Lahore High Court

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-03-2022 to 31-03-2022)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. Supreme Court of Pakistan
Commissioner of Income Tax (Legal) (in all cases) v. M/s Askari Bank Limited, Rawalpindi, etc (in all cases)
Civil Petitions No.2597 to 2600 of 2020.
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2597_2020.pdf

Facts: The petitioners filed instant petitions against judgment of Islamabad High Court. The controversy in this case revolves around the meaning and scope of section 23 of the Income Tax Ordinance, 2001.

Issues: Whether the term "first time in a tax year" in section 23 of Income Tax Ordinance, 2001 relates to the first time use of the building by the taxpayer?

Analysis: The term "first time in a tax year" relates to the first time use of the building by the taxpayer and has no concern with the history of usage of the building prior to it falling in the hands of the taxpayer. The act of placing the eligible depreciable asset into service or use, for the first time in a tax year, is of the taxpayer and it is inconsequential if the same asset/building was earlier put into service or use while it was in the hands of an earlier owner or proprietor. A taxpayer becomes entitled to deduction of initial allowance if he, through his own act, has placed an eligible depreciable asset into service for the first time in a tax year. This view is fortified from the reading of sub-section (5) of section 23 which defines "eligible depreciable asset" and specifically excludes a plant or machinery which has been used previously in Pakistan from the definition of "eligible depreciable asset".

Conclusion: The asset (building) which has been put into service/use by taxpayer for the first time in the tax year, the taxpayer is entitled to the deduction of the initial allowance in terms of section 23 of the ITO.

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2. Supreme Court of Pakistan
The Federation of Pakistan Chamber of Commerce, Karachi, etc. v. Province of Sindh through Secretary Labour and Human Resources Department Govt. of Sindh, Karachi, etc.
Civil Petitions No.5620, 5800 & 5959 of 2021etc.
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5620_2021.pdf

Facts: The case stems from Notification dated 09.07.2021 issued by the Labour and Human Resource Department, the Government of Sindh , under Section 4(1) read with Section 6(1)(a) of the Sindh Minimum Wages Act, 2015, raising the minimum rates of wages for unskilled adult and juvenile workers employed in all industrial/commercial establishments in the Province of Sindh to Rs. 25,000/- per month with effect from 01.07.2021

Issues: i) Whether the Government could itself revise the minimum rates of wages or could it be done only on the recommendation of the Board?
ii) What is the procedure in case of disagreement between the Government and Board?
iii) Who is responsible for fixing the minimum rates of wages in certain industrial undertakings?
iv) What factors ought to be considered for fixation of minimum wage?

Analysis: i) It is evident of the relevant provisions of the Sindh Minimum Wages Act, 2015 that the power of the Government to declare the minimum rates of wages has been qualified to be exercised on the recommendation of the Board. We deem it necessary to clarify that the words "subject to such exceptions as may be specified in the notification" used in Section 6(1)(a) and "subject to such modifications and exceptions as may be specified in the notification" used in Section 6(3) of the Act may refer to exceptions, or modifications in the exceptions, that could be created in view of "various" classes of workers or industry and should not be understood to mean that the Government could itself alter the minimum rates of wages recommended by the Board in view of a detailed and exhaustive mechanism for fixation of the minimum rates of wages spelled out in Sections 4, 5 and 6 the Act.
ii) In case of disagreement between the Board and the Government, the Act provided a way out: the Government could within thirty days of the receipt of recommendation return it to the Board for reconsideration along with any comments and information, and the Board would be bound to reconsider its recommendation. It could revise it or stick to its earlier recommendation subject to justifying it with supporting reasons.
iii) The Act makes the Government responsible for fixing the minimum rates of wages in certain industrial undertakings. It is the Government that takes cognizance of the circumstances necessitating fixation of the minimum rates of wages and sets the ball rolling by either referring the question of fixation of the minimum rates of wages to the Board under Section 4 of the Act or directing the Board under Section 5 of the Act to make recommendations on the said rates of wages and then the Government accepts the recommendations of the Board with or without exceptions or modifications or sends it back for reconsideration.
iv) Wage fixation is an important social welfare measure to be determined in the light of the economic reality of the situation and the minimum needs of the worker with an eye to the preservation of his efficiency as a worker. It is a delicate task, a fine balance is to be achieved. Minimum wage may preferably be fixed at a level that is "capable of meeting a worker's basic living needs and those of his family, for housing, nourishment, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments to maintain its purchasing power.

Conclusion: i) The power of the Government to declare the minimum rates of wages has been qualified to be exercised on the recommendation of the Board.

ii) In case of disagreement, the Government can within thirty days of the receipt of recommendation return it to the Board for reconsideration along with any comments and information, and the Board would be bound to reconsider its recommendation.

iii) The Sindh Minimum Wages Act, 2015 makes the Government responsible for fixing the minimum rates of wages in certain industrial undertakings.

iv) Minimum wage may preferably be fixed at a level that is "capable of meeting a worker's basic living needs and those of his family.

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3. **Supreme Court of Pakistan**
Commissioner of Inland Revenue, Lahore v. M/s Sargodha Spinning Mills (Pvt.) Ltd Faisalabad, etc
Civil Petition No.757-L of 2021.
Mr. Justice Umar Ata Bandial, CJ., Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._757_l_2021.pdf

Facts: The question of law raised before the High Court in the Sales Tax Reference by the petitioner Department was whether the respondent assesse could claim refund on the goods in respect of which sales tax had not been deposited in the government treasury by the respective supplier, hence violating section 2(14), 7, 8, 8A, 10, 22, 26 and 36 of the Sales Tax Act, 1990

Issues: i) Whether Appellate Tribunal is final forum for determination of facts in tax matters?

ii) Whether High Court is bound by the findings of fact recorded by the Tribunal?

iii) When tax reference is maintainable?

Analysis: i) It is now well established that the Tribunal is the final forum for determination of facts in tax matters. The Appellate Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures.

ii) Without raising a 'question of law' in the terms, like, 'whether there was evidence to support the finding of the Appellate Tribunal on such and such fact', the High Court is bound by the finding of fact recorded by the Tribunal. Thus in a case, where no question of law is raised to challenge the finding of fact recorded by the Appellate Tribunal as being not supported by any evidence or being perverse, the finding recorded by the Tribunal attains finality.

iii) It has also been established and clearly borne out from section 47(1) of the Act that the "question of law" must arise from the decision of the Appellate Tribunal and in the absence thereof, any such reference is not maintainable.

Conclusion: i) Appellate Tribunal is final forum for determination of facts in tax matters.

ii) Without raising a 'question of law' in the terms, like, 'whether there was

evidence to support the finding of the Appellate Tribunal on such and such fact', the High Court is bound by the finding of fact recorded by the Tribunal.
iii) For filing of tax reference the "question of law" must arise from the decision of the Appellate Tribunal.

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4. Supreme Court of Pakistan
Shaukat Hussain v. The State.
Criminal Appeal No.585 of 2020
Mr.Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._585_2020.pdf

Facts: The appellant received a guilty verdict maintained by the High Court in a case of homicide, being assailed by leave of this Court.

Issues: i) On whom onus to explain lies in incidents of domestic violence?
ii) What if witnesses present on scene did not intervene to rescue the deceased?

Analysis: i) In incidents of domestic violence more so in the event of homicidal death of a wife in the house of her husband a heavy onus is cast upon the latter to satisfactorily explain circumstances leading to the tragedy. See Article 122 of the Qanun-i-Shahadat Order, 1984.
ii) It is hard to believe that the witnesses four in number could not have intervened to rescue the deceased, statedly struggling to resist the assault within their view, close distanced at the crime scene, which creates doubt on prosecution story.

Conclusion: i) In incidents of domestic violence more so in the event of homicidal death of a wife in the house of her husband a heavy onus is cast upon the latter to satisfactorily explain circumstances leading to the tragedy.
ii) The fact that witnesses claimed to be present at crime scene but did not rescued the deceased creates doubt on prosecution story.

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5. Supreme Court of Pakistan
Rafaqat Ali v. The State.
Criminal Appeal No.541 of 2020
Mr.Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._541_2020.pdf

Facts: The appellant received a guilty verdict under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to death with a direction to pay compensation, altered by the High Court into imprisonment for life, vires whereof, are being assailed by leave of the Court.

Issues: i) What would be effect of testimony of a witness whose name is not mentioned in the crime report?

ii) Whether a supplementary statement can be read in continuation of FIR?

Analysis: i) Prosecution's preference for a witness whose name did not figure in the crime report as a witness in preference to another witness, abandoned during the trial, is a circumstance that clamours for explanation.
ii) Though the First Information Report is not to be taken as prosecution's last word, nonetheless, a supplementary statement, essentially being a statement under section 161 of the Code of Criminal Procedure, 1898 cannot be read in continuation thereof and, thus, a heavy responsibility is cast upon the prosecution to satisfactorily explain its initial failure to nominate an accused in the crime report and the circumstances improving upon its knowledge so as to justify inclusion of the accused previously amiss.

Conclusion: i) Prosecution's preference for a witness whose name is not present in crime report to another witness abandoned during trial will create doubt on prosecution story.
ii) Supplementary statement, essentially being a statement under section 161 of CrPC cannot be read in continuation of FIR.

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6. **Supreme Court of Pakistan**
Sharafat Khan v. The State
Crl.A.241/2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._241_2020.pdf

Facts: The appellant was convicted and sentenced by the trial court in case registered for the alleged commission of offence punishable under Section 9 (c) of the Control of Narcotic Substances Act, 1997. The appellant assailed the impugned judgment of High Court, whereby, his conviction was upheld.

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Issue: Whether the sample to be representative must be drawn for each and every physically independent and separate unit of the alleged narcotic drug recovered from the accused?

Analysis: Section 36 of CNSA provides that a sample of the narcotic drug has to be submitted with the Government Analyst for the test and analysis, while Rule 4 of the Control of Narcotics Substances (Government Analyst) Rules, 2001 provides that reasonable quantity of samples from the narcotic drug shall be drawn and dispatched to the testing laboratory. According to the Ameer Zeb case, a representative sample is to be collected from every packet/cake/slab of the alleged narcotic drug and sent for analysis to the Chemical Examiner. Therefore, the sample to be representative must be drawn for each and every physically independent and separate unit of the alleged narcotic drug recovered from the accused. A separate and independent unit of the alleged narcotic drug cannot be left out from test and analysis on the assumption that a representative sample has

been drawn from other similar physically independent and separate units of the alleged narcotic drug. Any such assumption would offend the fundamental right to fair trial and due process of the accused guaranteed under Article 10A of the Constitution, besides militating against the safe administration of justice.

Conclusion: The sample to be representative must be drawn for each and every physically independent and separate unit of the alleged narcotic drug recovered from the accused.

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7. Supreme Court of Pakistan
Faisal Shahzad v. The State
Jail Petition No. 95 Of 2017
Mr. Justice Sardar Tariq Masood, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._95_2017.pdf

Facts: Petitioner was convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997, by the Trial as well as High court, hence this Petition.

Facts: Petitioner was tried by the learned ASJ in terms of the case registere u/s 9(c) of the Control of Narcotic Substances Act, 1997. The learned Trial Court convicted the petitioner and sentenced. In appeal the learned High Court maintained the conviction and sentences recorded against the petitioner by the learned Trial Court. Hence, instant petition.

Issues: i) Whether testimony of police officials is as good as any other private witness?
ii) Whether Control of Narcotic Substances (Government Analysts) Rules, 2001, controls the substantive provisions of the Control of Narcotic Substances Act, 1997?

Analysis: i) Testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused. This Court has time and again held that reluctance of general public to become witness in such like 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 testimonies remain un-shattered during cross-examination.
ii) These Rules are stricto sensu directory and not mandatory in any manner. It does not spell out that if there is any lapse, it would automatically become instrumental to discard the whole prosecution case. The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997 and cannot in any manner frustrate the salient features of the prosecution case. If the series of acts which ultimately resulted into recovery of contraband narcotic are kept in juxtaposition with the alleged violation of the Rules, it cannot by any stretch of imagination be considered reasonable in law to smash the whole prosecution case on its salient features. Even otherwise, in terms of Section 29 of the Control of

Narcotic Substances Act, 1997, manner and standard of proof in cases registered under the Act is slightly different as in terms of the said Act the accused is presumed to have committed the offence unless the contrary is proved.

Conclusion: i) Police officials are as good as any other private witness and could be relied upon, if their testimonies remain un-shattered during cross-examination.

ii) The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997 and cannot in any manner frustrate the salient features of the prosecution case.

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8. Supreme Court of Pakistan
Syeda Nasreen Zohra (deceased) through L.Rs. v. Government of the Punjab through Secretary Commun ication & Works Depart ment, Lahore and others
Civil petitions No. 5718 to 5720 & 5799 of 2021
Government of the Punjab through Secretary Communication & Works Department, Lahore, etc. v. Syeda Nasreen Zohra (deceased) through her L.Rs., etc.
Civil Petition No. 2018 -L of 2021
Mr. Justice Ijaz ul Ahsan & Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5718_2021.pdf

Facts: The instant Civil Petitions have arisen out of a consolidated order passed by the Lahore High Court, which dealt with the limited question of the period from which the Petitioner is entitled to recover interest at the rate of 8 % per *marla* in terms of Section 34 of the Land Acquisition Act, 1894. The Petitioner is aggrieved by the date of possession as decided in the impugned order and the Government of Punjab is aggrieved by the date from which interest is to be calculated.

Issues: Whether compound interest will be payable under section 34 of the land acquisition Act 1894 even after the original compensation has been deposited?

Analysis: Section 34 of the land acquisition Act 1894 provides that where the amount of compensation is not paid or deposited on or before taking possession of the land, compounded interest at the rate of 8% per annum shall be paid from the time of taking possession….After the Award in question had been made, the Collector was bound to tender the payment in question. If the Collector is prevented from doing so, he is, required to tender the same in Court in view of Section 18 of the Act….In case the Collector does not make the payment, the Petitioners become entitled to interest as provided in Section 34 of the Act. The payment of such interest is mandatory in nature and its payment could not have been denied to the Petitioner... Compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. Once the original amount has been deposited, the matter goes out of the penal

consequences of Section 34 of the Act. However, it would be unfair, unjust and contrary to the policy of the law to put a landowner at an unfair disadvantage for recovery of the accrued amount of compensation and give an unfair advantage to the acquiring department which can delay payment of accrued compound interest indefinitely. This would lead to an absurd situation and could not be the intent of the law. S imple interest would be pay able on the amount that has accrued by way of compound interest till such time that the accrued and outstanding compound interest is paid to the person who is entitled to receive compensation for his/ her acquired land.

Conclusion: Compound interest will not be payable under section 34 of the land acquisition Act 1894 after the original compensation has been deposited rather only simple interest will be applicable till payment of outstanding compound interest.

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9. Supreme Court of Pakistan
Tahir Naqash, etc. v. The State, etc.
Crl.P.916-L/2021
<u>Mr. Justice Syed Mansoor Ali Shah</u>, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._916_l_2021.pdf

Facts: Petitioners seek leave to appeal against the order of the Lahore High Court, whereby their petition under Section 561-A of the Code of Criminal Procedure 1898 ("CrPC"), challenging the alteration/addition of certain offences to the charge framed against them, has been dismissed and the orders passed by the trial court and the revisional court respectively have been upheld.

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Issue: Whether mere reading of the Kalma and the Holy Qur'an by non-Muslim/Ahmadis constitutes offences under sections 295-B and 295-C PPC?

Analysis: To constitute an offence under Section 295-B, the reading thereof shows, the accused must have defiled, damaged or desecrated a copy of the Holy Quran or an extract therefrom or use it in any derogatory manner or for any unlawful purpose. Only that which resides in the mind of a non-Muslim while reading the Holy Quran is not sufficient to constitute the offence. In order to attract Section 295-B PPC, there must be an overt act (actus reus) that shows that the copy of the Holy Quran or its extract has been defiled, damaged or desecrated or it has been put to use in a derogatory manner or for an unlawful purpose Similarly, to constitute an offence under Section 295-C PPC, there must be words spoken or written or by visible representation or any imputation, innuendo or insinuation, direct or indirect, which defiles the sacred name of the Holy Prophet Muhammed (peace be upon him). What runs inside the mind of an Ahmadi, while reading the Kalima does not constitute an offence punishable under Section 295-C PPC unless there is

some overt act on his part that defiles the sacred name of the Holy Prophet Muhammed (peace be upon him).

Conclusion: Mere reading of the Kalma and the Holy Qur'an by non-Muslim/Ahmadis does not constitute offences under sections 295-B and 295-C PPC.

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10. Lahore High Court
Abdul Haseeb Sheikh v. The Government of the Punjab and others.
Writ Petition No.232186/2018.
Mr. Justice Muhammad Ameer Bhatti, CJ
https://sys.lhc.gov.pk/appjudgments/2021LHC9728.pdf

Facts: After the decision of the Authority regarding his compulsorily retirement, the petitioner approached the PGSHF, where he had membership for allotment of a house, through an application for withdrawal of the subscribed amount he deposited there to get house at the time of his retirement. The Service Appeal filed by the petitioner was decided whereby the punishment of imposition of major penalty of compulsory retirement" was converted into minor penalty of "censure", where after, he filed an application to the concerned Authority of PGSHF for restoration of his membership, which was declined; hence, this constitutional petition.

Issues: Whether a member on account of getting back his deducted amount from Punjab Government Servants Housing Foundation, loses his right/entitlement qua restoration of his membership later on?

Analysis It is not denied by the petitioner that he withdrew the amount by submitting application alongwith affidavit wherein he specifically, in unequivocal manner, deposed that he had understood the effect (permanent termination of membership) of claim of refund/return of deposited amount and on the basis of that, he got refunded his deposited amount necessary to retain his membership, therefore, subsequently he after obtaining favourable order from the Punjab Subordinate Judiciary Tribunal qua conversion of his punishment from major to minor penalty although became entitled to claim the house from the respondent Foundation provided he had not withdrawn the deducted amount, hence, lost his right/entitlement on account of getting back his deducted amount, which was condition precedent for retaining membership to claim a house from the Foundation. It is correct that the petitioner after awarding punishment had otherwise become disentitled/precluded to claim the membership as envisaged under Rule 6(1)(a) of the PGSHF Rules, 2013, and perhaps under this impression, despite the fact that his appeal challenging the validity of order of his punishment was pending but consciously reflecting/inferring from contents of affidavit withdrew the amount from the Foundation, as result whereof, excluded himself from the list of eligible candidate of allotment of house and it is not the case of the petitioner that he was amateur having no skill over such matters. Besides it is also not his case that he withdrew the amount conditionally subject to ultimate

decision of his service appeal.

Conclusion: As envisaged under Rule 6(1)(a) of the PGSHF Rules, 2013, a member on account of getting back his deducted amount from Punjab Government Servants Housing Foundation, loses his right/entitlement qua restoration of his membership. Had he either by mentioning about pendency of appeal against his punishment claimed return of amount due to his defective membership or not opted to withdraw the amount deposited for retaining the membership despite on awarding of major punishment, appeal against which was pending, his membership had become defective his lien would have been intact in such eventuality, the position would have been different.

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11. **Lahore High Court**
Muhammad Riaz. v. Govt. of Pakistan etc.
Case Diary No.39914 of 2022.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC2192.pdf

Facts: Office has raised different objections including objection regarding the validity of Power of Attorney of the learned counsel for the petitioner by virtue of non-attestation from the Pakistan Embassy.

Issues: Whether an execution of power of attorney in a foreign country without authentication by the High Commission of Pakistan would have valid presumption under Article 95 of the Qanoon-e-Shahadat Order, 1984?

Analysis: The authentication of the power of attorney under Article 95 of the Qanoon-e-Shahadat Order, 1984 is not merely an attestation of power of attorney, rather it implies that the person authenticating must satisfy himself not only about the identity of the executant but also satisfy himself about the factum of execution. If the power of attorney/wakalatnama executed in favour of the counsel does not disclose that notary public authenticated appointment of counsel to represent before this Court such power of attorney executed in favour of the counsel does not qualify the test of authentication as set down under Article 95...

Conclusion: An execution of power of attorney in a foreign country without authentication by the High Commission of Pakistan would not have valid presumption under Article 95 of the Qanoon-e-Shahadat Order, 1984.

12. **Lahore High Court**
Mst. Badami and others v. Mst. Budhee and others
R.S.A. No.141 of 1987
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC2200.pdf

Facts: The appellant filed suit for possession which was dismissed and first appeal was also dismissed. The appellant preferred RSA and this court remanded the matter to first appellate court for recording of additional and rebuttal evidence then to decide the matter. The respondent approached the Hon'ble Supreme Court where this court was directed to decide the RSA in light of judgment of Supreme Court. This court set aside judgments of learned courts below. The respondents challenged the judgment & decree of this court before Supreme Court and case was remanded again to this court with observations. This court remitted the matter to learned senior civil judge for purpose of recoding of evidence by keeping appeal pending here. After recording of rebuttal evidence, the learned senior civil judge transmitted the proceedings to this court.

Issue: i) Whether adverse presumption arises against party for-non production of important witness?
ii) Whether the deposition of witness can be considered and appreciated if he disassociated the proceedings and did not face the cross examination?
iii) Whether a presumption is attached to certified copies of foreign judicial records?

Analysis: i) The pedigree tables were got issued from the concerned authorities in India in the year 1985 as the same was in Indian language, so it was got translated by the said Abdul Rehman; meaning thereby the said person namely Abdul Rehman was an important witness so as to substantiate the stance of the appellants but he was not produced in the witness box, for the reasons best known to them, so adverse presumption arises against the appellant in view of Article 129(g) of the Qanun-e-Shahadat, 1984 that had he appeared in the witness box, he would not have supported the stance of the appellants.
ii) The deposition of a witness cannot be considered and appreciated who disassociated the proceedings and did not face the cross examination…
iii) Article 96, Qanun-eShahadat, 1984 deals with presumption as to certified copies of foreign judicial records. It states that the Court may presumed that any document purporting to be a certified copy of any judicial record of any country not forming part of Pakistan is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Federal Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Conclusion: i) An adverse presumption arises against a witness that had he appeared in the witness box, he would not have supported the stance of the appellants.

ii) The deposition of witness cannot be considered and appreciated who disassociated the proceedings and did not face the cross examination.
iii) A presumption is attached to certified copies of foreign judicial records if certified in prescribed manner.

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13. **Lahore High Court**
Nadir Khan v. The State etc.
Crl. Appeal No.13833 of 2022
Justice Miss Aalia Neelum, Mr. Justice Raja Shahaid Mehmood Abbasi
https://sys.lhc.gov.pk/appjudgments/2022LHC2105.pdf

Facts: Through this criminal appeal the petitioner has challenged the order of the learned Additional Sessions Judge whereby his application for summoning of register No.19, 21 and Roznamcha was dismissed.

Issue: Whether it is mandatory for the Court to issue process under section 94 of Cr.P.C. when the accused applies for the issuance of any process for the production of any document or thing?

Analysis: Section 94 of the Cr.P.C. provides that if the accused applies for the issuance of any process for the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Section 94 of the Cr.P.C empowers the Court to issue summons for production of documents or other thing by providing that whenever any Court considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Cr.P.C. by or before such Court, such Court may issue summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons. However, this provision is characterized by use of the expression 'may' and not 'shall' which is suggestive of the inference as to the Court not being under any obligation to compel for the production of the documents or any other thing.

Conclusion: It is not mandatory for the Court to issue process under section 94 of Cr.P.C. when the accused applies for the issuance of any process for the production of any document or thing if Court considers that that it is made for the purpose of vexation or delay or for defeating the ends of justice.

14. Lahore High Court
Maqsood Ahmad and others v. The State
Crl. Appeal No.991 of 2012
Mst. Noor Bhari v. The State, etc.
Crl. Rev. No.949 of 2012
Mst. Noor Bhari v. Murtaza, etc.
P.S.L.A. No.244 of 2012
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC2108.pdf

Facts: The appellants/convicts have assailed their conviction and sentence recorded by the learned Addl. Sessions Judge in private complaint filed under sections 302/148/149 PPC whereas the complainant of that private complaint filed criminal revision qua enhancement of sentence awarded to the appellants and PSLA against acquittal of co-accused.

Issue: i) Whether delay in conducting postmortem examination creates serious doubt about the genuineness of the prosecution story?
ii) What is role of motive in criminal case?
iii) What is evidentiary value of factum of abscondence?
iv) What if the link between the recovered weapons and crime empties with the report of Punjab Forensic Science Agency is not established?
v) Whether an order of acquittal can be interfered with?

Analysis: i) Delay in conducting postmortem examination also leads to the conclusion that the F.I.R. was recorded with a delay and the F.I.R had not been recorded at the time at which it is claimed to have been recorded. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story including presence of the complainant and eye witness at the scene of occurrence.
ii) The motive is a double edged weapon, which can be used for the commission of crime or for falsely implicating the accused. When there are open hostilities between two groups, the motive factor may propel one side to indulge in crime and the same factor may possibly also induce the other group to implicate their rivals.
iii) The factum of abscondence, even if established, could only be used as corroborative evidence and was not substantive piece of evidence. It is established principle of law that mere absconsion is not a proof of guilt of an accused.
iv) The prosecution has not established link between the recovered weapons and crime empties with the report of Punjab Forensic Science Agency, making the case of the prosecution highly doubtful. There is no evidence to connect the report of Punjab Forensic Science Agency with the weapons recovered on the pointing of the accused. The said contradiction in the deposition of the witnesses as well as report of Punjab Forensic Science Agency cannot be stated to be minor and irrelevant in the absence of the positive and material evidence. This creates doubt about the genuineness of the recovery of crime empties.

v) It is settled principle of criminal jurisprudence that unless it can be shown that the judgment of the lower court is perverse or that it is completely illegal and no other conclusion can be drawn except the guilt of the accused or there has been misreading or non-reading of evidence resulting in miscarriage of justice. Even otherwise, when accused is acquitted by a court of competent jurisdiction, double presumption of innocence is attached to his case. The acquittal order cannot be interfered with, whereby an accused earns double presumption of innocence.

Conclusion: i) Delay in conducting postmortem examination creates serious doubt about the genuineness of the prosecution story.

ii) The motive is a double edged weapon, which can be used for the commission of crime or for falsely implicating the accused.

iii) The factum of abscondence could only be used as corroborative evidence mere absconsion is not a proof of guilt of an accused.

iv) It creates doubt about the genuineness of the recovery of crime empties if the link between the recovered weapons and crime empties with the report of Punjab Forensic Science Agency is not established.

v) An order of acquittal cannot be interfered with, whereby an accused earns double presumption of innocence.

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15. **Lahore High Court**
Nazir Ahmad Afzal V. The State etc
Criminal Appeal No.132 of 2014
Miss. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC2136.pdf

Facts: The appellant was tried by the learned Senior Special Judge, Anti-Corruption, in respect of offences under sections 409, 468, 471, 420, 109 PPC read with Section 5(2)47 of PCA and convicted under section 409 PPC and sentenced him to undergo imprisonment for 05-years, with the direction to pay Rs.1,00,000/- as fine. The appellant has assailed his conviction through filing instant criminal appeal.

Issue: What are the pre requisites for conviction under section 409 PPC?

Analysis: Before a conviction under Section 409 Pakistan Penal Code can be recorded, the prosecution must prove firstly that accused person was governmental employee secondly he was entrusted some kind of property in capacity of government employee and thirdly the factum of misappropriation of the entrusted articles.

Conclusion: For conviction under section 409 PPC the factum of entrustment of property to government employee and its misappropriation must be proved.

16. **Lahore High Court**
Crl. Appeal No.14905 of 2019
Ejaz alias Jajji and others v. The State etc.
Crl. Rev. No.18550 of 2019
Faiz Ahmed v. The State, etc.
P.S.L.A. No.18548 of 2019
Faiz Ahmad v. Muhammad Ahmad, etc.
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC2078.pdf

Facts: The appellants have assailed their conviction in complaint filed u/s 302, 324, 336, 109, 148 & 149 of PPC through filing instant appeal. Complainant also filed Crl. Rev. qua enhancement of sentence awarded to the appellants and P.S.L.A. against acquittal of some of accused.

Issue: i) In what situations the acquittal order can be interfered with by the appellate court?
ii) What is nature of the medical evidence?

Analysis: i) when accused is acquitted by a court of competent jurisdiction, double presumption of innocence is attached to his case. The acquittal order cannot be interfered with, whereby an accused earns double presumption of innocence. This court has also taken note of the settled principle of criminal jurisprudence that unless it can be shown that the judgment of the lower court is perverse or that it is completely illegal and no other conclusion can be drawn except the guilt of the accused or there has been misreading or non-reading of evidence resulting in miscarriage of justice
ii) It is well settled principle of law that medical evidence only indicates receipt of injuries, kind of weapon used and nature of injuries but it did not name the assailant.

Conclusion: i) Judgment of acquittal can only be interfered with when the judgment of the lower court is perverse or that it is completely illegal and no other conclusion can be drawn except the guilt of the accused or there has been misreading or non-reading of evidence resulting in miscarriage of justice.
ii) Medical evidence only indicates receipt of injuries, kind of weapon used and nature of injuries but it did not name the assailant.

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17. **Lahore High Court**
Amir Shahzad etc. v. Federation of Pakistan etc.
Case No:W.P. 113414/2017
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC2290.pdf

Facts: This constitutional petition has been filed seeking the relief to direct the respondents to consider the petitioners for promotion as Junior Executive/Data Entry Operators (BPS-7) and Superintendent (BPS-14).

Issues: i) Whether the terms and conditions of service of employees of NADRA including their promotion policy framed by NADRA u/s 45 of the Ordinance are statutory or not?

ii) Can the writ jurisdiction of High Court under Article 199 of the Constitution be invoked by a contractual employee of a statutory organization, such as NADRA?

Analysis: i) NADRA has been established under the National Database and Registration Authority Ordinance, 2000. Under Section 44 of the Ordinance, the Federal Government may by notification in the official Gazette make rules for carrying out the purpose of this Ordinance, whereas under Section 45 of the Ordinance, the Authority may by notification in official Gazette make regulations, not inconsistent with the provisions of this Ordinance or the rules. Under Section 45 (2) of the Ordinance, the regulations may also provide for appointment of Registration Officers, members of staff, experts, consultants, advisors and other officers and employees and the terms and conditions of their service…On face of it, Rules being framed by the Federal Government under Section 44 of the Ordinance have the statutory force, however, Regulations being framed under Section 45 of the Ordinance by the Authority, without any approval of the Federal Government, does not have any statutory status. The terms and conditions of service of employees of NADRA including their promotion policy vide Notification dated 22.01.2004, are also framed by the Authority under Section 45 of the Ordinance (and not by Federal Government under Section 44 of the Ordinance), therefore, the same are also non-statutory.

ii) The Hon'ble Supreme Court of Pakistan in case of Chairman NADRA, Islamabad through Chairman, Islamabad and anothers Vs. Muhammad Ali Shah and other (2017 SCMR 1979) has held that the writ or Constitutional jurisdiction of High Court under Article 199 of the Constitution cannot be invoked by a contractual employee of a statutory organization, such as NADRA .

Conclusion: i) The terms and conditions of service of employees of NADRA including their promotion policy being framed by NADRA u/s 45 of National Database and Registration Authority Ordinance, 2000 are non-statutory in nature.

ii) The writ or constitutional jurisdiction of High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA.

18. **Lahore High Court**
Dr. Zahid Hussain Zahid v. The Executive Director, Imperial College of Business etc
Case No. W.P.No.28301/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC2277.pdf

Facts: Petitioner filed the constitutional petition in which he sought direction against respondents to decide the pending application and consequently pay salary arrears of the petitioner.

Issues: Whether the writ petition against a private sector institution is maintainable?

Analysis: Under Article 199(1)(a) of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution) , the High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any aggrieved party, make an order directing a "person" performing functions in connection with the affairs of Federation or Province or Local Authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do. The word "person" is defined under Article 199(5) of the Constitution, which includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government. The question that whether Imperial College fall within the definition of "person" under Article 199(5) of the Constitution can be ascertained firstly from the functions performed by Imperial College and secondly, by the status of the administrative and financial control of the Government with respect of Imperial College. This test is generally classified by Courts as "functional test". The august Supreme Court in Abdul Wahad etc vs. HBL etc (2013 SCMR 1383), held that for functional test, two factors are the most relevant i.e. the extent of financial interest of the state in an institution and secondly a dominance in the controlling affair thereof.

Conclusion: The writ petition against a private sector institution is maintainable; when no other adequate remedy is provided by law, and the administrative and financial powers of the private sector institution are controlled by the Government.

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19. **Lahore High Court**
Commissioner Inland Revenue v. M/s Nishat Chunian Power Limited
Case No. STR No. 257100 of 2018
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC9734.pdf

Facts: This Reference Application under Section 47 of the Sales Tax Act, 1990 is against order passed by Appellate Tribunal Inland Revenue, Lahore Bench, Lahore.

Issue: What is concept of value of supply under rule 13(3) of the Sales Tax Special Procedure Rules, 2007?

Analysis: Under the e Section 8(2) of the Act of 1990 input tax adjustment is not allowed to the extent of non-taxable supply, which need to be examined with Rule 13(3) of the Sales Tax Special Procedure Rules, 2007.The interpretation of Rule 13(3) is very simple that value of supply is the amount recovered, by the Independent Power Producer, against supply of EPP. It is reiterated, in latter part of the Rule 13(3) that any amount in excess of EPP supply i.e., on account of CPP shall not be a component of the value of supply. Meaning thereby that the Rule 13(3), being a special provision, is defining "value of supply" for the purpose of taxing the supply of EPP. Nothing is mentioned in this Rule about non-taxable or exempt supply. It needs to be clarified that non-taxability of a supply and exemption are two independent and different concepts under the Act of 1990. Sales tax is computed and levied on the value of a taxable supply at the applicable rate. Correct interpretation is that the amount, received by the IPP, on account of CPP is not part of taxable supply of EPP.

Conclusion: The interpretation of Rule 13(3) is very simple that value of supply is the amount recovered, by the Independent Power Producer, against supply of EPP. It is reiterated, in latter part of the Rule 13(3) that any amount in excess of EPP supply i.e., on account of CPP shall not be a component of the value of supply.

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20. **Lahore High Court**
Commissioner Inland Revenue v. Sui Northern Gas Pipelines Limited.
PTR No.314 of 2013
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC9696.pdf

Facts: In this and connected Tax References, the basic issue is development surcharge, as expense while computing income from business and expenditures under Section 20 of the Income Tax Ordinance, 2001 ("ITO 2001"). The issue culminated into appeal before the Appellate Tribunal Inland Revenue ("Appellate Tribunal"), which was decided in favour of the respondent taxpayer for all tax years. This appellate order is assailed through Tax References, in hand, by proposing certain questions of law.

Issues: i) Whether proviso to subsection (5) of Section 8 of the OGRA Ordinance would be applicable for allowance of development surcharge, when the Ordinance of 2002 is a special law being later in time?
ii) Whether any other Act, outside Income Tax Ordinance, 2001, can allow any payment to the government as expense while calculating business income under Section 20 of the Ordinance of 2001?

Analysis: i) The proviso was placed under subsection (5) as a precaution because Ordinance of 2001 had been promulgated by that time but was not enforced through notification, as required under Section 1(3) of the Ordinance of 2001. Had this

proviso been absent, the subsection (5) is ex facie complete and clear for the purposes of allowance. The same would be the case if we read Section 20 of the Ordinance of 2001 instead of Section 23 of the Repealed Ordinance, as is permissible under Section 8 of the Act of 1897.

ii) The development surcharge, paid under the Section 8(5), as expenditure allowable under the repealed Income Tax Ordinance, 1979. An expense can be allowed by another statute, while computing profits and gain under Repealed Ordinance of 1979. If the expenditure is allowable under Section 8(5) of OGRA Ordinance for computing income under Repealed Ordinance of 1979, it can be allowable under the Ordinance of 2001 also.

Conclusion: i) Yes, proviso to subsection (5) of Section 8 of the OGRA Ordinance would be applicable for allowance of development surcharge, when the Ordinance of 2002 is a special law being later in time.

ii) Any other Act, outside Income Tax Ordinance, 2001, can allow any payment to the government as expense while calculating business income under Section 20 of the Ordinance of 2001.

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21. Lahore High Court
Commissioner Inland Revenue, Zone-II, Regional Tax Office-II, Lahore v. M/s Techlogix Pakistan (Pvt.) Ltd.
PTR No.200 of 2013
Mr. Justice Shahid Jamil Khan Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC9738.pdf

Facts: Applicant assails order of learned Appellate Tribunal Inland Revenue, whereby taxpayer's appeal was allowed, and concurrent orders of the authorities were annulled. Fundamentally, the controversy is determination of the scope and effect of the proviso, added while inserting sub-clause (iii) to the second proviso to subsection (6) of section 153 of the Income Tax Ordinance, 2001 – sub-clause (iii) and proviso were inserted through Finance Act 2009.

Issues: i) Whether the third proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001 – inserted through Finance Act 2009 – would be construed to except out or limit the effect of first proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001?

ii) Whether the first proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001 and the third proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001 – inserted through Finance Act 2009 – are mutually exclusive or inconsistent to the extent of repugnancy, and if so, whether proviso latter in time shall prevail, attracting the principle of implied repeal?

iii) Whether the Circulars, variously, issued by the FBR, expressing conflicting explanations / opinions would influence the textual interpretation of first and third proviso(s) to subsection (6) of section 153 of the Income Tax Ordinance, 2001?

Analysis: i) Before insertion of sub-clause (iii) to the second proviso, deduction of tax relating to transactions under sub-clause (b) of sub-section (1) of section 153 of the Ordinance, 2001 by the persons, other than companies, was treated as final tax. And without sub clause (iii) to second proviso tax deducted by non-corporate sector, relating to the providing of services could not be classified as income under Normal Tax Regime (NTR). This is the precise mischief intended to be addressed by inserting sub clause (iii) and proviso thereto, and purpose whereof was to change the regime/classification of tax, from final to normal. Therefore, the submission that third proviso had the effect of repealing first proviso, effecting that tax deducted by the companies, relating to the transactions covered under sub clause (b) of sub-section (1) of section 153 of the Ordinance, comes under the minimum tax regime is misconceived and result of overlooking the effect of re-enacted section 113 of the Ordinance, 2001.

ii) It appears that insertion of third proviso, in the wake of re-enacted section 113 of the Ordinance, 2001 is unnecessary. With insertion of sub-clause (iii) to second proviso, the tax deducted on transactions covered under sub-clause (b) of subsection (1) of section 153 of the Ordinance, 2001 goes out of the ambit of FTR, hence, classified as income under NTR. Therefore, exclusion from the ambit of FTR would otherwise bring income under NTR, which would be liable to minimum tax, provided the conditions in section 113 of the Ordinance, 2001 are met. In view of the above, no case of express or implied repeal of first proviso was made out, which exclusively deals with the companies and third proviso to sub-clause (iii) to second proviso covers person(s), except the companies. It is a misconception to relate to or construe the third proviso as repealing first proviso, both are mutually exclusive and co-exist harmoniously – dealing with two different and distinct classes of persons. Therefore, harmonious / conjoint reading of first and third provisos is imperative, to avoid redundancy or super fluousness, when both provisos could survive independently – in the context of relevant Tax years.

iii) Another submission by counsels representing department that no benefit regarding construction of third proviso was available in the wake of subsequent instructions by FBR – in supersession of instructions contained in Circular No.6 – is meaningless as far as interpretation of the law – involving rights claimed by the taxpayers – is concerned. Circulars / Instructions issued cannot be construed or extended status superior to the text of the law. The scope of the circulars / instructions need not be discussed any further.

Conclusion: i) The third proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001 – inserted through Finance Act 2009 – would not be construed to except out or limit the effect of first proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001.

ii) First proviso to sub-section (6) of section 153 of the Income Tax Ordinance, 2001 and the third proviso to sub-section (6) of section 153 of the Income Tax

Ordinance, 2001 – inserted through Finance Act 2009 – are mutually exclusive e and co-exist in harmony. Hence no case of express or implied repeal of first proviso is made out, which exclusively deals with the companies and third proviso to sub-clause (iii) to second proviso covers person(s), except the companies.
iii) The Circulars, variously, issued by the FBR, expressing conflicting explanations / opinions would not influence the textual interpretation of first and third proviso(s) to subsection (6) of section 153 of the Income Tax Ordinance, 2001.

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22. **Lahore High Court**
Commissioner Inland Revenue, Zone-II Regional Tax Office, Lahore v. M/s Daewoo Pakistan Motor Way Services (Pvt.) Ltd.
PTR No.313 of 2015
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC9750.pdf

Facts: This reference application along other two applications are directed against consolidated order passed by the Appellate Tribunal Inland Revenue, Lahore, in terms whereof appeals of the taxpayer were allowed.

Issue: i) Whether apportionment of expenses under Section 67 of the Income Tax Ordinance, 2001 (Ordinance, 2001) read with Rule 13 of the Income Tax Rules, 2002 is required when taxpayer has maintained separate accounts regarding income under normal tax regime (NTR) and final tax regime (FTR)?
ii) Whether turnover, for the computation of minimum tax under section 113 of the Ordinance – re-inserted by Finance Act 2009 - excludes income covered under the Final tax regime?

Analysis: i) Apportionment of expenses under Section 67 of the Income Tax Ordinance, 2001 (Ordinance, 2001) read with Rule 13 of the Income Tax Rules, 2002 is not required when taxpayer has maintained separate accounts regarding income under normal tax regime (NTR) and final tax regime (FTR).
ii) Explicitly, turnover excludes the tax paid or payable as final discharge of the tax liability. Evidently, the Explanation added through Finance Act 2012 replicates exclusion of deemed income assessed as final discharge of tax liability - envisaged under sub-section (3) of section 113 of the Ordinance, 2001. Income coming under FTR – in terms of re-enacted section 113 of the Ordinance, 2001 – is not covered under the turnover, which excludes any amount taken as deemed income and is assessed as final discharge of the tax liability for which tax is already paid or payable. Hence, income qualified under FTR does not form part of the turnover, therefore not covered under minimum tax regime, provided under section 113 of the Ordinance, 2001. Minimum tax regime, established under section 113 of the Ordinance, prescribe mechanism for computation of minimum tax, based on the value of turnover, subject to the conditions provided.

Conclusion: i) Apportionment of expenses under Section 67 of the Income Tax Ordinance, 2001 (Ordinance, 2001) read with Rule 13 of the Income Tax Rules, 2002 is not required when taxpayer has maintained separate accounts regarding income under normal tax regime (NTR) and final tax regime (FTR).
ii) Yes, turnover, for the computation of minimum tax under section 113 of the Ordinance – re-inserted by Finance Act 2009 - excludes income covered under the Final tax regime.

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23. Lahore High Court
Romex International v. The Federation of Pakistan, etc.
Case No. W. P. No. 7555 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC2059.pdf

Facts: The captioned petition is filed for inaction on the part of Commissioner (Appeals), for not deciding appeal within the time directed by the Appellate Tribunal, whereas connected petitions are for direction to Commissioner (appeals), on expiry of statutory period, to decide appeal and extension of interim relief beyond statutory period.

Issues: i) What is purpose of prescribing statutory period for interim relief?
ii) When restrictions on time for granting interim relief can be exceeded?
iii) What is recourse for determining that taxpayer is entitled or not to grant of extension of interim relief beyond statutory period?

Analysis: i) The period, prescribed for the interim relief/stay, in essence, enjoins a duty upon the Commissioner (Appeals) to decide the appeal within the statutory period. Keeping the appeal pending beyond the statutory period for interim relief would frustrate the intent of Legislator.
ii) There is no cavil that jurisdiction is always conferred, upon the courts and quasi-judicial forums, by the Legislature, and restriction on time for granting interim relief cannot be exceeded under normal circumstances. However, the Constitutional Courts have created an exception by invoking the principle for administration of justice and good conscience, "actus curiae neminem gravabit", i.e., "the act of Court shall prejudice no one" which can be invoked only if delay in deciding the appeal is on the part of appellate forum (Court). Taxpayer cannot be a beneficiary of its own inactions, while taking unnecessary adjournments and not pursuing for early decision of appeal through applications for early hearing.
iii) For deciding whether delay is attributable to taxpayer, this Court cannot enter into factual inquiry in constitutional jurisdiction, therefore, safer recourse would be that the taxpayer should move an application for extension of stay/interim relief, beyond statutory period, before Commissioner (Appeals). On receiving the application, the Commissioner (Appeals) shall first determine the cause of delay. Delay on the part of taxpayer would disentitle it of the discretionary relief and

extension application would be rejected through speaking order in writing. Otherwise, the taxpayer would be entitled to the extension of interim relief based on principle of “actus curiae neminem gravabit”.

Conclusion: i) The period, prescribed for the interim relief/stay, in essence, enjoins a duty upon the Commissioner (Appeals) to decide the appeal within the statutory period.
ii) Restrictions on time for granting interim relief can be exceeded by invoking the principle for administration of justice and good conscience, “actus curiae neminem gravabit”, i.e., “the act of Court shall prejudice no one” but only if the delay is not on the part of taxpayer.
iii) The taxpayer should move an application for extension of stay, the Commissioner (Appeals) shall first determine the cause of delay. Delay on the part of taxpayer would disentitle it of the discretionary relief otherwise, the taxpayer would be entitled to the extension of interim relief based on principle of “actus curiae neminem gravabit”.

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24. **Lahore High Court**
Fatima Nadeem v. Province of the Punjab and others.
W. P. No.6700 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC2366.pdf

Facts: Petitioner unintentionally not selected the category of ‘delayed result candidates’ in the system, therefore she was declined the request of improvement in her marks, obtained in special exmination while preparing the merit list for admissions for MBBS/BDS, hence this petition.

Issues: Whether a request of the candidate for substitution of improved marks can be rejected on the ground of technicality?

Analysis: Article 37(c) enjoins upon the State, that it shall “make technical and professional education generally available and higher education equally accessible to all on the basis of merit”. Article 25 ensures equality and equal protection before law. The technicality introduced in the system even though a policy matter but it offends fundamental right of certain candidates under Article 37(c) read with Article 25 of the Constitution by creating a class within a class. Rejecting the request for substitution of marks of the candidates, the university ousting them, for a technicality, from being considered on merit, which is violation of the fundamental right under Article 25 read with Article 37(c) of the Constitution.

Conclusion: A request of the candidate for substitution of improved marks cannot be rejected on the ground of technicality as it violates the fundamental right under Article 25 read with Article 37(c) of the Constitution of Pakistan.

25. **Lahore High Court**
Federal Board of Revenue v. Federation of Pakistan, etc.
Review Petition No. 70644 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC9707.pdf

Facts: Petitioner filed this application for review of order passed by High Court in Constitutional Petition.

Issue: Whether the application for review of order passed in a Constitutional Petition is maintainable?

Analysis: It is settled law that power to review is available in Constitutional jurisdiction, as provisions of Code of Civil Procedure are applicable. Reference can be made of the judgment in Muhammad Yar (Deceased through L.Rs. and others v. Muhammad Amin (Deceased) through L.Rs and others (2013 SCMR 464), relevant portion of which is reproduced, "the ancillary question, which may arise in the matter also is, if the bar of Order XXIII, Rule 1, C.P.C. shall also be attracted to and shall prevent the petitioners to invoke the constitutional jurisdiction of the High Court vesting in it under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. While dealing with the proposition, this court in the context of applicability of section 12(2), C.P.C. in the orders passed in its constitutional jurisdiction has held in the case reported as Secretary, Ministry of Religious Affairs and Minorities and 2 others v. Syed Abdul Majid (1993 SCMR 1171), "it is well-settled that the provisions of the Code of Civil Procedure are applicable to Constitution petitions filed in the High Court. Section 12(2), C.P.C. being a part of it will be applicable. In this connection the next point for consideration is whether in view of the fact that this Court had dismissed civil petition for leave to appeal filed by the appellants against the judgment of the High Court, application under section 12(2), C.P.C. could be filed in the High Court or in the Supreme Court. As held in the Government of Sindh and another v. Ch. Fazal Muhammad PLD 1991 SC 197, such application can be filed in the Court which passed the final order. The final order in the present case was passed by the High Court and therefore the application filed by the appellants there was competent."

Conclusion: The application for review of order passed in a Constitutional Petition is maintainable.

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26. **Lahore High Court**
Crescent Educational Trust v. Registrar of Trade Unions Lahore & another
W.P. No. 23007/2015
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2022LHC2253.pdf

Facts: This constitutional petition brings a challenge to the order passed by the Registrar of Trade Unions, Lahore. This was done on a direction issued by this Court in

writ petition in which learned Single Judge of this Court directed the Registrar of Trade Unions to decide upon the objections as well as application of the petitioner in accordance with law through a speaking order. These objections relate to the registration of respondent No.2 trade union. Subsequently, on an application filed by respondent No.2, the union was certified as the collective bargaining agent in terms of Section 24(1) of the Punjab Industrial Relations Act, 2010 (PIRA). Petitioner seems to be aggrieved of the registration of trade union and was compelled to file a petition before this Court on which and direction was issued ad adumbrated.

Issues: i) What does the term “commercial” means?
ii) How profit is utilized in non-profit organization?
iii) Whether the trust is subject to the applicability of the provisions of Section 100C of the Income Tax Ordinance, 2001?

Analysis: i) Merriam-Webster’s Dictionary of Law defines “commercial” as relating to commerce’ and “commerce” to mean the exchange or buying and selling of goods, commodities, property, or services esp. on a large scale. As explicated, the term “commercial basis” has not been mentioned in PIRA. In the context of PIRA, the term commercial has to be seen as connoting trade or business occupation carried on for profit. It imports commerce, trade or enterprise having financial profit as primary aim. The intrinsic nature of the activity of an organization and its purpose and consequence would be the determining factor.
ii) Non-profit organization is one which is established for inter alia educational, charitable welfare purposes for general public which doubtless, is the purpose of the petitioner as well. Any educational institution is bound to make profit but the real question is that that profit or surplus fund should not enrich a trustee or his family. It must be diverted back to charitable and welfare activities.
iii) Sub-section (2) of Section 100C provides the category of income which is eligible for tax credit and includes income from donations, voluntarily contributions and subscriptions as also income from investment in the securities of the Federal Government etc. This provision thus pre-supposes that the income of a trust could be invested in the securities of the Federal Government and which income too is subject to tax credit. It is pertinent to mention that by sub-section (2)(f) of Section 100C, the eligibility of tax credit is subject to the condition that none of the assets of trust or welfare institutions confer a private benefit to the donors or family, children or author of the trust or any other person. Further a cumulative reading of subsection (1A) and (1B) of Section 100C of the Ordinance would show that surplus funds of trust would only be taxed in case funds are not spent on charitable or welfare activities during the tax period. Lastly, by sub-section 2(d) of Section 100C, incomes eligible for tax credit include income of an educational institution being run by a nonprofit organization existing solely for educational purposes.

Conclusion: i) The term commercial has to be seen as connoting trade or business occupation

carried on for profit.
ii) In non-profit organization the profit must be diverted back to charitable and welfare activities.
iii) The trust is subject to the applicability of the provisions of Section 100C of the Income Tax Ordinance, 2001.

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27. **Lahore High Court**
Reham Dad. v. Province of Punjab through Its Chief Secretary, etc.
Intra Court Appeal No.13 Of 2021
Mr. Justice Mirza Viqas Rauf & Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC2385.pdf

Facts: This Intra Court Appeal is directed against judgment passed by learned Single Judge in Chamber whereby the Writ Petition of the appellant against order passed by Member (Colonies), Board of Revenue, Punjab, was dismissed. Appellant had moved an application under Rules 14 & 15 of the Punjab Land Acquisition Rules, 1983 for return of acquired land before Senior Member, Board of Revenue, Punjab, which was dismissed by the Member (Colonies), Board of Revenue, Punjab.

Issues: i) When remedy of Intra Court Appeal is not competent or available?
ii) Whether remedy of intra court of appeal is available if application under rules 14 & 15 of Punjab Land Acquisition Rules, 1983 is dismissed by Member board of revenue and also dismissed in writ petition?

Analysis: i) There is no cavil with the proposition that section 03 of the Law Reforms Ordinance, 1972, provides the remedy of Intra Court Appeal in certain eventualities but no such appeal is available or competent if an application brought before the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, arises out of any proceedings in which the law applicable provided for at least one appeal or one revision or one review to any Court, Tribunal or Authority against the original order.

ii) The appellant moved an application under rules 14 & 15 of the Rules, 1983 which was dismissed by the Member (Colonies), Board of Revenue, Punjab, Lahore, that order was assailed through Constitution Petition with the same result as dismissed by the learned Single Judge in Chamber vide impugned order. Although, no remedy of appeal, revision or review is provided in the "Rules 1983", but the original order of acquisition of appellant's land provides remedy of reference (section 18) and appeal (section 54) under the "Act 1894". The test laid down by the legislature is that whether the original order passed in the proceedings is subject to an appeal under the law or not? If the law applicable to the proceedings from which the Constitution Petition arises provides for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or

more Judges of the High Court. The crucial words are the "original order" and meaning of expression "original order" is the order with which the proceedings under the relevant statute commenced. In the light of aforesaid definition the proceedings under the "Act 1894" would seem to be commenced with the acquisition of appellant's land and that proceedings ended with 'Award' of the Land Acquisition Collector. Against which the remedy of 'Reference' under Section 18 and then appeal under Section 54 of the "Act 1894" were available. The appellant filed application under rules 14 & 15 of the "Rules 1983" in respect of acquisition order of his land. In this way this application did not start any new proceedings and order of acquisition is the original order with which proceedings under the "Act 1894" were commenced and all orders subsequently passed would be treated as orders passed in continuation of said proceedings. Therefore, in view of availability of remedy of appeal under Section 54 of the "Act 1894" qua the original order of acquisition proceedings, the Intra Court Appeal is not maintainable under proviso of Section 3(2) of the "Ordinance, 1972".

Conclusion: i) If an application brought before the High Court under Article 199 of the Constitution, arises out of any proceedings in which the law applicable provided for at least one appeal or one revision or one review to any Court, Tribunal or Authority against the original order.

ii) In view of availability of remedy of appeal under Section 54 of the "Act 1894" qua the original order of acquisition proceedings, the Intra Court Appeal is not maintainable under proviso of Section 3(2) of the "Ordinance, 1972".

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28. Lahore High Court
Niaz Muhammad & 03 others. v. Muhammad Riaz & 09 others
Writ Petition No. 519 of 2011
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC2396.pdf

Facts: Writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is directed against the order passed by respondent No.6 (Chairman Federal Land Commission, Islamabad), whereby, he while accepting the revision petition under Section 27 of the Land Reforms Act, 1977 proceeded to set-aside the order passed by respondent No.7 (Chief Land Commissioner, Punjab) regarding upholding the order passed by respondent No.8 (Executive District Officer (Revenue)/Land Commissioner Attock) who dismissed the appeals against the land allotment orders dated 17.07.1998 passed by respondent No.9 (District Officer (Revenue) Attock/Deputy Land Commissioner, Attock) and directed respondent No.9 to allot the land to respondents No.1 to 5. in the form of writ of certiorari, the petitioner sought annulment of the order whereby respondent No.3 proceeded to cancel the lease of the petitioner.

Issues: i) What was the purpose of promulgation of Land Reforms Act, 1977?

ii) What is the procedure for allotment/disposal of surrendered land under section 15 of Land Reforms Act, 1977?

iii) What conditions were imposed upon the grantee under section 16 of Land Reforms Act, 1977?
iv) What would be the effect of allotment of land when the procedure of allotment was neither followed nor complied with?

Analysis: i) "The Act", was promulgated under the Scheme of Land Reforms and idea was to cut the size of individuals holdings to the prescribe limits on the basis of entries in the revenue record on the date of commencement of the said Act and the excesses area was to be resumed in favour of land commissioner in order to utilize the surrender land under Section 15 to the landless tenants or persons owning less than 12 acre land. There cannot be any other better use of this property then by allotting the same to the poor landless tillers of the soil so that they may earn their livelihood out of it and feed and bring up poor and downtrodden children to make them respectable citizen of the society. According to the injunction of the Holy Quran, ALLAH Almighty has created every human being respectable on account of his being human. It is further ordered in the Holy Quran at so many places that the needy persons have a right in the property of believers and can get it as of right.
ii) Perusal of section 15 of "The Act" ibid provides two types of procedures for allotment/disposal of surrender land. Firstly; under sub rules (1) & (2) that the said surrender land can be granted free of charge to the tenants who are shown in the revenue record to be in cultivating possession of it during kharif 1977 and Rabi 1975- 76 and if a tenant who is entitled to grant of land under sub section (1) already owned land, he shall be granted only so much land which together with the land already owned by him does not exceeds 12 acres. Secondly; if the land was not granted under sub sections (1) & (2), it can be granted to other landless tenants or persons owning less then 12 acres land as provided in sub section (3) of Section 15. Admittedly for grant of land under this sub section there is no restriction that the tenant should be shown in the revenue record to be in cultivating possession of it during Kharif 1976 and Rabi 1975-76. The only condition required to be fulfilled is that he should be landless tenant or owning less than 12 acres of land.
iii) Section 16 provides that a grantee or his heirs shall not alienate by sale, gift, mortgage or otherwise the land or any portion thereof during the period of 20 years from the date of grant, they shall maintain the land in proper state of cultivation, the whole of the land shall be used for the sole purpose of agricultural and shall not sublet the land.
iv) When we considered the allotment orders passed by the Deputy Land Commissioner with regard to allotment of land to the petitioners, we find that the procedure as referred above was neither followed nor complied with, therefore, the allotments made in favour of petitioners are nullity in the eyes of law and Chief Land Commissioner (respondent No.1) has rightly set-aside the said allotments.

Conclusion: i) "The Act", was promulgated to cut the size of individuals holdings and the excesses area was to be resumed in favour of landless tenants or persons owning less than 12 acre land.

ii) There are two procedures for allotment/disposal of surrendered land under section 15 of Land Reforms Act, 1977; a person should be a tenant and he shall be granted only so much land which together with the land already owned by him does not exceeds 12 acres.

iii) Section 16 provides that a grantee or his heirs shall not alienate the land by sale, gift, mortgage during the period of 20 years and such land shall be used for the sole purpose of agriculture.

iv) When the procedure of allotment was neither followed nor complied with; the allotments made are nullity in the eyes of law.

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29. **Lahore High Court**
Abid Farooq v. Federation of Pakistan, etc.
Intra Court Appeal No. 5696 of 2022
Mr. Justice Sardar Ahmad Naeem, Mr. Justice Anwaarul HaqPannun
https://sys.lhc.gov.pk/appjudgments/2022LHC2210.pdf

Facts: The Petitioner through writ petition prayed for grant of protective bail etc. which was dismissed, hence, instant intra court appeal.

Issues: i) What are meaning of absconding and proclaimed?

ii) Whether absconder/proclaimed offender can claim enforcement of fundamental rights?

iii) What factors are required to be considered to measure limiting a non-absolute right?

iv) What mechanisms have been used for compelling the accused to face the trial?

v) When law permits stepping over certain fundamental rights?

vi) Whether High Court can examine the nature of allegations while considering question of bail?

vii) What is purpose of informing the public about accused through publication?

Analysis: i) The primary meaning of the word "absconding" is to hide. A person may hide even in his place of residence away from it and in either case, he will be absconding when he does so. Whereas, absconding offender is a person against whom a warrant has been issued under section 204, Cr.P.C. and who is absconded or is concealing himself so that such warrant cannot be executed. Whereas proclaims means to announce something publically, to declare formally or officially.

ii) A person, even if an accused of an offence, shall continue to be a citizen, but the moment he chooses the act of abscondence, he ceases to be an abiding citizen. Article 5(2) of The constitution enjoins that if a person commits any offence against the state then he is not entitled to the protection of fundamental rights and is liable to be prosecuted and dealt with in accordance with law enforced for the

purpose.

iii) To measure limiting a non-absolute right is legitimate. The following factors must be considered; a) Is there a legal basis for the measures limiting the right? b) Does the limitation on the rights pursue a legitimate aim such as respect of the rights, maintenance of public order? and c) If so, is the limitation necessary to achieve the legitimate aim. If all of above factors are positive in a specific case a restriction on a non-absolute right is permissible.

iv) Under the law, two mechanisms have been provided to compel the accused to face trial/charge i.e. by appearing or bringing before the Court of law either by arrest or compelling him/her to appear.

v) In order to compel the accused to appear before court the law permits stepping over certain fundamental rights, as enshrined in Article 15 to 20 and 23 for compelling one (absconder/proclaimed offender) to cause his appearance before the Court of law or Authority concerned, which fundamental rights otherwise are guaranteed for every single citizen. In this respect, chapter XXIII of Police Rules, 1934 and chapter 04 of the Criminal Procedure Code, 1898 can also be referred to.

vi) The High Court while considering the question of bail in its constitutional jurisdiction can examine the nature of allegation on the basis of tentative assessment of the evidence about findings of the prosecution to ascertain prima facie, the question of guilt or innocence of an accused for the purpose of grant or refusal of bail and without expressing on the merits of the case, lest it should prejudice the accused or prosecution, should exercise discretionary jurisdiction in the interest of administration of justice, declared by the apex Court in case titled Abdul Aziz Khan Niazi versus The State through Chairman, NAB, Islamabad (PLD 2003 Supreme Court 668).

vii) The purpose of informing the public about such persons, in particular, absconders/proclaimed offenders, is to immediately inform the law enforcing agencies about such persons. The object and purpose of law for surveillance and method for declaring one as absconder/proclaimed offender was never to keep the names of such persons secret by letting the absconders to enjoy all privileges and to avoid the police but it was always intended to make the person to face trial either by arrest or compulsion, else the legislature would not have included section 59 in The Code of Criminal Procedure which permit even a private person to cause arrest of such person or proclaimed offender.

Conclusion: i) The primary meaning of the word "absconding" is to hide. Whereas proclaims means to announce something publically, to declare formally or officially.

ii) The absconder/proclaimed offender cannot claim the enforcement of fundamental rights.

iii) Firstly, there is legal basis for the measures limiting the right, secondly, legitimate aim of limiting is to maintain public peace etc. and thirdly, limitation is necessary to achieve the legitimate aim.

iv) Two mechanisms have been used for compelling the accused to face the trial i.e. by appearing or bringing before the Court of law either by arrest or

compelling him/her to appear.

v) In order to compel the accused to appear before court the law permits stepping over certain fundamental rights.

vi) High Court while considering the question of bail in its constitutional jurisdiction can examine the nature of allegation on the basis of tentative assessment without expressing on merits.

vii) The purpose of informing the public about accused through publication, is to immediately inform the law enforcing agencies about such persons.

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30. **Lahore High Court**
The State through Prosecutor General Punjab, Lahore v. Muhammad Shahzad
Criminal Miscellaneous No.3295-BC of 2020
Mr. Justice Sardar Ahmad Naeem, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2020LHC4357.pdf

Facts: The petitioner seeks cancellation of bail granted to respondent by the Drug Court.

Issues: i) Under what circumstances the court granting bail can cancel the same?

ii) Under what circumstances the High Court has the jurisdiction to entertain petition filed under sec 497(5) of Cr.P.C?

iii) What are the circumstances under which the concession of pre-arrest bail is granted?

iv) What would be the effect on investigation agency if concession of pre-arrest bail is allowed to each and every accused?

v) What is the responsibility of the trial court while granting concession of pre-arrest bail?

Analysis: i) Where the accused after the grant of bail misuse the same, interferes in the proceedings of the trial, extends threats to the witnesses or creates any sort of hindrance in conclusion of trial, the Court granting bail can cancel the same on the basis of evidence before him by exercising jurisdiction under section 497(5), Cr.P.C.

ii) If the bail granting order is without jurisdiction and without observing mandatory provisions of law, then this Court has jurisdiction to entertain the application under section 497(5), Cr.P.C. for cancellation of bail earlier granted to the accused.

iii) The concession of pre-arrest bail is a remedy of an exceptional and extra-ordinary nature which has to be granted in exceptional cases and discretion has to be used with care/caution. It is also settled principle of law that to get concession of pre-arrest bail, mala-fide on the part of the prosecution specially the police has to be shown through some cogent/convincing reasons.

iv) If in all the cases, the concession of pre-arrest bail is allowed to each and every accused of a case, the process of investigation would be strangulated and

the investigating agency would not be able to complete its investigation in a smooth manner.
v) It is settled by now that no pre-arrest bail can be granted on the basis of bald assertions of an accused by ignoring material/evidence collected during the investigation.

Conclusion: i) If the accused misuses the bail concession, threatens the witnesses and causes hinderance in proceedings of trial, the court can cancel the same.
ii) High Court has the jurisdiction to entertain the petition if the bail is granted without jurisdiction or without observing mandatory provisions of law.
iii) The concession of pre-arrest bail is granted in exceptional and extra-ordinary circumstances.
iv) The investigating agency would not be able to complete its investigation in a smooth manner.
v) The trial court should consider the material/evidence collected during the investigation.

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31. **Lahore High Court**
Criminal Appeal No.76 of 2017
Imam Bakhsh v. The State, etc.
Murder Reference No.06 of 2017
The State v. Imam Bakhsh
Mr. Justice Sardar Ahmed Naeem, Mr Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC9713.pdf

Facts: Appellate filed an appeal against his sentence and conviction in murder case while Murder Reference was transmitted by the learned trial Court for confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: **i)**What is the value of dying declaration, if it is properly recorded?
ii) What should be the condition of mind of the victim when statement was recorded?
iii) Whether an accused can be convicted solely on the basis of dying declaration?
iv) whether there is any particular form of making dying declaration?
v) How the statement of the deceased in "written form" be proved?
vi) How the statement of the deceased in "dictated form" be proved?
vii) What is the evidentiary value of dying declaration?

Analysis: i) Article 46(1) of the Qunoon-i- Shahadat, 1984 explores the concept of dying declaration. Dying declaration is a hearsay evidence but even then, it is given a lot of weightage. Recording of dying declaration is also important and if it is recorded properly by a proper person keeping in mind the essential ingredients of the dying declaration, it retains its full value. Missing any single ingredient of dying declaration makes it suspicious and then the accused may get the benefit of its shortcomings.

ii) The most important point of consideration is that the victim was in a fit condition of mind to give the statement when recording was started and remained in fit condition of mind till the recording of the statement finished. Merely stating that patient was fit will not serve the purpose. This can be best certified by the doctor who knows best about the condition of the patient. But even in conditions, where it was not possible to take fitness certificate from the doctor, dying declarations have retained their full sanctity but there are other witnesses to testify that victim was in such a condition of mind, which did not prevent him from making statements. Medical opinion cannot wipe out the direct testimony of the eye witness stating that the deceased was in fit and conscious state to make dying declaration.

iii) The dying declaration will be admissible in evidence only when the person making statement dies and if the cause of the person's death comes into question. If the person who has made a dying declaration survives, such statement will not come within the purview of Article 46(1) of the Qunoon-i- Shahadat 1984. Dying declaration is an exception to the general rule of excluding the hearsay evidence. The burden of proving the dying declaration is always on the prosecution. Since an accused can be convicted solely on the basis of dying declaration, the Court is expected to carefully scrutinize the same. The dying declaration should inspire the confidence of the Court about truthfulness of such declaration. If the Court, after careful evaluation of the entire evidence, feels that the same was result of either tutoring, prompting or product of imagination, the declaration will not be accepted. If the contents of the very dying declaration contradict the core of the prosecution case, the declaration will not be the basis for conviction.

iv) There is no particular form to be employed in making dying declaration. It can be oral, written, gestures and signs, thumb impressions, incomplete and can also be in form of question and answer. However, there must be distinct and definite assertion on the part of the person who makes the statement. The declaration should be in written form in the exact words stated by the person who made the statement. When a magistrate records the dying declaration then it should be in question answer form as the magistrate will opt to seek information rightly as in some other cases dying declaration become the sole way to help in conviction of the accused.

v) If the statement to be proved is a written statement, as in this case, made by a person who is dead, then it must be proved that such statement was so made by the person who is dead. In that case, of course, the written statement itself becomes substantive evidence. What is to be decided is what constitutes a written statement made by a person who is dead, therefore, the expression “written statement” made by a person who is dead means that the written statement must have been actually made by the deceased person.

vi) Now, a person may make a written statement either by writing it out himself or by dictating it to some body else. Usually, a person who is in immediate expectation of death is too feeble to be able to write out his statement himself but if any written statement is produced in the Court purporting to have been made by

a person who is dead, it must be shown, if that person did not write that statement himself that he dictated the statement and that he did not make the statement in answer to any questions except such a question as" will you please state what it is you wish to be written down?. It must be proved that the dictation has been taken down correctly.. The procedure to establish such statement is to show that the dictated statement was read over to the deceased and admitted by him to be correct.

vii) It is principle of criminal jurisprudence that the dying declaration by itself is not a strong evidence being not tested by way of cross-examination. The only reason for accepting the same is that a person apprehending death due to injury, caused to him is ordinarily not expected to speak the falsehood. To believe or disbelieve the dying declaration, thus is left to the ordinary human judgment.

Conclusion: i) Although dying declaration is a hearsay evidence but if it is recorded properly, it retains its full value.

ii) When recording was made the victim should be in a fit condition of mind to give the statement.

iii) An accused can be convicted solely on the basis of dying declaration, however same should inspire the confidence of the court about truthfulness of such declaration.

iv) There is no particular form to be employed in making dying declaration. It can be oral, written, gestures and signs, thumb impressions, incomplete and can also be in form of question and answer.

v) The statement of the deceased in the 'written form' must be proved to have been actually made by the deceased person.

vi) The statement of the deceased in 'dictated form' must be proved by showing that the dictated statement was read over to the deceased and admitted by him to be correct.

vii) Dying declaration by itself is not a strong evidence being not tested by way of cross-examination.

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32. Lahore High Court
Zahid Rasool, etc. v. The State, etc.
Criminal Appeal No.1133 of 2017
Abdul Jabbar. v. The State, etc.
Criminal Revision No.194 of 2018
Abdul Jabbar v. The State, etc.
P.S.L.A No.39 of 2018
Mr. Justice Sardar Ahmed Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC9672.pdf

Facts: Appellants assailed their conviction and sentence recorded by the trial court in private complaint filed for offences under sections 302/34 PPC. While the complainant also filed Criminal Revision qua enhancement of sentence and acquittal of co-accused.

Issues: i) What is rigor mortis?
ii) What is post mortem staining?
iii) What are various modes of determining time of death?
iv) How motive becomes relevant to be proved?
v) Under what circumstances the accused would be entitled to the benefit of doubt?

Analysis: i) The rigor mortis is a postmortem change which leads to stiffening of the body, muscles because of chemical changes in the myofibrils. It helps in estimating the time since death as well as to recognize if the body was moved after death. It starts to develop 2 to 4 hours after death and gradually dissipates until approximately 72 hours after death. It is due to chemical changes affecting the proteins of muscles fibers. This is sign of the end of cellular life of the muscles.
ii) The postmortem staining is an intravascular phenomenon and there is no extravasation of blood in the area. As the postmortem staining occurs externally on the dependent parts of the body, it also occurs at the dependent parts of all the internal organs, the blood of these organs settle at their dependent parts.
iii) Various methods have been tried to find out the time of death. These include study of physical, chemical, biochemical, histological and enzymatic changes which occur progressively in a dead body. Postmortem lividity is one of the physical changes useful for estimating time of death to a certain degree of accuracy. Postmortem lividity is one of the important signs of death. It is also called the "darkening of death" because shortly after death, in from 20 minutes to 2 hours usually purple red blotches begin to appear in the skin.
iv) Regarding motive, suffice it to observe that the motive is not a component of murder as certain crimes are motive-less and it lies deep in the mind of the perpetrator of the crime. It is also settled that prosecution is not bound to introduce the motive but once a motive is set up and then not proved, it adversely effects the case of prosecution.
v) It is an axiomatic principle of law that in case of doubt, the benefit thereof must resolve in favour of the accused. It was observed by the Hon‟ble apex Court in Tariq Pervaiz v. The State: (1995 SCMR 1345) that for giving benefit of doubt it was not necessary that there may be many circumstances creating doubts and if there is circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of doubt. In this context case of Muhammad Akram v. the State (2009 SCMR 230) can also be referred to. 30. It is settled principle of law that benefit of doubt even slightest must be resolved in favour of the accused and without any reservations. Reliance is placed upon case reported in ARIF HUSSAIN and others V. THE STATE through Advocate-General and another (2005 YLR 2279). It is well settled principle of law that to give benefit of doubt to an accused is much more than a mere rule of law. It is the rule of prudence which no man ought to and no judge

acting in accordance with provisions of Qanoon-e-Shahdat, can ignore and this rule was vigorously enforced by Islam.

Conclusion: i) The rigor mortis is a postmortem change which leads to stiffening of the body, muscles because of chemical changes in the myofibrils.
ii) The postmortem staining is an intravascular phenomenon and there is no extravasation of blood in the area.
iii) Various methods have been tried to find out the time of death which include study of physical, chemical, biochemical, histological and enzymatic changes which occur progressively in a dead body.
iv) Once a motive is set up then it becomes relevant and prosecution is bound to prove it.
v) A single circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, would entitle the accused to the benefit of doubt.

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33. Lahore High Court
Zafar Iqbal alias Zafri v. The State, etc.
Criminal Appeal No.333-J of 2014
Mr. Justice Sardar Ahmed Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC9686.pdf

Facts: Petitioner challenged his conviction and sentence under sections 376/382 P.P.C.

Issues: i) If a particular incriminating material is not put to the accused calling upon him either to admit or to deny or to explain the same, whether it can be used against the accused?
ii) How the element of doubt as to the guilt of accused must be resolved?

Analysis: i) It is settled principle of law that if there is any incriminating circumstance, flowing from any event/circumstances or documentary evidence, question in that respect has to be put to the accused seeking his reply/explanation in his statement under section 342, Cr.P.C. if it is not done so then such circumstance has to be excluded and in no case any order regarding prejudice or conviction, can be passed against the accused persons on the basis of such circumstance. If question of such circumstances has been ignored by the learned trial Court then it is illegal and amounts to an abuse of the process of the Court. In the present case, the trial Court has committed the abuse of the process of Court by not questioning the appellant in respect of the incriminating circumstance i.e. medico-legal report regarding his potency, although the document was available on the record. It is also settled by now that when incriminating circumstances were not put to the accused in examination under section 342, Cr.P.C. the evidence giving rise to the circumstance cannot be utilized by the Court.
ii) It is also settled principle of criminal administration of justice that if there is element of doubt, as to the guilt of accused, it must be resolved in his favour. The golden rule of benefit is initially a rule of prudence which cannot be ignored,

while dispensing justice in accordance with law. It is based on maxim that it is better to acquit ten guilty persons rather than to convict one innocent person. For acquittal of accused in an offence, how-so heinous it may be, only a single doubt in the prosecution evidence is sufficient.

Conclusion: i) If a particular incriminating material is not put to the accused calling upon him either to admit or to deny or to explain the same, it can never be used against the accused.
ii) The element of doubt, as to the guilt of accused, must be resolved in favor of the accused.

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34. Lahore High Court
Commissioner Inland Revenue v. M/s Be Be Jan Fabrics (Pvt) Ltd.
PTR No.156 of 2011
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2300.pdf

Facts: This judgment shall decide this and connected reference application directed against consolidated order of Appellate Tribunal Inland Revenue whereby department's appeal was dismissed.

Issues: Whether in terms of section 107 AA of Income Tax Ordinance, 1979 tax credit was only claimable provided the plant and machinery, acquired upon investing funds, was installed before the 30th day of June 2002?

Analysis: It is evident that condition precedent for being eligible for the tax credit was investment made within the timelines prescribed and entitlement for the adjustment, for a particular income year, was dependent upon installation of plant and machinery. The expression 'for installation' limits the purpose of investment – ensuring that plant and machinery was installed and not to be offered for sale or lease. There is difference between being eligible and claim entitlement in respect thereof. Sub-section (15) of section 239 of Income Tax Ordinance, 2001 had not altered the situation to the disadvantage of the taxpayer – nor could said provision of law be construed to take away eligibility to tax credit accrued, upon investment before 30th June 2002. Subsection (15) of section 239 of Income Tax Ordinance, 2001 actually supported section 107 AA of Income Tax Ordinance, 1979 by affirming cut-off date of 30.06.2002. Sub-sections (2) and (3) of Section 107 AA of Income Tax Ordinance, 1979 provides timing and mechanism for claiming tax credit – which have nothing to contribute for the purposes of determining eligibility for tax credit.

Conclusion: Condition precedent for being eligible for the tax credit was investment made within the timelines prescribed and entitlement for the adjustment, for a particular income year, was dependent upon installation of plant and machinery.

35. **Lahore High Court**
Commissioner Inland Revenue. Versus M/s Standard Ice & Cold Storage, Lahore.
PTR No.634 of 2010
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2164.pdf

Facts: This reference application is directed against judgment of learned Appellate Tribunal Inland Revenue, whereby department's appeal was dismissed, while affirming order of CIT/WT (Appeals).

Issues: i) Whether insertion of Clause-3A of Part-IV of Second Schedule to the Income Tax Ordinance, 2001 had retrospective effect?
ii)What is effect of deletion of Clause-3A of Part-IV of Second Schedule to the Income Tax Ordinance, 2001?
ii) What was purpose of State Bank of Pakistan Banking Policy Department's Circular No.29 dated 15.10.2002 (BPD Circular No.29)?

Analysis: i) Mere insertion of Clause (3A) through Finance Act, 2004 would not make its application prospective, denuding it of its curative and declaratory character. It is absurd to construe Clause (3A) to apply it prospectively and extend benefit to one set of debtors – post Finance Act 2004 – and deny benefit to other taxpayers, both benefactors of BPD Circular 29 – a distinctive class of persons. Clause (3A) possessed all the features and attributes of a curative, declaratory and beneficial enactment, affirming the spirit of the BPD Circular. Retrospectivity of Clause (3A) stood endorsed in terms of the clarification made, by the then CBR, through Circular No.14 of 2004 dated 17.07.2004.
ii) In the wake of deletion of Clause (3A), through Finance Act 2008 and addition of explanation to clause (d) sub-section (1) of section 18 of the Ordinance, 2001, it is evident that no exemption, in terms of sub-section (5) of section 34 and section 70 of the Ordinance, 2001 thereafter was available.
iii) The purpose of BPD Circular No.29 was to facilitate recovery of irrecoverable-cum–nonperforming loans against payment of FSV of the properties / securities, determined according to the mechanism provided under the BPD Circular. It was a one-time opportunity, having cut-off date of 14.04.2003 – which was extended later, still extension has no consequence with respect to the issue at hand. And in terms of Clause (3A) benefit was extended to those debtors, who reached settlements under the BPD Circular No.29. It is axiomatic that such benefit was available and effective from the date of BPD Circular No.29, i.e., 15.10.2002 and applicability whereof could not be denied for the purposes of Tax year 2004.

Conclusion: i) Clause (3A) possessed all the features and attributes of a curative, declaratory and beneficial enactment therefore, retrospective in nature.
ii) In the wake of deletion of Clause (3A), through Finance Act 2008 and addition of explanation to clause (d), it is evident that no exemption, in terms of sub-

section (5) of section 34 and section 70 of the Ordinance, 2001 thereafter was available.

iii) The purpose of BPD Circular No.29 was to facilitate recovery of irrecoverable-cum–nonperforming loans against payment of FSV of the properties / securities, determined according to the mechanism provided under the BPD Circular.

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36. Lahore High Court
Commissioner Inland Revenue Large Taxpayer Unit, Legal Division, Lahore. v. Syed Bhais Lighting Limited.
PTR Ngo. 628/2010
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2249.pdf

Facts: Petitioner filed Reference against order of Appellate Tribunal Inland Revenue whereby taxpayer's appeal was allowed simplicitor by holding that notice issued under section(s) 161/205 of the Income Tax Ordinance, 2001 (Ordinance, 2001) were beyond limitation.

Issue: What is the period of limitation for issuance of notice under section 161 of the Income Tax Ordinance, 2001?

Analysis: No limitation, for the purposes of issuing notice, has been prescribed under section 161 of the Ordinance, which otherwise does not suggest that time for invoking said clause is infinite. In the case of "Habib Bank Ltd Vs. Federation of Pakistan through Secretary, Revenue Division and 5 others" (2013 PTD 1659), learned division bench of Sindh High Court adjudged the question of limitation qua notice issued under section 161 of the Ordinance in the context of sub-section (3) of section 174 of the Ordinance, and dismissed the notice which was beyond the period of five years. Now, limitation period has been enhanced to six years through Finance Act 2010. The ratio laid down in the case of Habib Bank Ltd was reiterated in the case of "Commissioner Inland Revenue Zone-I, LTU Vs. MCB Bank Limited" (2021 SCMR 1325).

Conclusion: The period of limitation for issuance of notice under section 161 of the Income Tax Ordinance, 2001 is six years.

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37. Lahore High Court
The Commissioner Inland Revenue, Zone-I, Gujranwala. Versus M/s Gujranwala Electric Power Company (GEPCO)
PTR No. 112 of 2011
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2375.pdf

Facts: This Reference Application is directed against order of Appellate Tribunal Inland Revenue whereby taxpayer's appeal was allowed. Matter pertains to the Tax Year

2007.

Issues: i) What benefit is extended under clause (11) (xvi) of Part-IV of the Second Schedule to the Ordinance, 2001?
ii) Whether clause (5) of Part-III of the Second Schedule to the Income Tax Ordinance, 2001 has retrospective effect?
iii) What was intention for adding Clause (5) in Part-III of the Second Schedule to the Ordinance, 2001?

Analysis: i) Clause (11) (xvi) of Part-IV of the Second Schedule to the Ordinance, 2001 extended exemption to corporatized entities – including taxpayer - from the provisions of minimum tax, relating to receipts of sales of electricity, from date of their creation to the date of completion of the process of corporatization, which corporatization would be deemed completed till the Tariff was notified.
ii) There is no rational justification to treat Clause (5) of Part-III of Second Schedule having prospective effect, when the intention was to reduce liability. Reduction in the tax liability, as the object of Part-III suggests existence of liability, in the same manner as exemption inherently acknowledges chargeability and liability of tax. Retrospectivity of Clause (5) is inherently inbuilt, and any contrary construction would nullify the object / purposes thereof.
iii) To comprehend the intent to add clause (5) of Part-III a perusal of sub-sections (1) and (2) of section 53 of the Ordinance is imperative. Section 53 of the Ordinance provides exemptions and tax concessions. Clause (c) of sub-section (1) of section 53, envisages reduction in the tax liability, subject to the conditions and extent thereof specified. Preamble of Part-III replicates spirit of clause (c) of subsection (1) of section 53. Intention was to reduce the tax liability of corporatized entities, including the taxpayer.

Conclusion: i) Clause (11) (xvi) of Part-IV of the Second Schedule to the Ordinance, 2001 extended exemption to corporatized entities – including taxpayer.
ii) Clause (5) of Part-III of the Second Schedule to the Income Tax Ordinance, 2001 has retrospective effect
iii) Intention for adding Clause (5) in Part-III of the Second Schedule to the Ordinance, 2001 was to reduce the tax liability of corporatized entities, including the taxpayer.

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38. **Lahore High Court**
Munir Ahmad Bhatti v. Director, FIA Cybercrime Wing, etc.
Writ Petition No. 65490 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC2222.pdf

Facts: This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is directed against order passed by the Ex-officio Justice of Peace, Lahore.

Issue: i) Whether the officers of the FIA can be described as police authorities in terms of section 22-A(6) Cr.P.C.?

ii) Whether the terms "inquiry" and "investigation" are ordinarily taken as synonymous but in law they are distinct?

iii) Whether cybercrimes require preliminary inquiry to ascertain the nature of offence and determine whether sufficient evidence is available to justify prosecution of the accused?

iv) Why legislature often refers to possibilities provided 'by' or 'under' the governing law?

Analysis: i) Section 5(1) of the FIA Act invests the members of the Agency with all the powers that the provincial police have in relation to search, arrest of person and seizure of property and investigation of offences and states that, subject to any order of the Federal Government, they may exercise them throughout the country. Section 5(2) empowers a member of the Agency, who is not below the rank of a Sub-Inspector to exercise any of the powers of an officer incharge of a police station for the purposes of any inquiry or investigation under the Act. In this view of the matter, FIA is fully covered by the expression "the police authorities" occurring in section 22-A(6) Cr.P.C.

ii) The terms "inquiry" and "investigation" are ordinarily taken as synonymous but in law they are distinct. The diction of section 5(1) of the FIA Act and the context in which the terms "inquiry" and "investigation" appear in the said provision indicates that the legislature intended to give them different meanings. The Federal Investigation Agency (Inquiries and Investigation) Rules, 2002 supports this view.

iii) It is by now well settled that registration of FIR is not a condition precedent for commencement of investigation. Inasmuch as cybercrimes require some preliminary inquiry to justify prosecution of the accused, Rule 7(4) of the Investigation Rules talks of legal opinion and prior approval of the Additional Director. It needs to be appreciated that these cannot be rendered unless the authority has some material before it. When a complaint is received at the Cybercrime Reporting Centre the Circle In-charge may allow it to be registered for further processing and nominate an officer therefor. FIR is to be lodged only if it is found that a cognizable offence has been committed under the PECA and that too after completing the requirements of Rule 7(4) but in the case involving non-cognizable offence the Circle In-charge should seek permission of the competent court for investigation.

iv) When a statute provides something in its main text, it can be said to be something prescribed "by" the law. However, if secondary legislation envisaged by the parent law prescribes something (e.g. through statutory rules) it is "under" the parent enactment. The use of the word "under" in a parent law clearly suggests that the legislature left it open for something to be provided either through an amendment in the main statute or the rules framed thereunder.

Conclusion: i) The officers of FIA can be described as police authorities in terms of section 22-A(6) Cr.P.C.

ii) The terms "inquiry" and "investigation" are ordinarily taken as synonymous but in law they are distinct.

iii) Cybercrimes require preliminary inquiry to ascertain the nature of offence and determine whether sufficient evidence is available to justify prosecution of the accused.

iv) When a statute provides something in its main text, it can be said to be something prescribed "by" the law. The use of the word "under" in a parent law clearly suggests that the legislature left it open for something to be provided either through an amendment in the main statute or the rules framed thereunder.

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39. Lahore High Court
Maratab Mukhtar v. Government of the Punjab etc.
Writ Petition No. 27790 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC2305.pdf

Facts: Through this writ petition, the petitioner assailed the order of magistrate, whereby, his request for constitution of PSMB was declined.

Issue: i) Whether it is sufficient for Medical Officer to write only "Yes" or "No" in the column which asks whether there exists possibility of fabrication?

ii) Whether a mere allegation that an action has been taken wrongly is sufficient to establish that it is mala fide?

Analysis: i) The latest instructions issued by the Health Department vide letter dated 13.10.2020 emphasize that where the Medical Officer is of the opinion that any or all the injuries of the person examined by him are fake he must record reasons therefor in unambiguous terms on the basis of the principles of medical jurisprudence. It is not sufficient to merely write "Yes" or "No" in the column which asks whether there exists possibility of fabrication. Albeit this particular instruction is only for the Medical Officer of the First Tier, it must be followed by the DSMB and the PSMB not only for the purposes of Article 59 of the QSO but also to ensure fair trial, the right guaranteed under Article 10A of the Constitution. Even otherwise, it is well settled that the public functionaries should record reasons for their decisions even when the law does not impose a specific duty because fairness requires it.

ii) It is imperative that the courts examine every case with due care. A mere allegation that an action has been taken wrongly is not sufficient to establish that it is mala fide. It must be specific. In other words, mala fides must be pleaded with particularity. Vague and general allegations are not acceptable.

Conclusion: i) Where the Medical Officer is of the opinion that any or all the injuries of the person examined by him are fake he must record reasons in unambiguous terms on the basis of the principles of medical jurisprudence.
ii) A mere allegation that an action has been taken wrongly is not sufficient to establish that it is mala fide.

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40. Lahore High Court
Sobia Nazir v. Province of Punjab, etc.
W.P.No.16478 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC2413.pdf

Facts: Through this constitutional petition, the petitioner has called in question order passed by Dy. Director, Education (Admn), Punjab Workers Welfare Fund, Govt. of the Punjab, Labour and Human Resource Department, Directorate of Education, Lahore, whereby her application for grant of maternity leave was declined.

Issue: Whether the Leave Rules of 1981 providing for 90 days maternity leave with full pay are applicable despite the fact that the same are not provided in terms and conditions of petitioner's service contract?

Analysis: It would not be out of place to mention here that the Article 35 of the Constitution of Islamic Republic of Pakistan, 1973, provides that the State shall protect the marriage, the family, the mother and the child. Article 25 of the Constitution provides that all citizens are equal before law and are entitled to equal protection of law and there shall be no discrimination on the basis of sex and nothing in the said Article shall prevent the State from making any special provision for the protection of women and children. The Article 37 of the Constitution relating to Promotion of social justice and eradication of social evils in part II Chapter II titled "Principles of Policy" through its sub-article (e) provides that the state shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment. Article 9 of the Constitution provides for right to life and Article 14 of the Constitution relates to dignity of man. The refusal of maternity leave to a female may be tantamount to infringe her rights provided under the afore referred provisions relating to fundamental rights and principles of policy, which also provide for the corresponding duties of the State to protect the women and children. Obviously the law does not compel any person to perform an act which is beyond his/her capacity and the same principle is also recognized by Islam.
Another important aspect of the matter that needs consideration is that whether a woman can be forced to perform her duty, which due to advance position of her pregnancy she may not be in a position to perform, whereas the same may also include travelling to her place of posting in her condition for the strict observance

of the time schedule of her duty. The question arises that would it not be a kind of forced labour taken from her in her physical and mental state, when Article 11 of the Constitution prohibits forced labour. Obviously the law does not compel any person to perform an act which is beyond his/her capacity and the same principle is also recognized by Islam.

Conclusion: The Leave Rules of 1981 providing for 90 days maternity leave with full pay are applicable despite the fact that the same are not provided in terms and conditions of petitioner's service contract.

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41. Lahore High Court
Muhammad Hussain v. Judge Accountability Court No. I and four others
Writ Petition No. 4033 of 2022
Mr. Justice Ch. Abdul Aziz, Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2022LHC2315.pdf

Facts: Petitioner through instant Writ Petition has assailed the legality and correctness of an order passed by the learned Judge Accountability Court (trial court) on the basis whereof an application submitted by him for issuance of direction to Assistant Director/Investigating Officer to produce the complaint verification status (CVS) has been dismissed.

Issue: i) What is meant by the term 'fair trial'?

ii) Whether the Constitutional guarantee of fair trial can be denied to an accused?

Analysis: i) The right to a fair trial is one of the most litigated human rights and substantial case law has been established on the interpretation of this human right. A fair trial is a trial which is "conducted fairly, justly, and with procedural regularity by an impartial judge. The right to fair trial is now a fundamental and constitutional right belonging to every citizen of Pakistan. It extends not only to criminal charges but also to civil rights and obligations.

ii) Pursuant to 18th amendment (Act 10 of 2010) Article 10-A(right to fair Trial) was inserted in the Constitution. The honorable Supreme Court of Pakistan in Naveed Asghar's Case (PLD 2021 SC 600) on the importance of right of fair trial was pleased to hold that, "no matter how heinous the crime, the constitutional guarantee of fair trial under Article 10-A cannot be taken away from the accused. It may be pertinent to underline here that the principles of fair trial have now been guaranteed as a Fundamental Right under Article 10-A of the Constitution and are to be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of, or criminal charge against, any person". The right of fair trial by now is globally recognized in the light of Articles 10 and 11 of the Universal Declaration of Human Rights, that has guaranteed that everyone is entitled in full equality to a fair hearing by an independent and impartial tribunal, in the determination of any criminal charge

against him and he shall have all the guarantees necessary for his defense.

Conclusion: i) A fair trial is a trial which is "conducted fairly, justly, and with procedural regularity by an impartial judge.
ii) Constitutional guarantee of fair trial cannot be denied to an accused.

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42. **Lahore High Court**
Mst. Mukhtar Begum, etc. v. Mst. Mumtaz Asghar through L.Rs., etc.
Civil Revision No.3426/2011
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2343.pdf

Facts: The Instant Civil Revision is directed against concurrent findings / decisions, in terms whereof, suit for specific performance of agreement to sell filed by one of the respondents was decreed.

Issues: Whether an agreement to sell is enforceable, in wake of non-performance of condition of raising construction upon the plot as mentioned in the agreement?

Analysis: Intentions are evident from the agreement, which did not provide consequences of default in case of failure to construct. Hence, failure to fulfil condition of construction would not jeopardize or frustrate material component, relating to the sale of lease hold rights, and enforceable *per se* irrespective of alleged failure to construct…..Undisputedly, sale consideration agreed would remain unchanged. Section 16 of the Specific Relief Act, 1877 provides an answer which is an exception to section 17 of the Act, 1877 – which bars specific performance of part of the contract. It is evident from the perusal of the agreement that despite non-fulfillment of a condition of raising construction – which failure could not torpedo the enforceability of the agreement - a decree for specific performance can, independently, be passed, based on consideration agreed for sale.

Conclusion: In the absence of provision of consequences for failure to construct, the agreement is enforceable by splitting consideration component from the obligation of condition of construction, former being enforceable independently.

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43. **Lahore High Court**
Evacuee Trust Property Board and others v. Muhammad Tufail and others
Civil Revision No. 552/2010
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2323.pdf

Facts: Respondents challenged orders passed by the Chairman Evacuee Trust Property Board before the Civil Court, wherein objections were raised regarding the jurisdiction of Civil Court in terms of section 14 of Act 1975. Learned Civil Judge dismissed the suits and said decrees were reversed by learned appellate court, and consequently the suits filed by the respondents were decreed. Hence these civil

revision petition.

Issues: Whether civil court in terms of section 14 of Act 1975 has jurisdiction in the matter when validity of transfers was decided by the Chairman?

Analysis: It is apparent from the perusal of the section 10 of Act, 1975 that Chairman is vested with the power to determine the factum of validity of transfers – to which extent jurisdiction of the Civil Court is restricted. Question of applicability of section 8 does not arise in the circumstances, and simultaneously disagreed with assertion that matter was triable by the Civil Court, after exercise of powers by the Chairman under section 10 of Act, 1975. The question of powers exercisable by the Chairman and exclusivity of jurisdiction, to the exclusion of the jurisdiction of Civil Court was raised and settled in the case of "Evacuee Trust Property Board Vs. Mst. Zakia Begum and others" (1992 SCMR 1313). The determination carried out by the Chairman Evacuee Trust Property Board is not challengeable before the Civil Court, in terms of section 14 of Act, 1975, when powers were exercised by the Chairman under section 10 of Act 1975. The remedy of the respondent against said order is either available under sections 16 or 17 of the Act, 1975.

Conclusion: Civil court in terms of section 14 of Act 1975 has no jurisdiction in the matter when validity of transfers was decided by the Chairman.

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44. **Lahore High Court**
Ghulam Nabi v. Additional Sessions Judge etc
I.C.A No. 40 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9612.pdf

Facts: Through instant Intra Court Appeal, appellant has challenged the validity of order dated passed by learned Single Judge of this Court in-Chamber, whereby, his writ petition was dismissed.

Issue: Whether Ex-Officio Justice of Peace while deciding the application under section 22-A, Cr.P.C, performs the duties on judicial or administrative side and can burden the petitioner with fine/cost?

Analysis: While dealing with the application under section 22-A Cr.P.C, the learned Sessions Judges/Addl. Sessions Judges, do not perform their duties on the judicial side, rather, they function in their administrative capacity as Ex-Officio Justice of Peace. The learned Ex-Officio Justice of Peace was not empowered to impose fine/cost upon the appellant/petitioner while rejecting his application filed under section 22-A Cr.P.C.

Conclusion: Ex-Officio Justice of Peace while deciding the application under section 22-A,

Cr.P.C, functions in administrative capacity and cannot burden the petitioner with fine/cost.

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45. Lahore High Court
Muhammad Rafique v. Muhammad Akram, etc.
Case No. Crl. Appeal No.65/2017
Mr. Justice Sadiq Mahmud Khurram & Mr. Juatice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC2148.pdf

Facts: Through instant appeal acquittal of one of the respondents, who was tried for offence under section 302, PPC has been assailed.

Issues: What are the principles governing an appeal against acquittal?

Analysis: The esteemed Supreme Court of Pakistan expounded the guidelines regarding an appeal against acquittal which have been reiterated and consistently followed by the apex Court and this Court which are summarized as below:

1. Parameters to deal with the appeal against conviction and appeal against acquittal are totally different because the acquittal carries double presumption of innocence and same can be reversed only when found blatantly perverse, illegal, arbitrary, capricious, speculative, shocking or rests upon impossibility.
2. It is well settled law by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such double presumption of innocence.
3. Acquittal recorded by the trial court based on cogent reasons and not perverse would not be interfered. Appellate court should not lightly interfere with judgment of acquittal unless it arrives at a definite conclusion that evidence has not been properly analyzed and court below acted on surmises or conjectures.
4. Acquittal cannot be reversed merely because a contra view is possible, where the findings of the trial court are not unreasonable, improbable, perverse or patently illegal. Where on the basis of evidence on record two views are reasonably possible, appellate Court should not substitute its view in the place of that of trial Court.
5. The presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.
6. Judgment of acquittal can be reversed where trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record.
7. The appellate Court, while dealing with an appeal against acquittal, must proceed with the matter more cautiously and only if there is absolute certainty qua the

guilt of accused considering the evidence on record, acquittal can be interfered with or disturbed.

Conclusion: The above mentioned are the principles which govern an appeal against acquittal.

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46. **Lahore High Court**
Bagga etc. v. The State etc.
Crl. Appeal No.441-J/2018 etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC2172.pdf

Facts: Appellants challenged their conviction and sentence through their respective appeals while learned trial court forwarded Capital Sentence Reference under Section 374, Cr.P.C. for confirmation or otherwise of sentences of death awarded to the convicts.

Issues: i) Whether evidence of disbelieved witnesses can be made basis of conviction?
ii) What is the evidentiary value of evidence of witness who makes dishonest improvements in his statement before the court?
iii) How investigation in police encounter should be conducted?
iv) Whether recovery of weapon of offence is a direct evidence or a corroborative piece of evidence?
v) What should be the standard of proof in police encounter case?

Analysis: i) It is an established proposition of law laid down in catena of decisions of apex Court that where same set of witnesses was disbelieved qua number of accused persons implicated in the case, it cannot be made foundation of conviction of rest of the accused persons in absence of strong and independent corroboration, which, we are afraid, is conspicuously missing in this case.
ii) Where a witness makes dishonest improvements in his statement before the court, his testimony is not worthy of reliance in absence of strong and independent corroboration.
iii) Protection of right to fair trial as envisaged under Article 10-A of the Constitution is available at pre-trial proceedings including investigation. It was held in Babubhai by the Supreme Court of India while elaborating the connection of fair investigation with right to fair trial. Same view was reiterated by the Courts in number of judgments emphasizing that investigation in case of police encounter should be conducted by the independent and disinterested investigation agency and not by the aggrieved party i.e. police. In cases of police encounter, entrusting the investigation to the police would not lead to any fair outcome and would lack credibility.
iv) Recovery of weapon of offence is only a corroborative piece of evidence and in absence of substantive and direct evidence it is not sufficient to hold an accused guilty of the offence charged. When substantive evidence produced by the prosecution fails to connect an accused person with the commission of crime or is disbelieved then corroborative evidence would be of no help to the prosecution as

the corroborative evidence cannot by itself prove the guilt of an accused.

v) In the case of police encounter, the standard of proof should have been far higher as compared to any other criminal case as in such cases state is directly aggrieved, therefore, bound to prove its case beyond every possible reasonable doubt.

Conclusion: i) Evidence of disbelieved witness cannot be made foundation of conviction in absence of strong and independent corroboration.

ii) Where a witness makes dishonest improvements in his statement before the court, his testimony is not worthy of reliance in absence of strong and independent corroboration.

iii) Investigation in case of police encounter should be conducted by the independent and disinterested investigation agency and not by the aggrieved party i.e. police.

iv) Recovery of weapon of offence is only a corroborative piece of evidence.

v) In police encounter, the standard of proof should have been far higher as compared to any other criminal case.

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47. Lahore High Court
Abdul Haq v. Akram-ul-Haq etc
Civil Revision No.137 of 2017
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9528.pdf

Facts: Petitioner challenged the validity of judgments and decree passed by learned trial court as well as learned Addl. District Judge, whereby suit of partition was decreed as per report of local commission. He prayed that their private partition be declared final.

Issues: i) What is the main purpose of partition suit?

ii) How court has to proceed on submission of report by local commission submitted in case of partitionable and un-partitionable property?

iii) What are the requirements to be observed in case of partitionable property?

iv) How the court should decide the objections filed by the co-sharer?

Analysis: i) The main purpose of partition suit is to settle down the certain part/share of each sharer, according to their entitlement. So, the responsibility of court is to see, that nobody/share-holder be deprived in any way from his/her legal right.

ii) The local commission, if submits that the property is partitionable, then it proposes the mode of the partition, the parties have right to file their objections, if not suits them, then the court has to decide these objections. If the commission submits, that the property is not partitionable, then the same was put to auction under the rules. The amended Punjab Partition of Immovable Property Act, 2012, also proposes, internal auction and external auction as required under section 10 & 11of said Act.

iii) In case of partitionable property, the court is bound to see that the proposed shares are equal in all respect. (i) The valuation of the property is equal of each

sharer, accordingly to his/her share. (ii) Right of easement are equally available to all sharers.(iii) All sharers have the equal opportunity to utilize theirs shares. (iv) The future aspect of each sharer is equal in all respect.
iv) If objections are filed by the sharers, the court must settle these objections keeping in view the wisdom maintained in the Partition Act. The main purpose is to permanently settle the share of each sharer according to their entitlement.

Conclusion: i) The purpose of partition suit is to settle down the share of each sharer, according to their entitlement.
ii) If the local commission submits that the property is partitionable, then it proposes the mode of the partition and if the commission submits, that the property is not partitionable, then the same is put to auction under the rules.
iii) In case of partitionable property, the court is bound to see that the proposed shares are equal in all respects.
iv) The court must settle the objections keeping in view the wisdom maintained in the Partition Act.

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48. Lahore High Court
Noor Muhammad v. Mst. Umar Wadi etc
C.R. No.466-2016/BWP
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9518.pdf

Facts: This civil revision has been directed against the judgment and decree passed by learned Civil Judge vide which, suit for declaration filed by the respondents was decreed and the judgment and decree passed by learned Additional District Judge whereby, the appeal filed by the petitioner assailing the above said judgment and decree has been dismissed.

Issues: i) Whether the case should be remanded when comprehensive issues have been framed and decided?
ii) Whether the appellate court can determine the case finally as per the requirement of law?
iii) What is the essential element of a judgment?
iv) What is meant by a judgment?
v) Whether it is necessary for the appellate court to record its findings issue-wise?
vi) On whom burden to prove the ingredients of a valid gift lies and can he/she have the benefit of weaknesses of evidence of other side?

Analysis: i) If the comprehensive issues have been framed and the evidence has been led on those issues, the learned trial court had decided the issues while appreciating the evidence on record and even if the first appellate court has appreciated the issues in view of the already recorded reasons recorded by the learned trial court, it will not be a case of remand because the reasons already had been recorded were

found correct by the first appellate court and on the same reasons, the first appellate court has dismissed the appeal or revision.

ii) Where evidence on record is sufficient, appellate court may determine the case finally and there is no need to remand the case to the learned trial court.

iii) There should be statement of grounds for decision. The most important ingredient of a valid judgment is the result, reasons or grounds of the decision because the validity of the judgment is to be seen from the reasoning and the same is to be challenged by the aggrieved party.

iv) It means judicial decision of a court or of a judge, it need not necessarily deal with all matters in issue in the suit, it may determine all issues and matters in the controversy and result in final disposal of the suit…

v) It is not required by the appellate court to record finding issue-wise. And it is sufficient for the court to deal with all issues as were matters for disposal of the controversy accepting those abandoned by the appellants. The appellate court recording its findings on all the points raised before it without discussing the issue separately cannot be said to have committed any illegality or error..

vi) The beneficiary of gift has to prove that all three ingredients of a valid gift support him under the circumstances; the petitioner cannot have the benefit of the weaknesses of the respondents' evidence.

Conclusion: i) The case should not be remanded when comprehensive issues have been framed and decided.

ii) The appellate court may determine the case finally.

iii) Essential element of judgment is that there should be statement of grounds for decision.

iv) Judgment means judicial decision of a court or of a judge.

v) It is not required by the appellate court to record finding issue-wise.

vi) Beneficiary has to prove that all three ingredients of a valid gift and the beneficiary cannot have the benefit of the weaknesses of the evidence of other side.

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49. **Lahore High Court**
Mst. Farida Bibi etc. v. Judge Family Court etc.
Writ petition No.18625 of 2016
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC1981.pdf

Facts: Through instant constitutional petition, the petitioners seek enhancement of maintenance allowance, partly decreed by learned Judge Family Court.

Issues: i) Whether a disobedient lady/plaintiff having a suckling baby with her can be deprived from the maintenance allowance?

ii) Whether the maintenance allowance of the minor can be waived by the mother or any of the blood relative?

Analysis: i) The question before this Court is that a disobedient lady living separately without any reason should be refused to pay the maintenance allowance for that period she had not performed her matrimonial obligations but here this is a different situation. She had been feeding the minor during the said period . In these circumstances, the father of the minor was under obligation to provide the maintenance to the lady who was feeding his child as per Holly Verse 233 of Surah Al-Baqara.

ii) It is legal as well as moral right of every minor/child that he be brought up in healthy atmosphere and be brought up with the feelings of self-respect alongwith educational necessities and it is duty of the father to bring up his children as per his financial status. (…) It is settled principle of law that nobody/parents or any blood relative can waive the right of any minor regarding his maintenance allowance which has been given by „Shariah".

Conclusion: i) Father is responsible to maintain wife or ex-wife who is feeding his child.

ii) Nobody/parents or any blood relative can waive the right of minor regarding his maintenance allowance which has been given by "Shariah".

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50. Lahore High Court
Suriya Nafees v. Muhammad Ramzan Shahid etc.
W. P. No.9545 of 2016.
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC1989.pdf

Facts: Through instant petition, petitioner has called in question the legality of order passed by learned Judge Family Court and judgment passed by learned Additional District Judge, whereby claim of the petitioner for recovery of personal belongings was dismissed.

Issue: Whether Family Court has jurisdiction to entertain the suit regarding those articles/belongings which were purchased by the lady herself after the marriage?

Analysis: Schedule mentioned in the Family Court Act, 1964, clearly empowers the Family Court to hear suits filed by the lady regarding personal belongings or personal property which have been allegedly purchased by her after marriage while residing with her husband but those are also subject to prove.

Conclusion: Family Court has jurisdiction to hear suits regarding personal belongings or personal property which are purchased by lady herself after marriage.

51. Lahore High Court
Mst. Kalsoom Akhtar v. The State etc.
PSLA No.25 of 2019
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9641.pdf

Facts: Through instant PSLA petitioner seeks Special Leave to file an appeal against the acquittal of respondents no. 3 to 6 passed by learned Add. Sessions Judge in private complaint filed under sections 302, 365, 148, 149 & 34, PPC.

Issue: In what situations the acquittal order can be interfered with by the appellate court?

Analysis: A judgment of acquittal cannot be upset sparingly as the accused would enjoy double presumption of innocence, one relating to the pre-judgment stage, that every accused is innocent till proved otherwise and the other one through a judicial verdict. The well-settled principle of law is that a judgment of acquittal can only be interfered with if it looks wholly perverse, capricious, arbitrary, artificial, speculative or based on misreading or non-appraisal of the evidence on record, which incidentally is not the situation herein.

Conclusion: Judgment of acquittal can only be interfered with if it looks wholly perverse, capricious, arbitrary, artificial, speculative or based on misreading or non-appraisal of the evidence on record.

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52. Lahore High Court
Sumaira Ilyas v. Govt. of Punjab etc.
W.P. No.3012 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9514.pdf

Facts: Through this writ petition the petitioner sought direction to the respondents to issue a formal appointment in her favor against the post of midwife in the respondents' department under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 after the death of her mother.

Issues: i) Whether Rule 17-A of PCS (A&CS) Rules, 1974 confines that committee should recommend the candidate for the post applied for?
ii) From which date the age of an applicant would be consider for any post?
iii)Whether late convening of meeting of scrutiny committee could be an excuse/objection for ousting a candidate being overage?

Analysis: i) The Rule 17-A of PCS (A&CS) Rules, 1974 does not confine that committee should recommend the candidate for the post applied for rather it says that when candidate becomes entitled to apply for the post, he/she should be adjusted immediately under the policy of the Government.
ii) It was always the policy of the government to consider the age from the last

date of filing of application for any post.

ii) The constitution of the committee for recommendation of any candidate eligible for the post is internal management of the department and with the notification it has no concern. A person cannot be ousted on the ground that meeting of the committee was not convened for recommendation by the department and when it was convened the age of the candidate was over.

Conclusion: i) Rule 17-A of PCS (A&CS) Rules, 1974 does not confine that committee should recommend the candidate for the post applied for rather it says that when candidate becomes entitled to apply for the post, he/she should be adjusted immediately under the policy of the Government.

ii) The age of applicant was always considered from the last date of filing of application for any post.

iii) Late convening of meeting of scrutiny committee could not be an excuse/objection for not appointing a person due to becoming overage during that period.

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53. **Lahore High Court**
Mst. Sheedan Begum etc v. Muhammad Usman Khan etc
R.S.A. No.21 of 2011
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9606.pdf

Facts: Appellants challenged the orders passed by trial court and appellate court whereby application under order VII rule 11 C.P.C. was accepted and plaint was rejected.

Issues: i) What should be the fate of a suit filed after a period of limitation where limitation affects the locus standi of claimant and rights of other persons?

ii) What is the obligation of the Court regarding determining the point of limitation?

Analysis: i) This is admitted fact that suit was instituted after more than 30/40 years of the transfer of suit property, whereas as per Article 120 of the Limitation Act, 1908, maximum six years are provided to seek such right but appellants remained silent for decays and did not agitate or assailed any mutation, gift deed or Tamleek specially during life time of Muhammad Akram, therefore, wisdom of the statute is that such matters where limitation affects the rights of other person and also where prima facie locus standi of the claimant persons is doubted such matters should be straight away refused to entertain.

ii) As per mandate of section 3 of Limitation Act, Court is under obligation to scrutinize the plaint, the application and the appeal on the point of limitation regardless of the fact that the said point has been agitated by either party or not. It is an established principle that law of limitation is not merely a formality/technicality, rather said statute furnishes certainty and regularity to the

human affairs, matters and dealings. It is also well settled principle that law helps the vigilant and not the indolent. Furthermore, delay of each and every day has to be explained satisfactorily, otherwise the delay cannot and should not be condoned.

Conclusion: i) A suit filed after a period of limitation where limitation affects the locus standi of claimant and rights of other persons should be straight away refused to be entertained.

ii) Court is under obligation to scrutinize the plaint, the application and the appeal on the point of limitation regardless of the fact that the said point has been agitated by either party or not.

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54. **Lahore High Court**
Sadia Iqbal v. Umar Nasim Ahmed etc.
Writ Petition No.14646 of 2016
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC2028.pdf

Facts: Petitioner challenged the judgment passed by learned Addl. District Judge, whereby the orders passed by learned Executing Court were set aside to redetermine the value of gold ornaments.

Issues: Whether first Appellate Court has the jurisdiction to entertain the appeal against the interim orders of Executing Court as per provisions of section 14(3) and 17 of the West Pakistan Family Court Act 1964?

Analysis: The West Pakistan Family Courts Act 1964 is a special law and all the proceedings are conducted under the said Act. Section 17 of the West Pakistan Family Court Act 1964 provides that C.P.C and Qanun-e-Shahadat Order are not applicable to the proceedings of Family Court in order to decide the matters within the shortest possible time with permanent solution. Section 14 of the West Pakistan Family Court Act 1964 provides that only one right of appeal has been provided by the Act against the final order of the Family Court, whereas no provision of appeal or revision shall lie against an interim order of the Family Court.

Conclusion: First Appellate Court has no jurisdiction to entertain the appeal against the interim orders of Executing Court as per provisions of section 14(3) and 17 of the West Pakistan Family Court Act 1964.

55. Lahore High Court
Humayun Mirza v. SHO etc.
W.P. No. 41397 of 2020
Mr. Justice Safdar Saleem Shahaid
https://sys.lhc.gov.pk/appjudgments/2022LHC1958.pdf

Facts: Through this constitutional petition, petitioner has challenged the validity of order passed by learned Addl. Sessions Judge/ Ex-Officio Justice of Peace, whereby direction was not issued to S.H.O concerned for registration of FIR against the proposed accused persons/respondents.

Issue: Whether Muccadam appointed by the Bank, falls within the definition of customer as given in the Financial Institutions (Recovery of Finances) Ordinance, 2001?

Analysis: Muccadam neither comes within the definition of Financial Institutions (Recovery of Finances) Ordinance, 2001 nor as customer, rather, they had been appointed as Muccadam by the Bank for the purpose of security/safety of the pledged stock of Sugar Mill. Admittedly the respondents/proposed accused are the employees of a company carrying on business of Muccadam. The Muccadam does not come within the definition of "customer" rendering the provisions of Financial Institutions (Recovery of Finances) Ord. 2001; rather it is applicable to the Sugar Mill which had obtained a loan facility from the Bank. The Muccadam by virtue of its appointment becomes an agent of the Bank and has to act in accordance with such agency. However, if the agent commits a criminal act, then such criminal act comes under the general law (under the jurisdiction of Pakistan Penal Code and Criminal Procedure Code) and not under any Special law.

Conclusion: Muccadam appointed by the Bank, does not fall within the definition of customer as given in the Financial Institutions (Recovery of Finances) Ordinance, 2001 and if any employee of Muccadam Company commits a criminal act, then such criminal act comes under the general law.

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56. Lahore High Court
Mst. Razia Sultana v. Judge Family Court etc.
W.P. No. 19392 of 2016
Mr. Justice Safdar Saleem Shahaid
https://sys.lhc.gov.pk/appjudgments/2022LHC1964.pdf

Facts: Through this constitutional petition, the petitioner has challenged the validity of order whereby learned Judge Family Court / Executing Court directed the petitioner to receive the dowry articles as per list annexed with the file and declined the claim of the petitioner to hand over its alternate price.

Issue: i) Whether holder of a decree in Family matter of dowry articles can insist for the payment of alternative value if the articles have been found to be not capable of delivery?
ii) Whether a decree for recovery of dowry articles including gold ornaments

would be lawful and executable even if it does not state the monetary value payable in case the movable property is not delivered?

Analysis: i) During the proceedings of the execution petition, the petitioner took a specific stance that her dowry articles were replaced with the original one and she claimed to pay the price of the said dowry articles as alternative. In the case reported as Muhammad Akram vs Mst. Shahida Parveen and others (PLD 2004 Lahore 249) it has categorically been held that the decree holder can insist upon the value of the dowry articles and a certain amount of money should be allowed as an alternative if delivery of the chattel in dispute cannot be had; if the goods are capable of delivery, they must be delivered, if they are not capable of delivery then assessed damages should be paid.
ii) The provisions of Order XX, Rule 10, are not stricto sensu applicable to a decree obtained in a family suit in view of section 17 of the West Pakistan Family Courts Act, 1964. There is also no provision in the West Pakistan Family Courts Act, 1964, similar or corresponding to Order XX, Rule 10, C.P.C. Thus, a decree passed under the West Pakistan Family Courts Act, 1964, for recovery of dowry articles including gold ornaments or other movable property would be lawful and executable even if it does not state the monetary value payable in case the movable property is not delivered.

Conclusion: i) Holder of a decree in Family matter of dowry articles can insist for the payment of alternative value if the articles have been found to be not capable of delivery.
ii) A decree for recovery of dowry articles including gold ornaments would be lawful and executable even if it does not state the monetary value payable in case the movable property is not delivered.

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57. **Lahore High Court**
Dr. Shafi-ur-Rehman Afridi v. The State etc.
Crl. Misc. No.77754-B of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC1948.pdf

Facts: The petitioners seek post arrest bail in a case FIR registered for offences u/s 420, 468 , 471, 109, PPC read with section 5 (2) of Prevention of Corruption Act, 1947 & Section 3/4 of Anti-Money Laundering Act 2010.

Issues: i) Who is authorized to appoint member of the commission under The Pakistan commissions of Inquiry Act, 2017?
ii) Whether FIA can investigate and deal with the matter falling into the domain of OGRA Ordinance, 2002?

Analysis: i) Under section 3 of The Pakistan commissions of Inquiry Act, 2017, only the Federal Government is authorized to appoint member of the commission and this Act does not envisage any right of the Federal Government to delegate that power over to any subordinate body.
ii) OGRA Ordinance, 2002 is not a part of the scheduled offences and it provides a complete mechanism for the filing of the complaint and has overriding effect over the other laws. The FIA Act, 1974 only deals with the matters of scheduled offences. So, the FIA has no jurisdiction to deal with such matters where only OGRA has exclusive jurisdiction.

Conclusion: i) Only the Federal Government is authorized to appoint member of the commission under The Pakistan commissions of Inquiry Act, 2017.
ii) OGRA Ordinance, 2002 is not a part of the scheduled offences and it has overriding effect over the other laws. So, FIA has no jurisdiction to deal with any matter where OGRA has exclusive jurisdiction.

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58. **Lahore High Court**
Atta Muhammad etc. v. Shah Muhammad etc.
RSA No. 14-D of 2013
Mr. Justice Safdar Saleem Shahaid
https://sys.lhc.gov.pk/appjudgments/2021LHC9631.pdf

Facts: Through this RSA the petitioner has challenged the judgment of the Learned Additional District Judge whereby his suit for Pre-emption was dismissed which was originally decreed by the learned Trial Court.

Issue: i) How right of pre-emption would be exercised?
ii) Whether it is mandatory for pre-emptor to disclose particulars and detail of date, time and place of receiving information about sale and making Talab-e-Mawatibat and also the name of witnesses in whose presence such Talab was made?
iii) Whether the Talabs can be made by attorney on behalf of pre-emptor and also by the pre-emptor to a person other than the vendee in his absence?

Analysis: i) Right of- pre-emption of a person shall be extinguished unless such person makes demand of pre-emption by fulfilling three talabs i.e Talab-e-Mawatibat, Talab-e-Ishhad and talab-e-Khasumat. Talab-e-Mawatibat means immediate demand by a pre-emptor in the sitting area meeting in Majlis in which he comes to know about the sale, declaring his intention to exercise the right of pre-emption. Talab-e- Ishhad means demand by establishing evidence and khasomat means demand by filing suit. When the fact of sale comes in the knowledge of pre-emptor through any source he shall make talab-e- Mawatibat.
ii) The case cited as "PLD 2007 Supreme Court 302”, is very clear on the point that it was mandatory to disclose particulars and detail of date, time and place of

receiving information about sale and making Talab-e-Mawatibat and also named the witnesses in whose presence such Talab was made in his plaint in a suit for possession by way of pre-emption. The contradiction in mentioning the same regarding date of knowledge and non-mentioning the time of information itself speaks that the Talab-e-Mawatibat was not made in accordance with law.

iii) Right of pre-emption is not a vested right; it accrues under the special circumstance through a special law. A person having general power of attorney can certainly make the Talab-e-Ishad to the vendee but a person having special power of attorney of pre-emptor having no power to agitate the Talab-e-Ishad cannot make Talab to the vendee. Similarly, the person having general power of attorney in his favour on behalf of the vendee cannot reply for Talab-e-Ishad or any other Talab to the pre-emptor but on the other hand if the person having special instructions regarding the replying of the Talabs can certainly reply the Talabs of pre-emptor.

Conclusion: i) Right of- pre-emption can be exercised by making demand of pre-emption by fulfilling three talabs i.e Talab-e-Mawatibat, Talab-e-Ishhad and talab-e-Khasumat.
ii) It is mandatory for pre-emptor to disclose particulars and detail of date, time and place of receiving information about sale and making Talab-e-Mawatibat and also the name of witnesses in whose presence such Talab was made.
iii) The Talabs can be made by general attorney on behalf of pre-emptor but cannot be made by the pre-emptor to general attorney of the vendee in his absence unless the attorney is specifically authorized to reply the Talabs.

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59. **Lahore High Court**
Ahmed Sher etc v. Khuda Bakhsh etc
R.S.A. No.137 of 2012
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC2015.pdf

Facts: Suit for pre-emption was dismissed by the learned trial court whereas the Learned Additional District Judge allowed the appeal and decreed the suit of the respondent for pre-emption. Through this RSA the judgment at variance has been assailed by the appellants.

Issues: i) How Talb-e-Muwathibat is to be performed?
ii) What is the legal status of any portion of statement which has been stated by the witness, if not cross-examined?
iii) How pre-emptor has to establish performance of Talb-e-Ishhad?

Analysis: i) Bare reading of section 13 of Pre-emption Act clears that the pre-emptor has to disclose the source when, how and from whom he attained the knowledge of sale of the property under pre-emption. Then he has to prove that he made the immediate demand/Jumping demands as required to show his intention to pre-

empt the land and this jumping demand should be immediately made in presence of the witnesses in the same Majlis where he came to know about the impugned sale.

ii) It is settled principle of law that any portion of statement which has been stated by the witness, if not cross-examined will be considered to be admitted.

iii) It was mandatory to mention the names of witnesses of notices Talb-e-Isshad in the plaint. It was the duty of the pre-emptor to have produced the postman through whom the notice was allegedly served upon the vendee to prove that the notices were actually sent to him at the right address and he received it or refused to receive it; and that in order to establish Talb-e-Ishhad the pre-emptor has to prove that notice was sent to the vendee through registered post acknowledgment due card and its acknowledgment receipt was received by the pre-emptor after its service on the vendee. Only sending of the notices through registered envelope is not sufficient, the intention of law is to ensure that those were sent to the proper address and "served" or "not served" report will show that the condition of Talb-e-Ishhad was fulfilled or not.

Conclusion: i) In Talb-e-Muwathibat pre-emptor has to declare his intention to exercise the right of preemption in the sitting or meeting/Majlis in which he has come to know of the sale in presence of witnesses.

ii) When any portion of statement which has been stated by the witness, if not cross-examined will be considered to be admitted.

iii) In order to establish Talb-e-Ishhad the pre-emptor has to prove that notice was sent to the vendee through registered post acknowledgment due card and its acknowledgment receipt was received by the pre-emptor after its service on the vendee.

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60. **Lahore High Court**
Ali Raza v. The State etc
Cr.Misc. No.2873-B of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9488.pdf

Facts: Petitioner sought post arrest bail in a case pertaining to occurrence of murder of complainant's son.

Issues: What factors make the case of petitioner of further inquiry?

Analysis: Petitioner was implicated on basis of complainant's supplementary statement recorded after one month & 17 days after the occurrence, no allegation against the petitioner that he caused injury on body of deceased and in identification parade no specific role was assigned to petitioner during the occurrence by the PWs, yet features of the petitioner were not described by the complainant in the FIR are factors which made the case of petitioner falls in ambit of further inquiry.

Conclusion: Implications of accused on supplementary statement after a considerable long time, non-assigning of specific role to accused during Identification parade and non-mentioning of features of accused in FIR by complainant make the case of accused one of further inquiry.

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61. **Lahore High Court**
Habib Bank Limited v. Federation of Pakistan etc
Writ Petition No.3848 of 2021
Mr. Justice Safdar Saleem Shahid.
https://sys.lhc.gov.pk/appjudgments/2021LHC9480.pdf

Facts: Petitioner/Bank through writ petition has challenged the validity of orders of Banking Mohtasib Pakistan & President's Secretariat, Islamabad, whereby relevant complaint was decided and petitioner was advised to make good the loss by crediting certain amount to complainant's account.

Issues: What would be status of order of Banking Mohtasib Pakistan functioning as administrative body, but deciding rights between parties in a complaint on judicial side whilst exercising powers U/S 82-B of Banking Companies Ordinance, 1962?

Analysis: Section 82-A of the Banking Companies Ordinance, 1962 shows that the jurisdiction conferred upon Banking Mohtasib relates primarily to enquire into the complaints filed by the customers regarding malpractice & mal-administration of the banks/financial institutions & their officials with regard to the banking laws, regulations & policy directives issued by the State Bank of Pakistan. Banking Mohtasib Pakistan has power only to entertain the complaint, to formulate the recommendation in view of inquiry or report and then to submit it before the concerned authority. The courts are constituted under article 175 of The Constitution of Pakistan, 1973 and it provides the jurisdiction that can be exercised by the courts only. The powers under article 175 of the Constitution of Pakistan, 1973 and the powers of Banking Mohtasib Pakistan under section 82-B of the Banking Companies Ordinance, 1962 are altogether different and it cannot be conferred upon the administrative body. The matter to decide the rights or penalizing the parties is specific prerogative of the courts. Banking Mohtasib Pakistan by exercising his capacity under section 82-B of the Banking Companies Ordinance 1962 cannot decide the matter as it relates to the judicial side and for that the banking courts have been constituted under the law to deal with such matters.

Conclusion: Order of Banking Mohtasib Pakistan, functioning as an administrative body, passed on judicial side deciding rights between parties whilst exercising powers U/S 82-B of Banking Companies Ordinance, 1962, would be against the law as well as in violation of the article 175 of the Constitution of Pakistan.

62. **Lahore High Court**
Rukhsana Ambreen v. District Judge etc.
Case No. W. P. No.3462 of 2015
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9571.pdf

Facts: The petitioner/plaintiff has challenged the judgment & decree passed by Judge Family Court, whereby her suit for recovery of maintenance was partially decreed and she was declared entitled to recover maintenance allowance only for the period of "Iddat" whereas her claim for recovery of Rs. 3,00,000/- according to the condition mentioned in column No.19 of Nikah Nama was dismissed.

Issues: Whether a wife is entitled to past maintenance allowance subsequent to desertion when a husband did not make any effort for reconciliation?

Analysis: As per Sharia Law, a muslim wife who wilfully refused to perform the matrimonial obligation towards her husband is not entitled for any kind of maintenance allowance except the maintenance allowance for the period of "Iddat". Islam has given many rights to the spouses to care for each other but so-far-as the matter of maintenance is concerned the husband has to pay and only bar not to pay the maintenance is disobedience of the lady and refusal of the lady to perform the matrimonial obligation but in this proposition neither any evidence nor through any other document, the efforts have been shown by the Respondent/Husband to reconcile the matter, therefore, the lady was entitled for the recovery of past maintenance allowance.

Conclusion: A wife is entitled to past maintenance allowance subsequent to desertion when a husband did not make any effort for reconciliation.

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63. **Lahore High Court**
Babar Rasool v. Addl. District Judge etc
W.P. No.23372 of 2020
Miss. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC1938.pdf

Facts: Petitioner called in question the judgments and decrees of learned trial and appellate court where the suit of conjugal rights was dismissed and the suit of the respondent no.03/wife for recovery of maintenance allowance and dowry articles was decreed by the learned trial court whereas the learned appellate court modified the decree by enhancing the maintenance allowance and excluding some of the dowry articles.

Issues: When audio and video evidence cannot be relied upon?

Analysis: Courts below should have consider and appreciate all the evidence produced by the parties. However, the learned trial Court while recording evidence of the

parties has accepted the USB produced by the petitioner, but neither has confronted the same to the witnesses nor discussed to have viewed the same by playing it. The learned appellate Court also did not appreciate the evidence with regard to production, acceptance and playing of USB to view the pictures.

Conclusion: The audio and video evidence without production, acceptance and playing of USB to view the pictures and confronting the same to the witness cannot be relied upon.

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64. Lahore High Court
Saleem Mehmood v. Ch. Saeed Asghar
R.F.A. No.74319 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC1993.pdf

Facts: The appellant has challenged the judgment and decree, whereby Additional District Judge, while rejecting the application for leave to defend filed by the appellant, decreed the suit filed by the respondent under Order XXXVII, CPC, for recovery on the basis of cheque.

Issues: i) Whether in a suit under order XXXVII CPC, the limitation period for filing of leave to defend would run from the date of appearance of the defendant or from the date of receiving copy of the plaint?
ii) Whether a litigant can be made to suffer for act/omission of court?

Analysis: i) Admittedly, suit filed by the respondent is summary in nature under Order XXXVII, CPC, and summons in such matters were required to be issued on Form IV of Appendix B, C.P.C. and it was imperative that copy of the plaint and all the annexures should be sent to the defendant along with the summons and without fulfilment of that requirement, it could not be held that service was properly effected. In the circumstances, even if the defendant has been served with summons, without copy of the plaint, and he has appeared before the Court, the limitation would not run till the time he is supplied with a copy of the plaint for the reason that only on provision of copy of plaint he would gain knowledge as to what nature of suit is pending against him. Unless the defendant is handed over copy of the plaint for filing of leave to defend as required by law, no delay or default can be attributed to him.

ii) There is a well-known maxim "Actus Curiae Neminem Gravabit" (an act of the court shall prejudice no man). As such, where any court is found to have not complied with the mandatory provision of law or omitted to pass an order, required by law in the prescribed manner then, the litigants/parties cannot be taxed, much less penalized for the act or omission of the court. The fault in such cases does lie with the court and not with the litigants and no litigant should suffer

on that account unless he/they are contumaciously negligent and have deliberately not complied with a mandatory provision of law.

Conclusion: i) In a suit under order XXXVII CPC, the limitation period for filing of leave to defend would run from the date of receiving copy of the plaint by the defendant.
ii) The litigants/parties cannot be penalized for the act or omission of the court.

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65. Lahore High Court
Mumtaz Bibi & others v. Public at Large & others
C.R. No.471 of 2019
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9564.pdf

Facts: This civil revision has been filed against the order and memo of costs, whereby Civil Judge, accepted the application for issuance of succession certificate of respondents and the judgment passed by the learned Additional District Judge whereby the appeal of the petitioners was dismissed.

Issues: In what eventuality a Distant Kindred is entitled to receive share in the estate of a deceased Muhammadan under the Hanfi Law?

Analysis: There are three classes of heirs namely; 1. Sharers, 2. Residuaries, and 3. Distant Kindred. “Sharers” are those who are entitled to a prescribed share, of the inheritance; “Residuaries” are those who take no prescribed share, but succeed to the “residue” after the claims of the sharers are satisfied; and “Distant Kindred” are all those relations by blood who are neither Sharers nor Residuaries. According to the Hanfi Law the first in the distribution of estate of a deceased Muhammadan, after payment of his funeral expenses, debts, and legacies, is to allot their respective shares to such of the relations as belong to the class of sharers and are entitled to a share. The next step is to divide the residue (if any) among such of the residuaries as are entitled to the residue. If there are no sharers, the residuaries will succeed to the whole inheritance. If there are neither sharers nor residuaries, the inheritance will be divided among such of the distant kindred as are entitled to succeed thereto. The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of sharers or residuaries. But there is one case in which the distant kindred will inherit with a sharer, and that is where the sharer is the wife or husband of the deceased. Thus if a Muhammadan dies leaving a wife and distant kindred, the wife as sharer will take her share which is 1/4 and the remaining three-fourths will go to the distant kindred, the husband as sharer will take his 1/2 share, and the other half will go to the distant kindred.

Conclusion: The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of sharers or residuaries. But there is one case in which the distant kindred will inherit with a sharer, and that is where the sharer is the wife

or husband of the deceased.

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66. **Lahore High Court**
Rab Nawaz etc., v. Addl. District Judge etc.
W.P. No. 2067 of 2019
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9498.pdf

Facts: Through instant constitutional petition, the judgment passed by Appellate court was assailed, whereby order of trial Court was set aside to the effect of accepting application under Order IX Rule 13 CPC and setting aside the impugned judgment and decree.

Issues: i) What is required to be mentioned in suit for declaration where the prayer for oral agreement to sell is claimed?
ii) Whether High Court may convert application under Order IX Rule 13 CPC into application under Section 12(2) CPC?
iii) Whether High Court in its constitutional jurisdiction may rectify an illegal order beyond limitation?

Analysis: i) The suit for declaration where oral agreement to sell is claimed cannot be entertained as an ordinary suit. All the requirements of settlement of agreement to sell as well as the payment of consideration amount must be mentioned in the suit. The possession if claimed, should also be mentioned in detail that how, when and in whose presence it was given and why it was not incorporated in revenue record, if the same is not mentioned there.
ii) Legal matters should be decided on merits and no one should be condemned unheard. It is also settled principle that technicalities should not be hurdle in the way of justice. Application under Order IX Rule 13 CPC as per law can be converted into application under Section 12(2) CPC and under Constitutional jurisdiction of this Court, application under Order IX Rule 13 CPC filed by the petitioner is converted into application under Section 12(2) CPC. Similarly, Revision can be converted into appeal and likewise appeal can be converted into revision in the better interest of justice.
iii) It is settled by law that against illegal order there is no limitation and time does not run against a void order. So, when order was illegal and had been passed in violation of law then High Court had powers to rectify the same while exercising its constitutional jurisdiction. When initial order was void and against the mandatory provision of law, then subsequent superstructure could not stand.

Conclusion: i) In suit for declaration where oral agreement to sell is claimed, all the requirements of settlement of agreement to sell as well as the payment of consideration amount and factum of possession (in detail) if claimed must be mentioned in the suit.

ii) Yes, High Court may convert application under Order IX Rule 13 CPC into application under Section 12(2) CPC.
iii) Against illegal order there is no limitation and time does not run against a void order. High Court had power to rectify such jurisdictional error.

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67. **Lahore High Court**
Hassan Iqbal v. The State and another
Crl. Misc. No. 73828-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC2006.pdf

Facts: Petitioner sought post arrest bail in respect of offences u/s 302, 148 & 149 of PPC.

Issues: i) What is supposed by further inquiry?
ii) Whether benefit of doubt can be extended to the accused at bail stage?
iii) Whether heinousness of offence is ground for refusal of bail?

Analysis: i) In the case titled as "Resham Khan and another Vs. The State" (2021 SCMR 2011) the Hon'ble Supreme Court of Pakistan in paragraph No.8 of the judgment has held as under:- "…The insight and astuteness of further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime…"
ii) No doubt, in a post arrest bail only tentative assessment is to be made and deeper appreciation or evaluation of evidence at this stage is neither desirable nor permissible but benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant.
iii) It is well settled by now that mere heinousness of offence is no ground for the refusal of bail to an accused who otherwise becomes entitled for the concession of bail.

Conclusion: i) Further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime.
ii) Benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant.
iii) Mere heinousness of offence is no ground for the refusal of bail.

68. Lahore High Court
Muhammad Yahya etc., v. The State etc.
Crl. Misc. No.2271-B of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9491.pdf

Facts: Petitioners sought pre-arrest bail in offences under sections 409, 420,468 & 471, PPC read with section 5(2) of Prevention of Corruption Act, 1947.

Issues: Whether there can be possibility of false implication of accused when nominated co-accused were declared innocent by the Anti-Corruption Establishment?

Analysis: It has been noticed that petitioners were implicated in the instant case during the investigation. Co-accused who were nominated in the complaint/FIR were also declared innocent by the Anti-Corruption Establishment. Possibility cannot be ruled out that petitioners being the members of purchase committee signed the documents under the pressure of high ups of the Department. Keeping in view the facts and circumstances of the case, the applicability of offences under sections 468 & 409 PPC read with section 5(2) of Prevention of Corruption Act 1947 against the petitioners requires further inquiry whereas the offences under sections 420 & 471, PPC alleged against the petitioners are bailable. Keeping in view the facts and circumstances of the case, possibility of false implication of the petitioners by throwing a wider net by the complainant cannot be ruled out…

Conclusion: There can be possibility of false implication of accused when nominated co-accused were declared innocent by the Anti-Corruption Establishment.

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69. Lahore High Court
Muhammad Afzal v. Muhammad Aslam
R.F.A No.01 of 2021
Mr Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9596.pdf

Facts: Instant appeal has been preferred, against the judgment and decree passed by learned Addl. District Judge, whereby suit filed by respondent/plaintiff for recovery of amount on the basis of cheque U/O XXXVII Rule 1 & 2 CPC was decreed,.

Issues: i) What is effect of withholding best evidence?
ii) Whether presumption about drawing consideration etc of negotiable instrument under section 118 of Negotiable Instrument Act, 1881 is rebuttable?
iii) Whether it is necessary that defendant should prove in negative that he has not drawn the instrument or it is without consideration?

Analysis: i) The witness whose name was cited in the plaint as well as in the FIR but he is not produced before the learned trial court , in this way, best evidence has been

withheld by the respondent/plaintiff, thus, an adverse inference under illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984 could easily be drawn that in case he was produced he would not have supported plaintiff's version.

ii) Section 118 of the Negotiable instrument Act, 1881, does not envisage a conclusive presumption about drawing consideration etc of the negotiable instrument, rather, without any fear of contradiction , it can be held to be rebuttable in nature and this is so clear and obvious from the expression used in the Section i.e "until the contrary is proved".

iii) When the plaintiff has undertaken to prove that the negotiable instrument (cheque) has been duly executed for the consideration by not only that an issue has been framed in this case, which has placed the onus in this behalf upon the respondent/plaintiff rather he himself led evidence to prove the payment of the money through two witnesses, as per the judgment reported as Salar Abdul Rauf vs. Mst. Barkat Bibi (1973 SCMR 332), the respondent/plaintiff is precluded in law to urge in this case that it was for the respondent to prove to the contrary.

Conclusion: i) The effect of withholding best evidence is that an adverse inference under illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984 could easily be drawn.

ii) Presumption about drawing consideration etc. of negotiable instrument under section 118 of Negotiable Instrument Act, 1881 is rebuttable.

iii) When issue has been framed and plaintiff has also undertaken to prove execution of negotiable instrument for consideration, the respondent is not under obligation to prove contrary.

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70. **Lahore High Court**
Zahoor Ahmad v. District Accounts Officer etc.
Writ Petition No.3726 of 2017
Mr Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9592.pdf

Facts: The petitioner has filed the instant constitutional petition with the prayer that District Account Officer be directed to grant him premature increment on account of promotion from BS-3 to BS-4.

Issues: i) When premature increment is to be awarded to a civil servant?

ii) Whether matter of fixation of premature increment of retired civil servant can be challenged through writ petition?

Analysis: i) Premature increment is to be awarded to civil servant under Para No.10(i)(iii) of the policy instructions of the Punjab Civil Servant Pay Revision Rules, 1977, which clearly provides that on promotion of a civil servant to a higher post/scale 2 to 19, where the stage of the higher post, next above his pay in the lower post, gives a pay increase equal to or less than full increment of the pay scale of the higher post, the initial pay of the higher post will be fixed after allowing a

premature increment in the Revised National Pay Scale of the higher post.
ii) The fixation of premature increment relates to the terms and conditions of service but after the civil servant has been retired, his case does not fall within the meaning of civil servant and as such the writ petition is competent before this Court.

Conclusion: i) On promotion of a civil servant to a higher post/scale 2 to 19, where the stage of the higher post, next above his pay in the lower post, gives a pay increase equal to or less than full increment of the pay scale of the higher post, the initial pay of the higher post will be fixed after allowing a premature increment in the Revised National Pay Scale of the higher post.
ii) The matter of fixation of premature increment of retired civil servant can be challenged through writ petition.

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71. **Lahore High Court**
Muhammad Tufail etc v. Niaz Ahamd etc.
Civil Revision No.355-D of 2000
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9579.pdf

Facts: The suit of pre-emption was decreed against the petitioner and petitioner filed an appeal before ASJ which was also dismissed. The petitioner filed civil revision before this court which was dismissed for non-prosecution. The respondent no. 01 filed execution petition which was accepted and possession was delivered. The vendees withdrew the pre-emption amount. The petitioner sought restoration of civil revision and after restoration civil revision was allowed ex-parte. The vendees filed applications for restoration of possession and deposit of sale consideration amount. The pre-emptor filed application for rehearing of civil revision which was dismissed being time barred, the pre-emptor assailed said order and Hon'ble Supreme Court remanded the matter to this court.

Issues: i) What is the procedure for withdrawal of deposited pre-emption amount in the court?
ii) What does withdrawal of pre-emption amount by vendees implies?
iii) What is status of order which is obtained by concealment of facts?

Analysis: i) Under rule 29 Chapter 8-D Volume II of the Lahore High Court Lahore a person files an application for withdrawal of amount wherein he mentions that the suit had been decided and no litigation is pending, the court obtains a report from the office/Civil Nazir regarding the deposit of amount and verifies the contents of the application and then allows the same.
ii) When vendees file an application in the court for withdrawal of pre-emption amount and mention that there is no further litigation pending and seek permission for withdrawal of the amount which is allowed meaning thereby infact they impliedly accepted the decision of the courts below.

iii) The order which has been obtained by way of concealment of facts is not sustainable in the eyes of law.

Conclusion: i) The applicant mentions in the application that litigation has ended thereupon the court after obtaining report from civil nazir and verification accepts the same.
ii) Withdrawal of pre-emption amount by vendees implies that they have accepted the decision of court.
iii) An order which is obtained by concealment of facts is not sustainable in eye of law.

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72. Lahore High Court
Samia Anwar etc. V. Nasir Hussain etc.
W.P. No.32224 of 2015
Miss. Justice Safder Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC1933.pdf

Facts: This petition is directed against concurrent judgments and decrees passed by the learned Judge Family Court and learned Additional District Judge.

Issue: Whether fresh suit is necessary to make alteration in the rate of maintenance allowance?

Analysis: Once a decree by the Family Court in a suit for maintenance is granted thereafter, if the granted rate for per month allowance is insufficient and inadequate, in that case, according to scheme of law, institution of fresh suit is not necessary rather the Family Court may entertain any such application and if necessary make alteration in the rate of maintenance allowance. It is statutory provision, that for enhancement of maintenance allowance on behalf of the minors, the application can be filed by the person, having custody of the minors; similarly if the maintenance allowance is fixed without considering the financial status of the person, who has been burdened with such future financial liability can file application for re-fixation of maintenance allowance in view of financial status of the person is also entertainable under the same analogy.

Conclusion: Fresh suit is not necessary to make alteration in the rate of maintenance allowance and same can be enhanced simply on application filed on behalf of minors.

73. **Lahore High Court**
Muhammad Akhtar etc v. Niaz Ahamd etc.
Civil Revision No.356-D of 2000
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9467.pdf

Facts: The petitioner has files petitions for grant of permission to re-deposit of the pre-emption amount drawn earlier from the civil court and for restoration of possession delivered as a consequence of execution petition.

Issues: i) Whether application for rehearing of civil revision can be converted into the application under section 12(2) of CPC?
ii) Whether conduct of any party can establish the finality of an order or judgment and end of litigation?

Analysis: i) The order which has been obtained by way of concealment of facts is not sustainable in the eye of law. When the order has been obtained by concealment of facts from the court, it falls within the provision of section 12(2) of CPC because it fulfills the required ingredients of section 12(2) CPC. Therefore, civil revision can be converted into application under section 12(2) of CPC.
ii) When a party files an application in the court while mentioning therein that there is no further litigation pending. In fact, the party has impliedly accepted the decision of the court and said conduct has established finality of the order or judgment in the field.

Conclusion: i) The application for rehearing of civil revision can be converted into application under section 12(2) of CPC.
ii) Conduct of any party can establish the finality of an order or judgment and end of litigation.

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74. **Lahore High Court**
Ch. Abdul Waheed through L.Rs. v. Zahida Parveen Nagina, etc.
W.P. No.39791/2017
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9616.pdf

Facts: Petitioner filed the ejectment petition which was decreed by the trial court. Feeling aggrieved, respondents assailed the judgment of trial court before Appellate Court whereby the appeal was accepted and the judgment of trial court was set aside. Hence this petition.

Issues: i) What landlord has to establish for seeking eviction of tenant under The Punjab Urban Rented Premises Act, 2009?
ii) How the relationship of landlord and tenant is established?

Analysis: i) In rent cases where the denial of relationship of landlord and tenant is specifically agitated the question before the court is only to see the status of the

parties. It is obligatory upon a person claiming himself to be landlord of the premises to establish through evidence that the other person is occupying the premises in the capacity of a tenant and non-other and such tenant is also paying him rent against the tenancy of the demised premises, otherwise he would be deemed to have failed in establishing his claim and will not be entitled to seek eviction of such a tenant under The Punjab Urban Rented Premises Act, 2009.
ii) Perusal of both the terms clearly depicts the receiving of rent and payment of rent are sine qua non for establishing the relationship of tenancy between the parties and in a case where the relationship itself is under question then, it becomes further necessary and imperative to prove the existence of relationship between the parties through evidence and for the very purpose the factum of payment of rent by the tenant to landlord is pivotal to prove or disprove the claim of tenancy and relief sought.

Conclusion: i) A landlord has to establish himself to be landlord and the other person a tenant for seeking eviction of tenant under The Punjab Urban Rented Premises Act, 2009.
ii) The factum of payment of rent by the tenant to landlord is pivotal to prove the relationship of landlord and tenant.

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75. **Lahore High Court**
Sajid Ali v. The State etc.
Crl. Misc. No.50971-M/2021
Miss. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9623.pdf

Facts: Through instant Criminal Miscellaneous, filed under section 561-A Cr.P.C, the petitioner has called in question the vires of order passed by learned Magistrate 1st Class, on an application for exhumation/disinterment of dead body of deceased and order passed by learned Additional Sessions Judge, in criminal revision moved by the petitioner, whereby both the learned courts below allowed the exhumation/ disinterment of dead body of deceased by constituting a Medical Board.

Issue: i) Whether it is the legitimate right of every single person to know the cause of death of his loved one?
ii) Whether there is time limitation for filing the application for exhumation of dead body of deceased?

Analysis: i) The intention of legislature behind insertion of section 174 and 176 in the code is indeed to secure the right of all, interested in knowing the 'cause of death' of their loved one. Moreover, it is the legitimate right of every single person to know the cause of death of his loved one because sorrow of natural death is much lighter than the pain of unnatural and sudden death. Taking notice of tragedy being faced by a person after the unnatural death of his/her loved one, the

legislature has included proviso "c" in section 174 of the code, whereby such inquiry can competently be conducted merely on existence of "reasonable suspicion". This discretion should not be denied merely on account of request being made by stranger if, otherwise circumstances so justifies because for bringing the law into motion the requirement of move by blood relation is never insisted.
ii) It is well settled by now that application for exhumation of dead body of deceased can be moved on simple ground of suspicion and in this regard no time limit is fixed.

Conclusion: i) The application for exhumation can be filed by any person to know the cause of death of his loved one and even stranger is competent to file application for exhumation of dead body of deceased.
ii) There is no time limit for filing of application for exhumation of dead body of deceased.

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76. **Lahore High Court**
Muhammad Ashraf v. Riaz Mahmood.
RFA. No.31 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC9508.pdf

Facts: Through this regular first appeal the appellant has challenged the validity of judgment and decree passed by learned Additional District Judge, whereby suit filed by respondent on the basis of negotiable instrument was decreed.

Issues: i) Whether a person is entitled for any relief if he fails to fulfill the conditions specified in the conditional order issued by the Courts?
ii)Whether in a suit on the basis of a negotiable instrument the defendant could appear to defend the suit without leave of the court?

Analysis: i) When a person remained unable to explain that why he has not followed the order of the Court. Such attitude reflects that he was not entitled for any relief as he failed to fulfill the conditions specified in the conditional order granted by the Courts. The Court allowed the appellant to defend the suit but the appellant did not comply with the order of the Court so he was not entitled for any relief from the learned trial Court who rightly recalled the order for granting leave to defend.
ii) The essence of summary procedure for suits founded on the special documents as prescribed by Order XXXVII CPC is that defendant is not, as in ordinary suit, entitled as of right to defend the suit, the object underlying this procedure being prevention of unreasonable obstruction by a defendant who has no good defence to put up. Therefore, when it is a suit upon a bill of exchange, Hundi or promissory note and the plaint and summonses are in the prescribed form, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so as to appear and defend the suit under Rule (2) sub-rule

(2) of the Order.

Conclusion: i) A person is not entitled for any relief when he fails to fulfill the conditions specified in the conditional order issued by the Courts.
ii) The defendant shall not appear or defend the suit unless he obtains leave to appear and defend from court.

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77. Lahore High Court
Malik Khan, etc. v. Member (Judicial-VIII), Board of Revenue, Punjab, etc.
Writ Petition No.895 of 2016
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC2033.pdf

Facts: Through this Constitutional petition, the petitioners have called in question the validity & legality of order passed by the Member (Judicial-VIII), Board of Revenue, Punjab who, while accepting the Revision of Revision, set aside order passed by the Addl. Commissioner (Consolidation), regarding dismissal of the appeal of respondent No.4 and order passed by the Collector (Consolidation), whereby he reversed order, passed by Consolidation Officer.

Issues: i) What does expression ‘consolidation of holdings’ means?
ii) What steps are to be taken by consolidation officer prior to approving the scheme?
iii) Whether High Court in constitutional jurisdiction ought to re-appraise the evidence?
iv) Whether Constitutional Petition qua the consolidation matter is maintainable?
iv)What is the status of an order passed by a competent court but without following proper procedure?
v) When ‘inteqal-e-ishtrak’ and ‘inteqal-e-taqseem’ are attested?

Analysis: i) The expression “Consolidation of Holdings” has been defined in section 2(f) of Ordinance, 1960 in the following manner. “Consolidation of Holdings means the re-distribution of all or any of the land in an estate or Sub-Division of an Estate so as to reduce the number of plots.” It is clear from the said definition that consolidation of holdings means the re-distribution of the land.
ii) Before approving the scheme, the Consolidation Officer shall cause it to be published in the estate or sub-division in which the holdings are situated by beat of drum or other customary mode prevalent in the tract. After publishing the scheme the Consolidation Officer has to visit the estate, etc. and explain the scheme including proposal for the disposal of the encumbrances to all concerned. Such explanation shall be made in the presence of the members of the Advisory Committee. Then the Consolidation Officer shall invite suggestions or objections to the schemes and after considering them shall, so far as possible, remove the objections and if necessary modify the scheme. After the scheme has been prepared, it shall be exhibited by means of a map and a register of the scheme.

The Consolidation Officer shall draw up a list of owners of land who are affected by the scheme. If the Consolidation Officer fails to bring about an amicable settlement, and nevertheless an order confirming the scheme without submitting it to the Collector, his order will be illegal. The Collector on reference of a scheme under sub-section 10 (4) of the Ordinance, 1960 would without confining himself to the disputed Khata sanction the whole scheme.

iii) In exercise of its Constitutional Jurisdiction, this Court has only to see as to whether a Tribunal or Court has acted without jurisdiction or violated statute or law laid down by the superior Courts. This Court, in such like cases, is not called upon to reappraise the evidence and the writ petitions are not to be decided in the manner of appeals.

iv) It is settled principle of law that this Court has no jurisdiction to substitute its own findings in place of findings of the Tribunals below. Constitutional Jurisdiction would not be attracted unless glaring injustice or error of law pointed out. Constitutional petition qua the consolidation matter is not maintainable. Mere allocation and adjustments made in the scheme and upheld by the statutory functionaries would not entitle the petitioner to seek a judicial review. Moreover, factual controversy cannot be resolved by this Court in exercise of its extraordinary constitutional jurisdiction untill and unless there is a deficiency in the entitlement of right holder, adjustment or allocation of land in consolidation scheme.

v) Consolidation Officer before distribution of land to the right holders shall attest a “Intiqale-Ishtrak” to render entire land of the estate or its sub-division as a joint holding of all the right holders. After conformation of the consolidation scheme, he shall attest “Intiqal-e-Taqseem” by creating individual rights of the land owners according to the fresh distribution of land. After conformation of the scheme record of rights shall be prepared. During that process previous khasra numbers will be changed and abolished and fresh khasra numbers will be allocated.

Conclusion: i) Consolidation of holdings means the re-distribution of the land.

ii) According to section 10 of the Ordinance, 1960, before approving any scheme, the Consolidation Officer shall publish it and invite objections and after settlement of the objections finalize the scheme.

iii) High Court in constitutional jurisdiction cannot re-appraise the evidence.

iv) Constitutional Petition qua the consolidation matter is not maintainable.

v) Consolidation Officer before distribution of land to the right holders shall attest a “Intiqale-Ishtrak”. After conformation of the consolidation scheme, he shall attest “Intiqal-e-Taqseem”.

78. **Lahore High Court**
Ayaz Ahmad v. The State and another
Cr. Misc. No. 4626-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC2010.pdf

Facts: Petitioner sought post arrest bail in a case FIR under Section 496-A, P.P.C.

Issues: i) Whether in non-prohibitory clause cases, grant of bail is a rule and refusal an exception?
ii) Whether conduct of complainant with respect to tendering affidavit in favour of co-accused makes the case of prosecution doubtful and such doubt can be extended to accused in bail ?

Analysis: i) The offence under section 496-A, PPC prescribes sentence of seven years. The Courts, in such like cases where an offence falls within the non-prohibitory clause, consider favourably by granting bail as a rule but decline to do so in the exceptional cases. As far as exceptional circumstances are concerned those are to be taken into consideration depending upon each case.
ii) The conduct of complainant with respect to tendering affidavit in favour of Sadaqat Ali co-accused, has also made the case of prosecution of doubtful in nature. In a recent pronouncement of apex court of the country in case titled as Resham Khan and another vs. The State through Prosecutor General Punjab, Lahore and another (2021 SCMR 2011) has held that while granting post arrest bail even the benefit of doubt can be extended to the accused.

Conclusion: i) Yes, in non-prohibitory clause cases, grant of bail is a rule and refusal an exception.
ii) Conduct of complainant with respect to tendering affidavit in favour of co-accused makes the case of prosecution doubtful in nature and such benefit can be extended to accused in post arrest bail.

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79. **Lahore High Court**
Muhammad Junaid v. The State,etc.
Crl. Appeal No. 71704 of 2017
Zahid Kareem, etc v. The State etc.
Crl. Appeal No. 71699 of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC1998.pdf

Facts: The appellants have filed the titled appeals against their convictions and sentences for offences under sections 376(ii), 452, 384 of PPC.

Issues: i) Is there any effect of non-description of source of light on prosecution case?
ii) Whether a single circumstance creating doubt in a prudent mind is sufficient or multiple doubts are required in this regard?

Analysis: i) If occurrence took place in dark night and no source of light has been described by the prosecution so as to prove that sufficient light was present at the time and place of occurrence for the witnesses to make a positive identity of the assailants. This fact will create dent in the prosecution case…

ii) The responsibility to prove its case beyond any shadow of reasonable doubt squarely lies with the prosecution and if it fails to successfully discharge it, the only result can be the extension of benefit of doubt to the accused person and it is, by now, established proposition that multiple doubts are not required in this regard, even a single circumstance creating doubt in a prudent mind is sufficient. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.

Conclusion: i) Non-description of source of light creates dent in the prosecution case.

ii) It is, by now, established proposition that multiple doubts are not required in this regard, even a single circumstance creating doubt in a prudent mind is sufficient.

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80. Lahore High Court
Muhammad Shafique v. The National Highway Authority and five others.
W. P. No. 12098 of 2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC2066.pdf

Facts: The brief facts of the case are the Petitioner was appointed as Patwari by the National Highway Authority established and existing under Section 3 the National Highway Authority Act, 1991 on daily wages basis for a period of three months. Since the date of appointment, the Petitioner continuously performed his duty without any adverse service record. The appointment based on daily wages was extended after every three months without any service gap. The Petitioner was regularized along with a number of other employees .Through this petition**,** the petitioner has challenged the impugned order vide which regularization of the petitioner was withdrawn with retrospective effect.

Issues: i) Whether regularization of a daily wages employee of statutory body having statutory rules is a matter of terms & conditions of service?

ii) Whether unsubstantiated intelligence reports can be made basis for withdrawal of order of regularization when no such report required under relevant law?

iii) Whether any right accrued after issuance of lawful order can be taken away?

Analysis: i) Fitness of the daily wage employee to regularization which even in the case of a civil servant does not fall within the terms and conditions of service. The NHA is a statutory body having statutory rules. No appeal lies to the Service Tribunal under Section 4(1)(b) of the STA against the order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher grade. The instance case did

not pertain to the terms and conditions of service but related to fitness and suitability of the Petitioner to be regularized and hold the regular post in accordance with the order of regularization.
ii) There was no provision in the applicable Regulation to refer verification of the character and antecedents of the Petitioner to the Intelligence Bureau, Islamabad. Relying upon the same after the completion of the period of probation and after lapse of more than three and a half years from the date of regularization was an unlawful and mala fide act. Even otherwise, adverse unsubstantiated intelligence reports which were neither communicated nor confronted to the Petitioner could not be made basis for withdrawal of the order of regularization if the Petitioner was otherwise found fit to be regularized.
iii) Once a right has been accrued after issuance of lawful order after complying with all codal formalities, the same cannot be taken away on mere assumptions or suppositions or whims and fancy of any executive authority. Such right once vested cannot be destroyed or withdrawn as legal bar comes into way under the well-recognized doctrine of locus poenitentiae unless it can be shown that the initial order was unlawful.

Conclusion: i) Regularization is not a part of terms and conditions of service as it is primarily based on length of service
ii) Unsubstantiated intelligence reports cannot be made basis for withdrawal of order of regularization when no such report required under relevant law.
iii) Once a right has been accrued, the same cannot be taken away unless the initial order was unlawful.

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81. **Lahore High Court**
The State v. Munir Ahmad alias Munna
Murder Reference No.119/2019
Munir Ahmad alias Munna v. The State & another
Crl. Appeal No.898/2019
Mr. Justice Ali Zia Bajwa, Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC9660.pdf

Facts: The appellant, through instant appeal has assailed his conviction and sentence recorded for offences under Sections 302, 392, 34, of Pakistan Penal Code 1860 Learned trial court forwarded Murder Reference for confirmation of sentence of death in terms of Section 374 of Code of Criminal Procedure 1898.

Issues: i) Whether confession or extra-judicial confession can be made by the accused himself or by any other person on his behalf?
ii) Whether identification parade is necessary to identify the unknown accused?
iii) What is evidentiary value of medical evidence?
iv) What is the rationale behind rule provided under Article 40 of QSO?
v) Whether single circumstance creating reasonable doubt is sufficient for

acquittal of accused or numerous dents and doubts are required?

Analysis: i) The rudimentary component of an extra judicial confession is that it should be made by accused himself, therefore, when such disclosure was not made by the appellant himself, his father's statement cannot be termed as extra-judicial confession on his behalf and at the most same may be considered as an information provided by him regarding alleged culprits of instant occurrence.

ii) It is a trite law that where the accused are mentioned as unknown in the crime report, their identification parade must be conducted to establish their identity.

iii) Medical evidence neither itself proves involvement of an accused in the commission of an offence nor establishes his culpability. It is confirmatory in nature and may confirm the ocular evidence with regard to the seat of injury, nature of injury, kind of weapon used in the occurrence and duration between injury and death etc., but such evidence cannot connect the accused with the commission of crime. Where ocular evidence is not worthy of reliance, medical evidence is of no avail to prosecution case.

iv) Rationale behind the rule, provided under Article 40 QSO, is based on the principle that if a disclosure is made by the accused while in police custody, and same is substantiated by discovery of any subsequent fact pursuant to such disclosure made by that accused, truthfulness of such statement/disclosure would be established to the extent of such discovery. Recovery or discovery of any such fact or object should be pursuant to a disclosure made by an accused, while under custody of police and not by any other person on his behalf.

v) Numerous dents and doubts are not required in prosecution case for extending benefit of doubt. If a single reasonable doubt is available in prosecution case, accused would be entitled to have benefit of such doubt, not as a matter of grace and concession but as a matter of right.

Conclusion: i) Confession or extra-judicial confession as the case may be, is always made by the accused himself and not by any other person on his behalf.

ii) Where the accused are mentioned as unknown in the crime report, their identification parade must be conducted to establish their identity.

iii) Medical evidence is confirmatory in nature and where ocular evidence is not worthy of reliance, medical evidence is of no avail to prosecution case.

iv) U/A 40 QSO, if a disclosure is made by the accused in police custody substantiated by discovery or recovery, truthfulness of such statement/disclosure would be established to the extent of such discovery/recovery.

v) If a single reasonable doubt is available in prosecution case, accused would be entitled to have benefit of such doubt.

82. Lahore High Court
Majeed Ahmad v. Additional Sessions Judge, etc.
Crl. Revision No.54/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC2157.pdf

Facts: The instant revision petition has been filed against the order passed by learned ASJ through which SHO, Police Station was directed to proceed against the petitioner under Section 154 Cr.P.C. on the application of respondent No. 3.

Issues: i) Whether father being natural and lawful guardian can be termed as kidnapper of his own child?
ii) Whether taking away his own child from the custody of mother or father can be saddled with criminal liability and charged for an offence of kidnapping as defined under Section 361 of Pakistan Penal Code?

Analysis: i) The offence of kidnapping is punishable under section 363 PPC but the father being the legal guardian of the minor child under Muhammadan Law cannot, in any case, be said to take or entice away his own minor child and as reiterated above, although the mother has the right of hizanat but the fact remains that the guardianship vests in the father.
ii) The term 'lawful guardian' in section 361 PPC has been used in a wider sense including any person lawfully entrusted with the care or custody of the minor. The principle of dual guardianship of the minor is by itself not repugnant to Islamic Law or law of the land. Under this conception the guardianship of the father does not cease while the minor is in the custody of mother. Again, there is nothing in law to prevent the mother to agitate her right of hizanat when the minor is with the father. The father, being lawful guardian, taking away his own child from the custody of mother cannot be saddled with criminal liability and charged for an offence of kidnapping as defined under Section 361 of Pakistan Penal Code. Father and mother cannot prosecute each other on the charge of kidnapping of their own minor children.

Conclusion: i) The father being natural and lawful guardian cannot be termed as kidnapper of his own child.
ii) Taking away his own child from the custody of mother or father cannot be saddled with criminal liability and charged for an offence of kidnapping as defined under Section 361 of Pakistan Penal Code.

83. **Lahore High Court**
Muhammad Nazeer v. Ghulam Mustafa.
Civil Revision No.1071/2018
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC9655.pdf

Facts: Through this petition**,** the petitioner has challenged impugned order passed by the learned trial court whereby application for summoning of witnesses was dismissed.

Issues: i) What is wisdom behind showing good cause for non-submission of list of witness within stipulated time?
ii) What is a good cause for the application of summoning of witness not mentioned in the list of witnesses?

Analysis: i) The wisdom of public policy and law in this regard is that an adversary should not be taken by surprise in the course of trial of the suit and the parties before the commencement of trial, must be aware and should be fully prepared as to what kind of evidence is accepted to be given by the witnesses of the opposite side, so that they can make necessary preparation for the cross examination. The wisdom of law also targets to prevent the concoction and fabrication of evidence and to make up the litigants during the course of trial, meaning thereby to bind the parties to such genuine evidence which is available to them at the time of initiation of the trial. The intention of the legislature is to curb a situation where party to the suit should not subsequently fudge witnesses to make up their deficiencies
ii) Though in terms of law no hard and fast rule and absolute criteria can be set forth as benchmark to test if a case of omission to file the list of witnesses or a name in such list is on account of "good cause" as it depends upon the facts of each case, however, the party in default has to show a legally sufficient reason, why a request should be granted or its inaction/omission should be excused. Therefore, the good cause should be which appeal to judicial conscious of the Court that justified reasons as a party in default cannot, as a matter of right or as a matter of course, without assigning any good cause for the omission ask for calling the witnesses to be summoned nor to be produced only on account of a lame excuse and reasons and bald assertion.

Conclusion: i) The wisdom law in this regard is that an adversary should not be taken by surprise in the course of trial and opposite party should be fully prepared as to what kind of evidence is accepted to be given by the witnesses of the opposite side.
ii) The party in default has to show a legally sufficient reason why a request should be granted or its inaction/omission should be excused.

84. **Lahore High Court**
Arsal Shahzad Khan, etc. v. The Government of Punjab, etc.
Writ Petition No. 9454 of 2020
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC9648.pdf

Facts: Petitioners were employee of the Punjab Masstransit Authority on contract basis who participated in a protest due to non-disbursement of their salaries. On account of said protest, they were issued suspension letters initially and subsequently their services were terminated. Petitioners sought setting aside of the impugned orders of their termination and a direction to the Respondents to regularize their services.

Issue: i) Whether an authority providing human resource services acquires the status of a 'person' and its services are amenable to the Constitutional jurisdiction of this Court?
ii) Whether a private person is entitled for regularization by invoking the Constitutional jurisdiction of this Court?

Analysis: The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some public power; whether the control of the organization vests in a substantial manner in the hands of government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not and that's why the Hon'ble Supreme Court of Pakistan in the cases reported as **Pakistan Olympic Association through President and others v. Nadeem Aftab Sindhu and others 2019 SCMR 221 and Pakistan Red Crescent Society and another v. Syed Nazir Gillani PLD 2005 SC 906** held that the Pakistan Olympic Association and Pakistan Red Crescent Society despite using the name Pakistan are private entities who were body corporate and not amenable to the Constitutional jurisdiction of this Court under the Constitution, therefore, it is imperative that person against whom the Writ Jurisdiction is sought to be invoked has to pass the 'function test'. Therefore, merely by providing human resource services to the Punjab Masstransit Authority by Respondent No.4 by virtue of its nexus with the Authority cannot clothe the Respondent No.4 with the status of a 'person' and it will remain a private institution for all intents and purposes and its employees' service grievances are not amenable to the Constitutional jurisdiction of this Court. Therefore, this Petition is not maintainable.
ii) The services of the Petitioners are governed by the rule of the master and servant and the subject matter appointments or termination thereof are not amenable to the Constitutional jurisdiction of this Court. The Petitioners being contract employees that too of a private person, even otherwise, have to show their legal right and entitlement emanating from a law otherwise they cannot even

seek their entitlement for regularization by invoking the Constitutional jurisdiction of this Court.

Conclusion: i) An authority mere providing human resource services does not acquire the status of a 'person' and its service are not amenable to the Constitutional jurisdiction of this Court.
ii) A private person being contract employee of a private person is not entitled for regularization by invoking the Constitutional jurisdiction of this Court.

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85. Lahore High Court
Shabbir Ahmad, etc. v. Mst. Shaher Bano, etc
C.R. No.116-D of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC2047.pdf

Facts: Through this revision petition, the petitioner assailed the order of appellate court, whereby the appeal of petitioners was dismissed on merits without allowing the petitioners to submit arguments on their behalf.

Issue: Whether an adequate opportunity of hearing is to be given to a party in the matter of determination of his/her civil rights and obligations?

Analysis: The term 'hearing' spoken of in Order XLI, Rule 16, CPC at least envisages oral arguments. In the same vein Rule 30 of Order XLI of CPC also envisages a hearing before pronouncement of judgment. When Rule 16 is read in the light of Articles 4 and 10-A of the Constitution which provide a citizen with a right to be dealt with according to due process of law and which confer the right of a fair trial and due process on a person in the matter of determination of his civil rights and obligations, it becomes clear that great emphasis not to forget importance has been laid on the aspect of adequate opportunity of hearing to a party in the matter of determination of his/her civil rights and obligations.

Conclusion: An adequate opportunity of hearing is to be given to a party in the matter of determination of his/her civil rights and obligations.

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86. Lahore High Court
Saeed Ahmad, etc. v. Muhammad Naeem, etc.
C.R. No.793-D of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC2233.pdf

Facts: This civil revision has been filed against Judgment & decree passed by a civil judge and also judgment & decree passed by a learned Addl. District Judge by virtue of which the suit for declaration along with specific performance and permanent injunction filed by the petitioners was dismissed.

Issues: i) What kind of details are required to be mentioned in plaint by the beneficiary of transaction in case of oral agreement?
ii) whether the fact which was not mentioned in the plaint, could be brought on record through oral or documentary evidence?

Analysis: i) The plaint seeking enforcement of an oral contract must set forth the requisite ingredients including details about when the sale consideration or its balance was paid. In the case before this Court, the petitioners have failed to bring on the record any reliable and creditable evidence to show how oral sale of the suit property was executed between the parties as also about the mode of payment. The time and place of the alleged oral sale as well as the witnesses present at that time have also not been disclosed before the court, hence the trial court has rightly dismissed the suit.
ii) The competing parties in a trial are bound by their pleadings. An alleged fact which has not been agitated in the plaint cannot be brought in evidence and even if the same is brought in evidence through oral or documentary evidence, the courts are not bound to rely on it.

Conclusion: i) The plaint seeking enforcement of an oral contract must set forth the requisite ingredients including details about sale consideration, how oral sale of the suit property was executed, time and place of the alleged oral sale as well as the witnesses present at that time.
ii) Fact which is not agitated in the plaint, cannot be brought in evidence, even if the same is brought in evidence, the courts are not bound to rely on it.

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87. **Lahore High Court**
Mst. Hafza Mai v. Muhammad Qasim.
C.R. No.925-D of 2017
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC2331.pdf

Facts: Through the instant civil revision petitioner has assailed the judgment and decree passed by an Additional District Judge by virtue of which earlier judgment and decree in a suit for declaration alongwith cancellation of mutation of suit property passed by a civil judge was reversed.

Issues: i)Whether the question of limitation becomes irrelevant in all cases of inheritance?
ii) What is rationale of law of limitation?
iii) Whether revenue officials are necessary party in suit when their connivance is alleged in attestation of impugned mutation?
iv) What is effect of treating the mandatory statutory provisions of limitation as a formality?
v) Whether to get the exemption of limitation is it necessary to plead its ground

and prove the same?

Analysis: i) In the case reported as "Mst. Grana through Legal Heirs and others v. Sahib Kamala Bibi and others" (PLD 2014 Supreme Court 167) the Honorable Apex Court has held "It appears that in a suit which involves some element of inheritance the Courts are generally quick to declare that the law of limitation would not be attracted. It is not in all cases of inheritance that the question of limitation becomes irrelevant. Even in Ghulam Ali's case the Court recognized that there could be exceptional circumstances wherein even in a suit based on inheritance the issue of limitation may become relevant. This Court recently in some cases had invoked the principle of time limitation and acquiescence of the plaintiff in suits of inheritance."

ii) The rationale of the law of limitation has been reiterated in "Atta Muhammad v. Maula Bakhsh and others" (2007 SCMR 1446), the Court held:-- " The law of limitation provides an element of certainty in the conduct of human affairs. Statutes of limitation and prescription are, thus, statutes of peace and repose. In order to avoid difficulty and errors that necessarily result from lapse of time, the presumption of coincidence of fact and right is rightly accepted as final after a certain number of years. Whoever wishes to dispute this presumption must do so, within that period; otherwise his rights if any, will be forfeited as a penalty for his neglect. In other words the law of limitation is a law which is designed to impose quietus on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence…"

iii) In the case reported as "Sikandar Hayat and another v. Sughran Bibi and 6 others" (2020 SCMR 214) it has been held "…When it is pleaded in a suit that with the connivance of the revenue officials any mutation was got attested and the same is challenged through a civil suit, the Province of the Punjab as well as revenue officials against whom such connivance for attestation of the mutation is alleged, are a necessary party in such suit. The reason is that when anyone alleges connivance of the said officials of Revenue Department with the Defendants of the Suit for getting a mutation attested, without participation of the said party, no valid adjudication can be carried out against the said party and no finding can be recorded against them in their absence…"

iv) In "Muhammad Sharif (deceased) through LRs. and others v. Province of Punjab through District Collector Layyah and 10 others" (2017 YLR 794) it has been held "…The limitation provided by the Statute to perform any action or agitate the remedy within the specified period is not a mere technicality, but it is a mandatory statutory provision and treating it as a formality would tantamount to declare the entire Limitation Act, 1908 redundant the object whereof is to help the vigilant and not the indolent. The availing of remedy by the aggrieved party beyond the period of limitation prescribed, therefore, by the Statute creates a valuable right in favour of the opposite party. In such an eventuality delay of each and every day has to be explained by the defaulting party to the satisfaction of the Court, which cannot be condoned as a matter of right in routine, but arbitrary

exercise of discretion would cause serious prejudice to the opposite party".

v) In "Shamshad Ali v. Khan Muhammad and 2 others" (2016 YLR 356) it has been held "…When period of limitation provided under Article 120 of the Limitation Act, 1908 has been provided six years when the right to sue accrues and if the suit has been filed more than four years after the prescribed period of limitation, plaintiff was required to plead grounds for exemption from limitation law in accordance with Order VII Rule 6 of C.P.C. ,… no ground for exemption from limitation law has, been pleaded in accordance with Order VII Rule 6 of the C.P.C, therefore, petitioner-plaintiff was not entitled for exemption from period of limitation."

Conclusion: i) In exceptional circumstances, even in a suit based on inheritance the issue of limitation may become relevant.

ii) The law of limitation provides an element of certainty in the conduct of human affairs.

iii) Yes, revenue officials are necessary party in suit when their connivance is alleged in attestation of impugned mutation.

iv) Treating the mandatory statutory provision of limitation as a formality would tantamount to declare the entire Limitation Act, 1908 redundant.

v) Yes, to get the exemption of limitation is it necessary to plead its ground and prove the same by the plaintiff.

LIST OF ARTICLES

1. **MANUPATRA**

   https://articles.manupatra.com/article-details/An-In-Depth-Analysis-Of-Ostensible-Owner-As-Per-Transfer-Of-Property-Act-1882

   An In Depth Analysis Of Ostensible Owner As Per Transfer Of Property Act, 1882 by Shivansh Dwivedi

   The word 'ostensible' can be explained as something that appears to be true but is not actually true. The ostensible owner of a property is thus cannot be a real owner of a property. He can merely represent himself as the real owner to the third parties or to the public at large. The ostensible owner of a property possesses all the rights of ownership in a property but without being the real owner of the same. These rights are acquired by him through the explicit or implied consent of the real owner. He is the full but unqualified owner and the real owner remains the qualified owner of the property. The doctrine of transferring a property by ostensible owner can be seen as an exception to the maxim ***"nemo dat quod non habet"*** *i.e. no one has the power to confer a higher right on the property that is possessed by himself. The paper will be elaborating upon the concept ostensible owner and will be covering the rights and duties of the ostensible owner of a property in a detailed manner. The primary focus of the paper will be to focus on the justification and validation of the concept of ostensible owner and how such concept is supported by statutory and jurisprudential methods with the help of various conditions and specifications in*

form of principles and laws. ***Section 41*** *of the Transfer of Property Act states that when a person is acting on the express/implied consent of a person who is interested in an immovable property, the person who is acting on such consent is considered to be the ostensible owner of the property. He is in the possession of all the indicia of ownership like the right to possession, title, documents, goodwill etc. He has the power to transfer the property for a consideration to the transferee. The transferee should act in good faith and should believe that the ostensible owner is the actual owner of such property.*

2. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/free-world-law-behind-bars
Free-World Law Behind Bars by Aaron Littman

What law governs American prisons and jails, and what does it matter? This Article offers new answers to both questions. To many scholars and advocates, "prison law" means the constitutional limits that the Eighth Amendment and Due Process Clauses impose on permissible punishment. Yet, as I show, "free-world" regulatory law also shapes incarceration, determining the safety of the food imprisoned people eat, the credentials of their health-care providers, the costs of communicating with their family members, and whether they are exposed to wildfire smoke or rising floodwaters. Unfortunately, regulatory law's protections often recede at the prison gate. Sanitation inspectors visit correctional kitchens, find coolers smeared with blood and sinks without soap—and give passing grades. Medical licensure boards permit suspended doctors to practice—but only on incarcerated people. Constitutional law does not fill the gap, treating standards like a threshold for toxic particulates or the requirements of a fire code more as a safe harbor than a floor. But were it robustly applied, I argue, free-world regulatory law would have a lot to offer those challenging carceral conditions that constitutional prison law lacks. Whether you think that criminal-justice policy's problem is its lack of empirical grounding or you want to shift power and resources from systems of punishment to systems of care, I contend that you should take a close look at free-world regulatory law behind bars, and work to strengthen it.

3. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/the-history-wars-and-property-law-conquest-and-slavery-as-foundational-to-the-field
The History Wars and Property Law: Conquest and Slavery as Foundational to the Field by K-Sue Park

This Article addresses the stakes of the ongoing fight over competing versions of U.S. history for our understanding of law, with a special focus on property law. Insofar as legal scholarship has examined U.S. law within the historical context in which it arose, it has largely overlooked the role that laws and legal institutions played in facilitating the production of the two preeminent market commodities in the colonial and early Republic periods: expropriated lands and enslaved people. Though conquest and enslavement were key to producing property for centuries, property-law scholars have

constructed the field of property law to be largely devoid of these histories and without a strong conception of the formative role of race. As a result, recent movements to reintegrate these topics into the field generally reflect a broader trend in the legal academy of treating race as an elective rather than fundamental topic. This Article shows that these histories contain insights that are crucial for understanding their legacies in our present legal system. It offers an account of how current conceptions of the field of property law evolved and what we learn from suppressed histories. It shows that the histories of conquest and slavery explain aspects of the system—its construction of jurisdictions, property value, ground-level institutions, and organization of force, for example—that belong at the core of the curriculum and the field. First, this Article examines patterns of erasure in the property-law canon to explore how we came to understand property law as primarily a collection of doctrines derived from English law regulating relations between neighbors. It uses property-law casebooks as an index and offers the first comprehensive study of the tradition. This analysis shows that many of the norms of erasure and validations of racial hierarchy that casebooks exhibit were set during the period of their emergence—the time of the formal close of the frontier and the Jim Crow Era. It was not until the 1970s that casebooks began to critically examine the histories of conquest and slavery for the first time, but the query into their consequences for the property system has remained partial and inconsistent. I then examine three ubiquitously taught topics in property law—discovery, labor, and possession— in light of the contexts in which they arose, to highlight their role in the creation of new markets for land and people in early America. I show that Chief Justice Marshall's iteration of the Discovery Doctrine drew from an international legal tradition that authorized European conquests and the transatlantic slave trade to establish racial hierarchy as the basis of U.S. jurisdiction and trade in lands. In addition to affirming that hierarchy, as scholars have shown, the labor theory also captured the ways that colonists attributed property values to land and people only when they came into white possession. I further argue that the labor of property creation in the colonies in significant part comprised legal work, beyond agriculture labor, including the passage of laws creating homesteading incentives, making enslavement racial, permanent, and hereditary, and establishing systems such as the rectangular survey, comprehensive title registry, and easy mortgage foreclosure. Finally, taking possession of property in this context entailed a process of dispossession turning the principle of honoring possession on its head. Looking at possession as part of the Discovery Rule and fugitive-slave laws reveals that the state largely delegated enforcement of possession—and the concomitant racial violence of dispossession—to private actors in ways that simultaneously invested them in property interests and racial hierarchy. This Article opens a new inquiry into what these long-buried histories teach us about property law. It argues that they are indispensable for understanding the unique fruits of the colonial experiment that define American property law today—the singular land system that underpins its real estate market and its structural reliance on racial violence to produce value.

4. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/nfts-and-trademark-matters-metaverse

NFTs and Trademark Matters in the Metaverse by Arian F. Jabbary,Robert S.Weisbein

In January 2022, the heritage fashion house Hermès lodged a complaint in New York federal court against California artist Mason Rothschild for his use of its BIRKIN bag name and design. Unlike with the typical recipient of a BIRKIN bag infringement claim – such as a counterfeit producer or competing handbag designer – Rothschild's allegedly infringing works cannot be held, opened, or worn. The case, Hermès International, et al. v. Mason Rothschild, represents one of multiple recent disputes between fashion house and non-fungible token ("NFTs") creator attempting to implement a brand's trademarks into a new digital frontier – the metaverse. Rothschild's NFT works in the present case, coined the "MetaBirkins," represent a series of 100 NFT images featuring the iconic BIRKIN bag design covered in a variety of colorful furs.In its complaint, Hermès asserts that Rothschild's MetaBirkins infringe upon and dilute its federally registered BIRKIN trademarks as well as its trade dress rights in the BIRKIN bag form. At the heart of its argument, Hermès focuses on the fact that the MetaBirkins are being commercialized in a manner akin to the valuable "in-real-life" products for which they represent. The MetaBirkins are marketed and offered for sale just like the real thing, all the while incorporating and exploiting the famous BIRKIN marks in connection therewith. Hermès claims that the MetaBirkins "falsely create the impression that the goods sold by [Rothschild] are authorized, sponsored, or approved by Hermès when, in fact, they are not." In an attempt to cue the case up as a classic example of trademark infringement, Hermès conceptualizes the MetaBirkin NFTs as valuable assets able to be marketed and sold no differently than the actual BIRKIN bag.In response to the complaint, Rothschild submitted a motion to dismiss on February 9m 2022 with the intent of having the case tossed out in its entirety as a matter of law. Integral to his argument, Rothschild asserts that the MetaBirkins are artworks that provide commentary "on the animal cruelty inherent in Hermès' manufacture of its ultra-expensive leather handbags." The motion to dismiss goes on further to reiterate that the NFTs "are not handbags" and that "they carry nothing but meaning." Of course, Rothschild's argument takes the stance that his MetaBirkins are not commercializable assets in the first instance (as Hermès sees them), but rather Rothschild's speech, art, and expression, all of which are protectable under the First Amendment. To back up this argument, Rothschild relies on the precedent set forth in Rogers v. Grimaldi, which permits the use of trademarks in artistic works provided that the trademarks have no artistic relevance or otherwise overtly create a false designation of origin. Rothschild also cites Dastar Corp. v. Twentieth Century Fox Film Corp., which holds that only tangible, physical goods are actionable under the Lanham Act. Of course, given the amorphous and quickly-evolving nature of NFTs, it is unclear whether the Dastar case applies to the present facts, or whether it is distinguishable.Leaning on free speech and artistic expression, Rothschild has now presented a countering position to that of Hermès for the court to consider – namely, does the highly commercial nature of NFT works fall closer to artworks and speech or commercial goods.

5. **STANFORD LAW REVIEW**
   https://www.stanfordlawreview.org/print/article/the-bribery-double-standard/
   The Bribery Double Standard by Anna A. Mance & Dinsha Mistree

A double standard in bribery law has emerged. Over the past decade, the Supreme Court has broken with a century of progressive reforms by narrowly interpreting domestic bribery and other conflict-of-interest laws. This weak federal domestic bribery law now stands in stark contrast to the robust and expansive prosecutions of bribery under the Foreign Corrupt Practices Act (FCPA), which limits the ability of U.S. entities to bribe foreign public officials. As a result of this double standard, those who seek to improperly influence domestic public officials are often able to engage in behavior that looks and smells like bribery but is not bribery. Similar behavior in the foreign context, however, is punished by the FCPA. The act of bribery, whether foreign or domestic, not only undermines the practice of good governance but also delegitimizes government institutions themselves. Federal bribery laws were traditionally designed and interpreted to address both of these concerns, evolving into powerful tools of public accountability. But the Supreme Court has restricted the interpretation of federal bribery laws in ways that have weakened the domestic antibribery regime. As a result, high-profile elected officials are able to avoid punishment for acts that would have, until recently, been considered illegal. In contrast, the FCPA has not only withstood legal challenges, but is widely recognized as a powerful tool for curbing corruption. This Article explores this divergence, argues that the domestic bribery law should be modified, and identifies two aspects of the FCPA as a model for domestic statutory reform.