LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-06-2022 to 15-06-2022)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Shezan Services (Private) Limited. v. Shezan Bakers & Confectioners (Private)
Civil Appeal No. 57-K of 2018
Mr. Justice Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._57_k_2018.pdf

Facts: The appellant has challenged the decision of Registrar of Trade Mark and High Court wherein the respondents are allowed to register and use same name/label 'Shezan'/Shezan which is in the appellant's continuous use, from 1958 till date, and had over decades acquired considerable goodwill.

Issues: Whether registration of a trade mark which was identical to already registered trademarks is permissible under Trade Mark Act?

Analysis: Section 6 of the Act sets out the 'distinctiveness requisite for registration' of a trade mark; and stipulates that distinctive means the trade mark must be such to distinguish it from the goods of any other 'proprietor of the trade mark is or' who 'may be connected with' such goods (subsection (2) of section 6)….Merely because a proprietor of a trade mark had not obtained registration in a particular class, or in respect of certain goods mentioned in that class, would not on this basis alone entitle another to obtain registration in respect of that class, or in respect of other goods mentioned in such class. Section 6 of the Act mandates the distinctiveness requisite for registration… To allow registration of the same trade mark and in the same class of goods in respect whereof the appellant held registrations, would definitely deceive the customers of the appellant's goods, as they would assume they were buying the appellant's goods, which would contravene section 8(a) of the Act.

Conclusion: Registration of a trade mark which was identical to already registered trademarks is not permissible under Trade Mark Act.

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2. **Supreme Court of Pakistan**
M/s Sui Northern Gas Pipelines Limited (SNGPL) v. M/s Noor CNG Filling Station
Civil Petition No. 2032 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2032_2019.pdf

Facts: Respondent filed a suit for declaration etc against removal of meter and imposing late payment surcharge, which was decreed and the appeal filed by the petitioner was also dismissed. The petitioner filed this civil petition for leave to appeal against the judgment passed by the Learned Peshawar High Court.

Issue: i) Whether any memorandum of appeal not signed or verified by the party or his pleader can be presented in the court?
ii) Whether any person or agent can act on behalf of any other person without authorization?

iii) Whether implied bar on jurisdiction of civil court can be straightaway inferred or congregated in a routine?
iv) Whether question of jurisdiction can be raised in case which is not filed by an authorized person?

Analysis: i) On the word of Order VI, Rule 14, C.P.C, every pleading must be signed by the party and his pleader (if any) provided that where a party pleading is by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. While Rule 15 of Order VI, C.P.C. is germane to the verification of pleadings which clarifies that every pleading shall be verified on oath or solemn affirmation at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case... At this juncture, Order XLI, Rule 1, C.P.C. is also quite noteworthy which is somewhat interconnected with the provision of filing appeal against original decrees and depicts that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf.
ii) In the same sequence, Order III, Rule 4, C.P.C. shed light on the notion of recognized agents and pleaders and put into words that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.
iii) Under Section 9 of C.P.C., the Civil Courts have the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The ouster of civil court jurisdiction cannot be straightaway inferred or congregated in a routine, save as the conditions laid down are fulfilled. The presumption of lack of jurisdiction may not be gathered until the specific law enacted by the legislation debars Court from exercising its jurisdiction with specific remedy within the hierarchy which may attain the finality of order or the controversy involved.
iv) It is not the letter of law that the question of jurisdiction, if any, should be considered even in a case which was not filed by duly authorized person and or despite lack of proper authorization which made it non est. and more particularly, when no such plea of implied bar was taken in the three forums below and the petitioner remained heedless and callous.

Conclusion: i) Any memorandum of appeal not signed or verified by the party or his pleader cannot be presented in the court.
ii) No pleader shall act for any person in any Court, unless he has been appointed for that purpose.
iii) Implied bar on jurisdiction of civil court cannot be straightaway inferred or congregated in a routine.

iv) Question of jurisdiction cannot be raised in case which is not filed by an authorized person.

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3. **Supreme Court of Pakistan**
Inspector General of Police, Quetta and another v. Fida Muhammad and others
Civil Appeal No. 17-Q of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._17_q_2021.pdf

Facts: The appellants challenged the judgment passed by the learned Balochistan Service Tribunal, Quetta, whereby the Service Appeal filed by the respondents (employees) was allowed and they were reinstated into service.

Issue: i) Whether notification for appointment of employees issued after recommendation of the Departmental Selection Committee can be withdrawn by the department without hearing the employees?
ii) How doctrine of vested right can be defined?
iii) Whether an order once passed becomes irrevocable and a past and closed transaction?

Analysis: i) The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken in tandem with its ensuing constituent, that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi- judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. In our Constitution, the right to a fair trial is a fundamental right and this indispensable right should not be deprived of.
ii) The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law.
iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order.

Conclusion: i) Notification for appointment of employees issued after recommendation of the Departmental Selection Committee cannot be withdrawn by the department without hearing the employees.
ii) The doctrine of vested right upholds and preserves that once a right is coined in one locale; its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection.
iii) An order once passed becomes irrevocable and a past and closed transaction but if the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order.

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4. **Supreme Court of Pakistan**
Homoeo Dr. Asma Noreen Syed v. Government of the Punjab through its Secretary Health, Department and others.
Civil Appeal No. 1653 OF 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1653_2021.pdf

Facts: Through instant civil Appeal the appellant has assailed the order passed by the learned Punjab Service Tribunal, Rawalpindi Bench in Service Appeal, whereby the Appeal filed by the appellant was dismissed.

Issues: i) Whether a retired civil servant is entitled with proforma promotion after his/her retirement?
ii) Whether a patent error or oversight on part of court can be remedied by making necessary correction?

Analysis: i) According to Section 8 (5) of the Punjab Civil Servants Act, 1974 a retired civil servant shall not be eligible for grant of promotion; provided that he may be considered for grant of proforma promotion as may be prescribed.
ii) A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim“ actus curiae neminem gravabit” which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the court or delay in the procedure. Nobody should become victim of injustice and in the event of any injustice or harm suffered by mistake of the court, it should be remedied by making necessary correction forthwith. If the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not happen. This expression is established on the astuteness and clear-sightedness that a wrong order should not be perpetuated by preserving it full of life or stand in the way under the guiding principle of justice and good conscience. So in all fairness, it is an inescapable and inevitable duty that if any such patent error on the face of it committed as in this

case, the same must be undone without shifting blame to the parties and without further ado being solemn duty of the Court to rectify the mistake.

Conclusion: i) Yes, a retired civil servant is entitled with proforma promotion after his/her retirement.
ii) Yes, a patent error or oversight on part of court can be remedied by making necessary correction

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5. **Supreme Court of Pakistan**
Muhammad Nawaz etc v. The State through P.G. and others
Criminal Appeal Nos. 531 & 532 of 2019
Irfan Ali v. The State through P.G. and others
Criminal Petition Nos. 339-L & 361-L of 2015
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._531_2019.pdf

Facts: Appellants along with co-accused were tried by Anti-Terrorism Court for offences under Sections 302/324/148/149 PPC read with Section 7 of the Anti-Terrorism Act, 1997. The Trial Court sentenced the appellants to death under Section 302/34 PPC while acquitting some of the co-accused and giving sentence of imprisonment to others. In appeal, the High Court while maintaining the conviction under Section 302/34 PPC, altered the sentence of death into imprisonment for life to the extent of appellants while acquitting all the accused under Section 148 PPC although they were convicted u/s 148 PPC by the Trial Court.

Issues: Whether the sentence can be inflicted on the basis of individual liability after reaching at conclusion that it was committed in furtherance of common intention in murder cases falling within the ambit of Section 302 PPC?

Analysis: While dealing with murder cases falling within the ambit of Section 302 PPC, the Trial Court has to evaluate the act committed in the circumstances, which covers that it was committed in furtherance of common intention or on the basis of individual liability to press in the provision of Section 302(b) or 302(c) PPC and it has to give a definite finding qua the same. Any judgment which concludes that the offence falling under Section 302(b) PPC was committed in furtherance of common intention or common object but the sentence is inflicted on the basis of individual liability, the same would be squarely in defiance of the intent and spirit of law on the subject. However, if the Court comes to the conclusion that the elements of common intention and common object have not been established, then each accused would be dealt with, under the provisions of Section 302(c) PPC according to their own role and severity of allegations and would be sentenced accordingly by the Court exercising its discretionary powers.

Conclusion: The sentence cannot be inflicted on the basis of individual liability after reaching at conclusion that it was committed in furtherance of common intention in murder cases falling within the ambit of Section 302 PPC?

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6. **Supreme Court of Pakistan**
Muhammad Ashraf @ Nikka v. The State
Jail Petition No. 943 of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._943_2017.pdf

Facts: The petitioner/accused was convicted in a private complaint under section 302/337F5/337F6/148/149 PPC and sentenced to death, compensation and imprisonment. He preferred an appeal in which his sentence was converted into life imprisonment. He filed this jail petition and challenged his conviction passed by Learned Lahore High Court.

Issue: i) Whether the defence is under obligation to prove its version?
ii) Whether the accused is entitled to take benefit of reasonable doubt in prosecution case as a matter of right?

Analysis: i) 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 to only show the glimpse that its version is true.
ii) It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt.

Conclusion: i) The defence is not under obligation to prove its version.
ii) The accused is entitled to take benefit of reasonable doubt in prosecution case as a matter of right.

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7. **Supreme Court of Pakistan**
Zafar Iqbal v. The State
Criminal Appeal No. 177 of 2022
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._177_2022.pdf

Facts: The appellant was tried by the Special Judge (CNSA), under Section 9 (c) of the Control of Narcotic Substances Act, 1997 and sentenced to imprisonment for life and fine. In appeal, learned High Court maintained the conviction. Being

aggrieved, the appellant filed Jail Petition wherein leave was granted and the present Criminal Appeal has arisen.

Issue: i) Whether evidence of police/official witnesses can be relied upon and is sufficient for conviction?
ii) How 'Poast' can be defined and when it can be considered as narcotics?
iii) Whether every cultivation of poppy straw is a criminal act?

Analysis: i) This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed on such regard. Police/official witnesses are as good witnesses and could be relied upon, if their testimonies remain un-shattered during cross-examination. In this view of the matter, the statements of the official witnesses are sufficient enough to sustain conviction of the appellant.
ii) It is clear that it is only sack/pouch/basket of the whole poppy plant, which is called poast and the same is the only part of the poppy plant excluding its seeds, which contains morphine…From a bare perusal of Section 2(t)(iii) of the Control of Narcotic Substances Act, 1997, referred above, it is manifest that 'poast' in the mixture form would only be considered a narcotics substance within the meaning of the Act if the same contains 0.2 percent of morphine.
iii) The poppy plant is a spontaneous plant and is often seen grown on roadsides. Poppy straw is derived from the plant Papaver somniferum, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds. The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc. Therefore, every cultivation of poppy straw unless it is proved that it is made for the sole purpose of extracting narcotics after a proper method cannot be considered a criminal act.

Conclusion: i) Evidence of police/official witnesses can be relied upon and is sufficient for conviction if their testimonies remain un-shattered during cross-examination.
ii) Sack/pouch/basket of the whole poppy plant is called poast and poast in mixture form can be considered as narcotics if it contains 0.2 percent of morphine.
iii) Every cultivation of poppy straw cannot be considered as a criminal act unless it is proved that it is made for the sole purpose of extracting narcotics.

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8. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Peshawar v. M/s Pakistan Tobacco Company (Ltd.), 1st Floor, Evacue Trust Complex, F-5/1, Islamabad and another
Civil Appeal No.243 of 2011
Commissioner Inland Revenue, Peshawar v. Khurshid Ali, Pepsi Cola Dealer, Margazar Road, Saidu Sharif, Swat
Civil Appeal No.1136 of 2018
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._243_2011.pdf

Facts: In first appeal, the respondents are manufacturer and seller of cigarettes and in second appeal, the respondent is dealer of soft drink. All respondents sold their products in Tribal Areas to unregistered dealers. The appellant demanded additional sales tax which is resisted by the respondents. Through these appeals, the appellant challenged the judgments of learned High Court made in tax references.

Issue: i) Whether federal laws which otherwise applied in the whole of Pakistan were applicable to the erstwhile Tribal Areas?
ii) Whether additional tax can be recovered in situation where the person making the taxable supplies is located in Pakistan whereas the recipient of those supplies is located in the erstwhile Tribal Areas?
iii) What is difference between sale and agreement to sell?

Analysis: i) For a law to apply in the erstwhile Tribal Areas, there had to be a specific direction in that regard in terms of Article 247(3), and admittedly there was no such direction in relation to the Act at the relevant time.
ii) On such basis it was contended that the fact that the recipients of the supplies were in the Tribal Areas was not relevant, and Article 247 had no application. The supplies were taxable supplies within the meaning of the Act and, inasmuch as the recipients were not registered thereunder, additional tax was attracted in terms of s. 3(1A). With respect, we were unable to agree.
iii) That Act provides (see s. 4) that where property in the goods is transferred from the seller to the buyer the contract is called a "sale" but where a transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is to be called an "agreement to sell".

Conclusion: i) Federal law which has no specific direction in this regard was not applicable to the erstwhile Tribal Areas.
ii) Additional tax cannot be recovered in situation where the person making the taxable supplies is located in Pakistan whereas the recipient of those supplies is located in the erstwhile Tribal Areas.

iii) Where property in the goods is transferred from the seller to the buyer the contract is called a "sale" but where a transfer of the property in the goods is to take place at a future time called an "agreement to sell".

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9. **Supreme Court of Pakistan**
Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and another v. Farzand Begum and others.
Civil Petitions No. 5796, 5797 of 2021 and CMA No. 11796 of 2021
Mr. Justice Ijaz ul Ahsan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5796_2021.pdf

Facts: Leave to appeal is filed against judgments of Lahore High Court whereof the Government sought to de-notify and return the land to the owners after acquiring it.

Issues: Whether the Government has power to withdraw from acquisition of any property when the execution proceedings have been completed?

Analysis: Section 48 of Land Acquisition Act, 1894 makes it manifestly clear that although the Government has the power to withdraw from acquisition of any property, such power is not absolute and is circumscribed by an important prerequisite namely, "possession has not been taken by the Government or the acquiring Department". Further the powers under Section 48 of the Act can be exercised only where the execution proceedings in terms of the Land Acquisition Act, 1894 have not been completed.

Conclusion: Government does not have the power to withdraw from acquisition of any property when the execution proceedings in terms of the Land Acquisition Act, 1894 have been completed.

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10. **Supreme Court of Pakistan**
Muhammad Akbar and others v. Province of Punjab
Through DOR, Lodhran & others
Civil Petition No.715 of 2018
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sajjad Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._715_2018.pdf

Facts: The Respondents claimed that despite family settlement qua dispute regarding shares in the joint holdings, mutation was sanctioned wherein property was given to petitioner. After challenging the said mutation before Revenue Hierarchy, he filed suit for declaration which was dismissed by trial and appellate court. He filed revision petition against said order which was allowed. Hence being aggrieved of this order, the petitioner has filed instant civil petition.

Issues: Where a family settlement is proved, can it be held invalid merely due to non-registration of the same?

Analysis: The deed in question was in family arrangement and not a regular partition deed, as rightly held by the learned High Court. As such, it did not require compulsory registration**…**Essentially, the settlement operated as an agreement between the parties.

Conclusion: Where a family settlement is proved, it cannot be held to be invalid merely due to non-registration of the same.

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11. Supreme Court of Pakistan
Government. of KP thr. Secretary Home & TAs and others v. Noorani Gul thr. LRs
Civil Appeal No.190 of 2015
Mr. Justice Sajjad Ali Shah, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._190_2015.pdf

Facts: The respondent claiming to be owner of land, challenged the entries of Land settlement proceedings, wherein, an unsettled property was recorded in the name of the Provincial Government. The trial court decreed the suit, whereas, the appellate court reversed the findings. The High Court upheld the judgment and decree of the trial court. The appellants have appealed against the judgment of High Court.

Issues: Whether a land which remained unsettled at the time of its first settlement can be termed as unclaimed or ownerless property?

Analysis: It is a settled principle of law that in case of claim of ownership of property, the government is equally responsible to show that the property has either been acquired through due process of law or it has become its owner, in respect of a property, which has no rightful owner as provided by Article 172 of the Constitution of the Islamic Republic of Pakistan, 1973. Under the said provision of the Constitution, the government has the right to take ownership of an unclaimed or ownerless property. It occurs when an individual dies or disappears with no will and no heirs and his property remains unclaimed for a considerably prolonged period of time... When the government did not acquire the property through sale, gift or exchange, nor had ever claimed its right of escheat. Simply because the land in question was unsettled, when the first settlement was started, cannot be termed it as unclaimed or ownerless property.

Conclusion: A land which remained unsettled at the time of its first settlement cannot be termed as unclaimed or ownerless property.

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12. **Supreme Court of Pakistan**
Mst. Shahnaz Akhtar and another v. Syed Ehsan Ur Rehman and others
Civil Petition No.1077 of 2018
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1077_2018.pdf

Facts: The respondent no.1 claimed in his suit for declaration, cancellation, permanent and mandatory injunction against the petitioners that he appointed the petitioner No.1 as his general attorney who fraudulently obtained NOC and transferred the plot of respondent no.1 to petitioner No.2. The suit was dismissed by trial court but judgement was reversed by appellate court and maintained by High Court.

Issues: i) Whether an attorney cannot gift or sell a property without the consent of the principal?
ii) What is the difference between surrender and release?

Analysis: i) In normal circumstances, there is no cavil to the well settled exposition of law that an agent can act only on behalf of the principal according to the mandate given in the power of attorney and all acts of agent may be ratified by the principal under the normal and common relationship of principal and agent and even in case of selling out the property as well, the agent receives the amount on behalf of principal with the moral and legal obligation to pass on the sale proceeds to its principal unless the power of attorney is executed with consideration. It is also well-defined under the letter of law that the principal may at any time cancel or revoke the power of attorney if not executed with consideration. However, in the case in hand neither the principal ever cancelled or revoked the power of attorney, nor denied to have executed the wide-ranging power of attorney which indenture in its pith and substance was tantamount to a sort of a surrender of rights and release in favour of the attorney…..A bare look at the aforesaid powers bestowed in the power of attorney do show that this was not *simpliciter* a power of attorney in routine or an ordinary nature to act on behalf of principal in some traits and mannerisms but it was also protected under Section 202 of Contract Act which was neither cancelled or revoked by the principal nor any prayer was made for its cancellation in the civil suit and as a matter of fact, during its currency certain third party interests were also created .
ii) The word surrender presupposes the possession or ownership of the thing that is to be given up which may be expressed or implied such as give up, discharge, or abandon a right of action, whereas a release is the giving or discharging of a right of action which a man has or may claim against another or that which is his. An express release is one which is distinctly made in the deed or a release by operation of law which, though not expressly made but the law presumes in consequence of some act of the releaser.

Conclusion: i) An attorney can gift or sell a property without the consent of the principal if the issuance of power of attorney was against consideration.

ii) Word *surrender* presupposes the possession or ownership of a thing which is to be given up whereas a *release* is the giving or discharging of a right of action.

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13. **Lahore High Court**
Maj. (Retd) Bashir Ahmad v. Province of Punjab, etc.
R.F.A. No.13860/2019
Province of Punjab through LAC v. Major (Retd.) Bashir Ahmad
R.F.A, No.22896 of 2019.
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2022LHC3895.pdf

Facts: Through these two regular first appeals, one party challenged the enhancement of compensation, whereas, other party prayed for satisfaction of its total claim which was not accepted in a reference under Land Acquisition Act, 1894.

Issue: How category and status of land can be determined for awarding compensation?

Analysis: It is well settled law that use of land at the time of acquisition shall also be considered a factor to determine its status/classification and revenue record cannot be the exclusive criteria to determine its value and potential.

Conclusion: While awarding compensation, use of land shall also be considered to determine its status/classification alongwith revenue record at the time of acquisition.

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14. **Lahore High Court**
Ahsan Liaqat and three others v. University of the Punjab etc.
Writ Petition No. 1550 of 2017
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC4338.pdf

Facts: The petitioners, who were performing duties against different posts in the University of the Punjab, Lahore (the University) were proceeded against inter-alia on the allegations of forgeries/malpractices in the result of BA/B.Sc. Annual Examination 2012 and upon conclusion of proceedings major penalty of dismissal/removal from service was imposed against them vide order, passed by the competent authority, which, on the recommendations of the Appellate Committee, was converted into that of compulsory retirement from service. Aggrieved of imposition of major penalties, the petitioners have filed these petitions.

Issues: i) Whether non-initiation of criminal proceedings against any delinquent official/officer does in any way affects the departmental proceedings in cases of heinous allegations?
ii) Whether Court can substitute the findings of the competent/appellant authority until and unless the same are found to be perverse or arbitrary?
iii) Whether an inquiry officer/committee is bound to follow the strict principles applicable in other proceedings?

iv) Whether with a view to confront each petitioner, with his corresponding statement of allegation, the inquiry committee can issue consolidated charge sheet?

Analysis: i) Initiation of criminal proceedings against any delinquent official/officer, in addition to departmental action, falls within the domain of the competent authority. Further even if said proceedings are conducted simultaneously, their outcome has no overlapping affect upon each other. In this backdrop, non-initiation of criminal proceedings against the petitioners per-se does not come to their rescue.

ii) It is well entrenched by now that High Court cannot substitute the findings of the competent/appellant authority until and unless the same are found to be perverse or arbitrary.

iii) An inquiry officer/committee is not bound to follow the strict principles applicable in other proceedings rather the statements recorded in the shape of questions and answers are sufficient.

iv) It is relevant to note over here that with a view to confront each petitioner, with his corresponding statement of allegation, separate charge sheets were issued despite the fact that inquiry committee could do so even through a consolidated charge sheet.

Conclusion: i) Non-initiation of criminal proceedings against any delinquent official/officer does not in any way affects the departmental proceedings in cases of heinous allegations.

ii) High Court cannot substitute the findings of the competent/appellant authority until and unless the same are found to be perverse or arbitrary.

iii) An inquiry officer/committee is not bound to follow the strict principles applicable in other proceedings rather the statements recorded in the shape of questions and answers are sufficient.

iv) With a view to confront each petitioner, with his corresponding statement of allegation, the inquiry committee can issue consolidated charge sheet.

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15. **Lahore High Court**
Muhammad Ramzan v. Spl. Judge Anti-Terrorism Court-III, Lahore etc
Crl. Revision No. 9175/2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC3870.pdf

Facts: Through criminal revision petition, petitioner has assailed vires of order passed by Anti-Terrorism Court, whereby complaint case file by petitioner was sent to the Court of ordinary jurisdiction whilst invoking powers U/S 23 of the Anti-Terrorism Act, 1997.

Issues: When Anti-Terrorism Court may send complaint case to the Court of ordinary jurisdiction?

Analysis: After taking cognizance of the case, if Anti-Terrorism Court is of the opinion that offence is not a scheduled offence, then under Section 23 of the Anti-Terrorism Act, 1997, it can transfer the case to any other Court having jurisdiction to try the same. If after recording substantive evidence, Court comes to the conclusion that any scheduled offence has not been made out, then of course, Anti-Terrorism Court can exercise such power.

Conclusion: After taking cognizance of the case or even after the recording of substantive evidence, if Anti-Terrorism Court is of the opinion that offence is not a scheduled offence, then U/S 23 of the Anti-Terrorism Act, 1997, it can transfer the case to any other Court having jurisdiction to try the same.

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16. **Lahore High Court**
Crl. Appeal No.9474 of 2021
Basharat Ali v. The State, etc.
Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC3878.pdf

Facts: Through this second application under Section: 426 Cr.P.C., the applicant/convict has sought suspension of execution of sentence on merits as well as statutory ground of delay in decision of appeal. First application filed by applicant for suspension of sentence was dismissed as withdrawn for the time being. Applicant has been convicted and sentenced vide impugned judgment passed by learned Additional Sessions Judge, in a private complaint filed under Sections: 302, 324, 452, 34 PPC arising out of F.I.R registered under Sections: 302, 324, 34 PPC.

Issues: i) Whether any provision is provided under the Juvenile Justice System Act, 2018 for suspension of execution of sentence?
ii) How the appeal and application for suspension of sentence of a juvenile convict is to be preferred and dealt with?
iii) Whether statutory ground for bail of a juvenile during the trial can be extended to him after conviction?

Analysis: i) However, any such provision has not been provided in said statute for suspension of execution of sentence of the person convicted by Juvenile Court, during pendency of his appeal. It goes without saying that by now it is well settled that when something has not been provided under the statute then court cannot read the same so as to give a different interpretation….
ii) Needless to add at the cost of repetition that when any specific provision is not provided in Juvenile Justice System Act, 2018 for suspension of execution of sentence of the person convicted by a Juvenile Court and his appeal is to be preferred and dealt with in accordance with provisions of the Code of Criminal Procedure, 1898 then recourse is to be made to Section: 426 of the Code of

Criminal Procedure, 1898 for the purpose.
iii) We hold that notwithstanding the juvenility of the applicant/convict, period of two years for considering statutory ground for suspension of his sentence provided in Section: 426(1-A)(c) shall be unchanged and that the statutory ground for bail of a juvenile during the trial cannot be extended to him after conviction and he will be treated as a convict under the relevant provisions of Code of Criminal Procedure, 1898.

Conclusion: i) No such provision has been provided in the Juvenile Justice System Act, 2018 for suspension of execution of sentence of the person convicted by Juvenile Court, during the pendency of his appeal.
ii) Appeal of a person convicted by a Juvenile Court is preferred and dealt with in accordance with provisions of the Cr.P.C., and recourse is to be made to Section: 426 of the Code of Criminal Procedure, 1898 for suspension of execution of his sentence.
iii) Statutory ground for bail of a juvenile during the trial cannot be extended to him after conviction.

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17. **Lahore High Court**
M/S. Reliance Insurance Company Limited v. M/S Ahsan Ikram Textile (Pvt.) Limited
RFA No.21810/2021
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC3939.pdf

Facts: The claim of Marine Insurance Policy of respondent was rejected by the Insurance Company on the ground that the loss had already taken place six days before the issuance of the Marine Policy. The respondent no.1 filed insurance petition which was decreed by the learned Tribunal. Hence the instant appeal.

Issues: i) Whether jurisdiction of the Tribunal is ousted in respect of policy of Marine Insurance, under proviso to section 115 of the Ordinance?
ii) Whether it is sufficient ground to reject the claim of insured if the loss is occurred before the date of insurance?
iii) Whether the insurance policy would be repudiated if vessel is changed?

Analysis: i) Section 115 of the Ordinance neither confer nor oust the jurisdiction of Tribunal. The relevant section which deals with the power and jurisdiction of Tribunal is section 122 of the Ordinance. The Tribunal shall exercise its civil jurisdiction in respect of a claim filed by the policy holder against the insurance company in respect of or arising out of insurance policy and no Court other than the Tribunal shall have any jurisdiction with respect to any matter to which, the

jurisdiction of the Tribunal extends. The words "insurance" and "policy" are also defined in the Ordinance. From conjunctive reading of all these provisions, it can safely be concluded that Marine Insurance Policy also falls within the scope of insurance policy and Tribunal has jurisdiction in respect of Marine Insurance Policy. This legal position is also supported by the fact that Marine Insurance Act, 2018 (Marine Act) was promulgated on 07.2.2018, to provide for the regulation of the business of Marine Insurance but in said Marine Act, no separate forum for adjudication of Marine Insurance claim has been provided, rather section 2(2) of the Marine Act provides that words and expressions not defined in the Marine Act shall have the same meaning as assigned to them in the Ordinance. This leaves no manner of doubt that Marine Act is to be read along with the Ordinance, where the jurisdiction for enforcement of Insurance Policies are exclusively conferred on the Tribunal.

ii) Under the Marine Act, merely because the loss occurred before the date of insurance, is itself not sufficient ground to reject the claim. No doubt, under section 20 of the Contract Act, 1872 (Contract Act) where both the parties to an agreement, are under a mistake as to a matter of fact essential to the agreement, the agreement is void. However, the provisions of the Marine Act are exception to aforesaid provision. Under section 31 of the Marine Act read with clause 1 of the schedule, where the subject matter is insured and the loss has occurred before the contract is concluded, the risk remain attached, unless at such time the insured was aware of the loss and the insurer was not.

iii) So far as the change of carrier/vessel is concerned, no doubt vessel has been changed from HA to GMV but it will not discharge the appellant from insurance claim, as it is not their case that goods were damaged due to change of vessel or there was any defect in the vessel. There is also no provision in the Marine Act or Marine Policy that if vessel is changed, the insurance policy would be repudiated.

Conclusion: i) Section 115 of the Ordinance neither confer nor oust the jurisdiction of Tribunal. However, the Tribunal has jurisdiction in respect of policy of Marine Insurance.

ii) It is not sufficient ground to reject the claim of insured if the loss is occurred before the date of insurance.

iii) The insurance policy would not be repudiated if vessel is changed.

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18. **Lahore High Court**
FAO No.10741 of 2019
M/s. Agmore International (Pvt.) Limited, etc. v. Bank of Punjab. etc.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4017.pdf

Facts: The appellants have challenged the order of dismissal of application for setting aside ex-parte judgment and decree.

Issues: Whether customer can take the benefit of change of address in setting aside ex-parte judgment passed by banking court?

Analysis: Service on the last known address is to be treated as proper service and the party, who has changed its address, cannot take the benefit of change of address to call in question orders passed against it unless it shows from the record that the change of address was duly communicated by it to the Bank well within time and that too before proceedings were initiated for recovery of finance by filing a suit in the court against it, which was required to be done in view of rule that 'debtor must seek the creditor' whereby appellants were under obligation to intimate the Bank about change in their addresses but in the present case such obligation was not discharged as change of address was not conveyed and such omission on part of the appellants was fatal and they were to suffer from such omission and now cannot claim setting-aside of decree on ground that due to change of address they were not properly served.

Conclusion: Customer who has changed his address, cannot take the benefit of change of address to call in question orders passed against it unless he shows from the record that the change of address was duly communicated by him to the Bank well within time and that too before proceedings were initiated for recovery of finance by filing a suit in the court against him.

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19. **Lahore High Court**
National Bank of Pakistan v. Data Laboratories (Pvt.) Ltd. etc.
R.F.A. No. 897 of 2016
Mr. Justice Abid Aziz Sheikh , Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4307.pdf

Facts: Through this regular first appeal, the appellant has challenged the judgment & decree passed by Judge Banking Court, whereby recovery suit filed by the appellant against the respondents has been dismissed as a consequence of closure of appellant's right to lead evidence under Order XVII rule 3 C.P.C.

Issues: Whether strict adherence to the direction given by Superior Courts to decide the matter in a particular timeframe can stand in way of the Court to decide the matter in undue haste resulting in miscarriage of justice?

Analysis: The strict adherence to the direction given by Superior Courts to decide the matter in a particular timeframe should not stand in way of the Court to do justice in the matter by decision the same in undue haste resulting in miscarriage of justice. The court has not provided sufficient opportunities to produce the evidence despite the fact that evidence was required for just decision of the matter and would have helped the Court to reach a proper conclusion of the same.

Conclusion: The direction given by Superior Courts to decide the matter in a particular timeframe cannot stand in way of the Court to decide the matter after affording due opportunities to the parties.

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20. **Lahore High Court**
Muhammad Ayub (deceased) through L.Rs. v. Hashim Khan (deceased) through L.Rs & others.
Civil Revision No. 180/2006
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC3922.pdf

Facts: The respondent no.1 earlier filed suit for specific performance of sale contract which was dismissed, while the subsequent transferee filed suit for possession on basis of mutation which was decreed. The respondent no.1 filed appeal against order of dismissal of his suit but withdrew his suit with permission to file fresh at appellate stage while suit for possession filed by subsequent transferee attained finality. Thereafter the respondent no.1 filed second suit for specific performance which was concurrently decreed by lower court. Hence this Revision Petition is filed by the subsequent transferees etc.

Issues: i) If at appellate stage, the suit was withdrawn, then whether the evidence once discarded by court of competent jurisdiction can be made basis for success of a subsequent lis?
ii) When limitation is to be reckoned in a subsequent suit if earlier one is withdrawn with permission to file fresh?
iii) Whether the revisional court can interfere in concurrent findings of courts below?

Analysis: i) If at appellate stage, the suit was withdrawn, but the evidence once discarded by court of competent jurisdiction cannot be made basis for success of a subsequent lis instituted by a bootless party. The civil court after scanning of entire evidence had rejected claim of the plaintiff in earlier suit and thereafter simple withdrawal thereof in appeal would not frustrate/wash away the well-reasoned determination made by court of law. Had the earlier suit been dismissed as withdrawn by showing inherent and formal defects so found therein prior to final decision then, in such situation it can be assumed that same would have never been instituted, but the moment it was decided, then the effect of final culmination could not be disregarded in the days to come.
ii) The time span consumed in proceedings of the earlier suit cannot be condoned per spirit of section 14 of the Limitation Act, as it is not fulfilling the essential conditions laid down therein. It is settled principle of law that the compliance of statutory period within which a right has to be exercised or enforced is mandatory and the court cannot ignore period stipulated in the above referred enactment even if no objection was raised by the opposite party in this regard. The law of

limitation imposes some embargo in filing the suits, appeals as well as other remedies to save the parties from endless litigation. The said embargo can only be condoned, if the circumstances so detailed in this behalf are found to be beyond control of litigant(s) and some plausible reason has been assigned.

iii) Although, the scope of interference with concurrent findings of fact is limited, but same can be interfered with by this court, if courts below appeared to have either misread evidence on record or while assessing evidence had omitted from consideration some important piece of evidence, which had direct bearing on the issue involved… that no court in the country has the jurisdiction to decide about the rights of the parties wrongly or in violation of law and the revisional court has no exception to this rule. It has also been held therein that court could not pass an order of its liking, solely on the basis of its vision and wisdom, rather it was bound and obligated to render decisions in accordance with law & the law alone. So, this court can decide in which cases the interference is warranted.

Conclusion: i) If at appellate stage, the suit was withdrawn, then the evidence once discarded by court of competent jurisdiction cannot be made basis for success of a subsequent lis.

ii) If the plaintiff was granted leave to bring fresh suit, which was filed on the same cause of action and limitation was to be reckoned from the date of commencement of earlier proceedings as once limitation started on same cause of action, then it could not stop running.

iii) The revisional court can interfere in concurrent findings of courts below if courts below appeared to have either misread or omitted material points of evidence on record.

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21. **Lahore High Court**
Mst. Sughra v. Governor Punjab and others
W.P.No.15158 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC3852.pdf

Facts: Petitioner has assailed order of the Governor Punjab, whereby the Notification of the financial assistance to the family of the deceased Corporation employee was adopted to make effective from the date of its adoption and not retrospectively.

Issues: Whether the discrimination of financial benefits between the Civil Servant employee and Contractual employee who are being paid from the same consolidated fund of the Provincial Government offend the equality clause under the Article 25 of the Constitution of Pakistan?

Analysis: The financial benefit, in question, is meant for families of the employees, who died during service. There is no denial that both, employees of the Corporation and Civil Servants are paid from the Provincial Consolidated Fund after similar

procedure for allocation, approval and disbursement. Civil Servant and the other employees of the Corporation both are employees of Government of the Punjab. If Government of the Punjab takes any decision to help the families of deceased employees, through any financial package, it cannot discriminate between families of other employees being paid from the same consolidated fund of the Provincial Government. Family of an employee, who died during service, undergoes similar difficulties, financial or social, while living in similar circumstances, therefore, cannot be discriminated, in absence of any extra financial protection to one class, which might be a case for terms and condition and financial terms for an employee of a Corporation and a Civil Servant. But for financial benefit to the family of a Civil Servant or to an employee of a Corporation, different treatment only for the reason that the employee died before the date of adoption, amounts to create another class, even, between the employee of the Corporation. Extension of the same financial benefit to the families of employees of the Corporation, confirms that both the families are equally placed. Such discrimination would certainly offend the equality clause under the Article 25 ensuring equal treatment and equal financial protection.

Conclusion: When the Civil Servant employee and Contractual employee are being paid from the same consolidated fund of the Provincial Government the discrimination of financial benefits would certainly offend the equality clause under the Article 25 of the Constitution of Pakistan ensuring equal treatment and equal financial protection.

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22. **Lahore High Court**
M/s Presson Descon International (Pvt.), Ltd. v. Federation of Pakistan, etc.
W. P. No. 10593 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC4144.pdf

Facts: Petitioner has assailed order which is passed upon an earlier direction by this Court in Writ Petition.

Issues: i) What is meant by rectification under section 221 of the Income Tax Ordinance, 2001?
ii) Whether direct relief is provided under provisions of Section 124 of Ordinance of 2001?
iii) What is difference between section 226 (b) (i) and (ii) of Ordinance of 2001?
iv) Whether Commissioner can delay implementation of an order which has attained finality under the Ordinance of 2001 by filing a rectification application before Appellate Tribunal?

Analysis: i) The application under Section 221 of the Ordinance of 2001 is meant to rectify a mistake, legal or factual, floating on record, where no interpretation or long

drawn arguments are required to rectify it, for which limitation is five years.

ii) Complete understanding of Section 124 of Ordinance, 2001 clarifies the concepts of automatic stay, or where limitation would stop running and where stay is to be sought in an Appellate or Reference Jurisdiction. No direct relief is provided by the orders envisaged under subsection (1) nor filling of an appeal or reference against such order would operate as automatic stay order. The order by the Appellate Tribunal or High Court envisaged under subsection (2), is not providing direct relief, but disposing of a matter with direction to pass a new assessment order. In legal Jargon we call it a remand order, with direction for passing fresh order after proceedings afresh. The orders envisaged, in subsection (3) are also not providing any direct relief, because after the setting aside or modification, same proceeding are required to be undertaken again. Subsection (4) to Section 124 is the only subsection, which envisages the orders giving direct relief and limitation for implementation of such orders is minimum i.e. two months. Filing of reference or appeal against such order does not stop the limitation, therefore, it is imperative that interim relief be sought for suspending the operation of such order, from the Tribunal or Court, where Appeal or Reference is pending.

iii) The Sub-clause (ii) of section 229 appears to be in conflict with Sub-clause (i), but a careful reading would show that in Sub-clause (i), the Court, Tribunal or Authority is approached during an assessment or other proceedings, which were stayed. Whereas, under Sub-clause (ii) proceedings before the Court, Tribunal or Authority, relating to a tax year are envisaged, which are pending after completion of an assessment or other proceedings. In case of remand, if Court, Tribunal or the Authority directs to proceed again, as contemplated in the Section 124(3), without issuance of fresh notices etc., the period consumed in proceedings before the Court, Tribunal or Authority shall be excluded from the period of limitation, to complete the assessment or other proceeding. The difference is that under Subclause (i), existence of stay order is a prerequisite, whereas under Subclause (ii) the period consumed in proceedings before the Court, Tribunal or Authority shall be excluded even in absence of any stay order.

iv) Proceeding in an application for rectification before Appellate Tribunal does not fall under Section 226(b)(ii) of the Ordinance of 2001, therefore, the Commissioner is bound to issue appeal effect order under the Section 124(4), within two months. It may be observed that Commissioner has ample power, after implementation of order under the Section 124(4), if the rectification application is accepted, to take a remedial action for recovery of tax while giving effect to the Appellate Tribunal's order under relevant provisions of the Section 124.

Conclusion: i) Rectification under section 221 of the Ordinance of 2001 means to rectify a mistake, legal or factual, floating on record.

ii) Subsection (4) to Section 124 is the only subsection, which envisages the orders giving direct relief and limitation for implementation of such orders is minimum i.e. two months.

ii) The difference is that under Subclause (i), existence of stay order is a prerequisite, whereas under Subclause (ii) the period consumed in proceedings before the Court, Tribunal or Authority shall be excluded even in absence of any stay order.

iv) Commissioner cannot delay implementation of an order which has attained finality under the Ordinance of 2001 by filing a rectification application before Appellate Tribunal.

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23. **Lahore High Court**
Sohail Liaquat v. Mst. Salma Shaheen and 3 other.
Writ Petition No. 826 of 2015
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC4166.pdf

Facts: The suit filed by respondent nos.1 and 2 was decreed however the relief of possession of house was refused whereas the suit filed by the petitioner was dismissed. Feeling aggrieved, both the parties preferred their respective appeals which were decided through a consolidated judgment and decrees and respondent nos.1 and 2 were also held entitled to possession of house, hence this petition.

Issues: i) Whether column nos.13 to 15 and column no.16 of Nikahnama are independent or interdependent?

ii) Whether the special condition stipulated in column no. 16 can be enforced through the court?

Analysis: i) Column nos.13 to 15 and column no.16 are independent and not interdependent as they cater for two different undertakings between the spouses while executing the Nikahnama, thus the same cannot be read in conjunction. Through column nos.13 to 15 reference is made to dower i.e. what will be the dower, whether it is prompt or deferred and whether some of the dower has been paid at the time of marriage, whereas column no.16 is an independent condition setup at the time of marriage as it refers to a special condition undertaken by the spouses while entering in the marital bond through a Nikahnama.

ii) For the enforcement of the special condition as set up in column no.16, either of the spouses can approach the family court keeping in view the Schedule attached to the West Pakistan Family Courts Act 1964.

Conclusion: i) Column nos.13 to 15 and column no.16 of Nikahnama are independent and not interdependent as they cater for two different undertakings between the spouses while executing the Nikahnama, thus the same cannot be read in conjunction.

ii) Yes the special condition stipulated in column no. 16 can be enforced through the court.

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24. **Lahore High Court**
POSCO International Corporation v. Rikans International & others.
C.O.S No.53422 of 2020
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2022LHC4059.pdf

Facts: This judgment shall dispose of an application pursuant to Section 3 and 6 of the Recognition and Enforcement (Arbitration Agreements and foreign Arbitral Awards) Act, 2011 for recognition and enforcement of a foreign arbitral award on the basis of arbitration agreement in clause 18/19 of the Sales Contract between the parties.

Issues: i) Whether it is legal excuse not to put the defence during arbitration proceedings due to pending proceedings in civil court?
ii) Whether public policy can stand in the way of foreign award?

Analysis: i) Making a deliberate effort to avoid the proceedings before the Arbitrator is distinct from being subjected to detriments due to which a party is "unable to present his case". It could be an anti-suit injunction. The pendency of civil proceedings in the Civil Court cannot be taken as a circumstance which can present as an insurmountable hurdle in the way of a party to present its case before the Arbitrator.
ii) There is no known public policy which constrains the Court from enforcing the award. This is necessary to maintain the integrity of international commercial contracts and the trust in Pakistani courts to enforce foreign awards. That trust will be shaken irretrievably if the courts of Pakistan were to evince an anti-enforcement policy by seeking shelter in the nebulous concept of public policy. Thus an arbitral award is contrary to public policy if it offends a constitutional mandate or is forbidden by law or would defeat the provisions of any law. These are the only grounds on which a public policy challenge may succeed. Multiplicity of proceedings, conflicting decisions (between arbitral tribunal and courts in Pakistan) and futility are not grounds covered by the doctrine of public policy.

Conclusion: i) The pendency of civil proceedings in the Civil Court cannot be taken as a legal excuse to present its case before the Arbitrator.
ii) Public policy can stand in the way of foreign award if it offends a constitutional mandate or is forbidden by law or would defeat the provisions of any law.

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25. **Lahore High Court**
Mrs. Kaneez Fatima v. The Islamic Republic Of Pakistan And Others
Writ Petition No.1659 Of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC4171.pdf

Facts: The petitioner impugned the office memorandum dated 21st February, 2020 of Ministry of Law and Justice, through which the claim of the petitioner based on earlier office memorandum dated 04th December, 2015 was declined and another previous office memorandum dated 03rd May, 2016 was withdrawn.

Issues: i) Whether the widow of a Judge can claim privileges/benefits on basis of earlier office memorandum dated 04th December, 2015?
ii) Whether Office Memorandum has force of law and what is legal standing of Office Memorandum in case of inconsistency with the Rules?
iii) Can a right having stemmed out from a legal origin be obviated by the executive?

Analysis: i) The privileges of a Judge or his/her spouse are neither limited nor restricted to Paragraph 28 of the "Order" but a Judge or his/her spouse as the case may be can also become entitle for other privileges if any other provision is made by President in this behalf as determined by the rules for the time being applicable to an officer appointed by the President and holding the rank of Secretary to the Government of Pakistan in terms of latter Paragraph. It is undeniable fact that in terms of Section 5 of the Civil Servants Act, 1973 appointments to an All-Pakistan Service or to a Civil Service of the Federation or to a civil post in connection with the affairs of the Federation, including any civil post connected with defence, shall be made in the prescribed manner by the President or by a person authorized by the President in that behalf… Paragraph 29 of the "Order" is not in negation of Paragraph 28 of the "Order" but it is actually in addition and furtherance to the said provision, so the privileges and rights of Judge or his/her spouse cannot be curtailed to the limits of Paragraph 28 of the "Order".
ii) Basically, an Office Memorandum is a document released by a proper authority stating the government's policy or decision. It is recognized as an order from the government or a circular released by the executive branch. An office memorandum is thus not a stray paper rather it has the force of law. The Office Memorandums are concerned with the terms and conditions of service of the civil servants who fall within the relevant Group. The legal power whereby the Office Memorandums have been issued is nothing other than an aspect and exercise of the rule making power conferred in terms of section 25(1) of The Civil Servants Act,1973. In law, the Office Memorandums whereby the Occupational Groups are established emanate from, and are an exercise of, the rule making power conferred on the "President or any person authorized by the President in this behalf". The Office Memorandums cannot, in case of any inconsistency, be regarded as yielding to the rules otherwise made under section 25 of The Civil Servants Act,1973, since, in the legal hierarchy they are of equal standing. It is only if there is an irreconcilable difference that the question of which will prevail would arise. And that question would have to be addressed by resort to well established rules of interpretation, including but not limited to those such as relating to earlier versus later in time, or general versus specific etc. The question that which particular rule(s) of interpretation would actually apply and how, would depend on the actual provisions under consideration and the context in which they operate.
iii) it is well recognized principle of law as ordained in Section 21 of the General Clauses Act, 1897 most commonly known as principle of "*locus poenitentiae*" that once a benefit has accrued from legal source and it is availed by its recipients it can neither be transgressed nor rescinded thereafter, as such right becomes indefeasible and absolute.

Conclusion: i) The widow of a Judge, who died in service, is also entitled for the benefits in terms of earlier issued office memorandum dated 04th December, 2015.
ii) An office memorandum is not a stray paper rather it has the force of law. In the legal hierarchy they are of equal standing and must be read together in a

harmonized and consistent manner, to the maximum extent possible. In case, the question of which will prevail would arise then it would have to be addressed by resort to well established rules of interpretation.
iii) A right having stemmed out from a legal origin is always a vested right, which cannot be obviated by the executive.

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26. **Lahore High Court**
Shaista Noreen Sajid v. M/S Qatar Airways International, etc.
F.A.O. NO.478 of 2016
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC4180.pdf

Facts: The appellant has challenged the judgment of Presiding Officer; District Consumer Court, Lahore whereby the claim of the appellant filed under Section 25 of the Punjab Consumer Protection Act, 2005 was dismissed. The Consumer Court after having received the affidavits from the parties in support and contra to the subject claim while declining the right of cross-examination to the respondents proceeded to decide the claim in a summary manner.

Issues: Whether an affidavit *per se* can be considered as evidence?

Analysis: Affidavit by itself is not included in the term "evidence". The provisions of the Code of Civil Procedure (V of 1908) relating to the receiving of evidence on affidavits, have been clearly made applicable by virtue of Section 30 to the proceedings before the Consumer Court under the "Act 2005"….Section 139 of the "Code" lays down the procedure of administering oath to the deponent on the affidavit….Affidavits can only be used as evidence in terms of Order XIX of the "Code". It is trite law that an affidavit *per se* does not become evidence unless so consented by the parties or where it is specifically authorized by a particular provision of law….There is no cavil that the prime object of the "Act 2005" is to protect and promote the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith but it does not mean that the Consumer Court should proceed in a mechanical manner to achieve the object of the statute. When the Court is of the opinion that the claim is to be settled by receiving of evidence on affidavits, it has to adhere the procedure prescribed in Order XIX of the "Code".

Conclusion: An affidavit *per se* does not become evidence unless so consented by the parties or unless it is specifically authorized by a particular provision of law.

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27. **Lahore High Court**
Mst. Naziran Bibi v. Muhammad Rafi, etc.
R.S.A No.245 of 2010
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC4320.pdf

Facts: The appellant has challenged the concurrent findings of the trial court as well as first appellate court whereby the suit of respondents No.1 and 2 for specific performance was decreed.

Issues: Whether an exchange transaction comes within the scope of section 41 of the Transfer of Property Act 1882?

Analysis: It is manifestly clear from perusal of section 41 of the Transfer of Property Act 1882 that if a person being ostensible owner of any immovable property transfers the same for some consideration with the consent, express or implied of the persons interested in such property, such transfer shall not be voidable on the ground that the transferor was not authorized to make it provided the transferee after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

The word "transfer" used in Section 41 of the "Act, 1882" is clearly neither restricted nor confined to the sale transaction. It is an oft repeated principle of law that while interpreting a provision of law or a word used in the statute, it shall be given plenary meaning and nothing should be imported which is not specifically provided therein.

The definition of word "sale" under section 54 and word "exchange" under section 118 of the Transfer of Property Act 1882 makes it evident that both the provisions deal with the transfer of ownership either through exchange for a price or mutual transfer of ownership of one thing for the ownership of another. The common between the both is the transfer of immovable property for a consideration. This leads to an irresistible conclusion that the exchange mutation was duly protected under Section 41 of the "Act, 1882".

Conclusion: An exchange transaction comes within the scope of section 41 of the Transfer of Property Act 1882.

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28. **Lahore High Court**
Javaid Iqbal Butt v. Riffat Mahmood Ghauri etc .
Civil Revision No. 7548 of 2019
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC3932.pdf

Facts: The petitioner has filed instant civil revision feeling aggrieved with the decisions of concurrent findings of courts below in which the learned trial Court rejected plaint of suit filed by the petitioner under Order VII rule 11 CPC after acceptance of application under Order XXIII Rule 2 CPC filed by the adverse side and appellate court also dismissed the appeal of petitioner.

Issue: i) Whether withdrawal of earlier suit with permission to file the fresh one could suspend limitation?

ii) Whether Court can take cognizance regarding question of the limitation at any stage of trial either the objection is raised by any party or not?

Analysis: i) Under Section 9 of the Limitation Act, 1908 once time/limitation has begun to run, the subsequent disability or inability does not stop it. Further, under Order XXIII Rule 2 CPC when first suit was dismissed as withdrawn and second suit

was filed either permission was granted that would not help the party to escape from applicability of limitation

ii) Under Section 3 of the Limitation Act, it is the duty of the Court to take cognizance regarding question of the limitation at any stage of trial either the objection is raised by any party or otherwise and it should have to decide the point of limitation at the first instance and then proceed further with the trial of the case.

Conclusion: i) Withdrawal of earlier suit with permission to file the fresh one would not help the party to escape from applicability of limitation.

ii) Yes, Court can take cognizance regarding question of the limitation at any stage of trial either the objection is raised by any party or otherwise.

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29. **Lahore High Court**
Rizwan Ullah v. The State
Criminal Appeal No.760-2019
Mr. Justice Sardar Ahmad Naeem, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC4286.pdf

Facts: Appellant challenged the judgment rendered by the Judge Anti-Terrorism Court under section 4/5 of the Explosive Substances Act, 1908 read with section 13(2)(A) of the Punjab Arms Ordinance, 2015 and section 7 of the Anti-Terrorism Act, 1997.

Issues: i) What is the primary motive of the juvenile Court?

ii) What mechanism is provided under the Juvenile Justice System Act, 2018 regarding the rights of a child?

iii) Whether the attendance of juvenile can be dispensed with by the juvenile court?

iv) Whether the juvenile can be tried with an adult?

v) What is the criteria for remanding any case?

Analysis: i) The primary motive of the juvenile Court was to provide rehabilitation and protective supervision for youth. The Court was intended to be a place where the child would receive individualized attention from the concerned judge. The Courts hearings were informal and judges exercised broad discretion on how each case was to be handled. The juvenile Court was originally founded as a coercive social work agency, rather than as a criminal Court.

ii) The Juvenile Justice System Act, 2018 provides mechanism to protect the rights of a child and way to attend/deal with his case keeping in view the best interest of the child. At present, cases of juvenile offenders, in Pakistan are being dealt with under the Juvenile Justice System Act, 2018 which is also inconsonance with the Convention of United Nations on the Rights of Child. Article 40 of The United Nations Convention on the Rights of the Child (UNCRC), 1990 postulates that right of every child alleged as, accused of, or

recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforce the child's respect for human rights and fundamental frame and all others and which takes into account the child's age and desirability of promoting child's/integrity and child's assuming constructive role in the society.

iii) If a juvenile Court is satisfied that attendance of juvenile is not essential for the purpose of trial his attendance can be dispensed with under section 11(4). Sub-section 1 of section 12 says that no juvenile may be charged or with an adult and his physical presence may be dispensed with by the Court and the juvenile may be allowed to join the Court proceedings through audio and video technical link.

iv) Section 12 provides that a juvenile can be tried with an adult person but subject to a rider i.e. satisfaction of the Court in joint trial.

v) The criteria for remanding any case on account of any irregularity committed during trial are two folds: firstly, appellate Court has to examine as to whether the irregularity committed by the learned trial Court prejudiced the accused in any manner and secondly, whether objection qua the said irregularity or illegality was raised at the earliest stage.

Conclusion: i) The primary motive of the juvenile Court is to provide rehabilitation and protective supervision for youth.

ii) The Juvenile Justice System Act, 2018 provides mechanism to protect the best interests of a child.

iii) If a juvenile Court is satisfied that attendance of juvenile is not essential for the purpose of trial his attendance can be dispensed with.

iv) A juvenile can be tried with an adult person but subject to satisfaction of the Court in joint trial.

v) The Criteria for remanding a case is firstly, appellate Court has to examine as to whether the irregularity committed by the learned trial Court prejudiced the accused in any manner and secondly, whether objection qua the said irregularity or illegality was raised at the earliest stage.

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30. **Lahore High Court**
Niaz Khan v. The State
Criminal Appeal No.356 of 2022
Hussain Ahmad v. Niaz Khan
Criminal Revision No.134 of 2021
Mr. Justice Sardar Ahmed Naeem
https://sys.lhc.gov.pk/appjudgments/2022LHC4296.pdf

Facts: Appellant has filed Criminal Appeal against his conviction in murder. The complainant also filed Criminal Revision for enhancement of sentence awarded to appellant.

Issues: i) Who will prove the plea of unsound mind/disability raised by the accused?

ii) How trial of an unsound mind person can be conducted?

iii) What are manners to fix criminal responsibility in an act committed by unsound person?

Analysis: i) Within the contemplation of section 84, P.P.C., whenever the plea is raised regarding the state of mind of accused at the time of commission of offence, the onus would be on the defence to prove such a plea as contemplated in Article 121 of the Qanun-e-Shahadat, 1984.

ii) Chapter XXXIV of the Criminal Procedure Code, 1898 provides mechanism for the trial and other related matters of the person, appear to the Court of unsound mind.

iii). The manner of committing the offence by the person of unsound mind is also falling squarely within the four corners of criminal responsibility, which include:

i. The personal history of the accused, who may be eccentric, melancholic, degenerate or neuroasthenic;
ii. Absence of motive, not only does a mentally ill person commit without any motive but also often kills his nearest and dearest relations;
iii. Absence of secrecy, because if the accused happens to be mentally ill does not try to conceal body of victim, nor does he attempt to evade law by destroying the evidence of his crime;
iv. The manner of committing occurrence;
v. Want of preparation or pre-arrangement, a mentally ill person does not make any prearranged plan to kill any body, but a sane person, in routine, makes all the necessary preparation prior to committing of crime; and
vi. A mentally ill person has no accomplice in the criminal act.

Conclusion: i) Onus would be on the defence to prove a plea of unsound mind raised by the accused.

ii) Chapter XXXIV of the Criminal Procedure Code, 1898 provides mechanism for the trial of unsound persons.

iii) The manner of committing the offence by the person of unsound mind includes his personal history, his absence of motive and absence of secrecy etc.

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31. **Lahore High Court**

Commissioner of Inland Revenue, Legal Division, Lahore. v. M/s Wire Products (Pvt) Ltd. Lahore

PTR No. 196/2010

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez

https://sys.lhc.gov.pk/appjudgments/2022LHC3997.pdf

Facts: This Reference Application is directed against order of Income Tax Appellate Tribunal whereby appeal filed by the taxpayer was allowed.

Issues: i) Whether mere carrying out of trial production can be construe as business established for the purpose of section 22 & 23 of Income Tax Ordinance, 1979?

ii) Whether pre-operative expenses, guised/claimed as loss can be adjusted under

section 34 of Ordinance, 1979?

Analysis: i) If no business was conducted during period under consideration and the expenses incurred were of pre-commencement nature and had to be capitalized whereas no income / loss under the head Income from business was declared, mere carrying out of trial production would not be construed that business was established, for the purposes of section 22 and 23 of the Ordinance, 1979 – gains and profits to be earned from the income of the business, whereby no commercial production was carried out.
ii) For attracting section 34 of Ordinance, 1979, taxpayer must sustain a loss – as consequence of business undertaken for gains and profits. Expenses incurred for trial production being in the nature of pre-operative expenditure, are not classifiable as loss. Section 34 of the Ordinance, 1979 has no relevance and applicability to pre-operative expenses, guised / claimed as loss, – not otherwise covered within the ambit of section 22 or 23 of the Ordinance, 1979 .

Conclusion: i) Mere carrying out of trial production cannot be construed as business established for the purpose of section 22 & 23 of Income Tax Ordinance, 1979.
ii) Pre-operative expenses, guised/claimed as loss cannot be adjusted under section 34 of Ordinance, 1979.

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32. **Lahore High Court**
Falak Sher v. Government of the Punjab etc.
Writ Petition No. 3854/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3844.pdf

Facts: Through this petition under Article 199 of the Constitution the petitioner assailed the authority of the PSCA to issue e-tickets and his liability for e-Tickets which are outstanding against his Bus.

Issues: i) Whether section 116-A of the Provincial Motor Vehicles Ordinance, 1965 caters for e-ticketing.?
ii) Whether a traffic offence entails personal liability and only the person who commits it can be penalized?

Analysis: i) A bare perusal of section 116-A of the Ordinance shows that it provides for ticketing system only. It does not cater for e-ticketing. Section 116-A empowers the police officer and a person authorized by the Provincial Government to draw a charge against the person if he commits an offence mentioned in the Twelfth Schedule. The authorized officer has to prepare Form-J at the spot and deliver three copies thereof to the accused at the spot against due acknowledgement, send

the fourth copy to the bank and retain the fifth for the office record. Indubitably the authorized officer may seek assistance of PSCA for enforcement of section 116-A but the latter cannot issue any e-ticket on his behalf under the current legal dispensation unless there are arrangements to deliver it to the offender at the spot. No such mechanism is presently available.

ii) A traffic offence entails personal liability and only the person who commits it can be penalized. The buck cannot be passed to the owner of the vehicle unless he is the offender himself. The subsequent purchaser of the vehicle cannot be held liable in any eventuality.

Conclusion: i) Section 116-A of the Provincial Motor Vehicles Ordinance, 1965 does not cater for e-ticketing.

ii) Yes, a traffic offence entails personal liability and only the person who commits it can be penalized.

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33. **Lahore High Court**
Ali Hassan v. The State etc.
Crl. Misc. No.69233/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC4314.pdf

Facts: Through this application the Petitioner seeks pre-arrest bail. During investigation sections 279, 334, 336 & 337-G PPC were added.

Issues: i) Whether a person was driving a vehicle rashly or negligently at a particular time in a manner which endangered human life has to be proved through evidence?

ii) Whether offence under section 279 PPC is distinct from the one under section 320 or 337-G PPC?

iii) So far as the sentence of imprisonment is concerned, whether section 337-G PPC is exhaustive in terms of sentence & imprisonment?

Analysis: i) The question as to whether a person was driving a vehicle rashly or negligently at a particular time in a manner which endangered human life has to be proved through evidence.

ii) It is, however, important that the offence under section 279 PPC is distinct from the one under section 320 or 337-G PPC. An offender cannot legally be charged under sections 279 PPC and 320/337-G PPC simultaneously.

iii) The offence under section 337-G PPC is punishable with arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir. It is important to note that, so far as the sentence of imprisonment is concerned, section 337-G PPC is exhaustive. It does not say that the offender shall also be liable to imprisonment provided for the hurt caused.

Conclusion: i) Yes, a person was driving a vehicle rashly or negligently at a particular time in a manner which endangered human life has to be proved through evidence.
ii) Offence under section 279 PPC is distinct from the one under section 320 or 337-G PPC.
iii) So far as the sentence of imprisonment is concerned, section 337-G PPC is exhaustive.

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34. **Lahore High Court**
Abdullah Khan Usmani v. Security & Exchange Commission of Pakistan and others
Civil Original No.227628 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC3962.pdf

Facts: The petitioner seeks the original jurisdiction of this Court being a Company Judge under Section 126 of the Companies Act, 2017 (the "Act") for the rectification of register of members of the Company and challenged the transfer of his shares.

Issues: i) What are the grounds for rectification of the register of members of the Company?
ii) Whether Limitation Act is applicable on petition under Section 126 of the Act? And how the limitation starts to run in cases under the Act?
iii) Whether Directors of a Company can add or omit the name of members from the register of members, without justifiable reasons?

Analysis: i) Literal study of Section 126(1) (a) of the Act provides a right to make an application before the Court for the purposes of rectification of register of members or register of debenture holders of a company in a case where name of a person "fraudulently" or "without sufficient cause" was entered in or omitted from said registers. (…)The powers of the Board to arbitrarily add or omit the names is further made subject to the provisions of Section 126 of the Act, which provides that a member may move the Court to have register rectified where his name has been added or omitted without a sufficient cause or fraudulently.
ii) The limitation act is applicable on petition under Section 126 of the Act and the limitation starts to run from the time when the right to apply accrues and not from the date of knowledge. Moreover, anyone can get information through online service/SDMS portal provided by the SECP or alternatively by lodging complaint or writing an email or even through the phone provided for resolving complaints or even can contact through fax.
iii) Directors of a Company can add or omit the name of members from the register of members; such an act may only be done where there exist justifiable reasons. An instance of such a justifiable reason would be where a shareholder has sold his shares as per the process mentioned in Section 76 of the Act. In such

circumstances, at the last stage where the transfer of shares is to be registered by the Directors, such an act in practice takes place through a board resolution, whereby usually the company secretary or any other officer of the Company is authorized by the Board, to register the transfer of shares, and thus add the name of the new member whilst omitting the name of the previous member

Conclusion: i) The member may move the Court to have register rectified where his name has been added or omitted without a sufficient cause or fraudulently.
ii) The Limitation Act is applicable on petition under Section 126 of the Act and the limitation starts to run from the time when the right to apply accrues and not from the date of knowledge.
iii) The Directors of a Company can add or omit the name of members from the register of members; such an act may only be done where there exist justifiable reasons.

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35. **Lahore High Court**
Ghulam Hussain v. Manzoor Hussain
C.R. No. 25657 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4033.pdf

Facts: The petitioner impugned two orders; first of Trial court which directed to deposit remaining sale consideration amount in the Court while deciding application for interim relief in the suit for specific performance and second; the order of appellate court dismissing his appeal against the above said order.

Issues: Whether the order of court, for deposit of remaining sale consideration without providing for any consequence for non-deposit of same, adversely affects or prejudices the case of the plaintiff?

Analysis: While deciding the applications for interim relief in the consolidated suits, respondent was restrained from alienating the suit property and the petitioner was directed not to interfere in his possession, the Court also directed the petitioner to deposit the remaining unpaid consideration amount in the Court, however, neither the order of interim relief was made subject to deposit of afore-referred amount nor any consequences of its non-deposit were provided in the said order, thus, the order of deposit was independent of the portion of order relating to interim relief.

Conclusion: The order of court, for deposit of remaining sale consideration without providing for any consequence for non-deposit of same does not adversely affect or prejudices the case of the plaintiff

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36. **Lahore High Court**
Haji Mohammad Ilyas v. Haji Mushtaq Ahmed (deceased) through L.Rs.
C.R. No. 80839 of 2017
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4995.pdf

Facts: Through this Civil Revision, the petitioner called in question the judgment and decree passed by learned appellate and Civil Court through which suit filed by the petitioner for specific performance was dismissed under Order XVII Rule 3 of the C.P.C for non-production of evidence.

Issues: i) What procedure should be adopted by the aggrieved party when there is divergence of stance of the parties relating to recording of proceedings of the order?
ii) What sort of presumption is attached to the judicial record?
iii) Whether under Order XVII Rule 3 of C.P.C, it is necessary for the Court to pass the final order directing the petitioner to lead evidence subject to payment of costs?

Analysis: i) When there is divergence of stance of the parties relating to recording of proceedings of the order, which cannot be resolved by High Court without there being sufficient material available on the record to support contention of either party. In order to substantiate such claim, the petitioner could have instead of filing Civil Revision before High Court filed an application before the same court for recall of the said order on the ground that the order does not depict the actual position on the record.
ii) Presumption of authenticity is attached to the judicial record in term of Article 129 of the Qanoon-e-Shahadat Order, 1984. The position recorded in the courts order is presumed to be correct and no exception can be taken to the same.
iii) The provision of order XVII Rule 3 of the C.P.C reproduced below does not show that before passing the final order the court has to pass an order directing the petitioner to lead evidence subject to payment of costs and such procedure is generally adopted by the courts in order to regulate their own proceedings and passing or non- passing of such order is discretionary with the court.

Conclusion: i) When there is divergence of stance of the parties relating to recording of proceedings of the order, the aggrieved party can file an application before the same court for recall of the said order instead of filing Civil Revision before High Court.
ii) Presumption of authenticity is attached to the judicial record and no exception can be taken to the same.
iii) Under Order XVII Rule 3 of C.P.C, it is not necessary for the Court to pass the final order directing the petitioner to lead evidence subject to payment of costs.

37. **Lahore High Court**
Muhammad Azam v. The State and another.
Case No. Crl.Misc.No.23859-B of 2022.
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2022LHC3916.pdf

Facts: Petitioner seeks bail after arrest in case FIR registered under sections 324, 109, 34 of PPC.

Issues: i) Whether accused cannot be punished under section 324 PPC if any hurt is caused and in that case he is only liable to punishment provided for the hurt?
ii) Whether an accused can be granted bail in the cases of single fire shots attributed to him?
iii) What is the criterion to ascertain the reasonable ground for the grant of concession of bail?

Analysis: i) Originally section 307 PPC was an enabling provision dealing with the offence of attempt to murder. Later on Chapter XVI of The Pakistan Penal Code, 1860 titled as "OF OFFENCES AFFECTING THE HUMAN BODY" was revamped through Criminal Law (Second Amendment) Ordinance 1990. Thereafter the Section 324 PPC specifically stated that "and, if hurt is caused to any person by such act, the offender shall be liable to the punishment provided for the hurt caused". So according to this section, the act of the accused committed with intention and knowledge to commit qatl-i-amd was made punishable with imprisonment upto 10 years even if no hurt was caused. On the contrary, if through such act accused was successful in effectively causing injury to the victim then he was liable only to the extent of punishment provided for the hurt. This anomaly was noticed by a Division Bench of this Court in case reported as Shahbaz Ahmad and another v. The State (PLD 1994 Lahore 344) wherein it was observed that "There seems to be no logic or coherence in the two provisions". Thereafter Section 324 PPC was further amended as present which states that "and, if hurt is caused to any person by such act, the offender shall [in addition to the imprisonment and fine as aforesaid". … The language of amended section 324 PPC is explicit in sense and leaves no room for discussion that an act of accused towards taking the life of his adversary is made punishable with imprisonment upto 10 years. If such act of the accused culminates in infliction of injury to the victim, he also becomes liable to the punishment provided for the nature of hurt received by the victim.
ii) It is true that in cases of a single shot, the benefit of bail to an accused can be extended on the ground that he opted not to repeat the act of firing, presuming that his ultimate intention was only to inflict an injury and his act was not aimed at taking the life of victim. Likewise, in a case wherein a victim is assaulted through a club, hatchet or knife, generally the injury is inflicted at the intended locale and if it is on the non-vital organ or not serious in nature, it can be pleaded a circumstance in favour of granting bail.

iii) The existence of reasonable grounds is to be ascertained from the material comprising upon nature of accusations set out in the First Information Report, statements of witnesses recorded under section 161 Cr.P.C, the medical evidence and other material collected during investigation.

Conclusion: i) As per amended section 324 PPC an act of taking the life is made punishable with imprisonment up to 10 years and in case of injury, accused is also liable to punishment as per nature of injury.
ii) The benefit of bail to an accused can be extended on the ground that he opted not to repeat the act of firing.
iii) The existence of reasonable grounds is to be ascertained from the material comprising upon nature of accusations set out in the First Information Report, statements u/s 161, medical and other evidence.

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38. **Lahore High Court**
RFA No.184 of 2013
Mst. Lalarukh Saqlain, etc. v.
Punjab Health Department through its Secretary, etc.
Mr. Justice Shakil Ahmad, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC4271.pdf

Facts: This is an appeal that has been filed by appellants under section 54 of the Land Acquisition Act, 1894, to impugn judgment passed by learned Senior Civil Judge, Multan being a learned Referee Court.

Issues: i) What is the criteria for determining the compensation under section 23 of Land Acquisition Act, 1894?
ii) Whether one year's average of the sales taking place before the publication of the notification under section 4 of the similar land is only mode for ascertaining the market value?

Analysis: i) Acquiring authority and even the courts while determining the compensation indeed have to firstly adhere to the provisions of section 23 of the Act, 1894 and secondly are also bound to follow the dicta laid down by the apex court for determining the market value of the property so acquired. In case reported as "Pakistan Burmah Shell Ltd. v. Province of N.W.F.P and 3 others" (1993 SCMR 1700), it was observed by the apex Court that in assessing the market value of land, its location, potentiality and the price, evidenced by the transactions of similar land at the time of notification were the factors to be kept in view.
ii) It was further observed that one year's average of the sales taking place before the publication of the notification under section 4 of the similar land was merely one of the modes for ascertaining the market value and was not an absolute yardstick for the assessment.(…) In view of the dicta laid down by apex Court, it can very safely be concluded that while determining the compensation, Land

Acquisition Collector and the courts ought to have considered the evidence/material so brought on the file as per the provisions of section 23 of the Act, 1894 besides taking note of the potentiality and the future perspective of the land beyond the date of publication of the notification under section 4 (1) of the Act, 1894.

Conclusion: i) While determining the compensation, Land Acquisition Collector and the courts should consider the evidence/material so brought on the file as per the provisions of section 23 of the Act, 1894 besides assessing the market value of land, its location, potentiality and the price, evidenced by the transactions of similar land at the time of notification were the factors to be kept in view.

ii) Notification under section 4 of the Act, 1894 of the similar land is merely one of the modes for ascertaining the market value and is not an absolute yardstick for the assessment.

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39. **Lahore High Court**

M/s Pakistan General Insurance Limited v. Securities & Exchange Commission of Pakistan, etc.

Writ Petition No.4776 of 2009

Mr. Justice Ahmad Nadeem Arshad, Mr. Justice Sultan Tanvir Ahmad.

https://sys.lhc.gov.pk/appjudgments/2022LHC3883.pdf

Facts: The petitioner assailed the legality and validity of two orders, first directing the petitioner to encash the performance bonds within thirty days and second dismissing the appeal filed by him under Section 130(2) of the Insurance Ordinance, 2000, against said first order.

Issues: i)Whether the Ombudsman had the jurisdiction to deal with the matter of allegation of mal-administration on the part of Insurance Company or the same comes under the ambit of jurisdiction of Tribunal ?

ii)What means mal-administration and what element is necessary to prove mal-administration?

iii) Whether the "contract of Insurance" and "contract of guarantee" can be linked together?

Analysis: i) From perusal of Section 127 of Insurance Ordinance, 2000, it appears that the Ombudsman on a complaint by an aggrieved person has the authority to undertake any investigation into any allegation of mal-administration on the part of Insurance Company, whereas u/s 122(a) of said Ordinance, an Insurance Tribunal has jurisdiction in respect of a claim filed by a policy holder against an Insurance Company in respect of a matter arising out of policy of insurance.

ii) Section 127 (2) of the Insurance Ordinance, 2000 elaborates the meaning of mal-administration to include any decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations; or is of a departure from established practice or procedure; or is perverse, arbitrary or unreasonable, or unjust, biased, aggressive, or discriminatory. Element of dishonesty is necessary to prove mal-administration and where the omission is

under some bona fide act it will not fall within the definition of mal-administration.

iii) The Hon'ble Division Bench of this Court while defining the "Insurance" and "contract of guarantee" observed that "contract of insurance" and "contract of guarantee" are different contracts by observing that "The definition of "Insurance" shows that it includes "entering into" "Carrying out policies or contract" against the payment of premium Insurance Company promise to make payment to insured person of their nominee, in case of happening of any agreed, event, specified in the contract, whereas in contract of guarantee the beneficiary is third party, meaning thereby the Insurance Policy or contract are two different subjects, the Insurance company can enter into a contract of Insurance or some other contract and the consideration is the premium, whereas in a contract of guarantee or performance bond the purchaser to pay commission and that commission does not cover the entire amount of contract. In case of encashment of guarantee, the purchaser is bound to pay the amount of guarantee to the guarantor, but in the case of Insurance Policy it is not, in Writ Petition No.4776 of 2009 9 case of death of insured the Insurance Company is bound to pay the insured amount irrespective of the payment of only one or two installments. In case the insured paid the entire premium and the Insurance Policy is matured, the Insurance Company is bound to pay the insured amount to the insured. In a contract of insurance against different type of loss, the Insurance Company is bound to pay the insured amount without payment of any further premium. In the contract of guarantee, the purchaser of the guarantee is not the beneficiary, and in case of payment of guarantee amount the purchaser has to reimburse the Insurance Company, hence the contract of Insurance and contract of guarantee are different contracts."

Conclusion: i)In case of mal-administration on the part of Insurance Company, the Ombudsman has jurisdiction u/s 127 (1) of Ordinance 2000, to investigate and inquire into the matter.

ii)Maladministration is bad, inefficient, or dishonest management of the affairs of an organization, such as a business or institution. The element of dishonesty is necessary to prove mal-administration and where the omission is under some bona fide act it will not fall within the definition of mal-administration.

iii)The contract of Insurance and contract of guarantee are different contracts.

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40. **The Lahore High Court**
Mirza Pehlwan, etc. v. Province Of Punjab And Others.
Civil Revision No.575 Of 2007.
Mr. Justice Ahmad Nadeem Arshad
Https://Sys.Lhc.Gov.Pk/Appjudgments/2022lhc4224.Pdf

Facts: The petitioners have challenged the propriety and legality of judgments & decrees passed by learned Courts below, whereby, their suit for declaration, permanent injunction and possession was concurrently dismissed**.** The petitioners through a C.M. sought permission to make amendments in their plaint**.**

Issues: i) Whether the conduct, motive and the object/purpose of the party behind the request seeking for the proposed amendment is relevant for deciding the fate of the application of amendment?

ii) When a subordinate Court acts without jurisdiction, can such errors be corrected by the High Court in the exercise of its supervisory jurisdiction?

iii) Where a question arises at any point of time about status of property whether such property was evacuee or non-evacuee, which authority was competent to decide the controversy and whether jurisdiction of Civil Courts was barred in this regard under The Displaced Persons (Land Settlement) Act, 1958?

iv) Whether the bar on the jurisdiction of Civil Courts to call in question the character of property and its alienation by the settlement Authority existed or not after repeal of the Act, 1957 and the Act, 1958 through the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975?

Analysis: i) Some important fundamentals should also not be lost in sight and must be kept in mind by the courts while exercising such authority, in that, the amendment sought/proposed must not be tainted with dishonesty of purposes; it is not meant to withdraw and resile from an admission made in the pleadings of the parties, it should not cause prejudice to the opposite side, particularly to deprive such (Opposite) side of a benefit attained by it from the evidence adduced on the record by the party asking for the amendment; the conduct and the motive of the party and the object/propose behind the request for the amendment.

ii) High Court while exercising the revisional powers has jurisdiction to supervise and control subordinate Courts in the interest of administration of justice. Interference is to be limited to correction of errors of jurisdiction or non-compliance of any statutory provisions of law. The superintending and visitorial powers should be used to correct jurisdictional errors and irregularities. This reaction confers an exceptional and necessary power intended to secure effective exercise of this Court's superintending and visitorial powers of correction, unhindered by technicalities.

iii) In order to provide permanent settlement of displaced persons on land and to compensate them for the losses suffered by them on account of expropriation by the Government of India of their rights in property in India or in any area occupied by India and for matters incidental thereto or connected therewith "The Displaced Persons (Land Settlement) Act, 1958 [Act XLVII of 1958] ("the Act 1958") was introduced. Section 14 of the Act, 1958 provides procedure for allotment and disposal of land. Remedy of appeal, revision and review was available for aggrieved persons before Settlement Authorities in the light of Sections 18 to 20 of the Act, 1958. Hence, the jurisdiction of Civil and Revenue Courts has been barred under Section 25 of the Act, 1958.

iv) Section 41 of the Pakistan (Administration of Evacuee Property) Act, 1957, explicitly bars the jurisdiction of the Civil Court in clear and unambiguous terms and as such no Civil Court can give declaration about the status of a person or property being evacuee or non-evacuee. The repeal of the said Act did not have the effect of removing the bar of the General Clauses Act so far as the orders passed during the operation of the repealed law. If the non-evacuee owners did not seek their remedy under the law enforced at the relevant time, their title to such property stood extinguish and they could not assert their right of ownership before the Civil Court, even after the repeal of the Evacuee/Settlement Law on account of lack of jurisdiction.

Conclusion: i) The conduct, motive and the object/purpose of the party behind the request seeking for the proposed amendment is very relevant for deciding the fate of the application of amendment**.**

ii) When a subordinate Court acts without jurisdiction, the errors can be corrected by the High Court in the exercise of its supervisory jurisdiction.

iii) The Custodian was only competent to decide the controversy and jurisdiction of Civil Courts was barred to entertain the suit involving disputes of title relating to the evacuee property and with regard to orders passed by the Settlement Authorities.
iv)The Civil Court has no jurisdiction to entertain a suit concerning the evacuee nature or otherwise of a property and a proceeding conducted by the Settlement Authorities in their exclusive jurisdiction and the bar contained in the repeal laws on the jurisdiction of the Civil Courts remains available.

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41. **Lahore High Court**
Muhammad Naveed Butt & another v. Mst. Balqees Akhtar (deceased) through L.Rs and others
Civil Revision No.415-D of 2015
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC4038.pdf

Facts: The instant Civil Revision as well as connected Civil Revision with same questions of law and facts are decided through this single judgment. The petitioners assailed the validity and legality of impugned judgment whereby the learned appellate Court while setting-aside the judgment and decree passed by learned trial Court, dismissed their suit for declaration, possession through partition and permanent injunction and decreed the suit for declaration, permanent and mandatory injunction on the basis of oral gift instituted by respondent no.1.

Issues: i) What is meant by Hiba or gift?
ii) On whom burden of proof lies in oral gift?
iii) Whether it is necessary to narrate the details of the transaction of the gift in the pleadings before proving any fact?
iv) Whether the gift takes effect from the date of declaration of the gift or from the date of requisite possession of the gift?
v) What is the object & import of Article 79 of Q.S.O, 1984?
vi) Whether the opinion of an expert can be used as a piece of evidence?
vii) Whether it is necessary for the donor to prove the free will and consent of the donor?

Analysis: i) Hiba or gift means the transfer of property made by one person to another without consideration, accepted by or on behalf of the latter is a condition to be fulfilled in order to make a gift valid.
ii) In oral gift, the onus is always on the donee to prove through cogent and concrete evidence that the donor made gift to him/her voluntarily, without duress and with all senses; that he/she accepted the same, and that the possession was delivered to him/her towards completion of that transaction. If any of the ingredient/component is missing, the claim of the donor would be rejected outrightly. In case of deprivation of some or either of legal heirs, the heavy onus otherwise to prove original transaction as well as reasons for doing so strongly

rested upon its beneficiary.

iii) It is settled principle of law that before proving any fact, one should have to narrate its detail in his pleadings under mandate of well recognized principle "secumdum allegata et probate". The plaint should not be silent to the extent of essential details of factum of gift i.e. date, time, place and names of witnesses and that when, where and before whom the donor had made declaration of gift which was accepted by donee and in lieu thereof the possession changed hands and pleaded with regard to "Declaration of Gift".

iv) In order to constitute a valid gift under law, there must be pivotal requirement, which is the mark-able delivery of possession of the disputed house by the donor and taking of the possession by the donee. This requirement is so critical that gift is said to only take effect from the date on which the requisite possession of the disputed house is delivered to the donee; not from the date on which the declaration was actually made. Delivery of possession hence become concomitant of the gift and so serious that without delivery of possession to the donee, the gift is held void even if it was made through a registered document.

v) The object & import of Article 79 per its language is that the document entailing future/financial obligation must be proved by two attesting witnesses. The consequential phrase "shall not be used as evidence" until required figure of marginal witnesses produced to substantiate its execution and alleged transaction couched therein, thus places embargo for using it in evidence. Indeed, Article 79 is a mandatory as well as inflexible provision and deserved its due compliance by the Court per yardstick introduced therein. The resume of said discussion is that examination of both of the attesting witnesses is binding, which if not observed, could not be declared to have been proved for use in evidence.

vi) Although, report of the expert is not conclusive proof, but as held by the august Supreme Court of Pakistan in the judgment reported as Muhammad Qayyum and 2 others vs. Muhammad Azeem through legal heirs and another (PLD 1995 SC 381), the opinion of expert is one of the modes of producing evidence and if the said report is properly proved, the same can be used as corroborative piece of evidence.

vii) In "Aurangzeb v. Muhammad Jaffar" (2007 SCMR 236), it has been held that in a transaction of gift, heavy onus lies on the beneficiary to prove by convincing evidence which satisfies the judicial conscience of the Court that the transaction shown to be a gift was executed by the donor in favour of the donee of course with his free will and consent.

Conclusion: i) Hiba or gift means the transfer of property made by one person to another without consideration, accepted by or on behalf of the latter.

ii) Heavy burden of proof lies on the donee to prove the ingredients/components of the oral gift through cogent evidence.

iii) It is necessary to narrate the details of the transaction of the gift in the pleadings before proving any fact.

iv) The gift takes effect from the date of requisite possession of the gift.

v) The object & import of Article 79 of Q.S.O, 1984 is that the document entailing future/financial obligation must be proved by two attesting witnesses.
vi) The opinion of an expert, if properly proved, can be used as a corroborative piece of evidence.
vii) It is necessary for the donor to prove the free will and consent of the donor.

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42. **Lahore High Court**
Asghar Ali etc v. Muhammad Hussain, etc.
Civil Revision No.451-D of 2012
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC4244.pdf

Facts: Through this civil revision, the petitioners have challenged the validity of the consolidated judgment & decree passed by the learned Civil Judge whereby the suit of the petitioners was dismissed, however, suit of defendant side was decreed and being aggrieved, petitioners preferred two separate appeals which were dismissed by the learned appellate Court vide consolidated judgment/decree.

Issues: i) How occupancy tenants could be created or established?
ii) Whether Status of tenant is bound to be incorporated in Jamabandi?
iii) What is the use of Mutation as per Land Record Manual?
iv) What should be formation of orders of Revenue officer while mutation proceedings of occupancy rights?
v) Whether a tenant could acquire a right of occupancy mere on lapse of time?
vi) Whether it is necessary to have occupancy rights to claim benefits of section 114 Tenancy Act 1887?

Analysis: i) As per scheme of Tenancy Laws it appears, occupancy tenancy can only be created or established under section 5, 6 and 8 of the Act, 1887 and such tenants are presumed "Mustaqal Tenant" (though these words not used in the Act, 1887). Although, terminologies "Ghair Mustaqil Tenant", "Ghair Mustaqal Awal" and "Ghair Mustiqal Doem" are not defined in the Act, 1887, but it means that those tenants who does not possess the status of occupancy tenancy and are not "Mustiqal Tenant" but their services are acquired for cultivation of the land by the occupancy tenant for some compensation and said temporary cultivators are called "Ghair Mustaqal Tenant".
ii) Status of owner/cultivator/tenant/occupant is bound to be incorporated in Jamabandi. Jamabandi/Register Haqdaran Zamin is one of the most important document of the record of rights as well as periodical record as prescribed by section 39(2) of the West Pakistan Land Revenue Act, 1967 [XVII of 1967] (hereinafter referred to as the Act, 1967), and Rule 72(i) of the Punjab Land Revenue Rules, 1968. It is Form No.XXXIV, compiled by the Patwari, checked by Kanugo, Naib Tehsildar, Tehsildar and supervised by Collector, consisting of

10 columns and is called Jamabandi/Register Haqdaran Zamin. Land Record Manual in it's Chapter No.7 includes provisions, special instructions relating to Register Haqdaran Zamin.

iii) Mutations according to Land Record Manual are being used to be sanctioned regarding every acquisition of any right or interest as a land-owner or a tenant for a fix term exceeding one year. Provision No.7.1 of Land Record Manual deals with head of mutations. Mutations regarding occupancy rights are also used to be attested in accordance with Land Record Manual.

iv) In mutation proceedings relating to alienations of occupancy rights, the landlord undoubtedly an interested party, and he should be made a party to the proceedings. The revenue officer's order should note briefly whether the landlord has been examined by him, and, if so, whether the landlord consented to the alienation, and whether the provisions of section 53 and 56 of the Tenancy Act have been followed or not. This procedure will do much to obviate the difficulty of deciding whether the landlord has acquiesced in the transfer but if, as a matter of fact, the transfer has taken place, the mutation must not be refused simply because the landlord refuses his consent or because the provisions of section 53 and 56 have not been complied with.

v) No tenant shall acquire a right of occupancy mere on lapse of time. Similarly, no one of several joint owners of land shall acquire a right of occupancy in land jointly owned by them except when there is a custom to the contrary. Sections 9 & 10 of the Act, 1887 are relevant in this regard.

vi) The Punjab Tenancy (Amendment) Act, 1952 [VII of 1952], received the assent of the Governor on 29.01.1952 and published in the Gazzette on 04.02.1952, declared that no person shall after the coming into force of the Act acquire or have occupancy rights in any land under any enactment or contract or any decree or order of any Court or other authority and the existing occupancy right in respect of all lands other than owned by Government or by any person who under the law for the time being in force is an evacuee, shall on the coming into force of the Act, be extinguished and the land shall vest in the tenant according to the procedure laid down in section 114 of the Act, 1887. The person being occupancy tenant became owner of the land after said amendment by operation of law.

Conclusion: i) Occupancy tenancy can only be created or established under section 5, 6 and 8 of the Punjab Tenancy Act, 1887.

ii) Yes, status of owner/cultivator/tenant/occupant is bound to be incorporated in Jamabandi.

iii) Mutations according to Land Record Manual are being used to be sanctioned regarding every acquisition of any right or interest as a land-owner or a tenant for a fix term exceeding one year.

iv) The revenue officer's order should note briefly the examination of landlord by him, and his consent to the alienation, and proper following of provisions of section 53 and 56 of the Tenancy Act.

v) Tenant shall not acquire a right of occupancy mere on lapse of time.
vi) Yes, it is necessary to have occupancy rights to claim benefits of section 114 Tenancy Act 1887 for obtaining proprietary rights.

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43. **Lahore High Court**
Manzoor Khan v. The State etc.
Crl. Appeal No.750 of 2020
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC3911.pdf

Facts: The respondent No.2 and others have been tried by learned Additional Sessions Judge under sections 302, 148 & 149 PPC, whereby respondent No.2 was acquitted of the charge and others were convicted. The appellant assailed the acquittal of respondent No.2 through this appeal against acquittal, whereas, others have challenged their conviction through connected appeals.

Issues: Whether appeal against acquittal u/s 417 (2-A) of the code can be heard by single bench?

Analysis: It was pointed out that as per Rule 2(1) an appeal against acquittal u/s 417 (2-A) of the code shall be heard by the learned Division Bench and claim of the petitioner therein for fixation of appeal against conviction before Single Bench was accepted by the learned Division Bench with the observation that until notice in appeal against acquittal is issued (by the Division Bench), appeal against conviction shall be heard by single Bench… This clearly shows that it is the Division Bench which would pass order on appeal against acquittal.

Conclusion: Appeal against acquittal u/s 417 (2-A) of the code cannot be heard by single bench and it is the Division Bench which would pass order on appeal against acquittal.

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44. **Lahore High Court, Lahore**
Waqas Ahmed v. The State, etc.
Crl. Revision No. 100/2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC4121.pdf

Facts: Petitioner has assailed his conviction & sentence in case pertaining to the offences U/S 337-A(i), 337-A(iii), 337-F(i) & 34 PPC awarded by learned Magistrate Section-30 and upheld by learned Additional Sessions Judge with the modification of amount of Arsh.

Issues: i) Whether petitioner's act of payment of Arsh & Daman amounts to his having conceded impugned sentence making sentence executed and leaving his revision petition as not maintainable?

ii) Whether tooth is an organ (udw) or a bone?
iii) What penal section would be attracted if the teeth are broken/damaged?

Analysis: i) Petitioner has been released from jail after payment of arsh & daman. An accused, even after confession, can challenge the judgment to the extent of legality of his sentence as per section 412 of Cr.P.C. Similarly, when right of appeal is not available, same can be assailed through revision.

ii) Anatomy of human being goes by saying that there are in total 206 bones of human body and tooth is not cited as such. Teeth are not living tissue and they are comprised of four different types of tissue i.e. i) Dentin, ii) Enamel, iii) Cementum, iv) Pulp. The pulp is the innermost part of a tooth, it contains blood vessels, nerves, and connective tissue. The pulp is surrounded by dentin, which is covered by the enamel. Enamel is the hardest substance in the body, it has no nerves. Though some remineralization of enamel is possible, it can't regenerate or repair itself if there is significant damage. The cementum covers the root, under the gum line, and helps the tooth stay in place. Teeth also contain other minerals, but do not have any collagen.

iii) It is mentioned in section 337 PPC that 'Shajjah' means any hurt on face and head which does not amount to "itlaf-i-udw" or "itlaf-i-salahiyyat-i-udw". Therefore, injury to an 'udw' in face and head will not be dealt as 'Shajjah' injury. Tooth being not bone cannot be dealt for its damage considering it a fracture of tooth under section providing punishment for "Shajjah", rather it amounts to "itlaf-i-udw" u/s 334 PPC read with section 337-U PPC. Teeth being part of jaw, located in oral cavity as ectodermal appendages are specialized organs. If teeth are dismembered, amputated, severed, or their functioning, power and capacity is destroyed or permanently impaired or hurt to teeth caused permanent disfigurement, offence under section 334 or 336 PPC shall respectively be attracted.

Conclusion: i) Revision petition is maintainable as when right of appeal is not available, same can be assailed through revision.

ii) Tooth is specialized organ as ectodermal appendages located in the oral cavity and also part of jaw and it can safely be stretched as falling within the definition of 'udw'.

iii) Fracture of tooth amounts to itlaf-i-udw u/s 334 PPC read with section 337-U PPC.

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45. **Lahore High Court**
Mahmood Textile Mills Limited v. Sui Northern Gas Pipelines Ltd. through Managing Director & 05 others
W. P. No. 16225 / 2020
Mr. Justice Abid Hussain Chattah
https://sys.lhc.gov.pk/appjudgments/2022LHC3859.pdf

Facts: This constitutional petition is directed against the impugned order passed by the Gas Utility Court, whereby, an application of Sui Northern Gas Pipelines Limited seeking permission to submit list of witnesses was held as infructuous by declaring that special procedure provided in Sub-Sections (10) & (11) of Section 7 of the Gas (Theft Control and Recovery) Act, 2016 (the "Act") did not prescribe submission of list of witnesses.

Issues: i) Whether the provisions of the CPC in general and Rule 1 of Order XVI thereof in particular are applicable to a suit instituted under Section 6 of the Act?
ii) What are the consequences of non-submission of list of witnesses in terms of Order XVI, Rule 1 of the CPC?
iii) Whether the provision regarding filing of affidavits in lieu of examination-in-chief is mandatory?
iv) Is there any express special procedure enlisted in Section 7(10) & (11) of the Act to dispense with the requirement of submission of list of witnesses.

Analysis: i) The provisions of the Act make it abundantly clear that apart from the special procedure stipulated therein, the provisions of the CPC are fully applicable and attracted to the suits filed under Section 6 of the Act. The Gas Utility Court is bound to follow the provisions of the CPC in all matters which are not expressly excluded through the provision of special procedure in the Act. In other words, where the Act does not provide a special procedure to do a particular thing in a particular manner, the provisions of the CPC shall be fully applicable.
ii) The substituted Sub-Rules (1) & (2) of Rule 1 of Order XVI of the CPC currently in place in the Province of the Punjab are in line and in complete harmony with the law laid down in Amjad Khan case (supra). The bare reading thereof, underlines that in Sub-Rule (1) thereof, there is no distinction between witnesses to be produced by a party itself or witnesses required to be called through the Court as is evident from the conscious omission of the words „produce" and „call". Sub-Rule (2) thereof, restricts itself to the witnesses to be called and summoned through the Court as is evident from the use of the word „call" and omission of the word „produce".
iii) The provision regarding filing of affidavits in lieu of examination-in-chief is only permissive and not mandatory as is evident from the use of word „may" in the above quoted statutory stipulations. In case, such affidavits are filed, the Gas Utility Court is empowered subject to such modifications, as it may require for the purposes of producing and exhibiting the documents, or otherwise in accordance with law, to treat the affidavits as examination-in-chief and allow the contesting parties to cross-examine on the basis thereof.
iv) There is no express special procedure enlisted in Section 7(10) & (11) of the Act to dispense with the requirement of submission of list of witnesses. The Gas Utility Court misapplied the aforesaid provisions of the Act to hold that facility to tender affidavits in lieu of examination-in-chief dispenses with the requirements of Order XVI, Rule 1 of the CPC, although it had itself required the parties to

submit the list of witnesses after framing of issues. Hence, the provisions of Order XVI, Rule 1 of the CPC are fully applicable to a suit instituted under Section 6 of the Act. The Gas Utility Court misapplied and misconstrued the law to hold that the list of witnesses was not required under Section 7(10) & (11) of the Act.

Conclusion: i) The provisions of the CPC are fully applicable and attracted to the suits filed under Section 6 of the Act

ii) In case of non-submission of list of witnesses or omission of name of a witness, the defaulting party is not barred to produce private witnesses to give evidence or produce documents provided they are produced on the date fixed by Court for recording of evidence However, the defaulting party is barred to call or summon any witness through process of the Court to give evidence or produce documents unless the Court upon showing good cause permits to call or summon a witness after recording reasons to this effect.

iii) The provision regarding filing of affidavits in lieu of examination-in-chief is only permissive and not mandatory.

iv) There is no express special procedure enlisted in Section 7(10) & (11) of the Act to dispense with the requirement of submission of list of witnesses.

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46. **Lahore High Court**
Abdul Rehman v. Addl. District Judge-I, Rajanpur, etc.
Writ Petition No.382 of 2016
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC3899.pdf

Facts: The respondent no. 03 filed eviction petition against the petitioner which was allowed and upheld by appellate court. Through instant writ petition, the petitioner has challenged the concurrent findings of forums below.

Issues: i) What is legal value of family settlement and partition?

ii) Whether unproven tenancy agreement cum family settlement can be made basis of eviction proceedings against co-owner?

iii) How the eviction petition is to be decided, if the relationship between the parties is such that it cannot be decided without first determining the landlord's title?

iv) Whether High court can interfere into concurrent findings of forums below?

Analysis: i) There is no cavil to the proposition that a family settlement and partition can be reached at privately by the parties and courts of law have recognized such private partition, however, same requires some degree of recognition under the law or through the conduct of the parties.

ii) An unproven and unsubstantiated tenancy agreement cum family settlement cannot be made basis of eviction proceedings against the co-owner.

iii) If the relationship between the parties is such that it cannot be decided without

first determining the landlord's title, then the matter may be decided against the landlord who may be asked to approach the appropriate forum to first determine the question of his title as the Rent Tribunal is not competent to decide the question of title.

iv) In exercise of constitutional jurisdiction, utmost reluctance should be exercised to interfere in the concurrent findings rendered by the forums below, however, the said rule is neither an invariable nor an absolute norm, rather the same is subject to the overarching principle that interference can be made in concurrent findings where such findings are perverse and are likely to result in miscarriage of justice.

Conclusion: i) Courts of law have recognized private partition, however, same requires some degree of recognition under the law or through the conduct of the parties.

ii) An unproven and unsubstantiated tenancy agreement cum family settlement cannot be made basis of eviction proceedings against the co-owner.

iii) If the relationship between the parties is such that it cannot be decided without first determining the landlord's title, then the matter may be decided against the landlord who may be asked to approach the appropriate forum to first determine the question of his title.

iv) High court can interfere into concurrent findings of forums below where such findings are perverse and are likely to result in miscarriage of justice.

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47. **Lahore High Court**
Mian Abdul Ghaffar v. Mst. Kishwar Iqbal and 5 Others
Civil Revision No.369 of 2021/BWP
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC4202.pdf

Facts: The petitioners instituted suit for specific performance of part of a contract and Learned trial Court dismissed the suit. The said judgment and decree was assailed through Civil Appeal which was also dismissed. Aggrieved from the same, the petitioners filed this civil revision.

Issues: i) Whether part of a contract can be specifically enforced?

ii) Whether right of specific performance of a contract is absolute?

Analysis: i) Section 17 clearly prohibits decree of performance of part of the contract, unless the case squarely falls under section 14 to 16 of Act. It is settled law that the splitting up of the contract is not permissible and the contracts are to be performed in their entirely…specific performance of the partial contract can only be ordered when the case strictly falls within the provisions of section 14 to 16 of the Act.

ii) The right of specific execution of contract is not absolute and its enforcement rest on the discretion of the Court.

Conclusion: i) Part of a contract cannot be specifically enforced unless the case squarely falls under section 14 to 16 of Specific Relief Act.
ii) Right of specific performance of a contract is not absolute but it is discretionary.

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48. **Lahore High Court**
Mian Ejaz Amir v. Haji Muhammad Ibrahim
Civil Revision No. 170 of 2022/BWP
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC4110.pdf

Facts: This Civil Revision, filed under Section 115 of the Code of Civil Procedure, 1908 (the 'Code'), is directed against order passed by learned Additional District Judge, Rahim Yar Khan, whereby, condition to furnish surety equivalent to the suit amount was imposed on the petitioner.

Issues: i) Whether under Order XXXVII, Rule 3(2) of the Code of Civil Procedure imposing a condition of security or payment into the Court or granting unconditional leave is within the discretion of the trial Court?
ii) Whether quality of the defense and the plausibility of facts on the basis of which challenge is raised to the claim in the suit is a leading factor while considering the question as to grant of leave, on condition or without imposing condition?
iii) Whether once discretion is used by the trial court, High Court does have jurisdiction to interfere in the same?

Analysis: i) A reading of Order XXXVII, Rule 3(2) of the Code clearly reflects that imposing a condition of security or payment into the Court or granting unconditional leave is within the discretion of the learned trial Court, which is required to be exercised keeping in view the facts and circumstances of each case.
ii) Combined reading of sub-rule (1) and sub-rule (2) the Order suggests that leading factor, when considering the question as to grant of leave, on condition or without imposing condition, is the quality of the defense and the plausibility of facts on the basis of which challenge is raised to the claim in the suit or consideration of the instrument involved.
iii) There are no two views about the proposition that imposition of condition or granting unconditional leave is within the discretion of the learned trial Court and when statute confers such discretion, the exercise of the same should not be ordinarily interfered, however, such discretion is required to be exercised in careful manners and the same should be based upon logical and legally sustainable reasoning.

Conclusion: i) Under Order XXXVII, Rule 3(2) of the Code of Civil Procedure imposing a condition of security or payment into the Court or granting unconditional leave is

within the discretion of the trial Court.
ii) Yes, quality of the defense and the plausibility of facts on the basis of which challenge is raised to the claim in the suit is a leading factor while considering the question as to grant of leave, on condition or without imposing condition.
iii) The exercise of the discretion by the trial court should not be ordinarily interfered, however, such discretion is required to be exercised in careful manners and the same should be based upon logical and legally sustainable reasoning

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49. **Lahore High Court**
Khan Muhammad alias Muhammad through L. Rs. v. Waryam and another

Civil Revision No. 60875 of 2017

Mian Noor Muhammad v. Waryam and another

Civil Revision No. 69095 of 2017

Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC4086.pdf

Facts: Through these civil revisions, the petitioners challenged the consolidated judgment and decree passed by learned Additional District Judge, whereby, civil appeal instituted by Khan Muhammad alias Muhammad (Petitioner No. 1) against the judgment and decree in favor of respondent passed by learned Civil Judge in a suit for declaration, has been dismissed and civil appeal filed by Mian Noor Muhammad (Petitioner No. 2) against the aforesaid judgment and decree has been partially allowed.

Issue: i) Whether without production of original title document by the claimant, the benami transaction can be proved?

ii) How the motive in a benami transaction is ascertained?

Analysis: i) The four factors; (i) Source of consideration; (ii) The party from whose custody the titled documents were brought on the record; (iii) Possession of suit property; and (iv) Motive behind benami transaction are considerations and guidelines for determining the issues involving benami transactions. Failure of deposit of title documents in evidence by claimant of benami transaction, provided it is reasonably explained, does not always has consequence of failure of claim. In case titled “Muhammad Sajjad Hussain Vs. Muhammad Anwar Hussain” (1991 SCMR 703) the Honourable Supreme Court of Pakistan while refusing to decline the relief (of benami) for not producing the titled document in evidence, has observed as follows:- “Be that as it may, since the appellant was the ostensible owner of the second house, he obtained the title deed from the House Building Finance Corporation and, therefore, the production of the title deed by the appellant is itself not sufficient to negate the other evidence which tends to prove that the appellant was Benamidar”.

ii) As far as the motive is concerned, the same can be ascertained by determination of the intention of the parties, at the time of transaction, which can be gathered from surrounding circumstances including the relationship of parties. The argument of learned counsel for the petitioner that the 'motive' required to be proved in such transaction has to be one of the conventional kind, like avoidance of tax or some public functionary avoiding to disclose his wealth is not valid as there is no such requirement of law to establish a transaction of benami motive has to be stained with malice. The requirement of law is to see character of transaction and intention of the parties at the time of the transaction, which is not necessarily required to be criminal one. In this regard the relation of the parties sometimes can be quite important. It was not uncommon in our society to purchase properties in the names of spouse or children or even brothers or parents.

Conclusion: i) The benami transaction can be proved by the claimant without production of original title document provided it is reasonably explained.

ii) The motive can be ascertained by determination of the intention of the parties, at the time of transaction, which can be gathered from surrounding circumstances including the relationship of parties.

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50. **Lahore High Court**
President, The Bank of Punjab etc v. Authority under Payment of Wages Act etc.
Writ Petition No.2812 of 2013
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4215.pdf

Facts: The petitioner bank filed an application under Order VII Rule 11 CPC praying for the claim to be dismissed on account of want of jurisdiction since the petitioner bank is a trans-provincial organization and on account of which feature a provincial authority had no jurisdiction to attend to a dispute or a claim rooted in labour law against an organization. The Authority under the Payment of Wages Act, 1936 dismissed the application filed under Order VII, Rule 11 CPC. Being aggrieved the petitioner filed the writ petitions.

Issues: i) How the jurisdiction is ascertained in matters relating to disputes of labour?
ii) Whether the labour disputes and claims rooted in labour law can be dealt on provincial forum?

Analysis: i) The Hon'ble Supreme Court of Pakistan has unequivocally ruled that it is not the nature of dispute but the status of employer which will be the determining feature for the purpose of gauging jurisdiction in matters related to disputes of labour.

ii) The matters in respect of organizations and establishments that transcend provincial territorial boundaries, provincial quasi-judicial labour forums have no authority or jurisdiction to deal with labour disputes involving such organizations

and the employees of such organizations and establishments for the purpose of labour disputes and claims rooted in labour law can only approach the National Industrial Relations Commission and not any provincial forum.

Conclusion: i) The jurisdiction is ascertained in matters relating to disputes of labour thorugh the status of employer and not by the nature of dispute.
ii) The labour disputes and claims rooted in labour law can only be dealt through the National Industrial Relations Commission and not any provincial forum.

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51. **Lahore High Court Lahore**
Nazeer Ahmad etc. v. Zakir Hussain etc.
C.R. No.1080-D of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4154.pdf

Facts: The petitioners, claiming to be bonafide purchasers, challenged two orders, first the order of the trial court decreeing the suit for specific performance filed by the respondents No.1 and 2 and second; the order of the appellate court dismissing their appeal against the said first order.

Issues: i) What would be effect of non-production of witness in evidence, written statement of whom is relied by a petitioners?
ii)What is the probative value of *Rapat Roznamcha?*
iii) If a specific issue is not framed but allegations are made in the plaint and the parties challenged in the written statement, then whether the Court can allow the parties to lead evidence on such point and to give decision on it without framing any issue?

Analysis: i) Petitioners didn't produce in evidence the lady written statement of whom was relied by them. The petitioners have withheld their best evidence.
ii) Entering a mutation or reporting the factum of acquisition of any right in an estate to the *Patwari* was a mere ministerial act, which did not confer or extinguish any right in any property and thus nothing really hinged on the same. It is also well established that *Rapat Roznamcha* attains no presumption of truth unless and until its maker is produced to prove the same without which no probative value can be attached to the *Rapat* incorporating mutation.
iii) Once the parties are alive to the contentions raised and when once evidence is adduced in support of such contentions, the non-framing of such an issue loses significance.

Conclusion: i) If the witness on whose written statement the petitioner has relied is not produced in court then an adverse presumption ensues that if it was produced it would be against the person withholding it.
ii) A mere *Rapat* of mutation does not confer any right and has no probative value without evidence of its maker in court.

iii) if a specific issue is not framed but allegations are made in the plaint and the parties challenged in the written statement, it is open to the Court to allow the parties to lead evidence on such point and to give decision on it without framing any issue.

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52. **Lahore High Court**
Abdul Maalik v. Abdul Sattar.
R.F.A No.90 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4191.pdf

Facts: Through this regular first appeal the petitioner has assailed judgment and decree passed by the Learned Trial court in suit for recovery filed against him under Order XXXVII, Rule 2 of CPC, on the basis of Cheque issued by him.

Issues: i)Whether consideration always meant to be Money?
ii)Whether abandonment of a dispute is a valid consideration?
iii) Whether earlier liabilities could be settled through execution of negotiable instrument and the same could be executed without mentioning them?
iv)Whether the burden of proof lies upon the party who negates the presumption that the negotiable instrument was drawn without consideration?

Analysis: i) Consideration does not always mean money but it can also take several other forms including abstinence of one party from taking any action. That abstinence or forbearance by one person at the desire of another gives rise to corresponding rights and clearly qualifies as consideration in terms of Section 2(d) of Contract Act, 1872. Consideration is a very wide term and is not restricted to monetary benefit. It does not necessarily mean money in return of money or money in lieu of service. Any benefit of some value can be valid consideration.
ii)The abandonment of a dispute is a valid consideration and it makes no difference if ultimately the claim is found to be without foundation since on account of the compromise a party is saved from the rigours of uncertain litigation.
iii) The execution of a negotiable instrument can only be for the purpose of clearing up or paying up certain liability or consideration and which particular consideration need not be referred or mentioned in or on the negotiable instrument. This would not be sufficient to deprive one from resorting to the course provided by Order XXXVII of the Code if it is established that earlier liabilities were settled by execution of the negotiable instrument.
iv) According to Section 118 of the Negotiable Instruments Act, 1881, until the contrary is proved, a presumption shall be drawn that the negotiable instrument in question was a drawn for consideration and the burden to rebut this presumption lies upon the party arguing that the negotiable instrument has not been drawn for consideration and that a bare denial of the passing of consideration does not

appear to be any defence.

Conclusion: i) No, consideration always meant not to be money and any benefit of some value can be valid consideration.
ii) Yes, abandonment of a dispute is a valid consideration.
iii)Yes, earlier liabilities could be settled through execution of negotiable instrument and the same could be executed without mentioning them.
iv) The burden of proof always lies upon the party who negates the presumption that the negotiable instrument was drawn without consideration.

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53. **Lahore High Court**
Zeshan Shah Qureshi, etc v. Mst. Zareena Begum (deceased) etc.
Civil Revision No.718-D of 2018
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4130.pdf

Facts: The suit for declaration filed by petitioner on the basis of oral agreement to exchange the property was decreed by learned trial court while dismissed by the learned appellate court. Hence this revision.

Issues: i) Whether an oral agreement could be proved without mentioning of particulars like specific date, time, and place of such agreement in the plaint?
ii) Whether evidence beyond the pleadings is permissible and could be relied upon?
iii)Whether aspect of possession is meaningless in sale?

Analysis: i) When a Person came to the court to prove an oral assertion made in the plaint, he was required to specifically plead the same with full details and where no date, time and place of an oral agreement was pleaded and no names of any witnesses had been mentioned a decree could not be passed because in an oral agreement to sell there is no document in support of version of the plaintiff.
ii) In the absence of specific particulars in the plaint the plaintiffs could not be allowed to lead evidence to set up a new case or for that matter to lead evidence beyond the scope of pleadings. A party is bound by the averments made in its pleadings and is also precluded from leading evidence except precisely in terms thereof.
iii) The aspect of possession was meaningless because it was not a necessary ingredient of sale and a bonafide purchaser from co-sharers could also be in constructive possession of the property in question.

Conclusion: i) An oral agreement cannot be proved without mentioning of particulars like specific date, time, and place of such agreement in the plaint.
ii) Evidence beyond the pleadings is not permissible and could not be relied upon.

iii) Aspect of possession is meaningless in sale as it is not necessary ingredient of sale.

LATEST LEGISLATION/AMENDMENTS

1. The Salary of Judges of High Court's Order, 2018 (P.o.No. 4 of 2018) is repealed by P.O.No. 2 of 2022
2. Amendment in paragraph 23, P.O.No. 3 of 1997 is made through P.O.No. 4 of 2022.

SELECTED ARTICLES;

1. **MANUPATRA**
   https://articles.manupatra.com/article-details/Spot-of-morality-in-law

   Spot of morality in law by Ashish Abhisek

   There are some normative patterns that are intended to increase good and decrease bad in personal and societal life, and these are what we mean when we talk about "morality." Legislators and judges do not function in a vacuum when crafting laws and rendering judgments. Societal norms influence their decisions. Judges and politicians develop legal principles based on societal ideas known as values. There is more to values than just prospective legislative materials. They are a means of critiquing legislation that has been proposed. Decision-making in the courts is informed by morality and values because of its very nature. In this paper, the link between the rule of law and morality is examined, as is the degree to which the two impact one another. Legal theorists have been interested in the link between morality and law since the inception of natural law ideas. They believe that law is governed by a conservative morality that is unable to articulate the job of adopting a non-exclusionary view of legal spheres. For the purpose of this article, we will examine some of the formal traits that morality and law share. Furthermore, analytic jurisprudence scholars have recently focused a significant deal of emphasis on the notion that a rule might illuminate the concept of law.

2. **MANUPATRA**
   https://articles.manupatra.com/article-details/MEDIATION-AS-A-TOOL-IN-RESOLVING-SPORTS-RELATED-DISPUTES

   Mediation as a tool in resolving sports related disputes by Rohan Priyam, Aditya Visen

   In today's world sports related activities have became an integral part in the lives of common citizens all around the world. Sports organizations such as Commonwealth Games, Asian Games, Olympics etc., athletes work really hard and try to win medals for their respective nations and make everyone proud. But there are some athletes who are not so honest in their approach in order to win medals for their nations and hence they take the route of doping, fixing, corrupt activities etc. Hence to curb this menace, many anti-corrupt organizations have

been set up all around the world to tackle with these issues through the medium of mediation. We will be discussing more about it in detail.

3. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s40319-022-01202-w

Patents on 5G Standards Are not Matters of National Security by Jorge L. Contreras

For centuries, technologies ranging from repeating rifles to nuclear detonators have implicated national security and defense. Intellectual property (IP), to the extent that it affects the ability of manufacturers to supply or develop these technologies, likewise raises national security considerations. Recently, however, advocates have sought to link the acquisition and assertion of patents by U.S. firms in the consumer marketplace to national security. These arguments have been particularly pronounced in the context of 5G wireless telecommunications standards.

4. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-022-09907-4

Environmental Law and Youth Protests: Future Generations Between Speech Acts and Political Representation by Luigi D. A. Corrias

Law is increasingly used to tackle climate change. In the relevant legal documents it is acknowledged that the problems that climate change causes will only exacerbate with the passing of time. In the legal literature this has been acknowledged and led to the formulation of the principle of intergenerational equity that 'requires each generation to pass the planet on in no worse condition than it received it in and to provide equitable access to its resources and benefits' ([4], p. 200). It is therefore not surprising that environmental law and policy documents claim to take into account the interests of the youth and future generations. These, however, do not seem convinced, as they have taken to the streets in marches under such names as School Strike for Climate and Fridays for Future. This article aims to provide a semiotic analysis of both environmental law and youth protests. More specifically, drawing on speech act theory this article regards both as types of communication and teases out the inherent voice and message, especially as it concerns future generations. The argument unfolds in three steps.

5. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/metaverse-legal-primer-health-care-industry

The Metaverse: A Legal Primer for the Health Care Industry by Douglas A. Grimm ,Gayland O. Hethcoat II

The metaverse is widely regarded as the next frontier in digital commerce, with businesses across all industries spending millions of dollars to acquire a digital presence for positioning as market leaders. While it offers transformational opportunities, the metaverse also presents unique legal challenges. This Alert highlights a few key legal issues stakeholders in the health care industry should consider before entering the marketplace.

6. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/metaverse-legal-primer-health-care-industry

What Counts as an Internal Complaint in a Sexual Harassment Case? by Eric Bachman

In a sexual harassment lawsuit, a key legal question is whether the employee complained to the company about the harassment. But what, exactly, counts as an internal complaint under the law? The answer, discussed in detail below, depends on who the harasser is and what internal complaint policies the employer has in place. The focus of this article is on an employer's affirmative defense to a sexual harassment case where a supervisor harasses an employee but no concrete action is taken against the employee/victim. Under this scenario, the employer will be liable for the harassment unless it proves both that (1) the employer took reasonable care to prevent and promptly correct any harassment; and (2) the employee unreasonably failed to use any preventative or corrective opportunities offered by the employer. See, e.g., Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998).