LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(16-05-2022 to 31-05-2022)

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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1. **Supreme Court of Pakistan**
Chairman NAB thr. P.G, Accountability v. Nasar Ullah etc.
Civil Petitions No. 1809 to 1814 of 2020
Chief Justice Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1809_2020.pdf

Facts: The Chairman, National Accountability Bureau sought leave to appeal against the judgment passed by the Lahore High Court, whereby post-arrest bails have been granted to the respondents in a NAB Reference.

Issues: Whether delay in conclusion of trial under NAO 1999 is a valid ground for grant of post arrest bail to an accused facing NAB Reference?

Analysis: Under Section 16(a) of the NAB Ordinance, the trial is to proceed on a day-to-day basis and to be concluded within thirty days. The bar on granting bail to the accused under the NAB Ordinance is equitably balanced by providing for the trial to proceed on a day-to-day basis and its conclusion within thirty days. This statutory balance between the bar to grant bail and the expeditious conclusion of the trial would be rendered meaningless if an under-trial accused is detained for a long unexplained and unjustified period without determination of his guilt……Therefore, when the provision of NAB Ordinance requiring conclusion of trial within thirty days is not implemented, the corresponding provision barring grant of bail to the accused would also become proportionally pliant. If the scheme of a law in regard to a vital part fails, the sanctity of the other part, as observed by Salahuddin, J. in *Zahur Ilahi*, must of necessity be affected and what appears to be rigid must give way to flexibility. Inordinate delay in conclusion of the trial of an accused, for no fault on his part, being not envisaged by the NAB Ordinance would inevitably attract the constitutional protections under Articles 4, 9 and 10A of the Constitution.

Conclusion: The delay in conclusion of trial under NAO 1999 is a valid ground for grant of post arrest bail to an accused facing NAB Reference.

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2. **Supreme Court of Pakistan**
Mst. Kalsoom Begum v. Peran Ditta, etc.
Civil Appeal No. 1348 of 2014
Mr.Justice Qazi Faez Isa, CJ. Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1348_2014.pdf

Facts: Through this appeal, the appellant has challenged the judgment of High Court wherein the judgment of the Appellate Court in civil revision had been set aside and suit filed by the appellant was dismissed.

Issues: i) Whether section 4 of the Muslim Family Laws Ordinance, 1961 is no longer applicable?
ii) What are three essential ingredients of a valid gift?
iii) In what mode the gift ought to be accepted?

Analysis: i) The decision of the Federal Shariat Court in the case of Allah Rakha in which it had struck down section 4 of the Muslim Family Laws Ordinance, 1961 was challenged in an appeal filed under Article 203F of the Constitution of the Islamic Republic of Pakistan before the Shariat Appellate Bench of this Court, and leave was granted. Consequently, section 4 of the Ordinance continues to be the subsistent law of Pakistan, and shall remain so till such time that the Shariat Appellate Bench of the Supreme Court either upholds the decision of the Federal Shariat Court in the Allah Rakha case or dismisses the said appeal.
ii) To constitute a valid gift, it is settled that three essential ingredients must exist: (1) declaration of gift, (2) acceptance of the gift, and (3) delivery of the possession of the subject of the gift.
iii) Acceptance of gift may be specific or even implied in certain circumstances, for instance, by simply saying thank you or by some other act signifying acceptance, such as a nod of the head…

Conclusion: i) Section 4 of the Muslim Family Laws Ordinance, 1961 continues to be the subsistent law of Pakistan.
ii) To constitute a valid gift, three essential ingredients must exist: (1) declaration of gift, (2) acceptance of the gift, and (3) delivery of the possession of the subject of the gift.
iii) Acceptance of gift can be specific or implied.

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3. Supreme Court of Pakistan
Haji Muhammad Yunis (deceased) through legal heirs and another v. Mst. Farukh Sultan and others.
Civil Appeals No. 152 and 153 of 2019 and Civil Petition No. 472 of 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._152_2019.pdf

Facts: The respondent no. 1 instituted suit for declaration challenging a sale mutation while impleading his siblings as proforma defendants. Respondent no. 02 contested the suit while claiming that property belongs to him under family settlement and also disputed the validation of sale mutation. The suit of respondent no. 1 was dismissed whereas separate appeals filed by respondents no. 01 & 02 were also dismissed, thereafter both filed civil revisions which were allowed by the High Court by a common judgment, hence civil appeals filed by appellants. Furthermore, the appellants filed a complaint u/s 3 & 8 of Illegal

Dispossession Act 2005, against respondent no. 02 wherein the respondent no. 02 filed an application challenging the maintainability of complaint due to pendency of civil revisions against judgments of trial and appellate court. The trial court dismissed the application and respondent challenged the said order through writ petition. High Court allowed the said writ petition and dismissed the complaint of appellants while relying upon the common judgment passed in civil revision petitions. The appellants have filed civil petition for leave to appeal.

Issues: i) What is distinction between an "actual denial of right" and an "apprehended or threatened denial of right" in relation to applicability of the law of limitation in cases seeking declaration of proprietary rights in immovable property?
ii)When the deceased has not challenged the mutation during the life time and the right to sue has become time barred during his/her life, whether fresh period of limitation for sue would start for the legal heirs at his/her death?
iii) If the sale transaction is challenged; when onus to prove is shifted on the beneficiary of the transaction?
iv) Whether High court can interfere into concurrent findings of trial and appellate court?

Analysis: i) Every new adverse entry in the revenue record, being a mere "apprehended or threaten denial" relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person a fresh cause of action to institute the suit for declaration. It has, however, further clarified that the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation. In such a case, the alleged wrong entry in the revenue record coupled with the very act of taking over possession of the land by the alleged buyer or donee, in pursuance of the purported sale or gift, is an "actual denial of the proprietary rights" of the alleged seller or donor and thus, the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such actual denial. Therefore, in such a case, if the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation period, despite having knowledge thereof, his right to do so becomes barred by the law of limitation, and the repetition of the alleged wrong entry in the subsequent revenue record (Jamabandi) does not give rise to a fresh cause of action.
ii) If deceased lived for about two decades after sanction of the suit mutation but did not exercise the right within the limitation period of six years prescribed in Article 120 of the first Schedule to the Limitation Act thus right of deceased, therefore, became time barred even in his/her lifetime. When the right to sue of a person from or through whom the legal hears derive their right to sue has become time barred, no fresh period of limitation can start for such legal heirs...
iii) When a sale transaction of an immovable property is challenged, the ultimate onus to prove the same is on the "beneficiary" thereof. However, this onus is shifted on the "beneficiary", only when the challenger puts forth some evidence to

discharge the initial burden to rebut the legal presumption of truth in favour of the disputed long-standing revenue entries or registered sale deed, as the case may be.
iv) The High Court does not have, in its revisional jurisdiction, the legal mandate to reverse the concurrent findings of the trial and appellate courts, without first addressing the said reasoning of the trial and appellate courts.

Conclusion: i) Every new adverse entry in revenue record being apprehended or threatened denial gives a fresh cause of action to institute the suit whereas in case of actual denial limitation period runs from the date of actual denial and repetition of wrong entry in revenue record after actual denial does not give rise to a fresh cause of action.
ii) When the deceased has not challenged the mutation during the life time and the right to sue has become time barred in his/her life, no fresh period of limitation for sue would start for the legal heirs at his/her death.
iii) If the sale transaction is challenged; onus to prove is shifted on the beneficiary of the transaction, only when the challenger puts forth some evidence to discharge the initial burden to rebut the legal presumption of truth in favor of the disputed long-standing revenue entries.
iv) High court cannot interfere into concurrent findings of trial and appellate court without first addressing the said reasoning of the trial and appellate courts.

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4. **Supreme Court of Pakistan**
Mst. Raj Begum (deceased) through her L.Rs and others v. Mst. Ajaib Jan (deceased) through her L.Rs and others.
Civil Petition Nos. 230 of 2016
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._230_2016.pdf

Facts: The predecessors of respondents filed a suit for cancellation of inheritance mutation being attested in favour of sons/predecessors of appellants while depriving the daughters. The suit was decreed, appeal against same was dismissed and civil revision filed by appellants in High Court was also dismissed. The appellants filed CPLA and leave was granted.

Issues: If a person had died before the date of enactment of Punjab Muslim Personal Law (Shariat) application Act, 1948, whether only male heirs would be entitled to receive property of deceased to the exclusion of female heirs?

Analysis: The purported exclusion of the other legal heirs would depend as to when property formally acquired by male legal heirs. Section 2-A inserted to West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 through Ordinance XIII of 1983 was applicable only to those acquisitions of agricultural land which acquisition had come about prior to March 15, 1948. If the date of formal acquisition of property or attestation of inheritance mutation is after the cut-off date 15 March 1948 (date of enactment of Punjab Muslim Personal Law (Shariat) application Act, 1948) such acquisition by the male heirs cannot be

permitted as being contrary to the application of Islamic Shariat Law of inheritance and such inheritance mutation depriving female heirs is liable to be cancelled…

Conclusion: If a person died before the date of enactment of Punjab Muslim Personal Law (Shariat) application Act, 1948 (cut-off date), exclusion of female legal heirs depends upon date of formal acquisition of property. If formal acquisition of property i.e attestation of inheritance is after cut-off date 15th March 1948, then exclusion of female heirs would not apply

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5. Supreme Court of Pakistan
Janab Ali v. The State, etc.
Criminal Petition No. 407 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._407_2022.pdf

Facts: This criminal petition arose out of FIR regarding murder of a female, which is converted into appeal.

Issues: i) What are requirements of investigation in case of honour killing of female particularly where the complainant and/or the witnesses are also ladies as well?
ii) Whether bail can be granted merely on the ground that the complainant has not objected in the cases of honor killing?

Analysis i) A lady police officer should be associated with these type of cases particularly where the complainant and/or the witnesses are ladies, who may not be forthcoming before male police officers, are intimidated and/or actively conceal the truth of the matter. In such cases, usual methods in investigating crimes may also not reveal the truth. And, the emphasis placed on the complainant's statement needs careful and proper consideration. Circumstantial evidence and the stated motive be tested for veracity, and it be explored whether behind the crime there was another motive.
ii) In cases of honour killing, the mere fact that the complainant does not object to bail may not be a factor, let alone a determinative factor.

Conclusion: i) A lady police officer should be associated with these type of cases particularly where the complainant and/or the witnesses are ladies. In such cases complainant's statement needs careful and proper consideration. Circumstantial evidence and the stated motive be tested for veracity, and it be explored whether behind the crime there was another motive.
ii) In such cases the mere fact that the complainant does not object to bail may not be a factor, let alone a determinative factor.

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6. Supreme Court of Pakistan
Mrs. Naila Naeem Younus, etc. v.M/ s Indus Services Limited through its Chief Executive, etc.
Civil Petition No. 4296/ 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4296_2019.pdf

Facts: This petition challenges order passed by the learned Company Judge of the Lahore High Court whereby the petitioners' application for correction of the register of members of Indus Services (Pvt) Limited, was dismissed.

Issues: i) What constitutes the register of members and debenture-holders and its significance?
ii) Whether Article 181 applies to an application for the rectification of the register of a company and rectification of the Company's register could be sought after three years?

Analysis i) The law requires every company to keep a register of its members and debenture -holders and to keep this register at the registered office of the company and to make it available for inspection. Every company is also required to file every year 'a return containing the particulars specified in Form A of the Third Schedule', which includes a list of members of the company and to show the number of shares held by each member. Therefore, the register is not just a register of members but also a register of the shareholding of each member. The register of members lists the owners of a company and records their proprietary rights, that is, their shareholding of the company. Consequently, the integrity of the register of members is of utmost importance and must be maintained. If the 'name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members' the register needs to rectified.
ii) The Ordinance does not prescribe any period within which an application for rectification may be submitted. Therefore, it would not be appropriate to do so on account of a tenuous connection with Article 181 of the Limitation Act. Section 152 of the Ordinance does not distinguish between rectification necessitated on account of a fraud having been committed and rectification required to correct an omission in the register of members. Fraudulent changes made to the register and omissions therefrom are both categorized as offences. There is no limitation period in Pakistan to prosecute and punish a crime; unlike some countries where there are statutes of criminal limitations. A fraudster, who had illegally transferred shares of another into his own name commits a crime and could be convicted for this offence. However, if the impugned order is upheld, the one defrauded could not get back his/her shares, if the application to rectify the company's register was filed after a period of three years. But this irreconcilable contradiction does not arise if Article 181 is held not to apply to an application to rectify the company's register. SECP is quite correct to state that when section 152 of the Ordinance is read with the section following it (section 153) it removes

all doubts, if there were any, that the legislative intent was not to prescribe a period of limitation in filing a rectification application, or to make it subject to Article 181, or to any other provision of the Limitation Act.

Conclusion: i) The law requires every company to keep a register of its members and debenture -holders and to keep this register at the registered office of the company and to make it available for inspection. The register of members lists the owners of a company and records their proprietary rights, that is, their shareholding of the company.

ii) If section 152 of the Ordinance is read with the section following it (section 153) it removes all doubts, if there were any, that the legislative intent was not to prescribe a period of limitation in filing a rectification application, or to make it subject to Article 181, or to any other provision of the Limitation Act.

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7. Supreme Court of Pakistan
Abdul Aziz v. Mst. Zaib-un-Nissa & others
Civil Petition no. 2711 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2711_2019.pdf

Facts: This CPLA directed against the judgment passed by learned Lahore High Court, Rawalpindi Bench, in Civil Revision whereby the Civil Revision of the petitioner was dismissed and the concurrent findings recorded by the Courts of the learned Civil Judge as well as the Additional District Judge were upheld.

Issues: i) What rules apply regarding transaction by illiterate and ignorant woman?

ii) What is duty of court while dealing with a document executed by a Pardanashin or illiterate lady?

iii) What conditions ought to be complied with and fulfilled through evidence to prove the transaction by a Pardanasheen lady being legitimate and free from all suspicions and doubts?

Analysis: The rules regarding transaction by a Pardanashin lady are evenly applicable to an illiterate and ignorant woman though she may not be Pardanashin lady in a strict sense. The document severely and gravely jeopardizing the interest of an illiterate and Pardanashin lady in favour of any person having a relationship of profuse confidence and faith with them requires stringent testimony and authentication of execution with the assurance of independent and unprejudiced advice to such lady with further confirmation and reassurance without any doubt that the description, repercussions and aftermath/end result of the transaction was fully explained and understood. The burden of proof shall always rest upon the person who entreats to uphold the transaction entered into with a Pardanashin or illiterate lady to establish that the said document was executed by her after mindfulness of the transaction.

ii) It is imperative for the Court as an assiduous duty and obligation that, while

dealing with the instance of any document executed by a Pardanashin or illiterate lady, it ought to be satisfied with clear evidence that the said document was in fact executed by her or by a duly constituted attorney appointed by her with full understanding and intelligence regarding the nature of the document.

iii) In the case of Phul Peer Shah versus Hafeeza Fatima (2016 SCMR 1225), it was held that in a case of such transaction with old, illiterate/rustic village 'Parda Nasheen' lady onus to prove the transaction being legitimate and free from all suspicions and doubts surrounding it, can only be dispelled if the lady divesting herself of a valuable property, the following mandatory conditions are complied with and fulfilled through transparent manner and through evidence of a high degree. Amongst this condition, the pre-dominantly followed are:- (i) that the lady was fully cognizant and was aware of the nature of the transaction and its probable consequences; (ii) that she was having independent advice from a reliable source/person of trust to fully understand the nature of the transaction; (iii) that witnesses to the transaction are such, who are close relatives or fully acquainted with the lady and were having no conflict of interest with her; (iv) that the sale consideration was duly paid and received by the lady in the same manner and (v) that the very nature of transaction is explained to her in the language she understands fully and she was apprised of the contents of the deed/receipt, as the case may be.

Conclusion: i) The rules regarding transaction by a Pardanashin lady are evenly applicable to an illiterate and ignorant woman though she may not be Pardanashin lady in a strict sense.

ii) It is duty of court to be satisfied with clear evidence that the said document was in fact executed by her or by a duly constituted attorney appointed by her with full understanding and intelligence regarding the nature of the document.

iii) Above conditions ought to be complied with and fulfilled through evidence to prove the transaction by a Pardanasheen lady being legitimate and free from all suspicions and doubts.

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8. Supreme Court of Pakistan
Sajjad Hussain v. The State etc
Criminal Petition No. 1802-1 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/crl.p._1802_l_2017.pdf

Facts: Petitioner along with co-accused was tried by the learned Additional Sessions Judge, pursuant to a private complaint under Sections 302/324/148/149/109 PPC and in FIR under Sections 302/324/148/149 PPC for committing two murders and injuries to one person. The learned Trial Court convicted the petitioner under Section 302(b) PPC and sentenced him to death on two counts and also fined him for compensation. One of the co-accused was acquitted of the charge. However, the remaining co-accused were convicted under Section 302(b) PPC and were

sentenced to imprisonment for life. In appeal, the learned High Court while acquitting the co-accused and maintaining the conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life on two counts. The amount of compensation and the sentence in default whereof was maintained. Hence this criminal appeal.

Issues: i) Whether a person can be involved in the commission of offence on the basis of communication via mobile phone?
ii) What are the essential ingredients to establish/charge any person as conspirator?
iii) Under what circumstance benefit of doubt is extended to the accused?

Analysis: i) A person cannot be involved in the commission of offence on the basis of communication via mobile phone when neither the mobile phone nor Call Data Record was placed on record nor even the memo of recovery of mobile phone was made.
ii) Section 107 PPC reveals that three ingredients are essential to establish/charge any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment. However, all these three ingredients of Section 107 PPC are squarely missing from the record.
iii) Even a shadow of doubt in the prosecution case has been created, benefit of which must be given to the petitioner. 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.

Conclusion: i) A person cannot be involved in the commission of offence on the basis of communication via mobile phone without placing on record the evidence of communication through mobile phone.
ii) Three ingredients are essential to establish/charge any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment.
iii) A single circumstance creating reasonable doubt in a prudent mind about the guilt of accused is sufficient for extending the benefit of doubt.

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9. Supreme Court of Pakistan
Muhammad Arshad v. The State and Babar Abbas.
Criminal Petition No. 1603-L of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1603_l_2021.pdf

Facts: Through instant criminal petition, the petitioner has assailed the order passed by the learned Single Judge of the Lahore High Court, Lahore, whereby the application for suspension of sentence, filed by the respondent was allowed and he was granted bail.

Issues: i) Whether complainant and prosecution witnesses can improve their earlier stance and the same can be made basis to keep a person behind the bars?
ii) Whether benefit of doubt can be extended to accused at preliminary stage?

Analysis: i) The possibility cannot be ruled out that the prosecution witnesses deviated on the advice of the counsel or otherwise, therefore, the same cannot be made basis to keep a person behind the bars for indefinite period especially when the Investigating Officer has candidly stated that the empties recovered from the place of occurrence had not been fired by the pistol allegedly recovered at the instance of the respondent..
ii) It is now established beyond any doubt that benefit of doubt can be extended even at preliminary stage i.e. bail & suspension of sentence.

Conclusion: i) Complainant and prosecution witnesses cannot improve their earlier stance and the same cannot be made basis to keep a person behind the bars.
ii) Yes, benefit of doubt can be extended to the accused at preliminary stage.

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10. Supreme Court of Pakistan
Ijaz Ahmed v. The State etc
Criminal Petition No. 963-L of 2016
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar,
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._963_l_2016.pdf

Facts: The petitioner alongwith co-accused was tried for offences u/s 302, 392 & 412 PPC. The learned trial court awarded imprisonment, fine and death. In appeal, learned Lahore High Court maintained the conviction and altered the sentence of death into imprisonment for life. The petitioner through this petition has assailed judgement passed by the learned Lahore High Court.

Issue: i) Whether conviction can be based on the testimony of a single witness?
ii) Whether testimony of brother of deceased can be believed for conviction?

Analysis: i) It is a settled principle of law that it is the quality of evidence which is to be considered and not the quantity of evidence. The evidence of one person, if found confidence inspiring, is sufficient to sustain conviction.
ii) It is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the

testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.

Conclusion: i) Conviction can be based on the testimony of a single witness if found confidence inspiring.
ii) Testimony of brother of deceased can be believed for conviction unless previous enmity or ill will is established.

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11. Supreme Court of Pakistan
The Postmaster General Sindh Province, Karachi & Others v. Syed Farhan
Civil Petition No. 342-K Of 2020
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._342_k_2020.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the Federal Service Tribunal, whereby the Service Appeal was partially allowed by converting the major punishment of removal from service into a minor penalty of withholding of promotion for a period of one year and the petitioner was directed to restore the respondent in service from the date of his removal with back benefits.

Issues: i) How the power of discretion is required to be exercised by the Court or Tribunal?
ii) How the expression "gross negligence" and "ordinary negligence" are established?
iii) Whether an ordinary negligence may be converted into gross negligence?
iv) Whether the extreme penalty for minor acts defeat the reformatory concept of punishment in administration of justice?

Analysis: i) It is settled law that a judicial power exercised in discretionary jurisdiction, is not supposed to be interfered with by a higher judicial forum for collateral consequence in its discretion. It was further held that that the Tribunal has to follow the limitations and restrictions of law in its exercise of discretion in a manner which may not offend the spirit of law. The concept of discretion in judicial power is to advance the cause of justice and exercise of this power in a judicious manner in the aid of justice, and not to perpetuate injustice, whereas the executive authorities have different considerations for exercise of such power. In the case of Chairman Dr. A.Q. Khan, Research Laboratories and another v. Malik Muhammad Hamid Ullah Khan (2010 S C MR 302), it was held by this Court that the Courts/Tribunals seized with the matter are required to pass orders strictly within the parameters of the Constitution and the law and the rules, and have no jurisdiction to grant arbitrary relief in favour of any person.
ii) The expression "negligence" in fact connotes a dearth of attentiveness and alertness or disdain for duty. The genus of accountability and responsibility differentiates and augments an act of gross negligence to a high intensity rather

than an act of ordinary negligence. To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under the peculiar set of circumstances.

iii) Sometimes a little or minor mistake or negligence or inefficiency may cause serious disaster or devastation and have severe ramifications. So, while declaring or weighing any act of negligence or inefficacy vis-à-vis the penalty imposed by the management, either major or minor, and before the conversion of the sentence, the Service Tribunal is bound to revisit the entire evidence available on record with the inquiry findings and report and, if conversion is required in the interest of justice, then it should be with due weightage, commensurate and proportionate to the gravity of charges and act of negligence/inefficiency and not on the basis of an uncontrolled or unbridled exercise of discretionary powers of the Tribunal without any raison d'être.

iv) In service matters, the extreme penalty for minor acts depriving a person from right of earning would definitely defeat the reformatory concept of punishment in administration of justice. No doubt the philosophy of punishment is based on the concept of retribution. The purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society and the extreme penalty for minor acts would defeat the reformatory concept of punishment in administration of justice but at the same time we cannot lose sight of a ground reality that, in the case in hand, the respondent was found guilty of failing to perform his acute and crucial responsibility of checking and supervision by and large as In Charge, though he was not found directly guilty of misappropriation or embezzlement of pension fund for his own.

Conclusion: i) The power of discretion is required to be exercised by the Court or Tribunal strictly within the parameters of the Constitution and the law and the rules and not by granting arbitrary relief in favor of any person.

ii) To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under the peculiar set of circumstances.

iii) An ordinary negligence may be converted into gross negligence with due weightage, commensurate and proportionate to the gravity of charges and act of negligence/inefficiency and not on the basis of an uncontrolled or unbridled exercise of discretionary powers of the Tribunal without any raison d'être.

iv) The extreme penalty for minor acts would definitely defeat the reformatory concept of punishment in administration of justice.

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12. Supreme Court of Pakistan
Manzar Zahoor v. Lyari Development Authority and another
Civil Petition No. 677-K of 2019
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._677_k_2019.pdf

Facts: This Civil petition for leave to appeal is directed against the order passed by High Court of Sindh, Karachi, whereby the Constitution Petition filed by the petitioner for challenging the office order declining to change his date of birth in service record was dismissed.

Issue: i) Whether a civil servant can change his date of birth in service record at a belated stage or at the verge of his retirement?
ii) What is the lawful procedure to change the date of birth of a civil servant in his service record?

Analysis: i) In the case of Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456), this Court held that the mode of correction in the date of birth of a Civil Servant is provided under Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is part of the terms and conditions of service of a Civil Servant and cannot be resorted to through the Civil Suit. While in the case of Muhammad Khaliq Mandokhail. vs Government of Balochistan through Chief Secretary, Civil Secretariat Quetta and another (2021 SCMR 595), it is held that a Civil Servant could not seek alteration in his date of birth at the verge of his retirement. Similarly, in the case of Inspector General of Police, Balochistan, Quetta and others vs. Mohibullah (2022 SCMR 9), this Court held that the date of birth once written in the service record at the time of entering into service cannot be altered or changed and, in any case, it cannot be done after two years.
ii) Once an entry of age or date of birth has been made in a service book, no alteration of the entry should afterwards be allowed, unless it is known that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. Furthermore, the instructions encompassed in the Rule state that Officers competent to alter dates of birth should note that no change in the date of birth will be allowed unless an application is made by the Government servant within two years of the date on which his service book was opened under Rule 167 of the Sindh Civil Services Manual. The most indispensable constituent is that, if an application is made after the period of two years, it should be submitted to the Government for orders and the change in the date of birth should not be allowed on the evidence which could be available to a Government servant when he entered Government service and his date of birth was recorded in the service book.

Conclusion: i) A civil servant cannot change his date of birth in service record at a belated

stage or at the verge of his retirement.

ii) The lawful procedure to change the date of birth of a civil servant in his service record is to apply within two years of the date on which his service book was opened.

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13. Lahore High Court
Nasir Mahmood. v. Zafar Iqbal and another
Civil Revision No. 49002 of 2021
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC3541.pdf

Facts: The petitioner filed suit for possession through specific performance of agreement wherein respondent No.1 filed an application for dismissal of the suit due to non-deposit of remaining sale consideration whereas the petitioner filed an application seeking permission to deposit the remaining sale consideration. Trial Court dismissed the application filed by respondent No.1 and allowed that of the petitioner directing him to deposit remaining sale consideration within a period of fifteen days. The petitioner failed to deposit full amount and filed an application seeking extension of time for payment of remaining amount. The learned Trial Court while rejecting the application filed by the petitioner dismissed his suit due to non-compliance of order, hence this petition.

Issues: i) Whether the trial court can invoke the penal provisions of Order XVII rule 3 of CPC due to any previous omission or commission of the petitioner?

ii) Whether any specific circumstances are considered for the extension of time for compliance of court order?

iii) Whether there is any embargo on the trial courts for the application of the penal provisions of order XVII rule 3?

iv) Whether the consolidated proceedings are to be decided together?

v) Whether it is mandatory to decide the lis on the same day when a party fails to comply with the order of a court?

vi) Whether there exists any provision in the Specific Relief Act, 1877 compelling plaintiff in a suit for Specific Performance of Agreement to Sell to deposit the balance amount of consideration?

vii) Whether the failure on the part of trial courts to exercise their powers vested in it u/s 148 of CPC calls for interference of High court?

Analysis: i) When the Trial Court invokes the penal provisions of Order XVII rule 3 CPC due to non-compliance of order no reference can be made to any previous omission or commission, if any, on the part of the petitioner.

ii) The question relating to extension of time to comply with an order of the court depends upon the facts and circumstances of each case.

iii) There is no cavil with the proposition that in the event of non-compliance of a court's order, court can invoke penal provisions of Order XVII rule 3 CPC but prior to resorting to such penal action the court should satisfy itself that the party

concerned has failed to comply with its order despite availing reasonable time.

iv) It is well settled by now that when different proceedings are consolidated by a court of competent jurisdiction, they are to be decided jointly until and unless they are unconsolidated by the same forum with tangible reasons. The suit of the petitioner could not be dismissed in isolation without deciding the fate of the other suit which was consolidated.

v) It is not mandatory to decide the lis on the same day when a party fails to comply with the order of a court rather the court should adjourn the proceedings to the decide the same on merits or having regard to the peculiar facts and circumstances of the case should extend the period for compliance of its own order suo moto or on the application of the party concerned.

vi) There exists no provision in the Specific Relief Act, 1877 compelling plaintiff in a suit for Specific Performance of Agreement to Sell to deposit the balance amount of consideration rather the courts order so to adjudge the readiness of the plaintiff to perform his part of the contract. If the conduct of the petitioner is adjudged in line with the decision of the Apex Court of the country, upon deposit of the entire balance amount of consideration it cannot be doubted that he not willing to perform his part of the contract.

vii) As per section 148, a court enjoys power to extend period fixed by it for performance of an act by a party to the lis upon showing sufficient cause for non-compliance of its order within the stipulated period. If the Trial Court failed to exercise its powers in violation of the above provision it amounts to failure on its part to exercise the power vested in it which calls for interference by this court in exercise of its revisional jurisdiction vested under section 115 CPC.

Conclusion: i) Trial court cannot make any reference to any previous omission or commission, if any, on the part of the petitioner.

ii) The question relating to extension of time to comply with an order of the court depends upon the facts and circumstances of each case.

iii) There is no embargo but the court should satisfy itself that the party concerned has failed to comply with its order despite availing reasonable time.

iv) Different proceedings are to be decided jointly until and unless they are unconsolidated by the same forum with tangible reasons.

v) It is not mandatory to decide the lis on the same day when a party fails to comply with the order of a court.

vi) There exists no provision in the Specific Relief Act, 1877 compelling plaintiff in a suit for Specific Performance of Agreement to Sell to deposit the balance amount of consideration.

vii) Failure of trial court to exercise the power vested in it u/s 148 of CPC calls for interference by this court in exercise of its revisional jurisdiction vested under section 115 CPC.

14. Lahore High Court
Muhammad Hussain deceased through L.Rs. & others v. Muhammad Ali & others.
Civil Revision No.490 of 2013
Mr. Justice Shahid Waheed
https://sys.lhc.gov.pk/appjudgments/2022LHC3427.pdf

Facts: The attorney of the property transferred the property in name of his father through gift on behalf of original owner aged about 90 years. The other heirs filed declaratory suit which was dismissed. This application under Section 115 CPC is of the unsuccessful plaintiffs and seeks revision of the concurrent findings of the two Courts below.

Issues: i) Whether the attorney/agent is competent to gift the property of original owner himself?
ii) Whether registered deed is enough to establish the gift when donee excludes an heir?
iii) When cause of action would arise to a legal heir deprived of his share of inheritance if donee, who is also one of legal heirs, is in possession of property?

Analysis: i) The gift is a personal action which can be performed by the owner himself only and for that reason, it is now well settled that the agent cannot of his own transfer the immovable property of the principal/owner through gift based on any power of attorney, even if the power of attorney contains the power to transfer the property through gift. In the case of "Ijaz Bashir Qureshi v. Shams-Un-Nisa Qureshi and others" (2021 SCMR 1298), it has been held that such powers can only be used for completion of codal formalities of the gift which must be by the owner himself and if on the contrary a transfer is made, it will be invalid.
ii) A donee claiming under a gift that excludes a heir, is required by law to establish the original transaction of gift irrespective of whether such transaction is evidenced by a registered deed.
iii) If the donee is also one of legal heirs then his possession would be considered as constructive possession of the disputed land on behalf of all the legal heirs, in spite of his exclusive possession and the cause of action would be deemed to have arisen when the plaintiffs were denied their rights. …. Even otherwise, it is now well settled that limitation does not run against co-sharer, nor can it be allowed to form the basis for depriving a legal heir of his share in the inheritance.

Conclusion: i) The attorney/agent is not competent to gift the property of original owner himself.
ii) Registered deed is not enough to establish the gift when donee excludes an heir. He is required to prove original transaction of gift.
iii) If donee/legal heir is in possession of the property then the cause of action would be deemed to have arisen when the deprived legal heirs were denied their rights.

15. Lahore High Court
Ghafoori Bibi v. Bashir Ahmed (deceased) through L.Rs. and others
Civil Revision No.3559 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC3609.pdf

Facts: Through this revision petition, the petitioner has challenged the vires, legality and sanctity of the impugned judgments and decrees passed by the learned Courts below.

Issues: i) When sanctity of a gift is challenged or called into question, whether the beneficiary has only to prove the valid execution of gift deed or mutation?
ii) Whether efflux of time extinguishes the right of inheritance?
iii) Whether limitation runs against a void transaction?

Analysis: i) When sanctity of a gift is challenged or called into question, the beneficiary has not only to prove the valid execution of gift deed or mutation but also the original transaction.
ii) The efflux of time does not extinguish the right of inheritance.
iii) Limitation does not run against a void transaction.

Conclusion: i) When sanctity of a gift is challenged or called into question, the beneficiary has not only to prove the valid execution of gift deed or mutation but also the original transaction.
ii) The efflux of time does not extinguish the right of inheritance.
iii) Limitation does not run against a void transaction.

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16. Lahore High Court
Tufail Muhammad v. Nazar Hussain and others.
Civil Revision No.1035 of 2008
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC3621.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 dismissed suit of the petitioner for possession and decreed suit of the respondent No.1 for specific performance on the basis of oral agreement to sell and further the said decree was assailed in appeal by the petitioner but the same was also dismissed by the learned appellate court.

Issue: i) Whether it is necessary for the plaintiff to plead and prove the time, date and place of alleged transaction of oral agreement between the parties?
ii) Whether plaintiff is bound to plead the names of witnesses in whose presence oral agreement was struck in between parties?
iii) What is the period of limitation for the performance of a contract when the date of performance of contract is fixed and when no such date is fixed?

Analysis: i) When a case is instituted on the basis of oral agreement, minute detail of each and every event has to be pleaded and proved. It is a settled principle of law that a party has to first plead facts and pleas in pleadings and then to prove the same through evidence. A party cannot be allowed under the law to improve its case beyond what was originally set up in the pleadings. The principle of "secundum allegata et probata", that a fact has to be alleged by a party before it is allowed to be proved.

ii) When the petitioner has not pleaded the names of the witnesses in whose presence the alleged oral transaction took place, the witnesses produced by him in evidence would not be helpful to the petitioner's case because their evidence would be nothing but an improvement, as any evidence led by a party beyond the pleadings is liable to be ignored.

iii) The alleged oral agreement to sell was reached at in the year 1975 and the suit was instituted in the year 2002, which is badly barred by limitation, because Article 113 of the Limitation Act, 1908 provides three years limitation from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused.

Conclusion: i) Yes, it is necessary for the plaintiff to plead and prove the time, date and place of alleged transaction of oral agreement between the parties.

ii)Yes, plaintiff is bound to plead the names of witnesses in whose presence oral agreement was struck in between the parties.

iii) Article 113 of the Limitation Act, 1908 provides three years limitation from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused.

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17. Lahore High Court
M/s Zafar Hafeez v. United Bank Limited
R. F. A. No. 53170 of 2020
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC3416.pdf

Facts: Through this appeal filed under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001, appellant (judgment debtor) has called in question judgment & decree passed by Banking Court, whereby recovery suit filed by the respondent bank has been decreed against the appellant.

Issues: Whether recording of evidence is required to determine the question of limitation?

Analysis: The date of accrual of cause of action is important and required to be determined for deciding the question of limitation, which in the absence of any specific reference in the plaint could only be done by recording of evidence.

Conclusion: In absence of date of cause of action in plaint, recording of evidence is required to determine the question of limitation.

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18. Lahore High Court
Asif Ali Oulakh etc. v. Provincial Police Officer etc.
W.P. No.31483 of 2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3803.pdf

Facts: Through this Constitutional petition, the petitioners have challenged the order passed by respondents whereby the appointment of the petitioners against the post of temporary Sub-Inspector (T/SI) was withdrawn/ cancelled.

Issues: i) Whether probationary falls within the definition of Civil Servant?
ii) Whether Service Tribunal have jurisdiction in respect of departmental punishments/penalties?

Analysis: i) The appointments for the post of Sub-Inspector are governed under Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules, 2013 (Rules). Under Rule 5 of the Rules, Sub-Inspectors appointed by initial recruitment or selection under Rule 4 of the Rules shall be on probation for period of three years. Chapter II of the Punjab Civil Servants Act, 1974 (Act VIII of 1974) deals with the terms and conditions of Civil Servants. Section 5 of the Act VIII of 1974 manifests that an initial appointment to a service or post referred to in Section 4 (which deals with the appointment to a civil service of the Province), not being an ad hoc appointment shall be on such probation or for such period of probation as may be prescribed. Holistic, reading of the word "probation" under Section 5 of the Act VIII of 1974 read with Rules No.3, 4 and 5 of the Rules, leave no manner of doubt that the petitioners' appointment as T/SIs on probation under the Rules are covered within the scope of a civil service appointment under Section 4 of the Act VIII of 1974.
ii) Section 4 of the Punjab Service Tribunals Act, 1974 (PST Act), any civil servant aggrieved by any final order in respect of any of the terms and conditions of his service can prefer an appeal to the Service Tribunal. However, under Section 4(2)(a) of the PST Act if the appeal is against an order or decision of the departmental authority imposing the departmental punishment, the appeal shall be preferred in case of dismissal or removal from service etc. to a Tribunal referred to in Section 3 (3) and in any other case under Section 4(2)(b), to Tribunal under Section 3(7) of the PST Act but if no such Tribunal is established then to Tribunal established under section 3(3) of the PST Act. This shows that in respect of all departmental punishments/penalties to a civil servant regarding terms and conditions of his services, the exclusive jurisdiction is of the Service Tribunal and bar of Article 212 of the Constitution will apply.

Conclusion: i) Under Section 4 and 5 of the Punjab Civil Servants Act, 1974 (Act VIII of 1974) probationary falls within the definition of Civil Servant.
ii) Service Tribunal has exclusive jurisdiction in respect of departmental punishments/penalties and bar of Article 212 of the Constitution will apply.

19. Lahore High Court
Securities & Exchange Commission of Pakistan v. Koh-i-Noor Edible Oil Limited
C.O.No.30/2004
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3419.pdf

Facts: An application is submitted before this Court on behalf of Zarai Taraqiati Bank Limited (ZTBL) under section 316 of the Companies Ordinance, 1984 (Ordinance) (currently section 310 of the Companies Act, 2017 (Act) after repeal of the Ordinance), for seeking leave to proceed in the Execution Applications pending before this Court in Banking jurisdiction.

Issues: i) Whether any suit or other legal proceeding can be proceeded against the company when a winding up order has been made?
ii) Whether it is necessary to require permission from the Court for execution of a decree against the company in liquidation?
iii) What claims are necessary to be considered by the Court to continue execution proceedings against the company in liquidation?
iv) Whether a person claiming to be a secured creditor can be compelled to prove his debt in liquidation?
v) Whether the execution proceedings can be allowed when the judgment debtors also include the individuals beside company during winding up proceedings of the Company?

Analysis: i) The object of section 310 of the Act is to prevent litigation against a company, which is being wound up except with the permission of Court including all proceedings in which, the company under liquidation is either a defendant or respondent. The principle underline in section 310 of the Act is that property remained vested with the company but liquidator is a trustee for the benefit of all the creditors and therefore, one creditor cannot be placed at an advantageous position and be permitted to derive the benefit to the exclusion of other creditors. However, this Court is not bound to grant permission as prayed for rather it is settled law that this Court while granting permission may impose conditions in leave granting order as it may deem fit and appropriate.
ii) The permission under section 310 of the Act is not only confined to suits but the words "other legal proceedings" in subsection (1) of section 310 of the Act, can and should be held to cover the execution proceedings. Therefore, grant of permission by the Company Judge is necessary for execution of a decree against the company in liquidation.
iii) When the permission is required to proceed with the execution, the Court must consider the claims of all the creditors and application to continue execution proceedings against the company in liquidation can be refused if it would mean to give undue preference to the decree holder over the other creditors of the

company, unless the decree holder is a secured creditor and has specifically opted to stay outside the winding up and enforce its security.

iv) As per settled law, a person claiming to be a secured creditor cannot be compelled to prove his debt in liquidation, such person could stand outside the winding up proceedings and rely upon his security. When such creditor asks for leave to sue, such prayer should ordinarily be granted unless there are special grounds to support the contrary course.

v) In a judgment and decree, in which the judgment debtors also include the individuals beside company, the execution will ordinarily be allowed to proceed against individuals because winding up proceedings are against the company and not against the individual judgment debtors who are jointly and severally responsible.

Conclusion: i) When a winding up order has been made then any suit or legal proceeding can only be proceeded against the company with the permission of the Court and subject to such terms as the Court may impose.

. ii) Yes, it is necessary to require permission from the Court for execution of a decree against the company in liquidation.

iii) The Court must consider the claims of all the creditors and application to continue execution proceedings against the company in liquidation.

iv) A person claiming to be a secured creditor cannot be compelled to prove his debt in liquidation.

v) The execution proceedings can be allowed when the judgment debtors also include the individuals during winding up proceedings of the Company because such proceedings are against the company and not against the individual judgment debtors.

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20. Lahore High Court
Chief Editor Muhammad Riaz Anjum, etc. v. Dr. Mohammad Shahbaz.
R. F. A. No.140 of 2012.
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC3762.pdf

Facts: The plaintiff/respondent instituted a suit for recovery of damages against the defendants/appellants by contending that he is a Doctor by profession, whereas, defendants/appellants are Chief Editor and Editor of newspaper "Weekly Press Forum, Chakwal" who published a news by using derogatory words for him.

Issues: i) What is defamation?

ii) What are the ingredients which constitutes defamation?

iii) Whether it is necessary before filing suit for damages to give notice to the wrongdoer for publication of defamatory material?

iv) How damages can be defined and calculated?

Analysis: i) It is settled principle of law that defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of the society generally or tends to make them shun or avoid him.

ii) Defamation accordingly takes the forum of two separate torts i.e. libel and slander. There is no cavil to the proposition that libel is actionable per se and injury to reputation will be presumed. However, whether the case is one of libel or slander, the following elements must be proved by the claimant:- a. the imputation must be defamatory; b. it must identify or refer to the claimant; c. it must be published/communicated to at least one person other than the claimant.

iii) Plain reading of the above provision of law envisages that no action would lie unless the plaintiff has given to the defendant, fourteen days' in writing of his intention to bring an action with particulars of defamatory matter complained of and that too within two months of the publication of the defamatory matter or from the date of gaining knowledge thereof. It means that notice of action prior to filing of any claim/suit for damages is must but the mode of communication of the same is not the concern of the legislature as nothing special in this regard has been given in the statute.

iv) It appears that damages are defined under three headings; 1) compensatory, 2) general & 3) aggravated. Compensatory damages themselves can be divided into general and special. If plaintiff, who wins a defamation action is entitled to an award of general damages, compensating him for the injury to his reputation and feelings by being proportionate to the damage which the plaintiff has suffered and nothing greater than what is necessary to provide adequate compensation and to re-establish his reputation. Now the question arises is to weigh the quantum of damages for such loss caused to him by such wrongful act. General damages normally pertain to mental torture and agony sustained through derogatory/defamatory statement. Since, there is no yardstick to gage such damages in monitory terms, therefore, while assessing damages on account of such inconvenience, the Courts apply a rule of thumb by exercising its inherent jurisdiction for granting general damages on a case to case basis, whereas, special damages are defined as the actual but not necessarily the result of the injury complained of.

Conclusion: i) Defamation is the publication of defamatory statement in widely circulated newspaper or spoken in a large gathering.

ii) The following elements must be proved by the claimant:-

A. the imputation must be defamatory;

B. it must identify or refer to the claimant;

C. it must be published/communicated to at least one person other than the claimant.

iii) One has to give fourteen days' notice to the wrongdoer within two months of the publication of defamatory material or its knowledge and if there is no response by the other side, then the suit for defamation could be filed under the law.

iv) Damages can be defined under three headings; 1) compensatory, 2) general & 3) aggravated. There is no yardstick to gage damages in monitory terms; therefore, rule of thumb can be applied for granting general damages.

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21. Lahore High Court
Sabir Hussain etc. v. Mehboob Hussain etc.
C.R.No. 906-D of 2011.
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC3819.pdf

Facts: Respondent instituted suit for declaration to claim his exclusive ownership qua house which was dismissed by trial court whereas learned District Judge in exercise of appellate jurisdiction decreed the same through impugned decision. Hence, this petition.

Issues: i) What is the object & importance of Article 79 of Qanun-e-Shahadat Order, 1984?
ii) On whom burden to prove genuineness of document lies, especially when, other side claimed it to be forged, fictitious & fabricated one?
iii) Whether report of the expert is conclusive proof?
iv) Whether un-registered document confers title qua immovable property?
v) What are the ingredients of gift?
vi) What are the requirements to prove the transaction particularly when any legal heir is deprived of inheritance?

Analysis i) 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.
ii) The further drastic aspect of the case was that perusal of Exh.P1 revealed that its stamp paper was not issued for writing of gift deed, rather obtained for the execution of iqrarnama, which caused doubt qua its honest construction. Moreover, the beneficiary, to establish genuineness of his hub document had a chance to make request for the comparison of alleged signatures of the donor available over Exh.P1, especially when, other side/petitioners claimed it to be forged, fictitious & fabricated one, but he did not opt.
iii) 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.

iv) It is trite law that un-registered document like Exh.P1 does not confer title qua immovable property.
v) There is no cavil that a Muslim is free to make oral gift with regard to his immovable property, but in case of denial/dispute, it becomes sine qua non for the beneficiary to independently prove the ingredients of gift viz a viz 'offer', 'acceptance' & 'delivery of possession'.
vi) Over & above, in such circumstances, when through a gift, deprivation of some or either of legal heir is involved, the heavy onus otherwise to prove original transaction as well as reasons for doing so strongly rested upon its beneficiary.

Conclusion: i) The object & import of Article 79 per its language is that the document entailing future/financial obligation must be proved by two attesting witnesses.
ii) It is upon the beneficiary, to establish genuineness of his hub document especially when, other side claimed it to be forged, fictitious & fabricated one, but he did not opt.
iii) Although, report of the expert is not conclusive proof, but 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.
iv) It is trite law that un-registered document does not confer title qua immovable property.
v) There is no cavil that a Muslim is free to make oral gift with regard to his immovable property, but in case of denial/dispute, it becomes sine qua non for the beneficiary to independently prove the ingredients of gift viz a viz 'offer', 'acceptance' & 'delivery of possession'.
vi) When through a gift, deprivation of some or either of legal heir is involved, the heavy onus otherwise to prove original transaction as well as reasons for doing so strongly rested upon its beneficiary.

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22. Lahore High Court
Syed Zahid Hussain Shah v. Mumtaz Ali etc.
Civil Revision No.233 of 2021
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC3812.pdf

Facts: The petitioner/plaintiff instituted suit of specific performance and cancellation of sale deed executed in favor of respondent no.2 and the suit was decreed by learned Trial Court, yet learned Appellate Court reversed the said verdict of its subordinate court and dismissed the suit. It caused the petitioner to invoke revisional jurisdiction of this Court.

Issues: i) Whether any document (entailing future obligation or financial liability) can be used as evidence without strict compliance of Article 79 of Qanun-e-Shahadat Order, 1984?
ii) Whether the execution of document would only mean mere signing or putting thumb impression on the document?

iii) Whether the exhibition of document amounts to proof of the document?

Analysis: i) Agreement to sell cannot be treated as deed of title, which in case of denial, being document of financial obligation & future liability is required to be proved by the beneficiary to establish its genuineness in terms of Article 79 of Qanun-e-Shahadat Order, 1984. While defining Article 79 in depth, the apex Court finally observed that its requirement is mandatory and without strict compliance thereof any such document (entailing future obligation or financial liability) cannot be used as evidence

ii) It is well settled by now that execution of document would not only mean mere signing or putting thumb impression, but must be proved that same was so made in presence of witnesses before whom the document was written, read over and understood by the executant. It would also not only be limited to merely signing a name or affixing thumb impression upon a blank sheet of paper so as to prove the document to have been executed by the executant, whose identification should be proved by reliable & authentic evidence as well. The execution means series of acts, which would complete the same and mere signing or putting thumb mark would not amount to prove due construction of the document.

iii) Exhibition of document as well as its proof are two different aspects and obviously the latter one is more significant. In the case in hand, although the requisite document was tendered in evidence, but was not proved per stern compliance of law, thus he had to suffer.

Conclusion: i) Any document (entailing future obligation or financial liability) cannot be used as evidence without strict compliance of Article 79 of Qanun-e-Shahadat Order, 1984.

ii) Execution of document would not only mean mere signing or putting thumb impression, but must be proved that same was so made in presence of witnesses before whom the document was written, read over and understood by the executant.

iii) Mere exhibition of document does not amount the proof of the document.

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23. Lahore High Court
Qamar Abbas v. Mumtaz Ahmad Minhas, etc.
C.R. No. 597 of 2014
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC3827.pdf

Facts: Petitioner instituted suit for declaration & cancellation of documents besides recovery of possession which was ex parte decreed. The respondents No.1-A & 1-B made applications u/s.12(2) CPC for setting aside of said decree, which were not assailed any further and stood final to their extent. Subsequently, transferee of some of the decretal property preferred second petition u/s 12(2) CPC for setting aside of decree, which though was dismissed by Court of first instance, yet the Civil Revision was allowed. Although respondent No.1 preferred W.P. before this Court, yet declined, thus in compliance thereof, plaintiff filed amended plaint,

wherein the petitioner was not only added as one of the defendants, rather seven mutations sanctioned in his favor were also challenged. In this cycle of proceedings, respondents No.1-A & 1-B (the original defendants) were again proceeded against ex parte and the suit was decreed. The petitioner being aggrieved though within requisite limitation preferred appeal, yet without affixation of court fee. The petitioner was asked to furnish the court fee through interlocutory order and then the appeal was conditionally allowed subject to affixation of court fee within thirty days, but the petitioner did not affix the Court fee within the provided period, rather much thereafter the petitioner tabled application u/ss.148,149 & 151 of CPC for enlargement of time to levy court fee before learned Additional District Judge (who passed the judgment) but the same was rejected. It caused the petitioner to approach this Court through cited Revision Petition.

Issues: Whether the Court providing time period in terms of section 149 of CPC at the time of passing decree, can extended the time for fulfilment of imposed condition after expiry of period of limitation?

Analysis: It is an established proposition of law that an appeal is deemed to be filed only on the day, when the deficiency in the court fee is made up. The rule enunciated therein clearly lays down that discretion in terms of section 149 of CPC cannot be allowed to be extended after expiry of period of limitation as condonation of delay to pay the court fee thereafter tantamount to destroy the said provision. In addition thereto, this Court is of the view that enlargement of period per provisions, whereunder ongoing application filed, could be granted within the time bracketed by the Court while passing the final verdict. The moment the provided time period was over, the Court (which granted time) became functus officio, thus was no more alive to extend the time. Any such move could be made and considered within those thirty days, which were provided to fulfil the condition so imposed.

Conclusion: The Court providing time period in terms of section 149 of CPC at the time of passing of decree, cannot extend the time for fulfillment of imposed condition after expiry of period of limitation as court becomes functus officio.

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24. Lahore High Court
Mushtaq Ahmad v. Mohsin Iqbal
Civil Revision No. 70852 of 2019
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2022LHC3754.pdf

Facts: This civil revision along with connected Cross Objection arises out of a suit for specific performance of an agreement to sell which was decided in favor of the respondent/plaintiff. The petitioner/defendant preferred an appeal and the appellate court partially accepted the appeal. Being dissatisfied, the petitioner/defendant filed the instant civil revision while respondent/plaintiff also

filed cross-objection and challenged the validity of the judgment and decree passed by the appellate court after his application to pay the decretal amount was dismissed by appellate court being time barred.

Issues: Whether an admission, even implied, by a party, before the court during the judicial proceedings has to be given sanctity while applying the principle of estoppel?

Analysis: An admission, even implied, by a party, before the court during the judicial proceedings has to be given sanctity while applying the principle of estoppel as well as to respect moral and ethical rules and if retraction therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants over the Judiciary and would damage the sacred image of the Courts that they are not capable to implement the orders passed by them in the judicial proceedings. Any such admission even implied or statement given before the court of law will operate as legal estoppel (words used by the Hon'ble Supreme Court of Pakistan in number of cases) and estoppel by conduct against a party making such admission or giving such a statement or understanding. The doctrine of estoppel enacted in Art. 114 of Qanun-e-Shahadat Order, 1984 is, in fact, an equitable doctrine, a rule of exclusion, which implies that if a person has by act or omission altered his position, he will be estopped and be precluded or debarred from denying it or take a position so as to alter his position to the determinant of the other person/the opposite party and prevents the litigant from raising inconsistent plea(s) in judicial proceedings by disallowing the litigant from blowing hot and cold at the same time...

Conclusion: An admission, even implied, by a party, before the court during the judicial proceedings has to be given sanctity while applying the principle of estoppel.

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25. Lahore High Court
Salma Bibi etc v. Rana Sagheer Hussain
R.S.A No.76527 of 2017
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2022LHC3434.pdf

Facts: Respondent filed the suit of perpetual as well as mandatory injunction which was decreed by the trial court whereas the appellate court accepted the appeal and set aside the decree which was challenged before High Court in RSA by the plaintiff/respondent and the same was accepted with the direction to decide the appeal afresh. In remand proceedings, the appeal was dismissed. Feeling aggrieved, the defendants/appellants filed the instant Regular Second Appeal and challenged the validity of the impugned judgments and decrees passed by the learned courts below.

Issues: i) When the initial burden of proof is on the plaintiff; whether the weakness in the defense evidence, if any, would relieve a plaintiff from discharging the above

burden of proof?

ii) Whether a party is under legal obligation to connect the unsigned pages with signed/thumb marked?

iii) Whether the deposition of a scribe can be equated with deposition of an attesting witness as required under Article 79 of QSO 1984?

Analysis: i) It is also a well-settled law that the initial burden of proof is on the plaintiff to substantiate his/her claim(s) by adducing cogent, legal, relevant and unimpeachable evidence of definitiveness and the weakness in the defense evidence, if any, would not relieve a plaintiff from discharging the above burden of proof. When the plaintiff/respondent claimed himself as owner of disputed plot but failed to plead about the existence or execution of alleged sale deed in his plaint. Hence, the rule of "secundum allegata et probata" duly applied on the plaintiff/respondent with regard to alleged sale deed.

ii) It is settled principle of law that if the document is written on more than one page, then the parties must sign or put their thumb impressions on each page of document or otherwise the plaintiff/respondent is/was under legal obligation to connect the two unsigned pages with signed/thumb marked third page by producing evidence to prove the terms and conditions of disputed sale deed but the testimony does not convincingly connect the papers or show assent of alleged executor to the unsigned papers. Resultantly, without the sufficient connection between the unsigned papers with signed paper, the unsigned papers cannot be considered as part of the disputed sale deed.

iii) For the purpose of proving the under challenge sale deed, it was/is mandatory for the beneficiary/plaintiff/respondent that two attesting witnesses of mutation must be examined by him as per Article 79, Qanoon-e-Shahadat Order 1984. Even otherwise, the deposition of a scribe cannot be equated with deposition of an attesting witness and equating the testimony of a Scribe with that of an attesting witness would not only defeat the letter and spirit of the Article 79, Qanoone-Shahadat Order 1984 but also reduce the whole exercise of reenacting it to a farce as has been held by the Hon'ble Supreme Court of Pakistan.

Conclusion: i) When the initial burden of proof is on the plaintiff; the weakness in the defense evidence, if any, would not relieve a plaintiff from discharging the above burden of proof.

ii) A party is under legal obligation to connect the unsigned pages with signed/thumb marked by producing evidence to prove the terms and conditions of disputed document.

iii) The deposition of a scribe cannot be equated with deposition of an attesting witness as required under Article 79 of QSO 1984.

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26. Lahore High Court
Kareem Nawaz & 4 others v. District Collector/ Deputy Commissioner Multan & others
W.P No.2576 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2022LHC3711.pdf

Facts: This constitutional petition challenges the order passed by the Deputy Commissioner/ District Collector pursuant to a direction issued by this Court on constitutional petitions brought earlier by these petitioners seeking a direction to the District Collector to decide the issues of law raised by the petitioners in their applications.

Issues: i) Whether mere endorsement by District collector is sufficient for issuance of notification under section 4 of Land Acquisition Act 1894?
ii) Whether draft notification under section 17(4) and 6 of Act 1894 can be prepared by any authority other than Commissioner?
iii) Which kind of land can be subject of acquisition u/s 17 of Act 1894?
iv) What procedure is adopted for acquisition of land under section 17 (1) of Act 1894?
v) What procedure is adopted for acquisition of land under section 17 (2) of Act 1894?

Analysis: i) For all intents the section 4 notification is required to be signed by the District Collector and merely endorsement on draft notification sent to him to be signed is an egregious abdication of powers by the Collector who allows his discretion to be captured by extraneous persons…
ii) It is not the business of any other authority to have prepared the draft notification for issuance by the Commissioner as this statutory power vests in him. The only officer envisaged by section 17 for issuance of the declaration under section 6 is the Commissioner concerned and no other officer, how high so ever, is authorized by law to either form an opinion or to sign publication of the notification.
iii) Vide amendment brought about in the Act, 1894 by Land Acquisition (West Pakistan Amendment) Ordinance XLIX of 1969, section 17 was substituted and sub section (1) of section 17 was made applicable to "any land". Prior to the substitution carried out in 1969, the acquisition in cases of urgency was confined to waste or arable land. The scope of acquisition under the urgency provision of section 17 was expanded to "any land" after the amendment in the year 1960.
iv) What is important to note in sub-section (1) is that the provisions of section 5 and 5A and all other provisions up till the publication of notice under section 9 will have been complied with and carried out to full effect. Section5, it will be recalled pertains to the issuance of a notification that a land is needed for public purpose or a company and section 5A confers a right of hearing on any person interested in any land which has been notified under section 5 and to object to the acquisition of the land. Therefore, these rights as being fundamental to the process

of acquisition have been preserved inviolate even in case of urgency contemplated by sub-section (1).

v) Sub-section (2) is an emergency provision and confers a power on the Commissioner to acquire the immediate possession of any land in case of emergency which has been mentioned in sub-section (2). It is a "Rolled-up" procedure which dispenses with section 5 and 5-A rights vested in a person facing deprivation of property. These steps cannot be taken simultaneously and must be taken in the order in which they have been mentioned in section 17 and have to be preceded by formation of an opinion by the Commissioner on all of these aspects. Sub-section (4) of section 17 begins with the words "in cases where in the opinion of the Commissioner the provisions of subsection (1) or sub-section (2) are applicable". Thus, the legislature requires the Commissioner to form an opinion and that opinion must be expressed in writing and cannot be presumed to exist in the mind of the Commissioner without finding expression in a written order.

Conclusion: i) Mere endorsement by District collector is not sufficient for issuance of notification under section 4 of Land Acquisition Act 1894v.

ii) No authority other than Commissioner can have prepared draft notification under section 17(4) and 6 of Act 1894.

iii) The scope of acquisition under the urgency provision of section 17 was expanded to "any land" after the amendment in the year 1960.

iv) For acquisition of land under section 17 (1) of Act 1894 the provisions of section 5 and 5A and all other provisions up till the publication of notice under section 9 will be complied with and carried out to full effect.

v) Procedure for acquisition u/s 17(2) of Act 1894 is a "Rolled-up" procedure which dispenses with section 5 and 5-A rights vested in a person facing deprivation of property.

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27. Lahore High Court
Bashir Masih v. Suneela Nadeem, etc.
W.P.No.38 of 2014.
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC3442.pdf

Facts: Parties are non-Muslim and the plaintiffs/respondents after the death of their father instituted a suit for recovery of maintenance against the defendant/petitioner (grandfather) which was decreed under section 17-A of The Family Court Act and appeal of the petitioner was also dismissed. The petitioner filed writ petition.

Issues: i) Whether provisions of The Family Court Act 1964 are applicable to non-Muslims including Christian?

ii) What is impact of word "may" and "shall" in The Family Court Act 1964?

iii) Whether section 17-A of The Family Court Act 1964 empowered the family court with unfettered powers to proceed mechanically?

Analysis: i) There is no cavil to the proposition that the provisions of "The Act" are equally applicable to non-Muslims including the Christian citizens of Pakistan.
ii) It is an oft repeated principle of law that words "may" and "shall" are always interchangeable keeping in view the facts and circumstances of the case. The former ordinarily denotes permission and not command. The word "may" ordinarily involves a choice whereas word "shall" carries command but even enabling word like "may" would become mandatory when object was to effectuate a legal right.
iii) Though by virtue of Section 17-A of "The Act", Family Court is vested with the power to strike off the defence of the defendant and decree the suit on failure by him to pay the interim maintenance in terms of order of the Court but it will not equip the Court with unfettered powers to proceed mechanically. In no circumstances, a Court can abdicate its prime duty to foster justice as per canons of law. It is trite law that Court cannot proceed in vacuum and exercise judicial powers arbitrarily and whimsically. Before invoking a penal provision like section 17-A of "The Act" the Court was supposed to consider as to whether it was vested with the power to pass the order of interim maintenance…

Conclusion: i) The provisions of The Family Court Act 1964 are equally applicable to non-Muslims including the Christian citizens of Pakistan.
ii) The word "may" ordinarily involves a choice, whereas, word "shall" carries command but word "may" would become mandatory when object was to effectuate a legal right.
iii) The Court before invoking a penal provision under section 17-A is supposed to consider as to whether it is vested with the power to pass the order of interim maintenance or not.

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28. Lahore High Court
ANF v. Muhammad Faizan & 2 others.
Criminal Appeal No.206 of 2021
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Ch. Abdul Aziz,
https://sys.lhc.gov.pk/appjudgments/2022LHC3528.pdf

Facts: Through this appeal in terms of Section 48 of the Control of Narcotic Substances Act, 1997 read with Section 561-A of the Code of Criminal Procedure, 1898, the Anti-Narcotics Force through its Regional Directorate, assailed the vires of order passed by learned Judge Special Court whereby the file of case registered under Sections 302,324,353 & 186 of Pakistan Penal Code, 1860 (PPC) read with Sections 9 (c),15 & 17 of CNS Act, 1997, was ordered to be remitted to learned Judge Anti-Terrorism Court, for a joint trial.

Issues: Whether Anti-Terrorism Court besides taking cognizance of terrorism, sectarianism and heinous offences can also extend jurisdiction to try offences which are their fall out or by products?

Analysis: Sections 12 (1), 17 & 21-M of Anti-Terrorism Act, 1997, are required to be read in conjunction with each other for determining the jurisdiction of Special Court constituted under Anti-Terrorism Act, 1997. The non-obstante clause of Section 12 (1) Anti-Terrorism Act, 1997 when read conjointly with other 13 of Anti-Terrorism Act, 1997 it becomes abundantly clear that the jurisdiction of Special Court can be extended to try other offences as well if committed along with scheduled offences during same transaction as continuity of actions.

Conclusion: Anti-Terrorism Court besides taking cognizance of terrorism, sectarianism and heinous offences can also extend jurisdiction to try offences which are their fall out or by products.

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29. Lahore High Court
M/s Kot Addu Power Company Limited v. The Commissioner Inland Revenue, Regional Tax Officer, Multan, etc.
ITR No.224 of 2015
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC3627.pdf

Facts: Through this judgment, a common question of law of various reference applications is hereby decided. Reference applications were previously decided by this Court, in terms whereof matters were remanded to the Appellate Tribunal for determination of the proceedings, wherein revenue department has sought rectification of its earlier order. Applicant dissatisfied with the order of this Court, approached Honorable Supreme Court of Pakistan where Civil petitions were heard, and with concurrence of the parties allowed and matter was remanded for decision afresh, after addressing the questions of law involved. Wherein Appellate Tribunal allowed miscellaneous application(s), filed by the department and rectified original order, declaring that earlier declaration of absence of jurisdiction of Additional Commissioner – to amend assessment in terms of order under section 122(5A) of the Ordinance, 2001 - was a mistake apparent from the record. Hence these reference applications.

Issues: Whether Appellate Tribunal can rectify or recall its earlier order upon identifying the mistake apparent from the record?

Analysis: Jurisdiction of rectification and review jurisdiction are not synonymous. Power of rectification is not merely confined to rectification of arithmetical or typographical mistakes, which in fact and law extends to the rectification of mistakes of fact and law, provided such "mistakes are apparent from the record". Exercise of rectification jurisdiction by the Tribunal is valid, in accordance with the law and within the scope of "mistake apparent from the record".

Conclusion: Yes, Appellate Tribunal can rectify or recall its earlier order upon identifying the mistake apparent from the record.

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30. Lahore High Court
Dr. Mehmood Ayaz v. Government of Punjab through Secretary Health Punjab, Civil Secretariat, Lahore & others
Writ Petition No. 81113 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC3479.pdf

Facts: Through instant petition, petitioner has challenged a notification, issued by Government of the Punjab, Specialized Healthcare & Medical Education Department, whereby respondent No.5 was appointed as Administrator of the Punjab Human Organs Transplantation Authority.

Issues: i) Whether chief minister can differ from opinion of monitoring authority regarding appointment of Administrator of the Punjab Human Organs Transplantation Authority (PHOTA)?
ii) Whether High Court under Article 199 of Constitution can interfere into matter of appointment of Administrator of the Punjab Human Organs Transplantation Authority (PHOTA)?

Analysis: i) The appointment of Administrator PHOTA has been structured to preclude the arbitrary and capricious exercise of discretion at the cost of appointments on merit. The superior Courts have time and again held that the appointments have to be made on the principle of merit unless cogent reasons for not appointing the person who is highest in merit are given, which would be subject to judicial review. The Chief Minister should have to give cogent reasons if he was persuaded to make a different opinion than that of Monitoring Authority.
ii) Reasons provided by the Chief Minister for not appointing a candidate, who was placed highest on the merit list, are justiciable especially when no reasons were given by the Chief Minister and High Court can examine them on the touchstone of validity, fairness and compliance with the law, rules and departmental practice. Discretion of the Chief Minister in this regard is not unfettered, unbridled and unregulated and if action of the Chief Minster amounts to an illegal, arbitrary, capricious, unbridled exercise of discretion and against the law laid down by superior Courts, the jurisdiction of this Court to interfere under Article 199 of the Constitution of Pakistan, 1973 is not barred.

Conclusion: i) The Chief Minister should give cogent reasons if he is persuaded to make a different opinion than that of Monitoring Authority.
ii) When discretion is exercised by an authority in an arbitrary manner and against the law laid down by superior Courts, the jurisdiction of this Court to interfere under Article 199 of the Constitution of Pakistan, 1973 is not barred.

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31. Lahore High Court
Muhammad Saleem etc. Vs The State etc.
Crl. Misc. No.69238/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3747.pdf

Facts: Through this application Petitioners seek pre-arrest bail for an offence under section 406 PPC.

Issues: i) Whether the offence of criminal breach of trust as defined in section 405 PPC is distinct from the offence of cheating under section 420 PPC?
ii) Whether the law recognizes a distinction between investment of money and entrustment thereof?
iii) Whether Criminal prosecution of a partner is possible if it is shown that he was entrusted dominion over a particular partnership asset under a special agreement?

Analysis: i) The offence of criminal breach of trust as defined in section 405 PPC is distinct from the offence of cheating under section 420 PPC. The notion of a trust is that there is a person trustee or entrustee, in whom confidence is reposed by another who commits property to him; this again supposes that the confidence is freely given. A person who obtains a property by trick from another bears no resemblance to a trustee and cannot be regarded as a trustee under section 405 PPC.
ii) The law recognizes a distinction between investment of money and entrustment thereof. In the former the sum paid or invested is to be utilized for a particular purpose while in the latter case it is to be retained and preserved for return to the giver and is not meant to be utilized for any other purpose.
iii) In a partnership business, a partner has undefined ownership over all the assets of the partnership alongwith other partners. Therefore, he holds them in his own right rather than in a fiduciary capacity. If he chooses to use any of them for his own purposes, the other partners may hold him accountable under the civil law. Criminal prosecution of a partner is possible only if it is shown that he was entrusted dominion over a particular partnership asset under a special agreement.

Conclusion: i) Yes, offence of criminal breach of trust as defined in section 405 PPC is distinct from the offence of cheating under section 420 PPC.
ii) Yes, the law recognizes a distinction between investment of money and entrustment thereof.
iii) Criminal prosecution of a partner is possible only if it is shown that he was entrusted dominion over a particular partnership asset under a special agreement.

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32. Lahore High Court
Muhammad Tahir Nawaz Cheema etc. v. Federation of Pakistan etc.
Writ Petition No. 5801/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3452.pdf

Facts: The petitioners have challenged their Termination Letters through these petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

Issues: i) Whether only employees of organizations, whose services are governed by statutory rules, can approach the High Court under Article 199 of the Constitution?
ii) Whether the public sector employments can be snapped with one stroke of pen?
iii) Whether only use of word 'shall' connotes that provision is mandatory?

Analysis: i) It would not be out of place to mention here that rules do not become statutory merely because a corporation has adopted any rules framed by the Government or has made them applicable by reference. The law is now well settled that the employees of a statutory body whose conditions of service are not regulated by "rules/regulations framed under the Statute but only by Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'. There are, however, some exceptions to this canon out of which the following three are significant: first, the statutory body has violated the service rules or regulations framed by it under the powers derived from the statute and there is no adequate or efficacious remedy. Second, the body has disregarded the procedural requirements and the principles of natural justice while taking action in a service matter. Third, there is a statutory intervention. The rule of master and servant is not applicable to those cases also where there is violation of any law holding the field. Strictly speaking, this is an independent ground for judicial review, but it may be considered an extension of the third exception mentioned above.
ii) The courts have held that the public sector employments cannot be snapped with one stroke of pen as it offends various provisions of the Constitution, particularly Article 4 (right to be dealt with in accordance with law). The rights of the employees must be balanced with the interests of the State. Public institutions should not be allowed to become a breeding ground for parasites. They should have the freedom to manage their affairs in an appropriate manner so that they may deliver and come up to expectations of the nation.
iii) The general principle is that the use of the word "shall" connotes that the provision is mandatory. However, other factors such as the object and purpose of the statute and the fact whether the legislature has provided any penal consequences for non-compliance are also instructive.

Conclusion: i) Employees of those organizations whose services are not governed by statutory rules cannot approach the High Court under Article 199 of the Constitution, however, there are some exceptions to this canon.
ii) The public sector employments cannot be snapped with one stroke of pen as it offends various provisions of the Constitution, particularly Article 4
iii) The object and purpose of the statute and consequences for non-compliance of provision are also useful to determine mandatory nature of provision.

33. Lahore High Court
Tariq Iqbal v. Election Commission of Pakistan and others
Writ Petition No.20507 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC3649.pdf

Facts: This judgment will decide this petition alongwith connected petitions where interpretation of the basic provisions of the Election Act, and the Elections Rules, 2017 along with the relevant provisions which deal with the local government elections have been sought under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. There are various petitions filed requiring determination of the constituencies on delimitation conducted by the Election Commission of Pakistan through the Delimitation Committee and Delimitation Authority . The common point in all the petitions is that against the decision of the Committee and the Authority, no remedy is further provided to the Petitioners.

Issues: i) Whether the constitutional jurisdiction of this Court to judicially review the orders of the Delimitation Officer and Delimitation Authority is barred??
ii)Whether the ECP can review the correctness of the delimitation orders/notifications, if non-availability of other remedy provided under the Act? ?

Analysis: i) It is a settled judicial norm with strong principles of the Supreme Court in a chain of judgments that Courts jealously guard their jurisdiction. The constitutional courts do not, with ease, abdicate or surrender their jurisdiction to exercise judicial power if the Court is of the view that the order under challenge is illegal and outside the four corners of the law and no other alternate or special remedy has been prescribed by law. (…) the constitutional jurisdiction of this Court to judicially review the orders, notifications and the acts of the executive i.e. the Delimitation Authority and Delimitation Committee in this case is not barred.
ii) No appeal or remedy is provided against the order of the Delimitation Authority and mostly such decisions are considered to be final. However, it does not mean that petitioners are remedy-less. (…) The ECP under provisions of the Act, Rules and the Constitution has the mandate to make amendments, alteration or modification in the final list of constituencies so, the remedy provided under Section 22 of the Act can be deemed to be made as representation to the ECP against the decision of the Authority.

Conclusion: i) The constitutional jurisdiction of this Court to judicially review the orders, notifications and the acts of the executive i.e. the Delimitation Authority and Delimitation Committee in this case is not barred.
ii) The ECP under provisions of the Act, Rules and the Constitution has the mandate to make amendments, alteration or modification in the final list of constituencies so, the remedy provided under Section 22 of the Act can be deemed to be made as representation to the ECP against the decision of the Authority.

34. Lahore High Court
Pakistan Air Traffic Controllers' Guild v. Pakistan Civil Aviation Authority, etc.
Writ Petition No. 71539 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC3759.pdf

Facts: The association has called in question order whereby services of one of its members have been suspended for the purpose of initiating inquiry and has also called in question order whereby board of inquiry has been constituted to conduct inquiry.

Issues: Whether the aggrieved/effected party (association) itself has to file petition in her own name?

Analysis: The petitioner association claims to be pursuing the matter for her benefit in order to protect her interest but in order to approach the Court for filing constitution petition under Article 199 of the Constitution, the aggrieved/effected party herself has to file petition in her own name and nobody else can represent the effected party in service matters.

Conclusion: The aggrieved/effected party (association) itself has to file petition in her own name and nobody else can represent the effected party in service matters albeit subject to certain exceptions as provided under law.

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35. Lahore High Court
Muhammad Aftab Zafar v. Secretary Prosecution, Public Prosecution Department, Govt. of Punjab Lahore, etc.
Writ Petition No.17377 of 2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5513.pdf

Facts: Through the instant writ petition the petitioner has challenged his deferment for promotion to the post of District Public Prosecutor (BS-19) by the Provincial Selection Board-I (PSB) in its meeting.

Issue: Whether a minor penalty can hurdle promotion of officer to higher scale while bypassing the all Performance Evaluation Reports (PER)?

Analysis: It is the consistent view of the superior courts that a minor penalty cannot be a hurdle in the way of considering case of an employee for promotion. Civil servant cannot be refused promotion merely because there is some minor penalty against him.

Conclusion: A minor penalty cannot be a hurdle for promotion of officer to higher scale while bypassing the all Performance Evaluation Reports (PER)s.

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36. Lahore High Court
Frass Hameed v. National Accountability Bureau, etc
W.P. No. 10728 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC3772.pdf

Facts: Through this constitutional petition, petitioner, who is former Assistant Director, N.A.B. called in question order passed by Director General N.A.B. whereby, major penalty of removal from service has been imposed against petitioner and has also called in question order passed by President of Pakistan whereby representation filed by the petitioner against the afore-referred order has been declined.

Issues: i) Whether criminal proceedings and departmental proceedings are same or different?
ii) Whether mere confession of father of employee is sufficient to dispense with regular inquiry?
iii) Whether major penalty can be imposed on employee without holding regular inquiry?

Analysis: i) There is no doubt that the criminal proceedings and departmental proceedings are different and can proceed side by side as dynamics of both the proceedings are not only different, rather the same may in some cases result in different decisions i.e. one in favour of employee and other against him, consequently both the said proceedings are to be determined on their own merits in accordance with law by following the prescribed procedure provided by law in its true letter and spirit.
ii) When the allegations are purely factual in nature, which the employee has been disputing throughout the departmental proceedings initiated against him, in such circumstances, mere confession by father of the employee regarding allegation would not establish the said allegations against the employee unless regular inquiry is conducted and he is confronted with the statements of witnesses and material produced against him, with opportunity of explanation, rebuttal and cross-examination to find out the truth.
iii) The judicial consensus is that major penalty cannot be imposed on an employee without holding regular inquiry, which may only be dispensed with if sufficient material is available on the record for the said purpose and that too could only be done after recording of reasoning for the same which reasoning is justiciable before Courts of law in judicial review.

Conclusion: i) Criminal proceedings and departmental proceedings are different.
ii) Mere confession of father of employee is not sufficient to dispense with regular inquiry.
iii) Major penalty cannot be imposed on employee without holding regular inquiry and regular inquiry can be dispensed with only after recording of reasoning for the same if sufficient material is available on record.

37. Lahore High Court
A.M. Construction Company (Private) Limited. v. Taisei Corporation, etc.
Civil Revision No.23509/2020
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC3489.pdf

Facts: Instant Civil Revision is directed against order of learned Civil Judge who stayed petitioner's Civil suit, upon allowing application of the respondent, filed under section 4 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 ("Act, 2011"), while giving effect to the Arbitration clause of the arbitration agreement.

Issues: i) Whether exchange of few letters between the Company and employer amounts to subcontract and it gives rise to any cause of action against the employer?
ii) Whether the Act, 2011 has retrospective effect on all arbitration agreements, made before, on or after the commencement of this Act?
iii) What is the difference between ordinary original civil jurisdiction and original civil jurisdiction?
iv) What jurisdiction is provided under Section 3 of the Act, 2011?
v) Under what section of the Act, 2011 the remedy / mechanism for stay of pending legal proceedings, where subject matter of the suit is common to the matter otherwise covered by the arbitration agreement is provided?

Analysis: i) Mere exchange of few letters or an act of registering some complaints, in the absence of privity of contract between the Company and employer, does not give any cause of action to the petitioner to sue employer. Subcontract was independent and any representation made therein, or scope of obligations undertaken in the context thereof do not bind the employer and he cannot be held liable for any vicarious liability in the guise of subcontract.
ii) The expression 'before' mentioned in clause 3 of Section 1 of the Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 conveys the legislative intent, in crisp and clear manner. Laws can be made to give retrospective effect; this prerogative and authority of the legislature is not in dispute. All arbitration agreements, made before, on or after the commencement of the Act, 2011- except those wherein foreign arbitral awards were made before 14th July 2005 -, are covered under sub-section (3) of section 1 of Act, 2011.
iii) The scope of original civil jurisdiction as provided under Section 3 of the Act, 2011 and ordinary original civil jurisdiction, conferment of said jurisdictions and extent thereof were discussed and elucidated while rendering decisions in the cases of Pakistan Fisheries Ltd., Karachi and others v. United Bank Ltd.' (PLD 1993 Supreme Court 109) and Brothers Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others' (PLD 1996 Supreme Court 543). Observations appearing in the case of Brothers Steel Mills Ltd. and others (supra) are relevant "Although in some judgments the word 'ordinary' has not been used, yet where the proceedings are initiated by filing a plaint as provided by the Code of Civil Procedure, it should be termed as ordinary original civil jurisdiction and not merely original

civil jurisdiction. To clearly understand the meaning and impact of the term "original civil jurisdiction", it is necessary to differentiate between these two terminologies. The original civil jurisdiction cannot be restricted to proceeding initiated by filing plaint which in my view is ordinary original civil jurisdiction of a Court, as jurisdictions are conferred on the High Courts by statutes which provide for initiating proceedings before the High Court itself. It has been emphasized that such jurisdiction should be called statutory jurisdiction, but in any event it has to be considered whether it is an original jurisdiction or an appellate jurisdiction within the framework of even a statutory jurisdiction conferred by a statute.

iv) Section 3 of the Arbitration Agreements and Foreign Arbitral Awards Act, 2011 provides Original Civil Jurisdiction, exclusive remedy to the Court, defined in clause (d) of section 2 of the Act, 2011, for the purposes of entertaining the suit / proceeding initiated under section 6 of the Act, 2011, for the recognition and enforcement of foreign arbitration award, and also the remedy for seeking indulgence by stay of legal proceedings, where the circumstances so warrant and jurisdiction otherwise available – reference is aptly made to sub-section (2) of section 3 of the Act, 2011. Section 3 of the Act, 2011 provides Original Civil Jurisdiction.

v) Jurisdiction exercised by the Civil court is an ordinary original civil jurisdiction, whereunder court is invested with all the powers extended under the Code of Civil Procedure 1908. Section 4 of the Act, 2011, in the context of jurisdiction exercised by the Civil court, in the instant case, has had to be interpreted and given effect, independent of section 3 of the Act, 2011 – Section 4 may be invoked by the Court, while exercising ordinary original civil jurisdiction, where the occasion arises. Section 4 of the Act, 2011 provides remedy / mechanism for stay of pending legal proceedings, where subject matter of the suit is common to the matter otherwise covered by the arbitration agreement.

Conclusion: i) Mere exchange of few letters between the Company and employer does not amount to subcontract and it does not give rise to any cause of action against the employer.

ii) All arbitration agreements, made before, on or after the commencement of the Act, 2011- except those wherein foreign arbitral awards were made before 14th July 2005 -, are covered under sub-section (3) of section 1 of Act, 2011.

iii) Where the proceedings are initiated by filing a plaint as provided by the Code of Civil Procedure, it should be termed as ordinary original civil jurisdiction while the original civil jurisdiction cannot be restricted to proceeding initiated by filing plaint, as jurisdictions are conferred on the High Courts by statutes which provide for initiating proceedings before the High Court itself.

iv) Section 3 of the Act, 2011 provides Original Civil Jurisdiction, to the Court for the purposes of entertaining the suit / proceeding initiated under section 6 of the Act, 2011, for the recognition and enforcement of foreign arbitration award.

v) Section 4 of the Act, 2011 provides ordinary original civil jurisdiction regarding remedy / mechanism for stay of pending legal proceedings, where subject matter of the suit is common to the matter otherwise covered by the arbitration agreement.

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38. 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/2022LHC3781.pdf

Facts: Through this Constitution petition, the petitioner calls in question the legality and validity of order passed by respondent No.2 whereby on the complaint of respondent No.3 he directed the petitioner to encash the performance bonds within thirty days and order passed by respondent No.1, whereby appeal filed by the petitioner under Section 130(2) of the Insurance Ordinance, 2000 against said order was dismissed.

Issues: i) Whether the question of jurisdiction can be raised at the later stage?
ii) Whether any authority can exercise its jurisdiction in any matter which is not delegated to it?
iii) Whether the ombudsman has the authority to undertake investigation of mal practice?
iv) Whether a tribunal has jurisdiction in respect of a claim arising out of a policy of insurance?
v) Whether any person can approach to the tribunal or ombudsman for the redressal of his grievances?
vi) What element is necessary to prove mal-administration?
vii) Whether there is any bar in exercise of the jurisdiction under article 199 in case of the availability of other remedies?

Analysis: i) The question of jurisdiction is a pure question of law and almost it is a fundamental question, therefore, same can be raised at any time and must be decided.
ii) There is no cavil with the proposition that no authority should exercise any jurisdiction in any manner brought before it until and unless such jurisdiction had been conferred upon it by the Constitution itself or under any law and where there is abuse of process and without lawful authority, the High Court has jurisdiction to set-aside the same.
iii) 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. U/s 127 of Ordinance, the Ombudsman is competent to decide matters agitated through complaints of any aggrieved person on any allegation of mal administration on the part of any Insurance Company.

iv) A plain reading of provisions reveals that under Section 122 of the Ordinance, Insurance Tribunal is empowered to hear claims filed by a policy holder against an Insurance Company in respect of or arising out of a policy of insurance.
v) To approach a Tribunal under Section 122 of the Ordinance the applicant has to be a policy holder having a claim against the Insurance Company, whereas before the Ombudsman any aggrieved person can make a complaint alleging an arbitrary, unreasonable or unjust decision of the Insurance Company which falls within the meaning of mal administration.
vi) 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.
vii) The law on the subject's very specific as held in Khalid Mehmood's case "khalid mehmood versus collector of customs, customs house, lahore" (1999 SCMR 1881) that there is a statutory bar in exercise of jurisdiction under Article 199 of the Constitution in case of adequate alternate remedy and where High Court itself or Supreme Court is the repository of ultimate appellate, revisional or referable powers conferred by relevant statutory. .

Conclusion: i) Yes question of jurisdiction can be raised at any time and must be decided.
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ii) Any authority cannot exercise its jurisdiction in any matter which is not delegated to it.
iii) The Ombudsman on a complaint by an aggrieved person has the authority to undertake any investigation into any allegation of mal administration.
iv) Insurance Tribunal is empowered to hear claims filed by a policy holder against an Insurance Company.
v) To approach a Tribunal under Section 122 of the Ordinance the applicant has to be a policy holder whereas before the Ombudsman any aggrieved person can make a complaint.
vi) Element of dishonesty is necessary to prove mal-administration.
vii) There is a statutory bar in exercise of jurisdiction under Article 199 of the Constitution in case of adequate alternate remedy

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39. Lahore High Court
Mst. Fozia Tasleem v. Additional District Judge and 2 others
Writ Petition No. 3882 / 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC3569.pdf

Facts: The petitioner through this constitutional Petition assailed the Judgment and Memo of Costs passed by Additional District Judge whereby, the custody of minor girl was awarded to Respondent No. 3 as father of the Minor by reversing the Judgment and Memo of Costs rendered by Judge Family Court whereby, the custody of the Minor was adjudged in favour of the Petitioner as mother of the Minor.

Issue: i) What is the prime consideration for deciding the question of custody of a minor?
ii) Whether second marriage of mother permanently disentitles her from retaining

the custody of a child?

Analysis: i) It is trite law that best welfare of a child is the paramount consideration to determine the question of custody as stipulated in Sections 7 and 17 of the Act. It is always hard and difficult to establish the right of the father or the mother regarding custody of a child on the touchstone of welfare. The term „welfare" is an overarching concept which includes material, intellectual, moral and spiritual well-being of the child. There is judicial consensus to the effect that welfare of a child is to be determined on the basis of evidence on record and circumstances of each case. The prescribed principles of custody (Hizanat) ought to be followed yet such principles in favour of father or mother can be deviated in the supreme interest of child measured on the exclusive yardstick of welfare. No absolute right vests with the father or mother regarding custody of a child and in the presence of rival claims, the supreme welfare of the child is to be determined on the basis of evidence on record and prevalent circumstances of a particular case.

ii) Para Nos. 352 and 354 of the Muhammadan Law by Mulla stipulate that the mother is entitled to the custody of her female child until she attains puberty and the right continues even after divorce until she marries a second husband not related to the child within the prohibited degree. The right revives on dissolution of marriage by death or divorce. The Honorable Supreme Court of Pakistan while interpreting the aforesaid principles of Muhammadan Law held that it is a normal and general rule but not an absolute rule which can be departed in the supreme welfare of the child. Mere fact of second marriage by a lady is not by itself a consideration to disentitle her from the custody of her child if welfare of the child in the opinion of the Court still rests with the mother. Reliance is placed on case titled, "Shabana Naz v. Muhammad Saleem" (2014 SCMR 343).

Conclusion: i) The prime consideration for deciding the question of custody of a minor is the best welfare of that child.

ii) Second marriage of mother is not by itself a consideration to disentitle her from the custody of her child if welfare of the child in the opinion of the Court still rests with the mother.

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40. Lahore High Court
Atta Elahi v. Allah Bachaya etc
Civil Revision No. 554-D of 2020
Mr. Justice Sultan Tanvir Ahmed
https://sys.lhc.gov.pk/appjudgments/2022LHC3672.pdf

Facts: The civil revision filed under section 115 of the Code of the Civil Procedure, 1908 is directed against the judgment and decree passed by learned Additional District Judge, whereby the appeal against judgment and decree passed by learned Civil Judge, has been dismissed.

Issues: i) Whether court is empowered to decide the case if party fails to produce evidence and to cause attendance of witnesses, where last opportunity was given?

ii) Whether court should show some concession to delinquent litigant?

Analysis: i) When specific date of hearing is fixed or time is granted to any party of the suit, to produce evidence or to cause attendance of the witnesses or to perform other act(s) necessary for the progress of the suit, it becomes obligation of the party concerned to take efficient measures towards the same and when this step is to produce evidence or cause the attendance of the witnesses, hardly any choice is left with the litigants but to comply with the orders. The avoidance of order to produce evidence or to cause attendance of witnesses, the Court is required to proceed further and in appropriate circumstances / cases, the Court is fully empowered to settle the issue and decide the case.
ii) While requiring the Courts to invite the present witnesses, to record the evidence before decision on merits, the Courts must ensure that when the penal provisions of Order XVII Rule 3 of the Code squarely applies to the case of a delinquent litigant then no concession should be shown to such litigant nor any lenient view in his favour should be adopted.

Conclusion: i) The court is fully empowered to decide the case if party fails to produce evidence when last opportunity was already granted.
ii) When the penal provisions of Order XVII Rule 3 of the Code squarely applies to the case of a delinquent litigant then no concession should be shown to such litigant nor should any lenient view in his favour be adopted.

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41. Lahore High Court
FAO No. 23 of 2020/BWP
Sohney Khan and 2 others v. Ghulam Muhammad and 8 others.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC3697.pdf

Facts: This first appeal was filed against order passed by learned Additional District Judge, whereby, order passed by learned Civil Judge, rejecting the plaint by invoking Order VII, Rule 11 of the Code of Civil Procedure 1908, was set aside and the case had been remanded.

Issues: i) Whether restriction contained in Order XXIII Rule 1(3) of the Code is applicable to the Second Suit and the plaint is liable to be rejected under Order VII, Rule 11 of the Code being barred by law?
ii) Whether unilateral statement given at the time of withdrawing First Suit, regarding purported compromise, can be accepted as a fresh cause to file the Second Suit?

Analysis i) Plain reading of Order XXIII Rule 1(1) of the Code suggests that at any time after institution of the suit, the plaintiff can withdraw the suit or abandon the claim in part or full, against any or all defendants. Order XXIII, Rule 1(2)

empowers the learned trial Courts to allow the plaintiff to file fresh suit, on the terms as deemed fit, provided the learned Court is satisfied as to any formal defect in the suit or when sufficient ground for allowing to institute a fresh suit on the subject matter of the suit or part thereof are available to the plaintiff. Order XXIII Rule 1, sub-rule 3 of the Code clearly restricts plaintiff from instituting fresh suit in respect of same subject matter or part of the claim involved in the earlier suit withdrawn without permission in terms of Order XXIII, Rule 1(2).

ii) The above unilateral statement given by the learned counsel for respondents No. 1, 2, 3 and 5 and that too in the absence of the other side, cannot be taken as mutual concession or mutual promise, having any binding effect, especially when the statement regarding the so- called out of court compromise is not backed by any document. Furthermore, the statement does not fulfill the requirements of Order XXIII, Rule 3 which necessitate satisfaction of the Court, as already elaborated in Fazal Maqsood case (Supra).

Conclusion: i) Order XXIII Rule 1, sub-rule 3 of the Code clearly restricts plaintiff from instituting fresh suit in respect of same subject matter or part of the claim involved in the earlier suit withdrawn without permission in terms of Order XXIII, Rule 1(2).

ii) The unilateral statement given by one party and that too in the absence of the other side, cannot be taken as mutual concession or mutual promise and cannot be accepted as a fresh cause, enabling the party to file the Second Suit.

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42. Lahore High Court
Allah Rakha, etc v. Atta Muhammad, etc.
C.R. No.215-D of 2009
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC3466.pdf

Facts: Petitioners through Civil Revision challenged judgment & decree passed by a learned appellate court by virtue whereof appeal filed by the respondents was accepted to the effect of decreeing suit of respondents for declaration on the basis of Benami transaction and dismissing suit of petitioners seeking redemption of mortgaged property.

Issue: i) Whether a benami transaction may be proved without proving motive as ingredient thereof?

ii) Whether a mutation may be relied for the purposes of determination of possession over suit property?

iii) Whether a party may be allowed to improve case later agitating malafide & fraud beyond pleadings?

iv) Whether final decree may be passed without passing preliminary decree in cases of redemption of mortgaged property?

Analysis: i) Findings that motive is always in the mind of a party and no one can read the mind of a party is erroneous, incorrect and alien to law. A party alleging Benami transaction is under a legal obligation to prove motive for such Benami transaction.
ii) When no Khasra Girdawari for the year of purchase of suit property or years thereafter is produced to establish possession there over it, reliance on the entries of mutation for determination of possession is totally misconceived.
iii) It is trite that any matter beyond pleadings cannot be considered and that a party is not allowed to improve its case beyond what has originally been set up by way of pleadings.
iv) In case law reported as (1980 SCMR 397) "Muhammad Shamshad v. Haji Allah Rakha" the Hon'ble Supreme Court of Pakistan has held that, "a plain reading of Order XXXIV Rule 7 CPC makes it mandatory for the court to pass a preliminary decree for redemption and even in a case where Clause (A), (B) of Rule 7 are not applicable, the requirements of Clause-(C) still nonetheless have to be complied with and which provide for delivery of documents relating to the mortgaged property, its reconveyance in favour of mortgagor and the subsequent transfer of possession".

Conclusion: i) Without proving motive, a claim of Benami transaction cannot be proved.
ii) A mutation is not reflective & indicative of possession of any party and the same only pertains to recording a change in title.
iii) Any matter beyond pleadings cannot be considered and that a party is not allowed to improve its case beyond what has originally been set up by way of pleadings.
iv) Order XXXIV Rule 7 CPC makes it mandatory for the court to pass a preliminary decree for redemption.

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43. Lahore High Court
Mst. Saima Naz v. Govt. of Punjab etc.
W.P.No. 4884 of 2019
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC3577.pdf

Facts: The petitioners are contractual employees whose contracts of appointment have not been renewed or extended whereupon they have invoked the constitutional jurisdiction of High Court.

Issues: What is the scope of judicial review/writ jurisdiction in the matter of terms and conditions of employees of a statutory entity?

Analysis: Constitutional jurisdiction is meant to correct and rectify statutory dereliction and not contractual dereliction….. What is sought to be remedied by resort to writ jurisdiction is the offence caused to the statute….It is trite that the purpose of

judicial review is to further the intent of Parliament as contained in the statute. If there is no statute there is no judicial review. All non-statutory actions come within the sphere of private law. It is equally trite that there is no jurisdiction to entertain a writ in a matter governed by a contract as no public law element is involved in a purely contractual matter and which contract is not fettered by statute.when a statutory status is given to an employee and there has been a violation of the provision of the statute the employee will be eligible to get the relief of the declaration and it will not be a mere case of master and servant…..there is a clear distinction between public employment governed by Statutory Rules and employment governed purely by contract. The test for deciding the nature of relief is whether the employment is governed purely by a contract or by a Statute or Statutory Rules…. Even where the employer is a statutory body but the relationship is purely governed by contract with no element of statutory governance, the contract of service will not be specifically enforceable.

Conclusion: Where the power to enter into contracts of service is not hedged or fettered by any statutory provisions, the public law remedy afforded by Article 199 of the Constitution cannot be triggered.

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44. Lahore High Court
Khuda Yar v. Muhammad Gulzar.
C.R. No.53-D of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC3735.pdf

Facts: Through this civil revision, the petitioner has assailed judgment and decree passed by learned Additional District resultantly partially decreed the suit filed by the respondent.

Issues: Whether the presence of malice has to be carefully ascertained for awarding damages in malicious prosecution?

Analysis: What needs to be ascertained is if the complainant had no reasonable and probable cause to lodge the crime report then whether he acted in malice against the accused. Both these elements are required to be established in order to enable the claim of malicious prosecution to succeed although in some cases absence of reasonable and probable cause might point towards the presence of malice and if reasonable and probable cause is established, the question of malice might become irrelevant but this rule does not seem to have a universal application i.e. once reasonable and probable cause is established, the presence of malice has to be carefully ascertained.

Conclusion: The presence of malice has to be carefully ascertained for awarding damages in malicious prosecution.

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1. **MANUPATRA**

https://articles.manupatra.com/article-details/Causation-in-Medical-Negligence-cases-is-not-just-complex-its-confused

Causation in Medical Negligence cases is not just complex, it's confused by Abhinav Sharma

The topic of medical negligence is a complex one and makes it a confusing topic to understand for inexperienced people. If you feel like you do have a claim, then it is necessary to seek an experienced and qualified legal practitioner because such a person would be aware of these intricate complexities of the medical field and the confusion it creates amongst people who are not aware of these intricate complexities. Negligence can be defined as the breach of duty caused due to omission to do something or breach of duty where a person owed a duty of care to someone who suffered an injury, which a reasonable prudent man would not do. It means a lack of care on part of one person which causes injury to the other person. For the purpose of this article, we shall be discussing medical negligence and causation in medical negligence cases.

2. **MANUPATRA**

https://articles.manupatra.com/article-details/WELFARE-OF-THE-CHILD-AFTER-PARENTS-DIVORCE-OR-SEPARATION-KEY-ANALYSIS

WELFARE OF THE CHILD AFTER PARENTS' DIVORCE OR SEPARATION – KEY ANALYSIS by Hardik Batra and Tanish Arora

The law governing Custody in India is firmly associated with Guardianship. Though it has a narrower purview as compared to Guardianship. Custody of a child is an essential concept of a matrimonial relationship when the parents fall out of their marriage and reach the courts. It is granted specifically as a matrimonial relief to a parent who seeks such custody. When marriages break, it is neither the father of the child, nor the moth who suffers the most. It is always the child. Thus, in order to deal with the issue of custody, the most crucial point that the courts take into consideration is the welfare of the child. While there are laws that safeguard the welfare of the child in such matters, there is no law in India that specifically talks about joint-custody and shared parenting. There has been significant demand for laws to be amended in order to include a shared parenting model in India, and many countries have legislations providing for it. As India does not have a legislation that talks about shared parenting, in the absence of the same, the instances in which shared parenting is granted pan out of judicial pronouncements. Therefore, this article relies heavily on judicial pronouncements while discussing the concept of custody after separation and divorce of parents. It is divided into three parts. The first part explains the welfare principle adopted by the courts while granting custody wherein the most crucial point of consideration is the best interest of the child. The second part provides a critical analysis of the concept of joint custody and shared parenting with an interplay of the welfare principle and raises some concerns that arise out of the absence of a dedicated legislation governing the same. The third and last part of this article provides a suggestive conclusion to the concerns raised in the above parts of the article and a personal opinion

3. **MANUPATRA**

https://articles.manupatra.com/article-details/Rights-of-the-Working-Woman-as-a-Mother-An-Analysis

Rights of the Working Woman as a Mother - An Analysis by Aditi Jogvanshi

In a developing country like India which consists of a patriarchal society, many rights are yet to be provided to the women. Women have been working unpaid for decades like household work, cooking, cleaning, and child care. The working culture for women was developed after India got independence. Urbanization and industrialization and new social norms (economic hardships, job opportunities) encouraged women to seek gainful employment outside their homes which later developed many other issues like discrimination and miserable working conditions. Pregnancy became one of them. Women were dismissed because of pregnancy or they had to quit their jobs for childcare. Giving birth and taking care of infants have always been the burden of women in most societies. The Maternity Benefit Act was first introduced in the year 1961 to secure the employment of working women during their pregnancy. The Maternity benefit refers to a payment or allowance made by the state or an employer to a woman during pregnancy or after childbirth. Maternity benefits are only accessible to pregnant working women. This act is to ensure paid leaves to a pregnant woman before and after she gives birth. Also, to provide equal opportunity to women to balance their work-life as well as personal life. The provisions of Maternity Benefit Act in India are only applicable for the establishment which has 10 and more employees. The special protection granted to pregnant women only applies to a defined period of twenty-six weeks.[1] The reason for the specification of twenty-six weeks, which is the period recommended by the World Health Organisation, is that it covers the crucial first months when exclusive breastfeeding gives health benefits to both, mother and child.

4. SPRINGER LINK

https://link.springer.com/article/10.1007/s13437-022-00269-z

Autonomous ships and the collision avoidance regulations: a licensed deck officer survey by Elspeth Hannaford, Pieter Maes & Edwin Van Hassel

International interest in Maritime Autonomous Surface Ships (MASS) is on the rise. This exploratory research presents insights of a sample of licensed deck officers (LDOs) regarding the potential future of the Collision Avoidance Regulations (COLREGs) with the implementation of MASS. At present, there is much discussion in the maritime industry on if and how the COLREGs will need to be amended to be able to be applied to MASS. Limited research is published from the key perspective of the LDO. Qualitative and quantitative methods are used, including a literature review and a multiple-choice survey. Data is analyzed via descriptive statistics, and commonalities within the results are investigated as well as years of experience with practicing the COLREGs. Results show that many barriers exist when applying the COLREGs to MASS, and minor amendments to certain terms and definitions are recommended. Moreover, the COLREGs should not be quantified, and MASS should be identifiable from other vessels. LDOs with more experience with practicing the

COLREGs are found to be slightly more open to changing the rules versus LDOs with less experience. When compared to the results of the International Maritime Organization's regulatory scoping exercise, the results of this study are found to be in congruence. This research provides valuable insights for the ongoing discussion of the future of MASS operation in the maritime industry.

5. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/sharia-law-considerations-pension-trustees

Sharia Law Considerations for Pension Trustees by Kirsty McLean

As a non-Muslim I am not expert in Sharia law, but as a pensions professional I am conscious that Islam places obligations on followers that extend to financial matters including their pensions. As a lawyer, I counsel my clients against the risk of unlawful discrimination – and religion is one of the "protected characteristics" that can give rise to discrimination claims. Trustees are facing increased scrutiny and obligations on investment matters, whether from TCFD reporting requirements, cost and value for money disclosures or even complaints from members about how the scheme's assets are invested. Must trustees also take members' religious views into account? Could employers face a discrimination claim if the pension arrangement offered to staff is not Sharia compliant, so that Muslim employees feel compelled to opt out.

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