# LAHORE HIGH COURT

# BULLETIN

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# FORTNIGHTLY CASE LAW BULLETIN

**(01-03-2022 to 15-03-2022)**

**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**

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## SELECTED ARTICLES

**1. Supreme Court of Pakistan**

**MQM (Pakistan) and others v. Pakistan through Secretary Cabinet Division, Government of Pakistan and others.**

**Constitution Petitions No.24 of 2017**

**Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Mazhar Alam Khan Miankhel**

https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2017.pdf

**Facts:** Petitioners filed the Constitutional petitions under Article 184(3) of the Constitution with the contention that the Sindh Government by denying devolution of political, administrative and financial responsibility and authority to the Local Government is infringing upon the rights of the people as envisaged in Article 2A, the Objectives Resolution, Article 4 and the Fundamental Rights under the Constitution.

**Issues:** i) When the petition filed under Article 184(3) of the Constitution becomes maintainable?

ii) What nature of delegation of power to the government by legislature is provided under Article 140A of the Constitution and whether the provisions under Sections 74 and 75(1) of the Sindh Local Government Act, 2013 are in direct conflict with the Objectives Resolution in Article 2A and Articles 9, 14, and 25 of the Constitution?

iii) How the discretion is to be exercised when the legislature devolves its authority and power to be exercised by government or any of its functionary?

iv) What will be the fate of any other law whenever it is in conflict or inconsistent with the Constitution?

v) What powers are exercised by Local or Municipal Government?

**Analysis:** i) Facts pleaded by the petitioners, which are not denied by the Province of Sindh, are considered to be substantial questions giving rise to the very enforceability of fundamental rights of the citizens of the Province of Sindh and such fundamental rights relates to question of public importance and for this the petition filed under Article 184(3) of the Constitution is maintainable.

ii) Article 140A of the Constitution commands the province to establish by law local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments. The legislature cannot delegate un-canalised and uncontrolled power, as the power to delegate must not be unconfined and vagrant but must be canalised within banks that keep it from overflowing. The Sindh Government, by denying such devolution to the Local Government, is infringing upon the rights of the people. Therefore, Sections 74 and 75(1) of the Act of 2013 are considered as against the principle enshrined in the Objectives Resolution and the fundamental rights enacted in Articles 9, 14 and 25 of the Constitution and are also contrary to and in direct conflict with Article 140A of the Constitution and thus, declared ultra vires and struck down.

iii) Constitution does not envisage unstructured, uncontrolled and arbitrary

discretion being conferred by legislature on State functionary or holder of a public office; even if, some discretion is conferred by law on a State functionary or on holder of a public office, the same has to be exercised justly, honestly, fairly, and transparently. Whenever the legislature devolves its authority and power to be exercised by government or any of its functionary, it has to be circumscribed by structured exercise of discretion. It has been noted that entrustment of power without guidance suffers from excessive delegation, which in the scheme of Constitution is not permissible.

iv) The Constitution being a basic document is always treated to be higher than other statutes and whenever a document in the shape of law given by the Parliament or other competent authority, is in conflict with the Constitution or is inconsistent, then to that extent, the same is liable to be declared unconstitutional.

v) Local Government or Municipal Government is a form of public administration, which in a majority of contexts, exists as the lowest tier of administration within a given state or district. There are two principles underlining the establishment of Local bodies. Firstly, local bodies enjoy extensive powers to act in a way they like for the betterment of the community unless restricted by law in any sphere of activity. Secondly, local bodies cannot go beyond the specific functions delineated to them in various acts and statutes.

**Conclusion:** i) When matter is related to the question of public importance with reference to the enforcement of any of the fundamental rights; petition filed under Article 184(3) of the Constitution is maintainable.

ii) Article 140A of the Constitution commands the province to establish by law local government system and devolve the powers to the elected representative and by considering said Article, the provisions under Sections 74 and 75(1) of the Sindh Local Government Act, 2013 are in direct conflict with the Objectives Resolution in Article 2A and Articles 9, 14, and 25 of the Constitution.

iii) Whenever the legislature devolves its authority and power is to be exercised by government or any of its functionary, it has to be circumscribed by structured exercise of discretion.

iv) Whenever any other law is in conflict or inconsistent with the Constitution; the same is liable to be declared unconstitutional.

v) Local or Municipal Government enjoys extensive powers to act in a way for the betterment of the community unless restricted by law.

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**2. Supreme Court of Pakistan**
**Saif ur Rehman Khan (in all cases)**
**v. Chairman, NAB, NAB Headquarters, Islamabad, etc.**
**Civil Petitions No. 5178, 5179 & 5180 of 2021.**
**Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5178_2021.pdf

**Facts:** The general public enticed by the ponzi scheme of the petitioner, deposited money into various accounts in the names of certain individuals, registered

companies and unregistered businesses, all controlled and managed by the petitioner. On the inquiry conducted by the NAB, he has been found to have defrauded the public at large.

**Issues:** i) Whether proceedings conducted by the SECP, and the second proceedings by the NAB regarding the same matter amount to double jeopardy?
ii) Whether the provisions of the Companies Act and the SECP Act have overriding effect over the provisions of the NAB Ordinance?
iii) Whether the appeal before Supreme Court can be decided after the short order of High Court without waiting the detailed order?

**Analysis** i) Article 13(a) provides that no person shall be prosecuted or punished for the same offence more than once. The expression "prosecuted" means prosecuted on a charge of criminal nature before a Court of law; it does not include prosecution on the basis of breach of some code of conduct by a disciplinary authority or breach of some regulatory framework by an administrative authority. The expression "same offence" means offence constituted of the same ingredients and does not mean "same matter" or "same facts". The ingredients of the offence earlier charged and the offence subsequently charged should be the same, to attract the bar of Article 13, in the sense that the facts constituting the offence earlier charged were also sufficient to justify the conviction of the offence subsequently charged (See Jehangir Badar v. Chairman, NAB 2004 SCMR 1632 and Hoot Khan v. NIRC PLD 1977 Kar 145) . The SECP is not a court of law, nor are the offences under the Companies Act for which it has imposed penalties on the petitioner and his companies constituted, of the same ingredients as that of the offence defined in Section 9 of the NAB Ordinance, as explained above. The shield of Article 13 of the Constitution is therefore not available to the petitioner to prevent the proceedings against him under the NAB Ordinance.
ii) The NAB enjoys a totally different jurisdiction, which does not overlap with the Companies Act or SECP Act. The question of cheating the public at large and of breach of trust does not fall within the domain of Companies Act or SECP Act, but squarely falls under the NAB Ordinance. Therefore, the SECP sending a reference to the NAB or the NAB taking cognizance on the basis of the reference has little significance in the facts and circumstances of the case, when NAB in our tentative view could have taken cognizance on their own.
iii) Although this Court ordinarily waits for the detailed reasons before deciding the appeals or the petitions for leave to appeals filed against the short orders passed by the High Courts, but the peculiar facts and circumstances of a case, as those of the present case, may justify departure from this rule of practice and propriety, which is neither a rule of law nor is an absolute one and, like most of the rules, admits exception(s). The present case involves a bail matter, which is usually considered as an urgent one.. It is not uncommon that this Court maintains the decisions of the High Courts, in several cases, for its own reasons different from that of the High Courts.

**Conclusion:** i) Proceedings simultaneously conducted by the SECP, and NAB regarding the same matter does not amount to double jeopardy and thus do not infringe fundamental right to protection against double punishment guaranteed by Article 13 of the Constitution.

ii) The NAB enjoys a totally different jurisdiction, which does not overlap with the Companies Act or SECP Act.

iii) The appeal before Supreme Court can be decided after the short order of High Court without waiting the detailed order.

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**3.** **Supreme Court of Pakistan**
**Zafar Iqbal v. The State through Prosecutor General Punjab and another.**
**Criminal Petition No. 601-L OF 2021**
**Mr. Justice Umar Ata Bandial CJ., Mr. Justice Amin- Ud-Din Khan, Mr. Justice Sayyed Mazhar Ali Akbar Naqvi**
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._601_l_2021.pdf

**Facts:** Through instant Criminal Petition, the petitioner has assailed the order passed by the High Court and prayed to grant post arrest bail in case FIR registered U/S 302/34/147/109 PPC, in the interest of safe administration of criminal justice.

**Issue:** What is diminished liability and how it can be applied?

**Analysis:** If a crime is committed due to mental or psychological compulsion, it squarely falls within the ambit of diminished liability. It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in Committing or being a party to an alleged criminal act, which is committed under the impulses of question of ghairat, the doctrine of diminished liability would be squarely attracted.

**Conclusion:** If a crime is committed due to mental or psychological compulsion, it squarely falls within the ambit of diminished liability and it absolves an accused person of part of the liability for his criminal act.

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**4.** **Supreme Court of Pakistan**
**Syed Athar Hussain Shah v. Haji Muhammad Riaz and another.**
**Civil Petition No. 1831 of 2017.**
**Mr. Justice Qazi Faez Isa Mr. Justice Yahya Afridi**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1831_2017.pdf

**Facts:** Petitioner filed a suit seeking specific performance of the agreement but his plaint was rejected due to non-deposit of court fee. Petitioner filed another suit in which he sought the cancellation of the sale deed and a declaration with regard to his ownership of the property and also sought specific performance of the agreement. However, he withdrew the second suit and filed the third suit in which he sought specific performance of the agreement and the cancellation of the sale deed along with declaration. The third suit was dismissed on the ground of belated. The

petitioner through this petition has sought to set aside three concurrent judgments.

**Issues:** i) Whether the prescribed period of limitation could be extended by introducing another cause of action or relief in the suit?
ii) Whether linking or combining of section 53-A of the Transfer of Property Act can benefit in extending the period of limitation?

**Analysis** i) The first suit had sought the specific performance of the agreement and the second suit also the cancellation of the sale deed. For both these causes of action the prescribed period of limitation is three years as respectively provided under Article 113 and Article 91 of the First Schedule of the Limitation Act, 1908. The petitioner's third suit had sought the specific performance of the agreement, the cancellation of the sale deed, which was executed when there was no suit pending, and also a declaration with regard to the ownership of the land. The third suit was filed after three years and was time-barred with regard to seeking the specific performance of the agreement and for the cancellation of the sale deed. An examination of the petitioner's plaint makes it clear that the petitioner had added the declaratory relief to primarily save the third suit from the consequence of having been filed beyond the period of limitation.
ii) Section 53 -A of the Transfer of Property Act does not confer or create a right, but it provides a defence to a transferee to protect his possession. The linking or combining of section 53-A of the Transfer of Property Act with the petitioner's suit will not benefit him by extending the period of limitation and save the third suit.

**Conclusion:** i) Once the period of limitation commences it cannot be stopped or be avoided by introducing another cause of action or relief in the suit.
ii) Section 53-A of the Transfer of Property Act cannot benefit in extending the period of limitation.

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**5.** **Supreme Court of Pakistan**
**Commissioner Inland Revenue, Lahore v. The Bank of Punjab, Lahore.**
**Civil Petition Nos. 2143-L, 2144-L and 2145-L of 2020**
**Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2143_l_2020.pdf

**Facts:** Through these Civil Petitions, the petitioner challenged the order of the High Court passed in Petitions for Tax References in which plea of respondent regarding rate of tax was accepted.

**Issue:** Whether a banking company on its income derived from dividends is to be taxed as per the rate mentioned in the paragraph A or the rate mentioned in the paragraph D of Part V, Rates of Income Tax for Companies, of the First Schedule to the Income Tax Ordinance, 1979?

**Analysis:** The question raised in the References has already been decided by this Court in

the EFU case, where it was held that if a company was entitled to the benefit of a particular provision of the Ordinance it could not be denied its benefit. The precedent of the EFU case is still applicable with regard to dividends declared/distributed by Pakistani companies in terms of paragraph D in respect of other companies, including a banking company. And, there is no reason to withhold the same from such companies, including a banking company. In addition, the said paragraph A of Part V of the First Schedule of the Ordinance states that the rates mentioned therein would only apply provided, amongst others, paragraph D is not applicable. In the present case paragraph D applies. Such unambiguously clear language leaves no room to countenance another interpretation. And, all the more so when this Court had already given a clear and emphatic answer in the EFU case. Therefore; the rates mentioned in paragraph A would not be applicable in respect of dividend income which has been declared / distributed by Pakistani companies and the applicable rate of income tax on such dividend income would be the one mentioned in paragraph D.

**Conclusion:** A banking company on its income derived from dividends is to be taxed as per the rate mentioned in the paragraph D of Part V, Rates of Income Tax for Companies, of the First Schedule to the Income Tax Ordinance, 1979.

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**6.** **Supreme Court of Pakistan**
**Commissioner Inland Revenue, Federal Board of Revenue, Karachi v. Muhammad Mustafa Gigi & 580 Others**
**Civil Petition Nos. 490-K of 2020 etc**
**Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._490_k_2020.pdf

**Facts:** Through these Civil Petitions, the petitioners had challenged the judgment of the High Court whereby the petitions of the respondents were accepted by holding that the Income Support Levy Act, 2013 ('the Act') could not have been introduced as a Money Bill, and also that the Income Support Levy was not a tax or taxation and declared the Act to be unconstitutional.

**Issue:** i) Whether the Income Support Levy Act, 2013 was a Money Bill and did not require to be transmitted to the Senate for voting?

ii) Whether legislative procedure of ordinary legislation is different from Money Bill, if so, what is the proper procedure?

**Analysis:** i) The Act itself did not state that the Income Support Levy was or constituted a tax or taxation. Leaving semantics aside, an examination of the Act makes it abundantly clear that it neither came within the definition of tax nor taxation. The Act was social legislation with the declared objective of poverty alleviation. Though a worthwhile objective, it did not bring the Act within the definition of a Money Bill. Since the Act was not a Money Bill it had to be passed by both Houses, as provided by Article 70 of the Constitution. But as this was not done,

so, the Act never became law.

ii) The legislative procedure to enact a Money Bill is different from the procedure with regard to ordinary legislation. Non-money ordinary legislation is introduced in the National Assembly or in the Senate, and after its approval by the House in which it was introduced, it is sent to the other House which may pass it or propose amendments to it. If amendments are proposed the bill is sent to the House in which it originated and if it accepts the proposed amendments it sends it for the assent of the President. However, if the bill is rejected or not passed within ninety days, or sent to the other House under clause (2) of Article 70 with amendments which are not passed by that House, then if the House in which the bill originated so requests, it shall be considered in a joint sitting of both Houses. Resorting to a joint sitting of both Houses can be only done after going through the steps prescribed in Article 70 of the Constitution, and if this is done and the bill is passed by the votes of the majority of members present and voting in the joint sitting, it shall be presented to the President for assent.

**Conclusion:** i) The Income Support Levy Act, 2013 was not a Money Bill and it must have been transmitted to the Senate for voting to become a law.

ii) Legislative procedure of ordinary legislation is different from Money Bill and in case of ordinary legislation; bill is introduced in one house and must be presented to other house for voting as provided under Article 70 of the Constitution of Islamic Republic of Pakistan.

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**7. Supreme Court of Pakistan**
**Mst. Noor Jehan & another v. Saleem Shahadat.**
**Civil Appeal No. 601/2019 & CMA No. 2953/2019**
**Mr. Justice Maqbool Baqar, Mr. Justice Qazi Muhammad Amin Ahmed**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._601_2019.pdf

**Facts:** Through instant civil petition, the petitioner has challenged the impugned judgment of High Court wherein the two concurrent judgments of lower Courts have been set aside and the suit of the respondent for specific performance of agreement to sell was decreed.

**Issue:** i) Whether the "token receipt" contains all the necessary ingredients essential for it to qualify as a valid and lawfully enforceable contract?

ii) What are the legal options for a vendee when the vendor refuses to accept the amount of sale consideration?

iii) Whether it is necessary to place the document in original on file or if it is lost, what procedure has to be followed?

**Analysis:** i) The "token receipt" contains all the necessary ingredients essential for it to qualify as a valid and lawfully enforceable contract. The document unambiguously contains the identity of the seller and the purchaser. The property to be sold has been described accurately in a well-defined manner if spells out the agreed sale consideration amount and stipulates the manner of payment. The parties who

executed the document are at consensus in idem. The document clearly manifests the intention to sell and purchase the property. The specific performance of the document in the circumstances could not have been avoided on the pretext that it provided for executing a formal agreement. The 'token receipt" was in itself a complete, and a lawfully enforceable agreement to sell.

ii) It is now well settled that where the vendor refuses to accept the sale consideration amount, the vendee seeking specific performance of the agreement to sell is essentially required to deposit the amount in the Court. The vendee has to demonstrate that he is and has at all relevant times been ready and willing to pay the amount, and to show the availability of the amount with him. A vendee cannot seek enforcement of reciprocal obligations of the vendor, unless he is able to demonstrate, not only his willingness, but also his capability to fulfil his obligation under the contract.

iii) The party can produce the original document in his evidence as required in terms of Article 75 of Qanun-e-Shahadat Order. If the same has been lost or destroyed, then it is imperative to have proved the loss of the original, as an essential prerequisite for seeking to produce a photocopy of the said document. The party can explain, as to when, how and under what circumstances the document was lost, destroyed or misplaced. The party can claim having lodged any complaint or FIR regarding the loss or theft of the document.

Conclusion: i) The document titled "token receipt" contains all the necessary ingredients essential for it to qualify as a valid and lawfully enforceable contract.

ii) Where the vendor refuses to accept the sale consideration amount, vendee can deposit it in the court and has to demonstrate that he is and has at all relevant times been ready and willing to pay the amount.

iii) It is necessary to place the document in original on file or if it is lost, can produce a photocopy after proving its loss.

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**8.** **Supreme Court of Pakistan**
**Muhammad Rasool v. The State.**
**Criminal Petition No.762 of 2018**
**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.p._762_2018.pdf

**Facts:** Petitioner was convicted and sentenced under section 9(c) of the Control of Narcotic Substances Act, 1997 by the learned Trial Court which was upheld by the High Court and the petitioner has prayed leave to appeal through this criminal petition against his conviction and sentence.

**Issue:** Whether the request of the accused for de-sealing the parcels in order to examine weight and texture of the contraband during trial can be accepted?

**Analysis:** It is rather intriguing to comprehend as to how an accused pleading innocence, all

of a sudden in the midst of the trial, prophetically learns about a change, having occurred in weight or texture of the contraband kept in safe custody; it does not require a genius to smell the rat. In the first place there is no occasion for the trial Judge, in the absence of any plausible reason, to obligingly accede to such a request for an exercise, manifestly calculated to subvert the prosecution case through methods sinister and stained. It is otherwise not possible without connivance of Moharrir Malkhana and the Naib Court to lay the ground for such a venture. Fair trial is not a one-way affair; it also requires an accused and his agents, pleading innocence, to conduct themselves in a manner above board, in accordance with law; their pursuit is only justified insofar as it is in accord with the means sanctioned by law

**Conclusion:** The request of the accused for de-sealing the parcels in order to examine weight and texture of the contraband during trial cannot be accepted without any plausible reasons.

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**9.** **Supreme Court of Pakistan**
**Zafar Khan & another v. The State**
**Jail Petition No.42 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._42_2017.pdf

**Facts:** The petitioner assailed their conviction under section 9 (c) of the Control of Narcotics Substances Act, 1997.

**Issues:** i) How the recovery memo is to be prepared and proved?
ii) Upon whom responsibility of safe custody of parcel lies?

**Analysis:** i) Recovery memo is a basic document, which should be prepared by the Seizing Officer, at the time of recovered articles, containing a list thereof, in presence of two or more respectable witnesses and memo to be signed by such witnesses. The main object of preparing the recovery memo at the spot and with signatures of the witnesses is to ensure that the recovery is effected in presence of the marginal witnesses, honestly and fairly, so as to exclude the possibility of false implication and fabrication. Once the recovery memo is prepared, the next step for the prosecution is to produce the same before the Trial Court, to prove the recovery of the material and preparation of the memo through the Scribe and the marginal witnesses.
ii) It is the responsibility of the prosecution to establish safe custody of the recovered material and immediate transmission of its samples to the examiner to avoid any possibility of substitution.

**Conclusion:** i) Recovery memo is to be prepared at the spot in presence of two or more witnesses and memo to be signed by such witnesses. Memo is proved through scribe and marginal witnesses.
ii) It is bounded duty of the prosecution to prove the recovery of contraband material from the accused, its safe custody and sending the samples for chemical analysis without undue delay.

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**10.** **Supreme Court of Pakistan**
**Muhammad Arif Chattha & others v. The learned Addl. District Judge, Gujranwala & others.**
**Civil Petition No. 1540 of 2018**
**Mr. Justice Sardar Tariq Masood, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail.**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1540_2018.pdf

**Facts:** The first execution petition was dismissed due to non-prosecution. The petitioner filed the second execution petition which was dismissed being barred by time as well as being not maintainable.

**Issues:** i) What is the limitation for filing the execution application?
ii) Whether second execution application on same subject matter is maintainable?

**Analysis** i) According to sub section 1 clause (a) of section 48, no order for execution of a decree shall be made upon any fresh application presented after the expiry of six years from the date of the decree sought to be executed. At the same time, clause (b) of section 48 provides that where the decree directs payment of money or the delivery of any property to be made at a certain date or at recurring periods, the limitation would run from the date of default in making the payment or delivery of any property, in respect of which the applicant seeks execution. Thus, if a decree, sought to be executed, is conditional, specifying the date for performance of certain act(s), the period for execution of the same shall be reckoned from the date of default of performance of the act(s), mentioned in the decree, instead of counting from the date of passing of the decree. In other cases, second application shall be filed within the period prescribed by section 48 of the CPC, which period shall be counted from the date of the decree.
ii) Section 48 permits the decree holder to file number of subsequent application(s), provided that the same is/are being filed within a period prescribed therein; and subject to the principle of res judicata.When the earlier application for execution of the decree filed by the respondents was though in time, but was dismissed in default and for non-prosecution, rather than on merits, therefore, the decree remained unsatisfied. Had the earlier application been disposed of on merits, then of course, the subsequent applications would not have been competent. Therefore, the subsequent application filed by the respondents was quite competent.

**Conclusion:** i) Decree can be executed within the period prescribed by Article 181 of the

Limitation Act. It is only after the first application is made; the subsequent application can be filed within the period prescribed by section 48 of the CPC. Where the decree directs payment of money or the delivery of any property to be made at a certain date or at recurring periods, the limitation would run from the date of default in making the payment or delivery of any property.
ii) Second execution application on same subject matter is maintainable subject to limitation and principles of res-judicata.

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**11.** **Supreme Court of Pakistan**
**Muhammad Nadeem v. Muhammad Khurram Iqbal and another.**
**Criminal Petition No.33 of 2021**
**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.p._33_2021.pdf

**Facts:** The petitioner seeks the cancelation of pre-arrest bail granted to respondent in a criminal case under sections 3, 4 of the Punjab Prohibition Money Lending Act, 2007, on the complaint of petitioner.

**Issues:** What is the object of granting pre-arrest bail?

**Analysis** It is by now well settled that protection of pre-arrest bail is essentially a judicial protection to protect the innocent, being targeted through abuse of process of law for motives, oblique and sinister; it is neither a substitute for post arrest bail nor a treatment to be extended in every run of the mill criminal case. It is an option that warrants caution in its exercise, seemingly ignored by the High Court.

**Conclusion:** The object of pre-arrest bail is to protect the innocent, being targeted through abuse of process of law.

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**12.** **Supreme Court of Pakistan**
**Rana Muhammad Hanif Khan (decd) through LRs v. Saddiq Khan (decd) through LRs.**
**Civil Appeal No.997of 2010**
**Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi.**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._997_2010.pdf

**Facts:** The appellants filed suit for recovery of damages/ compensation in respect of property situated outside Pakistan. The suit was decreed by learned trial court but was dismissed by learned appellate court.

**Issues:** Whether Civil Courts of Pakistan have jurisdiction to entertain suit for rendition of account and recovery in respect of property situated outside Pakistan?

**Analysis:** Section 16 of the CPC clearly stipulates that all suits in respect of immovable property shall be filed in the Court within the local limits of whose jurisdiction the property in question is situated. The only exception to this rule is suits filed under Section 16(c). ..Section 20 of the CPC clearly provides that every suit shall be filed in a Court within the local limits of whose jurisdiction the defendant or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. ..The argument that civil courts of Pakistan have jurisdiction since the suit does not involve any question regarding immoveable property and involves rendition of accounts and recovery of money is erroneous and misconceived because the amount claimed is income generated from the land. The language of Section 16 (d) clearly provides that, for the determination of any right or interest in respect of immoveable property, a suit must be filed in a court within the territorial jurisdiction of which the property situated…. Even the presence of parties within territorial jurisdiction of Pakistan does not ipso facto grant jurisdiction to Pakistani Courts on the touchstone of Sections 16 to 20 of the CPC when the property in question is situated outside Pakistan.

**Conclusion:** Civil Courts of Pakistan have no jurisdiction to entertain suit for rendition of account and recovery in respect of property situated outside Pakistan.

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**13. Supreme Court of Pakistan**

**Province of Punjab through Secretary Housing and Physical Planning Department, Government of the Punjab, Lahore and others v. Syed Zia Ui Hassan Zaidi and others.**

**Civil Appeal No.401 of 2015**

**Mr. Justice Ijaz ul Ahsan, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail**.

https://www.supremecourt.gov.pk/downloads_judgements/c.a._401_2015.pdf

**Facts:** Appellants acquired the disputed land for the "scheme" but latter on a revised layout plan was approved that the disputed land was excluded from the Scheme. On the contrary, the disputed land was transferred to the Education Department for construction of school, which was challenged by the Respondents by filing a suit for declaration etc. The suit was dismissed but appeal was allowed against which the appellants filed a civil revision petition which was dismissed hence this appeal.

**Issues:** i) Whether it is mandatory to publish notification of acquisition in official Gazette?

ii) Whether the competent authority after issuance of notification can use the land for any other purpose other than that which was mentioned in the Notification?

**Analysis:** i) Section 4(1) of the Act of 1973 use the word "shall" making it obligatory upon the Appellants to publish any and all notifications in respect of acquisition under Section 4(1) of the Act of 1973. The requirement of publication of a notification

under Section 4 is an essential requirement in acquisition proceedings because it is likely that the rights and interests of landowners will be adversely affected. A notification issued by the Government essentially reveals its intention. One of the purposes of publishing a notification is so that those who may be affected by it can know the intention of the Government as mentioned in the notification itself. Essentially, a notification is a means used by the Government to communicate with the general public regarding inter alia, any projects et cetera that it might prospectively undertake. The intent behind the notification or, the purpose for issuing the same must be mentioned because, as noted above, the rights of different stakeholders are involved. This is one of the reasons that there are various safeguards provided in the Act of 1973 such as Section 6 which requires, by using the words "Shall", the publication of a notice to make the intention of the Government to possess a certain piece of land clear.

ii) If the intention of the Government or the area sought to be acquired changes after the Notification under Section 4 has been issued; a fresh notification or an addendum to the earlier notification can be issued to enable the parties affect by it to avail remedies provided by the law. Further, the acquisition of the land does not ipso facto mean that the Appellant-Department could use the acquired land for any purpose that it considered appropriate. The acquiring agency/ department/ entity is restricted in its use of the land to the purpose mentioned in the notification and for no other purpose.

**Conclusion:** i) It is mandatory to publish notification of acquisition in official gazette.
ii) The competent authority after issuance of notification can not use the land for any other purpose other than that which was mentioned in the Notification

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**14.** **Supreme Court of Pakistan**
**Muhammad Iftikhar v. The State.**
**Criminal Appeal Nos.15-Q & 16-Q of 2020**
**Mr.Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Jamal Khan Mandokhel**
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._15_q_2020.pdf

**Facts:** Appellant has assailed their conviction in murder case.

**Issues:** Whether the conviction can be based upon an indiscreet suggestion by defence lawyer with a grievous inaptitude?

**Analysis:** It is unsafe to base the conviction upon an indiscreet suggestion by defence lawyer with a grievous inaptitude as no one can be allowed to be victim of a bad choice of his defence. Therefore, such conviction is not sustainable in the eye of law when otherwise totality of circumstances fails to qualify to sustain the capital charge and mystery of the occurrence is fraught with doubts.

**Conclusion:** The conviction cannot be solely based upon an indiscreet suggestion by defence lawyer with a grievous inaptitude.

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**15.** **Supreme Court of Pakistan**
**Abid Hussain and others v. Muhammad Yousaf and others.**
**Civil Petition No. 1647 of 2018**
**Mr. Justice Sajjad Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar**
**https://www.supremecourt.gov.pk/downloads_judgements/c.p._1647_2018.pdf**

**Facts:** Through this Civil Petition for leave to appeal, petitioner has challenged the judgment passed by the learned High Court in Regular Second Appeal.

**Issue:** i) Whether the Transfer of Property Act, 1882 has any application to the hiba/gift envisioned and encapsulated under the Muslim Law?

ii) Whether a gift of immovable property conveyed by a donor (father/natural guardian) under the Muhammadan Law in favour of minor child (donee) can be revoked subsequently?

**Analysis:** i) The Transfer of Property Act, 1882 has no application to the hiba/gift envisioned and encapsulated under the Muslim Law and for this reason, Section 123 and 129 of the Transfer of Property Act can neither surpass nor outweigh or preponderate the matters of oral gifts contemplated under the Muslim Law for which a registered instrument or indenture is not mandatory.

ii) If at the time of conveying a gift the donee was minor, the acceptance of gift could be made by his or her guardian and predominantly for the reason of minority of donee alone, the factum of gift made by his natural guardian does not cease to exist but remains valid on fulfillment of all ingredients of valid gift. A minor donee may not have the capacity to understand the legal consequences but minor being a person in existence is a competent donee. In case a guardian makes a gift in favour of his ward, he declares the gift as donor and accepts the gift on the part of the donee, the delivery of possession is not compulsory provided if there must be a bona fide intention on the part of the guardian/real father to divest and part from his ownership and pass on it to the donee out of love and affection. The possession of the guardian amounts to possession of minor and separately no aliunde evidence is required to prove that the guardian handed over possession of the property to the minor.

**Conclusion:** i) The Transfer of Property Act, 1882 has no application to the hiba/gift envisioned and encapsulated under the Muslim Law.

ii) A gift of immovable property conveyed by a donor (father/natural guardian) under the Muhammadan Law in favour of minor child (donee) cannot be revoked subsequently.

**16.** **Supreme Court of Pakistan**
**Nasir Ali v. Muhammad Asghar.**
**Civil Petition No. 3958 of 2019**
**Mr. Justice Sajjad Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3958_2019.pdf

**Facts:** Civil Petition for leave to appeal was directed against the judgment passed by the learned Lahore High Court in Civil Revision whereby the Civil Revision was allowed and the concurrent findings recorded by the Trial Court and Appellate Court in their respective judgments and decrees were set aside.

**Issues:** i) On whom "burden of proof" lies and how it is proved?
ii) What is the test of credibility and trustworthiness of the witness?
iii) Whether suit of declaration is maintainable where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so?
iv) What is the scope of revisional jurisdiction of High Court?

**Analysis:** i) According to the Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and burden of proof lies on him. The terminology and turn of phrase "burden of proof" entails the burden of substantiating a case. The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.
ii) The credibility and trustworthiness of the witness mandates to be tested with reference to the quality of his evidence which must be free from suspicion or distrust and must impress the court as natural, truthful and so convincing. "Falsus in uno, falsus in omnibus" is a Latin term which means "false in one thing, false in everything" which is a legal principle in common law that a witness who testifies falsely about one matter is not at all credible to testify about any other matter. This doctrine simply encompasses and footholds the weightage of evidence which the court may acknowledge in a given set of circumstances or situation and is more or less or as good as a rule of caution or permissible inference which is essentially reliant on the Court to separate the falsehood from the truth.
iii) Under the provisions of section 42 of the Specific Relief Act a person entitled to any legal character or to any right to property can institute a suit for declaratory relief in respect of his title to such legal character or right to property. The expression, legal character has been understood to be synonymous with the expression status. A suit for mere declaration is not permissible except in the circumstances mentioned in Section 42 of the Specific Relief Act. The proviso attached to this Section clarifies that no Court shall make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. Whereas under Section 39 of the Specific Relief Act, any person against whom a written instrument is void or voidable, who has reasonable apprehension

that such instrument, if left outstanding, could cause him serious injury, may sue to have it adjudged void or voidable and the Court may, in its discretion, so adjudge it to be delivered up and cancelled. Hence, mere suit for declaration without claiming the consequential relief of possession and cancellation of mutation entry was otherwise not maintainable.

iv) The scope of revisional jurisdiction is limited to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C.

**Conclusion:** i) If any person desires a court to give judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and burden of proof lies on him.

ii) The credibility and trustworthiness of the witness mandates to be tested with reference to the quality of his evidence which must be free from suspicion or distrust and must impress the court as natural, truthful and so convincing.

iii) The suit of declaration is not maintainable where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so.

iv) The scope of revisional jurisdiction is limited to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law.

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**17.** **Lahore High Court**
**Mst. Shabina Firdous v. Latif Siddique & 02 others.**
**R.F.A No.17780 of 2021**
**Mr. Justice Shujaat Ali Khan, Mr. Justice Ahmad Nadeem Arshad**
https://sys.lhc.gov.pk/appjudgments/2022LHC1613.pdf

**Facts:** Through this Regular First Appeal the appellant has assailed the judgment and decree passed by the learned Civil Judge, whereby respondents-vendees' suit for specific performance of agreements to sell was decreed.

**Issues:** i) Whether time is considered as essence of the contract?

ii) Whether mentioning of a specified period in an agreement for completion of sale would make the time as essence of the contract?

iii) Whether it is incumbent upon the Court to decree every suit for specific performance?

iv) Whether discretionary relief can be denied to the litigant on account of pendency of lis for many years?

**Analysis:** i) It is important to mention over here that in the contract relating to immovable property generally time is not the essence of the contract. Section 55 of the

Contract Act, 1872 deals with the effects of the failure of a party to perform its part of the contract where time is essence of the contract and the contracts where the time is not the essence of the contract. From above, it is vividly clear that intention to make time of the essence of the contract must be expressed in unmistakable language and it can be inferred from what passed between the parties before but not after the contract is made.

ii) A mere mention of a specified period in an agreement for completion of sale would not make the time as essence of the contract unless it is expressly intended by the parties and the terms of the contract do not permit any other interpretation. This question has to be decided according to the intention of the parties reflecting in the agreement, its terms, and conduct of the parties after the agreement and all the attending circumstances.

iii) Grant of decree for specific performance is discretionary in nature and such discretion should be justly exercised and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. It is not incumbent upon the Court to decree every suit for specific performance if the circumstances of the case require otherwise. The relief of specific performance being an equitable relief, it can be refused by the Court only if the equities in the case are against the plaintiff.

iv) Discretionary relief cannot be denied to a litigant, who otherwise is vigilant always ready and willing to perform his part of obligation, merely because his lis remained pending for many years in the court. Increase of price of the property during the time when causes remain pending in courts, not ipso facto disentitles the purchaser to seek discretionary relief of specific performance.

**Conclusion:** i) Generally in contract relating to immovable property time is not the essence of the contract unless it was expressly intended by the parties.

ii) Mere mentioning of a specified period in an agreement for completion of sale would not make the time as essence of the contract.

iii) It is not incumbent upon the Court to decree every suit for specific performance.

iv) Discretionary relief cannot be denied to the litigant who is willing to perform his part of obligation with bona-fide on account of pendency of lis for many years.

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**18.** **Lahore High Court**
**M/s Premium Developers v. Muhammad Tariq**
**Civil Revision No.74574 of 2019**
**Mr. Justice Shahid Bilal Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC1890.pdf

**Facts:** Through this civil revision, petitioner called in question the order of learned trial court with the contention that the impugned order was passed in favor of the respondent while respondent has not fulfilled his part of bilateral agreement and

even the arrangements made subsequently between the parties.

**Issues:** i) What is bilateral agreement?
ii) How the court should determine the actual sale price and balance amount?

**Analysis:** i) The agreement inter se the parties is a bilateral agreement and in a bilateral agreement, participating parties promise each other that they will perform or refrain from performing an act. This type of contract is also known as a two-sides contract.
ii) The agreement to sell as a whole is to be considered and read; without calculation of the already sold units and received amount the actual sale price cannot be determined and the petitioner cannot be directed to deposit the entire agreed sale price as the agreement in question is bilateral in nature, binding the parties to perform their parts step by step. Moreover, the trial Court while passing the order should be sure whether the ordered amount is the balance amount or not.

**Conclusion:** i) The agreement inter se the parties is a bilateral agreement.
ii) Without calculation of the already sold units and received amount the actual sale price cannot be determined. Trial Court while passing the order should be sure whether the ordered amount is the balance amount or not.

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**19.** **Lahore High Court**
**Sheikh Muhammad Tariq v. M/s Premium Developers**
**Civil Revision No.49091 of 2021**
**Mr. Justice Shahid Bilal Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC1901.pdf

**Facts:** Through this revision petition, the petitioner assailed the order of executing court, whereby, the petitioner was directed to get transfer the land in response to amount received.

**Issue:** Whether a Court is precluded from getting its order executed when any 'executable order' is passed?

**Analysis:** No doubt, a Court is not precluded from getting its order executed when any 'executable order' is passed while adhering to the provisions of section 36 of the Code of Civil Procedure, 1908, which provides that the provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

**Conclusion:** A Court is not precluded from getting its order executed when any 'executable order' is passed.

**20.** **Lahore High Court**
**Muhammad Iqbal v. The State, etc.**
**Crl. Appeal No.234157-J of 2018**
**Mst. Kishwar Sultana v. Muhammad Iqbal, etc.**
**Crl. Revision No.231746 of 2018**
**Mst. Kishwar Sultana v. Muhammad Ehsan, etc.**
**P.S.L.A. No.231740 of 2018**
**Ms. Justice Aalia Neelum**
https://sys.lhc.gov.pk/appjudgments/2022LHC1970.pdf

**Facts:** Through the instant jail petition, the appellant has assailed his conviction and sentence in murder case

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

**Analysis:** 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. 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 as held in Muhammad Mansha Kausar v. Muhammad Ashgar and others (2003 SCMR 477).

**Conclusion:**. The acquittal order can be interfered with if it is perverse or that it is completely illegal or there has been misreading or non-reading of evidence resulting in miscarriage of justice.

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**21.** **Lahore High Court**
**Amjad Ali v. Agricultural Development Bank now ZTB and others**
**E.F.A. No.54 of 2016**
**Mr. Justice Shams Mehmood Mirza, Mr. Justice Rasaal Hasan Syed**
https://sys.lhc.gov.pk/appjudgments/2022LHC1763.pdf

**Facts:** The suit for recovery was decreed in favour of Bank. During execution proceedings, the property mortgaged with bank to secure the payment of finance facility was sold in auction. Thereafter the appellants filed objection petition on the ground that he has purchased the auctioned property from the judgment debtor and mutation is also sanctioned in his favor. Thus he requested for setting aside auction proceedings. His objection petition was dismissed by the learned executing court.

**Issues:** i) Whether a separate civil suit is maintainable to decide questions pertaining title, rights and interests of property sold in auction proceedings by execution court?
ii) Whether a judgment and decree binds a person who is not party to suit?

iii) What remedy is available to a person who apprehends that auction purchaser, under the grab of auction order, will usurp the property different from the one subject matter of sale certificate?

**Analysis:** i) When the property having been sold in auction in execution of a decree passed by the Banking Court, all questions pertaining title, rights and interest therein could only be determined by the Executing Court and no separate suit was maintainable for determination of these questions. Rule 62 of Order XXI, C.P.C. mandates that all questions related to the right, title or interest of the claimant or objector in the attached property shall be adjudicated upon and determined by the court and no separate suit shall lie to establish such title, right or interest. Same is the rule in respect of claim of occupation which is exclusively triable by the Executing Court… the Civil Court could not possibly take cognizance to determine the question of title, interest or right in the property sold during execution of a decree by the Banking Court as the suit was barred by Rules 62 and 103 of Order XXI, C.P.C.

ii) The judgment and decree bind the parties to the proceedings while a person who is not a party therein will not be bound by such decree or judgment nor it can be used detrimental to their rights and interest in the property.

iii) If the appellant has any apprehension that the auction purchaser in the garb of auction order will usurp or take possession of the property different from the one subject matter of sale certificate, he can move a specific application requesting the Banking Court for appointment of Revenue Officer to accompany the bailiff at the time of delivery of possession to identify the exact location of the property and to ensure that the order of delivery of possession is implemented in letter and spirit in qua the property which is subject matter of purchase in auction and that no distinct property or the property of any other person is disturbed and any such application.

**Conclusion:** i) A separate civil suit is not maintainable to decide questions pertaining title, rights and interests of property sold in auction proceedings by execution court.

ii) The Judgment and decree does not bind a person who is not a party to the suit.

iii) The person who apprehends that auction purchaser under the grab of auction order will usurp the property different from the one subject matter of sale certificate, can move a specific application requesting the Banking Court for appointment of Revenue Officer to accompany the bailiff at the time of delivery of possession to identify the exact location of the property.

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**22.** **Lahore High Court**

**Pervaiz Akhtar and others v. Land Acquisition Collector and others.**

**R. F.A. No.75623 of 2019.**

**Mr. Justice Shahid Jamil Khan, Mr. Justice Ahmad Nadeem Arshad**

https://sys.lhc.gov.pk/appjudgments/2022LHC1641.pdf

**Facts:** The reference, filed under Section 18 of the Land Acquisition Act, 1894, was dismissed by the learned Referee Court. Being dissatisfied, appellants preferred

the instant appeal.

**Issues:** i) What is the prime intent of legislature regarding the Land Acquisition Act, 1894?
ii) What are the guiding principles to be followed while determining the compensation of the acquired land?

**Analysis:** i) The Act is founded upon the doctrine that the interest of the public is supreme and that the private interests are subordinate to the interest of the State. The Act was promulgated for the purpose of compulsory acquisition of land needed for the public purpose and for determination of amount of compensation to be made on account of such acquisition. Although the Act has been devised to deprive citizens of their valuable rights in property through a somewhat coercive measures by State exercising authority under a Statue but such exercise should have been only for public purpose. However, bare reading of the Act leaves one with the strong impression that prime intent of the legislature was to ensure the protection of the rights of the citizens whose property is being acquired. They are to be given gold for gold and not copper for gold. In this background the scheme of law under Land Acquisition Act, 1894 is complete and exhaustive, which apart from mode of acquisition of land, provides a scheme containing mechanism for measurement of land, assessment of its value, payment of compensation to the affected persons and remedy in case of any dispute.

ii) We have come to the conclusion that following via media should be followed while determining the compensation of the acquired land: -

a. The best method to work out the market value is the practical method of a prudent man as laid down in Qanoon-e-Shahadat Order 1984 to examine and analyze all the material and evidence available on the point and to determine the price which a willing purchaser would pay to willing seller of the acquired land.
b. The Court shall take into consideration the market value, loss by reason of severing such land from his other land, acquisition injuriously affecting his other property or his earning in consequence of change of residence or place of business and damage, if any, resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 of the Act and the time of the Collector's taking possession of the land. This, however, is not exhaustive of other injuries or loss which may be suffered by an owner on account of compulsory acquisition.
c. The phrase "market value of the land" as used in section 23(1), of the Act means "value to the owner" and, therefore, such value must be the basis for determination of compensation. The standard must be no subjective standard but an objective one. Ordinarily, the objective standard would be the price that owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser. The property must be valued not only with reference to its condition at the time of the determination but its future potential value must be taken into consideration.

d. While determining the potentials of the land, the use of which the land is capable of being put, ought to be considered;
e. Consideration should be had to all the potential uses to which the land can be put, as well as all the advantages, present or future, which the land possesses in the hands of the owners.
f. While determining the value of the land acquired by the Government and the price which a willing purchaser would give to the willing seller, only the past sales should not be taken into account but the value of the land with all its potentialities may also be determined by examining (1t necessary as Court witness) local property dealers or other persons who are likely to know the price that the property in question is likely to fetch in the open market. In appropriate cases there should be no compunction even relying upon the oral testimony with respect to market value of the property intended to be acquired, because even while deciding cases involving question of life and death, the Courts rely on oral testimony alone and do not insist on the production of documentary evidence. The credibility of such witnesses would, however, have to be kept in mind and it would be for the Court in each case to determine the weight to be attached to their testimony. It would be useful and even necessary, to examine such witnesses while determining the market prices of the land in questions because of the prevalent tendency that in order to save money on the purchases of stamp papers and to avoid the imposition of heavy gain tax levied on sale of property, people declare or show a much smaller amount as the price of the land purchased by them than the price actually paid. The previous sales of the land, cannot, therefore, be always taken to be an accurate measure for the determining the price of land intended to be acquired.
g. In determining the quantum of fair compensation the, main criterion is the price which a buyer would pay to a seller for the property if they voluntarily entered into the transaction. The assumption being that sale is being taken place in open market as if notification of acquisition did not exist.
h. In cases of compulsory acquisition effort has to be made to find out what the market value of the acquired land was or could be on the material date. While so venturing the most important factor to be kept in mind would be the complexion and character of the acquired land on the material date. The potentialities it possessed on that date are also to be kept in view in determining a fair compensation to be awarded to the owner who is deprived of his land as a result of compulsory acquisition under the Act.
i. When the market value is to be determined on the basis of the instances of sale of land in the neighboring locality, the potential value of the land need not be separately awarded because such sales cover the potential value.
j. An entry in the Revenue Record as to the nature of the land should not be considered conclusive, for example, land may be shown in Girdawari as

Maira, but because of the existence of a well near the land, makes it capable of becoming Chahi land;

k. It is obvious that the law provides determination of compensation not with reference to classification or nature of land but its market value at the relevant time. No doubt, for determining the market value, classification or the nature of land may be taken as relevant consideration but that is not the whole truth. An area may be Banjar Qadeem or Barani but its market value may be tremendously high because of its location, neighborhood, potentiality or other benefits.

l. The value of the land of the adjoining area which was simultaneously acquired and for which different formula of compensation has been adopted, should be taken into consideration.

m. In determining the quantum of compensation, the exercise may not be restricted to the time of the aforesaid notification but its future value may be taken into account.

n. The sale-deed and mutation entries do serve as an aid to the prevailing market value.

**Conclusion:** i) The prime intent of legislature regarding the Land Acquisition Act, 1894 was to ensure the protection of the rights of the citizens whose property is being acquired. They are to be given gold for gold and not copper for gold.

ii) Above mentioned guiding principles must be followed while determining the compensation of the acquired land.

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**23. Lahore High Court**

**Azmat Jahan v. Additional District Judge, etc.**
**Writ Petition No. 156059 of 2018**
**Mr. Justice Faisal Zaman Khan**
https://sys.lhc.gov.pk/appjudgments/2022LHC1927.pdf

**Facts:** Petitioner filed a suit for recovery of dowry articles of her deceased sister against her brother-in-law and the suit was dismissed being not maintainable. Feeling aggrieved, petitioner preferred an appeal which was also dismissed, hence, this petition.

**Issues:** i) Whether the sister of deceased wife has the locus standi to file a suit for recovery of dowry articles?

ii) How the share of estate/tarka of sister of deceased wife can be determined?

**Analysis:** i) Family Court Act revolves around the settlement and resolution of disputes arising out of marriage and family, (which is the outcome of the marriage), it is only the spouses (either of them) who under the Act can approach the family court, being an aggrieved person and file a case against the other spouse or any person whose presence is necessary for proper adjudication [see section 2(d) of the Act]. An exception to the question of locus standi is created by the Superior Court who have also recognized the rights of the parents of a deceased daughter to approach the family court seeking recovery of dowry articles [since they had

given the dowry articles to the deceased and their capacity to sue is recognized in section 2(d) of the Dowry and Bridal Gifts (Restriction) Act 1976]. Since the claim of the petitioner is that of her inheritance as she is asking for ½ of her share in the dowry articles being the estate/tarka of the deceased for which she has approached the family court by way of filing a suit for recovery of dowry article and since determination of share in the estate/tarka of a deceased or its distribution do not fall within the jurisdiction of the family court, hence the suit filed by her was not maintainable as she had no locus standi to approach the family court, thus, the courts below have rightly decided against the petitioner.
ii) In order to establish share in the estate/tarka of the deceased and for determination of her rights (if any), petitioner needs to approach the Civil Court of competent jurisdiction seeking a declaration wherein at the outset, she will have to establish that she is the successor of the deceased and is entitled to ½ share out of the estate/tarka. Similarly, she will also have to prove that any dowry articles were given to the deceased at the time of marriage, which are allegedly in the custody of respondent no.3 and have been usurped by him.

**Conclusion:** i) Determination of share in the estate/tarka of a deceased or its distribution do not fall within the jurisdiction of the family court, hence the sister of deceased had no locus standi to file a suit for recovery of dowry.
ii) In order to establish share in the estate/tarka; sister of deceased needs to approach the Civil Court for determination of her rights.

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**24.** **Lahore High Court**
**Federation of Pakistan v. Nasir Munir Ahmed and others**
**R.F.A. No.34 of 2020**
**Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC1587.pdf

**Facts:** Through this Appeal, the Appellant calls in question the validity of the judgment and decree passed by the Senior Civil Judge (Civil Division), Rawalpindi whereby reference application filed on behalf of the Respondent No.1/landowner under Section 18 of the Land Acquisition Act against the award passed by Land Acquisition Collector, Rawalpindi was allowed.

**Issue:** i) What are the mode for determining the actual compensation of acquired land?
ii) Whether the preamble of a statute holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law?
iii) Whether if base/foundation of any order or action is illegal then whole superstructure built thereupon can be sustained?

**Analysis:** i) The mode for determining the same is provided in Section 23 of the "Act" according to which the landowner is entitled to compensation and not just market-value and, therefore, loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits

are also relevant. The delay in the consummation of the acquisition proceedings cannot be lost sight off. While conducting the aforesaid exercise, oral evidence, if found, credible and reliable can also be taken into account.

ii) The preamble to a statute is though not an operational part of the enactment yet it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also shed clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, is therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. The Preamble of the "Act" laid strong emphasis to deal with matters of acquisition of land and payment of compensation to be made on such account.

iii) It is settled principle of law that if base/foundation of any order or action is illegal then whole superstructure built thereupon cannot be sustained. When the law specifies a particular manner and procedure then it is obligatory for the functionary of the state to adhere to the same and comply with it in all respects and any negligence, failure or omission to do so invalidate the proceedings on account of which whole superstructure raised on such defective foundation automatically crumbles down.

**Conclusion:** i) Loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits, the delay in the consummation of the acquisition proceedings, oral evidence, if found, credible and reliable can also be taken into account for determining actual compensation of acquired land.

ii) The preamble of a statute holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

iii) If base/foundation of any order or action is illegal then whole superstructure built thereupon cannot be sustained.

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**25. Lahore High Court**

**Munawar Hussain and 5 others v. Govt. of the Punjab, Through District Collector Jhelum and 2 others**

**R.F.A. No.150 of 2016**

**C.Ms. No.174-C & 175-C of 2021**

**Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan.**

https://sys.lhc.gov.pk/appjudgments/2022LHC1536.pdf

**Facts:** Petitioners moved two applications, one seeking recalling of order dismissing their appeal for non-prosecution and the other seeking condonation of delay.

**Issues:** i) Whether order of dismissing appeal for non-prosecution can be considered as order passed on date of hearing of Appeal under Order XLI Rule 17(1) of CPC if in preceding order office was directed to requisition the record & prepare the paper book before the next date of hearing and matter was directed to be listed on date?

ii) What will be limitation for filling of the application to set aside an order passed in Appeal not being an order on date of hearing under Order XLI Rule 17(1) of CPC?

**Analysis:** i) Order XLI of the CPC lays down the procedure in appeals. In terms of Rule 11 of Order XLI of "CPC" appellate court is vested with the power to dismiss the appeal without sending notice to the lower court. By virtue of sub-rule (2) of the Rule ibid if, on the day fixed or any other day to which the hearing is adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order of dismissal of appeal. Rule 12 (1) of Order XLI of CPC reads that "unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal" and Rule 12 (2) of Order XLI of CPC reads that "Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day". Rule 17(1) of Order XLI of CPC provides the consequences of default of the appellant to appear on the day fixed or any other day to which the hearing is adjourned. There can be no cavil that the expression "hearing" used in Order XLI Rule 17(1) of CPC corresponds to the adherence of all the steps outlined by Rules 11 to 16 of Order XLI of CPC. While, Chapter 2 Volume V of the Rules and Orders of the Lahore High Court, Lahore deals with the preparation of paper book and record.

ii) Article 168 of the Limitation Act, 1908 provides thirty days for an application seeking re-admission of the appeal dismissed for non-prosecution under Order XLI Rule 17(1) of CPC from the date of dismissal, but if the order cannot be termed as an order passed on day of hearing of Appeal under Order XLI Rule 17(1) of CPC. In such an eventuality, residuary Article i.e. 181 of the Limitation Act, 1908 would come into play.

**Conclusion:** i) It can safely be inferred that the proceedings were not adjourned for hearing of Appeal rather office was directed to requisition the record and prepare the paper book before the next date of hearing and matter was directed to be listed on date fixed, as such, said order cannot be termed as an order passed on day of hearing of Appeal under Order XLI Rule 17(1) of CPC.

ii) The residuary Article i.e. 181 of the Limitation Act, 1908 would come into play, which provides three years period of limitation.

**26. Lahore High Court**

**Muhammad Abu Bakar Farooq, etc. v. The Learned Judge Family Court, Chakwal, etc.**

**I.C.A No. 85 of 2021**

**Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran**

https://sys.lhc.gov.pk/appjudgments/2021LHC9414.pdf

**Facts:** The petitioners being the defendants in a family suit for recovery of dowry articles etc. moved an application seeking rejection of the plaint on the ground that the "respondents" have no cause of action which was dismissed. Hence instant appeal.

**Issue:** i) Whether the order of the learned Family Court dismissing the application for rejection of plaint is a "decision" as provided under section 14 of the Family Courts Act, 1964?

ii) Whether the Intra Court Appeal is maintainable in presence of remedy of appeal provided under Section 14 of the Family Courts Act, 1964?

**Analysis:** i) Bare reading of Section 14 of the Family Courts Act, 1964 postulates that appeal is permissible under the said provision with certain restrictions as enunciated in subsection (2), against a decision given or a decree passed by the learned Family Court. The word "decision" used in Section 14 of the Family Courts Act, 1964 is quite similar and akin to the term "case decided" used in Section 115 of the Code of Civil Procedure. It is well settled principle of law that revision under Section 115 of "CPC" is only maintainable against an order which comes within the purview of "case decided". There is no ambiguity that the order whereby application of the appellants seeking rejection of plaint was dismissed was a decision for all intents and purposes as per contemplation of Section 14 of the Family Courts Act, 1964.

ii) Proviso to Section 3 of the Law Reforms Ordinance, 1972 places an embargo that an Intra Court Appeal under Section 3 shall not be available or competent if the application brought before 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.

**Conclusion:** i) The order of the learned Family Court dismissing the application for rejection of plaint is a "decision" as provided under section 14 of the Family Courts Act, 1964.

ii) The Intra Court Appeal is not maintainable in presence of remedy of appeal provided under Section 14 of the Family Courts Act, 1964.

**27. Lahore High Court**

**Atif Riaz v. Federation of Pakistan through Secretary Ministry of Religious Affairs, Islamabad and 5 Others.**
**Writ Petition No. 2571 of 2021**
**Mr. Justice Mirza Viqas Rauf**
https://sys.lhc.gov.pk/appjudgments/2022LHC1743.pdf

**Facts:** Through instant petition under Article 199 of Constitution of Pakistan in the form of writ of certiorari, the petitioner sought annulment of the cancellation order of lease in favor of petitioner by Deputy Administrator Evacuee Trust Property.

**Issues:** i) What is the concept of writ of "Certiorari"?
ii) What kind of powers are vested upon High Court under writ of "Certiorari"?
iii) Whether Federal Government is competent to eject any person in possession or occupation of any evacuee trust property?
iv) Whether the order made under Section 25 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 can be challenged?
v) What is the effect of non-issuance of notice of hearing when a decision is to be adjudged in matter of public interest?
vi) Whether constitutional petition for implementation of the lease agreement is competent?

**Analysis:** i) Certiorari jurisdiction is based on the principle that wherever judicial jurisdiction is exercised by an inferior Court or Tribunal, it is, in cases of abuse or excess, liable to be corrected by the King's Bench Division of the High Court; in other words, the High Court, as a delegate of supreme judicial authority from the Sovereign, is liable for keeping inferior Courts or tribunals exercising judicial power within the limits of their jurisdiction.
ii) Through a writ of certiorari, a High Court on the one hand is vested with the power to correct the errors committed by the inferior Courts or Tribunals and on the other hand to annul the acts or proceedings taken by the inferior bodies without any lawful authority. High Court is empowered to interfere in all cases of excess of jurisdiction. It is trite law that a writ of certiorari cannot be used as a substitute of appeal or revision as its scope is limited and circumscribed to the eventualities noted hereinabove. The Court issuing a writ of certiorari acts in the exercise of a supervisory jurisdiction. As regards the character and scope, certiorari will be issued for correcting error of jurisdiction.
iii) Section 25 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 makes it manifestly clear that the Federal Government is competent to eject any person in possession or occupation of any evacuee trust property if it is required for an object, which is considered to be for public purpose. In the light of preamble it can safely be inferred that the evacuee trust properties are mainly meant to charitable, religious and educational purposes.
iv) The order made under Section 25 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 is mainly questioned on two grounds; firstly, that ejectment cannot be equated with the under Section 25 of the "Act,

1975" was termination of lease and secondly that no notice as was required ever served to the petitioner.

v) When a decision is to be adjudged as to what the public interest requires such a decision cannot be termed as termination of civil rights and obligations. Similarly, if the facts leadings to the impugned action are incontrovertible and admitted and despite affording an opportunity of hearing no other inference is deducible from the facts and circumstances, mere non-issuance of notice cannot be made basis for setting at naught such action as a rule of universal application.

vi) Law is well settled that a lessee has no vested right to get it enforced through constitutional petition. In other words terms and conditions of the lease agreement cannot be implemented by resorting the constitutional jurisdiction of this Court.

**Conclusion:** i) The concept of Certiorari is for keeping inferior Courts or tribunals exercising judicial power within the limits of their jurisdiction.

ii) Basically High Court on the one hand is vested with the power to correct the errors committed and on the other hand to annul the acts or proceedings taken by the inferior bodies without any lawful authority.

iii) Federal Government is competent to eject any person in possession or occupation of any evacuee trust property if it is required for an object, which is considered to be for public purpose.

iv)The order made under Section 25 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 can be challenged.

v) When a decision is to be adjudged in matter of public interest and despite affording an opportunity of hearing no other inference is deducible then mere non-issuance of notice cannot be made basis for setting at naught an action as a rule of universal application.

vi) Constitutional petition for implementation of the lease agreement is not competent.

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**28.** **Lahore High Court**
**Afzal Khan & another v. The State**
**Criminal Appeal No.774 of 2019**
**Muhammad Akhtar v. The State**
**Criminal Appeal No.744 of 2019**
**The State v. Afzal Khan & another**
**Murder Reference No.51 of 2019**
**Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Ch. Abdul Aziz**
https://sys.lhc.gov.pk/appjudgments/2022LHC1525.pdf

**Facts:** The appellants challenged their conviction & sentence whereas trial court sent reference under section 374 of CrPC for the confirmation or otherwise of death sentence.

**Issues:** i) How the term "charge" can be legally described?

ii) When error in the charge is considered material and calls for interference?

iii) What powers appellate court can exercise if some material error is noticed in

the charge?

iv) Whether a person can be prosecuted twice for same offence, if he is convicted or acquitted in earlier trial?

**Analysis:** i) Precisely, the term "charge" can legally be described as formulation of allegations prior to recording of prosecution evidence so as to enable an accused facing criminal trial for making good his defence. The word "charge" is wider in purport and implies the accusation against a delinquent, mentioning all the requisite details of offence allegedly committed by him.

ii) As a general rule embedded in Section 225 of CrPC, an error in framing of charge pertaining to the particulars of offence etc. is not to be regarded as material in nature. At the same time, if such error in framing of charge misleads the accused facing trial, it calls for interference through redressive measures.

iii) Section 227 empowers only the trial court to alter a charge at any stage of the case, even before the pronouncement of the final judgment but the foregoing provision cannot be invoked by the appellate court. Under section 232 of CrPC appellate court can remand the case for fresh trial in the manner it thinks fit on account of some material error in the charge, if it evinces that the convict was misled in his defence due to this defect. It can be concluded that the appellate court can even direct, if the circumstances so warrant, that after the framing of charge the trial court can rely upon the statements of witnesses earlier recorded and there is no need to order their re-summoning/re-calling.

iv) Article 13 Constitution, 1973 places an embargo that no person shall be vexed twice for the same offence. This rule has its roots in the maxim "nemo bis puniture aut vexature pro odum delico" which means that no one should be subjected to peril twice for the same offence. Article 13 is based on the principle of autrefois convict and prohibits the subsequent prosecution of an accused for the same cause if he is convicted in an earlier trial. The same rule is postulated in section 403 of CrPC with the modification of adding the principle of autrefois acquit and thereby further embargo is placed on subsequent prosecution if the earlier one had culminated in acquittal.

**Conclusion:** i) "Charge" is formulation of allegations to enable an accused for making good his defence.

ii) An error in framing of charge is material if it misleads the accused facing trial.

iii) The appellate court can remand case for fresh trial in the manner it thinks fit.

iv) A person cannot be prosecuted twice for same offence, if he is convicted or acquitted in earlier trial.

**29. Lahore High Court**
**Iftikhar Ali v. The State.**
**Criminal Appeal No.343 of 2019**
**The State v. Iftikhar Ali.**
**Capital Sentence Reference No.5 of 2019**
**Mr. Justice Raja Shahid Mahmood Abbasi, Mr. Justice Ch. Abdul Aziz**
https://sys.lhc.gov.pk/appjudgments/2022LHC1514.pdf

**Facts:** The accused/appellant preferred the instant appeal against the conviction/sentence, whereas trial court sent reference under Section 374, Cr.P.C. for the confirmation or otherwise of death sentence awarded to him.

**Issues:** i) Whether mechanism to adjudge the competency of a witness is provided in Article 3 of QSO, 1984?
ii) Whether deposition of a child witness can be ousted from consideration if he/she is not subjected to question answer session?
iii) While considering the evidence of a child, what should be observed by the court?
iv) How a distinction can be drawn between a child witness and a child victim while adjudging competency to testify in terms of Article 3 of QSO, 1984?
v) What are the sources which court should take into account for ascertaining the truth behind cases of sexual violence?

**Analysis:** i) There is no inbuilt mechanism provided in Article 3 of QSO, 1984 to adjudge the competency of a witness to testify even before administering him oath. Whereas a rule of caution a witness of tender or extreme old age is subjected to queries by the trial court before recording his evidence so as to ascertain his competency to understand the questions and ability to give their rational replies.
ii) The rule of caution of putting queries to witness of tender or extreme age can in no manner be taken as a statutory embargo so as to oust from consideration the deposition of a child witness if he/she is not subjected to questions in this regard before administering him/her oath.
iii) The legislative intent of Article 3 of QSO, 1984 unambiguously insinuates from the expression "unless the court considers" and needs no further elaboration. The true import and interpretation which can be given to Article 3 is to the effect that even while recording evidence of a child, the court can consider his ability to grasp the questions and to respond it through logical answers.
iv) A child who witnessed a crime committed against some other person, such child witness can on occasions be influenced through tutoring for narrating a false account of the incident, thus his evidence is to be subjected to a strict scrutiny of appraisal. On the other hand, a child who himself fell victim to a crime more so of sexual assault and successfully narrates his sufferings, besides competently standing the test of cross-examination by responding rationally to the questions put to him, his deposition is generally to be accepted.
v) So far as the other sources for ascertaining the truth behind cases of sexual violence are concerned, besides evaluating the deposition of a victim, some of

these can be summed up as under:- "(a) Marks of violence on the genitals; (b) Marks of violence on the person of the victim as well as the accused; (c) The presence of semen or bloodstains on the clothes of the victim or accused; and (d) The presence of seminal material around the vagina."

**Conclusion:** i) There is no mechanism provided in Article 3 of QSO,1984 to adjudge the competency of a witness.
ii) Such rule of caution can in no manner be taken as a statutory embargo so as to oust from consideration the deposition of a child witness.
iii) The court can consider his ability to grasp the questions and to respond it through logical answers.
iv) Deposition of a child witness calls for a vigilant judicial observance whereas deposition of a child victim, besides competently standing the test of cross examination, is generally to be accepted.
v) The sources to ascertain the truth behind cases of sexual violence can be marks of violence on genitals, on person of victim & accused, presence of semen or blood stain on clothes of victim or accused and seminal material around vagina.

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**30.** **Lahore High Court**
**Talib v. Government of Punjab, etc.**
**Writ Petition. No.25111/2019**
**Mr. Justice Sardar Muhammad Sarfraz Dogar**
https://sys.lhc.gov.pk/appjudgments/2022LHC1816.pdf

**Facts:** The petitioner and his co-accused filed criminal appeal against conviction & sentence while trial court sent a reference u/s 374 CrPC for confirmation of death sentence or otherwise. The appeal of petitioner was dismissed and Murder reference was answered in negative while death sentence was converted into life imprisonment. The petitioner filed criminal appeal before Hon'ble Supreme Court which was dismissed. Through this petition, the petitioner prayed that his sentence of life imprisonment of two counts be made concurrent and benefit of section 382-B CrPC be extended to him.

**Issues:** i) Whether maximum sentences of imprisonment for any heinous offences awarded on two counts ought to run consecutively or concurrently?
ii) Whether grant of benefit u/s 382-B CrPC is mandatory?
iii) Whether decisions on sentencing are binding?
iv) What is notion of sentence proportionate to the offender's culpability?

**Analysis:** i) A four-member Bench of the Hon'ble Supreme Court had held in Javed Shaikh v. The State (1985 SCMR 153) that :- "A perusal of proviso (a) to sub-section (2) of section 35 Cr.P.C. indicates that it prohibits the giving of consecutive sentence in one trial beyond the period of fourteen years, the maximum sentence, short of the death sentence, which could be imposed on an offender before the promulgation of the Law Reforms Ordinance, 1972. The said provision (section 35 Cr.P.C.) appears to be in consonance with the scheme and intendment of the

Pakistan Penal Code that an offender should only suffer the maximum sentence of imprisonment for any heinous crime (as it stood until 1972) which should not exceed fourteen years..."

ii) It is now settled law that grants of benefit of Section 382-B Cr.P.C, is a mandatory and in normal circumstances cannot be refused to the accused for the period he remained or detained in custody as an under-trial prisoner at the time of awarding him sentence of imprisonment by trial court.

iii) The decisions on sentencing are no more than examples of how the Court has dealt with a particular offender in relation to a particular offence. Limitation or curtailment of sentencing may be regulated by legislative provisions and other modes of fettering discretion in awarding of the punishment may also result from the principles stated by judicial pronouncement.

iv) The notion of `Just deserts' or the sentence proportionate to the offender's culpability was the principle which, by passage of time, became applicable to the criminal jurisprudence. For an offender to receive a sentence which adequately reflects the gravity of his offence, the punishment ought not to be so lenient and should not be heavier than that justified by the offence.

**Conclusion:** i) Maximum sentences of imprisonment for any heinous offences, short of the death sentence, awarded on two counts ought to run concurrently.

ii) Grant of benefit u/s 382-B CrPC is mandatory.

iii) The decisions on sentencing are no more than examples of how the Court has dealt with a particular offender in relation to a particular offence.

iv) The punishment ought not to be so lenient and should not be heavier than that justified by the offence.

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**31.** **Lahore High Court**
**Meera Shafi etc v. Federation of Pakistan etc.**
**Writ Petition No. 24397/2021**
**Mr. Justice Tariq Saleem Sheikh**
https://sys.lhc.gov.pk/appjudgments/2022LHC1786.pdf

**Facts:** This writ petition lays challenge to the constitutionality of section 20 of the Prevention of Electronic Crimes Act, 2016 ("PECA"), and seeks quashing of FIR registered under that provision at Police Station FIA Cyber Wing Circle, Lahore.

**Issue:** i) Whether jurisdiction of the High Court under Article 199 of the Constitution should be invoked only when there is no adequate and efficacious alternative remedy?

ii) Whether section 20 of the PECA is violative of Article 19 of the Constitution?

iii) Whether section 20 of the PECA is discriminatory? If so, it's effect.

iv) Whether rule 7(5) ordains that non-cognizable offences are to be dealt with according to section 155 Cr.P.C?

v) Whether criminal and civil litigation can continue side by side?

vi) If a particular act is malafide then whether it requires factual inquiry which cannot be undertaken by High Court in constitutional jurisdiction?

**Analysis:** i) It is trite that the jurisdiction of the High Court under Article 199 of the Constitution is extraordinary and should be invoked only when there is no adequate and efficacious alternative remedy. However, some authorities hold that the bar is not absolute. Every case has its own facts and in exceptional circumstances the High Court can intervene.

ii) A bare reading of section 20 of the PECA shows that it encompasses a wide range of objectionable/offensive acts and "harm to reputation" – or to put it in another way, defamation – is only one of them. As adumbrated, nobody can be given a licence to defame another or do anything that may impinge on his dignity. The phraseology of section 20 is broad enough to cover not only defamation but also the use of offensive and derisive language. Section 20 of the PECA sanctions attacks on the dignity of a natural person. Defamation is one of the things that violate it. The restrictions contemplated by section 20 of the PECA are justified by the Harm Principle. Interestingly, Chapter XXI of the PPC criminalizes various acts constituting defamation and it has been there since the very inception.

iii) Section 20 of the PECA relates to offences against dignity of a natural person and defamation is one of the acts that it criminalizes. PECA does not override PPC. Section 28 thereof rather says that the provisions of the PPC shall apply to the offences provided in the PECA unless they are inconsistent with it. The language of section 28 is perspicuous but section 50 presents some difficulty because of the expression "not in derogation of". The PECA has to be read in tandem with the laws mentioned in section 50(1) thereof. So far as defamation is concerned, the Explanations and the Exceptions set out in section 499 PPC would be read into section 20 of the PECA by virtue of sections 28 and 50 of this Act.

iv) Rule 7 retains the distinction between cognizable and noncognizable offences as we have in the Cr.P.C. However, it is not happily worded and appears to be incoherent. Rule 7(5) ordains that non-cognizable offences are to be dealt with according to section 155 Cr.P.C. and permission of the competent court is necessary for their investigation. In the case involving non-cognizable offence the Circle In-charge should seek permission of the competent court for investigation. This interpretation is in consonance with Standing Order No. 05/2020 issued by the Director General, FIA, to regulate the Agency's working.

v) The standard for appreciation of evidence for granting damages in civil litigation is altogether different from the one employed in criminal cases.

vi) The question as to whether a particular act is malafide requires factual inquiry which cannot be undertaken by this Court in constitutional jurisdiction.

**Conclusion:** i) The jurisdiction of the High Court under Article 199 of the Constitution should be invoked only when there is no adequate and efficacious alternative remedy. However, some authorities hold that the bar is not absolute.

ii) Section 20 of the PECA is not violative of Article 19 of the Constitution.

iii) Section 20 of the PECA is not discriminatory.
iv) Rule 7(5) ordains that non-cognizable offences are to be dealt with according to section 155 Cr.P.C.
v) The criminal and civil litigation can continue side by side.
vi) If a particular act is alleged as malafide then it requires factual inquiry which cannot be undertaken by High Court in constitutional jurisdiction.

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**32.** **Lahore High Court**
**Zia Hussain v. Additional District Judge and others**
**Writ Petition No.2832 of 2018**
**Mr. Justice Jawad Hassan**
https://sys.lhc.gov.pk/appjudgments/2022LHC1599.pdf

**Facts:** The petitioner has sought for reductions of the maintenance allowance while the respondents through their separate writ petition have assailed the enhancement of their maintenance allowance.

**Issues:** i) Whether adverse inference would be drawn if a husband/father fails to disclose his salary or financial earnings?
ii) What standards must be adopted while interpreting the word "maintenance" for a child?

**Analysis:** i) If the husband/father fails to disclose his salary or financial earnings, adverse inference would be drawn against him".

ii) Under the law, a father is bound to maintain his children until they have attained the age of majority. The intent and purpose of the maintenance allowance to a minor child is to enable her/him to continue living at least in the same state of affairs as the child was used to live prior to separation/divorce amongst the parents and it would be quite unjust and against the norms of proprietary if due to separation amongst the parents the child has to relegate to a lower level of living standard or he/she is declined the level or standard of education which was achieved by him/her prior to such happening i.e. separation of parents which admittedly has already taken place between the parties. At the same time, there is no escape from the fact that financial status of the father is also to be taken into consideration while awarding maintenance. The minors are entitled to be maintained by the father in the manner befitting the status and financial condition of the father and for this reason the Family Court is under an obligation while granting the maintenance allowance, to keep in mind the financial condition and status of the father. The Honorable Supreme Court of Pakistan has considered the aforesaid issue in the case of "Humayun Hassan Versus Arslan Humayun and another" (PLD 2013 SC 557) and held that in interpreting the word "maintenance" some reasonable standard must be adopted.

**Conclusion:** **i)** Adverse inference would be drawn if a husband/father fails to disclose his salary or financial earnings.

**ii)** Reasonable standards must be adopted while interpreting the word "maintenance" for a child. Its quantum must enable her/him to continue living at least in the same state of affairs as the child was used to live prior to separation/divorce amongst the parents while financial status of the father is also to be taken into consideration while awarding maintenance.

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**33.** **Lahore High Court**
**Faisal Shabbir, etc. v. SHO, etc.**
**W.P. No.8852 of 2020**
**Mr. Justice Muhammad Waheed Khan**
https://sys.lhc.gov.pk/appjudgments/2022LHC1544.pdf

**Facts:** Through these writ petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have sought quashing of FIRs all for offence u/s 406 PPC, against them on the applications of respective companies, who had been appointed by the banks for protection of pledged material/goods.

**Issues:** i) Whether FIR can be lodged under PPC against the customer of bank?
ii) Whether the Banking Court has the power to direct or conduct an inquiry/investigation after receiving a private complaint?
iii) Whether the prosecution can be brought against Muqaddam under the Financial Institutions (Recovery of Finances) Ordinance, 2001, (FIO)?

**Analysis**: i) Section 20 of the FIO relates to provisions with regard to certain offences, particularly sub-section (6) makes one thing very clear that all the offences under the Financial Institutions (Recovery of Finances) Ordinance, 2001 shall not only be triable by the banking court but such offences have been made bailable, non-cognizable and compoundable. The legislation has used the word "non-cognizable" therein, which means that no FIR in this regard can be registered, under section 154 Cr.P.C., as FIR can be registered regarding offences, which are cognizable in nature. Likewise, the provisions of section 4 of the "FIO" have given the FIO overriding effect. Sub-clause (c) of above referred sub-section (1) of section 20 of the FIO described that subsequent to the creation of a mortgage in favour of a Financial Institution, if the pledged goods have been dishonestly alienated, without written permission of the Financial Institution, that would also be an offence and since the overriding effect of this Ordinance has been provided under section 4, so, there is no cavil to the proposition that no FIR can be lodged against the customer against any other law, including the Pakistan Penal Code. Similarly, the banking courts have been given the jurisdiction to try the criminal case in section 7 of the "FIO".
ii) After receiving a private complaint, the learned Banking Court while postponing issue of process, has the power to direct an inquiry or can get

inquiry/investigation conducted from any agency, including the FIA, etc., as it needs fit under section 202 of the Cr.P.C. as in clause (b) of section 7(1) of the FIO, the Code of Criminal Procedure has been made applicable in Banking Courts while conducting trial in offences punishable under the Ordinance.
iii) The companies represented by the Muqaddams undertake to safeguard and protect the pledged goods, so, if any misappropriation, embezzlement or for that matter, the offence of theft has been committed regarding the pledged goods, the Muqaddam and the company cannot be absolved/relieved from the responsibility of the same… The learned Division Bench of this Court in Faisal Farooq's case (supra) has held that if Muqaddam appointed by banker is sought to be prosecuted, no prosecution can be brought against Muqaddam under the FIO and he can be prosecuted under the general law, since he is the independent entity, as having no concern in the agreement executed between the bank and the customer.

**Conclusion**: i) FIR cannot be lodged against the customer of bank against any other law, including the Pakistan Penal Code in respect of matters falling under FIO.
ii) The Banking Court has the power to direct or conduct an inquiry/investigation after receiving a private complaint.
iii) No prosecution can be brought against Muqaddam under the FIO.

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**34.** **Lahore High Court**
**Lahore Development Authority, etc. v. Muhammad Arif Khan deceased through L.R.s, etc.**
**C.R. No.1614 of 2011**
**Mr. Justice Rasaal Hasan Syed**
https://sys.lhc.gov.pk/appjudgments/2022LHC1690.pdf

**Facts:** This civil revision petition impugns judgments and decree of trial court and subordinate Appellate court whereby suit for permanent injunction filed by the respondents/plaintiffs was decreed and appeal there against was dismissed. The case of the respondents/plaintiffs was that as per LDA's applicable policy for the subject Scheme, they were entitled to the adjustment of the occupied unit in the Scheme and that they were ready for adjustment as per policy and that they were entitled to retain their constructed properties against such adjustment.

**Issues:** i) Whether the suit for permanent injunction simpliciter was maintainable without seeking declaration of ownership of property?
ii) Whether injunction can be granted in respect of land acquired under Land Acquisition Act?
ii) Whether the concurrent findings of a fact recorded by the subordinate courts cannot be interfered with in the revisional jurisdiction?

**Analysis:** i) The permanent injunction could be granted only if there were admitted rights either under a contract or under the statute, which were being violated. Therefore without seeking declaration of ownership of residential unit under

sanction/approval of competent authority, the suit for permanent injunction simpliciter was not maintainable.
ii) When the land has been acquired, Award have been announced, the Acquiring Authority or the Land Acquisition Collector had to proceed with the performance of statutory duties of taking over the possession by removing encroachments for delivery of possession to the persons who were entitled to have the same and, as such, no injunction could be granted to interfere with the performance of public duties of any department of Federal or Provincial Government in view of the bar under section 56(d) of Specific Relief Act, 1977
ii) The revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where courts have acted in the exercise of its jurisdiction illegality or with material irregularity. 24).

**Conclusion:** i) In the peculiar circumstances of the case, the suit for permanent injunction simpliciter was not maintainable without seeking declaration of ownership of residential unit under sanction/approval of competent authority.'
ii) Injunction cannot be granted in respect of land acquired under Land Acquisition Act.
iii) The concurrent findings of a fact recorded by the subordinate courts can be interfered with in the revisional jurisdiction where there is misreading and non-reading of evidence on the record which is conspicuous.

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**35.** **Lahore High Court**
**Zia-ul-Haq, etc v. Muhammad Ismail, etc.**
**Civil Revision. No. 10864/2022**
**Mr. Justice Asim Hafeez**
https://sys.lhc.gov.pk/appjudgments/2022LHC1774.pdf

**Facts:** During the pendency of suit of partition, contesting respondents filed suit for declaration and permanent injunction and the plaint of the said suit was rejected by the trial court being non-maintainable in law. Contesting respondents called in question the said decree of trial court before the first appellate court where appeal was allowed and the said decree was set aside. Hence, this revision petition.

**Issues:** Whether suit for declaration inter-se co-owners is maintainable?

**Analysis:** Suit for declaration is maintainable, inter-se co-owners and no restriction could be imposed on the rights of one of the co-sharers to sell the share. Contentions that suit for injunction was not maintainable, in view of the allegation of change of nature of the property, are misconceived and result of misconstruction of law.

**Conclusion:** Suit for declaration inter-se co-owners is maintainable.

**36.** **Lahore High Court**
**Rao Talib Ali Khan v. Peer Saleem-ud-Din, etc.**
**C.R. No.1415 of 2013**
**Mr. Justice Asim Hafeez**
https://sys.lhc.gov.pk/appjudgments/2022LHC1777.pdf

**Facts:** This Civil Revision is decided along with another Civil Revision having overlapping issues, whereof appeals filed against decision of learned executing court challenging the auction of attached decree were dismissed.

**Issues:** i) What is the nature of the attached decree?
ii) What is the effect of determining low and unrealistic reserve price of the decree during the auction proceedings?

**Analysis:** i) Attached decree is a non-money decree which, in fact, is a decree of specific performance. A non-money decree is treated as a property and can be put to sale in accordance with the mandate of section 64 of CPC.
ii) Court being the custodian of the rights of the judgment debtor was obligated to ensure lawful determination of the reserve price, ascertained through arranging evaluation of the attached decree, which essential acts were missing. Mere failed attempts to draw bidder at auction is not ground to auction attached decree at throw away price – without considering the worth of the property and arranging its forced sale value (FSV).

**Conclusion:** i) Attached decree is a non-money decree which, in fact, is a decree of specific performance.
ii) Determining low and unrealistic reserve price of the decree without considering the worth of the property is a ground for setting aside the auction proceedings.

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**37.** **Lahore High Court**
**Jamshaid alias Bablu vs. The State & another, Sana Ullah alias Fouji vs. The State & another, Rashid Mehmood vs. The State & another**
**Crl. Appeal No.51-ATA/2018, Crl. Appeal No.53-ATA/2018, Crl. Appeal No.86-ATA/2018**
**Mr. Justice Sadiq Mahmud Khurram**, **Mr. Justice Ali Zia Bajwa**
https://sys.lhc.gov.pk/appjudgments/2022LHC1910.pdf

**Facts:** The appellants, have assailed their convictions and sentences passed by learned Judge, Anti Terrorism Court, Bahawalpur Division, Bahawalpur, offences under Sections 365-A, 201 & 34 PPC read with Section 7(e) of Anti-Terrorism Act, 1997.

**Issues:** i) When Test of Identification Parade is necessary?
ii) If no role of accused is mentioned during the proceedings of TIP, then what is its evidentiary value?

iii) Whether child is competent witness and what is its effect if kidnapped child is not produced as witness before trial court?

**Analysis** i) It is a settled legal proposition of criminal law that where accused are not previously known to witnesses, TIP must be conducted to rule out the possibility of false implication or misidentification.

ii) Identification of an accused person without reference to the role allegedly played by him during the occurrence is hardly of any evidentiary value. Identification parad**e** loses its sanctity, when no role has been attributed to the accused during commission of offence. Evidentiary value of TIP, where no role has been attributed to accused, is next to nothing.

iii) A child, irrespective of his age, is competent to appear as a witness before the trial court, subject to his fulfilling the conditions precedent provided under Articles 3 and 17 of the Qanun-e-Shahadat, 1984. Prosecution should have produced the minor allegedly kidnapped in this case and it was the trial court to determine his competence to be a witness after applying the 'rationality test'. Non-production of kidnapped child before the trial court, casts a serious doubt on the prosecution version

**Conclusion:** i) Where accused is unknown, the test of identification parade is necessary.

ii) The role of accused must be disclosed by the witness during the identification Parade otherwise it loses its value.

iii) Child is competent witness and if kidnapped child is not produced as witness then it casts serious doubt in prosecution case.

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**38.** **Lahore High Court**
**Multan Development Authority & 2 others v. Malik Saleem Ullah & 6 others**
**R.F.A. No. 225 of 2018**
**Mr. Justice Sohail Nasir , Mr. Justice Shakil Ahmad.**
https://sys.lhc.gov.pk/appjudgments/2022LHC1734.pdf

**Facts:** The land of respondents was acquired to launch a housing scheme and the Land Acquisition Collector (LAC) made an award for compensation. Being dis-satisfied with the award, the respondents filed reference, filed in terms of Section 18 of the Land Acquisition Act, (I of 1894) (the "Act") wherein learned Senior Civil Judge enhanced the compensation. Hence the instant appeal.

**Issues:** i) When after receiving the compensation without any protest the party is estopped to file the reference?

ii) What is worth if the special attorney did not state in specific words during his examination that he was the attorney?

iii) What are the parameters for ascertainment of compensation of the land acquired?

**Analysis:** i) From bare reading of proviso to subsection (2) of section 31 of the "Act" reveals that the entire "Act", does not provide any particular mode, manner and method of

protest by a claimant at the time of receipt of amount of compensation, awarded under Section 11 of the "Act", hence, the protest can be made either in writing or through reference under Section 18 of the "Act".

ii) The fact that while making his statement , the special attorney did not state in specific words that he was the attorney of private respondents, at the most is a technical attack but with no worth at all.

iii) The question of ascertainment of compensation of the land acquired the parameters and considerations have been settled which are formulated as under: -

i. An entry in the Revenue Record as to the nature of the land may not be conclusive, for example, land may be shown in Girdawari as Maira, but because of the existence of a well near the land, makes it capable of becoming Chahi land.

ii. While determining the potentials of the land, the use of which the land is capable of being put, ought to be considered.

iii. Market value of the land is normally to be taken as existing on the date of publication of the notification under Section 4(1) of the Act but for determining the same, the prices on which similar land situated in the vicinity was sold during the preceding 12 months and not 6-7 years may be considered including other factors like potential value etc.

iv. The best way to work out the market value is the practical method of a prudent man to examine and analyze all the material and evidence available on the point and to determine the price which a willing purchaser would pay to willing seller of the acquired land.

v. Under Section 23 of the Act in determining the amount of compensation the court shall take into consideration the market value, loss by reason of severing such land from his other land, acquisition injuriously affecting his other property or his earning in consequence of change of residence or place of business and damage, if any, resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of the Collector's taking possession of the land.

vi. This, however, is not exhaustive of other injuries or loss which may be suffered by an owner on account of compulsory acquisition.

vii. The best method of determination of the market price of the plots of land under the acquisition is to rely on instances of sale of it near about the date of notification under section 4(i) of the Act.

viii. The next best method is to take into consideration the instances of sale of the adjacent lands made shortly before and after the notification.

ix. No doubt, for determining the market value, classification or the nature of land may be taken as relevant consideration but that is not the whole truth. An area may be Banjar Qadeem or Barani but

its market value may be tremendously high because of its location, neighbourhood, potentiality or other benefits.

x. While determining the value of the compensation the market value of the land at the time of requisition/acquisition and its potentiality has to be kept in consideration.

xi. Consideration should be had to all the potential uses to which the land can be put, as well as all the advantages, present or future, which the land possesses in the hands of the owners.

xii. In determining the quantum of fair compensation the main criterion is the price which a buyer would pay to a seller for the property if they voluntarily entered into the transaction.

xiii. Worth has to be determined in a way as the value of the land in open market at the relevant time.

xiv. In appropriate cases there should be no compunction even relying upon the oral testimony with respect to market value of the property intended to be acquired, because even while deciding cases involving question of life and death, the courts rely on oral testimony alone and do not insist on the production of documentary evidence. The credibility of such witnesses would, however, have to be kept in mind and it would be for the court in each case to determine the weight to be attached to their testimony.

xv. It would be useful and even necessary, to examine such witnesses while determining the market prices of the land in questions because of the prevalent tendency that in order to save money on the purchases of stamp papers and to avoid the imposition of heavy gain tax levied on sale of property, people declare or show a much smaller amount as the price of the land purchased by them than the price actually paid.

xvi. The sale deed and mutation entries do serve as an aid to the prevailing market value.

xvii. The standard must not be subjective but objective. Ordinarily, the objective standard would be the price that owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser.

**Conclusion:** i) After receiving the compensation without any protest the party is not estopped from filing the reference.

ii) If the special attorney did not state in specific words during his examination that he was the attorney is at the most is a technical attack but with no worth at all.

iii) There are different parameters for ascertaining the compensation of land required such as potential & value of land, loss by reason of severing such land from his other land, acquisition injuriously affecting his other property or his earning in consequence of change of residence or place of business and damage, if any, resulting from diminution of the profits of the land between the time of the

publication of the declaration and the time of the Collector's taking possession of the land.

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**39.** **Lahore High Court**
**Faiz Muhammad v. The State & 3 others**
**Criminal Miscellaneous No.611-M of 2021.**
**Mr. Justice Sohail Nasir**
https://sys.lhc.gov.pk/appjudgments/2022LHC1481.pdf

**Facts:** The application for proceedings under section 145 Cr.P.C was filed against the petitioner before Special Judicial Magistrate. The application was accepted and a direction was issued for sealing the disputed property. Petitioner being aggrieved from that decision preferred a criminal revision which was dismissed vide an order dated 23.01.2021 passed by the learned Additional Sessions Judge Multan. Being aggrieved from the decisions of two courts below the petitioner has approached this Court through the instant criminal miscellaneous filed under Section 561-A, Cr.P.C. .

**Issues:** i) What are the basic conditions to invoke the proceedings under section 145 Cr.P.C?
ii) Whether magistrate is competent to decide the question of entitlement of property while exercising the powers under Section 145 Cr.P.C?

**Analysis:** i) There are two conditions for invoking the jurisdiction, one dispute relates to land and the other it likely to cause breach of peace. Undisputedly both the conditions must be in existence simultaneously.
ii) The provisions of section 145, Cr.P.C clearly envisage apprehension of breach of peace as a jurisdictional requirement. The issue of possession of a party could only be gone into by a Magistrate after his jurisdictional requirement is satisfied. The purpose of this section is to prevent imminent apprehension of breach of peace over the immovable and or movable property. This provision does not authorize a Magistrate to exercise jurisdiction in mere existence of a dispute relating to an immovable property.

**Conclusion:** i) In order to invoke jurisdiction under section 145 Cr.P.C, there must be dispute of land and same should be likely to cause breach of peace.
ii) The magistrate has no jurisdiction while proceeding under section 145 Cr.P.c to decide question of entitlement of property.

**40.** **Lahore High Court**
**F. A.O. No.128 of 2014**
**Indus Motor Company Ltd. & another v. Malik Ishfaq Ahmad & another**
**Mr. Justice Sohail Nasir**
https://sys.lhc.gov.pk/appjudgments/2022LHC1672.pdf

**Facts:** Respondent No.3 (contesting respondent) who being the Consumer purchased a new Toyota Corolla XLI, from appellants through its authorized Dealer respondent No.2 but lost it just after 17 days, when it got fire and completely burnt due to defect in the fuse box. Learned Consumer Court, on a claim filed by contesting respondent against appellants and respondent No. 2 under Section 25 of the Punjab Consumer Protection Act, 2005 (Act) declaring the product as defective had directed to pay the claim to the contesting respondent. Feeling aggrieved from the above said decision, appellants have approached this Court.

**Issues:** i) What would be the effect where the party withholds its best evidence?
ii) What are the powers of Consumer Court under Section 30(c) of the Punjab Consumer Protection Act, 2005.

**Analysis** i) If a party is responsible for withholding the best available evidence and under the settled principles of law the presumption shall be against that party.
ii) The legal proposition is absolute that in terms of Section 30(c) of the Act the Consumer Court has the powers to decide a dispute on the basis of evidence relating to the accepted industry standards and by inviting expert evidence in this regard.

**Conclusion:** i) Presumption shall be against the party responsible for withholding the best available evidence.
ii) Consumer Court under section 30(c) of the Act has the powers to decide a dispute on the basis of evidence relating to the accepted industry standards and by inviting expert evidence in this regard.

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**41** **Lahore High Court**
**Mehdi Khan v. Shumaila Bibi, etc.**
**Writ Petition No. 2772 of 2017**
**Mr. Justice Ahmed Nadeem Arshad**
https://sys.lhc.gov.pk/appjudgments/2022LHC1665.pdf

**Facts:** Through this petition, petitioner challenged the vires of orders passed by the Administrator, Union Council and the District Collector vide which past maintenance of respondent no. 1 was allowed and revision petition of petitioner was also dismissed.

**Issues:** i) Whether Administrator Union Council has jurisdiction to fix maintenance?
ii) Whether Administrator Union Council has jurisdiction to grant past maintenance?
iii) Whether Chairman can assume himself to be Arbitration Council?

iv) What do words "within the prescribed period" mean?
v) Whether provisions of Limitation Act, 1908 are applicable if the special law prescribed period for availing remedy?

**Analysis:** i) After the promulgation of the Ordinance, 1961, West Pakistan Family Courts Act, 1964 was enacted which shows that without any ambiguity the Muslim Family Laws Ordinance, 1961, an earlier statute, was not only kept intact but it was given an overriding effect on any other statute on the subject. On a conjunctive reading of section 5 and section 21 of the West Pakistan Family Courts Act, 1964 it also clearly emerges that the right of a woman to invoke provisions of section 9 of the Muslim Family Laws Ordinance, 1961 could not be taken away on any pretext including filing of proceedings before any other forum…
ii) Section 9(1) of the Ordinance, 1961, postulates that Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband. From the word 'maintenance' it cannot be gathered that it relates to past or future rather in wide sense it covers all kinds of maintenance payable to the wife either during subsistence of her marriage or for Iddat period, as the case may be. Therefore, in no way Section 9(1) curtailed the power of Arbitration Council to grant past maintenance to the wife.
iii) Rule 5(6) of the West Pakistan Family Court Rules (framed under the Muslim Family Laws Ordinance, 1961) envisages that all decisions of the Arbitration Council shall be taken by majority and where no decision can be so taken the decision of the Chairman shall be the decision of the Arbitration Council.
iv) The words 'within the prescribed period' means not beyond the period stipulated under the Rules.
v) When the statute itself prescribed the period for availing remedy before the higher forum the provisions of Limitation Act, 1908 would not be applicable.

**Conclusion:** i) Administrator Union Council has jurisdiction to fix maintenance.
ii) Administrator Union Council has jurisdiction to grant past maintenance.
iii) Where no decision can be taken by majority, the decision of the Chairman shall be the decision of the Arbitration Council.
iv) The words 'within the prescribed period' means not beyond the period stipulated under the Rules.
v) Provisions of Limitation Act, 1908 are not applicable if the special law prescribes period for availing remedy.

**42.** **Lahore High Court**
**Abdul Hameed, etc v. Addl. District Judge, etc.**
**Civil Revision No.3650 of 2012.**
**Mr. Justice Ahmad Nadeem Arshad.**
https://sys.lhc.gov.pk/appjudgments/2022LHC1508.pdf

**Facts:** The petitioners filed this revision petition against decision of learned appellate Court which dismissed their appeal challenging condition imposed by the learned trial Court with regard to payment of stamp duty according to the rate prevalent at the time of registration of registered sale deed.

**Issues:** Whether it is necessary for the petitioners to pay the requisite stamp duty according to the rate prevalent at the time of registration of sale deed?

**Analysis:** The accumulative reading of the above-referred provisions of different legislative pieces and the Rules makes it abundantly clear that all the requisite fees on a written instrument are payable according to the rate prevalent on the date of presentation of the said document. A document which is presented for registration is required to be stamped as per the stamp duty applicable on such day, when it is presented and it is the duty of the Registration Officer to examine the document in order to determine whether it bears the requisite stamps or the requisite stamp duty has been paid.

**Conclusion:** Yes, It is necessary for the petitioners to pay the requisite stamp duty as per market value of the suit property prevalent at the time of registration of sale deed.

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**43.** **Lahore High Court**
**Ijaz alias Jujji v. The State etc.**
**Writ Petition No. 80463 of 2021**
**Mr. Justice Muhammad Tariq Nadeem**
https://sys.lhc.gov.pk/appjudgments/2022LHC1473.pdf

**Facts:** Through instant writ petition, the petitioner has prayed that all the sentences awarded in two different cases kindly be ordered to run concurrently and not consecutively.

**Issues:** Whether High Court has jurisdiction to pass an order regarding the sentences passed in two different cases to run concurrently?

**Analysis:** The trial, appellate or revisional Court can pass orders in singular trial, that the sentences run in row, however, section 35 of the Cr.P.C enables the trial and or higher Courts of appeal to order consolidation of several imprisonment sentences in the same trial. Section 397 Cr.P.C. further provides that when a person is sentenced at a time when he is already undergoing imprisonment, then his subsequent sentence is to commence upon the expiration of the earlier sentence unless the Court has specifically given directions that subsequent sentence to run concurrently with the previous sentence. This section deals with various sentences passed in a single trial of two or more offences. The sentences are to run consecutively unless the Court directs otherwise. This Court has jurisdiction

under section 561-A read with section 35 and or section 397, Cr.P.C as the case may be to order multiple sentences in same transaction/trial or in a separate and subsequent trial to run consecutively.

**Conclusion:** High Court has jurisdiction to pass an order regarding the sentences passed in two different cases shall run concurrently.

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**44.** **Lahore High Court**
**Muhammad Asif v. The State etc.**
**Crl. Appeal No.1175 of 2019**
**Mr. Justice Muhammad Amjad Rafiq**
https://sys.lhc.gov.pk/appjudgments/2022LHC1567.pdf

**Facts:** Petitioner sought suspension of sentence awarded to him under sections 302/34 PPC.

**Issues:** i) Whether previous record of accused is necessary for declaring him as desperate, hardened or dangerous criminal?
ii) What is the criteria to label one as hardened, desperate or dangerous criminal?

**Analysis:** i) In interpreting the words “hardened, desperate and dangerous used in fourth proviso to section 497 Cr.P.C., the Honourable Supreme court has focused on the phrase “in the opinion of the court” and held that previous record of accused is not necessary for such declaration rather from the act or role of an accused during the crime, his status as such can be ascertained. The words "in the opinion of the Court" connotes that such opinion cannot obviously be subjective but must be based upon material placed before the Court, reasonably supporting the conclusion that the person concerned is a criminal of the classes described.
ii) Harm is the criteria to label one as hardened, desperate or dangerous criminal. Act in one situation or against a person may not be regraded much harmful as compared to others; offence against vulnerable class is more serious particularly when one is reckless or know the effects of his act, part selected by him for causing injury or making one as sign of victimization.

**Conclusion:** i) Previous record of accused is not necessary for declaring him as desperate, hardened or dangerous criminal rather from the act or role of an accused during the crime, his status as such can be ascertained.
ii) Harm is the criteria to label one as hardened, desperate or dangerous criminal.

**45.** **Lahore High Court**
**Muhammad Usman Ghani v. The State etc.**
**Criminal Revision No. 05 of 2022**
**Mr. Justice Muhammad Amjad Rafiq**
https://sys.lhc.gov.pk/appjudgments/2022LHC1485.pdf

**Facts:** Petitioner called in question the order passed by the learned Additional Sessions Judge where the petitioner/accused and others were summoned without examining the material available on record, though their names were placed in Column No.2 of the Challan.

**Issues:** i) How the report u/s 173 Cr. P.C. is to be submitted?
ii) How prosecutors scrutinize the report under section 9(5) of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 (CPS Act)?
iii) What is the criteria for summoning of an accused?
iv) What is the evidentiary value of recommendations of prosecutor?

**Analysis:** i) Report u/s 173 Cr. P.C. is to be submitted by the SHO concerned as mentioned in section 173 Cr.P.C., on a prescribed form as set out in Police Rules, 1934 and attached with it all statements and documents as mentioned in 265-C Cr.P.C. and other documents necessary to be used as evidence to prove the case. If the investigation was conducted by a junior officer even then report must be submitted by the SHO as set out in section 168 of Cr. P.C. Report u/s 173 Cr. P.C would also be submitted through senior officer in any cases if directed by the Provincial Government by special or general order as reflected from sub-section 2 of Section 173 Cr.P.C.
ii) As per section 9(5) of CPS Act, 2006 prosecutors are obliged to scrutinize the police reports, forward it to the court if it is fit for filing or return the same removal of defects, that can be of any types including applicability of proper offences or collection of any particular evidence. The scrutiny carried out by the prosecutors is twofold, one for the police for removal of procedural defects in the Report including collection of relevant evidence; and, other for courts about preliminary and tentative assessment of evidence on record.
iii) Mere mentioning of the name in the police report or deposing it by a witness is no ground to issue process in blindfold. However, if an accused has been summoned to face the process, even then before framing of charge, material must be examined in the light of criteria highlighted which is the command and mandate of law. In a Magisterial trial where a provision like 265-D Cr.P.C. is not available yet there is no prohibition in section 242 Cr.P.C. as to not consider the material before framing of charge.
iv) Provisions of CPS Act requires the court to give due consideration to the result of assessment submitted by the prosecutor. CPS Act being special law shall prevail over the general law. If the prosecutor recommends, the case as not worthy of prosecution or discharge of accused due to deficient evidence but the

Court had a different observation and expects that evidence can be made available, it can frame the charge but otherwise court still has two option for the time being either to discharge the accused or stay the proceedings u/s 249 of Cr. P.C.

**Conclusion:** i) Report u/s 173 Cr. P.C. is to be submitted by the SHO concerned as mentioned in section 173 Cr.P.C., on a prescribed form as set out in Police Rules, 1934 with all necessary documents as required by law.
ii) As per section 9(5) of CPS Act, 2006 prosecutors are obliged to scrutinize the police reports, forward it to the court if it is fit for filing or return the same if there are defects for removal of such defects.
iii) Mere mentioning of the name in the police report is no ground to issue process; however, if an accused has been summoned to face the process, even then before framing of charge, material must be examined as per mandate of law.
iv) Provisions of CPS Act requires the court to give due consideration to the assessment submitted by the prosecutor; however, if the Court had a different observation, it can frame the charge and collect the evidence.

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**46.** **Lahore High Court**
**Mst. Seema Yousaf etc. v. District Judge etc.**
**Writ Petition No. 20144/2021**
**Mr. Justice Anwaar Hussain**
https://sys.lhc.gov.pk/appjudgments/2022LHC1574.pdf

**Facts:** The petitioner is one of defendants in a suit for declaration whereby legality of registered sale deeds was challenged. In suit the petitioner filed an application under Order XXXVIII Rules 1 to 5 r/w section 94 CPC praying for arrest & attachment of property of another defendant for ensuring his appearance before court and that matter also be referred to the Anti-Corruption Establishment and till then suit be adjourned sine die. The said application was dismissed and civil revision was also dismissed, hence Writ Petition.

**Issues:** i) Whether defendant can avail the provisions of Order XXXVIII of CPC?
ii) What is scope and object of provisions of Order XXXVIII of CPC?
iii) Whether there is any embargo on exercise of power u/o XXXVIII of CPC?
iv) Whether Civil Court can refer any matter pending before it qua determination of rights in immovable property to Anti-Corruption Establishment?

**Analysis:** i) The coercive measures under the provisions of Order XXXVIII, CPC can be adopted for ensuring presence of the defendant(s) when the plaintiff in a suit has an apprehension that any ultimate decree in his favor is likely to be frustrated by absence of the defendant. These provisions cannot be invoked in favour of a defendant against the co-defendant in a suit
ii) These provisions being preemptory in nature aim at ensuring that an ultimate decree may not be defeated by the defendant. The main objective is to ensure the

protection of the plaintiff and not a co-defendant in whose favour no decree is sought and/or prayed as is the position in the instant manner. These provisions vest the court with the preemptive powers to forestall any illmotivated attempt of defendant to frustrate an ultimate decree and defeat the ends of justice

iii) The applicability of provisions of Order XXXVIII Rule 1, CPC has been excluded with respect to suits in the nature provided in Clauses (a) to (d) of Section 16, CPC because those suits are to be filed within the territorial jurisdiction of courts where such property is situated, which rules out any possibility of avoidance of the execution of decree if and when it is ultimately passed.

iv) A Court or Tribunal has to derive jurisdiction from or under the Constitution or by or under any law. No jurisdiction is vested in civil court to refer any civil matter qua determination of rights in an immovable property pending before it to the Anti-Corruption Establishment.

**Conclusion:** i) The defendant cannot avail the provisions of Order XXXVIII of CPC.

ii) The scope and object of provisions of Order XXXVIII of CPC is that ultimate decree may not be defeated by the defendant.

iii) The applicability of provisions of Order XXXVIII Rule 1, CPC has been excluded with respect to suits in the nature provided in Clauses (a) to (d) of Section 16, CPC.

iv) Civil court cannot refer any matter pending before it qua determination of rights in immovable property to Anti-Corruption Establishment

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**47.** **Lahore High Court**
**Syed Abdur Rashid (deceased) through legal heirs v. Rana Muhammad Anwer.**
**R.S.A. No.08/2008**
**Mr. Justice Anwaar Hussain**
https://sys.lhc.gov.pk/appjudgments/2021LHC9420.pdf

**Facts:** Through this Regular Second Appeal against impugned judgment and decree passed by a learned Appellate Court whereby the judgment and decree passed by the learned trial court was reversed and the suit for specific performance of the respondent was decreed.

**Issues:** i) What are essentials in order to succeed a suit for specific performance?

ii) What is effect of withholding the best piece of evidence?

iii) Whether a scribe of a document may be considered as an attesting witness?

iv) How the issuance of the stamp paper used for execution of the Agreement can be proved?

**Analysis:** i) In order to succeed, the plaintiff required to prove that the parties reached a consensus qua the sale of the suit property. The issuance of the stamp paper used to reduce the sale transaction into writing i.e., the Agreement should have been

proved by producing its vendor and his register in which it was recorded. Similarly, the attesting witnesses of the Agreement were required to prove the execution and contents of the Agreement and the payment of the remaining amount was required to be proved by producing the witnesses in front of whom the same was paid. Moreover, the plaintiff is required to establish willingness on his part to pay the balance amount of consideration at the time of institution of the suit.

ii) It is well settled principle of law that if the best piece of evidence is withheld by a party, then the case falls under the purview of illustration (g) to Article 129 of the Qanun-e-Shahdat Order, 1984 and it is to be presumed that said party had some improper motive behind it and an adverse presumption against such party is to be drawn.

iii) A scribe of a document may be considered as an attesting witness under certain circumstances but the evidence of the scribe as an attesting witness has to be measured up and scrutinized on the same yardsticks as are applicable to an attesting witness. He cannot be categorized as attesting witness, if he was not shown or described as witness in the said agreement…. In the absence of being a registered scribe and his failure to register the Agreement in the relevant register denudes him from the status of scribe. Having lost his status as of a scribe, ipso facto, he does not qualify to be an attesting witness.

iv) The issuance of the stamp paper used for execution of the Agreement could have been proved through the statement of the stamp-vendor and production of his register. Testimony of the stamp vendor and the register could have established the serial number of the stamp-paper used in the transaction, date of issuance/sale of said stamp paper, purpose of sale of stamp paper and, more importantly, the name of the person to whom the stamp-paper was sold.

**Conclusion**: i) In order to succeed suit for specific performance, the plaintiff has to prove execution and contents of agreement along with his willingness to perform his part of contract.

ii) If the best piece of evidence is withheld by a party, then adverse presumption against such party could be drawn by the court.

iii) Scribe of a document may be considered as an attesting witness but under certain circumstances. But he cannot be categorized as attesting witness if he was not shown or described as witness in the said agreement.

iv) The issuance of the stamp paper used for execution of the Agreement could have been proved through the statement of the stamp-vendor and production of his register.

**48.** **Lahore High Court**
**Dr. Akbar Anjum v. Bahauddin Zakariya University etc.**
**Writ Petition No.19669/2019**
**Mr. Justice Anwaar Hussain**
https://sys.lhc.gov.pk/appjudgments/2022LHC1824.pdf

**Facts:** Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged summary as well as notification for appointment of respondent No.6 as the Dean in a University while ignoring the petitioner who admittedly scored higher marks than respondent No.6.

**Issue:** Under what circumstances, the Court in exercise of its constitutional jurisdiction can upset a decision reached by executive?

**Analysis:** The High Court in exercise of constitutional jurisdiction neither superimpose nor substitute its opinion/decision, which the legislature has vested within an executive body. Thus, generally in the exercise of power of judicial review, the Courts are reluctant to upset a decision reached by executive merely on the ground that another view/decision could have been reached at as this Court in exercise of its constitutional jurisdiction of judicial review does not sit as a court of appeal to ascertain the merits of the decision reached at by the executive domain of the State rather this Court is deeply concerned with the decision-making process particularly where discretion has been vested in the executive in reaching such a decision so as to ascertain whether the decision has been reached at through due process and fair exercise of discretion in a structured manner. It is well entrenched principle of law that where the executive wing of the State has been vested with the discretion, such discretion is to be exercised in a manner that is fair, transparent and in accordance with law.

**Conclusion:** The Court in exercise of its constitutional jurisdiction can exercise jurisdiction of judicial review to check that executive discretion has been exercised in a manner that is fair, transparent and in accordance with law.

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**49.** **Lahore High Court**
**Iffat Shaheen v. Public at large etc.**
**FAO No.109/2018**
**Mr. Justice Anwaar Hussain**
https://sys.lhc.gov.pk/appjudgments/2022LHC1847.pdf

**Facts:** The brother of appellant is mentally disordered person and appellant was appointed guardian of his person and manager of his property by the Court of Protection in terms of section 32 & 33 of Mental Health Ordinance, 2001. The appellant filed two different applications for sale of land being barren land/vacant plot not producing any yeild/income so that some other property such as shop, yielding rent, can be purchased and both applications were declined. Hence, this

appeal.

**Issues:** i) How preamble of a legislative instrument is important?
ii) What is object of Mental Health Ordinance, 2001?
iii) How the Court of Protection ought to exercise jurisdiction while deciding application for grant of permission for sale of property of ward?
iv) What are the measures the Court of Protection can adopt while supervising the use of sale proceeds of property of a mentally deranged person?

**Analysis:** i) It is well settled by now that the preamble of a legislative instrument works as a gateway which helps to dig out the object and purpose of the law and also brings forth what the legislature intended to achieve through the enactment of the law.
ii) The preamble of the Ordinance, clearly contemplates that the object is to achieve the well-being of mentally disordered persons through their treatment and care of their persons and management of their property.
iii) The court ought to apprise itself in respect of the interest of the mentally disordered person and status of the suit property or demand from the appellant of expected sale price of property. It has to observe as to how a vacant plot and/or barren land not yielding any income is not to be sold out in order to buy such property which could yield income to look after the needs of the mentally disordered person.
iv) The Court of Protection is not only at liberty to adopt any procedure as it deems appropriate, inter alia, by closely monitoring the sale process including receipt of funds constituting sale proceeds through banking channel, preparation of the registry of the new property to be purchased, which can yield income for the benefit of the ward and/or directing the appellant to invest the sale proceeds of the suit property in any fixed deposit/profit scheme of a Schedule Bank for some fixed period of time and to settle such conditions or restrictions as it may deem fit to impose upon the use and investment of the sale proceeds. The arrangement with the Bank could be in the nature of permitting the appellant to withdraw monthly interest/profit amount on the said deposit, so as to be utilized for the well-being of the ward.

**Conclusion:** i) Preamble brings forth what the legislature intended to achieve through the enactment of the law.
ii) The object of Ordinance is to achieve the well-being of mentally disordered persons through their treatment and care of their persons and management of their property.
iii) The Court of Protection ought to consider the interest of the mentally disordered person while deciding application for grant of permission for sale of property of ward.
iv) The Court of Protection is at liberty to adopt any procedure as it deems appropriate while supervising the use of sale proceeds of property of a mentally deranged person.

**50.** **Lahore High Court**
**Sardaran Bibi v. Muhammad Arshad, etc.**
**Civil Revision No.170-D of 2011**
**Mr. Justice Anwaar Hussain**
https://sys.lhc.gov.pk/appjudgments/2021LHC9439.pdf

**Facts:** Petitioner withdrew prior suit after filing of the second suit. Petitioner contended his ownership of the suit property on the basis of revenue record for the year 2001-2002 and the suit was dismissed by the learned trial and appellate court on merits.

**Issues:** i) If first suit is withdrawn after filling the second suit, then whether the second suit is barred in terms of Order II, Rule 2 of the CPC?
ii) Whether the declaration of the entitlement is an inbuilt relief claimed by the plaintiff in suit for possession under section 8 of Specific Relief Act?
iii) What is the evidentiary value of entries of revenue record?

**Analysis:** i) It is settled law that where first suit is withdrawn and not decided on merits, the bar contained in Order II, Rule 2 shall not attract. The Prior Suit had been withdrawn after the filling of the Suit and not before and hence, the bar contained in Order XXIII, Rule 1 of the Code against filing the fresh suit after withdrawal of the first suit without permission of the court for filing a fresh suit does not attract.
ii) Under Section 8 of the Specific Relief Act, 1877, "a person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure." The words "entitled to the possession" presupposes that in order to obtain a decree for possession, the plaintiff of such a case is entitled to the possession. In other words, it implies an inbuilt declaration as to entitlement of a plaintiff of such suit qua the property in dispute.
iii) Revenue record is not a conclusive evidence of the ownership; however, mutation of the suit property is admittedly in favour of the petitioner, which though per se is not a title deed but it is sanctioned under Section 42 of the Land Revenue Act, 1967 (hereinafter "the Act 1967") by the officer concerned, in revenue hierarchy, in discharge of his official duties. It is also settled law that in terms of Section 52 of the Act, 1967, the entries of record of revenue carry presumption of truth until the contrary is proved or a new entry is incorporated in place of the existing one in accordance with law.

**Conclusion:** i) Filling of the second suit during the pendency of prior suit does not attract the bar contained in Order II, Rule 2 and Order XXIII, Rule 1 of CPC.
ii) The declaration of the entitlement is an inbuilt relief claimed by the plaintiff in suit for possession under section 8 of Specific Relief Act
iii) Entries of record of revenue carry presumption of truth until the contrary is proved or a new entry is incorporated in place of the existing one in accordance with law.

**51.** **Lahore High Court**
**Doud Khan v. Muhammad Rashid, etc.**
**Civil Revision No.884 of 2021**
**Mr. Justice Anwaar Hussain**
https://sys.lhc.gov.pk/appjudgments/2022LHC1837.pdf

**Facts:** Petitioner instituted a suit for recovery on the basis of pro-note, under Order XXXVII of CPC, before the learned Additional District Judge, against the respondent, wherein leave was granted in favour of the respondent. The respondent also instituted suit for cancellation of the same pro-note, before the learned Civil Judge 1st class, against the petitioner. Respondent filed an application before the learned District Judge, for consolidation of above suits, which application was accepted, whereby the suit from the court of learned Civil Judge was withdrawn and entrusted to the court of learned Additional District Judge, where suit under Order XXXVII, of the CPC was pending. Hence, this civil revision has been filed.

**Issues:** Whether a District Judge can withdraw a suit of cancellation of a negotiable instrument from the Civil Court and entrust the same for adjudication to the Court of an Additional District Judge where recovery suit on the basis of same negotiable instrument is pending adjudication under Order XXXVII, CPC and if so, under what circumstances?

**Analysis:** It has become well-coalesced principle that no hard and definitive formulation of principles could be made for regulating the consolidation of suit. The fundamental considerations of avoidance of multiplicity of litigation, obviation of any possibility of conflicting judgment as a matter of public policy and prevention of abuse of process of the court should be guiding principles for the consolidation of suits by the Court. It is well settled principle of law that common issues should be resolved together instead of unnecessarily keeping one suit pending while the other is decided particularly when both the suits involve the same subject matter and the decision in one would have substantial bearing on the other if not rendering the other suit infructuous at all.

**Conclusion:** Suits involving the same subject matter and the decision in one would have substantial bearing on the other, could be consolidated, in order to avoid contradictory judgments and for better administration of justice and merely that the procedure of the two courts are different is not an impediment in this regard.

**52.** **Lahore High Court**
**Mst. Kishwar Sultana v. Nizam-ud-Din etc**
**Civil Revision No.216/2022**
**Mr. Justice Muhammad Raza Qureshi.**
https://sys.lhc.gov.pk/appjudgments/2022LHC1724.pdf

**Facts:** The petitioner's application u/s 12(2) was dismissed due to non-prosecution. She filed application of restoration which was also dismissed. The Petitioner instead of assailing said order switched his remedy and opted to refile the application under section 12(2) CPC which was also dismissed considering that upon dismissal of the first Application due to non-deposit of process fee and that the Petitioner failed to assail the previous dismissal Order, therefore, her second Application under section 12(2) CPC was not maintainable. Thereafter the learned Appellate Court dismissed the appeal filed by the Petitioner considering that the same was filed against dismissal of first Application under section 12(2) CPC filed by the Petitioner. Hence, the instant Civil Revision.

**Issues:** i) Whether second application u/s 12 (2) CPC is maintainable after dismissal of restoration application against dismissal of first application U/S 12 (2) CPC?
ii) What is the effect if the second suit or application is not filed within the period of limitation?
iii) What is object and nature of statute of limitation?

**Analysis:** i) The provisions of Order IX Rule 4 CPC provide remedies to an aggrieved person i.e. either to bring a fresh Suit/Application or apply for an order to set the dismissal aside. Once a litigant exhausts either of remedies, being unsuccessful he is not permitted to have another bite at the cherry in an attempt to go for second remedy. As under the doctrine of election of once aggrieved person had acted and exhausted either of the two remedies he is deemed to have given up and forfeited his right to the other remedy. As in terms of law he could pursue the remedy which was initiated and exhausted first or earlier in point of time.
ii) An application U/S 12(2) CPC is to be filed within a period of three years and in the instant case said period commenced from the date of knowledge i.e. when the petitioner filed her first application U/S 12(2) CPC. The condition precedent for re-filing the same was subject to limitation available to the petitioner under Order IX rule 4 CPC. If the second suit or application is not filed within the period of limitation, then obviously such proceedings will be hit by provisions of section 3 of Limitation Act, 1908… A litigant might have a right which was otherwise enforceable, loses the said right to the extent of its enforcement, if it is found by the Court of law that its case is hit by limitation. In such a situation, the right remains with the party, but such party cannot enforce it and if the litigant aggrieved did not approach the appropriate forum within the stipulated period, though the grievance remains alive but it cannot be redressed because if on one

hand there was a right with the party which could have enforced against the other, but because of principal of limitation, the same right then vests in favour of opposite party.

iii) Ignorance, negligence, mistake or hardship did not save limitation, nor does poverty of the parties and as held by the Hon'ble Supreme Court of Pakistan, the law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly.

**Conclusion:** i) Second application u/s 12 (2) CPC is not maintainable after dismissal of restoration application against dismissal of first application U/S 12 (2) CPC.

ii) If the second suit or application is not filed within the period of limitation, then obviously such proceedings will be hit by provisions of section 3 of Limitation Act, 1908

iii) Statutes of limitation by their very nature are strict and inflexible with object to bar stale and water-logged disputes.

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**53.** **Lahore High Court**
**Muhammad Ali v. Mian Maqbool Ahmad.**
**Civil Petition No. 1647 of 2018**
**Mr. Justice Muhammad Raza Qureshi**
R.F.A. No.38/2012 (lhc.gov.pk)

**Facts:** The instant Regular First Appeal calls into question the legality and propriety of Judgment and Decree passed by learned District Judge in a suit filed under the provisions of Order XXXVII of Code of Civil Procedure, 1908.

**Issue:** i) What is presumption as to negotiable instruments and how the law governs it?

ii) What is legal effect of simple denial in evidence?

**Analysis:** i) There is initial presumption that the Negotiable Instrument is made, drawn, accepted or introduced for consideration, but under the law this is a rebuttable presumption and onus is on the person denying consideration to allege and prove the same. The term "until the contrary is proved" in the beginning of Section 118 of the Act indicates that it shall be the responsibility of the person who claims that the instrument was executed without consideration to prove the reasons why it was so executed. Once this is done, the onus is shifted to the holder of the instrument. This presumption unless rebutted is statutory and mandatory and the person who

wishes to dispel it must furnish proof to the contrary. In a case where a person, challenges the consideration of a Negotiable Instrument does not adduce satisfactory evidence or absence of consideration or where no evidence is produced, the statutory presumption under Section 118 comes into play to the effect that the Negotiable Instrument which in the instant case is promissory note was made or drawn for valid consideration.

ii) The effect of simple denial in evidence or replying to every sentence, the question or suggestion in the negative in pleadings or depositions also operates against the person making statement. It is settled position of law as well as equity that law would help a person who controverted the controversies, but the one who denied everything, would lose credibility.

**Conclusion:** i) There is presumption that the Negotiable Instrument is made, drawn, accepted or introduced for consideration, but under the law this is a rebuttable presumption.

ii) It is settled position of law as well as equity that law would help a person who controverted the controversies, but the one who denied everything, would lose credibility.

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**54.** **Lahore High Court**
**Muhammad Waris v. United Bank Ltd. etc.**
**F.A.O No. 49 of 2008 and C.M. Nos. 931-C & 932-C of 2019**
**Mr. Justice Muhammad Shan Gul**
https://sys.lhc.gov.pk/appjudgments/2022LHC1493.pdf

**Facts:** Basically through this First Appeal against Order the appellant assailed the order passed by a learned Civil Judge Ist Class whereby he returned the plaint filed by the appellant under Order VII Rule 10 CPC so as for the appellant to present the plaint before the court of proper jurisdiction. Subsequently upon dismissal of instant main appeal due to non-prosecution miscellaneous applications were also filed for restoration as well as condonation of delay of the same.

**Issues:** i) What is legal effect of issuance of notice pervi to a dead counsel and whether it is sufficient cause to condone the delay in approaching court?
ii) In what situations the delay can be condoned?
iii) What is legal value of a non-speaking order?
iv) Whether the disputes regarding the contents placed in a safe locker falls within the jurisdiction of Banking Court?

**Analysis:** i) If the notice for the date of hearing was issued to a dead counsel then there is no way that anyone could have appeared and, likewise, there is no way that the petitioner could have learnt either about the fixation of the matter. There is no gainsaying that a notice pervi issued to a dead counsel is meaningless and of no value, therefore, this fact can be taken as a sufficient cause to condone the delayed approach of the petitioner before the court…. Since the counsel for the petitioner

had passed away, there was no way that the petitioner who now lives in Karachi could have learnt about the dismissal of his appeal.

ii) Where an order is a nullity then challenge can be laid to such an order even after the period of limitation. The Hon'ble Supreme Court of Pakistan in the case of Mst. Yasmeen Bibi vs. Muhammad Ghazanfar Khan and others (PLD 2016 SC 613) at paragraph 19 has clearly held that "where an important point of law of public importance was involved delay could be condoned". In the case of Dr. Syed Sibtain Raza Naqvi vs. Hydrocarbon Development and others (2012 SCMR 377) at paragraph 8, it has been held that if an application was barred by time, then provisions of section 5 of the Limitation Act could be invoked by showing 'sufficient cause'.

iii) The order does not qualify the test of a judicial order since it is a non-speaking order and except for a bald reference to one reason, and that too, in a lackadaisical manner, there is no discourse whatsoever. It may also be mentioned here that the order under challenge does not allude to any facts presented by the appellant either and therefore, does not qualify the judicially acknowledged criteria of a judicial order… On the legal plain, such order is erroneous and warrants to be declared to be of no legal effect.

iv) There is no question pertaining to any loan or finance involved in the matter relating to contents of locker. Likewise, there is no question of non-fulfillment of any obligation pertaining to any loan or finance involved in the present matter. There is, equally, no customer to whom any facility of finance or loan has been extended. Any other default in fulfilling warranties, covenants etc. by a bank in a matter not involving finance or loan is not enforceable under the special jurisdiction conferred by Financial Institutions (Recovery of Finances) Ordinance, 2001. There must be a relationship of a borrower/customer with a bank in respect of some finance or loan and some default in fulfilling obligations with respect to such facility of finance or loan and which is what attracts the jurisdiction of a banking Court established under Financial Institutions (Recovery of Finances) Ordinance, 2001. Such jurisdiction is not available in respect of any other matter… Banking Courts can only adjudicate upon disputes regarding obligations arising out of a Finance facility extended by a Bank to its customer and the nature of duty cast upon the bank regarding the contents placed in a safe locker does not attract the provisions of Section 2(d) resultantly keeping the petitioner out of the sweep of the definition of a Customer under Section 2(c) of FIO, 2001. Hence, the banking Court does not have jurisdiction to decide the claim of the Petitioner.

**Conclusion**: i) A notice pervi issued to a dead counsel is meaningless and of no value and it is sufficient cause to condone the delay in approaching court.

ii) The delay can be condoned where order is a nullity or where an important point of law of public importance is involved or upon showing sufficient cause.

iii) The non-speaking order is erroneous and of no legal effect.

iii) The disputes regarding the contents placed in a safe locker does not fall within the jurisdiction of Banking Court.

**55.** **Lahore High Court**
**Farooq Azam, etc v. Mst. Shehzadi Perveen, etc.**
**C.R. No.933-D of 2020**
**Mr. Justice Muhammad Shan Gul**
https://sys.lhc.gov.pk/appjudgments/2022LHC1559.pdf

**Facts:** The suit property was mortgaged by father of respondent no.1 in favor of respondent no.2 but the same was never sought to be redeemed by the father of respondent No.1 and thus respondent No.2 became owner of the property who, in turn, sold out the same to the present petitioner. Therefore petitioner filed suit for declaration while respondent no.1 being daughter of original mortgager filed suit for redemption of mortgage. Both the suits were dismissed by the trial court. But the learned appellate court decreed the suit for redemption

**Issues:** Whether the mortgagee would become the owner of the mortgaged property on account of the non-payment of mortgage money within stipulated period?

**Analysis:** In case law reported as "Khushi Muhammad and others v. Muhammad Ashfaq and others" (PLD 2014 Lahore 26) the plea that the mortgage deed contained a clause to the effect that the mortgagee would become owner in possession of property on account of non-payment of mortgage money upon expiry of stipulated period of six months was to be treated as sale was repelled on the ground that right of redemption as contained in Section 60 of the Transfer of Property Act, 1882 was a statutory right affirming the principle 'once a mortgagee always a mortgagee' and that such a clog in a mortgage deed compromised the mortgagor's right of redemption and was thus illegal and void.

**Conclusion:** The mortgagee would not become the owner of the mortgaged property on account of the non-payment of mortgage money within stipulated period.

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**56.** **Lahore High Court**
**Jam Siraj Ahmad v. Govt. of Punjab, etc.**
**Writ Petition No.19596 of 2021**
**Mr. Justice Muhammad Shan Gul**
https://sys.lhc.gov.pk/appjudgments/2022LHC1878.pdf

**Facts:** The petitioner is a civil servant working in the Excise & Taxation Department, Province of Punjab, who has been denied, and deferred for, promotion, on the pretext that a minor penalty of withholding of increments for two years was imposed on him.

**Issues:** Whether the promotion of a civil servant can be deferred on the pretext that a minor penalty of withholding increment for two years was imposed on him?

**Analysis:** The observation of the Provincial Selection Board that the performance of the petitioner may be monitored for one year and a special report over and above his Performance Evaluation Report be made available is, to say the least, absolutely

misdirected, misaimed and a clear case of the decision-maker being dictated by an improper motive and an absolutely irrelevant consideration. The imposition of minor penalty has never been held to be a legally recognized ground to defer a civil servant for promotion.

**Conclusion:** The promotion of a civil servant cannot be deferred on the pretext that a minor penalty of withholding increment for two years was imposed on him.

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**57.** **Lahore High Court**
**Kashif Mahmood v. Additional District Judge and others.**
**Writ Petition No.166 of 2022**
**Mr. Justice Raheel Kamran**
https://sys.lhc.gov.pk/appjudgments/2022LHC1553.pdf

**Facts:** The petitioner has challenged the order passed by a Judge Family Court in execution proceedings regarding maintenance allowance of respondent No.4 whereby it ordered payment of ten percent annual increase from the date of judgment i.e. from the year 2013. The petitioner has also challenged the judgment passed by the Additional District Judge, in appeal whereby ten percent annual increase in the maintenance of respondent No.4 under Section 17A (3) of the Family Courts Act, 1964 has been allowed with effect from the date of promulgation of the Punjab Family Courts (Amendment) Act, 2015.

**Issues:** Whether the enforcement of ten percent annual increase on the maintenance allowance under amended Section 17A (3) of the Family Courts Act 1964 from the date of said amendment, in case of a maintenance allowance fixed prior to the said amendment can be considered as retrospective in nature, hence unsustainable in law?

**Analysis:** Section 17A(3) of the Act is a beneficial and remedial or curative piece of legislation, which must be liberally construed. The fact that statutory prerequisites under Section 17A(3) of the Act (i.e. fixation of maintenance by the Court and omission or failure of the Court to prescribe annual increase in the maintenance) may be drawn from a period prior to the enactment does not render application or operation of the said provision to be retrospective, particularly when the automatic annual increase in the maintenance takes effect from the date of enactment and not the period prior to that. A statutory provision cannot be termed to have been given retrospective effect merely because it affects existing rights or because a part of the requisites for its action is drawn from a time antecedent to its passing or operation thereof is based upon the status that arose earlier.

In the impugned decision, learned Additional District Judge has held the provision of Section 17A(3) of the Act to be applicable with effect from the date of enactment of the Punjab Family Courts (Amendment) Act, 2015, therefore, plea of the petitioner qua retrospective effect and application of the said provision is

unfounded and misconceived. Even in the case of Shahzad Yousaf, the Hon'ble Supreme Court of Pakistan, inter alia, held the maintenance to be increased at the rate of 10% each year while applying the provision of sub-section (3) of Section 17A of the Act to the decree dated 19.01.2011 in the suit for maintenance.

**Conclusion:** The enforcement of ten percent annual increase on the maintenance allowance under amended Section 17A (3) of the Family Courts Act 1964 from the date of said amendment, in case of a maintenance allowance fixed prior to the said amendment cannot be considered as retrospective in nature, hence sustainable in law.

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**SELECTED ARTICLES**

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Analysis-on-transfer-of-property-to-an-unborn-child

**Analysis on transfer of property to an unborn child by Akshita Tripathi & Amit Pandey**

*An unborn child is a child in the mother's womb. The term is often seen used in debates over the personhood of the fetus before birth. It also used in the context of deciding the legal and moral status of abortions. The transfer of property is generally made to a living person but under some circumstances property can be transferred to an unborn person also. Transferred to the Unborn allowed by the law. There cannot be a first or direct transfer to an unborn person but subsequent transfer can be made to an unborn person. Law provides that when transfer to the Unborn shall not take effect it can be derived that when transfer to the unborn is valid. Where on a Transfer of Property an interest therein is created for the benefits of a person not in existence at the date of the transfer subject to a prior interest created through the same transfer interest created to assist that person will not become effective unless it passes to the rest of the transferor's interest on the property.*

2. **MANUPATRA**
https://articles.manupatra.com/article-details/AMENDMENT-OF-PLEADINGS-AFTER-COMMENCEMENT-OF-TRIAL-RIGHT-OF-THE-PARTY-OR-DISCRETION-OF-THE-COURT-UNDER-ORDER-VI-RULE-17

**Amendment Of Pleadings After Commencement Of Trial: Right Of The Party Or Discretion Of The Court Under Order Vi Rule 17? by Samarth Kapoor and Abhijeet Kumar**

*"Pleadings" is defined under Order VI Rule 1 which states pleading as "written statement" or "plaint". However, the terms plaint and written statement are not defined anywhere in the Civil Procedure Code ("CPC") but plaint can be construed as a document of claim which has the material fact upon which a party (preferably the plaintiff) is relying to establish his/ her case and a written statement is the reply filed against the plaint filed by the plaintiff wherein the defendant establishes some new facts in support of his/her case and refutes the pleadings put forth by the plaintiff. The object of the pleadings is to afford the other side an opportunity to know the case and for the courts to understand the issue at hand. There are chances that in the course of the proceedings, an issue arises due to the change in circumstances of the proceedings. Now, in the given*

*set of changes parties cannot rely on their previously filed pleadings but will have to file another one. Just to save parties in this situation and to reduce the multiplicity of the proceedings, the legislature introduced a provision by which parties are allowed to alter or make changes in their already submitted pleadings. This rule is not absolute and parties cannot claim it as a matter of right but what is to be considered here is the gravity of the situation under which a party is claiming the amendment. This article will delve deeper into the issue of amendment of pleadings, will further look for the changes made to the proviso of Rule 17 in 2002 amendment, will focus upon the wordings of the proviso and conflicting judgment of different High Courts ("**HCs**") and the Supreme Court ("**SC**") and ultimately will conclude on the term of the present scenario with respect to the amendment of pleadings vis-à-vis Court's limited discretion to grant the liberty.*

3. **HAVERD LAW REVIEW**
https://harvardlawreview.org/2022/03/discriminatory-taint/
**Discriminatory Taint by W. Kerrel Murray**

*The truism that history matters can hide complexities. Consider the idea of problematic policy lineages. When may we call a policy the progeny of an earlier, discriminatory policy, especially if the policies diverge in design and designer? Does such a relationship condemn the later policy for all times and purposes, or can a later decision maker escape the past? It is an old problem, but its resolution hardly seems impending. Just recently, Supreme Court cases have confronted this fact pattern across subject matters as diverse as entry restrictions, non-unanimous juries, and redistricting, among others. Majority opinions seem unsure whether or why "discriminatory predecessors" matter, and individual Justices who agree that they do squabble over methodology. One could answer these questions by banishing them. Thus, some would simply treat any non-identical policy predecessor as minimally relevant, and only relevant insofar as it suggests present-day bad intent. Anything else, they suggest, risks an unmoored original sin jurisprudence, with courts claiming to know guilt when they see it. Simple is not always better, however, especially if it risks eliding information material to a policy's validity. But again: how do we divine materiality?Better approaches are possible. While our law broadly appreciates that continuity matters to legal meaning and responsibility, constitutional law has undertheorized it. Deploying continuity here helps conceptualize, and craft guideposts for, "discriminatory taint": an objectively ascertainable relationship between an earlier policy and a later, similar policy. Thus defined, taint can impugn some policies that might otherwise have passed constitutional muster. Yet it also facilitates realistic approaches — judicial and nonjudicial — to distinguishing genuine purging of taint from its laundering. And it supplements debates on the nature of wrongful discrimination by underscoring how continuity can help identify persistent constitutional problems even absent subjective bad intent.*

**4. THE YALE LAW JOURNAL**

https://www.yalelawjournal.org/article/bankruptcy-grifters

**Bankruptcy Grifters by Lindsey D. Simon**

*Grifters take advantage of situations, latching on to others for benefits they do not deserve. Bankruptcy has many desirable benefits, especially for mass-tort defendants. Bankruptcy provides a centralized proceeding for resolving claims and a forum of last resort for many companies to aggregate and resolve mass-tort liability. For the debtor-defendant, this makes sense. A bankruptcy court's tremendous power represents a well-considered balance between debtors who have a limited amount of money and many claimants seeking payment. But courts have also allowed the Bankruptcy Code's mechanisms to be used by solvent, non-debtor companies and individuals facing mass-litigation exposure. These "bankruptcy grifters" act as parasites, receiving many of the substantive and procedural benefits of a host bankruptcy, but incurring only a fraction of the associated burdens. In exchange for the protections of bankruptcy, a debtor incurs the reputational cost and substantial scrutiny mandated by the bankruptcy process. Bankruptcy grifters do not. This dynamic has become evident in a number of recent, high-profile bankruptcies filed in the wake of pending mass-tort litigation, such as the Purdue Pharma and USA Gymnastics suits.This Article is the first to call attention to the growing prevalence of bankruptcy grifters in mass-tort cases. By charting the progression of non-debtor relief from asbestos and product-liability bankruptcies to cases arising out of the opioid epidemic and sex-abuse scandals, this Article explains how courts allowed piecemeal expansion to fundamentally change the scope of bankruptcy protections. This Article proposes specific procedural and substantive safeguards that would deter bankruptcy-grifter opportunism and increase transparency, thereby protecting victims as well as the bankruptcy process.*

**5. HAVERD LAW REVIEW**

https://harvardlawreview.org/2022/03/navigating-the-identity-thicket-trademarks-lost-theory-of-personality-the-right-of-publicity-and-preemption/

**Navigating the Identity Thicket: Trademark's Lost Theory of Personality, the Right of Publicity, and Preemption by Jennifer E. Rothman**

*Both trademark and unfair competition laws and state right of publicity laws protect against unauthorized uses of a person's identity. Increasingly, however, these rights are working at odds with one another and can point in different directions with regard to who controls a person's name, likeness, and broader indicia of identity. This creates what I call an "identity thicket" of overlapping and conflicting rights over a person's identity. Current jurisprudence provides little to no guidance on the most basic questions surrounding this thicket, such as what right to use a person's identity, if any, flows from the transfer of marks that incorporate indicia of a person's identity, and whether such transfers can empower a successor company to bar a person from using their own identity, and, if so, when. Part of the challenge for mediating these disputes is that both right of publicity and trademark laws are commonly thought of as concerned solely with market-based interests. But this is not the case. As I have documented elsewhere,*

*the right of publicity has long been directed at protecting both the economic and the noneconomic interests of identity-holders. And, as I demonstrate here, it turns out that the same is true for trademark and unfair competition laws, which have long protected a person's autonomy and dignity interests as well as their market-based ones. After documenting and developing this overlooked aspect of trademark law, I suggest a number of broader insights of this more robust account of trademark law both for addressing the identity thicket and for trademark law more generally. First, I suggest that recognizing a personality-based facet of trademark law suggests a basis to limit the alienation of personal marks in some contexts. Second, this understanding shores up trademark's negative spaces, especially when truthful information is at issue. Third, recognizing trademark's personality-based interests provides a partial explanation (and limiting principle) for some of its expansionist impulses. Finally, I contend that recognizing this broader vision of trademark law provides significant guidance as to how to navigate the identity thicket. I employ trademark preemption analysis to mediate disputes between trademark and right of publicity laws. Trademark preemption provides an avenue out of the thicket, but only if trademark law's robust theory of personality is recognized. A failure to do so risks leaving us with one of two bad options: a right of publicity that acts as a "mutant" trademark law, swallowing up and obstructing legitimate rights to use trademarks, or, alternatively, with a shallow husk of trademark law (rooted solely in commercial interests) that swallows up publicity claims at the expense of personal autonomy and dignity. Trademark law already provides us with the tools to avoid both of these unsavory paths — if only we reclaim its lost personality.*