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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2023 to 28-02-2023)

A Summary of Latest Judgments Delivered by the Honourable Supreme Court & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Federal Government of Pakistan through Ministry of Defence Rawalpindi and another v. Mst. Zakia Begum and others
Civil Appeals No.2150 to 2263 of 2019 and
Civil Misc. Applications No.5284 to 5300 of 2020
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2150_2019.pdf

Facts: Through these Civil Appeals petitioners have assailed the judgment, passed by the Lahore High Court, whereby the Regular First Appeals, filed by the landowners were allowed and compensation was enhanced to the rate of Rs.30,000/-per Kanal for the purposes of acquisition of land, along with 15% necessary acquisition charges as well as compound interest, whereas the Regular First Appeals, filed by the Government, were dismissed.

Issues: i) Whether in case of land acquisition for usage other than its nature, it is fundamental process to consider potential value along with market value for the award of compensation?
ii) What is meant by potential value of a land?
iii) How to determine the potential value of the land and what is the objective behind its consideration?
iv) Whether revenue record and land classifications can form the basis of compensation for land acquisition?
v) Whether the law of acquisition is confiscatory in nature and the constitution of Pakistan mandates provision of due process and compensation when any acquisition made by the State while depriving a person from his right to own property?
vi) What were the objectives of the Land Acquisition Act,1894?
vii) Whether the landowners must be given the benefit of the potential value of the entire area being acquired and not just small pieces of land?

Analysis: i) Section 23 of the Land Acquisition Act,1894 requires that while determining compensation for land acquired, market value of the land must be considered and that market value means the value of similar land located in the vicinity and put to the same use. Hence, the key factors for determining market value are land similarly situated and in similar use. Potential value also has to be factored in where the land is put to different usage, so when agricultural land is acquired for commercial, industrial or residential purposes, the Act requires that along with the market value, potential value be considered. This is important because market value per se does not factor in the value that can be attributed based on the capacity or potential it y of the land, meaning the value based on the use it is reasonably capable of being put to in the future. It means assessing that if the land

were fully developed or used at its fullest potential, what would its value be. Hence, compensation is about the value of the land, being its market value plus its potential value, so as to ensure that the landowner is duly compensated. This is fundamental to the process of award of compensation.

ii) Potential value means the value of the land based on the probability that if developed, considering its location and proximity to residential, commercial or industrial areas with amenities such as roads, water, gas, electricity, communication network and suitability it has the potential to be developed, which will increase its value.

iii) So far as the determination of potential value, there is no mathematical formula, which is applied uniformly in every case. Each case is seen in the context of its own facts but potential value has to be factored along with the market value. The objective is to ensure that the landowner not only gets the actual value of the land at the time it is acquired but also gets the value based on any future prospects attached with the use of land.

vi) Factors such as entries in the revenue record and land classifications cannot form the basis of the compensation as it does not bring out the potential value of the land and it does not factor in future prospects of the land. The revenue classifications of land are based on agricultural requirements essentially denoting the manner in which the land is irrigated adding to its fertility, quality of the soil and its potential for cultivation. Based on this, the average yield per kanal can be calculated on the basis of which land revenue is assessed. The objective of these classifications is to assess the annual value of the landowner's share of the produce cultivated on the land. In this context, valuing land based on agriculture classification does not bring out the market value of the land or even its potential value. The land may be classified as Banjar Qadeem or Chahi Aabi Selab but its market value may be much more based on its location and proximity to roads and other amenities. Hence, reliance on the aforesaid classifications is not relevant for calculating compensation.

v) The law of acquisition is confiscatory in nature and easily deprives an individual of their property and all rights attached to it. The Constitution of the Islamic Republic of Pakistan, 1973 gives every citizen the right to acquire, hold and dispose of property in every part of Pakistan under Article 23. Article 24 of the Constitution protects the right to own property such that no person can be deprived of his property save in accordance with law under Article 24. The exception to this fundamental right as per Article 24 is compulsory acquisition for public purpose, which means that the State can acquire private property for public purpose under the authority of law, which provides for compensation and either fixes the compensation or provides for a mechanism to fix compensation. The Constitution, therefore, mandates that if there is any acquisition by the State, it will be under a Statute, which provides for due process and compensation. In the context of acquisition, it means that a person who owns property has to be compensated on account of being deprived of their property. When a person is deprived of their right to own property, even if in accordance with law, they are

deprived of their right to control, possess and earn from that property. And this deprivation is what must be compensated.

vi) The Land Acquisition Act.1894 is a colonial law, designed to facilitate acquisition of private land for public purpose. The Act was enacted with the objective of building infrastructure like railway lines, roads, bridges and communication networks essential for the benefit of the rulers of the time. the law was designed to prevent a heavy burden on the public exchequer. Hence, its very objective was to acquire land at the least price possible. Hence, the colonial objective and understanding of the law continues as acquisition even today, for public purpose, is at the cost of an individual's right to own property. In this context, there appears to be no effort on the part of the acquiring department to be fair in their application to determine compensation.

vii) Measuring the land in small parcels, based on ownership and revenue classifications is to the disadvantage of the landowners, because it undermines the potential value particularly when the acquisition is of a large area of land for a single project. In such a situation, the landowners must be given the benefit of the potential value of the entire area being acquired and not just small pieces of land, so as to ensure that the landowners are compensated as per the expected reasonable capacity of land use.

Conclusion: i) Yes, in case of land acquisition for usage other than its nature, it is fundamental process to consider potential value along with market value for the award of compensation.

ii) Potential value means the value of the land based on the probability that if developed than it will increase its value.

iii) There is no mathematical formula to determine the potential value of the land and objective behind its consideration is to ensure that the landowner not only gets the actual value of the land at the time it is acquired but also gets the value based on any future prospects attached with the use of land.

iv) Revenue record and land classifications cannot form the basis of compensation for land acquisition.

v)Yes, the law of acquisition is confiscatory in nature and the constitution of Pakistan mandates provision of due process and compensation when any acquisition made by the State while depriving a person from his right to own property.

vi) The objectives of the Land Acquisition Act.1894 were to acquire land at the least price possible.

vii)Yes, the landowners must be given the benefit of the potential value of the entire area being acquired and not just small pieces of land

2. **Supreme Court of Pakistan**
M/s Middle East Construction Company, Karachi v. The Collector of Customs, Karachi
Civil Appeals No. 2016 and 2017 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2016_2022.pdf

Facts: The petitioner company imported some vehicles but the Customs authorities did not clear the goods alleging that they were different from those described in the Goods Declarations and also older than five years and as such could not be imported under the Import Policy Order, 2016. In appeal the Customs Appellate Tribunal ("the Tribunal") set-aside the order of the adjudicating officer whereas the High Court reversed the order of the Tribunal which the petitioner has assailed through these civil appeals.

Issue: Whether under section 196 of the Customs Act, 1969, the High Court can determine the facts or the jurisdiction is limited only to a question of law**?**

Analysis: The Tribunal is the last forum for the determination of facts. The High Court's jurisdiction under section 196 of the Act is limited to a question of law. It did not lay within the jurisdictional domain of the High Court to itself determine the nature the imported vehicles. If the learned Judges of the High Court preferred any particular reports which were before them, and if they were setting aside the judgments of the Tribunal then they should have given valid reasons for their preference. However, the High Court should not have embarked upon determining the nature of the vehicles itself, and to do so by relying upon material which had not been produced either before the adjudicating officer or the Tribunal. The manner in which the learned Judges of the High Court took it upon themselves to ascertain the nature of the imported vehicles cannot be endorsed.

Conclusion: Under section 196 of the Customs Act, 1969, the High Court cannot determine the facts and the jurisdiction of High Court is limited only to a question of law**.**

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3. **Supreme Court of Pakistan**
Zafar Iqbal v. Additional District and Sessions Judge, Ferozewala & others
Civil Petition No.715 of 2020
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._715_2020.pdf

Facts: Respondents no. 2 to 4 filed suit for specific performance of oral agreement. During pendency of suit, the defendant died and legal heirs of defendant were brought on record. The petitioner filed an application u/O. 1 R. of CPC for his impleadment as legal heir of defendant which was accepted. The respondent no 2 to 4 filed application for amendment in plaint, to the effect that petitioner is not legal heir of defendant, which was dismissed by trial court, however, same was allowed by revisional court, whose order was sustained by High Court, hence this

civil petition.

Issues: Whether party A can seek amendment in plaint to challenge the paternity of party B who was added as legal heir on application u/O.1 R.10 of CPC if the party A has quit its remedy against decision on application filed under u/O. 1 R. 10 of CPC?

Analysis: The matter stands concluded when party A withdrew its petition against decision on application filed u/O.1 R. 10 of CPC. If party A had any grievance with regard to party B being arrayed as a legal heir, party A should have agitated it then, and should not have withdrawn its petition…

Conclusion: Party A cannot seek amendment in plaint to challenge the paternity of party B who was added as legal heir on application u/O.1 R.10 of CPC if the party A has quit its remedy against decision on application filed under u/O. 1 R. 10 of CPC.

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4. **Supreme Court of Pakistan**
Zulfiqar Ahmed Bhutta. v. The Federation of Pakistan
through Secretary Law and Justice Division, Islamabad
Civil Misc. Appeals No. 44 to 46 of 2022 In Constitution Petitions NIL/2022
Mr. Justice Qazi Faez Isa
https://www.supremecourt.gov.pk/downloads_judgements/c.m.appeal._44_2022.pdf

Facts: Three Constitution Petitions were filed by the petitioners and sought that an inquiry be conducted by this Court in respect of a cypher sent by an Ambassador of Pakistan to the Federal Government. However, the office did not number these petitions because, as per office objections, they did not fulfill the stipulated criteria of Article 184(3) of the Constitution and did not meet other related provisions of the Supreme Court Rules, 1980. It is against the said office objections that these three civil miscellaneous appeals have been filed.

Issues: i) Who is authorized to order an inquiry in respect of cypher under the Pakistan Commissions of Inquiry Act, 2017?
ii) Whether Court can assume the executive powers vesting in the Federal Government?

Analysis: i) He was asked who has been authorized to exercise powers under the Act and the learned counsel states that it is the Federal Government. Since the Act itself prescribes who can order an inquiry then it is for that authority to do so, and this Court will not assume such jurisdiction…However, if this Court were to resort to the Act in initiating an inquiry, it would not only contravene the Act but will also be assuming the executive power of the Federal Government.
ii) The executive authority of the Federal Government is attended to by Chapter III of Part III of the Constitution which in its Article 97 stipulates that, the executive authority of the Federation shall extend to the matters with respect to

which the Parliament has powers to make laws … . The said laws are those mentioned in the Federal Legislative List (Fourth Schedule to the Constitution) which also mentions external affairs at number 3 of the said List. Therefore, the matter exclusively vested in the Federal Government. However, the then Prime Minister in his discretion elected not to exercise powers under the Act to order an inquiry. The Court cannot assume the executive powers vesting in the Federal Government.

Conclusion: i) The Federal Government is authorized to order an inquiry in respect of cypher under the Pakistan Commissions of Inquiry Act, 2017.
ii) The Court cannot assume the executive powers vesting in the Federal Government.

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5. **Supreme Court of Pakistan**
Ahmed Ali and another v. The State
Criminal Appeal No.48 of 2021
Mr. Justice Sardar Tariq Masood,Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._48_2021.pdf

Facts: The appellants were booked in case/FIR, registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNSA") and were convicted under Section 9(c) of CNSA and sentenced to imprisonment for life with a fine, or in default thereof to further undergo simple imprisonment for one year each, with benefit of Section 382-B of the Code of Criminal Procedure, 1898 ("the Code"). The appeal filed by the appellants before the learned High Court was dismissed; hence, the instant appeal by leave of this Court granted.

Issues: i) What are the relevant provisions of law and rules as to the case property and exhibition of the same in a court of law?
ii) If the recovered narcotics are not produced before court, whether the accused can be convicted for the said narcotics?
iii) When the material (narcotics) is neither produced nor exhibited, whether the presumption can be drawn that it is not in existence at all?
iv) Whether a single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit?

Analysis: i) Rule 22.16 of the Police Rules, 1934 ("the Police Rules") deals with the "case property". Rule 22.18 of the Police Rules deals with "custody of property". Rule 22.70 of the Police Rules provides that Register No. XIX shall be maintained, wherein, with the exception of articles already included in Register No. XVI, every article placed in the store-room shall be entered and the removal of any such article shall also be noted in the appropriate column. Rule 27.11 of the Police Rules provides that the head of the legal branch shall, with the help of his assistants, maintain the Registers, including Register of case property and

unclaimed property in Form 27.11(1), which may be destroyed three years after being completed. Rule 27.12 of the Police Rules provides that at headquarters, the Deputy Superintendent of Police (Legal), with the assistance of his staff, shall take charge of weapons, articles and property connected with their safe custody until the case is decided. When final orders are passed in the case, such weapons, articles and property shall, if not made over to the owner, be made over to the District Nazar. The Deputy Superintendent of Police (Legal) shall similarly take charge of, and be responsible for, the safe custody of suspicious property until the issue of the proclamation under Section 523 of the Code of Criminal Procedure, when such property be made over to the District Nazar. Rule 14-E of Part B of Chapter 24 of Volume III of Lahore High Court Rules and Orders provides, inter alia, that care is often required in tracing the custody of a prisoner's substances, personal food, bloodstained clothes, etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry, if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the chemical examiner. The person who packs, seals and dispatches such articles should invariably be examined. Rule 14-F of the High Court Rules provides that clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses. Rule 14-H thereof provides, inter alia, that all exhibits should be marked with a letter or number. The second proviso of section 516-A of Cr.P.C., provides that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance, seized or taken into custody under various laws, the court may, either on an application or of its own motion, and under its supervision and control, obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other court, and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf. The third proviso thereto provides that such samples shall be deemed to be whole of the property in an inquiry or proceeding in relation to such offence before any authority or court. The Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides the procedure to be followed by the police while dispatching the narcotic for the test or analysis and also the procedure to be adopted by the analyst.

ii) In narcotics cases, the conviction and sentence are based on the possession of the narcotics or on aiding, abetting or associating with the narcotics offences. In that eventuality, it is incumbent upon the prosecution to produce the case property before the court to show that this is the narcotics/case property that was recovered from accused’s possession. The defense counsel may then request the court to de-seal and weigh the case property. Even otherwise, if the prosecution claims that huge quantities of narcotics, i.e., many mounds, were recovered but the same were never produced, then how can the accused be convicted for the said narcotics, which were never before the court or may not even be in existence? However, if the narcotics were destroyed under Section 516-A of the Code, then,

of course, the said practice should be done after issuing notice to the accused, and the destruction should be done in the presence of the accused or his representative. The Magistrate is required to prepare samples of the narcotics substance that was ultimately destroyed so that a representative of the destruction process could be produced in the Court; besides, the certificate so issued by the Magistrate would also be relevant and the same should be exhibited in the Court. When the contraband, on the basis of which a person is convicted, is not produced or exhibited, how can a conviction be sustained on the basis of the same?

iii) When the material (narcotics) is neither produced nor exhibited, the presumption can be drawn that it is not in existence at all. When the best evidence, i.e., the case property/ narcotics, vehicle, etc., is withheld by the prosecution and there is no plausible explanation for the non-production of the same in court, an adverse inference or assumption against the prosecution could be drawn under Article 129-(g1) of the Qanoon-e-Shahadat Order, 1984, and it can easily be presumed that no such material/narcotics is in existence. Needless to observe that if the case property is not produced in Court, the concerned authority/prosecution is required to furnish plausible explanation based upon concrete material and not mere lame excuses.

iv) It is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right.

Conclusion: i) Rule 22.16, Rule 22.18, Rule 22.70, Rule 27.11 and Rule 27.12 of the Police Rules 1934, Rule 14-E, Rule 14-F and Rule 14-H of Part B of Chapter 24 of Volume III of the Lahore High Court Rules and Orders, Section 516-A of the Code of Criminal Procedure, 1898 and the Control of Narcotic Substances (Government Analysts) Rules, 2001 are the relevant provisions of law and rules as to the case property and exhibition of the same in a court of law.

ii) If the recovered narcotics are not produced before court, the accused cannot be convicted for the said narcotics.

iii) When the material (narcotics) is neither produced nor exhibited, the presumption can be drawn that it is not in existence at all.

iv) A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit?

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6. **Supreme Court of Pakistan**
Imran Ahmad Khan Niazi v. Main Muhammad Shahbaz Sharif
C.P. 3436-L of 2022 and C.P. 3437-L of 2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3436_l_2022.pdf

Facts: Through the present petitions, the petitioner seeks leave to appeal against a consolidated order of the Lahore High Court, whereby his two revision petitions filed against the orders of the trial court have been dismissed. The trial court had dismissed the objections (application) of the petitioner for rejection of the interrogatories of the respondent and directed him to submit the answers to those interrogatories and struck out the right of defence of the petitioner due to non-submission of the answers to the said interrogatories.

Issues: i) What has the substantial bearing while using the discretionary power of Supreme Court to grant or decline the leave to appeal?
ii) When the court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant?
iii) What does the "peremptory order" means?
iv) What is the object of rules relating to time limits for certain acts during judicial proceedings?
v) What is the object of pleadings as well as interrogatories?
vi) Whether the provisions of procedural law are mandatory or directory in nature?
vii) Whether non-examining of the interrogatories would vitiate the order of the trial court?
viii) What is the procedure of examination of interrogatories as per the provisions of CPC?
ix) Whether the trial court has the power to take penal action at its own motion for enforcement of its order?
x) Whether the trial court has discretionary power to grant an adjournment and the appellate court can interfere in the order of the trial court of discretionary nature?

Analysis: i) The jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 to grant the leave to appeal is discretionary; the conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him.
ii) The conduct of a party is material for the purpose of exercising the court's discretion under Rule 21 of Order XI, CPC: the court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant when the party concerned is guilty of contumacious conduct by disregarding the specific order of the court, for compliance of which the court has granted a reasonable time and a sufficient opportunity. However, it is not only a deliberate failure to comply with a specific order of the court by a party that is regarded as his contumacious conduct but a series of separate inordinate delays caused by him at different stages of the proceedings of the case is also a convincing proof of such conduct.
iii) A "peremptory order" of the court, specifies a time to do a certain act in the proceedings of the case with a warning of last opportunity, must be followed by the legal consequences prescribed by the relevant law for its non-compliance.

iv) The rules containing time limits for doing the specified acts necessary for the progress of a case are intended to accomplish the constitutional goal of fair trial and expeditious dispensation of justice by concluding the litigation process within a reasonable timeframe. These rules should, therefore, be observed. The main purpose of providing a timeframe in procedural rules is to expedite the hearing and conclusion of the case and to avoid unnecessary adjournments. Such rules are, therefore, to be adhered to for giving effect to the purpose of their making, else the non-compliance therewith would frustrate the objective of expeditious decision of the cases sought to be achieved by the legislature or the rule-making authority, as the case may be. The procedural rule prescribing the timeframe for doing a certain act in the course of the proceedings of a case should, therefore, be followed as a rule and the departure therefrom can be made only as an exception in exceptional circumstances beyond the control of the party concerned. The court may also ask for the filing of an affidavit or the necessary documents, depending on the facts and circumstances of the case, in support of those exceptional circumstances.

v) The interrogatories differ from the pleadings: the object of the pleadings is to ascertain what the issues are, while the main object of the interrogatories is to save time and expense by enabling a party to obtain an admission of certain facts from his opponent, which narrows down the issues for trial and thus reduces the burden of proof. The fair use of the process of interrogatories ultimately results in an overall shortening of the trial and thus helps achieve the constitutional goal of the inexpensive and expeditious dispensation of justice. Interrogatories therefore play a vital role in making the civil trial court system more effective and efficient.

vi) The provisions of a procedural law are ordinarily directory in nature and are construed liberally to advance the cause of justice, as their main purpose is to facilitate the administration of justice. The same purposive approach is to be adopted while construing and applying a procedural provision which provides a timeframe for doing a certain act necessary to the further progress of the case.

vii) The power of the trial court under Rule 1 to examine the interrogatories before delivering the same to the party concerned under Rule 2 and to reject any irrelevant interrogatory at that stage, is permissive, not obligatory. The non-exercise of which does not vitiate the order of the court delivering the interrogatories to the party concerned under Rule 2 for submitting the answers.

viii) The civil justice, is primarily adversarial, the party concerned invite the attention of the trial court for such examination, either (i) by making an application under Rule 7 of Order XI if all or most of the interrogatories delivered appear to be irrelevant by specifying the particular objection taken to each of such interrogatories separately, or (ii) by answering those interrogatories which he/she thinks are relevant and taking objection to those which he thinks are irrelevant as per Rule 6 of Order XI, CPC.

ix) These amendments would be rendered useless if the trial court enjoys no power to enforce its order by first issuing the warning of the proposed penal action and then to take the said action if its order is not complied with despite that

warning, without an application of the party. The trial court, in our opinion, does have the power to take the penal action on its own if its order is not complied with despite giving the warning of last opportunity for compliance.

x) The power of the trial court under Rule 1 of Order XVII of the CPC to grant an adjournment on being shown the sufficient cause is discretionary; therefore, an appellate court cannot interfere with the order of the trial court, either granting or refusing adjournment, unless it is found that the discretionary power has been exercised perversely or arbitrarily.

Conclusion: i) The conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him.

ii) The court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant when the party concerned is guilty of contumacious conduct by disregarding the specific order of the court.

iii) A "peremptory order" of the court, specifies a time to do a certain act in the proceedings of the case with a warning of last opportunity, must be followed by the legal consequences prescribed by the relevant law for its non-compliance.

iv) The rules containing time limits are intended to accomplish the constitutional goal of fair trial within a reasonable timeframe.

v) The object of the pleadings is to ascertain what the issues are, while the interrogatories save time and expense.

vi) The provisions of a procedural law are ordinarily directory in nature.

vii) The non-examining of the interrogatories would not vitiate the order of the court.

viii) The procedure is by making an application if all or most of the interrogatories delivered appear to be irrelevant by specifying the particular objection taken to each of such interrogatories separately, or by answering those interrogatories which he/she thinks are relevant and taking objection to those which he thinks are irrelevant.

ix) The trial court has the power to take penal action at its own motion for enforcement of its order.

x) Trial Court has discretionary power to grant adjournment and appellate court cannot interfere with the order of the trial court unless it is found that the discretionary power has been exercised perversely or arbitrarily.

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7. **Supreme Court of Pakistan**
Mst. Ghazala v. The State & another
Criminal Petition No.54 of 2023.
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._54_2023.pdf

Facts: The petitioner seeks leave to appeal against an order of the Peshawar High Court, whereby the High Court while dismissing the bail application of the petitioner has denied to her the post arrest bail in case, for the offences under Sections 302, 325, 200, 201, 182, 109 and 34 of the Pakistan Penal Code 1860 and the offence under

Section 15 of the Khyber Pakhtunkhwa Arms Act 2013.

Issues: i) Whether women accused is entitled to bail as a rule and refusal is only an exception?
ii) What are the exceptions that justify the refusal of bail?
iii) What is distinction between granting bail under Section 497(1) and under Section 497(2) CrPC?

Analysis: i) No doubt, the offence of Qatl-i-amd (intentional murder) punishable under Section 302 PPC alleged against the petitioner falls within the prohibitory clause of Section 497(1) of the Code of Criminal Procedure 1898 ("CrPC") but being a women, the petitioner's case is covered by the first proviso to Section 497(1), CrPC. The said proviso, as held in Tahira Batool case, makes the power of the court to grant bail in the offences of prohibitory clause of Section 497(1) alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, equal to its power under the first part of Section 497(1), CrPC. It means that in cases of women accused etc. as mentioned in the first proviso to Section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of Section 497(1), CrPC.
ii) The exceptions that justify the refusal of bail are also well settled by several judgments of this Court. They are the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence.
iii) The Court is not considering the grant of bail to the petitioner under Section 497(2), CrPC, under which the bail is granted to an accused as of right if it appears to the court that there are no reasonable grounds for believing that the accused has committed the offence alleged against him rather there are sufficient grounds for further inquiry into his guilt. For the purpose of deciding the prayer for grant of bail in exercise of the discretionary power of the court under Section 497(1), CrPC, the availability of a sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration.

Conclusion: i) In cases of women accused etc. as mentioned in the first proviso to Section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of Section 497(1), CrPC.
ii) The exceptions that justify the refusal of bail are: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence.
iii) Under Section 497(2), CrPC, the bail is granted to an accused as of right if

there are sufficient grounds for further inquiry into his guilt. Under Section 497(1), CrPC, the availability of a sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration.

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8. **Supreme Court of Pakistan**
Imran Mehmood v. The State and another
Criminal Appeal No. 82 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._82_2022.pdf

Facts: Appellant-accused was booked in case FIR for offences under sections 302/324/34 PPC read with Section 13 of the Arms Ordinance wherein he was convicted by trial court for offence under section 302(b) PPC and sentenced to death. In appeal the High Court maintained the said conviction and sentence. Being aggrieved the appellant filed instant criminal appeal.

Issues: (i) Whether mere relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witnesses out-rightly?
(ii) Whether ocular evidence can be given preference over medical evidence?
(iii) Whether conflict of ocular account with medical evidence would have an adverse affect on prosecution case?
(iv) Whether minor discrepancies on trivial matters can result in rejection of evidence in its entirety?
(v) When the burden to prove any particular fact shifts to an accused in a criminal trial?

Analysis: (i) 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 out-rightly. If the presence of the related witnesses at the time of occurrence is natural and their evidence is straight forward and confidence inspiring then the same can be safely relied upon to award capital punishment.
(ii) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.
(iii) It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain conviction. Minor discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as

witnesses are not supposed to give pen picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence.

(iv) It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored.

(v) According to Article 119 of the Qanun-e-Shahadat Order, 1984, the burden of proof to any particular fact lies on the person who wishes the court to believe its existence. There is no denial to this fact that the prosecution has to discharge the burden of proving the case beyond reasonable doubt. However, once the prosecution becomes successful in discharging the said burden, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty.

Conclusion: (i) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses out-rightly.

(ii) Where ocular evidence is found trustworthy and confidence inspiring, the same is to be given preference over medical evidence.

(iii) Conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case.

(iv) Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety.

(v) Once the prosecution becomes successful in discharging the burden to proof any particular fact, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty.

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9. **Lahore High Court**
M/s. Ashfaq Brothers & another v. Anti-Dumping Appellate Tribunal of Pakistan & others
F.A.O. No. 74 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC484.pdf

Facts: The appellants through the instant first appeal against order have challenged the orders of different dates passed by the Anti-Dumping Appellate Tribunal, Islamabad ("Appellate Tribunal") while exercising jurisdiction under Section 70 of the Anti-Dumping Duties Act, 2015 ("Act").

Issue: i) The word "High Court" used in sub-section (13) of Section 70 of the Anti-Dumping Duties Act, 2015 corresponds to which High Court?
ii) Whether the Lahore High Court has got territorial jurisdiction to ponder upon the decision of the "Appellate Tribunal" based in Islamabad?

Analysis: i) An appeal against the decision of the "Appellate Tribunal" lies before the High Court. The term "High Court" is nowhere defined in the "Act". Part VII of the Constitution of the Islamic Republic of Pakistan, 1973 deals with the judicature and Chapter 1 defines the Courts. In terms of Article 175(1), there shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for Islamabad Capital Territory and such other courts as may be established by law. It would not be out of context to mention here that initially, Islamabad High Court was not in existence and it was ultimately established through Act No.XVII of 2010, dated 2 nd August, 2010. By virtue of Section 4 of the said Act, jurisdiction of Islamabad High Court was extended in respect of the Islamabad Capital Territory, original, appellate, revisional and other jurisdiction, as under the constitution or the laws in force immediately before the commencement of the Act ibid, which was previously exercisable in respect of the said territory by the Lahore High Court. … The crux of above discussion is that word "High Court" used in sub-section (13) of Section 70 of the "Act" corresponds to Islamabad High Court.

ii) There is no cavil to the proposition that the "Appellate Tribunal" is performing functions in connection with the affairs of the Federation and it is amenable to writ jurisdiction, but we have to examine as to whether in the circumstances, this Court can exercise the jurisdiction constitutional or appellate against the decision of the "Appellate Tribunal". It is an admitted fact that initially investigation was started by the "Commission" at Islamabad, which resulted into passing of order in original. The said order was assailed through an appeal before the "Appellate Tribunal" under Section 70(1)(2) of the "Act", who decided the same through impugned order. We have noticed that the cause of action also arose either at Islamabad or Karachi and even the appellants before us while preferring their appeals before the "Appellate Tribunal" mentioned their addresses of places other than Rawalpindi. Apparently, the appellants have now changed addresses for their convenience or for any other reason best known to them. It is trite law that the Court cannot assume jurisdiction on the whims of the parties or to facilitate any of them. We cannot ignore the doctrine of *forum non conveniens*. It is founded on the principle that if some other forum is more appropriate and the interest of justice would be served better, the Court may decline to exercise jurisdiction on the ground that a case could be suitably tried by another Court, and, as such, this Court lacks territorial jurisdiction to ponder upon the decision of the "Appellate

Tribunal".

Conclusion: i) The word "High Court" used in sub-section (13) of Section 70 of the Anti-Dumping Duties Act, 2015 corresponds to Islamabad High Court.
ii) The Lahore High Court has got no territorial jurisdiction to ponder upon the decision of the "Appellate Tribunal" based in Islamabad.

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10. **Lahore High Court**
Mian Tariq Mehmood v. Election Commission of Pakistan & others
W.P.No.30623 of 2019
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC542.pdf

Facts: This constitutional petition brings a challenge to the judgment passed by the Election Commission of Pakistan.

Issues: i) What is the effect of repeal?
ii) Whether under clause (3) of Article 218 Election Commission can make a declaration qua disqualification of a member of Assembly?
iii) Whether Articles 62 and 63 confer power on ECP to make such a declaration?
iv) What is procedure when any question arises that a member of the Parliament has become disqualified from being a member?
v) When ECP can proceed to adjudicate upon controversy of disqualification of a member?
vi) Whether ECP is vested with power to entertain any reference of disqualification filed by a private person?
vii) What is the procedure to challenge the election?

Analysis i) The effect of repeal is that it will only save pending proceedings and any proceedings commenced after the enactment of Act, 2017 will be governed by the new law and the provisions of old law cannot be invoked.
ii) The ECP in the impugned order has invoked to its aid clause (3) of Article 218 to make a declaration that the petitioner was disqualified from being a member of the Provincial Assembly. This power cannot be culled out from clause (3) of Article 218 and such an action by ECP must be discountenanced. Clause (3) of Article 218 merely casts a duty on ECP to organize and conduct elections and to make arrangements to ensure that the elections are conducted justly and fairly and in accordance with law. During the course of conduct of the elections it must also guard against corrupt practices. By no stretch of imagination it has empowered ECP to entertain a reference such as one in the present case and to embark upon an inquiry to disqualify a member of the Assembly or the Senate. Such a course is impermissible to ECP and would nullify the intent that permeates the relevant provisions not only of the Constitution but also of the Act, 2017.
iii) Further it is a fallacy on the part of ECP to have relied upon Articles 62 and 63 as conferring power on ECP to make a declaration of the kind which has been done through the impugned order. Articles 62 and 63 merely prescribe the

qualifications and disqualifications of a person from being elected or chosen as and from being a member of the Parliament and a Provincial Assembly and no more. The procedural requirements for doing so and the power which comes to vest in a Court or other Tribunal to set in motion the proceedings for doing so must be prescribed in law.

iv) Clause (2) of Article 63 clearly provides that if any question arises whether a member of the Parliament (or a Provincial Assembly) has become disqualified from being a member of that Assembly, the Speaker or the Chairman shall refer the question to ECP which shall be decided within ninety days from the receipt of the reference from the Speaker or Chairman of the Senate.

v) The only time that ECP can proceed to adjudicate upon such a controversy is when a reference is received from either the Speaker or the Chairman of the Senate.

vi) Apart from this ECP is not vested with any power to broach the subject of disqualification on any reference filed by a private person which exercise will be ultra vires the Constitution as well as the Act, 2017.

vii) It indubitably follows that under the law no election shall be called in question except by an election petition filed by a candidate for that election.

Conclusion: i) The effect of repeal is that it will only save pending proceedings and any proceedings commenced after the enactment of Act, will be governed by the new law and the provisions of old law cannot be invoked.

ii) Clause (3) of Article 218 has not empowered ECP to entertain a reference filed by a private person and to embark upon an inquiry to disqualify a member of the Assembly or the Senate.

iii) Articles 62 and 63 do not confer power on ECP to make a declaration of disqualification of member of assembly.

iv) Clause (2) of Article 63 clearly provides that if any question arises whether a member of the Parliament (or a Provincial Assembly) has become disqualified from being a member of that Assembly, the Speaker or the Chairman shall refer the question to ECP.

v) The only time that ECP can proceed to adjudicate upon such a controversy is when a reference is received from either the Speaker or the Chairman of the Senate.

vi) ECP is not vested with any power to broach the subject of disqualification on any reference filed by a private person which exercise will be ultra vires the Constitution as well as the Act, 2017.

vii) Under the law no election could be called in question except by an election petition filed by a candidate for that election.

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11. **Lahore High Court, Lahore**
Mst. Saima Naeem v. M/S Habib Bank Ltd. and another
EFA No. 18 of 2021
Mr. Justice Mirza Viqas Rauf and Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC459.pdf

Facts: This appeal under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is directed against the order passed in execution proceedings of decree, whereby appellant's objection petition was dismissed.

Issues: Whether a buyer from a mortgagor or a third party can claim any better title or right in the property or any interest free from the charge of mortgage?

Analysis: As per section 58 of the Transfer of Property Act, 1882 mortgage is transfer of an interest in specific immovable property for the purposes of securing the payment of money advanced or to be advanced by way of loan or financing, an existing or future debt or the performance of an engagement giving rise to a pecuniary liability. Once a valid mortgage is created against a specific immoveable property, then mortgagor's interest in the property to that specific extent stands transferred to the mortgagee. Upon creation of mortgage, the charge travels with the property and not with the person. If a mortgagor manages to part with the property or confers interest to third party, then the buyer or the third party will step into the shoes of mortgagor.

Conclusion: Having stepped into the shoes of mortgagor, buyer or the third party cannot claim any better title or rights in the property or any interest free from the charge of mortgage.

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12. **Lahore High Court, Lahore**
Col. (R) Muhammad Shabir Awan v. Raja Saghir Ahmed and 4 others
Election Petition No.1 of 2022
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC503.pdf

Facts: Through main petition under section 139 of the Elections Act, 2017 the petitioner called in question the candidature of returned candidate and, in response thereto, returned candidate submitted his reply including objection on maintainability of main petition.

Issues: i) What law requires in connection with verification of the pleadings of an election petition?
ii)Whether "Oath Commissioner" and "Notary Public" are same terms/offices for the purposes of Section 144 of the Election Act, 2017?
iii) Whilst presenting the election petition, what is impact of non-compliance of the mandate of sections 142, 143 and 144 of the Election Act, 2017?

Analysis: i) Section 144 (4) of the Election Act, 2017 prescribes that the election petition and its annexures shall be signed by the petitioner and it shall be verified in the manner laid down in in Order VI Rule 15 ofthe Code of Civil Procedure, 1908. Said both provisions of law shall be read with section 139 of the Code of Civil

Procedure, 1908.

ii) Power to appoint Notary under the Notaries Ordinance (XIX of 1961) vests in the Provincial Government and functions of the Notary are laid down in section 8 of said Ordinance. On the other hand, Oath Commissioner is to be appointed by the High Court under section 139(b) of the Code of Civil Procedure (V of 1908) & section 539 of the Code of Criminal Procedure, 1898 and the prime object of appointing Oath Commissioner is to attest affidavits to be produced before a court to prove any particular fact or facts. Rules and Orders of the Lahore High Court, Lahore Volume IV Chapter 12 Part B deals with the affidavits wherein the manner of appointment and charging of fee by the Oath Commissioner is provided alongwith mode of administering of oath as well as attesting, signing and verification of affidavits, whereas Volume V Chapter 1 Part E of the Rules and Orders of the Lahore High Court, Lahore lays down the procedure for making and filing of affidavits in the High Court. In terms of section 139(b) of the Code of Civil Procedure (V of 1908) Oath Commissioner can only be whom the High Court may appoint in this behalf, which in no way can be Notary.

iii) Chapter IX of the Election Act, 2017 lays down a procedure for the settlement of election disputes. Election petition is to be presented in a manner provided under section 142 of the Act ibid and Section 144 thereof lays down necessary preconditions for the election petition. Section 144 (4) of the Act ibid ordains that an election petition and its annexures shall be signed by the petitioner and the petition shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. Section 145 of the Act ibid prescribes a procedure before the Election Tribunal. Section 145 (1) of the Act ibid contemplates that if any provision of preceding sections 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition.

Conclusion: i) The joint reading of section 144 (4) of the Election Act, 2017 and Order VI rule 15 of the Code of Civil Procedure (V of 1908) clearly shows that the pleadings shall be verified on oath and said oath which is required to be administered by a person who is duly authorized in this behalf.

ii)An “Oath Commissioner” and “Notary” are both different and distinct terms/offices. The intermingling of both would result into serious legal complications.

iii) A petitioner of an election petition is obliged to adhere the mandate of provisions of sections 142, 143 and 144 of the Election Act, 2017 and noncompliance thereof renders automatic rejection of the election petition.

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13. **The Lahore High Court**
Muhammad Nazeer v. Ch. Ghulam Hussain, Etc.
W.P.No.3843 of 2021
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC495.pdf

Facts: This writ petition is filed against an order passed by the Additional Rent Controller–in a pending ejectment petition filed under section 17(8) of the Cantonments Rent Restriction Act, 1963 seeking eviction of the petitioner, whereby the petitioner was directed to deposit the tentatively assessed rent as well as regular future rent.

Issues: i) When a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, whether it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship *inter se* parties in the first instance?
ii) In what circumstances an interlocutory order is amenable to constitutional jurisdiction of High Court?

Analysis: i) A landlord can seek eviction of tenant by moving a petition under section 17 of the Cantonments Rent Restriction Act, 1963. Section 17(8) of the Act ibid empowers the Rent Controller to direct the tenant to deposit all the rent due from him before a specified date and also to deposit the monthly rent which subsequently becomes due till the final decision of the case. Such an order may be passed either on the first hearing of proceeding or as soon thereafter as may be, but before issues are framed. Said section 17(8) manifests that a direction to deposit the tentative rent can only be given to the tenant. The Rent Controller cannot proceed mechanically with the proceedings and pass an order under section 17 (8) of the Act ibid without being satisfied that there exists relationship of landlord and tenant between the parties before it. Where the relationship of landlord and tenant is denied, the Rent Tribunal would lack jurisdiction, on account of the doctrine of jurisdictional fact, to pass an order for payment of rent due under section 24 of the Act until and unless the Tribunal positively ascertains the relationship of tenancy and establishes that the respondent to the eviction application is in fact a 'tenant' in terms of section 2(l) of the Act. When a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship *inter se* parties in the first instance.
ii) It is observed that in ordinary course, the constitutional jurisdiction should not be exercised against an interlocutory or interim order as a run-of-the-mill case, but when such order, at the face of it, is patently perverse and appears to be suffering with illegalities, the jurisdiction of High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be abdicated or abridged.

Conclusion: i) When a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship *inter se* parties in the first instance.

ii)Though scope of constitutional jurisdiction against an interim order is limited, but when once Court reaches at the conclusion that the order/action under challenge is fraught with illegalities as to alter the justice, it cannot sit as a silent spectator to perpetuate a void order.

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14. **Lahore High Court, Lahore**
Newage Cables (Pvt.) Ltd.v. Lahore Electric Supply Company, etc.
ICA No.10644 of 2023
Mr. Justice Ch. Muhammad Iqbal and Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC566.pdf

Facts: Through this Intra Court Appeal filed under Section 3 (2) of the Law Reforms Ordinance, 1972, the appellant has called in question order passed by learned Single Judge of this Court, whereby his constitutional petition was dismissed.

Issues: How expiry of six months would be calculated in case letter of intent/agreement provides that repeated order may be placed during the currency of the Contract or within 6 months from the date of issue of initial purchase order, whichever is later?

Analysis: The expression 'whichever is later' is a rider on the exercise of right to place a purchase order with increase or decrease of quantity by 15%, which could have be done even through the initial purchase order and the same could have been made during the currency of the contract or through a subsequent purchase order made within 6 months after initial purchase order had been placed, both of which situations could arise in the matter. The expression 'whichever is later', if provided in the contract/agreement, could not have been treated as redundant or unilaterally rescinded.

Conclusion: Instead of the date of acceptance of Letter of Intent, the six months are to be calculated on the basis of date of issuance of initial purchase order as the same was later in time.

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15. **Lahore High Court**
University of Punjab etc. v. Abdul Majeed etc.
Civil Revision No.78898 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC510.pdf

Facts: Through this civil revision, the petitioner has challenged the validity of judgment & decree passed by the learned Civil Judge whereby suit for declaration with mandatory injunction filed by respondent No.1 was decreed and judgment & decree passed by the learned Additional District Judge who dismissed the appeal of the petitioner.

Issues: Whether the University is debarred to quash the result after the lapse of period of three years once the result gazette was issued?

Analysis: Under Chapter-VI of the Calendar of the University of the Punjab, 1998 the Syndicate has the jurisdiction to quash the result or withdraw the degree within three years from the date of declaration of result. Once the result gazette was issued the University was/is debarred to quash the result after the lapse of period of three years.

Conclusion: Yes, the University is debarred to quash the result after the lapse of period of three years once the result gazette was issued.

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16. **Lahore High Court**
Mst. Rajan Bibi etc. v. Muhammad Saddique etc.
R.S.A. No.67 of 2013
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC517.pdf

Facts: Through this Regular Second Appeal under Section 100 CPC the appellants have assailed the judgment & decree passed by the learned Civil Judge who decreed the suits for possession through specific performance filed by respondents No.1 to 3 and also assailed consolidated judgment & decree passed by the learned Additional District Judge who dismissed their appeal.

Issues: i) Whether the documents relied upon by a party in pleadings should be produced in the evidence by such party and not by their counsel, while giving an opportunity to the other party to cross-examine the same?
ii) Whether evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a subsequent judicial proceeding?
iii) Whether it is duty of the beneficiaries to prove the alleged agreement to sell by producing both the marginal witnesses?

Analysis: i) It is settled law that the documents relied upon or on the basis of which the pleading (plaint or written statement) has been filed should be produced in the evidence by party itself and an opportunity should be given to the other party to cross-examine the same, as such the documents produced by the counsel cannot be relied upon as valid tender of evidence and such documents are liable to be excluded from consideration.
ii) Under Article 47 of the Qanun-e-Shahadat Order, 1984, the evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which states that the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

iii) Under Article 17 read with Article 79 of the Qanun-e-Shahadat Order 1984, it is the duty of the beneficiaries to prove the alleged agreement to sell by producing both the marginal witnesses.

Conclusion: i) Yes, the documents relied upon by a party in pleadings should be produced in the evidence by such party and not by their counsel, while giving an opportunity to the other party to cross-examine the same.
ii) Yes, evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a subsequent judicial proceeding subject to fulfill of parameters provided under Article 47 of the Qanun-e-Shahadat Order, 1984.
iii) Yes, it is duty of the beneficiaries to prove the alleged agreement to sell by producing both the marginal witnesses as mandatory requirement.

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17. **Lahore High Court**
Anam Bibi v. Secretary, Punjab Public Service Commission, Lahore & others
Writ Petition No.2412 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC537.pdf

Facts: This writ petition is directed against the rejection letter, whereby petitioner's candidature for the post of Lecturer Philosophy (Female) (BS-17) in the Punjab Higher Education Department announced by PPSC, was rejected on account of non-submission of her previous domicile certificate along with domicile certificate of her husband at the time of filing of her application for the said post and petitioner's representations in this regard were rejected.

Issues: i) Whether the non-existence or non-submission of previous domicile of a married female candidate along with her husband's domicile will result in her ineligibility for appointment to a particular post announced by PPSC?
ii) Whether a subordinate legislation can be made in conflict with the primary legislation?

Analysis: i) PPSC Regulations, 2016 were formulated by taking power from sub-section (2) of Section 10 of the Punjab Public Service Commission Ordinance, 1978 and these are subordinate and delegated legislation, deriving authority and legal cover from the provisions of the main statute. Policy Decisions are meant to deal with details and can neither be a substitute for the fundamentals of the Regulations nor can add to them. The Policy Decision in question has imposed a further condition of having domicile of the candidate before her marriage for getting benefit of domicile of her husband. While Regulation 23(e) does not require the submission of earlier domicile of any married female candidate or rejection of her candidature in case she does not possess any earlier domicile. The beneficial Regulation 23(e) has been qualified with a restriction leading to ineligibility of a candidate to be considered for appointment if she has no domicile before marriage.
ii) The principles of delegated legislation entitle the delegate to carry out the

mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation. They can fill in details but not vary the underlying statutory principles. Even otherwise, if a subordinate legislation is in conflict with the primary legislation, then it is void and ultra vires. Similarly, through a policy, a valid subordinate legislation can neither be made redundant nor superseded and no policy can be made in conflict therewith.

Conclusion: i) The non-existence or non-submission of previous domicile of a married female candidate along with her husband's domicile will not result in her ineligibility for appointment to a particular post announced by PPSC.
ii) No, a subordinate legislation cannot be made in conflict with the primary legislation.

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18. **Lahore High Court**
Azeem-ud-Din v. Feroze Khan etc.
Crl. Misc. No.60014/CB of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC466.pdf

Facts: The complainant lodged an FIR against the respondent in an offence punishable u/s 489-F PPC wherein the pre-arrest bail of the respondent was allowed by the High Court based on a compromise (Mark-A) executed between them. Later complainant died and the petitioner as his son applied for the cancellation of bail on the ground of non-compliance with the terms of compromise by the respondent.

Issues: Who can file an application for the cancellation of the bail under section 497(5) Cr.P.C of 1898?

Analysis: Section 497(5) Cr.P.C. does not explicitly state that only an interested person can move the court for cancellation of bail. In Nazir Ahmad v. Latif Hussain and others (PLD 1974 Lahore 476), the High Court entertained the application because the applicant, in addition to being a witness of the alleged motive, was the husband of the woman who was assaulted and dishonoured. The High Court held that he was "a person vitally interested in the case." In Khalid Mahmood v. Abdul Qadir Shah and others (1994 PCr.LJ 1784), this Court ruled that a private person who has a legitimate interest in the prosecution, such as the complainant or a close relative of the deceased or an injured person, may apply for cancellation of bail granted to an accused person. The learned Judge observed that being the "real aggrieved persons" they cannot be barred from seeking redress in a court of law. This is also necessary because the State frequently exhibits passivity in bail cancellation.
It is the State's primary duty to ensure justice is done to the parties even during the bail process. No accused should be released on bail unless legally entitled to

it. The Prosecution Department should immediately seek a correction under section 497(5) Cr.P.C. where the court has wrongly granted bail to an offender. Additionally, any individual who is vitally interested in the case and concerned with its outcome has a right to contest such an order. The court may also intervene on its own initiative if any lapse, capriciousness, arbitrariness, or perversity comes to notice. Section 497(5) Cr.P.C. confers powers similar to revisional powers under sections 435 and 436 Cr.P.C. on the High Court and the Court of Sessions.

Conclusion: Any individual who is vitally interested in the case may apply for the cancellation of bail u/s 497(5) PPC.

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19. **Lahore High Court**
Muhammad Akram v. The State etc.
Crl. Misc. No.51580/M of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC570.pdf

Facts: The petitioner and respondent no.4 filed two separate applications before the Judicial Magistrate, for custody (superdari) of the Car. The Judicial Magistrate dismissed the Petitioner's application and allowed that of Respondent No.4. The Petitioner filed a revision petition in the Sessions Court, which was dismissed by the Additional Sessions Judge. The Petitioner has now assailed these orders through this petition under section 561-A Cr.P.C. before this Court.

Issues: i) What procedure is required to be adopted, when a person applies for superdari of the vehicle and one of the interested parties asks the Motor Registering Authority to investigate the title of its rival and cancel his registration?
ii) What is meant by 'motor vehicle' under motor vehicle ordinance XIX of 1965?
iii) Whether anyone one can drive any vehicle, or motor vehicle owner can cause or permit his vehicle to be driven in any place unless it is registered under Chapter III of the Ordinance and has a registration mark displayed in the prescribed manner?
iv) What are the consequences regarding ownership of a vehicle, if the transferee does not submit an application to the Motor Registering Authority for a change of ownership of a vehicle within 30 days following the transaction?
v) Whether there is any provision in the Ordinance, which authorizes the Motor Registering Authority to hear an application questioning the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute?
vi) Whether the signature or handwriting on the document is required to be proved when a question with regard to signature or writing of a document by a particular person arises?
vii) Whether the conviction based on modern devices and techniques may be lawful?
viii) Whether the handwriting expert's opinion is relevant piece of evidence or

conclusive proof of evidence to prove a fact?

ix) Whether any expert opinion may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness in the court?

Analysis: i) Section 550 Cr.P.C. empowers a police officer to seize any property that may be alleged or suspected to have been stolen or may be found under circumstances that raise suspicion that an offence has been committed. Sections 523 to 525 Cr.P.C. outline the procedure for disposal of the seized property. Section 523 directs the police to report the matter to a Magistrate immediately after the seizure. However, it is well settled that the proceedings before the Magistrate are summary. He cannot conduct a detailed inquiry because it is the realm of the civil court. When the police seize a vehicle, and a person applies for its superdari, the Magistrate sometimes calls a report from the Motor Registering Authority. At times one of the interested parties asks the Motor Registering Authority to investigate the title of its rival and cancel his registration, then it is necessary first to define the precise nature, scope, and extent of the Motor Registering Authority's jurisdiction.

ii) The Motor Vehicles Ordinance XIX of 1965 (the "Ordinance") regulates motor vehicles in the province. According to section 2(23) thereof, "motor vehicle means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached or a tractor and a trailer; a combined harvester, a rig, a fork lifter, a road roller, construction, and earth moving machinery, such as a wheel loader, a crane, an excavator, a grader, a dozer and a pipe layer, a road making and a road/sewerage cleaning plant but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner."

iii) Section 23(1) of the Ordinance states that no one shall drive any vehicle, and no motor vehicle owner shall cause or permit his vehicle to be driven in any place unless it is registered under Chapter III and has a registration mark displayed in the prescribed manner. Sections 24 to 28 set out the procedure for registering a motor vehicle.

iv) Section 32 speaks of the subsequent transfer of ownership. It stipulates that the transferee shall, within 30 days of the transfer of ownership of a motor vehicle registered under the Ordinance, report the transfer to the Motor Registering Authority within whose jurisdiction he ordinarily resides along with the prescribed documents as proof of the change of ownership and payment of the prescribed fee. The Motor Registering Authority shall update the records and issue a new registration certificate. Section 34 enumerates the instances under which the MRA may suspend a motor vehicle registration certificate, and section 35 lists the circumstances under which the Motor Registering Authority may cancel it.

v) There is no provision in the Ordinance, including sections 34 or 35, which

authorizes the Motor Registering Authority to hear an application questioning the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute. That is the exclusive jurisdiction of the civil court.

vi) According to the Article 59, when the court has to form an opinion on the point of foreign law, science, or art, or the identity of handwriting or finger impression, or the authenticity of an electronic document, the opinions of the experts in those fields are relevant facts. Article 61 deals with the situation when the court has to form an opinion about the person who wrote or signed a document. It states that the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact. Article 78 deals with the proof of a person's signature and handwriting. It stipulates that if a question arises whether a document was signed or written by a particular person, his signature or handwriting, as the case may be, on that document must be proved. Article 100 attaches some presumptions to thirty years old documents.

vii) Article 164 of Qanun-e-Shahadat provides that courts may allow any evidence that may have become available because of modern devices and techniques. Proviso to Article 164, added in the year 2017, provides that conviction based on modern devices and techniques may be lawful. Article 164, read with Article 59, inter alia, allows modern forensic science to enter courts through the experts' credible and valued scientific opinions as evidence to arrive at the truth.

viii) Parliament has recently amended section 510 Cr.P.C. through the Code of Criminal Procedure (Amendment) Act, 2022 and made the report of the forensic scientist and the handwriting expert admissible per se. While interpreting section 510 Cr.P.C**.** (and the abovementioned amendment), we must, on the one hand, distinguish between the admissibility and the procedure for adducing the handwriting expert's report in evidence and, on the other hand, its probative value. The law only makes the report admissible without the expert's examination, but it is not conclusive evidence. The jurisprudence developed over the years is that the handwriting expert's opinion is relevant, but it is a weak type of evidence. It should not be treated as conclusive evidence to prove a fact.

ix) Qanun-e-Shahadat makes the expert opinion admissible, but section 510 Cr.P.C. states special rules of evidence and simplifies the evidentiary procedure by providing that the reports of the chemical examiner, serologist, fingerprint expert, or firearm expert may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness.

Conclusion: i) It is necessary first to define the precise nature, scope, and extent of the Motor Registering Authority's jurisdiction; when a person applies for superdari of the vehicle and one of the interested parties asks the Motor Registering Authority to investigate the title of its rival and cancel his registration.

ii) According to Section 2(23) of motor vehicle ordinance XIX of 1965, motor

vehicle means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner.

iii) No one shall drive any vehicle, and no motor vehicle owner shall cause or permit his vehicle to be driven in any place unless it is registered under Chapter III of the Ordinance and has a registration mark displayed in the prescribed manner.

iv) If the transferee does not submit an application to the Motor Registering Authority for a change of ownership of a vehicle within 30 days following the transaction, the transaction is null and void under section 32 of the Ordinance.

v) There is no provision in the Ordinance, which authorizes the Motor Registering Authority to hear an application questioning the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute.

vi) The signature or handwriting on the document must be proved; when a question with regard to signature or writing of a document by a particular person arises.

vii) Proviso to Article 164, added in the year 2017, provides that the conviction based on modern devices and techniques may be lawful.

viii) The handwriting expert's opinion is only a relevant piece of evidence and not a conclusive proof of evidence to prove a fact.

xi) Under Section 510 Cr.P.C, any expert opinion may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness in the court.

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20. **Lahore High Court**
Muhammad Manzoor @ Dani v. The State & another
Crl.Misc.No. 261-B of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC472.pdf

Facts: The petitioner on being unsuccessful in getting relief of post-arrest bail from the court of learned Additional Sessions Judge, through instant application entreats the same concession from this Court in case FIR, in respect of an offence under Section 9(1) 3(c) of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether juvenile accused of a major or minor offence is entitled to bail as matter of right?

ii) Whether bail of juvenile accused above 16 years involved in heinous offence can be denied?

iii) Whether a juvenile below the age of 16 years involved in heinous offence is entitled to bail as a matter of right?

Analysis: i) The reading of the sections of the Act of 2018 reflects that a juvenile i.e. (a person less than 18 years of age) accused of a major or minor offence, should be granted bail as of right and not by way of grace or concession unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger.
ii) If the offence for which a juvenile is charged is a heinous offence, the juvenile may be declined bail provided he is more than 16 years of age.
iii) The sections 6(3) and 6(4) of the mentioned Act have different meanings and purposes. Section 6 (4) of the Act do not have an overlapping effect upon section 6(3) of the Act. In the present case, according to the Birth Registration Certificate, the petitioner prima facie, appears to be 13 years, 11-months and 15-days of age and thus, entitle to the concession given in the Act of 2018 to persons falling within the ambit of Section 6(3) of the Act Ibid.

Conclusion: i) A juvenile accused of a major or minor offence, should be granted bail as of right and not by way of grace or concession.
ii) The bail of juvenile accused above 16 years may be declined in heinous offences
iii) If a person is less than sixteen years of age then by virtue of section 6(3) of the Juvenile Justice System Act, 2018 he should be granted bail as of right and not by way of grace of concession.

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21. **Lahore High Court**
Maqbool Ahmed v. The State, etc.
Criminal Appeal No.32 of 2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC580.pdf

Facts: The respondent No.2 was acquitted of the charge under section 489-F PPC by the learned trial court. The appellant/complainant has assailed the judgment passed by the learned Magistrate 1st Class through this criminal appeal under Section 417 Cr.P.C.

Issues: i) Whether every transaction where a cheque is dishonoured may constitute an offence?
ii) Whether dishonesty on the part of the payer is a condition precedent in issuance of a cheque to constitute an offence under section 489-F PPC?
iii) How the term "obligation" can be defined?
iv) Whether dishonesty is a "state of mind" or it is a "course of action" in view of section 489-F PPC?
v) Whether words 'dishonestly' and 'fraudulently' are different in view of section 489-F PPC?

Analysis: i) Every transaction where a cheque is dishonoured may not constitute an offence, rather three elements are required for the applicability of section 489-F PPC (i)

cheque must be issued with dishonest intention or dishonestly, (ii) it should be for repayment of a loan or (iii) to fulfill an obligation.

ii) It is trite that to constitute an offence under this section dishonesty on the part of the payer is a condition precedent in issuance of a cheque towards repayment of loan or to fulfill an obligation.

iii) The popular meaning of the term "obligation" is a duty to do or not to do something. In its legal sense, obligation is a civil law concept. An obligation can be created voluntarily, such as one arising from a contract, quasi-contract, or unilateral promise. An obligation can also be created involuntarily, such as an obligation arising from torts or a statute. An obligation binds together two or more determinate persons. Therefore, the legal meaning of an obligation does not only denote a duty, but also denotes a correlative right; one party has an obligation means another party has a correlative right. The person or entity who was liable for the obligation is called obligor; the person or entity who holds the correlative right to an obligation is called obligee… The legal sense of obligation from early Roman law claims that obligations are the bond of vinculum juris, or legal necessity, between at least two individuals or parties. In the original sense, the idea of obligation referred only to the responsibility to pay any money outlined in the terms of specific written documents. Obligation is the moral or legal duty that requires an individual to perform, as well as the potential penalties for the failure to perform. An obligation is also a duty to do what is imposed by a contract, promise, or law.

iv) Dishonesty means a state of mind where an act is committed by a person with the intention of causing wrongful gain for himself, herself or another, or of causing wrongful loss to any other person. Dishonesty is an acquisitive offence but a crucial question is palpitated as to whether dishonesty is a "state of mind" or it is a "course of action" No law in Pakistan defines this difference so far as told to the court; therefore, seeking guidance from UK law which says that there were two views of what constituted dishonesty in English law. The first contention was that the definition of dishonesty (such as those within the Theft Act 1968) described a course of action, whereas the second contention was that the definition described a state of mind. A clear test within the criminal law emerged from R v Ghosh [1982] QB 1053. The Court of Appeal held that dishonesty is an element of mens rea, clearly referring to a state of mind, and that overall, the test that must be applied is hybrid, but with a subjective bias which "looks into the mind" of the person concerned and establishes what he was thinking… But this decision was criticized, and over-ruled, by the UK Supreme Court in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The position as a result is that the court must form a view of what the defendant's belief was of the relevant facts. Hence the test for dishonesty was subjective and objective… From the above expression it is clear that two terms stand a part therefore, it is essential to prove dishonesty in issuing of cheque for the applicability of section 489-F PPC.

v) Section 489-F PPC finds mentioned the word 'dishonestly' and not the

'fraudulently' which is somewhat different concept yet both sometime are intermingled… Section 23 of PPC further defines that "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property… The above discussion is concluded in the terms that dishonesty is an acquisitive offence and in our law is a 'state of mind' (mens rea) and the fact that doer of an act knew of his act being dishonest (subjective test) is to be determined by the court from 'course of action' adopted for such act (objective test), depending upon the circumstances and evidence of the parties; therefore, it rests upon the Court to consider under which circumstances, the cheque was issued and what was the intention of the person issuing it.

Conclusion: i) Every transaction where a cheque is dishonoured may not constitute an offence, rather three elements are required for the applicability of section 489-F PPC (i) cheque must be issued with dishonest intention or dishonestly, (ii) it should be for repayment of a loan or (iii) to fulfill an obligation.
ii) Dishonesty on the part of the payer is a condition precedent in issuance of a cheque to constitute an offence under section 489-F PPC.
iii) The meaning of the term "obligation" is a duty to do or not to do something what is imposed by a contract, promise, or law.
iv) Dishonesty is a "state of mind" or it is a "course of action" in view of section 489-F PPC, for determination, the court must form a view of what the defendant's belief was of the relevant facts. Hence the test for dishonesty was subjective and objective.
v) Section 489-F PPC finds mentioned the word 'dishonestly' and not the 'fraudulently' which is somewhat different concept yet both sometime are intermingled.

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22. **Lahore High Court, Lahore**
M/S Fun Infotainment (Pvt.) Limited/Neo TV v. Pakistan Electronic Media Regulatory Authority And 2 Others
F.A.O No. 32274 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC9905.pdf

Facts: This appeal is filed under Section 30-A of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 against order passed by Pakistan Electronic Media Regulatory Authority, whereby fine is imposed upon petitioner.

Issues: i) When an order has been passed by the competent authority in exercise of its delegated powers, whether it would be considered as in violation of Section 8 (5) of the Ordinance, 2002?

ii) Which is the appropriate forum to decide that the contents as aired by Neo TV contained 'obscenity', 'indecency' or 'vulgarity'?

iii) Can the Courts take a lenient view regarding the person who admits his guilt and tenders apology, invoking the said apology as the mitigation circumstances?

Analysis: i) Section 8 (5) of the PEMRA Ordinance, 2002 requires that all the orders, determinations and the decisions of the Authority must identify the determination of Chairman and each member, separately. The Honourable Supreme Court of Pakistan in the case titled "Muhammad Ashraf Tiwana and Others v. Pakistan and Others"(2013 SCMR 1159) has clearly held that all the statutory authorities must discharge its functions and responsibilities conferred by the statute and the powers must be exercised personally, unless, the Authority is expressly allowed by law/statute to delegate his powers.Under section 13 of the PEMRA Ordinance, 2002, the Authority may, by general or special order, delegate to the Chairman or a Member or any member of its staff or an expert, etc. any of its powers, responsibilities or functions under this Ordinance subject to such conditions as it may prescribe by rules The Authority had delegated the powers to the Chairman of PEMRA in terms of Section 26 of the Ordinance, 2002.

ii) Courts are best suited for the job of upholding the rule of law and to provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner.The Council of Complaints is the appropriate forum to address the issue that whether the contents as aired by the Appellant contained 'obscenity', 'indecency' or 'vulgarity'.

iii) Invariable in cases where a person admits guilt or misconduct, express remorse, tenders apology and assures not to repeat wrong or misconduct complained of, then the authority concerned and courts of law as well do take a lenient view of the matter but in case, charge or allegation is contested and is ultimately established, then such delinquent may lose sympathetic consideration or any leniency on the part of the authority or the Court.

Conclusion: i) An order passed by the competent authority in exercise of its delegated powers, would be considered in consonance with Section 8 (5) of the PEMRA Ordinance, 2002.

ii)The forum for determination the question as to the contents, which are aired by the Channel, is the 'Council of Complaint'.

iii) In case where the charges or allegations are also contested at the same time, then the delinquent losses sympathetic consideration and thus the apology will not operate as the mitigation circumstance.

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23. **Lahore High Court**
Muhammad Shareef deceased through LRs, etc. v. Muhammad Ramzan deceased through LRs, etc.
Civil Revision. No.192 of 2014
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC479.pdf

Facts: Through this petition under Section 115 of the Code of Civil procedure, 1908 the petitioners have assailed the judgment and decree passed by the learned District Judge, allowing appeal of the respondents against dismissal of their suit for declaration vide judgment and decree, passed by the learned Civil Judge, for being not maintainable.

Issues: i) Whether suit can be treated as an application under Section 12(2) of the CPC.?
ii) Whether it is necessary to frame issues and record evidence in every application under section 12(2) CPC?
iii) What is the period of limitation to file an application under Section 12(2) of the CPC?
iv) What is the procedure to be adopted by the Court while disposing of an application under Section 12(2) of the CPC?

Analysis i) A cursory reading of the plaint in the instant case, instituted by the plaintiffs-respondents specially alleged in their plaint shows that the decree impugned therein was obtained by fraud and the same could not deprive of the Court to its jurisdiction to decide it as an application under Section 12(2) of the CPC if otherwise such jurisdiction was available to the court under the law, therefore, the learned appellate court was justified in converting into/treating the suit to be an application under Section 12(2) of the CPC and no prejudice was caused to the petitioners- defendants.
ii) As regards direction of the appellate court to the Civil Court to frame issues, record evidence and thereafter decide the case afresh on merits, suffice it to say that it is not mandatory in every case to frame issue and record evidence for disposal of an application under Section 12(2) of the CPC.
iii) the period of limitation to file an application under Section 12(2) of the CPC is governed by Article 181 of the Limitation Act, 1908.(…) "A careful reading of the above provision clearly reveals that the period of limitation to file an application under Section 12(2) of the CPC would be three years, and the crucial starting point for the period of limitation would be when the right to apply accrues to the aggrieved applicant, which in case of an application under Section 12(2) of the CPC would be the date when the impugned decision based on fraud and concealment was passed. In case the aggrieved person has, by means of fraud, been kept from the knowledge of decision of the Court, he may then seek the extension of the commencing point of the period of limitation of three years from the date of the decision under Article 181 of the Act, to the date of knowledge of the said decision under Section 18 (supra)."
iv) Sub-section (3) of Section 12 of the CPC governs the procedure to be adopted

by the Court while disposing of an application under Section 12(2) of the CPC. (…) Prior to insertion of sub-section (3) in Section 12 of the Code through Punjab Act No. XIV of 2018 dated 20.03.2018, no procedure was prescribed for the disposal of an application under Section 12(2) of the Code, however, in cases where the determination of allegations of fraud and misrepresentation involved investigation into the question of fact, inquiry was ordinarily held to adjudicate upon the matter by framing an issue and recording evidence while invoking the provision of Section 141 of the Code. It was, however, held in various judgments of the apex Court to be not mandatory to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code as the court had to regulate its proceedings keeping in view nature of the allegations made in the application and adopt such mode as was in consonance with justice in the facts and circumstances of the case.

Conclusion: i) The suit can be converted into/treated to be an application under Section 12(2) of the CPC.
ii) It is not mandatory in every case to frame issue and record evidence for disposal of an application under Section 12(2) of the CPC.
iii) The period of limitation to file an application under Section 12(2) of the CPC would be three years, which is governed by Article 181 of the Limitation Act, 1908.
iv) Sub-section (3) of Section 12 of the CPC governs the procedure to be adopted by the Court while disposing of an application under Section 12(2) of the CPC.

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24. **Lahore High Court**
Muhammad Arif v. Fouzia Nasreen, etc.
W.P. No.30491 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC556.pdf

Facts: Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") the petitioners have assailed the judgment and decree passed by the learned Judge Family Court, whereby suit for dissolution of marriage, recovery of maintenance and dowry articles instituted was partially decreed.

Issues: i) How the jurisdiction of family courts is determined with reference to the maintenance claim?
ii) If the cause of action arose in abroad, whether the family court in Pakistan has the jurisdiction over the matter of maintenance?

Analysis: i) In terms of Article 175(2) of the Constitution, no court has any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. Jurisdiction of the Family Court to entertain, hear and adjudicate upon matters specified in Part I of the Schedule to the Family Courts Act, 1964 ('Act') is

governed by Section 5 of the Act. The matters specified in the Schedule to the Act include maintenance as Item No.3. On matters specified under the Act, Rule 6 of the Family Court Rules, 1965 governs territorial jurisdiction of a Family Court. In terms of Rule 6 ibid, the Family Court which has jurisdiction to try a suit for maintenance is the one within the local limits of which the cause of action wholly or in part has arisen, or where the parties reside or last resided together.

ii) If the parties resided in abroad and the cause of action arose there, then the courts over there could exercise jurisdiction over the matter of maintenance and the suit is not maintainable in Pakistan.

Conclusion: i) In terms of Rule 6 of the Family Court Rules, 1965, the Family Court has jurisdiction to try a suit for maintenance within the local limits of which the cause of action wholly or in part has arisen, or where the parties reside or last resided together.

ii) The family court in Pakistan has not the jurisdiction over the matter of maintenance if the cause of action arose in abroad.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. PAP/Legis-2(125)/2021/99, dated 17.02.2023 amendments in clauses of sections 2, 5, 6, 7, 8, 10, 11, 12, 13, 17, 22, 23, 24, 27, 28, 31, 32 and in Schedule and insertion of sections 20-A, 20-B, 21-A, 21-B, 21-C, 21-D, 28-A of the Punjab Shops and Establishments Ordinance, 1969 have been made.
2. Vide Notification No. PAP/Legis-2(146)/2022/108, dated 17.02.2023 amendments in sections 2, 25, 30, 32, 34 and in First Schedule of the Provincial Motor Vehicles Ordinance, 1965 have been made.
3. Vide Notification No. PAP/Legis-2(140)/2021/105, dated 17.02.2023 amendment in section 15 of the Punjab Pension Fund Act, 2007 has been made.
4. Vide Notification No. PAP/Legis-2(139)/2021/104, dated 17.02.2023 amendment in section 9 of the Punjab General Provident Investment Fund Act, 2009 has been made.
5. Vide Notification No. PAP/Legis-2(106)/2021/101, dated 17.02.2023 amendment in section 16 of the Punjab Urban Immovable Property Tax, 2003 has been made.
6. Vide Notification No. PAP/Legis-2(136)/2021/102, dated 17.02.2023 amendment in section 8 of the Punjab Finance Act, 2014 has been made.
7. Vide Notification No. PAP/Legis-2(132)/2021/103, dated 17.02.2023 amendment in section 9 of the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 has been made.
8. Amendments of sections 2, 3, 4, 6, 7, 11, 12, 15, 17, 22, 24, 25 and Schedule-I, substitution of section 8 and 21 and insertion of 21-A and 24-A in the Punjab Alternate Dispute Resolution Act, 2019 have been made.

9. Vide Order No. SO (IS-II)1-1/2004 of the Home Department, Government of the Punjab dated 20.02.2023 prohibition/ban has been imposed on "usage of rough papers including newspapers having holy words/verses imprinted on them for wrapping/packaging and preserving the commodities in any form".
10. Vide Notification No. F. 22(38)/2023-Legis., dated 11.01.2023 amendments in long title, preamble, clauses a, b, c, d, of section 2 and insertion of section 20-A in the Public Procurement Regulatory Authority Ordinance, 2002 have been made.
11. Vide Notification No. F. 9(3)/90-Admin/FSC dated 10.02.2023, substitution of word in Rule 3 (1) (b), Chapter-1 of the Federal Shariat Court (Procedure) Rules, 1981 has been made.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Sociology-and-Law-Interface-An-Analysis

Sociology and Law Interface: An Analysis by Himanshu Ratre

Sociology, when we think about sociology one word always strikes in our mind i.e. society, and we know that studies about society is known as sociology. Law, when we talk about the law it is related to a set of rules and regulations for society. In this article, we will discuss about the interconnection and link between society and law. To know the link between this two, first of all, we have to know the definitions of these both terms.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Critical-Analysis-of-Statutory-Framework-of-Indemnity-Contracts

Critical Analysis of Statutory Framework of Indemnity Contracts by Prerita Bhardwaj

Indemnity refers to a situation in which a person suffers a loss and that loss is reimbursed or paid by another. Loss has always been a component of our life. It is natural that loss occurs and that rules for redressing it have existed for a long period of time. A person may suffer a loss in a variety of ways; it may be to his person or to his possessions. Indemnity is a legal principle, expressed in the form of a contract or referenced as a provision in business contracts, in which a party undertakes to compensate the indemnified party for damages incurred as a consequence of the promisor's or any third party's actions. By 1872, English law on contractual indemnities was quite developed. The common law courts had established the fundamental character of the claim for indemnification. Courts of equity also have the authority to enforce indemnification contracts. Insofar as it followed then-prevailing English law on indemnities, the Act was weak in certain areas and ahead of its time in others. For example, the Act makes no reference to the promisor's rights. It is startling to note that the 'contract of indemnification,' a

critical and often used instrument in the commercial world, is covered by just two provisions of the Indian Contract Act 1872, namely sections 124 and 125. This concept's statutory framework seems to have a number of flaws and inadequacies. This article attempts to address these shortcomings as well as propose corrective solutions to help rectify these deficits.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Right-to-Apply-for-Winding-Up-Devas-Multimedia-vs-Antrix-Corporation

Right to Apply for Winding Up: Devas Multimedia vs Antrix Corporation by Simant Tyagi

A company is said to be in the stage of winding up when its assets are acquired and sold in order to settle its debts. Debts, expenses, and charges are initially paid off and distributed among the shareholders when a company is wound up. A firm is formally dissolved and ceases to exist when it is liquidated. It is a legal procedure to shut down a business and stop all activities. When a company is wound up, its existence comes to an end, and its assets are managed to protect the interests of its stakeholders. According to Pennington, "Winding up or liquidation is the process by which the management of a company's affairs is taken out of its director's hand, its assets are realized by a liquidator, and its debts and liabilities are discharged out of the proceeds of realization and any surplus of assets remaining is returned to its members or shareholders. At the end of winding up the company will have no assets or liabilities, and will therefore be simply a formal step for it to be dissolved, that is its legal personality as a corporation to be brought to an end."

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Fraud-as-a-Ground-for-Arbitrability-Demystifying-the-Evolved-Jurisprudence

Fraud as a Ground for Arbitrability: Demystifying the Evolved Jurisprudence by Dhairya Kumar

With the changing legal scenario, there has been a rise in the use of arbitration to settle disputes due to a surge in business transactions and the parties' desire to promptly settle disputes in a private setting. Determination of subject matter of arbitrability is a crucial aspect. It means 'capability of a dispute or classes of disputes that can be settled by an arbitrator'. The question of the arbitrability of fraud is a contentious one. The Arbitration and Conciliation Act 1996 does not expressly bar the arbitrability of fraud. The amendments made in 2015 and 2019 have provided little light on this issue. In such a scenario, interpreting the jurisprudence based on several case laws becomes very crucial. In legal terminology, arbitrability is determined based on the nature of the rights involved.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11572-023-09657-9

Against the Evidence-Relative View of Liability to Defensive Harm by Eduardo Rivera-López & Luciano Venezia

According to the evidence-relative view of liability to defensive harm, a person is so liable if and only if she acts in a way that provides sufficient evidence to justify a (putative) victim's belief that the person poses a threat of unjust harm, which may or may not be the case. Bas van der Vossen defends this position by analyzing, in relation to a version of Frank Jackson's famous drug example, a case in which a putative murderer is killed by a putative victim. Van der Vossen submits that the putative murderer is liable to be killed, which is a verdict that can be accommodated only by the evidence-relative view. We argue that Van der Vossen's attempt to ground the evidence-relative view of liability to defensive harm fails. We also argue that this notion should be construed in fact-relative terms. This, however, does not mean that the notion of permissibility should necessarily also be understood in such a way in all possible cases. So, we explore whether the evidence-relative view of permissibility may be used in some contexts.