LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update ***Online Edition***

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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2021 to 28-02-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Mst. Safia Bano v. Home Department
Civil Review Petition No. 420 of 2016 in Civil Petition No. 2990 of 2016 etc
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._420_2016.pdf

Facts: An eight year old girl was raped and murdered in an unseen occurrence. Case was based on circumstantial evidence of wajtakkar, extra judicial confession, medical evidence and D.N.A.

Issue: i) How should the trial Court deal with the plea of an accused that he/she was suffering from mental illness at the time of commission of offence?

ii) How should the trial Court deal with the claim by an accused that he is incapable of making his/her defence due to mental illness?

iii) Whether the trial Court can form a prima facie subjective view concerning the incapability of the accused to make his/her defence without seeking the opinion of the medical expert?

iv) Whether a mentally ill condemned prisoner should be executed?

Analysis: i) Whenever the plea is raised regarding the state of mind of accused at the time of commission of offence, the onus will be on the defence (accused) to prove such a plea as contemplated in Article 121 of the Qanun-e-Shahadat Order, 1984 (QSO). As per Article 121 of QSO, the onus is on the accused to prove that when the alleged act was committed, he/she was suffering from a mental illness which made him/her incapable of knowing the nature of the act or that what he/she was doing was either wrong or contrary to law. In the case of a special plea under section 84 PPC, the Courts should keep the following principles in view:-

(i) It is the basic duty of the prosecution to prove its case against the accused beyond reasonable doubt and the prosecution will not be absolved of this duty if the accused is unsuccessful in proving a plea raised on his/her behalf.

(ii) Where the accused raises any specific plea, permissible under the law, including a plea under section 84 PPC, the onus to prove such plea is on the accused. However, while proving such plea, the accused may get benefit from any material, oral or documentary, produced/relied upon by the prosecution.

ii) Section 464 Cr.P.C. is relevant for trial of an accused before a Magistrate, whereas section 465 Cr. P.C. deals with the trial of accused before a Court of Sessions or High Court. It is clear from the provision of section 464 Cr.P.C. that if a Magistrate holding an inquiry or a trial, has reason to believe that the accused is suffering from mental illness and is consequently incapable of making his/her defence, he shall inquire into the fact of such mental illness, and shall also cause such person to be examined by a Civil Surgeon of the District or such other medical officer as the Provincial Government directs. Thereafter, he shall examine such Surgeon or other officer as a witness and also shall reduce the examination in writing. Under the provision of section 465, Cr.P.C. if any person before a Court of Session or a High Court appears to the Court to be suffering

from mental illness and is consequently incapable of making his/her defence, the Court shall, in the first instance, try the fact of such mental illness and resulting incapacity. If the Court is satisfied of this fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

iii) Whenever the trial Court is put to notice, either by express claim made on behalf of the accused or through Court's own observations, regarding the issue of incapability of accused to understand the proceedings of trial and to make his/her defence, the same shall be taken seriously while keeping in mind the importance of procedural fairness and due process guaranteed under the Constitution and the law. The terms "reason to believe" and "appears to the Court" in the context of sections 464 and 465 Cr.P.C are to be interpreted as a prima facie tentative opinion of the Court, which is not a subjective view based on impressions but one which is based on an objective assessment of the material and information placed before the Court or already available on record in the police file and case file. While forming a prima facie tentative opinion, the Court may give due consideration to its own observations in relation to the conduct and demeanor of an accused person. Failure of the parties to raise such a claim, during trial, does not debar the Court from forming an opinion on its own regarding the capability of an accused person to face the proceedings of trial. In such a situation, the Court may rely on its own observations regarding the demeanor and conduct of the accused either before or at the time of taking a plea against the charge or at any later stage. The Court may take note whether he/she is being represented by Counsel or not and consider the material (if any) available on record which may persuade it to enquire into the capability of the accused to face trial. The Court may assess the mental health condition of an accused by asking him/her questions such as why he/she is attending the Court; whether he/she is able to understand the proceedings which are being conducted (trial); whether he/she is able to understand the role of people who are a part of the trial; the basic procedure may be explained to him/her to assess whether he/she is able to understand such procedure and whether he/she is able to retain information imparted to him/her; whether the accused is able to understand the act committed by him/her and what the witnesses are deposing about his/her act; and whether he/she is able to understand the evidence being produced by the prosecution against him/her. However, we would like to clarify that a prima facie tentative opinion cannot be formed by the Court only on the basis of such questions posed to the accused. The Court is required to objectively consider all the material available before it, including the material placed/relied upon by the prosecution.

Once the Court has formed a prima facie tentative opinion that the accused may be incapable of understanding the proceedings of trial or make his/her defence, it becomes obligatory upon the Court to embark upon conducting an inquiry to decide the issue of incapacity of the accused to face trial due to mental illness. Medical opinion is sine qua non in such an inquiry. For this purpose, the Court must get the accused examined by a Medical Board, to be notified by the Provincial Government, consisting of qualified medical experts in the field of

mental health, to examine the accused person and opine whether accused is capable or otherwise to understand the proceedings of trial and make his/her defence. The report/opinion of the Medical Board must not be a mere diagnosis of a mental illness or absence thereof. It must be a detailed and structured report with specific reference to psychopathology (if any) in the mental functions of consciousness, intellect, thinking, mood, emotions, perceptions, cognition, judgment and insight. The head of the Medical Board shall then be examined as Court witness and such examination shall be reduced in writing. Both the prosecution and defence should be given an opportunity to cross examine him in support of their respective stance. Thereafter, if the accused wishes to adduce any evidence in support of his/her claim, then he/she should be allowed to produce such evidence, including expert opinion with the prosecution given an opportunity to cross examine. Similarly, the prosecution may also be allowed to produce evidence which it deems relevant to this preliminary issue with opportunity given to the defence to cross examine. It is upon the consideration of this evidence procured and adduced before the Court that a finding on this question of fact i.e. the capability of the accused to face trial within the contemplation of sections 464 and 465 Cr.P.C. shall be recorded by the Court.

iv) If a condemned prisoner, due to mental illness, is found to be unable to comprehend the rationale and reason behind his/her punishment, then carrying out the death sentence will not meet the ends of justice. However, it is clarified that not every mental illness shall automatically qualify for an exemption from carrying out the death sentence. This exemption will be applicable only in that case where a Medical Board consisting of mental health professionals, certifies after a thorough examination and evaluation that the condemned prisoner no longer has the higher mental functions to appreciate the rationale and reasons behind the sentence of death awarded to him/her. To determine whether a condemned prisoner suffers from such a mental illness, the Federal Government (for Islamabad Capital Territory) and each Provincial Government shall constitute and notify, a Medical Board comprising of qualified Psychiatrists and Psychologists from public sector hospitals.

Conclusion: i) Whenever the plea is raised regarding the state of mind of accused at the time of commission of offence, the onus will be on the defence (accused) to prove such a plea as contemplated in Article 121 of the Qanun-e-Shahadat Order, 1984 (QSO) like all other exceptions in Chapter IV of PPC.

ii) The court of Magistrate shall inquire into the fact of such mental illness, and shall also cause such person to be examined by a Civil Surgeon of the District or such other medical officer as the Provincial Government directs. Thereafter, he shall examine such Surgeon or other officer as a witness and also shall reduce the examination in writing. If the person is before a Court of Session or a High Court, the Court shall, in the first instance, try the fact of such mental illness and resulting incapacity. If the Court is satisfied of this fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

iii) The terms "reason to believe" and "appears to the Court" in the context of sections 464 and 465 Cr.P.C are to be interpreted as a prima facie tentative opinion of the Court, which is not a subjective view based on impressions but one which is based on an objective assessment of the material and information placed before the Court or already available on record in the police file and case file. Once the Court has formed a prima facie tentative opinion that the accused may be incapable of understanding the proceedings of trial or make his/her defence, it becomes obligatory upon the Court to embark upon conducting an inquiry to decide the issue of incapacity of the accused to face trial due to mental illness. Medical opinion is sine qua non in such an inquiry.

iv) If a condemned prisoner, due to mental illness, is found to be unable to comprehend the rationale and reason behind his/her punishment, then carrying out the death sentence will not meet the ends of justice.

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2. **Supreme Court of Pakistan**
Justice Qazi Faez Isa etc v. The President of Pakistan
Civil Review Petition No.296 of 2020 a/w C. M. A. NO. 7084 OF 2020 etc
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._7084_2020.pdf

Facts: The review petitions against the majority judgment in Justice Qazi Faez Isa Vs. President of Pakistan and others (Const. P 17/2019) and connected petitions were initially posted before a Bench comprising the seven learned Judges who had passed the majority judgment. A number of miscellaneous applications have been filed seeking reconstitution of the Bench hearing said review petitions with a prayer that review petitions be heard by the same bench including three learned judges who had passed minority judgments.

Issue: What should be the numerical strength and composition of the review Bench?

Analysis: The answer to this question depends upon two considerations: the judgment sought to be reviewed and matters of practicability. These are the primary factors taken into account by the HCJ (in exercise of his power under Order XI), along with the relevant provisions of the Constitution, the Supreme Court Rules, 1980, the practice of the Court and the law laid down by it, to guide him in constituting a review Bench…… Rule 8 of Order XXVI of the SCR is germane to the subject. It links the constitution of a review Bench with the judgment that is sought to be reviewed….. For purposes of Rule 8 one has to look at the judgment that was delivered, and the Judges who actually gave that decision. It is those Judges who (subject to what is said below) can be considered the authors of the judgment and therefore 'the same Bench' which 'delivered the judgment' under review….. Rule 8 makes it abundantly clear that practicability is the dominating factor in the constitution of review Benches….. By subjecting the constitution and therefore composition of a review Bench to what is practicable, Rule 8 by its own terms lays down directory criteria. The HCJ therefore has power to take into consideration such conditions and circumstances that can affect the formation of a

review Bench. Therefore, Order XXVI, Rule 8 requires a substantial, rather than strict, compliance with its terms….. So even though the HCJ may constitute a Bench of his choice in a review matter, the exercise of his discretion ought to be guided by two criteria: firstly, the review Bench (at the minimum) should bear the numerical strength of the original Bench. By convention, this practice is followed even in cases where only the majority judgment is under review.

Conclusion: For the purposes of Order XXVI, Rule 8, the minimum numerical strength of the Bench that delivered the judgment or order under review is the numerical strength of the Bench which heard and decided the original matter, regardless of whether the judgment under review was passed unanimously or by majority.

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3. **Lahore High Court**
M/s Ghani Global Glass Ltd. v. Federal Board of Revenue etc.
W.P.No.50298/2019
https://sys.lhc.gov.pk/appjudgments/2021LHC286.pdf

Facts: Petitioner deposited excessive amount of tax inadvertently. He claimed refund by filing application in a wrong wing of the department of Respondent No. 2 which kept the application pending disposal and did not return it timely and let the limitation period expired. Respondent No.2 declined the application merely on the premise of non submission of application within stipulated time as envisaged by Section 66 of the Sales Tax Act, 1990.

Issue: Whether the petitioner's claim for refund was time barred as envisaged by Section 66 of the Sales Tax Act, 1990 despite of this fact that he filed the same within time though in a wrong wing of same department?

Analysis: The Hon'ble Court held that it is manifestly evident from the record and even not controverted by the respondents that the petitioner moved first application for the refund of excessive amount within the stipulated time to wrong wing of the same department. Had the application been considered and decided by that wing with due promptness, the petitioner would have been in a position to approach the relevant authority for the refund of its undisputed excessive amount, therefore, inaction of the one wing of the same department to keep the application pending so as to let the period stipulated in law for filing the application elapsed/run out; could not be allowed to defeat the right of the petitioner who resorted to the remedy well within time irrespective of the fact that it was before the wrong wing in the same department…… It was contributory negligence from both side and constitutes a sufficient cause to exercise the power provided under the law to condone the delay.

Conclusion: The claim of petitioner was not time barred as the petitioner filed the application in time though before wrong wing of same department. It was contributory negligence from both sidesa which constitutes a sufficient cause to exercise the power provided under the law to condone the delay.

4. **Lahore High Court**
Umer Atta-ur-Rehman Khan v. Ministry of Energy, etc
Writ Petition No.110187/2017
https://sys.lhc.gov.pk/appjudgments/2021LHC370.pdf

Facts: Petitioner file writ petition to the effect that he was appointed as Administrative Officer with National Engineering Services Pakistan Pvt. Ltd. (NESPAK) on contract. Subsequently, the he was issued show cause notice and inquiry initiated on the ground that petitioner mis-represented and concealed information by submitting forged transcript during recruitment process. The petitioner was finally dismissed from service. The departmental appeal of the petitioner was also dismissed.

Issue: Whether rules of NESPAK are statutory for the purpose of maintainability of this constitution petition?

Analysis: NESPAK is a private limited Company and its Rules namely Employees (Efficiency & Discipline) Rules, 1974 (Rules) are framed by the Board of Directors of the company under the power conferred on them through Articles of Association of NESPAK. Neither these rules are framed by the Federal Government nor were approved by the Federal Government nor these rules are made under any statute, therefore, said rules cannot be termed as statutory rules.

Conclusion: Said rules cannot be termed as statutory rules.

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5. **Lahore High Court**
Mst. Shahnaz Bibi v. Siraj Din etc.
W.P. No. 6807/2016
https://sys.lhc.gov.pk/appjudgments/2020LHC3537.pdf

Facts: The respondent No. 1 secured a six marla house from petitioner through a mortgage deed for five years in lieu of one lac rupees as consideration. The petitioner was, however, entitled to redeem the house after the payment of one lac rupees. The mortgage was usufructuary as the possession of the house was to remain with the petitioner and she had to pay the monthly rent for the use of the house during said period. For this arrangement, the parties inserted an additional clause in the mortgage deed. The petitioner made default in payment of rent upon which the respondent No. 1 filed the ejectment petition which was accepted and the learned rent controller passed the order of ejectment against petitioner. The petitioner assailed the said order through instant writ petition.

Issue: Whether there exists a relationship of Landlord and Tenant between the respondent No. 1 and the petitioner respectively?

Analysis: It would be important to dilate upon the said mortgage deed in view of the judgment passed in case titled Asif Raza Mir versus Muhammad Khurshid Khan (2011 SCMR 1917), in which it was held that it is not the title but the contents of the document which will determine its nature and that the true intention of the

parties must be given effect. Admittedly, the title is (گروی)رھن نامہ اقرار which was written on a stamp paper issued in the name of the petitioner. It was not registered either as a mortgage deed or as Rent Agreement, until the learned Special Judge (Rent) ordered the respondent to deposit fine equivalent to 10% of the annual value of rent in terms of Section 9(b) of the Punjab Rented Premises Act, 2009 where after the notices were issued to the petitioner. The court, therefore, acknowledged the status of document as a rent agreement which was not challenged by the petitioner. Besides, the petitioner had admitted the execution of the said document which also contains the condition for the payment of rent @ 6000/- per month by the petitioner which was enhanced to Rs.8000/- per month after receiving Rs.30,000/- as additional mortgage money by the petitioner; and was also written on the back of the stamp paper, showing the intention of the parties to operate as rent agreement.

Conclusion: Neither the petitioner had filed any suit for redemption nor respondent No.1 filed suit for recovery of amount on the basis of the usufruct mortgage, therefore, the irresistible conclusion is that for all intents and purposes it was a rent agreement and the relationship of landlord and tenant existed, notwithstanding the title and terms of mortgage deed with regard to possession.

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6. **Lahore High Court**
Mst. Kaneez Mai v. Judge, Anti-Terrorism Court, etc.
Writ Petition No.716 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC376.pdf

Facts: Petitioner's complaint under Sections 364-A, 365-A PPC read with Section: 7 of Anti-Terrorism Act, 1997 against respondents No.2, 3 and two unknown accused persons with the allegation of abduction of her two minor paternal granddaughters was dismissed by learned Judge, Anti-Terrorism Court, Dera Ghazi Khan after hearing preliminary arguments and without examining her.

Issue: Whether the learned judge Anti-Terrorism court could dismiss complaint after hearing preliminary arguments and without examining complaint?

Analysis: Proper course to be adopted for learned Judge, Anti- Terrorism Court after receipt of complaint was to at once examine the complainant upon oath under section 200 Cr.P.C. and then to proceed further in accordance with law but learned Judge, Anti-Terrorism Court, Dera Ghazi Khan has adopted novel method after receipt of complaint by dismissing the same just after hearing preliminary arguments of the learned counsel.

Conclusion: Anti-Terrorism court cannot dismiss complaint just after hearing preliminary arguments and without recording statement of complainant.

7. **Lahore High Court**
Al Abbas Mini Travel Service v. Govt. of Punjab
2021 LHC 246
W.P.No.1430/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC246.pdf

Facts: Petitioners were transporters and were aggrieved of shifting their bus stands to a new location. They sought direction from the Court to the respondents not to interfere in their lawful business set up on their personal property.

Issue: Whether in writ jurisdiction the High Court is competent to interfere in the order of shifting of bus stand set up on a personal property by the Government?

Analysis: The shifting of buses and wagons stands to a particular place such as General Bus Stand falls within the policy making domain of the Government and such policy decision cannot be interfered with by this Court in its constitutional jurisdiction unless it is shown to be against some provision of law, based on illegality, arbitrariness or established mala fides as was held by Supreme Court in Dossani Travels case (PLD 2014 Supreme Court 01).…….In Haji Zar Ali Khan case (PLD 2000 Peshawar 14) matter before the division bench of Peshawar High Court was similar as the bus stand was situated on the personal property. The Court held that when the petitioner's establishment was subject to control exercised by the authority, it would become altogether meaningless whether bus stand was established on one's personal property or on a rented property. Personal property with reference to establishment of bus stand has no significance as bus stand could not be established beyond the provisions of law……Moreover the demand of shifting the Wagon Stand of the petitioner to General Bus Stand due to administrative issues relating to traffic flow in the city etc. would not be contrary to the right of the petitioners under Article 18 of the constitution providing freedom of business, trade or profession as the respondents were not stopping the petitioners to carry on their business as transporters but were only shifting the premises for regulating the same for smooth functioning of the same in the public interest.

Conclusion: The shifting of buses stands falls within the policy making domain of the Government. and such policy decision cannot be interfered with by this Court in its constitutional jurisdiction unless it is shown to be against some provision of law, based on illegality, arbitrariness or established mala fides.

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8. **Lahore High Court**
Muhammad Shakir v. The State etc
2021 LHC 271
W.P.No.1430/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC271.pdf

Facts: A criminal case u/s 295-B PPC was registered against the petitioner for burying copy of Quran in his house.

Issue: Whether the act of burial of Holy Quran ipso facto amounts to its defilement?

Analysis: There is a consensus among lawyers and religious scholars that subject to certain conditions Shariah recognizes burial as one of the modes to dispose of old and unusable copies of the Quran. If one goes by the contents of the FIR, in the instant case the petitioner did not comply with those conditions. The learned Deputy Prosecutor General candidly admitted that there has never been any complaint against him that he was irreligious. Hence, the question as to whether he violated the prescribed conditions intentionally or due to ignorance must be left for the trial court.

Conclusion: Motive and intention are important factors to be considered for determining whether or not defilement of a Holy Scripture has taken place by its burial.

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9. **Lahore High Court**
Tariq Mehmood etc. v. Siraj ud Din etc
2021 LHC 380
Writ Petition No.716 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC380.pdf

Facts: Petitioner directly filed a revision petition in High Court against an interlocutory/interim order qua his suit for specific performance having a value of Rs. 4,50,000/-, to which office raised an objection.

Issue: Whether after the promulgation of Civil Procedure Code (Punjab amendment) Ordinance 2021 every revision petition is to be filed in High Court?

Analysis: By amendment in Section 159 of Code of Civil Procedure, 1908 ("Code") vide the same ordinance, proceedings instituted prior to enactment of the amendment Ordinance are to be proceeded and dealt in accordance with the provisions of the Code, which existed prior to the said amendment Ordinance; therefore, revision against order of the learned Trial Court in the present case where the suit was filed prior to the said amendment shall lie before the relevant District Judge and not before this Court.

Conclusion: Proceedings instituted prior to enactment of Amendment Ordinance are to be proceeded and dealt in accordance with the provisions of the Code, which existed prior to the said Amendment Ordinance; therefore every revision petition is not competent in High Court.

10. **Lahore High Court**
Alam Sher v. Yasir Nawaz and another
Civil Revision No.4636-P/2019
https://sys.lhc.gov.pk/appjudgments/2021LHC235.pdf

Facts: Suit for enforcement of oral agreement to sell allegedly executed between the petitioner and father of the owner (who was a minor) was dismissed on the ground of his failure to establish the claim.

Issue: i) Whether father of a minor can enter into an agreement to sell property on his behalf?

ii) Whether an agreement to sell can be oral?

Analysis: i) In terms of Section 11 of the Contract Act, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. Though it appears from the cursory glance of the above provision of law that minor is debarred to enter into a contract but at the same time Section 11 would not impair the rights and interest of the minor from acquiring title to anything valuable and he being beneficiary of agreement.

Paragraph No.362 of the Principles of Muhammadan Law by D.F. Mulla's also creates an exception to the principle embodied in Section 11 of the Contract Act, 1872, and provides that the father is entitled to be guardian of the property of a minor.

ii) Adverting to the aspect of oral sale, there is no cavil that the same is recognized under the law but it had to be proved through credible and unimpeachable evidence.

Conclusion: i) A father being natural guardian can validly enter into an agreement to sell on behalf of his minor child unless the same is found adversarial to the interest of the minor.

ii) There is no cavil that the oral sale is recognized under the law but it had to be proved through credible and unimpeachable evidence.

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11. **Lahore High Court**
Muhammad Ehsan v. Additional District Judge, Chishtian, District Bahawalnagar and another
Writ Petition No. 8094 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3545.pdf

Facts: The right of petitioner, being defendant, to produce evidence in the suit for recovery instituted under Order XXXVII of CPC was closed after failure to produce the same despite availing opportunities due to consecutive strike of local bar association.

Issue: Whether petitioner's failure to produce evidence despite given opportunities on the plea that local bar was on strike is justified and does not warrant the applicability of penal provisions contained in Order XVII Rule 3 of the CPC?

Analysis: It appears that the legislature, while inserting the penal provisions in the form of Order XVII Rule 3 of "CPC" was quite cognizant of the fact that litigants may abuse the process of court by using the un-called for delaying tactics in order to achieve their illegal designs. Such penal provisions are neither illusory nor ineffective, rather the same will come into play automatically with full force and rigours depending upon the facts and circumstances of each case in order to save the ends of justice from being defeated in the hands of chronic litigants.

Every professional pursuit and calling is subservient to law and so is the legal practice. A counsel is bound to appear in the Court when a matter is called so as to represent his paymaster and in the event of default, the Court may proceed with the case regardless of the consequences befalling upon the unrepresented client, who may sue the counsel for any injury or loss on account of failure to provide him legal assistance.It is also noteworthy to mention here that the lawyers have no right to strike i.e. to abstain from appearing in Court in cases in which they hold power of attorney (Wakalatnama) for the parties, even if it is in response to or in compliance with a decision of any association or body of lawyers. In exercise of the right to protest, a lawyer may refuse to accept new engagements and may even refuse to appear in a case in which he had already been engaged, if he has been duly discharged from the case. But so long as a lawyer holds the power of attorney for his client and has not been duly discharged, he has no right to abstain from appearing in Court even on the ground of a strike called by the Bar Association or any other body or lawyers. If he so abstains, he commits a professional misconduct, a breach of professional duty, a breach of contract and also a breach of trust and he will be liable to suffer all the consequences thereof.

Conclusion: A counsel is bound to appear in the Court when a matter is called so as to represent his paymaster and in the event of default, the Court may proceed with the case regardless of the consequences befalling upon the unrepresented client, who may sue the counsel for any injury or loss on account of failure to provide him legal assistance. Every litigant has an inalienable right to be provided an opportunity of fair trial but the penal provisions inserted in "CPC" are not illusory in nature and the same will come into play with full rigours when a party defaults in discharging its duty in the light of relevant provisions.

12. **Lahore High Court**
Nazir Ahmad and others V/S Additional District Judge and others
Civil Revision No.790 of 2012/BWP
https://sys.lhc.gov.pk/appjudgments/2021LHC221.pdf

Facts: Petitioners/vendee filed an application to make the award of the arbitrator as "rule of court" which was announced in view of alleged oral arbitration agreement. The vendor got recorded his conceding statement but learned trial Court, dismissed the said application and an appeal preferred was accepted whereby the order of lower court was set aside and the award was made as rule of court.

Issue: Whether there can be any oral arbitration agreement, for the appointment of an arbitrator between parties; if so, whether it could have been made the rule of the court by the Civil Court under the Arbitration Act, 1940?

Analysis: It is crystal clear that law only recognizes the arbitration agreement which is in written form and in the instant case admittedly there was oral arbitration agreement. The counsel of the petitioners neither filed any written arbitration agreement nor relied on any written document to show that the parties have mutually agreed in writing to appoint an arbitrator. When the petitioner filed application under Section 14 of the Act to make the award as rule of court, both Courts dismissed on this point that there was no written agreement.

Conclusion: The arbitrator cannot be appointed through an oral arbitration agreement.

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13. **Lahore High Court**
Deputy Director, Anti Money Laundering, Intelligence and Investigation, Inland Revenue, Lahore v. Learned Special Judge, Customs, Taxation and Anti-Smuggling, Lahore, etc.
Criminal Appeal No.52336 of 2017
https://sys.lhc.gov.pk/appjudgments/2021LHC382.pdf

Facts: An application of the appellant under Section 8 of the Anti-Money Laundering Act, 2010 (AMLA) for obtaining the permission to provisionally attach the property mentioned therein has been dismissed by the learned Special Judge (Customs, Taxation and Anti-Smuggling), Lahore on the ground of having no jurisdiction because Generally inly a Court of Session established under Cr.P.C has jurisdiction to deal with such matter and proviso (a) to this section confers jurisdiction relating to trial of offence of Anti Money Laundering Act, 2010 and all matters connected therewith or incidental thereto, upon the court where matter relating to any predicate offence is pending adjudication. Respondent /court held that as at the moment no cases/proceedings are pending in the court with regard to any predicate offence, hence said court has hardly any jurisdiction to pass an order under the provision of section (8) (1) of Anti Money Laundering Act, 2010.

Issue: Whether Special Judge, Customs, Taxation and Anti-Smuggling, Lahore has the jurisdiction to allow the application of the appellant to provisionally attach the property of the accused?

Analysis: Succinct reading of proviso (a) of section 8(1) abundantly makes it comprehensible that if the predicate offence is triable by any Court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence.

Prosecution of Predicate offences involved in this case i.e. false statement in verification, concealment of income and abetment, where tax sought to be evaded is ten million rupees or more, and all matters connected therewith or incidental thereto are exclusively triable by learned Special Judge (Customs, Taxation and Anti-Smuggling).

Section 39 of the "AMLA" has also got overriding effect and the learned Special Judge (Customs, Taxation and Anti-Smuggling) has exclusive jurisdiction to try the offences of the "AMLA" i.e. predicate offences (scheduled offences of the AMLA), relating to tax evasion, all matters connected therewith or incidental thereto, like matter in issue

Conclusion: High Court has held that Special Judge (Customs, Taxation and Anti-Smuggling), Lahore has jurisdiction to allow an application under section 8 of Anti Money Laundering Act, 2010 to grant the permission to provisionally attach the property.

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14. **Sindh High Court**
K.E.S.C. Labour Union and others v. Federation of Pakistan and others
Const. Petition No.D-1511/2005, 3775, 3776/2012, 3767, 3818/2015
2021 SHC 118
https://eastlaw.pk/cases/k.e.sVSfederation-of-pakistan.Mzk3NTU5

Facts: In 2005, the government, which initially had 98% of KESC's shares, sold 71% of its shares to a business consortium and the company was converted from state-owned to a foreign owned and managed corporation. The petitioners (KESC Labour Union, administration Officer of KESC, a shareholder in the KESC and a local businessman) sought declaration to the effect that privatization process in respect of the sale of shares and management control in KESC was illegal, arbitrary, irrational and without any lawful authority.

Issues: i) Whether the Petitioners have locus standi to challenge KESC's privatization?

ii) Whether the petition is barred due to the alternate remedy provided under the Privatization Commission Ordinance, 2000?

iii) Whether KESC could at all be transferred out of State ownership/control under the scheme of Constitution?

Analysis: i) The right to electricity has been recognized by the Supreme Court as a fundamental right guaranteed by Article 9 of the Constitution. All citizens of Karachi can be termed, therefore, as "aggrieved persons" as per the definition of the term adopted by the Supreme Court. The Petitioners have a closer and substantial interest in the affairs of KESC than ordinary citizens of Karachi; hence have the locus standi.

ii) While discussing about Privatization Commission Ordinance, 2000 (the Ordinance) august Supreme Court held in the Steel Mills case (PLD 2006 S.C 695), that sec. 28 of the Ordinance applies only to matters relating to "the rights and obligations of the parties who are the subject of the Ordinance. As far as pro bono publico cases are concerned, those shall not be covered…" Petitioners herein have filed the instant petition pro bono publico.

iii) The subject of electricity falls within Part II of the Federal Legislative List. Naturally, the CCI can only exercise effective supervision and control over such institutions if they remain under ownership of the State. Though the State must personally perform all functions pertaining to the provision of fundamental rights to the people, however in some cases, it may be more beneficial to delegate such functions to the private sector provided that the State maintains sufficient safeguards and regulatory control to ensure that such delegation does not – in any manner or form – impair or curtail the peoples' realization of Fundamental Rights. This assessment of whether any particular state function can be delegated or not has to be made by the courts in each country in light of their own constitutional ethos and history. Different judiciaries have chosen to draw the line differently. Privatization of KESC was the result of policy making decision by the executive authority and once the competent authority in the government has taken a decision, which is backed by law, rules and regulations and does not suffer from any malafide, then it would not be in consonance with the well-established norms of judicial review to interfere in policy making decision of the executive authority.

Conclusion: i) Yes, being the citizen of Pakistan; having closer and substantial interest in the affairs of KESC; the petitioners' had the locus standi.

ii) The Privatization Commission Ordinance, 2000 does not bar the filing of petitions of pro bono public; hence the instant petition being that of pro bono public was hit by the Ordinance, 2000.

iii) Electricity being an essential service cannot be privatized; therefore plea of the petitioners stands rebutted.

15. **Supreme Court of India**
Asha John Divianathan v. Vikram Malhotra & Ors.
Civil Appeal No. 9546 of 2010
https://main.sci.gov.in/supremecourt/2009/33958/33958_2009_35_1501_26504_Judgement_26-Feb-2021.pdf

Facts: Section 31 of the Foreign Exchange Regulation Act, 1973 debars a foreigner to acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India, except with the previous general or special permission of the Reserve Bank of India (RBI). A foreigner who was the owner of the property in question, gifted it to respondent no.1, without obtaining requisite prior permission. A challenge was made to the transaction but suit was dismissed and in appeal High Court also concurred with the trial court by holding that lack of permission under Section 31 of the1973 Act does not render the subject gift deeds as void much less illegal and unenforceable

Issue: Whether transaction with respect to any immovable property by a foreigner without requisite prior permission of Reserve Bank of India under Section 31 of the Foreign Exchange Regulation Act, 1973, is void or only voidable; and if so, at whose instance?

Analysis: It is true that the consequences of failure to seek such previous permission has not been explicitly specified in the same provision or elsewhere in the Act, but then the purport of Section 31 must be understood in the context of intent with which it has been enacted, the general policy not to allow foreign investment in landed property/buildings constructed by foreigners or to allow them to enter into real estate business to eschew capital repatriation, including the purport of other provisions of the Act, such as Sections 47, 50 and 63.

A contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition.

In every case where a statute imposes a penalty for doing an act, though, the act not prohibited, yet the thing is unlawful because it is not intended that a statute would impose a penalty for a lawful act. When penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty if imposed is not enforceable.

Merely because no provision in the Act makes the transaction void or says that no title in the property passes to the purchaser in case there is contravention of the provisions of Section 31, will be of no avail. That does not validate the transfer referred to in Section 31, which is not backed by “previous” permission of the RBI.

The sale or gift could be given effect and taken forward only after such permission is accorded by the RBI. There is no possibility of *ex post facto* permission being granted by the RBI under Section 31 of the 1973 Act

Conclusion: Supreme Court held that the condition predicated in Section 31 of the 1973 Act is mandatory. Until such permission is accorded, in law, the transfer cannot be given effect to.

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16. **United Kingdom Supreme Court**
Uber BV and others v. Aslam and others
[2021] UKSC 5
https://www.bailii.org/uk/cases/UKSC/2021/5.html

Facts: Appellant through the instant appeal has challenged the decision of employment tribunal which held that the respondents were "workers" as defined by section 230(3) of the Employment Rights Act 1996. Who, although not employed under contracts of employment, worked for Uber London under "workers' contracts.

Issue: Whether an Employment Tribunal was entitled to find that drivers whose work is arranged through Uber's smartphone application ("the Uber app") work for Uber under workers' contracts and so qualify for the national minimum wage, paid annual leave and other workers' rights?

Analysis: The UK Employment law distinguishes between three types of people: those employed under a contract of employment; those self-employed people who are in business on their own account and undertake work for their clients or customers; and an intermediate class of workers who are self-employed but who provide their services as part of a profession or business undertaking carried on by someone else. Some statutory rights, such as the right not to be unfairly dismissed, are limited to those employed under a contract of employment; but other rights, including those claimed in these proceedings, apply to all "workers"
The Services Agreement (like the Partner Terms before it) was drafted by Uber's lawyers and presented to drivers as containing terms which they had to accept in order to use, or continue to use, the Uber app. It is unlikely that many drivers ever read these terms or, even if they did, understood their intended legal significance. In any case there was no practical possibility of negotiating any different terms. In these circumstances to treat the way in which the relationships between Uber, drivers and passengers are characterised by the terms of the Services Agreement as the starting point in classifying the parties' relationship, and as conclusive if the facts are consistent with more than one possible legal classification, would in effect be to accord Uber power to determine for itself whether or not the legislation designed to protect workers will apply to its drivers.

Conclusion: The Employment Tribunal was entitled to find that the claimant drivers were "workers" who worked for Uber London under "worker's contracts" within the meaning of the statutory definition. It follows that the Employment Tribunal was entitled to conclude that, by logging onto the Uber app in London, a claimant driver came within the definition of a "worker" by entering into a contract with Uber London whereby he undertook to perform driving services for Uber London. So, he qualifies for the national minimum wage, paid annual leave and other workers' rights.

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17. **Supreme Court of the United States**
United States v. Briggs, 592 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/20pdf/19-108_8njq.pdf

Facts: This case is considered notable due to its impact and implications on the issue of sexual assault in the United States military and the military's ability to address these types of cases. Michael Briggs was found guilty of rape in 2014 in a general court-martial for an act that occurred in 2005. On appeal, Briggs asserted that the statute of limitations had expired. The United States Air Force Criminal Court of Appeals (CAAF) affirmed the court-martial's decision. On appeal, the Court of Appeals for the Armed Forces affirmed in part and denied review in part. On appeal, the Supreme Court granted a petition for a writ of certiorari, vacated the Court of Appeals for the Armed Forces' judgment, and remanded the case. The Court of Appeals for the Armed Forces reversed the Air Force Criminal Court of Appeals' decision and dismissed the charge against the respondent. Subsequently the United States of America filed a petition for a writ of certiorari with the Supreme Court.

Issue: Whether the Court of Appeals for the Armed Forces erred in concluding contrary to its own longstanding precedent-that the Uniform Code of Military Justice allows prosecution of a rape that occurred between 1986 and 2006 only if it was discovered and charged within five years?

Analysis: The Court, with the exception of Justice Amy Coney Barrett who did not participate on the case, ruled unanimously that under the Uniform Code, such crimes that are "punishable by death" under the Code do not have a statute of limitations unlike similar civilian crimes. Justice Neil Gorsuch filed a concurring opinion and opined that "*I continue to think this Court lacks jurisdiction to hear appeals directly from the CAAF but a majority of the Court believes we have jurisdiction, and I agree with the Court's decision on the merits. I therefore join the Court's opinion".*

Conclusion: In a unanimous ruling, the court reversed the judgment of the U.S. Court of Appeals for the Armed Forces and remanded the case for further proceedings,

holding that the respondents' prosecutions for rape were timely held under the Uniform Code of Military Justice.

LIST OF ARTICLES:-

1. **HARVARD LAW REVIEW**
   https://harvardlawreview.org/wp-content/uploads/2021/02/134-Harv.-L.-Rev.-1423.pdf
   Modern tort law:
   Preventing harms, not recognizing wrongs by Catherine M. Sharkey

2. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12593
   Failure of Condition or Implied Term? By Timothy Pilkington

3. **COURTING THE LAW**
   https://courtingthelaw.com/2021/02/22/commentary/legalization-of-cryptocurrency/
   Legalization of Cryptocurrency by Chaudhary Mubashir Qayyum Kasuri