R.No.18523/2022**
**Mr. Justice Ch. Muhammad Iqbal**
https://sys.lhc.gov.pk/appjudgments/2022LHC2768.pdf

**Facts:** Through this civil revision, the petitioner has challenged the validity of the judgment & decree passed by the learned Civil Judge who decreed the suit for declaration and cancellation of documents along with mandatory injunction filed by the respondents and also assailed the consolidated judgment & decree passed by the learned Additional District Judge who dismissed the appeals of the petitioner along with other respondent.

**Issues:** i) What is the purpose of The Mental Health Ordinance, 2001 (VIII of 2001)?
ii) Whether the manager is under obligation to obtain permission for sale / transfer the land of the mentally disordered person by the court?
iii) Whether a superstructure upon fraud can be validated under any norms of law?
iv) Whether a vendee can take plea of bona fide purchaser while purchasing land owned by the mentally disordered person?

**Analysis:** i) The Mental Health Ordinance, 2001 (VIII of 2001) was promulgated on 20.02.2001 to amend the law relating to the treatment and care of mentally disordered persons to make better provision for their care, treatment, management of the properties and affairs and to provide for matters connected therewith or incidental thereto and to encourage community care of such mentally disordered persons and further to provide for the promotion of mental health and prevention of mental disorder.
ii) Under section 36 of the Mental Health Ordinance, 2001 (VIII of 2001) it is mandatory for the managers of the mentally disordered person to file application before the Court of Protection in order to obtain permission for sale / transfer of the suit land of the mentally disordered person.
iii) It is settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, that stand automatically dismantled and any ill-gotten gain achieved by fraudster cannot be validated under any norms of laws.
iv) Vendee was under unalienable extraordinary legal obligation to observe all the care and caution and should have made intelligent investigation with regard to the

competence of the vendor or his agent or ward of property of a mentally disordered person under the principle of Caveat Emptor and any disclosure of post transaction flaw in the title of owner, the vendee is precluded to take plea of bona fide purchaser.

**Conclusion:** i) The purpose of The Mental Health Ordinance, 2001 (VIII of 2001) to make better provision for care, treatment, management of the properties and affairs of mentally disordered persons.
ii) Yes Under section 36 of the Mental Health Ordinance, 2001 (VIII of 2001) it is mandatory to obtain permission by the court for sale / transfer the land of the mentally disordered person.
iii) Fraud vitiates the most solemn proceedings and any ill-gotten gain achieved by fraudster cannot be validated under any norms of laws.
iv) Vendee is always under legal obligation to observe all the care and caution while purchasing of property of a mentally disordered person and precluded to take plea of bona fide purchaser.

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**23. Lahore High Court**
**Rafia Bibi alias Razia v. The State etc.**
**Crl. Misc. No.55763/B/2021**
**Mr. Justice Tariq Saleem Sheikh**
https://sys.lhc.gov.pk/appjudgments/2022LHC2693.pdf

**Facts:** The Petitioner applied for pre-arrest bail in the Sessions Court which was allowed by the learned Additional Sessions Judge. After about six weeks the Complainant moved that court for cancellation of her bail, which was accepted. The Petitioner has now approached this Court for pre-arrest bail.

**Issues:** i) Whether the Supreme Court and the High Court are competent to convert one type of proceedings into another?
ii) Whether protection against arbitrary arrest and detention is part of the right to liberty and fair trial?

**Analysis:** i) It is, however, well settled that the Supreme Court and the High Court are competent to convert one type of proceedings into another.
ii) Protection against arbitrary arrest and detention is part of the right to liberty and fair trial.

**Conclusion:** i) Yes, the Supreme Court and the High Court are competent to convert one type of proceedings into another.
ii) Yes, protection against arbitrary arrest and detention is part of the right to liberty and fair trial.

**24. Lahore High Court**
**Khalid Safdar Makhdoom v. Government of the Punjab etc.**
**Writ Petition No. 76878 of 2021**
**Mr. Justice Tariq Saleem Sheikh**
https://sys.lhc.gov.pk/appjudgments/2022LHC2535.pdf

**Facts:** Through this petition, the Petitioner lays challenge to formation of the Special Board and prays that its report be declared null and void. In the alternative, he prays for constitution of a new board for re-examination of prisoner.

**Issue:** i) Whether a constitutional petition not filed by an aggrieved person was not maintainable?
ii) Whether Secretary, Specialized Healthcare & Medical Education Department, Government of the Punjab has jurisdiction to constitute a special medical board for examination of a prisoner?

**Analysis:** i) In respect of the matters mentioned in clauses (i) & (ii) of Article 199(1)(a) the High Court must be moved by an aggrieved party while any person may approach it for an order under clauses (i) & (ii) of Article 199(1)(b). As for the matters falling within the ambit of Article 199(1)(c), it can exercise jurisdiction only on the application of an aggrieved person. It is important to note that Article 199 has used two expressions: "aggrieved party" and "aggrieved person". Article 4 of the Constitution mandates that it is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan, to enjoy the protection of law and to be treated in accordance with law. Thus, "a person, merely because he is lodged in prison, does not cease to be a 'person'. He has therefore as much right to be dealt with in accordance with law as any other person and to have that right to be dealt with in accordance with law as any other person and to have that right enforced by judicial review.
ii) The Prison Rules, 1978, contain detailed provisions for the superintendence and management of prisoners. The Prison Rules, 1978, do not prescribe any procedure for constitution of a medical board for examination/re-examination of the prisoners. Indeed, judicial proceedings cannot commence until a report under section 173 Cr.P.C. Section 3 of the Prisons Act, 1900, stipulates that the officer in-charge of a prison shall receive and detain all persons duly committed to his custody under the said Act or otherwise by any court according to the terms of the writ, warrant or order until he is discharged or removed in due course of law. Section 4 of the Act requires the officer in-charge of the prison to return writs etc. after execution or discharge. Rule 14 of the Prison Rules, 1978, mandates that no person shall be admitted to any prison except under a lawful warrant or order of commitment issued by a competent court addressed to the Superintendent of Prisons. A close reading of the above provisions leaves no doubt that it is the magistrate/court which regulates the custody of a prisoner. Therefore, it is just and proper that all requests/ complaints regarding his examination or re-examination by a medical board should be made to it.

**Conclusion:** i) A constitutional petition not filed by an aggrieved person is maintainable.
ii) Secretary, Specialized Healthcare & Medical Education Department, Government of the Punjab has no jurisdiction to constitute a special medical board for examination of a prisoner.

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**25. Lahore High Court**
**Muhammad Zawar Hussain v. Province of Punjab and others.**
**Writ Petition No. 63655 of 2021**
**Mr. Justice Jawad Hassan**
https://sys.lhc.gov.pk/appjudgments/2021LHC9799.pdf

**Facts:** Petitioner filed this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenging the vires of notification dated 06.10.2021 under Section 9 (iv) of The Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 issued by Wildlife and Parks, Punjab department imposing ban on use of electronic devises including gadgets, battery operated decoys/moju and pre-charged pneumatic air guns in course of hunting waterfowl/upland birds.

**Issues:** i) How the idea of "fair chase" is recognized and embraced by the hunters?
ii) What efforts are made by the Wildlife Departments to maintain a tradition of successful wildlife conservation and management?
iii) Whether the additional restriction imposed by the Wildlife Department on hunting/shooting of wild birds and animals by using electronic devises/gadgets, battery operated decoys/moju and pre-charged pneumatic air guns, in addition to the restrictions already given in Section 9 (i) of The Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974, is justified?
iv) Which Authority has the power to add, amend, vary or rescind any notification so issued?

**Analysis:** i) The most common term used to describe the actual ethical pursuit of a big game animal is called the fair chase, concept of which has been widely promoted for over a century. The term "fair chase" can be defined as "the ethical, sportsman like, and lawful pursuit and taking of any free-ranging wild, big game animal in a manner that does not give the hunter an undue advantage over the game animals. With the passage of time, fair chase has become a code of conduct for new hunters to complete the mandatory certification courses. However, despite its long history and widespread acceptance, fair chase is not as clearly understood by hunters or the non-hunting public as it should be. This is because social values, conservation practices, and hunting technologies are constantly evolving. Furthermore, fair chase is more a matter of the "spirit of the hunt" than a set of written rules. It is shaped, in part, by an individual's motivations for hunting and their personal sense of right and wrong. Thus, the meaning of fair chase can vary to some extent from one person to the next. What is most important is that hunters

recognize and embrace the ideal of fair chase and use it individually to measure their hunting decisions and experiences.

ii) Regulated hunting with the fair chase policy of hunting the wild animals/birds fundamentally supports wildlife conservation efforts being made by the Wildlife Departments. A loss of hunting would, therefore, equate with a measurable loss in conservation efforts. Consequently, the hunting ethics and fair chase policy of hunting are important if we are to maintain a tradition of successful wildlife conservation and management.

iii) Preamble of The Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 clearly delineate that the basic purpose behind enacting this legislation is to protect, preserve, conserve and manage the wildlife in the Province of Punjab and the aim & object of the provision of Section 9 thereof is centric to the protection of wildlife animals from being hunt down with unfair means and to chalk a balance between the right to hunt in equilibrium with right of animal to escape and to ensure not to tilt the toe in favor of the hunters in a way that cruelty overshadows the spirit of hunting as a sport. In view of this, the Impugned Notification is well within the statutory mandate of the Act, issued in line with the purpose and object of the primary legislation and in accordance with the spirit of Section 9 of the Act and the Petitioner failed to establish that the same is, in any manner, beyond the scope and mandate of the Act and violative of any of the fundamental rights as provided and protected under the Constitution, which was sine qua non to effectively put a challenge to the impugned notification and thus the question raised by the Petitioner is found to be unfounded and established in accordance with law.

iv) Section 20 of the Punjab General Clauses Act, 1956 the Authority, conferred with power to issue notifications, orders, rules etc. it is competent in the like manner to add to, amend, vary or rescind any notification so issued. It is therefore held that the impugned notification was validly issued by competent authority authorized by law in this behalf and the same was in accordance with the object and mandate of the primary law, the Act.

**Conclusion:** i) The idea of "fair chase" is recognized and embraced by the hunters individually to measure their hunting decisions and experiences.

ii) Regulated hunting with the fair chase policy of hunting is made by the Wildlife Departments to maintain a tradition of successful wildlife conservation and management.

iii) The additional restriction/condition, the additional restriction imposed by the Wildlife Department on hunting/shooting of wild birds and animals by using in electronic devises/gadgets, battery-operated decoys/moju and pre-charged pneumatic air-guns is justified because use of the aforesaid electronic devices/gadgets is against the norms of hunting, especially the principle of fair chase whereby the animal or bird has a fair chance to escape.

iv) Under Section 20 of the Punjab General Clauses Act, 1956, the Authority conferred with power to issue notifications, orders, rules etc. is competent to add, amend, vary or rescind any notification etc. so issued.

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**26. Lahore High Court**
**Tariq Iqbal Malik v. M/s. Multiplierz Group Pvt. Ltd. and 04 others.**
**Civil Original No.05 of 2021**
**Mr. Justice Jawad Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC2643.pdf

**Facts:** Through this Petition, the Petitioner has sought direction to the Respondent /Securities and Exchange Commission of Pakistan, Islamabad to start investigation into the affairs of the Respondents under Section 257(1)(a)(ii) of the Companies Act, 2017.

**Issues:** i) Whether Section 257 of the Act can be invoked straightway without referring to Section 256 of the Act?
ii) Whether the power conferred on the Commission to investigate a company's affairs under Section 257 is without prejudice to its powers under Section 256 of the Act?
iii) Whether Show cause notice can be issued by the commission under section 257 of the Act, without formation of opinion?

**Analysis:** i) Under the Doctrine of Intertwined, the Petitioner has to fulfill the requirements of Section 256 of the Act regarding locus standi of being member, qualification of member and company against whom the relief is being sought. (…) in case parties/persons having no link or nexus to the affairs of a Company (by way of either membership/shareholding/holding office) are allowed to invoke the provisions of both Sections and other related provisions of the Act to have the affairs of a company investigated on account of matters that purely pertain to their commercial and business dealings with such a company, would in turn not only open flood-gates of litigation, but would also lead to (i) a situation where the affairs of any company would be investigated in every such instance where there is an alleged breach of contract by the company in its business dealings with third party, (ii) disputes in the normal course of business between a company and third party would end up requiring investigations into the affairs of a company, (iii) the laws and statutes dealing with and providing for legal remedies based on contract, sale of goods, specific performance etc. would more or less be rendered redundant.
ii) Although Sections 256 and 257 of the Act are closely tied in, the power flows out of entirely different circumstances for the Commission to start an investigation. Section 256 is engaged on the happening of an event; either on an application by members (holding certain threshold voting power) or on a report compiled under Section 221(5) or by the registrar under Section 254(6). Thus, if at all the Commission seeks to investigate into the affairs of a company on an

application, it must be an application made by one of the persons or entities mentioned in Section 256 and none else. Section 257 envisages formations of opinion by the Commission as a pre-condition and that opinion must be based on the Commissions' own inquiry and by application of independent mind.
iii) The cognizance of a matter relating to investigation cannot be taken by a circuitous route, that is, by firstly receiving a complaint and thereafter invoking its powers under Section 257, whimsically and unreasonably, to serve a notice. Any power to be exercised by the Commission under Section 257 has to be preceded by formation of an opinion and thereafter a show cause notice giving the company an opportunity of hearing can be issued.

**Conclusion:** i) Under the Doctrine of Intertwined, one cannot invoke the provisions of section 257 straightaway without referring to Section 256 of the Act. The Petitioner has to fulfill the requirements of Section 256 of the Act regarding locus standi of being member, qualification of member and company against whom the relief is being sought.
ii) The power conferred on the Commission to investigate a company's affairs under Section 257 is without prejudice to its powers under Section 256 of the Act. Although Sections 256 and 257 of the Act are closely tied in, the power flows out of entirely different circumstances for the Commission to start an investigation.
iii) The prerequisite of show cause notice is that the commission should have formation of opinion in order to exercise any power under section 257 of the Act.

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**27. Lahore High Court**
**Fauji Cement Company and Askari Cement Company v. Securities and Exchange Commission of Pakistan and others.**
**Civil Original No.01 of 2022.**
**Mr. Justice Jawad Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC2621.pdf

**Facts:** This petition under Sections 279 to 282 of the Companies Act, 2017 has been filed by the authorized representative of the Petitioners for seeking/obtaining sanction of this Court to a Scheme of Arrangement and for merger between Transferee Company (the Petitioner No.1) and Transferor Company (the Petitioner No.2) and also seeking approval from Securities and Exchange Commission of Pakistan and Competition Commission of Pakistan which is mandatory requirement under the respective laws.

**Issues:** i) Whether court may order meeting of company?
ii) Whether the shareholder has right to know the agenda of meeting of company?
iii) Who is proxy and whether his right to vote in meeting of company is absolute?
iv) What is the jurisdiction of court when majority of members of both companies have approved the resolution of merger of both the companies?

**Analysis** i) The Court may order a meeting of company to be called, held and conducted in

such manner as the Court thinks fit.
ii) Shareholder should know what meeting is about so that the business of company could be properly transacted and conducted.
iii) The proxies are defined under Section 137(1) of the Act according to which a member of a company entitled to attend and vote at a meeting of the company may appoint another person as his proxy to exercise all or any of his rights to attend, speak and vote at a meeting. (…) Proxies are agents of the share- holders and are governed by the law of Agency, Chapter X of Contract Act, 1872. On a poll, vote could be given either personally or by proxy under section 79 of the Companies Act, 1913. After the promulgation of the Companies Ordinance, 1984, this recognition was converted into a statutory right conferred by section 161(1) of the Companies Ordinance, 1984. However, proviso (a) was inserted putting limitation on the right to vote by proxy. (…) In my view there can be no proxy voting in the case of a Company limited by guarantee and having no share capital.
iv) Once the requirements of a scheme for getting sanction of the Court is found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval of the scheme. (…) where required majority of the members of both the company has approved the resolution of merger of both the companies the sanction for merger could not be withheld unless it was shown that same was unfair, unreasonable or against the national interest.

**Conclusion:** i) Court may order a meeting of company to be called, held and conducted.
ii) Shareholder should know what meeting is about so that the business of company could be properly transacted and conducted.
iii) Proxies are agents of the share-holders. On a poll, vote could be given either personally or by proxy but no proxy can vote in the case of a Company limited by guarantee and having no share capital.
iv) Once the requirements of a scheme for getting sanction of the Court is found to have been met, it could not be withheld unless it is shown that same is unfair, unreasonable or against the national interest.

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**28.** **Lahore High Court**
**Adam Sugar Mills Ltd v. Cane Commissioner Punjab, etc.**
**C.M. No.10910 of 2021/BWP in ICA No.4 of 2019-BWP**
**Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Sultan Tanvir Ahmad**
https://sys.lhc.gov.pk/appjudgments/2022LHC2597.pdf

**Facts:** Through this civil miscellaneous application filed under section 12(2) read with section 151 of C.P.C., the applicant/Appellant Company seeks recalling/setting aside of order passed by this Court whereby the Intra Court Appeal filed by the applicant was dismissed as withdrawn on the statement of respondent No.7 who had appeared as counsel on behalf of the applicant.

**Issues:** i) Whether death of executant of power of attorney would take away the authority

vested in counsel to represent the company in the court?
ii) How power of attorney is to be revoked?
iii) Whether presumption of authenticity is attached to the judicial proceedings?
iv) Whether a party is bound by the statement recorded by his engaged counsel?
v) Whether mere assertion that lawyer was not authorized to withdraw appeal is sufficient for recall of said order?

**Analysis:** i) It is pertinent to mention here that a company is a separate legal entity from its directors and shareholders and its separate existence continues regardless of who represents it before the Court or any other authority, hence, the death of executant of power of attorney would not take away the authority vested in the counsel to represent the company in the ICA pending before this Court.
ii) Power of Attorney signed by a party in favour of advocate is a contract between the client and his counsel and it is the duty of party as well as the advocate to revoke or terminate the power of attorney through notice if it is to be terminated otherwise the same remains in the field and both parties are bound by the same. Where power of attorney is not withdrawn, the counsel engaged in the matter by a party, were under legal obligation to represent their client as long as they had not sought discharge of the vakalatnama in accordance with law.
iii) Presumption of authenticity is attached to the judicial proceedings, which cannot be set-aside merely because a party challenges the same through an application supported by an affidavit of that party, when the circumstances of the case available on the record do not support the assertion of the said party. There is always a presumption of correctness in favour of judicial proceedings and credibility is attached to the proceedings before a judicial forum. Strong and unimpeachable evidence is required to rebut the presumption.
iv) When an Advocate is duly engaged by a party, it is bound by the statement recorded by the said Advocate in the Court even if the same is for withdrawal of the suit or appeal. The party in circumstances could not claim that Advocate engaged by him was not competent to make statement.
v) Where power of attorney/vakalatnama was duly executed, a lawyer has the authority to bind a party in compromise and such compromise decree could not be set aside on an application u/s 12(2) CPC. mere assertion that lawyer was not authorized to withdraw appeal is not sufficient for recall of said order through application under Section 12(2) of CPC because for that purpose the Applicant in addition to above was also required to establish grounds of fraud, misrepresentation or lack of jurisdiction provided under section 12(2) CPC, which has not been done.

**Conclusion:** i) No, the death of executant of power of attorney would not take away the authority vested in the counsel to represent the company in the case pending before Court.
ii) It is the duty of party as well as the advocate to revoke or terminate the power of attorney through notice.
iii) Yes, presumption of authenticity is attached to the judicial proceedings;

however, it can be rebutted through strong and unimpeachable evidence.
iv) Yes, a party is bound by the statement recorded by his engaged counsel.
v) Mere assertion that lawyer was not authorized to withdraw appeal is not sufficient for recalling of said order.

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**29. Lahore High Court**
**Noman Amanat Advocate v. Govt. of Punjab, etc.**
**W.P. No. 61661of 2021**
**Mr. Justice Muzamil Akhtar Shabir**
https://sys.lhc.gov.pk/appjudgments/2021LHC9788.pdf

**Facts:** Through this Constitutional Petition, petitioner challenged the appointment of Provincial Police Officer Punjab Lahore, who earlier was holding the post of Additional Inspector General of Police Punjab with the assertion that the procedure prescribed under Article 11 of the Police Order, 2002 was not followed.

**Issues:** i) Whether the consensus between Federal and Provincial Governments regarding appointment of police official amounts to compliance of Article 11 of Police Order, 2002?
ii) Whether Grade- 21 officer can be appointed to the rank of Inspector General of Police?
iii) Whether officer already holding the rank of Inspector General of police could be appointed as Provincial Police Officer and a person holding post of Additional Inspector General cannot be promoted to the said rank?

**Analysis:** i) When appointment was made with consensus of both governments and Provincial Government is satisfied with the said arrangement and has no reason to call the same in question, hence, the purpose of Article 11 of Police Order, 2002 that the Provincial Police Officer be appointed by the Provincial Government from the officers recommended by Federal Government has been achieved, therefore, even if three names had not been proposed by the Federal Government out of which one candidate could be selected by the Provincial Government, yet the consensus between both Governments amounts to substantial compliance of the said provision of law and this Court is not inclined to hold that there was any procedural defect in the same.
ii) The Article 11 of Police Order, 2002 provides that Provincial Police Officer is to be appointed from the penal of three police officers recommended by Federal Government but the grade of such officers has not been mentioned in the said Article and none of the afore-referred provisions of law provide that the officer having Grade-22 could only be appointed to the rank of Inspector General of Police, hence, objection that the respondent No. 3 is a Grade- 21 and not Grade-22 officer, therefore, not qualified to be appointed is without any substance and the same cannot be held as a disqualification for appointment to the said post.
iii) The objection of the petitioner that an officer already holding the rank of Inspector General of police only could be appointed as Provincial Police Officer

and a person holding post of Additional Inspector General cannot be promoted and appointed to the said post during the availability of an officer of the rank of Inspector General of police is also without any substance as the terms “Provincial Police Officer” and “Inspector General of Police” specifically in the case of appointment of Provincial Police Officer are used as synonymous and who so ever was appointed as Provincial Police Officer shall automatically hold the rank of Inspector General of police.

**Conclusion:** i) The consensus between Federal and Provincial Governments regarding appointment of police official amounts to compliance of Article 11 of Police Order, 2002.

ii) When no grade of officer has been recommended in the Article 11 of Police Order, 2002 then Grade- 21 officer can be appointed to the rank of Inspector General of Police.

iii) The terms “Provincial Police Officer” and “Inspector General of Police” specifically in the case of appointment of Provincial Police Officer are used as synonymous and whosoever was appointed as Provincial Police Officer shall automatically hold the rank of Inspector General of police.

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**30. Lahore High Court**
**Muhammad Iqbal v. Registrar, Lahore High Court, Lahore**
**W.P No. 18696/2022**
**Mr. Justice Muzamil Akhtar Shabir**
https://sys.lhc.gov.pk/appjudgments/2022LHC2495.pdf

**Facts:** Petitioner has filed instant petition while challenging the rejection letter passed by respondent.

**Issues:** Whether High Court can exercise jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, to call in question the order passed by the High Court in its administrative capacity?

**Analysis:** It is held that this Court lacks jurisdiction to entertain this petition in view of Article 199 sub-Article (5) of the Constitution of Islamic Republic of Pakistan, 1973, whereby the High Court has been excluded from the definition of ‘person’ for the purposes of exercise of jurisdiction under Article 199 of this Court, as High Court cannot exercise its jurisdiction against itself.

**Conclusion:** High Court cannot exercise jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, to call in question the order passed by the High Court in its administrative capacity.

**31.** **Lahore High Court**
**The State v. Malik Imtiaz Mahmood Awan, Advocate**
**Crl. Org. No.1271 of 2021/BWP**
**Mr. Muzamil Akhtar Shabir**
https://sys.lhc.gov.pk/appjudgments/2022LHC2503.pdf

**Facts:** This contempt petition arises out of show-cause notice which was issued by this Court against the respondent, a learned counsel of this court, vide order passed in writ petition as on his behalf a written request of adjournment was submitted in the said petition, whereas he was not the counsel for either of the parties to the said petition.

**Issues:** What are the requirements of initiating proceeding for Contempt of Court against a contemnor?

**Analysis** This Court can proceed against a contemnor for committing Contempt of Court of three types provided in Definition Clause of Contempt of Court Ordinance, 2003, which are (1) Civil Contempt (2) Criminal Contempt and (3) Judicial Contempt. (…) However, for proceeding for Contempt of Court against a contemnor, firstly his case must fall within the definition of at least one of different types of Contempt of Court mentioned above and secondly there is material available to connect him with committing of Contempt.

**Conclusion:** For proceeding for Contempt of Court against a contemnor, firstly his case must fall within the definition of at least one of different types of Contempt of Court which are (1) Civil Contempt (2) Criminal Contempt and (3) Judicial Contempt and secondly there is material available to connect him with committing of Contempt.

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**32.** **Lahore High Court**
**Muhammad Rizwan v. The State & another**
**Criminal Appeal No.57199 of 2019**
**Atif Sharif v. The State & another**
**Criminal Appeal No.57200 of 2019**
**Naveed Javed v. The State & another**
**Criminal Appeal No.57201 of 2019**
**Syed Muhammad Mukarram v. The State & another**
**Criminal Appeal No.57203 of 2019**
**Mr. Justice Ch. Abdul Aziz, Mr. Justice Muhammad Amjad Rafiq**
https://sys.lhc.gov.pk/appjudgments/2021LHC9767.pdf

**Facts:** The appellants through these Criminal Appeals have assailed their conviction and sentence recorded by the Anti-Terrorism Court in case FIR registered under sections 265-A, 170 & 171 PPC read with Section 7 of the Anti-Terrorism Act, 1997 (ATA, 1997).

**Issue:** i) How and when the statement of witness/victim recorded under section 164 Cr.P.C. during investigation be treated as admissible evidence under section 265-J

Cr.P.C?

ii) Whether the examination-in-chief of a witness in isolation from cross-examination can be treated as evidence?

iii) Whether Article 47 of QSO, 1984 is applicable to a statement recorded under Section 164 Cr.P.C?

**Analysis:** i) The language of Section 265-J is explicit in sense and sheds no ambiguity that statement of a witness under Section 164 Cr.P.C recorded during investigation can only be treated as evidence, firstly if it is recorded in presence of accused, secondly if the accused had prior notice of it, thirdly if he is given an opportunity of cross-examination, fourthly if such witness is produced and examined during trial. Cross-examining a witness is essentially a right of accused to be provided with all fairness and seriousness. The serving of a notice in accordance with Section 265-J Cr.P.C is not a simple formality, rather essentially a legal requirement which if not fulfilled is likely to entail consequences of discarding such incriminating evidence. The non-adherence to the mandatory provision of serving a notice before recording 164 Cr.P.C statement left not even least prospect of treating it as evidence. It further follows from the plain review of Section 265-J Cr.P.C that the 164 Cr.P.C statement of a witness will attain the status of evidence if the witness subsequently appears before the trial court and more importantly is examined as such.

ii) The term "examination" is not defined in Article 2 of QSO, 1984 which stands for interpretations but a clue about it is traceable from Articles 132 & 133 (1) wherein the examination of a witness is described to be comprising upon examination-in-chief, cross-examination and re-examination. From Article 133 (1) it convincingly evinces that the term "examination", compulsorily includes right of cross-examination, if so desired by the adversaries. If the desire of the accused to cross-examine the witness is reflected from the record but cross-examination could not be conducted due to death of the witness then in the circumstances, we have no doubt in our minds that examination of witness is incomplete. Such statement of witness does not fit into the requirements of Section 265-J Cr.P.C so as to be treated as evidence during trial.

iii) Article 47 of QSO, 1984 can be made applicable only for the evidence recorded during judicial proceedings, whereas a statement under Section 164 Cr.P.C can legally be recorded before the commencement of inquiry or trial. The specific embargo placed in Section 164 (1) Cr.P.C for recording a statement before the commencement of inquiry and trial is sufficient to hold that such statement is neither recorded by a court nor during judicial proceedings. The term evidence, in our view, stands for every type of proof presented before the court in accordance with some express legal provision intended to persuade the judge regarding the truth of alleged facts. The expression "judicial proceedings" used in Article 47 includes proceedings in the course of which evidence is or may be legally taken on oath. The proceedings before a judge or magistrate who has no jurisdiction to decide the pending lis cannot be equated with judicial proceedings

in terms of Article 47 of QSO, 1984.

**Conclusion:** i) The statement of a witness under Section 164 Cr.P.C recorded during investigation can only be treated as evidence, if it is recorded in presence of accused, the accused had prior notice of it, he is given an opportunity of cross-examination and such witness is produced and examined during trial.
ii) The examination-in-chief of a witness in isolation from cross-examination cannot be treated as evidence.
iii) Article 47 of QSO, 1984 is not applicable to a statement recorded under Section 164 Cr.P.C because such statement is neither recorded by a court nor during judicial proceedings.

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**33.** **Lahore High Court**
**Mian Ansar Hayat v. The State & 10 others**
**Crl.Misc.No.1983-M of 2021**
**Mr. Justice Ch. Abdul Aziz**
https://sys.lhc.gov.pk/appjudgments/2021LHC9759.pdf

**Facts:** Through this petition in terms of Section 561-A of the Code of Criminal Procedure, 1898, petitioner called in question the vires of order whereby learned Additional Sessions Judge, while setting aside the order accepted the revision petition filed by respondents, agreed with the discharge report submitted by the police.

**Issues:** i) Whether revision before session court is competent against the administrative orders passed by magistrate?
ii) From where magistrate and police derive powers for cancelling a criminal case?
iii) Under police hierarchy, who is under obligation to dispatch the cancellation report to the court?

**Analysis:** i) A Magistrate in his capacity as such generally exercises judicial powers but often passes an order in his administrative capacity. Only the judicial orders passed by the Magistrate can be challenged through a criminal revision whereas the administrative orders since are not delivered as a criminal court thus are not revisable and their vires can be examined under Section 561-A Cr.P.C. On the same premises, a distinguishing line is drawn in Rule 2 of Chapter 11-D of Rules and Order of the Lahore High Court through the use of words administrative and judicial orders. The order upon a cancellation report submitted by the police since is passed by the Magistrate not in reference to some express provision of Cr.P.C. rather in accordance with Lahore High Court Rules & Orders and Police Rules, 1934, thus, by no stretch can be termed as judicial in nature.
ii) There is no specific provision in Cr.P.C. regarding the concept of cancellation of criminal case registered under Section 154. The police derives powers for cancelling a case under 24.7 and 25.7 of Police Rules, 1934, whereas the fate of

such report is decided by the learned Magistrate under Rules and Orders of the Lahore High Court, Vol.III, Chapter 11-D.

iii) The provision of 24.7 of Police Rules, 1934 is categorical in sense and it manifests there from that the cancellation report under the foregoing Rule is to be forwarded to the court by Superintendent of Police and not by some of his subordinate. As a token of strict adherence to 24.7 of Police Rules, 1934, such cancellation report is to be countersigned by the Superintendent of Police. Article 18 of the Police Order, 2002 was substituted through Punjab Police Order (Amendment) Act, 2003 and thereby a supervisory officer not below the rank of Deputy Superintendent of Police was made responsible for verifying the correctness of investigation and accuracy of ultimate conclusion of police probe. Similarly, under 24.8 of Police Rules, 1934 the Superintendent Police of the District is mandatorily required to maintain a register of cognizable offence in the prescribed form, needless to mention for ensuring the just conclusion of investigation.(…) It is the salutary legal principle emanating from a maxim “a communi observantia non est recedendum”, which means that if law provides athing to be done in a particular manner, then it must be accomplished in the same way. It deciphers from the obligatory requirement of dispatch of cancellation report to the court by none other than the Superintendent of Police that it is aimed at providing a supervisory tier to ensure fair investigation by maintaining check and balance upon the police working.

**Conclusion:** i) No revision is competent before session court against the administrative order of magistrate.

ii) The police derive powers for cancelling a case under 24.7 and 25.7 of Police Rules, 1934, whereas the Magistrate derives powers under Rules and Orders of the Lahore High Court, Vol.III, Chapter 11-D.

iii) The Superintendent of police is under obligation to dispatch the cancellation report to the court. It is aimed at providing a supervisory tier to ensure fair investigation by maintaining check and balance upon the police working.

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**34.** **Lahore High Court**
**Muhammad Amir and another v. Zahid Hussain and another**
**Civil Revision No.68059 of 2019**
**Mr. Justice Rasaal Hasan Syed**
https://sys.lhc.gov.pk/appjudgments/2022LHC2669.pdf

**Facts:** Through this civil revision the petitioners challenged the consolidated judgment of the learned Addl. District Judge, whereby appeals of respondents were allowed and judgment and decree passed by the learned Trial Court in favor of petitioners was set aside.

**Issue:** i) Whether the Appellate Court should permit the additional evidence in every case or can refuse the same?

ii) Whether the suit for declaration on the basis of agreement to sell is

maintainable?

**Analysis:** i) The provisions of Order XLI, Rule 27, C.P.C. as are available for additional evidence did not impart unfettered power nor did the Appellate Court have the discretion to allow the additional evidence as a matter of choice rather the discretion is structured/limited by the factors enunciated in the said provisions, i.e. where the court from whose decree the appeal had been preferred has refused to admit any evidence which it ought to have been admitted and that the provision does not mean to give a delinquent litigant a chance to make up his omission or fill up the lacunas in his case by way of additional evidence. It is evident from the rule consistently observed in the case laws that the provisions of Order XLI, Rule 27, C.P.C. are discretionary in nature.

ii) No title in the property could be claimed on the basis of agreement of sale. Petitioners' reliance was on section 53-A of Transfer of Property Act, 1882 which could be used only as a shield and not as a sword. Reference can be made to "Muhammad Yousaf v. Munawar Hussain and 5 others" (2000 SCMR 204) wherein while examining the scope of section 53-A ibid. it was observed to the effect that the said provision of law enabled the transferee to protect the possession if he proves the existence of any agreement and transfer of possession thereunder in part performance thereof and that the person claiming such agreement could not seek a declaratory decree on the basis of an agreement to sell and that right course for him would be to institute suit for specific performance if at all such agreement was executed inasmuch as the agreement to sell could not confer any title on the vendee because the same is not title deed nor it confers any proprietary rights and therefore no declaration could be granted under section 42 of the Specific Relief Act, 1877.

**Conclusion:** i) The Appellate Court should not permit the additional evidence in every case as a matter of choice rather the discretion is structured/limited by the factors enunciated in the said provisions.

ii) The suit for declaration on the basis of agreement to sell is not maintainable because the same is not title deed nor it confers any proprietary rights.

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**35.** **Lahore High Court**
**Mushtaq Ahmed v. Ishfaq Ahmed and others**
**W.P. No.75382 of 2021**
**Mr. Rasaal Hasan Syed**
https://sys.lhc.gov.pk/appjudgments/2022LHC2509.pdf

**Facts:** Through instant petition, the petitioners have challenged the order of the learned Addl. District Judge, Lahore, vide which appeal of respondent no. 1 was accepted and eviction of petitioner was directed.

**Issues:** i) Whether party can be permitted to produce evidence beyond pleadings?

ii) What is the concept of landlord in rent matters?
iii) Whether oral version of landlord is sufficient to establish the existence of relationship of landlord and tenant?

**Analysis** i) It is well-settled that evidence could not be allowed or led beyond the pleadings and that the case set up in the pleadings could not be improved at the stage of evidence.
ii) The concept of landlord includes a person who has been authorized to rent out the property or who had been acting as rent collector under instructions and permission of the landlord.
iii) Where any agreement of tenancy was not produced nor any documentary evidence showing that rent was being paid to the said individual, no counterfoil of any receipt, letter from tenant or any notice or other document could be produced, in such instances oral version of landlord shall be insufficient to hold in favor of existence of relationship of landlord and tenant.

**Conclusion:** i) A party cannot be permitted to produce evidence beyond pleading.
ii) Landlord includes a person who has been authorized to rent out the property or who had been acting as rent collector under instructions and permission of the landlord.
iii) Where neither any agreement of tenancy, nor any documentary evidence regarding the payment of rent was produced, in such instances oral version of landlord shall be insufficient to hold in favor of existence of relationship of landlord and tenant.

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**36.** **Lahore High Court Lahore**
**Bashir Ahmad (deceased) through L.Rs. v.**
**Muhammad Amin Akhtar and another**
**C.R. No.1927 of 2011**
**Mr. Justice Rasaal Hasan Syed**
https://sys.lhc.gov.pk/appjudgments/2022LHC2520.pdf

**Facts:** Petitioner called into question judgment and decree of learned Addl. District Judge, whereby the suit of the petitioner was dismissed by accepting the appeal of the respondents.

**Issues:** i) How a gift is required to be established by the donee?
ii) Whether mere registration of a document can establish the actual execution of the document?

**Analysis:** i) Three ingredients of a valid gift are the declaration of gift by donor, acceptance thereof by donee and the transfer of possession of the corpus. The donee claiming gift is required by law to establish the original transaction of gift irrespective of whether such transaction was evidenced by a registered deed.

ii) Mere registration of document could not establish the actual execution and that the execution of the registered instrument having been specifically denied by the person by whom it was purported to be executed it had to be established in accordance with the provisions of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 which not having been done, the factum of registration could not be a ground to assume the genuineness of the transaction.

**Conclusion:** i) A gift is required to be established by the donee by establishing the transaction of a gift.

ii) Mere registration of a document cannot establish the actual execution of the document; however, it should be established under the provisions of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984.

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**37.** **Lahore High Court**
**Dost Muhammad Khan (deceased)through L.Rs**
**v. Fareed Muhammad Khan and others**
**C.R. No.12352 of 2022**
**Mr. Justice Rasaal Hasan Syed**
https://sys.lhc.gov.pk/appjudgments/2022LHC2660.pdf

**Facts:** Through this civil revision; petitioner called into question the judgments/orders and decree of the courts below whereby the plaint in a suit for specific performance was rejected being barred by time and the appeal there against also ended in dismissal.

**Issues:** i) Whether mere pendency of any litigation is reasonable ground for non-filing of suit within period of limitation?

ii) Whether after withdrawal of earlier suit, limitation will be counted from the date of institution of earlier suit or of subsequent suit?

iii) Whether question of limitation could only be determined after framing of issue and recording of evidence?

**Analysis** i) Pendency of any litigation otherwise could not be a legally tenable ground for non-filing of suit unless the filing of suit claimed to have been stayed by a specific injunctive order of the court which was not the case here.

ii) It is settled rule that in the event of filing a fresh suit time will run against the plaintiffs from the date of institution of the first suit and that the institution of the fresh suit could not affect limitation. Order XXIII, Rule 2, C.P.C. mandates that in any fresh suit instituted on permission granted under the last preceding rule the plaintiff shall be bound by law of limitation in the same manner as if the first suit had not been instituted. (…) Under section 9 of the Limitation Act, 1908 where once time has begun to run, no subsequent disability or inability to sue stops it.…

iii) the question of limitation could not be determined without evidence and framing of issues the same does not sound good in the circumstances of this case. Where the allegations in the plaint do not require any roving inquiry to give findings that the suit was barred by limitation and that the plaint on the face of it

was based on facts not seriously in dispute was barred by time, then the plaint could be rejected under Order VII, Rule 11, C.P.C.

**Conclusion:** i) Mere pendency of any litigation could not be a legally tenable ground for non-filing of suit unless the filing of suit claimed to have been stayed by a specific injunctive order of the court.

ii) After withdrawal of earlier suit and filing of fresh suit, limitation will be counted from the date of institution of earlier suit.

iii) Question of limitation could be determined without evidence and framing of issues, where the allegations in the plaint do not require any roving inquiry to give findings that the suit was barred by limitation and that the plaint on the face of it was based on facts not seriously in dispute was barred by time.

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**38.** **Lahore High Court**
**Muhammad Sohail Asim v. The State & another**
**Crl. Appeal No.407/2015**
**Mr. Justice Sadiq Mahmood Khurram, Mr. Justice Ali Zia Bajwa**
https://sys.lhc.gov.pk/appjudgments/2022LHC2567.pdf

**Facts:** Through the instant appeal filed under Section 31-A of the Drugs Act, 1976, appellant, has called into question the vires of impugned judgment, passed by learned Drug Court, Bahawalpur, through which while adjudicating Case for offences under Sections 27(1)(a) and 27(1)(b) of the Drugs Act, 1976, learned trial court convicted and sentenced him.

**Issues:** i) Whether Trial court, after framing of charge and denial of accused to charge, can record confession during trial without recording prosecution evidence?

ii) What is the condition precedent for invoking the provision of section 342 Cr.P.C?

**Analysis:** i) It is a settled proposition of law that where an accused pleads not guilty at the time of framing of charge and claims trial, there is no discretion left with the trial court to record the confession of accused afterwards and convict him on the basis of such confession without recording prosecution evidence. After a formal charge has been framed and put to an accused is denied under Section 242, Cr.P.C. the provisions of Section 243, Cr.P.C, shall ipso facto become inoperative. The trial court has to proceed under Section 244, Cr.P.C. by hearing the complainant and recording his evidence and afterwards the accused and his evidence in defence.

ii) The condition precedent for invoking Section 342 Cr.P.C. is that there must be some circumstances appearing in evidence against an accused during the course of trial. In case where no evidence has been recorded by the trial court there would be no occasion for the trial court to record the statement of an accused under Section 342 Cr.P.C.

**Conclusion:** i) After commencing the prosecution evidence, there cannot be staged a retreat to Section 243, Cr.P.C. by procuring a plea of guilty from the accused.
ii) There must be some circumstances appearing in evidence against an accused during the course of trial, in order to record the statement of accused under section 342 Cr.P.C.

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**39.** **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/2022LHC2711.pdf

**Facts:** Through the instant petition filed under section 497 Cr.P.C., the petitioner seeks post-arrest bail registered at Police Station FIA, in respect of offences under sections 4, 5, 8 and 23 of the Foreign Exchange Regulation Act, (VII of 1947) as amended by the Foreign Exchange Regulation (Amendment) Act, 2020 and under sections 3 and 4 of Anti Money Laundering Act, 2010 and under section 109 PPC.

**Issues:** i) What are the parameters which are to be looked into by the court while granting bail and whether heinousness of offence is ground for refusing bail?
ii) What is the purpose of insertion of the word "or" in Section 23 of the Foreign Exchange Regulation Act, 1947?

**Analysis** i) A Court considering a bail application has to tentatively look to the facts and circumstances of the case and once it comes to the inference that no reasonable ground exists for believing that the accused has committed a non-bailable offence, it has the discretion to release the accused on bail. 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) 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 law provides for the possibility that if the petitioner is convicted after recording of evidence he may only be sentenced to payment of fine only.

**Conclusion:** i) A Court considering a bail application has to tentatively look to the facts and circumstances of the case. 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) 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.

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**40.** **Lahore High Court**
**Noman Maqsood v. Appellate Authority & four others.**
**Writ Petition No. 16094 of 2021**
**Mr. Justice Sohail Nasir**
https://sys.lhc.gov.pk/appjudgments/2022LHC2547.pdf

**Facts:** Petitioner submitted his nomination papers for the special interest seats of 'Worker' in Cantonment Boards. Contesting respondent filed objections on the nomination papers of petitioner with regard to his qualification as 'Worker' which were overruled by the returning officer but appeal against order of returning officer was allowed. The petitioner has challenged the order of appellate authority through this Constitutional petition.

**Issues:** Whether delay in filing of appeal can be condoned and if not, then appeal is liable to be dismissed on the point of limitation alone?

**Analysis:** The Cantonment Ordinance (CXXXVII of 2002) is a Special Law. It is settled principle of law that in case of contrast of period of limitation provided under the Limitation Act of 1908 and Special Law, the one prescribed under the Special Law has to prevail. Therefore, the limitation for filing of appeal shall be decided under the provisions of Cantonment Ordinance (CXXXVII of 2002) read with Rule 77 of the Cantonment Local Government (Election) Rules, 2015 and delay cannot be condoned under the Limitation Act of 1908 and appeal filed is liable to be dismissed on this ground alone.

**Conclusion:** Delay in filing of appeal cannot be condoned under the Limitation Act of 1908 and appeal is liable to be dismissed on the point of limitation alone.

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**41.** **Lahore High Court**
**Muhammad Mohsin Khan Joya v. Member (Judl-VIII) BOR etc.**
**Writ Petition No.82148 of 2017**
**Mr. Justice Safdar Saleem Shahid**
https://sys.lhc.gov.pk/appjudgments/2022LHC2720.pdf

**Facts:** Petitioner was appointed as Lambardar by the District Collector and the said order was challenged by the two respondents before the learned Executive District Officer (Revenue). Learned EDO (Revenue) accepted the appeal of respondent no.2 and appointed him as Lambardar which order was upheld by the learned Member (Judicial-VI), Board of Revenue, Punjab. The writ petition filed by the

petitioner before this Court was also dismissed and he filed Civil Petition for Leave to Appeal, which was converted into Civil Appeal by the Hon'ble Supreme Court and the case was remanded to the Board of Revenue for decision afresh after carrying out a detailed comparison of both the candidates in light of the requirements of law contained in Rule 17 of the West Pakistan Land Revenue Rules, 1968. Member (Judicial-VIII), Board of Revenue Punjab dismissed the revision petition filed by the petitioner. Hence this writ petition.

**Issues:** Whether High Court while invoking its Constitutional jurisdiction can interfere into the concurrent orders of EDO (Revenue) and Members Board of Revenue in non-compliance of directions of Hon'ble Supreme Court?

**Analysis:** This case was remanded by the Hon'ble Supreme Court for decision afresh after carrying out a detailed comparison of both the candidates in light of the requirements of law contained in Rule 17 of the West Pakistan Land Revenue Rules, 1968. The Board of Revenue having not found any solid ground to interfere in the orders passed by the Executive District Officer (Revenue) and Member (Judicial-VI) respectively, rightly dismissed the revision petition filed by the petitioner. Even otherwise, in view of the directions of the Hon'ble Supreme Court regarding comparison of the candidates in accordance with Rule 17, this Court being not a Court of appeal, cannot interfere with the impugned concurrent orders of the Executive District Officer (Revenue) and the Member Board of Revenue in absence of any non-compliance with the directions contained in the judgment of remand passed by the Hon'ble Supreme Court.

**Conclusion:** High Court while invoking its Constitutional jurisdiction being not a Court of appeal cannot interfere into the concurrent orders of EDO (Revenue) and Members Board of Revenue in non-compliance of directions of Hon'ble Supreme Court.

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**42.** **Lahore High Court**
**Abdul Rasheed & another VERSUS Haji Muhammad Ramzan & another**
**Civil Revision No.23063 of 2019**
**Mr. Justice Safdar Saleem Shahid**
https://sys.lhc.gov.pk/appjudgments/2022LHC2705.pdf

**Facts:** This civil revision is directed against the order and judgment/decree of learned Civil Judge and learned Additional District Judge where the application of the petitioners for framing of issue regarding jurisdiction of the Court was dismissed and the suit for recovery filed by the respondents was decreed.

**Issues:** i) Whether the Revenue courts have the jurisdiction regarding the matters relating to lease of agricultural land?
ii) What procedure should be adopted by the civil court if matter falling under jurisdiction of revenue court is presented before civil court?

**Analysis:** i) Section 77 of the Punjab Tenancy Act is divided into three groups and suits by a landlord for arrears of rent or the money equivalent of rent, or for sums recoverable under Section 14 are covered by Section 77(3)(n), which shall be instituted and determined by Revenue Courts, and no other Courts shall take cognizance of any such dispute or matter with respect to which any suit might be instituted.

ii) If any suit has been filed before civil court where matter is to be heard and determined only by a Revenue Court, it is necessary for the Civil Court to endorse upon the plaint the nature of the matter and return the same as required by Order VII, Rule 10, CPC, for presentation to Collector.

**Conclusion:** i) Revenue Courts have the jurisdiction regarding the matters relating to the lease of agricultural land.

ii) If matter falling under jurisdiction of revenue court is presented before civil court then Civil Court should return the same as required by Order VII, Rule 10, CPC, for presentation to Collector.

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**43.** **Lahore High Court**
**Khan Muhammad v. Addl. District Judge etc.**
**Writ Petition No.15906 of 2016**
**Mr. Justice Safdar Saleem Shahid**
https://sys.lhc.gov.pk/appjudgments/2022LHC2698.pdf

**Facts:** Respondents No.3 and 4 filed a suit for recovery of maintenance allowance and dower amount. The petitioner through instant petition assailed the judgments and decrees passed by the learned Judge Family Court and learned Addl. District Judge, Faisalabad.

**Issues:** i) In which Union Council the notice of divorce is delivered u/s 7 of the Muslim Family Law Ordinance, 1961?

ii) What is the obligation of chairman after receiving notice of divorce?

iii) When time will be started for the effectiveness of divorce?

iv) What is the purpose of providing ninety days for the effectiveness of divorce?

v) What is the function of Chairman and an arbitration council after receiving notice of Talaq?

vi) What is the legal definition, interpretation and application of "disobedience"?

vii) Whether there is any exception to pay the maintenance to the ex-wife even after divorce?

viii) Whether the reliance can be placed on the oral evidence where the documentary evidence is available on record?

ix) Can a lady live in the house of her ex-husband for the purpose of feeding a suckling baby, if yes, for how long?

x) When oral divorce given thrice becomes irrevocable and effective?

**Analysis:** i) Under Section 7 of the Muslim Family Law Ordinance, 1961 a person who wishes to divorce his wife shall, as soon as may be, after the pronouncement of Talaq in any form, whatsoever, give a notice in writing of his having done so to the Chairman of the Union Council/Town Committee in which the wife in relation to whom Talaq had been pronounced was residing that stage of time. Simultaneously, a copy of divorce notice, shall be transmitted to the wife.

ii) After the receipt of the notice by the Chairman he is obligated to constitute an Arbitration Council consisting of representatives of the parties for effecting reconciliation, if any, between the parties.

iii) Subsection (3) of Section 7 states that Talaq pronounced unless revoked earlier expressly or otherwise does not become effective until the expiry of the period of 90 days; from the day on which the notice of Talaq is delivered to the Chairman, period of ninety days starts from the day notice is received.

iv) This period is available to the parties to reconsider and retrace their steps, if they are so minded.

v) When the parties appear before the Chairman and an Arbitration Council is constituted, but reconciliation does not succeed, the only thing the Council or the Chairman may do, is to record in writing that reconciliation has failed. There is no other function, which a Chairman or an Arbitration Council is competent to perform in this behalf.

vi) Jurists have not reached consensus as to the accepted legal definition, interpretation and application of "disobedience". Generally, it is accepted that when a wife leaves the home without consent or lawful excuse may amount to disobedience. Non Hanafi schools have argued that a healthy wife who denies her bed to her husband is disobedient and therefore loses her right to maintenance.

vii) Ex-wife is entitled to get maintenance in lieu of her breastfeeding to the minor during the said period from father of the child. Reference in this regard is made to Verse 233 of Surah AlBaqara in the Holy Quran, whereby the father has been bound down to provide maintenance allowance to the lady who was breastfeeding his child. As per „Sharia" the father is duty bound to maintain his wife who was feeding his child.

viii) When documentary evidence is contradictory to the oral evidence no reliance can be placed on the oral testimony and that it is well established rule of appreciation of evidence that a person can tell a lie but documents do not so.

ix) It is also a principle of *Sharia* that even after separation; a lady can live in the house of her ex-husband for the purpose of feeding in case she had a suckling baby, within the limits prescribed by Almighty Allah. Under the Islamic Rules, the feeding period has been fixed by the *Fiqa* as 2 ½ years.

x) In view of para no 310 and sub-para (3) of para 311 of "Principles of Mohamedan Law" by D.F. Mullas, it is crystal clear that even oral divorce given thrice becomes irrevocable and become effective the moment same was pronounced.

**Conclusion:** i) Under Section 7 of the Muslim Family Law Ordinance, 1961 the notice of divorce is given to the Chairman of the Union Council/Town Committee in which the wife was residing at that time.

ii) After receiving the notice of divorce, the Chairman is obligated to constitute an Arbitration Council for effecting reconciliation between the parties.

iii) The time for effectiveness of divorce will be started from the day on which the notice of Talaq is delivered to the Chairman.

iv) The purpose of providing ninety days for the effectiveness of divorce is for the parties to reconsider and retrace their steps.

v) The function of the Chairman or the Arbitrary Council is to record the result of reconciliation in writing.

vi) Generally it is accepted that when a wife leaves the home without consent or lawful excuse may amount to disobedience.

vii) Ex-wife is entitled to get maintenance in lieu of her breastfeeding to the minor during the said period from father of the child.

viii) Oral evidence cannot be relied upon when the documentary evidence is available on the record.

ix) The lady can live in the house of her ex-husband for the purpose of feeding a suckling baby for 2 ½ years of feeding.

x) Oral divorce given thrice becomes irrevocable and effective the moment same was pronounced.

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**44.** **Lahore High Court**
**NRSP Micro Finance Bank Ltd. v. Ex-officio Justice of Peace, etc.**
**W.P. No. 9737 of 2018**
**Mr. Justice Muhammad Shan Gul**
https://sys.lhc.gov.pk/appjudgments/2022LHC2455.pdf

**Facts:** The petitioner through this Constitutional Petition challenges the order of the Justice of Peace/Additional Sessions Judge whereby his application for seeking a direction under Section 22-A/22-B of the Code of Criminal Procedure, 1898 (Cr.P.C) for lodging of FIR under Section 489-F of Pakistan Penal Code, 1860 (PPC) was dismissed.

**Issue:** i) Whether it is necessary that all the three ingredients must be present to constitute an offence under section 489-F of PPC?

ii) Whether the cheque issued by the Microfinance Bank fulfills the criteria of "Cheque" for the purpose of section 489-F of PPC?

iii) Whether the section 3(2) of the Microfinance Institutions Ordinance, 2001 bars the application of section 489-F of PPC to Microfinance Banks?

**Analysis:** i) From a literal reading of Section 489-F of PPC it appears that for an offence to be made out, it is essential that all three elements are simultaneously present and discernible from the complainant/petitioner's application i.e. (i) issuance of cheque with a dishonest intention, (ii) issued cheque must be for the purpose of repayment of a loan and (iii) dishonoring of the cheque. The necessity of the

presence of all three elements has been stressed upon by the Hon'ble Supreme Court of Pakistan in "Mian Allah Ditta v. The State and others" (2013 SCMR 51); every transaction where a cheque is dishonored may not constitute an offence. The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation and lastly that the cheque in question is dishonored.

ii) From a comparison of the provisions of the Microfinance Institutions Ordinance, 2001 and the SBP Act, 1956 it seems that both Scheduled Banks and microfinance banks provide services of acceptance of deposit by their customers and in turn obviously are bound to remit such deposits back to the depositor or any other person as per the direction of the depositor. The distinctive feature of a microfinance bank is that the value of its banking services is limited to the maximum limit defined by SBP whereas no such limit is defined for the scheduled banks. Both Scheduled Banks and microfinance Banks provide services of a banker in terms of Section 3(j) of Negotiable Instruments Act, 1881. There is no legal provision in sight differentiating the status of cheques drawn on microfinance banks and scheduled banks and hence, distinction between two seems insignificant for the purpose of Section 489-F. Petitioner does conduct regular banking business and Cheques issued by it are as much a Negotiable Instrument as those issued by any other Bank or Scheduled Bank and attract the provisions of Section 489-F.

iii) Section 489-F PPC is, in its pith and substance, not a law that only or exclusively relates to Banking Companies or Financial Institutions and rather has been promulgated as a safety valve in loan transactions between private parties. The provision safeguards the right of private persons to whom, by way of repayment of loans, cheques are issued by other private persons with a dishonest intent. Since the Financial Institutions (Recovery of Finances) Ordinance, 2001 has already been judicially held to be not applicable to microfinance institutions, there are no competing provisions and a microfinance institution only has the facility contained in Section 489-F PPC to fall back on in case a cheque issued to it for repayment of a loan is dishonored. The dominant object of Section 489-F PPC is not focused on repayment of finances or loans to a banking company or a financial institution rather the thrust of Section 489-F PPC is aimed at securing interests of a private party including even the petitioner to whom cheques are issued dishonestly and, hence, it follows that it is not a law that in its pith and substance exclusively relates to financial institutions or banking companies so as to attract the ouster contemplated by Section 3(2) of the Microfinance Institutions Ordinance, 2001. Dishonoring of the cheque will attract the provisions of Section 489-F PPC.

**Conclusion:** i) It is necessary that all the three ingredients i.e. (i) issuance of cheque with a dishonest intention, (ii) issued cheque must be for the purpose of repayment of a loan and (iii) dishonoring of the cheque must be present to constitute an offence under section 489-F of PPC.

ii) The cheque issued by the Microfinance Bank does fulfill the criteria of

"Cheque" for the purpose of section 489-F of PPC.
iii) The section 3(2) of the Microfinance Institutions Ordinance, 2001 does not bar the application of section 489-F of PPC to Microfinance Banks.

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**45.** **Lahore High Court**
**Muhammad Iqbal Mughal v. Govt. of Punjab, etc.**
**W.P. No.464 of 2022**
**Mr. Justice Muhammad Shan Gul**
https://sys.lhc.gov.pk/appjudgments/2022LHC2425.pdf

**Facts:** Through this judgment, the titled constitutional petition and also other constitutional petitions are sought to be decided since common questions of law and facts pertaining to voluntary retirement of civil servants are involved in these petitions.

**Issues:** i) What is effect of amendment in section 12 of Punjab Civil Servants Act, 1974?
ii) Whether court has jurisdiction to exercise judicial power to grant an injunction or make any order or entertain any proceedings in respect of any matter to which the jurisdiction of Service Tribunal extends?
iii) Whether determination of the date of accrued right of retirement and the Petitioner's right to avail pension, forming part of terms and conditions of his service under the Act, 1974 are to be adjudicated by the Punjab Service Tribunal?

**Analysis:** i) The amendment in Section 12 means that the option of voluntary retirement is now available to a Civil Servant who is aged 55 years or has completed 25 years of service, whichever is later. There is no retrospective effect given to the amended Section 12.
ii) Article 212 of the Constitution being a non obstante article prevails over Article 199 since no Court has jurisdiction to exercise judicial power to grant an injunction or make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Tribunal extends. It is, therefore, that this Court has no jurisdiction to even entertain a matter that stands barred under Article 212 of the Constitution. In fact, the remedy afforded by Article 199 cannot be triggered owing to this jurisdictional bar. The words 'jurisdiction to entertain' clearly mean that since there is no jurisdiction to even entertain no question of exercise of the consequent judicial power arises. Article 212 of the Constitution beginning with a non obstante clause expressly bars all Courts including a High Court to entertain or take cognizance of matters that eminently fall within the jurisdiction of the Administrative Tribunal.(…) it was settled that every form of executive order or act affecting terms and conditions of a civil servant shall fall within the exclusive jurisdiction of the Service Tribunal for the purpose of adjudication.
iii) Both, determination of the date of accrued right of retirement and the Petitioner's right to avail pension, forming part of terms and conditions of his

service under the Act, 1974 are to be adjudicated by the Punjab Service Tribunal since Section 2(a) read with Section 4 of Punjab Service Tribunals Act, 1974 and of course Article 212 confers exclusive jurisdiction on the said Tribunal to decide both interlinked controversies.

**Conclusion:** i) By virtue of amendment in section 12 of Act, 1974, the option of voluntary retirement is now available to a Civil Servant who is aged 55 years or has completed 25 years of service, whichever is later.
ii) Every form of executive order or act affecting terms and conditions of a civil servant shall fall within the exclusive jurisdiction of the Service Tribunal for the purpose of adjudication.
iii) Article 212 confers exclusive jurisdiction on the Service Tribunal to decide both determination of the date of accrued right of retirement and the Petitioner's right to avail pension, forming part of terms and conditions of his service under the Act, 1974.

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**46.** **Lahore High Court**
**Samuel Latif, etc. v. Govt. of Punjab, etc.**
**W.P. No.15380 of 2020**
**Mr. Justice Muhammad Shan Gul**
https://sys.lhc.gov.pk/appjudgments/2022LHC2742.pdf

**Facts:** Petitioner, professing the faith of Christianity, applied against the posts of Chowkidar as well as Gardener under general category to be filled on open merit, against such posts since no post in the said categories was reserved for minorities/non-Muslim. Petitioner agitated the matter with Respondent No.2 and demanded that each category advertised must have 5% seats reserved for minorities/non-Muslims, however, his efforts remained fruitless and hence the petitioner approached this Court alleging violation of his rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.

**Issues:** i) Whether there is any discretion with the provincial government of limiting the reservation of any quota to particular class?
ii) How the beneficial or bread and butter provisions should be interpreted?
iii)Whether the restriction of minority quota to the specific job reflects the phenomenon of generational bias within workplace against minorities?

**Analysis:** i) Hon'ble Supreme Court of Pakistan in "Suo Motu actions regarding suicide bomb attack on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailies in Chitral" (PLD 2014 SC 699), passed a clear and binding direction in the following terms: -, it is directed that the Federal Government and all Provincial Governments shall ensure the enforcement of the relevant policy directives regarding reservation of quota for minorities in all services. The directions of the Hon'ble Supreme Court of Pakistan, being a valid law in terms of Article-189 of the Constitution cannot be overlooked while

interpreting the aforesaid Notification. The direction, indubitably, required the reservation of quota for minorities in all services and leaves no discretion with the provincial governments to exercise discretion to limit the reservations of such quota to any particular class of service, let alone a menial and marginalized class of service.

ii) There is no gainsaying that beneficial or bread and butter provisions should be purposively or teleologically interpreted rather than through the strict constructionist approach of interpretation. Precedents and instances are therefore available where welfare provisions have been interpreted in the light of provisions of the Constitution in a manner that advances and extends relief and suppresses rejection.

iii) That the Constitution of Islamic Republic of Pakistan, 1973 commands that the non-Muslim minorities should not only be treated equally but also with generosity and special measures in the form of affirmative action may be taken to ensure their prosperity and growth otherwise meaningful and real equality which is the ultimate grail of our Constitution can never be achieved. Limiting non-muslims to posts of Sweepers is indicative of exploitation and which was one of the reasons for conversion of Dalit Hindus to Christians in colonial India and cannot be endorsed in a constitutional democracy. Any other conclusion will offend Articles 14, 25 and 36 of the Constitution of Islamic Republic of Pakistan, 1973 and shall also render the fundamental right of minorities to profess their religion a mere sham and quite illusory. The restriction of minority quota to the specific job of a Sweeper reflects the phenomenon of generational bias that constitutes vertical discrimination within workplace against minorities. Vertical segregation being a situation where people of a particular race cannot hold positions more dignified than a particular designation.

**Conclusion:** i) There is no discretion with the provincial government of limiting the reservation of any quota to particular class.

ii) The beneficial or bread and butter provisions should be interpreted in a manner that advances and extends relief and suppresses rejection.

iii) The restriction of minority quota to the specific job reflects the phenomenon of generational bias that constitutes vertical discrimination within workplace against minorities.

**<u>LATEST LAGISLATION/ AMENDMENTS:</u>**

1. Amendments made under the heading ‘DEFINITIONS’ whereas Rule 4.107-A (1)is inserted after Rule 4.107 in the Subsidiary Treasury Rules issued under Treasury Rules (Punjab).
2. Sub rules (4) & (5) are inserted in rule 5.2 after sub-rule (3) in the Punjab Financial Rules Volume-I.
3. The University of Kamalia Ordinance, 2022 is promulgated by the Governor of Punjab
4. The University of Taunsa Sharif Ordinance, 2022 is promulgated by the Governor of Punjab.

**LIST OF ARTICLES**

1. **MANUPATRA**
https://articles.manupatra.com/article-details/AMENDMENT-OF-PLEADINGS-AFTER-COMMENCEMENT-OF-TRIAL-RIGHT-OF-THE-PARTY-OR-DISCRETION-OF-THE-COURT-UNDER-ORDER-VI-RULE-17
**Amendment Of Pleadings After Commencement Of Trial: Right Of The Party Or Discretion Of The Court Under Order Vi Rule 17? by Samarth Kapoor and Abhijeet Kumar**

*"Pleadings" is defined under Order VI Rule 1 which states pleading as "written or "plaint". However, the terms plaint and written statement are not defined anywhere in the Civil Procedure Code ("CPC") but plaint can be construed as a document of claim which has the material fact upon which a party (preferably the plaintiff) is relying to establish his/ her case and a written statement is the reply filed against the plaint filed by the plaintiff wherein the defendant establishes some new facts in support of his/her case and refutes the pleadings put forth by the plaintiff. The object of the pleadings is to afford the other side an opportunity to know the case and for the courts to understand the issue at hand. There are chances that in the course of the proceedings, an issue arises due to the change in circumstances of the proceedings. Now, in the given set of changes parties cannot rely on their previously filed pleadings but will have to file another one. Just to save parties in this situation and to reduce the multiplicity of the proceedings, the legislature introduced a provision by which parties are allowed to alter or make changes in their already submitted pleadings. This rule is not absolute and parties cannot claim it as a matter of right but what is to be considered here is the gravity of the situation under which a party is claiming the amendment. This article will delve deeper into the issue of amendment of pleadings, will further look for the changes made to the proviso of Rule 17 in 2002 amendment, will focus upon the wordings of the proviso and conflicting judgment of different High Courts ("HCs") and the Supreme Court ("SC") and ultimately will conclude on the term of the present scenario with respect to the amendment of pleadings vis-à-vis Court's limited discretion to grant the liberty.*

2. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/the-antitrust-duty-to-deal-in-the-age-of-big-tech
**The Antitrust Duty to Deal in the Age of Big Tech by Erik Hovenkamp**

*The antitrust duty to deal is perhaps the most confounding and controversial form of antitrust intervention. It is sought in situations where a monopolist controls a critical input (or "essential facility") and unilaterally refuses to sell access to rivals. Courts have substantially narrowed the doctrine in recent decades. However, the rise of dominant platforms like Google, Facebook, and Amazon has provoked intense debate over whether the antitrust duty to deal needs a revival. Many such platforms are accused of refusing to deal with (or discriminating against) rivals in adjacent markets. At present, all unilateral refusals are evaluated under a common standard, which is virtually impossible to satisfy. This paper identifies an important economic distinction between two types of refusal cases; it argues that they raise very different theories of harm and demand different standards of liability. In one line of cases, the defendant's conduct raises essentially the same theory of harm as tying or related vertical restraints. However, formalistic doctrine prevents courts from evaluating them as*

*such. As a result, these cases do not receive meaningful scrutiny. This is problematic, because a large majority of meritorious refusal-to-deal cases fall into this category, as do almost all cases involving dominant platforms. In a separate line of cases, intervention is much harder to justify on economic policy grounds, as it risks chilling investment in valuable new technologies. Courts often acknowledge this investment concern in dicta, but the liability standard they apply—which focuses myopically on exclusion—ignores it. This has led to a major internal contradiction: courts are emphatic that a duty to deal is almost never warranted, but simple economic arguments show that the refusals in these cases are routinely exclusionary in precisely the sense that the law purports to condemn. This contradiction has spurred courts to erect suffocating evidentiary requirements, which now do most of the heavy lifting in practice. These rules bear little logical connection to exclusion, but they excel at reining in liability. The problem is, they also kill off all the meritorious cases. This Article argues that any effective reform must begin by disentangling these distinct lines of cases. Subjecting them to different liability standards would help to address many of the key concerns raised on both sides of the debate. The justifications for this approach are manifold. First, it protects investment incentives without needlessly stifling enforcement in meritorious cases. Second, it naturally limits antitrust scrutiny to cases in which intervention is most likely to be administrable. Third, it is exactly analogous to the way antitrust already treats other forms of unilateral conduct. Finally, this approach would allow for meaningful antitrust scrutiny of unilateral conduct by dominant platforms—an objective that has recently received bipartisan support in Congress—while remaining faithful to core antitrust principles.*

**3. LATEST LAWS**

https://www.latestlaws.com/articles/condonation-of-delay-application-not-required-in-case-of-delayed-filing-of-charge-sheet-before-court-explained-183903/

**Condonation of delay application not required in case of delayed filing of Charge-sheet before Court: Explained by Jamshed Ansari**

*There is a practice of seeking application for condonation of delay from Investigating Officers for filing police charge-sheet before Courts after the prescribed period of limitation provided under Section 468 of the Code of Criminal Procedure, 1973 (in short "Cr.PC"). The said application is filed by the Investigating Officers/ Station House Officers under Section 473 of Cr.PC to explain the delay in filing police charge-sheet before Courts, citing transfer of the initial Investigating Officer, heavy work load of the cases pending investigation with the Investigating Officers etc. as the reasons for the delay. This paper shall analyse the relevant statutory provisions, Standing Orders and the jurisprudential developments in order to understand as to whether the said practice is in conformity with the law or not. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim* ***nullum tempus aut locus occurrit regi****, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy as is expressed in the legal maxim* ***vigilantibus et non dormientibus, jura subveniunt****. It is noteworthy that under the old Criminal Procedure Code of 1898, no period of limitation was prescribed for launching a criminal prosecution. So much so, the court could not have thrown out a private complaint or a police charge-sheet solely on the ground of delay, though the delay was treated as a good ground for*

*doubting the prosecution story or a circumstance to be taken into consideration in arriving at the final verdict.*

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/tokenization-and-law-legal-issues-nfts
**Tokenization and the Law: Legal Issues with NFTs by Sheppard, Mullin, Richter & Hampton LLP**

*As the world economy increasingly goes digital, innovators and existing market participants are finding new ways to tokenize assets and expand upon their uses. The exponential growth of non-fungible tokens (NFTs) has stimulated interest in tokenizing many types of assets. An NFT is a digital certificate of ownership of or rights to a unique asset, ownership of which is recorded on a blockchain. NFTs have commonly been used to represent digital art, photos, videos, audio files, collectibles, game items, tickets, and other digital assets. However, they can be used to represent virtually any digital or physical asset as well as entitlements (e.g., tickets, subscriptions, exclusive access, etc.).Whether you are a game company contemplating tokenized virtual goods, an artist looking to tokenize digital art, or a brand owner looking to jump into digital fashion or other types of NFTs, there are potential legal issues of which you should be aware. Tokenization can implicate several U.S. laws, including those related to licensing, securities, anti-money laundering, sanctions, intellectual property, gambling, and others. Below is an overview of some of the potential legal issues with NFTs.*

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s12689-022-00095-9
**Trials by video link after the pandemic: the pros and cons of the expansion of virtual justice by D. L. F. de Vocht**

*The Covid-19 pandemic has led to an enormous increase in the use of technology in the courtroom. This development raises the important question on the potential effects of the digitalisation of criminal justice—especially from the viewpoint of the right to a fair trial. This contribution discusses this complicated question from different angles. It focuses on a number of different assumptions underlying the debate: the assumption that the use of technology in the courtroom diminishes human interaction, impedes an effective defence, influences decision-making and affects the legitimacy of the trial. This is done with the aim to shed light on the lack of evidentiary basis of these assumptions which clearly complicates the current discussion on the future of technology in the courtroom. The author argues that the validity of these assumptions needs to be adequately tested before we can make any long-term decisions on the content and scope of virtual criminal justice.*