Lahore High Court

BULLETIN

Fortnightly Case Law Update *Online Edition*

Volume - III, Issue - XIX

01 - 10 - 2022 to 15 - 10 - 2022

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://researchcenter.lhc.gov.pk/Home/CaseLawBulletin

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FORTNIGHTLY CASE LAW BULLETIN

(01-10-2022 to 15-10-2022)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

Sr. No.	Court	Subject	Area of Law	Page
1.	Supreme Court	Fundamental rights and rights under Article 17(2) of Constitution; Healthy operation of political parties; Consequences of casting proscribed vote; Bifurcation of powers between parliamentary party and party head under Article 63-A; Directions for casting votes in Assembly; Punishment for defector	Constitution Law	1
2.		Special allowances to deputationists and regular employees	Service Law	6
3.		Matters of demand guarantee	Civil Law	7
4.		Ground of Second appeal; Re-reading and re-appraisal of evidence in second appeal		8
5.		Rule of consistency in pre-arrest and post arrest bail; Merits of case in pre-arrest bail	Criminal Law	9
6.		Discriminatory imposition of property tax	Taxation Law	10
7.		Conferring jurisdiction upon court by parties	Civil Law	11
8.		Concept of the doctrine of estoppel; Change of date of birth in service book	Service Law	12
9.		Move-over and promotion to higher post; Proforma promotion		13
10.		Conversion of amenity plot to commercial plot	Civil Law	14
11.		Territorial jurisdiction of high Court; Status of employees of PESCO; status of WAPDA		15

		employees		
12.		Effect of Minor discrepancies in prosecution case; Essential ingredients to dub any person as conspirator	Criminal Law	16
13.		Effect of relationship of witness with deceased; Diminished liability for sudden provocation		18
14.		Ingredients of abetment; Evidentiary value of call data record		19
15.		Civil Liability resulting into criminal liability	Civil Law	20
16.		Principle of prohibitory clause of Section 497 Cr.P.C	Criminal Law	21
17.		Appeal against an unfavourable portion of order of modification; What term "variation" means?	Constitutional Law	22
18.		Jurisdiction of civil court in matters of allotment or cancellation of official accommodation	Civil Law	23
19.		Application of bar contained in proviso to Rule 8 Order XXIII of Supreme Court Rules, 1980	Criminal Law	24
20.	Lahore High Court	Maintainability of intra Court Appeal	Service Law	24
21.		Scheme of law of the Insurance Ordinance 2000, Powers of Insurance tribunal as that of Civil Court	Civil Law	25
22.		When party bound by statement of counsel		27
23.		Quantity to prove the agreement of financial obligation		28
24.		Appeal against consent decree		28
25.		Jurisdiction of civil court under undesirable Cooperative Society Act, 1993		29
26.		Parameters to accept evidence of chance witness; Effect of weakness of motive; Concept of theories of deterrence & retribution	Criminal Law	30
27.		Scope of preliminary decree in a partition suit; Determination of shares by local commission;	Civil Law	32

		Evidentiary value of Marked document		
28.		Remand of matter by Commissioner (Appeals)	Taxation Law	33
29.		Status of reference u/s 18 of the Land Acquisition Act, 1894 when compensation was received without any protest	Civil Law	34
30.		Transfer of contract employee	Service Law	34
31.		Project Standard Design Residence as criteria to allot plot to officer of particular grade	Administrative Law	35
32.		Expression "Import and supplies thereof" to be read conjunctively or disjunctively	Taxation Law	35
33.		Parameter to evaluate circumstantial evidence; Conviction on basis of extra judicial confession	Criminal Law	36
34.	Lahore High Court	Writ Petition by contract employee; Can Maternity leave to a pregnant woman be declined	Constitutional Law	37
35.		Fixation of maintenance allowance; Inquiry about estate and resources of defendant	Family Law	38
36.		Authority to make Law/Legislation & policy for protection of mountain eco-system	Constitutional Law	40
37.		Types of contempt of court; contempt of court against dead person; Effect on order in case of death of person holding the post against which post order was passed		41
38.		Meaning of word 'then' used in column no. 05-A and 21-A of Nikahnama; Responsibility for non-incorporation of contract of Nikah on appropriate and amended form; Benefit of doubt to accused	Criminal Law	43
39.		Presumption of legitimacy of a child	Civil Law	44
40.		Application of doctrine of return(Radd)		45

41.	Lahore High Court	Deduction of Incentive Bonus and Additional Incentive Bonus from Operational Cost		45
42.		Disposing of the 'information' regarding commission of cognizable offence without registration of criminal case	Criminal Law	46
43.		Effect of acknowledgment on revival of limitation period; Form of acknowledgment; Burden to prove acknowledgment	Civil Law	47
44.		Ascertaining market value of a piece of land		48
45.		Burden to prove fraud; Pleading fact of fraud		49

SELECTED ARTICLES

1.	Public Policy Conundrum in the Enforcement of Arbitral Award By Anshu Singh Rathore	50
2.	If Any Conflict Arises Between The Fundamental Rights And The Fundamental Principles Of State Policy, Which One Will Prevail? By Md Toslim Bhuiyan Prantiik	50
3.	Unmanned Stakeouts: Pole-Camera Surveillance and Privacy After the Tuggle Cert Denial By Dana Khabbaz	51
4.	FRAND Access to Data: Perspectives from the FRAND Licensing of Standard-Essential Patents for the Data Act Proposal and the Digital Markets Act By Erik Habich	51

1. **Supreme Court of Pakistan**
Supreme Court Bar Association of Pakistan through its President, Supreme Court Building, Islamabad v. Federation of Pakistan through M/o Interior Islamabad and others,
Pakistan Tahreek-e-Insaf through its Chairman Imran Khan v. The Election Commission of Pakistan, Islamabad and others
Constitution Petition No.2 of 2022,
Reference No.1 of 2022,
Constitution Petition No.9 of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail.
https://www.supremecourt.gov.pk/downloads_judgements/const.p._2_2022_14102022.pdf

Facts: 142 members of National Assembly filed a notice for moving a resolution for a vote of no confidence against the Prime Minister. Along with the said notice, another notice was filed requisitioning a session of the National Assembly by the then Speaker. As can be imagined this move immediately created political turmoil in the country. It was in these circumstances that the Supreme Court Bar Association ("SCBA") decided to intervene by filing a petition in this Court under Article 184(3) of the Constitution. Pakistan Tahreek-e-Insaf through its Chairman Imran Khan also filed petition under Article 184(3) of the Constitution. The President moved the Reference pursuant to Article 186, seeking the advice of the Court in respect of the questions regarding Article 63A of Constitution.

Issues: i) What are different aspects of fundamental rights enshrined in a constitution?
ii) What are differences between the right-holders under other fundamental rights and the two sets that exist under Article 17(2)?
iii) Whether in a system of parliamentary democracy the rights are vested in the political parties or in the members of the political parties individually?
iv) What is "healthy operation" of political parties in a system of parliamentary democracy under Article 17(2) of the Constitution?
v) What is external aspect of "healthy" operation of political parties in a system of parliamentary democracy?
vi) Whether there can be "healthy" operating of, and among, the political parties in the external aspect if defections are not defeated?
vii) What are the consequences for a member of a parliamentary party who casts his vote contrary to a direction issued by the parliamentary party in respect of any of the enumerated matters?
viii) Whether the bifurcation of powers between the parliamentary party and the Party Head under Article 63A of the Constitution regarding the power to issue the directions regarding different matters amounts to "healthy" operation of internal aspect of political parties in a system of parliamentary democracy?
ix) How the directions be given to the parliamentarians for the purpose of voting in the Assembly?

x) Whether the member in default, who cast the proscribed vote, is ipso facto de-seated?
xi) What should be the punishment of defector, i.e., the period of disqualification?

Analysis: i) The first aspect of fundamental rights is that in the case of each such right it is conferred in equal measure on all the right holders. Every person entitled to the freedom of speech or expression, or of movement, or of assembly, etc. is entitled to such right in equal measure as any other such right-holder. The second aspect of fundamental rights is that, in general, each right is exercised by a right-holder independently of the others. Put differently, in general, a right-holder is indifferent to whether any other right-holder is exercising that right or not, and if so to what extent. The third aspect of fundamental rights is that, again in general, it is for the right-holder to decide whether he wishes to exercise it or not. For example, of all the persons who are entitled to the freedom of expression it is only a fraction that actually exercises the right, whether as poets or authors or artists, etc. Finally in general the nature of each fundamental right is such that each right-holder thereof can exercise it in any number of many different ways. The rights of assembly and movement may be utilized for many different purposes, and the variety of opportunities under Article 18 is endless.

ii) The first difference between the right-holders under other fundamental rights and the two sets that exist under Article 17(2) is the singularity of purpose and objective that necessarily exists under the latter. There, there can be only one goal or objective, namely to form and/or be a member of a political party. Article 17(2) is essentially monochromatic. It is designed for, and geared towards, only one kind of association and one set of goals and objectives. This brings us to the second manner in which Article 17(2) is differentiated from other fundamental rights. There, the right-holder may choose to exercise the right or not, as he deems fit. That is not the case with Article 17(2). The purpose of forming the political party—the association—the very raison d'etre for its creation and existence is the pursuit of political power. No political party, properly so called, can be sensibly regarded as such unless (of course in such measure as is open to it) it seeks political power. This brings us to the third manner in which political parties, while exercising the bundle of rights enshrined in Article 17(2), differ from other right-holders acting (or not) in respect of other rights. There the right-holders in general act independently of each other and even indifferently to what the others are doing. Not so under Article 17(2). It is of the very essence of the provision that political parties cannot be indifferent to the others or act independently of them. Since all are in pursuit of the same goal or objective—political power—that simply cannot be so. Finally, notice must be taken of what may be called the cyclic aspect of the rights that inhere in Article 17(2). This is again a point of difference between this fundamental right and others. the association may continue to pursue them unimpeded and over whatever period of time as it may deem appropriate. In terms of Article 17(2) the political parties must again restart the political rivalry and competition that drives the system of parliamentary

democracy.

iii) Article 17(2) reaches far beyond what may appear to be suggested by the bare language of the text. The right inhering in citizens to form and/or be a member of a political party is but the starting point, and not the end-all and be-all of this fundamental right. Political parties so established are themselves right-holders in terms thereof, having the benefit of the bundle of rights encompassed in Article 17(2) in their own right and not simply as placeholders for their members for the time being. Furthermore, the rights so bundled inhere in each political party in equal measure. The constitutional requirement, necessary for the proper functioning of the system of parliamentary democracy, that there be a plurality of political parties who are competitors and rivals for political power on a cyclical basis, is duly reflected in, and is an integral aspect of, Article 17(2).

iv) It is inherent in the nature of Article 17(2) that there be a "healthy" operating of political parties. The "healthy" operating of a political party within the meaning of Article 17(2) has both an internal and an external aspect. The internal aspect pertains to matters within a political party whereas the external aspect relates to those that apply across the spectrum to, and among, all the political parties for the time being. The former is intra- while the latter is inter-party. To recall the words of Shafi ur Rehman, J., "healthy operation has been kept free of all limitations to flourish and flower inside the Government as well as outside it" (emphasis supplied). Put differently, the "healthy" operating of political parties in both its internal and external aspects relates and applies to all aspects and phases of political power: its pursuit, acquisition, retention and exercise.

v) The external aspect of healthy" operating of political parties is, one obvious area where the requirement applies is the competition among the parties as they vie for political power. It must be kept in mind that the competition or rivalry is not limited only to the election phase, when the parties are seeking the mandate of the people. It extends also (and perhaps much more so) to after the electoral verdict has been given and members elected, and matters move to action within the Assembly concerned.

vi) Defections are an attack on the integrity and cohesion of the political parties, and represent in an acute form the unconstitutional and unlawful assaults, encroachments and erosions which constitute a direct negation and denial of the rights encompassed in Article 17(2). There can be no "healthy" operating of, and among, the parties in the external aspect if defections are not thwarted and defeated. Indeed, the degradation—if not outright destruction—of "healthy" operating of parties in this manner is how and why the political bedrock established by the Constitution can become destabilized and parliamentary democracy itself delegitimized.

vii) If a parliamentary party gives a direction in terms of para (b) of clause (1) of Article 63A and a member thereof votes contrary to the same then (viewing the matter now from the perspective of Article 17(2)) two pathways immediately open within the folds of Article 63A. One is provided by the bare text of the provision. This pathway leads, if the Party Head so decides, to a formal

declaration of defection against the member in default and, subject to the remaining clauses, to his de-seating. He is removed from the parliamentary party (and may well also be expelled from the political party).

viii) Internal aspect of the "healthy" operation of a political party relates to the internal dynamics of the party, and has a bearing on the relationship between the parliamentary party and the Party Head. Under Article 63A, for purposes of clause (b) the power to issue the direction is vested in the parliamentary party and if there is a proscribed vote then, in terms of the first pathway, the declaration is to be made by the Party Head. There is thus a bifurcation of powers. If the matter is viewed, as it must, from the perspective of Article 17(2), this division is perfectly understandable for the internal aspect of the "healthy" operating. This is so because political parties are right holders in their own right in terms of Article 17(2) and the expectation is that they will not just be associations but institutions far outlasting any member thereof for the time being in order to fully carry, as they must, the burden of the system of parliamentary democracy envisaged by the Constitution. In terms of Article 63A, it appears to be a division of powers between the parliamentary party on the one hand and the Party Head on the other. If this division is breached then, since Article 63A must on its true understanding be viewed from the perspective of Article 17(2), there would be an adverse affect on the internal aspect of the "healthy" operating of the political party. When so viewed, it is clear that each serves as a check and balance on the other. The parliamentary party may issue a direction in terms of para (b) of clause (1), thereby opening the first pathway if there is a proscribed vote. But the Article has installed a "gateway" on this pathway, by conferring a discretionary power in the Party Head as to whether the matter is to be taken further to a declaration of the member in default as a defector and his de-seating. The parliamentary party cannot delegate, transfer, assign or in any manner "outsource" the power conferred on it in terms of para (b) to anyone, including the Party Head. Nor can it act merely at the behest or on the dictate of another. In constitutional terms, it is for the parliamentary party itself to decide whether the direction is to be issued. In practice of course, in most situations it may well be that the position of the parliamentary party on the one hand and the controlling organs of the political party including the Party Head are aligned so that in most cases it may not even be necessary for the formal issuance of a direction. This alignment may well be regarded, in practice, as the normal or ordinary state of affairs and suffice for most situations.

ix) The parliamentary party of a political party in an Assembly is a well-defined body, known to all concerned. Since it is a body of parliamentarians, any decision in terms of para (b) must have the support of (at least) the bare majority of the parliamentary party. The taking of the decision and its communication may therefore be established in such credible manner as satisfies the forum concerned, and it would not be appropriate to lay down any hard or fast rule in this regard. The totality of the circumstances in each actual situation must be kept in mind and given due weight and regard. However, for guidance the following procedure may

be suggested. A copy of the direction, duly supported by the signatures of the majority of the parliamentary party, should be deposited with the secretariat of the Assembly/House by or before the time it takes up for voting the matter to which it relates. While notice ought also to be given to the members of parliamentary party of the direction through any feasible means (including modern communication and messaging facilities), the deposit of the same in terms just stated will be deemed notice to them all. In any case it should at all times be regarded as the responsibility of a member of a parliamentary party to satisfy himself, before voting or abstaining to vote on any matter covered by Article 63A(1)(b), whether his party has (or has not) issued a direction in terms thereof.

x) The member in default, who cast the proscribed vote, is not ipso facto de-seated. The reason is that the Article has placed a "gateway" along this pathway, which is to leave it to the discretion of the Party Head whether to proceed to making a declaration of defection, which must precede the deseating. So, it could be that the "gateway" never opens and the member in default continues to remain a parliamentarian and part of the parliamentary party concerned. It must be emphasized that this has no bearing on the second pathway; as explained, that self-actuates and the proscribed vote cast is automatically and immediately disregarded. But, the position could be that in its internal aspect the "healthy" operating of the political party remains jeopardized by the continued presence of the member in default. This apparently anomalous result can however be readily explained.

xi) A defector may come within the scope of Article 62(1)(f). The question is that if this be the case what should be the punishment, i.e., the period of disqualification. If a member who casts a proscribed vote is de-seated he can seek reelection in the bye-election. If he chooses to contest the same, he may do so as an "independent" or even on the ticket of those who sought, engineered, welcomed, brought about and/or rewarded the defection. If he loses then the ensuing humiliation is also a punishment of sorts, both for the defector and his puppeteers. However, the cyclical nature of the electoral process must also be taken into consideration. To impose a lifetime ban is to remove the defector for all cycles to come. Since Article 63(1)(p) confers the necessary competence on Parliament, on reflection it is our view that the matter is best left to the legislature.

Conclusion: i) The first aspect of fundamental rights is that in the case of each such right it is conferred in equal measure on all the right holders. The second aspect of fundamental rights is that, in general, each right is exercised by a right-holder independently of the others. The third aspect of fundamental rights is that, again in general, it is for the right-holder to decide whether he wishes to exercise it or not. Finally in general the nature of each fundamental right is such that each right-holder thereof can exercise it in any number of many different ways.

ii) The first difference between the right-holders under other fundamental rights and the two sets that exist under Article 17(2) is the singularity of purpose and objective that necessarily exists under the latter. Secondly, the right-holder of

other fundamental rights may choose to exercise the right or not, as he deems fit. That is not the case with Article 17(2). Thirdly, there the right-holders in general act independently of each other and even indifferently to what the others are doing. Not so under Article 17(2). Finally, notice must be taken of what may be called the cyclic aspect of the rights that inhere in Article 17(2). This is again a point of difference between this fundamental right and others.

iii) Under Article 17(2) of the Constitution, in a system of parliamentary democracy, the rights are vested in the political parties and not in the members of the political parties individually.

iv) "Healthy operation" of a political party under Article 17(2) of the Constitution means healthy operation in both its internal and external aspects which relates and applies to all aspects and phases of political power: its pursuit, acquisition, retention and exercise.

v) The external aspect of "healthy" operation of political parties in a system of parliamentary democracy is competition among the parties as they vie for political power which includes election phase, electoral verdict and matters move to action within the Assembly concerned.

vi) There cannot be "healthy" operating of, and among, the political parties in the external aspect if defections are not defeated.

vii) When a member of a parliamentary party casts his vote contrary to a direction issued by the parliamentary party in respect of any of the enumerated matters, then consequence is a declaration of defection by a Party Head, a de-seating of the member in default.

viii) The bifurcation of powers between the parliamentary party and the Party Head under Article 63A of the Constitution regarding the power to issue the directions regarding different matters amounts to "healthy" operation of internal aspect of political parties in a system of parliamentary democracy.

ix) A notice ought to be given to the members of parliamentary party of the direction through any feasible means (including modern communication and messaging facilities), for the purpose of voting in the Assembly.

x) The member in default, who cast the proscribed vote, is not ipso facto de-seated, however, it is left to the discretion of the Party Head to make declaration of defection.

xi) If a member who casts a proscribed vote is de-seated he can seek reelection in the bye-election as an "independent" or even on the ticket.

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2. **Supreme Court of Pakistan**
Abdul Rehman and others v. Secretary, Ministry of Communication etc.
Civil Petition No. 2944 Of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2944_2019.pdf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the judgment passed by

the learned Islamabad High Court, whereby the writ petition filed by the petitioners, praying that they may be treated at par with the other regular employees of the respondent department and given special allowances, was dismissed.

Issues: Whether deputationists and regular employees can be treated at par for the purposes of special allowances?

Analysis: Both the categories of regular and employees on deputation are distinct and the deputationists do not enjoy the status of regular employees. When the terms and conditions of deputationists are settled vide a separate memorandum vide which the deputationists have been held entitled to several allowances and it is nowhere mentioned that they will also be paid special allowance of one month's pay allowance which is meant for regular employees only, the deputationist cannot be held entitled to receive such special allowance.

Conclusion: Deputationists and regular employees cannot be treated at par for the purposes of special allowances.

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3. **Supreme Court of Pakistan**
EFU General Insurance Limited v. Zhongxing Telecom Pakistan (Private) Limited (ZTE) and others
Civil Petition No. 607 of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._607_2021.pdf

Facts: Through this Civil petition the petitioner challenged the judgment of the Islamabad High Court, whereby his appeal against the decree passed by the Civil Court in a suit for recovery, was dismissed.

Issue: i) What is meant by demand guarantee?
ii) What is the correct approach for the Courts to adopt in the matters of demand guarantee?

Analysis: i) Demand guarantees are regarded as being in nature similar to letters of credit, and the guarantee constitutes an autonomous contract between the issuer and the beneficiary. Now, one aspect of the law relating to letters of credit is the rule of strict compliance. The documents presented by the beneficiary to the issuing (or, if such be the case, confirming) bank must comply strictly with the terms thereof. If so, the bank is (subject to exceptions and conditions not presently relevant) bound to pay. If not, the bank is bound to refuse payment. Now, the key document (indeed, in most instances the only document) in respect of a demand guarantee/performance bond is the demand itself.
ii) The correct approach to be adopted in this jurisdiction is for the Court to initially proceed on the basis that strict compliance is required. If this test is not

met it is then for the party claiming otherwise to show that the test of substantial compliance should be applied in the facts and circumstances of the case, while keeping in mind the actual text of the bond/guarantee. However, it should be kept in mind that the threshold required for the party to succeed on such a submission is a high one and is not to be lightly or easily accepted by the Court. There must be clear justification (which must be recorded in appropriate reasoning) for the Court to so hold, i.e., to uphold the claim notwithstanding that the rule of strict compliance has not been met.

Conclusion: i) Demand guarantee is similar in nature to letter of credit, and the guarantee constitutes an autonomous contract between the issuer and the beneficiary.
ii) The correct approach for the Court to adopt is to initially proceed on the basis that strict compliance is required. If this test is not met it is then for the party claiming otherwise to show that the test of substantial compliance should be applied in the facts and circumstances of the case, while keeping in mind the actual text of the bond/guarantee.

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4. Supreme Court of Pakistan
Zafar Iqbal and others v. Naseer Ahmed and others
C.A. No. 775 of 2015
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._775_2015.pdf

Facts: The appellants have filed this appeal, as of right, under Article 185(2)(d) of the Constitution of the Islamic Republic of Pakistan 1973 against the judgment and decree of the Lahore High Court passed in Regular Second Appeal.

Issues: i) Whether second appeal shall lie except on the grounds mentioned in Section 100 CPC?
ii) When a decision is open to examination by the High Courts in second appeal?
iii) Whether High Court can enter into the exercise of re-reading and re-appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court?

Analysis: i) Under Section 100 of the Code of Civil Procedure 1908 ("CPC"), a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. The scope of second appeal is thus restricted and limited to these grounds, as Section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100.
ii) The expressions "relevant evidence" and "admissible evidence" are often used interchangeably, in legal parlance, with "relevant facts" and "duly proved facts"

respectively, and a decision is said to be "contrary to law" and is open to examination by the High Courts in second appeal when: (i) it is based no evidence, or (ii) it is based on irrelevant or inadmissible evidence, or (iii) it is based on non-reading or misreading of the relevant and admissible evidence. A decision on an issue of fact that is based on correct reading of relevant and admissible evidence cannot be termed to be "contrary to law"; therefore, it is immune from scrutiny in second appeal.
iii) A High Court cannot, in such case, enter into the exercise of re-reading and re-appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court, much less the concurrent findings of facts reached by the trial court as well as the first appellate court. It has, in second appeal, no jurisdiction to go into the question relating to weightage to be attached to the statements of witnesses, or believing or disbelieving their testimony, or reversing the findings of the courts below just because the other view can also be formed on the basis of evidence available on record of the case.

Conclusion: i) No second appeal shall lie except on the grounds mentioned in Section 100 CPC.
ii) A decision is said to be "contrary to law" and is open to examination by the High Courts in second appeal when: (i) it is based no evidence, or (ii) it is based on irrelevant or inadmissible evidence, or (iii) it is based on non-reading or misreading of the relevant and admissible evidence.
iii) A High Court cannot enter into the exercise of re-reading and re-appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court.

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5. **Supreme Court of Pakistan**
Naeem Qadir Sheikh (In Cr.P. 1086-L/2022), Muhammad Zaigham Ali (In Cr.P. 1143-L/2022) v. The State etc (In both cases)
Criminal Petition Nos. 1086-L & 1143-L of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1086_l_2022.pdf

Facts: Through the instant petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail, in the interest of safe administration of criminal justice.

Issues: i) Whether pre-arrest bail can be granted to accused on rule of consistency when co-accused having same role has already been granted post-arrest bail by the court?
ii) Whether merits of the case can be touched upon by the Court while granting pre-arrest bail?

Analysis: i) When it is admitted fact that the role ascribed to the petitioners cannot be distinguished from the co-accused who has been granted post-arrest bail by the court of competent jurisdiction which remains unchallenged, any order by this Court on any technical ground that the consideration for pre-arrest bail and post arrest bail are entirely on different footing, would be only limited upto the arrest of the petitioners because of the reason that soon after their arrest they would become entitled for the concession of post-arrest bail on the plea of consistency.
ii) It is now established that while granting prearrest bail, the merits of the case can be touched upon by the Court.

Conclusion: i) Pre-arrest bail can be granted to accused on rule of consistency when co-accused having same role has already been granted post-arrest bail by the court.
ii) Merits of the case can be touched upon by the Court while granting pre-arrest bail.

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6. **Supreme Court of Pakistan**
M/s Lucky Cement Ltd thr. its General Manager, Peshawar V. Khyber Pakhtunkhwa thr. Secretary Local Government and Rural Development, Peshawar & others
Civil Appeal No. 2092 of 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2092_2019.pdf

Facts: Making basis upon allegation of discrimination for having been singled out to pay property tax at higher tax rate in comparison to other cement manufacturers treated beneficially, appellant i.e. a tax payer cement manufacturer, has assailed judgment of Peshawar High Court agitating that the ground of discrimination was not attended to in impugned judgment.

Issues: i) Whether there was any intelligible differentia or criteria to subject the buildings of one tax payer cement manufacturer to different rates of tax as compared to those of other cement manufacturers in the Province?
ii) How to undo the effect of the stated discrimination and unfair treatment meted out to the tax payer cement manufacturer, and whether the property tax already paid by such tax payer cement manufacturer in excess of the rates imposed on identically placed buildings can be retained or it must be refunded/adjusted?

Analysis: i) If the imposition of property tax is apparently discriminatory, then to sustain such discrimination the taxing authority/Government must demonstrate that it was justifiable by presenting some identifiable or intelligible criteria and further prove that the same was permissible under the Khyber Pakhtunkhwa Local Government Act, 2013 (or its predecessor law). Article 25 of the Constitution of theIslamic Republic of Pakistan mandates equality before the law and Article 18 of the

Constitution secures the right to conduct any lawful trade or business. If both these Articles are read together and applied to the present case it means that the tax payer cement manufacturer cannot be made to face a more onerous tax regime than its competitors. The treatment meted out to the tax payer cement manufacturer to the extent of imposing property tax on its buildings at a higher rate than which was imposed on the buildings of other cement manufacturers was discriminatory and to such extent it is illegal and ultra vires.

ii) When the Government was aware of, or had been informed, that discrimination was taking place and an unfair/unreasonable benefit/advantage was given to the tax payer cement manufacturer's competitors for nodiscernible reason, it was incumbent upon the Government to exercise itspowers under section 42(5) of the Khyber Pakhtunkhwa Local Government Act, 2013 and rationalize matters, and itsfailure to do so would mean that it was acting in an arbitrary and capricious manner, which was not permissible. Property Tax already paid by the tax payer cement manufacturer was at a rate higher than that which was imposed on the buildings of other cement manufacturers.

Conclusion: i) There is nothing to justify, and thus sustain, the discriminatory imposition of property tax by imposing a higher property tax rate on the buildings of the one tax payer cement manufacturer compared to what was imposed on the buildings of other cement manufacturers.

ii) The difference in such amount was to be repaid to the tax payer cement manufacturer or adjusted with regard to future property taxliability.

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7. **Supreme Court of Pakistan**
Eden Builders (Pvt) Limited, Lahore v. Muhammad Aslam and others
AFR. No.12587/2021 In/And C.P. No.5925 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._12587_2021.pdf

Facts: An application for return of the plaint under Order VII Rule 10 of the CPC of the petitioner was dismissed by the learned trial court and he challenged the order through a Civil Revision before the learned High Court which too was dismissed. Hence, the instant petition for leave to appeal.

Issues: i) Whether the parties can by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction?

ii) Whether a party can be restrained to enforce his right in ordinary court of law?

Analysis: i) It is a settled proposition of law that the parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction.

ii) No doubt, a party cannot be restrained to enforce his right in ordinary court of law but if by mutual agreement between the parties a particular court having

territorial and pecuniary jurisdiction is selected for the determination of their dispute, there appears to be nothing wrong or illegal in it or opposed to public policy.

Conclusion: i) The parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction
ii) A party cannot be restrained to enforce his right in ordinary court of law but by mutual agreement between the parties a particular court having territorial and pecuniary jurisdiction can be selected.

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8. **Supreme Court of Pakistan**
Ali Bux Shaikh v. The Chief Secretary, Government of Sindh, Karachi and others
Civil Petition No. 3112 of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3112_2020.pdf

Facts: This Civil Petition for leave to appeal is directed against the Judgment passed by the Sindh Service Tribunal at Karachi ("Tribunal"), whereby Service Appeal filed by the petitioner was dismissed.

Issue: i) What is the concept of the doctrine of estoppel as provided under Article 114 of the Qanun-e-Shahadat Order, 1984?
ii) Whether under Rule 12-A of the Sindh Civil Servants (Appointments, Promotion and Transfer) Rules 1974, the date of birth once recorded by a civil servant at the time of joining Government service is final and no alteration is permissible?

Analysis: i) Article 114 of the Qanun-e-Shahadat Order, 1984, defines the doctrine of estoppel. If a person by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief then he is not allowed in any suit or proceeding to deny the truth of that thing. In fact this principle is established on equity and fair-mindedness with the sole intention to nip in the bud the element of fraud and deception in order to ensure justice.
ii) There is no disbelief or reservation to the niceties of the Rule 12-A of the Sindh Civil Servants (Appointments, Promotion and Transfer) Rules 1974, but, the other way round, this Rule does not prohibit or restrain the competent authority from inquiring into cases where, on the face of it, certain interpolations are made by the Civil Servant in the service book, or where he provided wrong date in the service record. In such a case, obviously, the correction may be made after due satisfaction and inquiry and each case has to be decided on its own facts and circumstances.

Conclusion: i) The concept of the doctrine of estoppel is that when a person by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief then he is not allowed in any suit or proceeding to deny the truth of that thing.
ii) Rule 12-A of the Sindh Civil Servants (Appointments, Promotion and Transfer) Rules 1974 does not prohibit or restrain the competent authority to make the correction in service book of date of birth after due satisfaction and inquiry and each case has to be decided on its own facts and circumstances.

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9. **Supreme Court of Pakistan**
Civil Petitions No. 3157 to 3165 Of 2022
Federation of Pakistan through Secretary, Ministry of National Health Services v. Jahanzeb and others
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3157_2022.pdf

Facts: The aforesaid Civil Petitions for leave to appeal are directed against the common Judgment, passed by learned Federal Service Tribunal, Islamabad whereby Service Appeals were allowed with the directions to the department to take steps for grant of move-over to the appellants from the date on which they became eligible.

Issue: i) Whether move-over can be construed as promotion to the post of higher Basic Pay Scale?
ii) When avenue or pathway of proforma promotion comes into field if someone is neglected due to administrative oversight or delay?
iii) What is effect of unjustified delay in proforma promotions?

Analysis i) It is a well settled exposition of law that a move-over cannot be construed as promotion to the post of higher Basic Pay Scale, but the higher pay scale is treated to be an extension of the existing Basic Pay Scale of the post held by the employee (…) If an employee was not promoted and meanwhile reached to the maximum stage of his pay scale then obviously, he could be stagnant in his earlier pay scale due to attainment of maximum stage, therefore, as per erstwhile move over Policy, the modus of move-over was devised to cope with such situations in accordance with the criteria provided under SI.No.73 to SI.No.91, (O.M. 1975 to 1999) incorporated in the Establishment Code 2007.
ii) If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may, if satisfied that a civil servant who was entitled to be

promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up gradation arising from the antedated fixation of his seniority.
iii) Unjustified delay in proforma promotion cases trigger severe hardship and difficulty for the civil servants and also creates multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention.

Conclusion: i) A move-over cannot be construed as promotion to the post of higher Basic Pay Scale, but the higher pay scale is treated to be an extension of the existing Basic Pay Scale of the post held by the employee.
ii) If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits.
iii) The unjustified delay in proforma promotions cases triggers hardships and difficulty for civil servants and creates multiplicity of litigation.

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10. Supreme Court of Pakistan
Mall Development (Pvt) Ltd v. Waleed Khanzada & others
Civil Appeal No.639 of 2014
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._639_2014.pdf

Facts: Through a Constitutional Petition, the respondent challenged the merger by the appellants of a plot of land with commercial plot which was allowed by the learned High Court. Hence this civil appeal.

Issues: i) Whether an amenity plot or public park can be converted for commercial use?
ii) Whether payment of valid consideration absolves the purchaser of his responsibility to follow the law for change of nature of plot?

Analysis: i) It is settled law that an amenity plot or public park cannot be converted for commercial use, nor can its land use be changed to one which affects the rights of other residents of the locality to enjoy the public park or amenity. Any transaction in this respect cannot be deemed to be legal because, one of the stakeholders in such a transaction is the general public.
ii) It is settled law that, when the law provides a Particular manner of doing things, they must be done in that manner or not at all. When law provides a procedure which must be followed if the nature of a plot is to be changed,

payment of consideration does not ipso facto absolve the purchaser of his responsibility to follow proper procedure of the law for change of nature of plot. Merely Paying consideration does not mean that the purchaser can do whatever he wants with such plot i.e use amenity plot as commercial plot.

Conclusion: i) An amenity plot or public park cannot be converted for commercial use.
ii) Payment of valid consideration does not absolve the purchaser of his responsibility to follow the law for change of nature of plot.

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11. **Supreme Court of Pakistan**
Chief Executive Officer, Peshawar Electric and Power Company (PEPCO), WAPDA thr. its Chairman & others v. Sajeeda Begum & others, Gul Farah Jaan & others.
Civil Petitions No.4963 & 5021 of 2018
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4963_2018.pdf

Facts: Through instant civil petitions the petitioners have challenged two judgments of the Islamabad High Court, whereby in consequence of prayer by the respondents in writ petitions, directions to PESCO and WAPDA respectively were allowed by the court to compensate them in accordance with the 2014 Prime Minister's Assistance Package in terms of office memorandum.

Issues: i) Whether Islamabad High Court has jurisdiction to try the cases of corporate bodies such like PESCO etc whose registered office falls within the jurisdiction of other Province?
ii) Whether the employees of PESCO are government employees for the purposes of 2014 PM's Assistance Package?
iii) Whether WAPDA, for the purposes of conducting its affairs, acts as a body corporate and can grant its employees an assistance package similar in spirit to the Prime Minister's Assistance package?
iv) Whether the employees of WAPDA are government employees and Islamabad High court foist Prime Minister's Assistance package upon WAPDA?

Analysis: i) PESCO is regulated by the Companies Ordinance of 1984 and therefore, the relevant High Court for the purposes of issuance of any directions under Article 199 of the Constitution is the High Court where the main office of PESCO is situated. PESCO's headquarters are situated in Peshawar, KPK and none of its activities are undertaken within the territorial jurisdiction of the Islamabad High Court. It has no place of business, branch office or presence in any of the territories that fall within the jurisdiction of the Islamabad High Court.
ii) PESCO's employees were not governed by any law making them government servants. They are employees of a statutory corporation and the terms and

conditions of the service of their employees are determined by their own rules and regulations.
iii) WAPDA had, of its own volition, and according to its own rules which have a different genesis, granted its employees an assistance package similar in spirit to the Prime Minister's Assistance package. The said package had been granted by WAPDA vide its office memorandum dated 05.07.2007 and has periodically been updated by WAPDA in order to cater to changing conditions and circumstances. This Assistance package had been approved by Competent Authority in WAPDA and then passed on the Federal Government which accorded its approval before the funds were disbursed. Therefore, in principle, it would be unconscionable for an employee of any department to benefit from two Assistance Packages if, after availing a department's indigenous Assistance Package(which had already been sanctioned and approved by the Competent Authority and the Federal Government), they subsequently sought a direction for grant of another (better)Federa1 Assistance Package.
vi) Employees of WAPDA are not government servants and the 2014 Assistance Package was announced for the benefit of government servants only. There was no bar on the board of WAPDA against adopting the package of 2014. But the fact remains that it was not adopted and the High Court had no legal basis to foist the said package on WAPDA.

Conclusion: i) Islamabad High Court has no jurisdiction to try the cases of corporate bodies such like PESCO etc whose registered office falls within the jurisdiction of other Province.
ii) The employees of PESCO are not government employees for the purposes of 2014 PM's Assistance Package.
iii) Yes, WAPDA, for the purposes of conducting its affairs, acts as a body corporate and can grant its employees an assistance package similar in spirit to the Prime Minister's Assistance package.
iv) The employees of WAPDA are not government employees and Islamabad High court also cannot foist Prime Minister's Assistance package upon WAPDA.

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12. **Supreme Court of Pakistan**
Muhammad Ali (In Cr.A. 363/2021) Khurram Shahzad (In Cr.A. 364/2021) Muhammad Sajjad, complainant (In Cr.As. 365 & 366/2021) v. The State etc
Criminal Appeal Nos. 363 to 366 of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._363_2021.pdf

Facts: The appellants Khurram Shahzad and Muhammad Ali were convicted for offences under Sections 302/324/396/449 PPC in case/FIR registered at Police Station Dhudial, District Chakwal. In appeal, the learned High Court while maintaining the conviction of the appellants under Section 460/396 PPC, altered the sentence of death into imprisonment for life. The amount of fine and the

sentence in default whereof was maintained. Benefit of Section 382-B Cr.P.C. was also extended to the appellants. The conviction and sentence of the appellants under Section 337-A(ii) PPC was also maintained. However, the learned High Court set aside the conviction and sentence of the appellants under Section 302(b) PPC. All the sentences were ordered to run concurrently. Being aggrieved by the impugned judgment, the appellants filed Jail Petition & Criminal Petition whereas the complainant also filed Criminal Petitions.

Issues: i) Whether minor discrepancies can hamper the prosecution case?
ii) What ingredients are essential to dub any person as conspirator?
iii) Whether under sections 391/396 PPC there is a chance to distinguish the criminal liability on the basis of act or role ascribed to each accused?

Analysis: i) The minor discrepancies cannot hamper the prosecution case as it is repeatedly held by this Court that minor discrepancies do not frustrate the prosecution case unless and until there is something which directly shatters the salient features of the prosecution case.
ii) Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of abetment.
iii) The use of word 'conjointly' in Section 391 PPC indicates that five robbers act with knowledge and consent and in aid of one another or pursuant to an agreement or understanding i.e. unitedly. A bare perusal of the aforesaid provisions clearly reflects that the purpose of using the word “conjointly” relates to overlapping each and every act of participants in the occurrence on equal basis without any distinguishing feature. The aforesaid provisions are based upon entirely different footing as compared to ordinary case of murder where conviction can be recorded on the basis of role ascribed coupled with the fact of having common object or common intention. The law has been devolved on these lines since long but as far as these two provisions i.e. Sections 391/396 PPC are concerned, there is absolutely no chance to distinguish the criminal liability on the basis of act or role ascribed to each accused rather each one of them becomes equally responsible soon after they make preparation for the commission of the offence, act during the course of occurrence and even the acts committed while retreating after commission of the offence. No one can be distinguished on the basis of role or criminal liability with reference to such like offences as these offences are squarely against the fabric of the society and heinous in nature by all means. Section 396 declares in specific terms that the liability of other persons is co-extensive with that of the actual murderer. All that is required to be proved is that they have been conjointly committing dacoity and during the course of dacoity death caused by a dacoit would be murder and would be attributed to all of them. The fact that Section 396 PPC is a self-contained provision stands out right away upon its first reading. The Section is unique, in that, it imposes

vicarious liability upon all members of the gang without there being any distinction and to that extent is sui generis in nature.

Conclusion: i) The minor discrepancies cannot hamper the prosecution case.
ii) Three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of abetment.
iii) Under sections 391/396 PPC there is no chance to distinguish the criminal liability on the basis of act or role ascribed to each accused.

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13. **Supreme Court of Pakistan**
Sabtain Haider v. The State
Jail Petition No. 34 Of 2020
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._34_2020.pdf

Facts: Petitioner was convicted and sentenced by trial court in a private complaint under Sections 302/34 PPC for murder of two persons. In appeal the learned High Court set aside the conviction and sentence of the petitioner under Section 302(b) PPC for the murder of one person, however, the conviction and sentence for committing murder of another person was maintained. Being aggrieved by the impugned judgment, the petitioner/convict filed the instant jail petition.

Issues: i) Whether mere relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witnesses?
ii) How much burden of proof is on the defence to prove its version?
iii) Whether the doctrine of diminished liability would be attracted; if the murder is committed under the impulses of ghairat and grave and sudden provocation?

Analysis: i) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.
ii) It is established principle of criminal jurisprudence that the defence is not under obligation to prove its version and the burden on it is not as heavy as on the prosecution rather the defence is only to show the glimpse that its version is true.
iii) 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 state of mind as to substantially impair his responsibility in committing or being a party to an alleged criminal act. If the murder is committed under the impulses of ghairat and grave and sudden provocation, the doctrine of diminished liability would be squarely attracted.

Conclusion: i) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill

will is established.
ii) The burden of proof on defence is not as heavy as on the prosecution rather the defence is only to show the glimpse that its version is true.
iii) If the murder is committed under the impulses of ghairat and grave and sudden provocation, the doctrine of diminished liability would be squarely attracted.

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14. **Supreme Court of Pakistan**
Shameem Bibi v. The State etc.
Criminal Petition No. 982-L of 2022
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._982_l_2022.pdf

Facts: Through instant criminal petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order of learned Single Judge of the Lahore High Court, Lahore, whereby post-arrest bail has been denied to her in case FIR registered for offences punishable under sections 394/302/411 /109 PPC.

Issues: i) How much ingredients are essential to dub any person as conspirator for the purpose of completion of abetment?
ii) Whether the Call Data Record is a conclusive piece of evidence to ascertain the guilt or otherwise of an accused?
iii) Whether liberty of a person is a precious right and the same can be taken away in to ordinary circumstances?

Analysis: i) Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (a) instigation, (b) engagement with co-accused, and (c) intentional aid qua the act or omission for the purpose of completion of abetment.
ii) In absence of any concrete material the Call Data Record is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused. The (Call Data Record) CDR in isolation does not advance the prosecution's case unless and until some credible material in this regard has been collected. It is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioner
iii) Liberty of a person is a precious right guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be taken away without exceptional foundations. Keeping in view the peculiar facts and circumstances of this case, keeping the petitioner behind the bars for an indefinite period would not be in the interest of justice.

Conclusion: i) Three ingredients are essential to dub any person as conspirator for the purpose of completion of abetment as provided in Section 107 PPC.
ii) Call Data Record is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused unless and until some credible material in this regard

corroborated.

iii) Liberty of a person is a precious right and the same cannot be taken away without exceptional foundations.

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15. **Supreme Court of Pakistan**
Muhammad Ali vs. Samina Qasim Tarar and others
Civil Petition No. 3130 of 2020
Mr. Justice Ijaz ul Ahsan Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3130_2020.pf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the vires of judgment dated 01.10.2020 passed by the learned Islamabad High Court, whereby the writ petition filed by the respondents was allowed and the FIR No. 163 dated 28.04.2020 registered under Sections 406/448 PPC at Police Station Lohi Bher, Islamabad registered against them, was quashed.

Issue: Whether the breach of a civil liability (an agreement to sell) may also result in criminal breach of trust and FIR may be registered under section 406 PPC?

Analysis: To constitute an offence of criminal breach of trust defined in Section 405 PPC, which is punishable under Section 406 PPC there must be an "entrustment" of property with the accused and a misappropriation of the same by him. The expression "entrustment" with the property or with any domain over the property has been used in a broader sense under Section 405 PPC. It has wide and different implications in different context. The expression "trust" in Section 405 PPC is a comprehensive expression and has been used to denote various types of relationship, like relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. It is established law that while using the inherent powers, the High Court is to determine whether continuance of the proceedings would constitute a gross abuse of the judicial process. Both under the criminal law and civil law remedy can be pursued in diverse situations. Although they plainly overlap, they do not always exclude one another, and essentially vary in both content and impact. An act does not lose its criminal nature just because it has a civil liability. It is wrongly presumed that when a civil liability is under challenge and its discipline relates to civil remedy, criminal prosecution is unsustainable. This impression has been clarified by this Court while rendering a number of judgments on this subject. In the instant matter without critically analyzing the scope of quashing of FIR, we are surprised to note that the alternative remedy of filing petition under the law was not availed rather directly filing a Constitution petition calling in question the very registration of FIR was something extraordinary coupled with the fact that the contents of the crime report were totally ignored and were not taken into consideration while adjudicating the matter in hand. The fate of deciding any criminal litigation primarily without

recording of evidence seems to be something which has narrow scope. However, this principle is not absolute. In an appropriate case where complete injustice has been done, a Constitutional remedy can be pressed into and that can prove to be beneficial if the contents of the same warrant interference by a Constitutional court. Even otherwise, the legal remedy provided under the statute is based upon two words used by the Legislature i.e. "possibility" and "probability". Both these words in their entirety are sufficient to provide remedy to a sufferer of criminal litigation if at all it infringes the legal rights of any litigant on the basis of malicious prosecution. In the instant case a bare perusal of the FIR and the agreement to sell prima facie reveals that a clear allegation of entrustment and misappropriation of the property was made by the petitioner against the respondents in the FIR, which prima-facie discloses an offence under Sections 405 PPC punishable under Section 406 PPC. Admittedly, despite lapse of statutory period, the challan had not been submitted before the Trial Court, which ex-facie means that investigation had not been completed. In such circumstances, the possibility cannot be ruled out that further material may be collected for proceeding with trial. In view of the above, we are of the view that question regarding determination as to whether there was an entrustment of property, as asserted by the petitioner, could best be left to Trial Court to consider and decide in exercise of its power after recording of evidence.

Conclusion: Yes, the breach of civil liability (an agreement to sell) may also result in the criminal breach of trust and FIR may be registered under section 406 PPC.

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16. **Supreme Court of Pakistan**
Malik Muhammad Tahir v. The State and another
Criminal Petition No. 287 of 2022
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._287_2022.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the Lahore High Court, Rawalpindi Bench with a prayer to grant post-arrest bail, in the interest of safe administration of criminal justice.

Issues: Whether granting post-arrest bail in offence not falling within the prohibitory clause of Section 497 Cr.P.C is an absolute principle?

Analysis: Although the offences under Section 406/468/489-F PPC do not fall within the prohibitory clause of Section 497 Cr.P.C but this principle is not absolute, rather it depends upon the facts and circumstances of each case.

Conclusion: Granting post-arrest bail in offence not falling within the prohibitory clause of Section 497 Cr.P.C is not an absolute principle**;** rather it depends upon the facts and circumstances of each case.

17. **Supreme Court of Pakistan**
Asadullah Khan etc. v. Muslim Commercial Bank Ltd. etc.
Civil Appeals Nos. 8 Q & 11 Q of 2017 and Civil Petition No. 32-Q of 2017
Mr. Justice Yahya Afridi, Mr. Justice Amin ud Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._8_q_2017.pdf

Facts: Appellants filed the appeals under Article 185(2)(d) of the Constitution against the consolidated judgment of the learned Division Bench of the High Court of Balochistan, Quetta against the unfavorable portion of the order of modification.

Issues: i) Whether an appellant can file an appeal against an unfavorable portion of the order of modification under Article 185(2)(d) of the Constitution?
ii) Whether a partially upheld, and partially reserved judgment, falls under the ambit of term "variation"?

Analysis: i) If the portion of the judgment of the High Court which varied the judgment of the lower court (order of modification) in favor of the appellant is accepted by the appellant and he only challenges the part of the judgment which is against him, he is not competent to file an appeal under Article 185(2)(d) of the Constitution and is required to file a petition for leave to appeal under Article 185(3) of the Constitution.
ii) The term "varied" as used in the lexical and legal dictionaries is to change or alter or modify the ruling of the court below, it would be said that the judgment has varied the ruling of the lower court. However, where the same is set aside, or upheld, no modification takes place and the impugned ruling of the court below is either accepted in toto or reversed absolutely. Where a judgment is partially upheld, and partially reserved, and only that part of the judgment has been challenged which is partially maintained, then the same cannot fall under the ambit of variation, and would have to be considered as a judgment "upheld" to one extent, and a judgment "set aside" to the rest of it.

Conclusion: i) Under Article 185(2)(d) of the Constitution, an appellant cannot file an appeal against only an unfavorable portion of the order of modification and is required to file a petition for leave to appeal under Article 185(3) of the Constitution.
ii) A partially upheld, and partially reserved judgment, does not fall under the ambit of variation, and would have to be considered as a judgment "upheld" to one extent, and a judgment "set aside" to the rest of it.

18. **Supreme Court of Pakistan**
Govt. of Pakistan M/O Housing & Works through Joint Estate Officer, Federal Government Colony Hassan Ghari, Peshawar vs. Malik Safeer Ahmed
Civil Petition No. 361-P of 2018
Mr. Justice Amin-ud-Din Khan Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._361_p_2018.pdf

Facts: The respondent was serving in the Income Tax Department, Government of Pakistan and was posted at Peshawar. He was allotted an official residence in the Federal Government Employees Housing Colony, Hassan Garhi, Peshawar. Upon his transfer from Peshawar, the Estate Officer cancelled the allotment vide notice/letter dated 10th of August 2011 and directed the respondent to vacate the official residence (the residence). Being aggrieved, the respondent filed a civil suit in the Court of Senior Civil Judge, Peshawar, which was decreed in his favour. The petitioner filed an appeal and a civil revision, both of which were dismissed by the Appellate Court and the High Court respectively, hence, this petition for leave to appeal.

Issue: Whether an order of allotment or cancellation of an official accommodation can be assailed in Civil Court?

Analysis: If any person is aggrieved from any order made or proceedings taken by an authorized officer in respect of an official accommodation, can avail the remedies, provided by the relevant applicable rules, regulations, policies, instructions, directions etc., for redressal of his/her grievance. Since, no serious question of facts normally involves in the matter of allotment or cancellation of an official accommodation, therefore, the said forums, having all the powers to consider the vires of any order made or proceedings taken by an officer, could rectify the error and resolve the disputes on the basis of the available material, in accordance with the applicable rules, regulations, policies, instructions, directions etc. One of the purposes of establishing a separate forum is to proceed with the matters pertaining to the official accommodation summarily, and to resolve the issue in a shortest possible time, in order to avoid the procrastinated litigation. Under such circumstances, any order made or proceedings taken in respect of an official accommodation, pursuant to the applicable rules, regulations, policies, instructions, directions etc., shall not be called in question before any court, except the forums provided therein. However, if such forum is not provided, a High Court may, if it is satisfied, exercise its power, as provided by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The respondent, feeling aggrieved from the order of cancellation of allotment of his official accommodation, made by an authorized officer in pursuance of the power conferred upon him by the Rules 2002, instead of availing the remedy provided by the Rules 2002, approached the civil court which Civil Petition No.5 had no jurisdiction in the matter.

Conclusion: Civil Court has no jurisdiction to entertain the matter of allotment/cancellation of an official accommodation instead it shall be agitated at the forum provided under the relevant applicable rules, regulations, policies, instructions, directions etc. otherwise in High Court under Art. 199 of the Constitution of 1973.

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19. **Supreme Court of Pakistan**
Atif Ali and others v. Abdul Basjt and another
Criminal Misc. Appeal No. 30 OF 2022 In Criminal Petition No. Nil of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.appeal._30_2022.pdf

Facts: The pre-arrest bail petition of the petitioners before this Court has not been entertained by the office by placing reliance on Order XXIII Rule 8 of the Supreme Court Rules, 1980 and a judgment of this Court reported as Muhammad Adnan Vs. The State (2015 SCMR 1570), which led to filing of instant Criminal Miscellaneous Appeal.

Issues: Whether the bar contained in first proviso to Rule 8 Order XXIII of the Supreme Court Rules, 1980, does apply to the case where the petitioner seeks pre-arrest bail before the Supreme Court of Pakistan?

Analysis: The bar contained in first proviso to Rule 8 Order XXIII of the Supreme Court Rules, 1980, does not apply to the case in hand because of the reason that no order of imprisonment or fine as contained in Rule 8 ibid is challenged before this Court and, as such, the said bar is not applicable to the present case. Case of the applicants is entirely on different footing and the same is not sensitized by first proviso to Rule 8, which requires surrender to an order of imprisonment before availing the opportunity of filing petition before this Court. In the instant case, the matter pertains to recalling of the order of pre-arrest bail granted to the applicants by the learned Trial Court. In this regard, my view is fortified by the judgment of this Court reported as Zahid Vs. The State (PIn 1991 SC 379) wherein it has been held that bar contained in Rule 8 Order XXIII does not apply in such like cases.

Conclusion: The bar contained in first proviso to Rule 8 Order XXIII of the Supreme Court Rules, 1980, does not apply to the case where the petitioner seeks pre-arrest bail before the Supreme Court of Pakistan.

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20. **Lahore High Court Lahore**
Technical Education & Vocational Training Authority Through Its Chief Executive Officer v. Muhammad Arshad & Another
I.C.A. No.22963 Of 2019.
Mr. Justice Shujaat Ali Khan, Mr. Justice Rasaal Hasan Syed.
https://sys.lhc.gov.pk/appjudgments/2022LHC6710.pdf

Facts: Appellant in intra court appeal has assailed order accepting writ petition of respondent No.1 whilst setting aside order passed by the Competent Authority, and upheld by Appellate Authority and Revisional Authority, to the effect of removal of respondent No.1 from service on charge of absence from duty.

Issues: i) In what circumstances remedy of intra court appeal against order passed in Writ Petition is not available?
ii) Whether embargo contained under proviso to Section 3(2) of the Law Reforms Ordinance, 1972 is attracted if the Authority could not challenge any order passed by it or any of its functionaries?

Analysis: i) According to proviso to Section 3(2) of the Law Reforms Ordinance, 1972, the remedy of Intra Court Appeal is not available if the constitutional petition filed before this Court in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, arose out of any proceedings in which the law applicable, provided for at least one appeal or one revision or one review to any Court, Tribunal or Authority against the original order.
ii) The plain reading of Section 3 of the Law Reforms Ordinance, 1972, quoted supra, does not draw any line of distinction on the point as to whether any authority can file an appeal against the proceedings subject matter of writ petition before the learned Single Bench or not rather the import of law is that whenever a remedy of appeal, review or revision has been provided against an order challenged in constitutional jurisdiction of this Court the remedy of Intra Court Appeal is not available in such matters.

Conclusion: i) The remedy of Intra Court Appeal has been barred in the cases where the order impugned in the writ petition arose out of any proceedings in which the law applicable, provided for at least one appeal or one revision or one review to any Court, Tribunal or Authority against the original order.
ii) The embargo contained under proviso to Section 3(2) of the Law Reforms Ordinance, 1972 is attracted irrespective of whether any authority can file an appeal against the proceedings subject matter of writ petition before the learned Single Bench or not.

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21. **Lahore High Court**
J.K. Twills and Drills (Pvt.) Ltd. and another v. Premier Insurance Company of Pakistan Ltd. and another
R.F.A No.40462 of 2019
Mr. Justice Shahid Bilal Hassan, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6669.pdf

Facts: Through this Regular First Appeal under Section 124 of the Insurance Ordinance, 2000 (the "Ordinance"), the Appellants being policy holders have called into question the legality and propriety of the Judgment and Decree passed by the learned Insurance Tribunal constituted under Section 121 of the Ordinance. Pursuant to the Impugned Judgment and Decree, the Insurance Application of the Appellants seeking recovery was dismissed.

Issue: i) What is the scheme of law of the Insurance Ordinance 2000?
ii) Whether the Insurance Tribunal has all powers of civil court under CPC?
iii) Whether the applicant should have pleaded all the claims with specific details clearly?
iv) Whether pleadings could be equated with evidence and party to lis can be allowed to lead evidence beyond pleadings?
v) Whether unmarked documents are admissible in evidence?
iv)Whether the intention of the parties must essentially be gathered from the language adopted in the document while interpreting it?

Analysis: i) It is imperative to identify the scheme of law under which the proceedings are conducted before the learned Tribunal. The Ordinance 2000 was promulgated to regulate the business of the insurance industry; ensure the protection of the interests of the insurance policy holders; and promote the sound development of the insurance industry and for matters connected therewith and incidental thereto.
ii) The Ordinance clearly envisages that for all intents and purposes, the Tribunal has the powers of a Civil Court under the CPC, and trial before it shall be conducted in the same manner in which, a suit before the Civil Court proceeds. Since the Tribunal has powers to enforce the attendance of any person, examine him on oath, receive evidence on affidavits and issue permission for examination of witnesses or documents, therefore, all procedural as well as substantive provisions contained in the CPC and Qanoon-e-Shahadat Order,1984 will be applicable for trials before the Tribunal.
iii) In a claim filed by policy holder against an insurance company in respect of, or arising out of policy of insurance the Tribunal has the power to grant loss, insurance cover as well as liquidated damages under Section 118 of the Ordinance, therefore, it is imperative for an Applicant to plead all such claims through tabulation of the financial details and prove the same in accordance with the parameters laid down by the provisions of Qanoon-e-Shahadat Order, 1984. This criterion is mandatory in its scope and effect to curb evasive, bald, or vague claims to be presented before the Tribunal. It is also important for the purposes of administration of justice that all such contents shall be pleaded with specifics and categorically, otherwise, claim or Application will be flawed and vague in its form and substance.
vi) This requirement of law emanates from the cardinal principle that pleadings could not be equated with evidence and neither party to lis can be allowed to lead evidence beyond pleadings nor could it be read in evidence. Under the law the parties are required to lead evidence in consonance with their pleadings and no evidence can be laid or looked into in support of a plea, which has not been taken in pleadings. A party, therefore, is required to plead facts necessary to seek relief claimed and to prove it through evidence of an unimpeachable character.
v) The list of machinery placed as a marked document is worthless and inadmissible in evidence as the same cannot be even read in evidence.
iv) While interpreting the document the intention of the parties must essentially be gathered from the language adopted in the document and viewed in the law

through surrounding circumstances. As for proper comprehension and insight into an instrument that was to be read as a whole and where its language was simple, clearly understandable, and capable of no ambiguity, then the intention of the parties to such instrument was to be gathered from its contents alone without adverting to any other extraneous consideration.

Conclusion: i) The Insurance Ordinance 2000 was promulgated to regulate and protect the business of the insurance industry
ii) The Tribunal has the powers of a Civil Court under the CPC, and trial before it shall be conducted in the same manner in which, a suit before the Civil Court proceeds
iii) It is imperative for an Applicant to plead all such claims through tabulation of the financial details and prove the same in accordance with the parameters laid down by the provisions of Qanoon-e-Shahadat Order, 1984.
vi) The Pleadings could not be equated with evidence and neither party to lis can be allowed to lead evidence beyond pleadings nor could it be read in evidence.
v) The unmarked documents are not admissible and have no worth.
iv) While interpreting the document the intention of the parties must essentially be gathered from the language adopted in the document.

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22. **Lahore High Court**
Basharat Ali, etc v. Muhammad Arif, etc.
Writ Petition No.22235 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6944.pdf

Facts: The respondents instituted suit for malicious prosecution which was dismissed as withdrawn on the statement of their counsel. The respondents filed an application for restoration of suit which was dismissed by the trial court. The respondents filed a revision petition which was partially allowed hence, the instant constitutional petition filed by the petitioners.

Issues: Whether a party is bound by the statement of his counsel recorded in his suit?

Analysis: A party is always bound by the statement of his counsel unless there is anything contrary in the power of attorney places restriction on the authority, delegated upon the counsel, to compromise or abandon the claim on behalf of his client(s).

Conclusion: A party is always bound by the statement of his counsel unless there is anything contrary in the power of attorney places restriction on the authority.

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23. **Lahore High Court**
Niamat Bibi, etc. v. Muhammad Rafique, etc.
Civil Revision No.1148 of 2013
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6959.pdf

Facts: The respondents/plaintiffs instituted a suit for specific performance of an agreement to sell and learned trial Court decreed the suit in favour of the respondents/plaintiffs. The petitioners being dissatisfied preferred an appeal against the same but the learned appellate Court dismissed the appeal; hence, the instant revision petition.

Issues: How many witnesses are required to prove the execution of an agreement pertaining to financial or future obligations?

Analysis: Article 17(2)(a) of the Qanun-e-Shahadat Order, 1984 provides that in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly;' meaning thereby when two persons enter into any agreement pertaining to financial or future obligations, the instrument should be attested by two men or one man and two women, so that one may remind the other. Article 79 of the Qanun-e-Shahadat Order, 1984 enumerates the procedure of proof of execution of document required by law to be attested.

Conclusion: When two persons enter into any agreement pertaining to financial or future obligations, the instrument should be attested by two men or one man and two women, so that one may remind the other.

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24. **Lahore High Court**
Asif Naeem v. Mst. Balqees Fatima and others
Civil Revision No.60443 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6940.pdf

Facts: Respondents instituted a suit for declaration which was decreed by the trial court upon recording of conceding statements of the petitioner. Feeling aggrieved of the same, the petitioner preferred an appeal but it was dismissed; hence, the instant revision petition.

Issues: Whether an appeal can be filed against the consent decree?

Analysis: No appeal lies in consent decree; however, there are following exceptions where consent decree is appealable:- • An appeal by a person who was not a party to the compromise; • Where it is alleged that decree is not a decree passed with the

consent of parties; • Where the consent decree is alleged to be invalid as for instance where court did not have jurisdiction over the subject matter; • Where there is a dispute regarding the nature of compromise; • Where the decree travels beyond the agreement; • Where the consent is given under mistake of fact or obtained by practicing fraud upon the court; • Where there was no compromise at all; • Where the strict requirements of O.XXIII, Rule 3, Code of Civil Procedure, 1908 are not satisfied.

Conclusion: No appeal can be filed against the consent decree; except in exceptional circumstances.

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25. **Lahore High Court**
Harmooz Khan and others v. Abdul Azeem Khan and others.
Civil Revision No. 115692 of 2017
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6948.pdf

Facts: Through the instant civil revision the petitioners have challenged the concurrent findings of court courts below whereby a suit for declaration filed by them was dismissed being barred under section 12, 13 and 17 of the Undesirable Cooperative Society Act, 1993.

Issue: Whether section 17 of the Undesirable Cooperative Society Act, 1993 bars the jurisdiction of civil Court to try the suit?

Analysis: As per Section 9 of the Code of Civil Procedure, 1908, The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In such scenario, the alleged bar contained in section 17 of the Act, 1993ibid cannot take away the plenary jurisdiction enjoined upon the civil Court under section 9, C.P.C. in a situation where the aggrieved person finds himself remediless, particularly, when a dispute requires detailed evidence in order to resolve a factual controversy, as in the present case, because a specific plea of fraud and forgery has been pleaded.

Conclusion: Section 17 of the Undesirable Cooperative Society Act, 1993 does not bar the jurisdiction of civil Court to try the suit where a specific plea of fraud and forgery has been pleaded.

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26. **Lahore High Court**
Muhammad Faisal v. The State & another and
Criminal Appeal No.76 of 2020
The State v. Muhammad Faisal
Murder Reference No.14 of 2020
Mr.Justice Sadaqat Ali Khan, Mr.Justice Ch.Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2022LHC6924.pdf

Facts: This judgment shall dispose of the above-captioned criminal appeal filed by appellant and Murder Reference for confirmation of his death sentence or otherwise, who was convicted by learned Sessions Judge, held in case FIR registered under Section 302 PPC.

Issues: i) Who is interested witness in criminal matters?
ii) What are the parameters to accept the evidence of "chance witness"?
iii) What is the evidentiary value of recovery which is effected on pointing of accused and witnessed by two witnesses?
iv) Whether weakness of motive or failure of prosecution to prove motive, could be taken as mitigating circumstances to award lesser punishment even in brutal murder cases?
v) Whether any statutory guidelines are given for deciding the quantum of sentence under Section 302 (b) PPC?
vi) what does the term 'just decision' stands for?
vii) what is the concept of theories of deterrence and retribution?

Analysis i) Suffice it to say in this regard that mere relationship of a witness with the deceased does not oust him from the court so as to be rendered unworthy of credence. For holding an eyewitness as interested, the defence has to demonstrate that he is inimically placed against the accused that there is every likelihood of false implication for satisfying pre-existing grudge or vengeance.
ii) Legally speaking, even the evidence of a passerby, who successfully explains his presence at the spot, cannot be discarded by describing him a chance witness.
iii) Since the recovery of cleaver knife (P.3) was effected on the disclosure and pointation of the appellant, thus is relevant under Article 40 of Qanun-e-Shahadat Order, 1984. Such recovery attains credence and admissibility if witnessed by two witnesses, not necessarily having abode in the same neighborhood from where it is effected. The wisdom behind acceptance of such recovery has its roots in the fact that it was discovered from a place within the exclusive knowledge of none other than the accused.
iv) In broader spectrum, we consider it expedient to mention here that weakness of motive or failure of prosecution to prove it, loses significance in a barbarous murder incident like the instant one and the convict deserves no leniency in the quantum of sentence. The weakness of motive or failure of prosecution to prove it can admittedly be made basis for having resort to alternate sentence of imprisonment for life provided in Section 302 (b) PPC but such rule is not

inflexible and deviation can be made from it if the deceased is done to death with display of brutality.
v) For deciding the quantum of sentence under Section 302 (b) PPC no statutory guidelines are given, thus each case is dependent upon the peculiar background and the manner in which a person is assassinated. In our view, homicide cases can be classified in two categories, out of which one pertains to incidents where persons are killed out of human frailty, morbid jealousy, loss of tamper or without display of brutality, etc. and the second class is of ferocious killing wherein innocent persons are assassinated in a savage manner. In the former class of cases, the Court can opt for the alternate sentence of imprisonment for life but in the latter category of cases the infliction of death sentence is warranted.
vi) The term 'just decision' stands for a finding which is in conformity with the facts of the case and law on the subject giving what is due to a perpetrator in reference to the quantum and magnitude of aggression committed by him towards the victim. A decision can be termed as just only if it is based on rationality, correct interpretation of law and the conviction is in proportionate to the manner in which the crime is committed by the delinquent.
vii) The award of death sentence to the perpetrators of barbarous killings besides creating deterrence is also destined to console the legal heirs of the victim, to whom the Courts owe duty while administering justice. (…)The maximum punishment in cases like the instant one, creates deterrence forcing the individuals to follow the law even if their rights are encroached upon or usurped by their adversaries. (…) The basic purpose of awarding punishment rests in the idea that the criminals be deterred from taking law in their hands, where possible, the convicts be reformed and the families of victims be consoled through retribution.

Conclusion: i) An interested witness is one who has a motive for falsely implicating an accused, is a partisan witness and is involved in the matter against the accused.
ii) Evidence of a chance witness, who successfully explains his presence at the spot, cannot be discarded.
iii) Recovery effected on the disclosure and pointation of the accused is relevant under Article 40 of Qanun-e-Shahadat Order, 1984. Such recovery attains credence and admissibility if witnessed by two witnesses.
iv) The weakness of motive or failure of prosecution to prove it can admittedly be made basis for having resort to alternate sentence of imprisonment for life provided in Section 302 (b) PPC but such rule is not inflexible and deviation can be made from it if the deceased is done to death with display of brutality.
v) For deciding the quantum of sentence under Section 302 (b) PPC no statutory guidelines are given thus each case is dependent upon the peculiar background and the manner in which a person is assassinated.
vi) A decision can be termed as just only if it is based on rationality, correct interpretation of law and the conviction is in proportionate to the manner in which the crime is committed by the delinquent.
vii) The basic purpose of awarding punishment rests in the idea that the criminals

be deterred from taking law in their hands, where possible, the convicts be reformed and the families of victims be consoled through retribution.

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27. **Lahore High Court**
Zia ud Din etc. v. Malik Humayun Irfan etc.
Civil Revision No.364-D of 2010
Malik Aamir Ali Khan v. Malik Humayun Irfan etc.
Civil Revision No.531 of 2009
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC6839.pdf

Facts: Petitioners have challenged judgments and decrees including preliminary decree, ex-parte proceedings and report of local commission and filed titled civil revisions against the impugned judgments and decrees of learned Courts below which are being decided through this single judgment.

Issues: i) What is scope of preliminary decree in a partition suit of immovable property?
ii) Whether Local Commission has power to determine the right/share of any party to suit for partition of immovable property?
iii) Whether a document, which has not been produced and proved in evidence but only marked, can be taken into account as a legal evidence of fact?
iv) Whether the entire superstructure built on illegal order/judgment/decree falls on the ground automatically?

Analysis: i) A preliminary decree only comes out as a consequence of determination of substantive rights of the parties. The Court while passing preliminary decree after determination of right and share of each party in a partition suit of immovable property appoints local commission to prepare the mode of partition/divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order.
ii) Local Commission has no power to determine the right/share of any party to suit for partition of immovable property, it is appointed only to prepare the mode of partition at the spot in view of the shares determined by the Court in preliminary decree. The local commission cannot assume the role of the Court, rather only can propose the allotment of specified share to the parties determined in preliminary decree.
iii) The law is settled by now that the document, which has not been produced and proved in evidence but only marked, cannot be taken into account as a legal evidence of fact by the Courts.
iv) The law is settled by now that when basic order/judgment/decree is found illegal or void then the entire superstructure built on it falls on the ground automatically.

Conclusion: i) Preliminary decree determines the right and share of each party in a partition

suit of immovable.

ii) Local Commission has no power to determine the right/share of any party to suit for partition of immovable property.

iii) The document, which has not been produced and proved in evidence but only marked, cannot be taken into account as a legal evidence of fact by the Courts.

iv) The entire superstructure built on illegal order/judgment/decree falls on the ground automatically.

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28. **Lahore High Court**
Commissioner Inland Revenue Zone-II, RTO, Gujranwala v. M/s Crystal Distributors, Gujranwala
ITR No.41041 of 2022
Mr.Justice Shahid Jamil Khan,Mr.Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC6750.pdf

Facts: Through instant Reference Application under Section 133 of the Income Tax Ordinance, 2001, questions of law, asserted to have arisen out of impugned order, passed by learned Appellate Tribunal Inland Revenue, have been pressed and argued for opinion.

Issues: Whether Commissioner (Appeals) enjoys power of remand under Section 129(1) of the Income Tax Ordinance, 2001?

Analysis It is clear from careful reading of the above that before amendment Commissioner (Appeals), after making observations, could pass direction to the Commissioner to pass fresh assessment order, however such power has been curtailed by way of amendment. Commissioner (Appeals) is only confined to confirm, modify or annul the assessment order after examining evidence which in his opinion is necessary for just decision. Commissioner (Appeals) cannot travel beyond the above scope or pass an order or give any direction which would work adversely against the appellant who had filed appeal against the order of lower authority. The amendment has further authorized Commissioner (Appeals) to undertake further enquiries to ascertain the facts rather than remitting the case to a lower forum. The legislative policy behind the aforesaid amendment is to curb prolonged and protracted litigation at the cost and inconvenience of taxpayer. (…) In the wake of above, we hold that Commissioner (Appeals) lacks jurisdiction to go beyond the scope of Section 129 of the Ordinance of 2001 and remand the matter to lower forum rather is bound to decide the same on merits.

Conclusion: Commissioner (Appeals) lacks jurisdiction to go beyond the scope of Section 129 of the Ordinance of 2001 and remand the matter to lower forum rather is bound to decide the same on merits.

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29. **Lahore High Court**
Muhammad Umar etc. v. National Highway Authority etc.
R.F.A. No.162/2021
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC6662.pdf

Facts: Through this Regular First Appeal, the appellants challenged the validity of the order passed by the learned Referee Court/Senior Civil Judge, who dismissed the Reference under Section 18 of the Land Acquisition Act, 1894 filed by the appellants.

Issues: Whether reference under Section 18 of the Land Acquisition Act, 1894 is maintainable, if compensation was received without any protest?

Analysis The aforesaid provision is very much clear that only such person is entitled to file application for enhancement of compensation who has received compensation under protest whereas the appellants did not file any application to show their protest at the time of receipt of the compensation amount.

Conclusion: Reference under Section 18 of the Land Acquisition Act, 1894 is not maintainable, if compensation was received without any protest.

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30. **Lahore High Court**
Ms. Farzana Liaqat v. Program Director, Integrated Reproductive Maternal New Born & Child Health Program, Punjab Etc.
Writ Petition No.5653 Of 2022
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC6795.pdf

Facts: The order of the transfer of petitioner i.e. a contract employee, on administrative ground is assailed in this writ petition.

Issues: Whether an employer/competent authority has the power to transfer a contract employee from one place of posting to another?

Analysis: The plain reading of the Clause 10 of the terms and conditions of the appointment letter of the petitioner/contract employee evinces that only the employee is placed under stringent embargo to claim transfer. The Clause 10 of the terms and conditions of said appointment letter in any stretch of imagination does not oust the administrative power of the employer/competent authority to transfer its employee.

Conclusion: The employer/competent authority can transfer a contract employee from one place to another on the administrative ground and such order does not violate any right of such employee.

31. **Lahore High Court**
Arooj Asghar v. Government of Punjab through Chief Secretary, Civil Secretariat, Lahore & others
Writ Petition No.66990 of 2020.
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC6743.pdf

Facts: Through instant petition, petitioner has challenged order passed by respondent No.2 whereby House was reallotted to another after cancelling the same from petitioner's name.

Issues: Whether Project Standard Design Residence can be made criteria to allot a house to an officer of a particular grade?

Analysis: Project Standard Design Residence in Punjab Pay Scale 18+19 Cat-II mentioned at site plan prepared by an architect showing Elevation and Sections of the building is not sufficient for proper allotment of government owned accommodation. This inherent defect / flaw in the Allotment Policy gives unbridled discretion to authorities to make allotments at their whims and wishes and facilitates government servants in getting undue benefits. This lacuna in the Allotment Policy needs to be filled immediately through necessary legislation / amendments in the Allotment Policy.

Conclusion: Project Standard Design Residence cannot be made criteria to allot a house to an officer of a particular grade.

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32. **Lahore High Court**
Commissioner Inland Revenue, Legal Zone LTO v. M/s Sapphire Dairies (Pvt) Ltd
STR No. 20573/2021
Mr Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC6849.pdf

Facts: Instant Sales Tax Reference Application is directed against order of Appellate Tribunal Inland Revenue whereby Appellate Tribunal Inland Revenue proceeded to allow the appeal of the registered person, declaring claim of credit of input tax qua the supplies admissible.

Issues: Whether the expression "Import and supplies thereof" in column (3) of Sr.4, of the SRO.549(1)/2008 ought to be read and construed conjunctively or disjunctively?

Analysis: The expression "Import and supplies thereof" has had to be construed in the context of the definition of taxable supplies – which inter alia includes supply of

taxable goods made by an importer or manufacturer, as the case may be. The expression "Import and supplies thereof" covers the incidence of import and supplies, in the context of the goods and separately amenable to chargeability of tax and zero rated regime. Likewise, the expression 'thereof' – a qualifying expression - suggests reference to the goods described in column (2) of Sr.4, of the SRO.549(1)/2008, which cannot be read to refer to the supply of imported goods exclusively, to the exclusion of supplies of locally produced / manufactured goods. Disjunctive reading of column (3) of Sr.4, of the SRO.549(1)/2008, conveys more meaningful, natural, rational and practical meaning to the expression "Import and supplies thereof", whereof the evident intent was to cover the goods, either subject of import-cum-supplies or supplies made of locally produced / manufactured goods. The expression 'supplies" cannot be bracketed / clubbed with the incidence of Imports – which two expressions cannot be construed of same kind / class, nor the expression 'supplies' be contextualized in limited / narrower sense, in the company of the expression 'import' but to be read independent thereof, where the context relates to taxable supplies of locally produced / manufactured goods in terms of Sr.4 of SRO.549(1)/2008.

Conclusion: Bracketing import and supplies together and conjunctive reading thereof is contrary to the spirit and scheme of the enactment, besides being irrational and inherently defective, therefore, the expression "Import and supplies thereof" in column (3) of Sr.4, of the SRO.549(1)/2008 be read and construed disjunctively.

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33. **Lahore High Court**
Manzoor Ahmad v. The State, etc.
Crl. Appeal No. 454-J-2021/BW
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC6718.pdf

Facts: The appellant through this criminal appeal has assailed the judgment passed by the learned Trial Court whereby he was convicted and sentenced for an offence punishable under Section 364-A, 302, 34 PPC.

Issue: i) What is the parameter to evaluate circumstantial evidence?
ii) Whether accused can be convicted on the basis of extra judicial confession?

Analysis: i) It is settled by now that in cases based upon circumstantial evidence every chain should be linked with each other as its one end touches the dead body while the other end goes to the neck of the accused and if any chain link is missing then its benefit should be given to the accused.
ii) This Court is well-conscious of the fact that conviction can be based on extra judicial confession when it is corroborated by other reliable evidence. However, extra judicial confession being regarded as a weak type of evidence by itself, utmost care and caution has to be exercised in placing reliance on such confession.

Conclusion: i) The parameter to evaluate circumstantial evidence is that every chain should be linked with each other.
ii) Conviction can be based on extra judicial confession when it is corroborated by other reliable evidence.

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34. **Lahore High Court**
Sabeen Asghar etc. v. Province of the Punjab etc.
Writ Petition No. 51488/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6801.pdf

Facts: The appellants seek a writ of mandamus through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 against the respondents for grant of maternity leave for 90 which was declined by respondent.

Issue: i) Whether an individual can file Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 if the terms of his employment are governed by a contract?
ii) Whether the violation of the right to safe motherhood by declining the maternity leave to a pregnant woman constitutes an infringement of the fundamental right?

Analysis: i) The basic principle is that an individual cannot invoke the constitutional jurisdiction of the High Court under Article 199 if the terms of his employment are governed by a contract rather than statutory rules. If he has any grievance, he should seek redress in an ordinary court of competent jurisdiction. However, even in the case of a contractual employee, the High Court can entertain a writ petition if there is a question of infringement of fundamental rights. In Dr. Aamna Saleem Khan v. National University of Sciences and Technology, Islamabad, and 4 others [2021 PLC (C.S) 212] the Islamabad High Court held that "Learned counsel for the respondent University has taken the stance that the Petitioner being contract employee is debarred from approaching this Court, hence, instant petition is not maintainable. However, the instant writ petition has been taken up by this Court while keeping in view the violation of fundamental rights of a woman and it is the primary duty of the constitutional Court to protect the fundamental rights of a citizen, especially a woman, who is going to become mother and she has been penalized for availing maternity leave, which otherwise is a condemnable act on the part of an employee and that too after granting her such leave."
ii) Sex discrimination occurs when women's health needs, such as maternity care, are neglected. On this touchstone, violation of the right to safe motherhood constitutes an infringement of Article 25 of the Constitution. Besides, it offends the women's right to dignity guaranteed by Article 14(1), a right which is absolute, nonnegotiable and inviolable… The right to safe motherhood is a fundamental right under Article 9 of the Constitution and its violation also

constitutes an infringement of Articles 14(1) and Article 25… Maternity leave for working women is essential for safe motherhood. "It is the basic element of maternity protection." Since safe motherhood is the fundamental right of every woman, the right to maternity leave should also have the same status. This right may also be justified under Articles 3 and 11 of the Constitution. Article 3 obligates the State to ensure the elimination of all forms of exploitation and gradual fulfillment of the principle from each according to his ability to each according to his work. Article 11 prohibits all forms of forced labour. This Court also held in Sobia Nazir v. Province of the Punjab etc. (2022 LHC 2413) that Article 11 would be violated if a woman is compelled to work during advanced stages of pregnancy or immediately after childbirth.

Conclusion: i) An individual cannot invoke the constitutional jurisdiction of the High Court under Article 199 if the terms of his employment are governed by a contract rather than statutory rules. However, even in the case of a contractual employee, the High Court can entertain a writ petition if there is a question of infringement of fundamental rights.

ii) The violation of the right to safe motherhood by declining the maternity leave to a pregnant woman constitutes an infringement of the fundamental right.

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35. **Lahore High Court, Lahore**
Marriam Bibi and others v. Azhar Iqbal and others
Writ Petition No.359 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6756.pdf

Facts: The Petitioners through this constitutional petition under Article 199 of the Constitution have assailed the judgments & decrees respectively passed by Senior Civil Judge (Family Division) and Additional District Judge only to the extent of fixing quantum of maintenance.

Issues: i) Whether the Family Court has powers to fix maintenance allowance on it's own volition arbitrarily or otherwise is required to assess the quantum for maintenance as per provisions of Section 17-A (4) of the Family Court Act,1964?

ii) What is meant by terms "estate" and "resources" referred in Section 17-A (4) of the Family Court Act,1964?

iii) Generally or in particularized state of non-availability of sufficient evidence on behalf of parties, whether the pleadings/averments set forth by the parties to the suit are enough for determination of quantum of maintenance or the Family Court should embark upon inquiry about 'estate' and 'resources' of the defendant for finally fixing up maintenance allowance?

Analysis: i) Issue of maintenance allowance in Family Courts is dealt with under Section 17-A of the Family Court Act, 1964, wherein Section 17-A (1) deals with the interim maintenance of wife and the child, whereas Section 17-A(4) deals with

final maintenance allowance. Use of the terms "fix" and "fixing" in sub-section 1 and 4 of the said Section 17-A is of much relevance. The, use of both said terms "fix" and "fixing" respectively arise in Section 17-A (1) to fix interim maintenance and in Section17-A (4) for fixing final maintenance.

ii) Provisions stipulated in Sections 11 and 39 of the Income Tax Ordinance, 2001 state range of sources of income, which Section 11 states that the income can be classified under the heads of salary, income from property, income from business, capital gains and income from other sources, whereas Section 39 provides that head of income from other sources includes dividend, royalty, profit on debt, additional payment on delayed refund under any tax law, ground rent, rent from sub-lease of land or a building, income from the lease of any building together with plant or machinery, income from provision of amenities, utilities or any other service connected with the renting of building, annuity or pension, prize bond etc. and such other sources defined therein.

iii) The Family Court established under Section 3 of the Family Court Act,1964 and exercising jurisdiction under Sections 4 & 5 of Act ibid has been specifically conferred clear mandate for expeditious settlement and disposal of family disputes and related matters as per its Preamble and, for implementation of purpose, said Act has brought in certain powers, procedure and parameters for the Family Courts for being adhered to. There can be no qualms about the fact that the Family Court has to exercise its powers so conferred vide provision of Section 17-A of the Family CourtAct,1964. Thus, the Family Court is legally obliged to assess the quantum of maintenance as per dictate and criteria mentioned in Section 17-A(4) of the Family Court Act, 1964, which empowered Family Court to step ahead with procedure enunciated for requisite inquiry destined for absolute and unambiguous determination of defendant's 'estate' and 'resources' including his salary/monthly income to finally fix maintenance allowance. Judicial resources need to be promptly and consistently available to litigants for the core functions of fact finding, particularly when law itself is available for rescue. Women and children approaching the Court in family matters are protected by Article 4 of our Constitution and they must be treated in accordance with the law laid down in S. 17(A) of the Family Court Act, 1964. Article 10-A of The Constitution of Islamic Republic of Pakistan, 1973 provides right of fair trial and due process for determination of rights and obligations of parties. The maxim goes "boni judicis est ampliare justitiam" i.e. the good judge's duty is to extend justice, and justice can only be extended, when something is done in accordance with law. It is well established that the procedural laws are enacted to advance cause of justice and not to thwart the same, which intent of law is no doubt always aimed at the welfare of its subjects. It is need of the day to employ legislated processes that are more accessible and more responsive for children, parents, and families. The Family Courts must adopt therapeutic and holistic approach to the Court structure and processes as well as to decision making in family disputes. Therapeutic jurisprudence applied in the family law context means that courts must focus on achieving outcomes that positively affect

and even improve the lives of individuals, children, and families involved in family litigation, which approach definitely has the potential to facilitate problem-solving and to positively enhance the quality of the parties' daily lives, thereby rendering a more effective outcome for individuals and families. Articles 4, 9 and 14 of The Constitution of Islamic Republic of Pakistan, 1973 are to be read with Article 35 of the Constitution, which cast duty upon the State to protect the marriage, the family, the mother and the child. It is the duty of the Family Court to ascertain the 'estate' and 'resources' of the defendant.

Conclusion: i) The Family Court has no unguided, un-fettered, un-bridled and arbitrary powers to fix maintenance while employing its discretionary dominion at its discretion, but is required to proceed on pragmatic, rational and judicial basis invoking provisions of Section17-A (4) of the Family Court Act,1964.
ii) Benefit may be fetched from Sections 11 and 39 of the Income Tax Ordinance, 2001 for purpose of determining what are the 'estate' and 'resources' falling in Section 17-A (4) of the Family Court Act, 1964.
iii) In cases where the 'estate' and 'resources' stand undetermined or pleadings are evasive or just formal without substantive or believable proof in this regard, it is the duty of the Family Court to ascertain the 'estate' and 'resources' of the defendant through inquiry invoking provisions of Section17-A (4) of the Family Court Act, 1964 instead to settling with sole reliance upon the pleadings/averments of the parties.

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36. **Lahore High Court, Lahore**
Pervaiz Abbasi v. Government of Punjab and others
Writ Petition No.75 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6911.pdf

Facts: Through this writ petition pertaining public interest litigation, petitioner, being citizen of this country, has agitated for expansion for the protection of fundamental rights about welfare of the public at large as well as has prayed for directing legislation to protect the Eco-System of Murree Hills, which is a place of public resort and entertainment for the citizens of Pakistan.

Issues: Who is the Authority to make law/legislation and policy under Federal Rules of Business & Punjab Government Rules of Business for protection of mountain eco-system?

Analysis: Article 26 of the Constitution of Islamic Republic of Pakistan, 1973 grants fundamental right to every citizen of this country to have access to all places of public entertainment or resort. Ministry of Climate Change under Schedule-I [Rule 3(1)] of the Federal Rules of Business, 1973 has the Climate Change Division with the mandate to make National policy, plans strategies and programmes with regard to disaster management, including environmental

protection, preservation, pollution, *ecology*, forestry, wildlife, biodiversity, climate change and desertification. As per Schedule-III to the Federal Rules, Pakistan Environmental Protection Agency is the attached department of the Ministry. Similarly, in the First Schedule (Rule 2 and 3) [List of Departments] to the Punjab Government Rules of Business, 2011, there exists the Environmental Protection Department and the Disaster Management Department, which is controlled by the Director General, Provincial Disaster Management Authority while Sr. No.39A, Column-II of this Schedule also mentions the Tourism Department, which is headed by (i) Director General, Archaeology, Punjab and (ii) Deputy Collector, Department of Tourism Services as per Column-III.

Conclusion: Under Federal Rules of Business, Climate Change Division & Pakistan Environmental Protection Agency are empowered to make a specific legislation for protection of the mountain eco-system, whereas under Punjab Government Rules of Business, 2011 The Disaster Management Department, Provincial Disaster Management Authority and the Tourism Department may also make law/legislation for the purpose.

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37. **Lahore High Court**
Muhammad Majid v. Dr. Muhammad Shahid Iqbal
Criminal Original No. 29909 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC6729.pdf

Facts: Through this contempt of Court petition filed under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 3/4 of Contempt of Court Ordinance, 2003 , the petitioner seeks initiation of contempt of Court proceedings against Medical Superintendent of Hospital for non-compliance of order passed by this Court.

Issues: i) For what type of contempt of court, contempt proceedings can be initiated?
ii) Whether in every case that the alleged contemner has definitely to be proceeded against?
iii) Whether legal heirs etc. of respondent/defendant can be impleaded as a party to the contempt proceedings in his place when the respondent or defendant died after initiation of proceedings against him?
iv) Whether legal heirs etc. of respondent/defendant can be impleaded as a party to the contempt proceedings in his place when the respondent or defendant was dead at the time of initiation of proceedings?
v) Whether the order passed against the person holding the office by designation no longer hold the field on death of such person?
vi) Whether contempt proceedings can be initiated against the person presently holding the designation for non-compliance of court order passed against the person holding the office by designation and the person holding such designation at the time of passing such order has died?

Analysis: i) The combined perusal of the Article 204 of the Constitution and sections 3 & 5 of the Contempt of Court Ordinance, 2003 makes it abundantly clear that contempt proceedings could be initiated against the person who is alleged to have committed any one of the three types of contempt of Court provided under the law i.e. civil contempt, criminal contempt or judicial contempt.

ii) The perusal of Section 17 & 18 of the Contempt of Court Ordinance, 2003 shows that it is not in every case that the alleged contemner has definitely to be proceeded against rather the conditions mentioned in the said sections are to be met with before any action can be taken against the alleged condemner and he is not to be found guilty or punished unless the contempt is substantially detrimental to the administration of justice or scandalizes the Court or otherwise tend to bring the Court or Judge of the Court into hatred or ridicule.

iii) There is no cavil to the legal proposition that when the respondent or defendant died after initiation of proceedings against him, his legal heirs, representatives or successor in interest can be impleaded with the exception that the cause of action was personal to the deceased and did not survive after the death of the deceased as in the cases of commission of contempt of Court by a person through any personal disobedience or action resulting in scandalizing the Court, tort, defamation, etc., for the reason that personal action dies with the person.

iv) Where there was only one defendant or respondent and he was dead at the time of initiation of proceedings, then the proceedings against him would be similar to a 'still born lis/suit' with no possibility of revival, hence, nullity in the eyes of law and not proceedable at all so much so that in such proceedings legal heirs of the deceased can also not be impleaded and fresh proceedings, if permissible under the law, may be initiated. However, if there are more than one respondent or defendant and some of the respondents or defendants were alive when the proceedings are initiated, then the said lis would not be a nullity at least as against the alive respondents or defendants and the legal heirs, representatives or successors in interest of the dead respondents or defendants may, if permissible, be allowed to be impleaded as parties subject to question of limitation.

v)If an order is passed against the person holding the office by designation it cannot be said that it no longer hold the field, by the death of a person holding the post at the time of passing of order, rather the said order is to be treated as a valid order unless set aside or varied in accordance with law.

vi) If the order of court is passed against the person holding the post and person holding the post at the time of passing such order has died, the cause of action relating to contempt of court against the person holding the post remains subsisting due to non-compliance of court order passed against the person holding the post. However, the placement of matter before new incumbent and non-compliance of order by new incumbent has to be shown.

Conclusion: i) Contempt proceedings can be initiated against the person who is alleged to have committed any one of the three types of contempt of Court provided under the law i.e. civil contempt, criminal contempt or judicial contempt.
ii) In every case that the alleged contemner has not definitely to be proceeded against.
iii) when the respondent or defendant died after initiation of proceedings against him, his legal heirs, representatives or successor in interest can be impleaded with the exception that the cause of action was personal to the deceased and did not survive after the death of the deceased.
iv) Where there was only one defendant or respondent and he was dead at the time of initiation of proceedings, then the proceedings against him would be nullity in the eyes of law. However, if there are more than one respondent or defendant and one of respondent is dead then the legal heirs etc. of dead respondents may, if permissible, be allowed to be impleaded as parties subject to question of limitation.
v) It cannot be said that the order passed against the person holding the office by designation no longer holds the field on death of such person.
vi) yes, contempt proceedings can be initiated against the person presently holding the designation for non-compliance of court order passed against the person holding the office by designation and the person holding such designation at the time of passing such order has died.

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38. **Lahore High Court**
Mehr Shaukat v. Ex-Officio Justice of Peace/ASJ, etc.
Writ Petition No.45708 of 2022
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC6868.pdf

Facts: This constitutional petition in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has been filed by petitioner for registration of criminal case with allegation that her former husband (respondent No.5) committed misrepresentation, cheating and fraud through Nikahnama, whereas, her application under Section: 22- A, B Cr.P.C. for registration of case was dismissed by learned Ex-Officio Justice of Peace/Additional Sessions Judge.

Issues: i) What are meanings of the word “then” used in column No.5-A and 21-A of Nikahnama?
ii) Whether any party is responsible for non-incorporation of contract of Nikah on appropriate and amended Form by the Nikah Registrar?
iii) Whether benefit of each and every doubt at each and every stage goes to the accused/proposed accused?

Analysis: i) It goes without saying that word “then” used in column No.5-A and 21-A is of vital importance and as per P RAMANATHA AIYAR’S ADVANCED LAW LEXICON (THE ENCYCLOPAEDIC LAW DICTIONARY WITH WORDS &

PHRASES, LEGAL MAXIMS AND LATIN TERMS) 4 th Edition, Volume 4, word "then" means "in that event" or "in that case". As per WORDS AND PHRASES PERMANENT EDITION, Volume 41B, word "then" is an adverb of time, it also means "in that case or event".
ii) If Nikah Registrar has not incorporated contract of Nikah of the parties on appropriate and amended Form then it is no fault on part of bridegroom.
iii) It is well settled principle of law that for the purpose of invoking criminal law, benefit of each and every doubt at each and every stage goes to the accused/proposed accused.

Conclusion: i) The word "then" means "in that event" or "in that case" used in column No.5-A and 21-A of Nikahnama.
ii) Parties are not responsible for non-incorporation of contract of Nikah on appropriate and amended Form by the Nikah Registrar.
iii) Benefit of each and every doubt at each and every stage goes to the accused/proposed accused.

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39. **Lahore High Court**
Shahida Parveen v. Province of Punjab & others
Civil Revision No. 460/2009
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC6828.pdf

Facts: Petitioner through this Civil revision challenged the concurrent findings of fora below wherein her suit for declaration and permanent injunction filed through her real mother being minor at that point in time, whereof she claimed rights in inheritance claiming her being real daughter of a deceased was dismissed.

Issues: Whether the presumption of legitimacy and application of Article 128 of Q.S.O, 1984 arises in favor of a person who is claiming to be son or daughter of a legally wedded wife of deceased?

Analysis: In case where a plaintiff claims to recover property as the son of any person by his lawfully married wife and the defendant denies that the wife ever gave birth to the child and sets up that the plaintiff was the son of a woman other than the lawfully married wife, the onus of proof is upon the person who claims to show that the lawfully wedded wife gave birth to him, before invoking the presumption in Article 128 of Q.S.O, 1984. In terms of Article 128, the presumption of paternity arises only when the mother of the child is married to the man, who is alleged to be the father of the child, however, in this case it is not proved that petitioner was born of the body of wife of deceased. In these circumstances, question of presumption of legitimacy and applicability of Article 128, does not arise.

Conclusion: Presumption of legitimacy and application of Article 128 of Q.S.O, 1984 does not arise in favor of a person who is claiming to be son or daughter of a legally

wedded wife of deceased.

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40. **Lahore High Court**
Muhammad Tufail, etc. v. Begum Munawar Siddique,etc.
Civil Revision No.1362 of 2018.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC6784.pdf

Facts: Through this Civil Revision filed under Section 115 of Code of Civil Procedure, 1908, petitioners have called in question the validity and legality of judgments/orders of learned Courts below whereby they were declined to give their share in the legacy of deceased being paternal cousin.

Issues: How the doctrine of return (Radd) applies when there is residue left after satisfying the claim of sharers?

Analysis: The doctrine of return (Radd) applies when after assigning shares to all sharers, there is surplus, and there being no residuary and in that eventuality the residue reverts to the sharers in proportion to their respective shares. The basic condition of principle of Return (Radd) is that there is no residuary. In presence of any residuary, principle of Return (Radd) does not apply and the residue left after satisfying the claim of sharers will be distributed among the residuaries.

Conclusion: In presence of any residuary, principle of Return (Radd) does not apply.

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41. **Lahore High Court**
Muhammad Saeed & 2 others v. State Life Insurance Corporation of Pakistan & 3 others
I.C.A. No. 36 of 2021
Mr. Justice Anwaar Hussain, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC6899.pdf

Facts: This Intra Court Appeal assailed the Judgment passed by learned Single Judge in Chambers in Writ Petition, whereby, the prayer against deduction of Incentive Bonus and Additional Incentive Bonus from Operational Cost was declined.

Issues: i) What does term ‘employee’ mean as defined u/s 2(c) of the State Life Employees (Service) Regulations, 1973?
ii) Whether employer can deduct the operational cost from Incentive Bonus and Additional Incentive Bonus, if the appointment letter of employee provided the exclusion of Incentive Bonus and Additional Incentive Bonus from the Operational Cost?
iii) What do universally accepted principles of interpretation of documents ordain?

Analysis: i) Regulation 2(c) of the State Life Employees (Service) Regulations, 1973 defines “employee” to mean a full time employee on monthly salary, but does not include salaried field officials whose emoluments are dependent on procurement of business except those who are classed as Area Managers by the competent authority.

ii) When the exclusion of Incentive Bonus and Additional Incentive Bonus is granted to the employees in the Appointment Letter or that the same are not curtailed or withdrawn in terms of Regulation No. 4(ii)(c)(1) & (2) of the Regulations, 1973 by the Board of the employer/statutory corporation, further that the Regulations, 1973 has not been pointed out to be inconsistent with the exclusion of Incentive Bonus or Additional Incentive Bonus from the Operational Cost as contained in the terms and conditions of the Appointment Letter. In such situation, deduction of the operational cost from Incentive Bonus and Additional Incentive Bonus by the employer is illegal and without lawful authority.

iii) The universally accepted principles of interpretation of documents ordained that plain and general words are given their literal meaning, express mention or inclusion of one thing excludes the other and that redundancy cannot be attributed to express words of the contract. Any other interpretation would lead to absurd result.

Conclusion: i) Regulation 2(c) of the State Life Employees (Service) Regulations, 1973 defines “employee” to mean a full time employee on monthly salary, but does not include salaried field officials whose emoluments are dependent on procurement of business except those who are classed as Area Managers by the competent authority.

ii) The employer cannot deduct the operational cost from Incentive Bonus and Additional Incentive Bonus, if the appointment letter of employee provided the exclusion of Incentive Bonus and Additional Incentive Bonus from the Operational Cost and when such exclusion is also not inconsistent with the State Life Employees (Service) Regulations, 1973.

iii) The universally accepted principles of interpretation of documents ordained that plain and general words are given their literal meaning, express mention or inclusion of one thing excludes the other and that redundancy cannot be attributed to express words of the contract. Any other interpretation would lead to absurd result.

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42. **Lahore High Court**
Arsalan Raza v. Justice of Peace, etc
Writ Petition No.9549 of 2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6953.pdf

Facts: Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the vires of the impugned order passed by the learned Ex-officio Justice of Peace, Gujrat whereby petition

under Section 22-A (6) of the Code of Criminal Procedure, 1898 filed by the petitioner, for issuance of direction to register a criminal case, was dismissed.

Issues: Whether the SHO can resort to Section 157 of the Code read with Rule 24.4 of the Rules for disposing of the 'information' regarding the commission of a cognizable offence furnished to him under Section 154 of the Code without registration of a criminal case?

Analysis: Conjunctural reading of Section 154 of the Code and Rule 24.1(1) of the Rules makes it abundantly clear that on receiving the information regarding the commission of a cognizable offence, the same shall culminate in the registration of a criminal case. The legislature by using the word 'every' to qualify the word 'information', ultimately left no discretion with an SHO to refuse the registration of a criminal case after receiving information regarding the commission of a cognizable offence. The words 'every information' clearly postulate that the legislature designedly abstained from further qualifying these words. Apparently, the use of the words 'every information' in Section 154 unlike in Sections 22-A(3)(a) and 54 of the Code is for the reason that the SHO should not have the power to refuse to record the information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. Section 156 of the Code confers the power upon a police officer to investigate a cognizable offence whereas Section 157 lays down the manner, in which that investigation should be carried out. Section 158 of the Code further lays down the self-explanatory procedure to submit a report under Section 157 of the Code. Comprehensive scrutiny of Sections 154, 156, 157 and 158 of the Code makes it abundantly obvious that Section 157 read with Rule 24.4 of the Rules is post registration of criminal case stage, therefore, Section 157 read with Rule 24.4 cannot be pressed into service before the registration of a criminal case. When information of a cognizable offence is received by the SHO, he cannot embark upon an inquiry to examine the reliability or credibility of such information to refuse the registration of a criminal case.

Conclusion: The SHO cannot resort to Section 157 of the Code read with Rule 24.4 of the Rules for disposing of the 'information' regarding the commission of a cognizable offence furnished to him under Section 154 of the Code without registration of a criminal case.

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43. **Lahore High Court**
Muhammad Iqbal v. Islamic Republic of Pakistan and 27 others
Civil Revision No. 225-D of 2007
Mr.Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC6855.pdf

Facts: Through the present Civil Revision, filed under section 115 of the Code of Civil Procedure, 1908 revision-petitioner assailed the judgment and decree passed by the learned District Judge, whereby, the judgment and decree passed by the learned Civil Judge Ist Class, was upheld and the civil appeal was dismissed.

Issues: i) When an acknowledgment starts a fresh period of limitation?
ii) What should be the form of acknowledgment?
iii) On whom burden to prove acknowledgment lie?

Analysis i) Provision of the *Limitation Act* clearly reflects that signed written acknowledgment by a party, against whom such property or right is claimed, can revive limitation provided this written acknowledgment is prior to the expiring of the prescribed period for filing the suit or application.
ii) Further, the acknowledgment within original limitation period has to be signed personally or through authorized agent by the one against whom the rights are claimed.
iii) The burden to prove that this acknowledgment is prior to expiry of original period, to give fresh start of limitation period, is on the one who is asserting this fresh start of limitation.

Conclusion: i) Signed written acknowledgment by a party, can revive limitation provided this written acknowledgment is prior to the expiring of the prescribed period for filing the suit or application
ii) Acknowledgment within the original limitation period has to be signed personally or through an authorized agent by the one against whom the rights are claimed.
iii) The burden to prove that this acknowledgment is prior to the expiry of the original period, to give fresh start of limitation period, is on the one who is asserting this fresh start of limitation.

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44. **Lahore High Court**
Ahmad Khan v. ADJ, etc.
W.P. No.50484 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6817.pdf

Facts: The question confronting this Court in the present matter is whether without undertaking any inquisitorial exercise for ascertaining market value of a piece of land, could the courts below determine and specify alternate value of the land merely on the basis of their own assumptions and without conducting any fact-finding exercise?

Issue: Whether without undertaking any inquisitorial exercise for ascertaining market value of a piece of land, could the courts determine and specify alternate value of the land merely on the basis of their own assumptions and without conducting any fact-finding exercise?

Analysis: The practice of fixing alternate value of any relief without any evidence of the value at the prevalent market has been discouraged and overturned by the Hon'ble Superior judiciary time and again (…)if the property/house mentioned in the Nikahnama on account of lack of sufficient description leading to its identification then its price, if mentioned in the Nikahnama, can be awarded then in the same way the value of the other property (agricultural), the price of which has not been mentioned in the documentation/Nikahnama, can also be granted if the evolvement of a mechanism for determination of value is possible, which is not in conflict with any provision of law rather in consonance with the established principles for determining the value of property.

Conclusion: Market value can only be fixed of any piece of land on the basis of evidence after conducting inquiry.

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45. **Lahore High Court**
Muhammad Iqbal Khan v. Muhammad Nawaz Khan, etc.
C.R. No.66215 of 2019.
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6698.pdf

Facts: Through this Civil Revision, the petitioner has called into question the validity and propriety of judgments & decrees of courts below whereby suit of the petitioner has been dismissed.

Issues: i) Whether initial burden of proving fraud lies on the person who alleges fraud and the onus only shifts to the beneficiary when once such onus has been rightfully discharged?
ii) How a party can allege fraud being a pivotal point in the plaint?

Analysis: i) The initial burden of proving fraud lies on the person who alleges fraud. In case of failure to do so, there is no way that initial onus can be shifted on to the defendant to prove the mutation was result of fair play. It is trite that the burden of proving fraud is on the party alleging it and that, too, by clear and convincing evidence particularly where a long period has expired and valuable rights have accrued to the other side.
ii) It is essential that in a case where fraud is canvased as the pivotal point the party claiming fraud should set out the facts in full and give essential particulars instead of making general allegations. This is a legal requirement enshrined in Order VI, Rule 4 of the Code of Civil Procedure. It is an elementary principle of pleadings that where allegations of fraud, collusion or misrepresentation are attributed, necessary particulars and details in that context have to be specifically narrated in the pleadings and bald or vague statements cannot make any headway.

Conclusion: i) Initial burden of proving fraud lies on the person who alleges fraud.

ii) Where fraud is canvased as the pivotal point the party claiming fraud should set out the facts in the plaint as enshrined in Order VI, Rule 4 of the Code of Civil Procedure.

SELECTED ARTICLES:

1. **Manupatra**
   https://articles.manupatra.com/article-details/Public-Policy-Conundrum-in-the-Enforcement-of-Arbitral-Award

   Public Policy Conundrum in the Enforcement of Arbitral Award By Anshu Singh Rathore.

   Abstract

Arbitration is the consensual dispute resolution mechanism that allows the parties to mutually settle their disputes in a shorter time frame as compared to the traditional method of the court of law adjudicating the disputes. The role of public policy in enforcing the Arbitral Award is a controversial and contentious issue in the field of Arbitration, the UNCITRAL model law and New York Convention acknowledges the importance of public policy while enforcing the Arbitral Awards. In India Section 34 & Section 48 of the Arbitration and Conciliation Act, 1996 state that an Arbitral award can be set aside if it violates the public policy of India. But the term public policy is not clearly defined in the A & C Act 1996, however, the courts have tried to define public policy through various judicial pronouncements. The public policy ground has been used by the courts in India to set aside the arbitral awards that violate public policy. Though India is a party to the New York convention, India has suffered from the disrepute of the country where it is difficult to enforce international arbitral awards. This is because there is a lack of clear understanding of the public policy exception in India. This Article explores the doctrine of public policy and its relevance while enforcing Arbitral Award.

2. **Manupatra**
   https://articles.manupatra.com/article-details/If-any-conflict-arises-between-the-fundamental-rights-and-the-fundamental-principles-of-state-policy-which-one-will-prevail

   If Any Conflict Arises Between The Fundamental Rights And The Fundamental Principles Of State Policy, Which One Will Prevail? By Md Toslim Bhuiyan Prantiik

   Introduction:

As a citizen of Bangladesh, it is important to know that, every citizen is a "respected citizen" of the state. The state carries the full responsibility of its citizens. But the state is not directly obliged to give an answer to the citizens about her (the state) state policies. If the state is legally asked whether it is granting the rights of its honorable citizens, the state will be obliged to answer this question. So, if any conflict arises between the fundamental rights and the fundamental principles of state policy, I believe "the fundamental rights" will prevail.

3. **Latest Laws**
https://www.yalelawjournal.org/forum/unmanned-stakeouts-pole-camera-surveillance-and-privacy-after-the-tuggle-cert-denial

Unmanned Stakeouts: Pole-Camera Surveillance and Privacy After the Tuggle Cert Denial By Dana Khabbaz

Abstract

This Essay analyzes the implications of the Supreme Court's denial of certiorari in Tuggle v. United States, a Seventh Circuit opinion upholding law enforcement's warrantless, eighteen-month pole-camera surveillance of a criminal suspect's home. By declining to take up the case, the Supreme Court missed an opportunity to update its outmoded Fourth Amendment search doctrine. That doctrine has failed to evolve alongside modern surveillance technology and has been inconsistently applied by lower courts. Taking a privacy-rights-focused view, this Essay suggests and evaluates alternative avenues for protecting civil liberties in the wake of the Court's refusal to do so. Promising alternative paths for civil-rights advocates include strategic litigation in state courts centering a "mosaic" theory of surveillance as well as legislative advocacy in favorable state and local jurisdictions.

4. **Springer Link**
https://link.springer.com/article/10.1007/s40319-022-01255-x

FRAND Access to Data: Perspectives from the FRAND Licensing of Standard-Essential Patents for the Data Act Proposal and the Digital Markets Act By Erik Habich

Abstract

This article evaluates how the principles developed for the fair, reasonable and non-discriminatory (FRAND) licensing of standard-essential patents could be applied to FRAND data access as envisaged under the Digital Markets Act and the Data Act and proposes a negotiation scheme to specify the FRAND obligations. Firstly, this article describes the access rights under the Data Act and identifies its four layers to accelerate data sharing (Section 2). Secondly, the role of FRAND data sharing in the EU Data Package is described, and the specifics of FRAND in the context of the Data Act and the Digital Markets Act are developed (Section 3). Based thereon, the differences and commonalities of data sharing as envisaged in the Acts with respect to the FRAND licensing of standard-essential patents are described, and a negotiation scheme for

FRAND terms under the current Data Act Proposal is developed under adaptation of the principles from Huawei/ZTE (Section 4).