

# LAHORE HIGH COURT BULLETIN



Fortnightly Case Law Update *Online Edition*

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# FORTNIGHTLY CASE LAW BULLETIN

(16-03-2021 to 31-03-2021)

**A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues  
Prepared & Published by the Research Centre Lahore High Court**

## JUDGMENTS OF INTEREST

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- 1. Supreme Court of Pakistan**  
**Sheikh Muhammad Muneer v Mst. Feezan**  
**Civil Petition No. 962 of 2016**  
**Mr. Justice Qazi Faez Isa**  
**Mr. Justice Yahya Afridi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_962\\_2016%20.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._962_2016%20.pdf)

**Facts:** Petitioner filed a suit for specific performance alleging execution of agreement which was witnessed by three witnesses. He produced only one witness and scribe.

**Issue:** Whether a scribe can be termed as witness?

**Analysis:** A scribe may be an attesting witness provided the agreement itself mentions/nominates him as such. The agreement mentioned three attesting witnesses by name and the scribe (Muhammad Iqbal) was not one of them...As regards the scribe he was not shown or described as a witness in the said agreement, therefore, he could not be categorised as an attesting witness. The cited verse of the Holy Qur'an mentions three times the word scribe (katib) and five times the witness/es (shahid) but does not use these words interchangeably, instead separately and distinctively. Therefore, a scribe and a witness cannot be the same.

**Conclusion:** A scribe cannot be regarded as an attesting witness unless he attests the agreement in capacity of witness too.

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- 2. Lahore High Court**  
**Syed Ibn-e-Ali Shah etc v Sarwar Khatoon (deceased) through LRs etc**  
**C.R. No.3752/2011**  
**Mr. Justice Muhammad Ameer Bhatti**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC541.pdf>

**Facts:** The predecessor-in-interest of the respondents, a pardanashin illiterate lady, filed a suit seeking declaration to the effect that her owned land was got transferred by the petitioners by means of fraud and misrepresentation.

**Issue:** Whether independent advice to parda observing illiterate lady by her relatives having no adverse interest with that of lady is essential for sale transaction?

**Analysis:** The predecessor-in-interest of the respondents/plaintiffs was an illiterate pardah observing lady who filed declaratory suit alleging therein that she did not appear before the Revenue Officer rather she had even no knowledge of the transaction in question nor she received any consideration amount in this regard. In the presence of this stance of the female owner of land, the first and foremost responsibility of the defendants/petitioners/beneficiaries of the transaction was to produce overwhelming evidence to prove that the execution of mutation was carried into effect in the presence of the lady who had the independent advice of her relatives such as husband or son with no adverse interest on their part....The

absence of her relatives for independent advice in the alike cases, such as husband and son, is fatal and enough to fizzle out the validity of the transaction.

**Conclusion:** The absence of relatives of parda observing lady for independent advice such as husband and son with no adverse interest, is fatal.

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**3. Lahore High Court**  
**Syed Yasir Hassan v. Home Secretary etc.**  
**W.P. No. 2051/2019**  
**Mr. Justice Ali Baqar Najafi**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC581.pdf>

**Facts:** Petitioner No.1 entered into partnership agreement with petitioner No.2 whereby the later transferred his license of the business in the name of “Sports Arms” to the petitioner No.1 while retaining the rights of only 1% of the profit. In the year 2014, The Punjab Arms License Rules, 2014 were promulgated and in view whereof, the petitioner filed application for the transfer of license in his name. He pleaded that since he had applied for the transfer of arms license under The Punjab Arms Rules, 2014, therefore, his case should be dealt with under the old Rules but respondent No.8 observed that under new Rules the license could not be transferred in his name since he is not the “prospective legal heir” of petitioner No.2.

**Issue:** Whether a sui juris and legally competent person can transfer or attorn the license during his lifetime to some other person other than the “prospective legal heir”?

**Analysis:** Under Rule 22 of The Punjab Arms Rules, 2014, arms licenses are transferable, in case of death or incapacitation of the licensee or “on account of other compelling circumstances”, the transfer of license was possible through a No Objection Certificate by the prospective legal heirs. However, under part “C” titled “Transfer of license or place of business” in The Punjab Arms Rules, 2017 it has been provided under Rule 45 that transfer of the business arms license in cases other than death is possible only if a transferee has a legal heir and that too after fulfilling the requirements and eligibility criteria prescribed in Rule 35 of the 2017 Rules. Under Sub Rule 4 of Rule 45 of Rules of 2017, the original licensee shall remain responsible for compliance of the provisions of the Ordinance and Rules, terms of the license and instructions issued by the Government from time to time and shall also be held responsible for any violation thereof. Interestingly, under Rule 44 of the Rules of 2017, in case of death of licensee, a license can be transferred to a legal heir if an affidavit is submitted subject to fulfilment of the criteria under Rule 35 of The Punjab Arms License Rules, 2017. The present writ petition has been jointly filed by the actual licensee and the major partner who had applied for transfer of arms license in his name, therefore, respondent No.1 could not possibly refuse the transfer of license and was required to grant it of course within the parameters of the Rules.

**Conclusion:** The argument that a sui juris and legally competent person cannot transfer or attorn during his lifetime to some other person, would be a false argument.

Prospective legal heirs are nothing but an heir in the waiting who may enjoy some rights with the contingency of the death of predecessor.

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**4. Lahore High Court**  
**Muhammad Yaqoob deceased through L.Rs v Land Acquisition Collector**  
**R.F.A No.781 of 2014**  
**Mr. Justice Shahid Waheed**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC611.pdf>

**Facts:** The appellants, dissatisfied with the compensation determined by the award delivered in consequence of acquisition of their land, filed references under Land Acquisition Act. During pendency of references they withdrew the deposited compensation without protest. They submitted certain mutations in the statement of their counsel to prove the market value of their land.

**Issue:**

- i) Whether the withdrawal of compensation without protest during pendency of references amounted to waiver?
- ii) What is the evidentiary value of mutations tendered in the statement of counsel to prove market value of acquired land?
- iii) Whether the proceedings for the mutation are judicial in nature?

**Analysis:**

- i) Underlined wisdom of the provisions of Section 18 read with Section 31 of the Act is that the concept of consent and protest cannot go together, and thus, it is essential, that whenever a person feels dissatisfied with the amount of compensation determined in the award, it ought to first raise its protest either by making an application before the Collector asking him to send reference to the Court for determination of his objections or in the alternative receive the amount of compensation under protest, otherwise, it shall be precluded to make any grouse and taking out any proceeding. This principle furnishes a basis for determining the present issue. The appellants at first while not accepting the award had raised their objections to it and also stated the grounds for the objection. They had asserted their right to require a reference under Section 18 of the Act for determination by the Court. The applications were competently entertained and lawfully forwarded. The appellants had clearly expressed their dissatisfaction and disapproved the Collector's award and then claimed more compensation. In such a set of circumstances, the entire conduct of the appellants cannot even by implication be inferred to amount to consent, acceptance of award or conscious waiver of their existing rights....Receiving of compensation amount by the appellants would be deemed to be under protest and the absence of a mention of the same in the cash register or Qabzul Wasool was mere inadvertence.
- ii) It is clear that before the three mutations could be relied upon by the Reference Court, it was the duty of the appellants (land-owners) to prove mutations by adducing evidence either of vendor or vendee or the witnesses of passing of the consideration under the mutations, to prove that the sale transactions are genuine transactions between the willing vendor and willing vendee; that the consideration had in fact been passed, represent the prevailing

market value; and also the lands under acquisition and the lands concerning the sale are similarly situated and possessed of same or similar nature, advantages, etc.

iii) It is an error to suppose that proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

- Conclusion:**
- i) The withdrawal of compensation without protest during pendency of reference does not amount to waiver.
  - ii) Mere tendering of mutations in the statement of counsel without adducing evidence either of vendor or vendee or the witnesses of passing of the consideration under the mutations, to prove that the sale transactions are genuine transactions between the willing vendor and willing vendee and that the consideration had in fact been passed and represent the prevailing market value; does not prove the market value of acquired property as claimed by a party.
  - iii) The mutation proceedings are not judicial proceedings.
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**5. Lahore High Court**  
**M/s. Sharif Construction Company. Vs. Civil Judge 1st Class,**  
**Diary No. 4857-W-21**  
**Mr. Justice Muzamil Akhtar Shabir**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC508.pdf>

**Facts:** In a suit for injunction filed on 10.02.2021, the petitioner filed revision petition before District Judge against the order passed u/s 94 CPC by the civil judge but same was rejected being not maintainable. He then invoked revisional jurisdiction of High Court. However the office raised objection to the maintainability of the petition.

**Issue:** Whether, after the enforcement of Civil Procedure Code (Punjab) amendment Act 2021 (the Act), a civil revision is maintainable in High Court or district court where civil court has passed an order u/s 94 CPC?

**Analysis:** The present suit was filed by the respondents on 10.02.2021 and on the same date, through the Act, the right of filing civil revision under Section 115 CPC was taken away by substituting the existing section with a new one. The perusal of the amended section clearly indicates that in suits filed on or after the date amendment has taken effect, civil revisions can be entertained only against orders passed by the district court in an appeal decided under section 104 of the CPC against an interlocutory order passed by a civil judge and in no other case. Hence, this Court and the district courts are no longer vested with the jurisdiction to entertain civil revisions against the impugned interlocutory order; therefore, the office objection to the extent of non-maintainability of revision before this Court is upheld.



**Conclusion:** Civil revision is not competent in High Court or district court against an order passed u/s 94 CPC as after the latest amendment in section 115 CPC, civil revisions can be entertained only against orders passed by the district court in an appeal decided under section 104 of the CPC against an interlocutory order passed by a civil judge and in no other case.

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**6. Lahore High Court**  
**Writ Petition No.56759/2020**  
**Muhammad Jahan Zaib Khan. v. Muhammad Rafique Khan, etc.**  
**Mr. Justice Ch. Muhammad Masood Jahangir**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC630.pdf>

**Facts:** Petitioner brought suit for specific performance of agreement to sell along with possession as well as permanent injunction against respondent No.1/defendant who executed the agreement to sell for a consideration of Rs.3,20,00,000/- and received Rs.80,00,000/-. Petitioner was directed to deposit remaining sale consideration and said order was unsuccessfully assailed through revision before District Judge.

**Issue:** Whether trial court was justified to order the deposit of remaining sale consideration?

**Analysis:** The judgment of august Supreme Court i.e. Messrs Kuwait National Real Estate Company (Pvt.) Ltd and others (2020 SCMR 171) relied upon by the learned Trial Court to order the deposit of remaining sale consideration, is not applicable to the present case because subject matter involving that *lis* was not the immovable property, whereas vendor therein straightaway admitted the transaction as well as execution of sale agreement, besides to propose that if remaining sale price would be paid, then suit might be decreed. After having such fair attitude on the part of vendor, the apex Court required the vendee to make good the balance sale consideration. Thus, the rule so laid down might be for the cases where execution of contract was admitted and in its due compliance the vendor consented to transfer subject property as well.

The said canon cannot be applied where the transaction as well as execution of document entailing terms/conditions of alleged deal is questioned from its inception.

In the current case subject property is immovable one, possession of which never delivered to the plaintiff and the vendor also specifically asserted sale agreement to be fabricated, deceptive & concocted one. Besides he has already created third party's charge by transferring title & possession of subject area to him. The alleged agreement to sell is bilateral document and its genuineness or otherwise as well as ascertainment who is at fault to perform his part besides to search readiness and willingness of either party is, indeed, a fact, which could only be determined after collecting evidence.

**Conclusion:** In peculiar distinguished circumstances of the case, the trial court is not justified to order for deposit of remaining amount.

**7. Lahore High Court**  
**C. R No. 105/2010.**  
**Muhammad Inayat Vs. Zaigham Nawaz, etc**  
**Mr. Justice Ch. Muhammad Masood Jahangir**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC668.pdf>

**Facts:** Respondent's father was murdered by his real paternal nephew, who was son of the petitioner/plaintiff. Father of deceased, who was also father of petitioner, alienated his land in the name of minor son of his deceased son i.e. respondent. Petitioner/plaintiff challenged the oral gift mutation but withdrew the suit without obtaining formal permission to file fresh suit. Petitioner filed second suit, which was dismissed but issue regarding competency of suit was decided in favor of the petitioner.

**Issue:** Whether, second suit of the petitioner/plaintiff was competent when first suit was withdrawn by him without obtaining permission to file fresh suit?

**Analysis:** The plain reading of Rule 1 of Order XVIII shows that sub-rule (1) contemplates withdrawal of suit, which is optional to the plaintiff and can tender request to that effect at any stage of the proceedings, however, per sub-rule (2) the plaintiff while showing formal/inherent defect in the plaint or asserting some other sufficient reasons may withdraw his suit with liberty to institute fresh one. Where he does not intend to institute a fresh suit or he simply withdraws a suit without seeking permission to file new one, then according to sub-rule (3), the plaintiff is precluded to institute second suit qua subject matter of the earlier lis. The object of last principle is to prevent a plaintiff from re-opening of another round of litigation, which he already has dropped, otherwise, there would be no end to the litigation.

Moreover, section 12 of the said Code provides that where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to bring a suit in respect thereof in any court to which this enactment applies. The main object of these provisions is to prevent endless litigations and to save the precious time of the Courts.

**Conclusion:** Second suit was not competent.

**8. Lahore High Court**  
**Writ Petition No.1869 of 2018**  
**Mst. Naseem Sajjad. v. Additional District Judge etc**  
**Mr. Justice Tariq Saleem Sheikh**  
<https://sys.lhc.gov.pk/appjudgments/2020LHC3566.pdf>

**Facts:** Petitioner sought dismissal of execution petition of respondent no. 3 on the pretext that suit land was sold by the respondent no.4 to his father and her father did tamleek in her favour. She contended that as she was not party to the suit between respondent no.3 and 5, so decree in suit for specific performance to contract is not binding on her.

- Issue:** i) Whether subsequent purchaser during pendency of suit was required to be impleaded necessary party and such subsequent sale deed was required to be challenged compulsorily?  
ii) Whether in a suit for specific performance of contract, respondent no.3/plaintiff was required to pray for possession also?
- Analysis:** i) Transferor pendente lite is not a necessary party to the suit and if it is decided without impleading him he would be bound by the decree.  
The mere fact that plaintiff/respondent No.3 has not instituted any legal proceedings for cancellation of subsequent Sale Deed and Tamleek Nama would not hinder execution of decree passed in his favor.  
ii) In a suit for specific performance of contract, relief of delivery of possession is incidental to the main relief and the Executing Court may grant it even if the plaintiff/decree holder has not prayed therefor in the plaint and there is no mention about it in the decree.
- Conclusion:** i) Neither a purchaser of suit property during the pendency of suit is necessary party nor plaintiff is bound to challenge any such subsequent sale deed due to application of doctrine of *lis pendence* .  
ii) There is no compulsion to seek possession in suit for specific performance as it is incidental to main relief.
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**9. Lahore High Court**  
**Irfan Akbar Khan v. The State, etc.**  
**Writ Petition No. 3119 of 2020**  
**Mr. Justice Muhammad Tariq Abbasi**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC569.pdf>

- Facts:** The police recommended cancellation of F.I.R, which was agreed by the Magistrate.
- Issue:** What are the grounds of cancellation of a criminal case and what is meant by application of judicial mind?
- Analysis:** Grounds, where a move for cancellation of a registered case can be made are:- **a.** Information is maliciously false, **b.** false owing to mistake of law, **c.** false owing to mistake of fact **d.** offence reported is found to be non-cognizable **e.** matter fit for a civil suit.  
The Magistrate while acting fairly, justly, honestly and applying his mind to the material before him and duly considering all the aspects of the matter should pass a speaking and well-reasoned order, rather putting his signatures in an unjustified manner, whichever is placed before him by the police. His order should indicate as how and on the basis of which material, he finds himself in agreement with the cancellation report.
- Conclusion:** See grounds above.

**10. Supreme Court of the Australian Capital Territory  
R v. Walker [2021] ACTSC 42  
Mr. Justice Mossop**

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACTSC//2021/42.html>

**Facts:** The accused was a colleague and friend of the victim. He was allegedly facing paranoid delusions recently. He used to say that people were coming to get him (“Commandos”) and that he wanted to kill himself. The accused was allegedly hearing voices, crying and was unable to sleep. Once he was involuntarily detained pursuant to section 85 of the Mental Health Act 2015. On the eventful day, the accused invited the victim on dinner and critically injured him while stabbing him with knife at his chest.

**Issue:** Whether the accused has proven on the balance of probabilities that he was suffering from a mental impairment as defined u/s 27 of the Criminal code so as to relieve him of criminal responsibility.

**Analysis:** Section 28(1) of the Criminal Code provides that a person is not criminally responsible for an offence, when he was suffering from a “mental impairment” and that mental impairment had one of the following effects:

- (a) the person did not know the nature and quality of the conduct;
- (b) the person did not know that the conduct was wrong; or
- (c) the person could not control the conduct.

Mental impairment is defined in Section 27 of the Criminal Code which means that the “*mental impairment*” includes senility, intellectual disability, mental illness, brain damage and severe personality disorder. For the purposes of that definition, “*mental illness*” means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition (a reactive condition) resulting from the reaction of a healthy mind to extraordinary external stimuli.

The evidence on this issue was provided in reports by forensic psychiatrists Dr Richard Furst and Dr Stephen Allnut. These reports were admitted as part of the Crown case and the doctors did not give oral evidence and were not cross-examined. As per their reports the accused was suffering from acute ‘schizophrenia’. Immediately prior to the stabbing the accused was acting irrationally and making irrational accusations. After the stabbing he immediately desisted and tried in a confused way to summon assistance. The statements that he made in his 000 call do not make a lot of sense and are consistent with disordered thinking. The incoherent behaviour of the accused is not explained by the ingestion of illicit substances. While there is some evidence that he used heroin four days prior to the stabbing and methamphetamine five days prior and some other general references to the possibility of him having used drugs in the days prior to the offence, there is no probative evidence that drugs were still affecting his behaviour. His history of discharge from the Canberra Hospital and travel to the Bonython residence would also not support any inference that he was drug affected at the time.

**Conclusion:** The accused had successfully proved on the balance of probabilities that at the time of the stabbing he was suffering from a mental impairment within the meaning of s 28 of the Criminal Code. As a consequence, he was not held criminally responsible for the offence of intentionally inflicting grievous bodily harm to the victim.

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**11. Lahore High Court**  
**Sajjad Hussain v. ADJ**  
**Writ Petition No.17374 of 2018**  
**Mr. Justice Ch. Muhammad iqbal**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC527.pdf>

**Facts:** Family court held the respondent entitled to 04-Kanals land as dower or Rs.5,00,000/- as its alternate price. During execution proceedings the executing court made instalment of decretal amount directing the petitioner/judgment debtor to pay Rs.50,000/- as first instalment and remaining according to schedule of other payments. Decree holder requested the executing court for transfer of 4 Kanal land of the petitioner in her name but her request was rejected.

**Issue:** Whether an executing court, against the wishes of the decree holder, is justified to direct satisfaction of a decree through payment of price instead of giving him the property decreed?

**Analysis:** The judgment and decree of family court has attained finality in which the respondent was held entitled to 04-Kanals land as dower or Rs.5,00,000/- as its alternate price. As per law the executing Court cannot go beyond the scope of the decree and has to execute the decree in its letter and spirit. The command of the decree is as mentioned above wherein it is manifestly jotted down the entitlement of the plaintiff which constitute that it is exclusive choice of decree holder lady either to have property or the price whereof whereas the judgment debtor is precluded to adopt the course of his own choosing regarding the satisfaction of the decree rather the avenue given in the decree shall prevail unless expressly modified by the competent forum. As per available record the petitioner/judgment debtor is owner of land measuring 04-Kanals; thus it was incumbent upon the executing Court to effectively satisfy the decree firstly by giving land to the decree holder but if some insurmountable impediment exist or land is found deficient or not available or property partly available or impartition-able then the alternate mode may be resorted to by the executing court directing the judgment debtor to pay the alternate price.

**Conclusion:** The executing court cannot direct satisfaction of decree through payment of price instead of giving him the decreed property against the wishes of decree holder.

**12. Lahore High Court**  
**Mst. Raees Begum v. Addl. District Judge**  
**W.P. No.1795 of 2020**  
**Mr. Justice Rasaal Hasan Syed**  
<https://sys.lhc.gov.pk/appjudgments/2020LHC162.pdf>

**Facts:** After divorce between parents, minors were raised by their mother. When they were over 10 years of age, paternal grandmother of the minors moved application for the custody of the minors on the ground of remarriage by the mother.

**Issue:** Whether second marriage of the mother in itself a sufficient ground for depriving her of the custody of her child?

**Analysis:** In the matter of custody of the minors, mere entitlement or disentitlement of a parent to have the custody may not be such a significant factor; instead it is the welfare of the minors that needs to be accorded paramount consideration. While determining this aspect, the courts always lean in favour of allowing custody to the person with whom the custody of minor lies and in the cases second marriage of the wife after divorce, the mother is not denuded of her capacity simply because of remarriage unless the factum of second marriage was established to have impinged upon the welfare of the minors.

**Conclusion:** In the matters of custody welfare of the minor is the paramount consideration. Mere remarriage of the mother is not sufficient to deprive her of the custody unless it is established that the remarriage compromises welfare of the minor.

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**13. Lahore High Court**  
**Regular First Appeal No. 3953/2020**  
**State Life Insurance Corporation, etc. Vs. Mst. Syeda Muzhara Fatima**  
**Mr. Justice Ch. Muhammad Masood Jahangir**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC635.pdf>

**Facts:** The appellants insured the husband of the respondent/plaintiff, who unfortunately died, his widow/respondent preferred claim before insurer about three months thereafter, but insurance policy was repudiated by insurer who concluded that the proposal form was based on fraud and misrepresentation. Widow/respondent struggled hard to have the secured claim by approaching Wafaqi Mohtasib, President of Pakistan, Insurance Tribunal and finally concerned learned District Court by filing suit in hand which was decreed in her favor.

**Issue:** i) Whether insurer was justified to repudiate the policy contract?  
 ii) Whether suit of plaintiff/respondent was time barred?

**Analysis:** The insurer has a limited authority to reprobate its act/contract that too within two years of the effectiveness of the policy, which can be exercised where either the insured avoided its obligation in exposing the required particulars or he acted with fraud or misrepresentation. In instant case, the insurer at the most within two years could repudiate the same, but despite that claim was submitted within time, it was declined when the provided period stood already elapsed.

Widow even within her iddat period tendered the claim before the insurer. Had it been awarded at that moment, then there was no fun to approach the Authority/Tribunal or the Court. Indeed, it is act of repudiation, which caused accrual of limitation to the claimant, otherwise, the Insurance Companies can defeat object of the provision *ibid* by retaining claim for more than three years.

The judicial system is aimed to promote justice and when it is proved on record that the repudiation was not justified on law as well as merit, then to me in such like situation the principle of recurring cause of action fully applies, thus whenever a demand for disbursement of claim is denied, fresh cause of action accrues to the claimant to approach the Court within three years of last denial, because an illegal, without jurisdiction, unfounded and based on mala fide act has no pedestal to be perpetuated even behind the shield of limitation.

**Conclusion:** Neither repudiation of contract by insurer was justified nor claim of respondent/plaintiff was time barred.

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**14. Supreme Court of Pakistan  
Regional Operation Chief NBP v. Mst. Nusrat Perveen, etc.  
C.P.2717-L of 2015**

**Mr. Justice Manzoor Ahmad Malik**

**Mr. Justice Syed Mansoor Ali Shah**

**Mr. Justice Amin-ud-Din Khan**

[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_2717\\_1\\_2015.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._2717_1_2015.pdf)

**Facts:** Deceased in his life was departmentally proceeded against and was awarded major penalty. He challenged imposition of the penalty but died during the pendency of his appeal before the Tribunal. The Tribunal allowed legal heirs of the deceased to be impleaded as party in the appeal.

**Issue:** Whether a service appeal filed by a civil servant in the Service Tribunal would abate on his death?

**Analysis:** Service disputes are not always attached merely with the person of a civil servant as an individual but more often than not with some benefits which could potentially be enjoyed by the successors of the civil servant in accordance with law which are contingent on the adjudication of the controversy....The question whether after the death of the plaintiff or the petitioner proceedings would abate would primarily depend on the nature of cause of action<sup>16</sup> and the relief claimed in the peculiar facts of each case<sup>17</sup>. Service benefits may be enjoyed by the successors of the deceased civil servant. Some of those are inheritable which form part of the estate of the deceased while others are grants to be distributed among his family members according to law.<sup>18</sup> The respondents in the instant petition would receive some benefits in case they are able to vindicate their stand before the Tribunal. Such a claim does not extinguish with the death of civil servant....A claim by a civil servant for his promotion or better terms and conditions or for reinstatement in service, is survivable claim and passes on in the shape of pecuniary and pensionary benefits to his legal heirs. Such a claim may arise under the service laws but also enjoys constitutional underpinning. "The right to

employment and to earn a living free from undue molestation is a property right affecting the estate of plaintiff. Such right does not abate upon his death.”<sup>25</sup> Abatement of appeal on the death of the decedent would impinge upon the property rights of the respondents. Also, shutting eyes to their potential property rights would hurt their right to dignity.

Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial. Fundamental right to life including right to livelihood ensures the security of the terms and conditions of service; <sup>27</sup> fundamental right to property ensures security of the pecuniary and pensionary benefits attached to the service; <sup>28</sup> fundamental right to dignity ensures that the reputation of the civil servant is not sullied or discredited through wrongful dismissal, termination or reversion etc; <sup>29</sup> and fundamental right to fair trial and due process, inter alia, safeguards and protects the survivable interest and ensures continuity of the legal proceedings even after the death of the civil servant, equipping the legal heirs to pursue the claim<sup>30</sup>. Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs. It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one’s reputation is also a survivable right and flows down to the legal heirs to pursue and take to its logical conclusion. Any slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honour of his family.

**Conclusion:** In certain cases, a service appeal filed by a civil servant in the Service Tribunal would not abate on his death and his legal heirs can pursue the same.

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**15. Supreme Court of Pakistan**  
**The Province of Punjab v Kanwal Rashid**  
**C.P.883-L/2020 and C.P.1791-L/2020**  
**Mr. Justice Manzoor Ahmad Malik**  
**Mr. Justice Syed Mansoor Ali Shah**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 883 1 2020.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 883 1 2020.pdf)

**Facts:** Respondent was continuously drawing the family pension after the passing away of her parents till she was informed by the Accountant General, Punjab, that she could not draw the pension of both the parents simultaneously and could only draw the pension of one parent.

**Issue:** Whether an unmarried daughter of deceased civil servant parents can draw the pension of both her parents simultaneously or instead, entitled to draw the pension of only one of her parents

**Analysis:** The Finance Department has no authority under the law to clarify, interpret, abridge or extend the right of pension provided under Section 18(2) of the Punjab Civil Servants Act, 1974 and further regulated by the Punjab Civil Services



Pension Rules, 1963 promulgated by the Governor. The impugned clarification issued by the Finance Department dated 11.09.2015 has usurped the rule making power of the Governor by interpreting, clarifying and modifying Rule 4.10. Finance Department has also encroached upon the legislative power under section 18 of the Act which entitles the family of the deceased civil servant to pension in the manner prescribed...“Acquiring a regular source of income” under the Rules means that the unmarried daughter on her own, irrespective of the source of pension, has acquired a regular source of income...Acquire signifies gain by one’s own effort. Entitlement to family pension by virtue of the death of the parents does not constitute acquisition of a regular source of income. It is also not “regular” as the unmarried daughter is disentitled to receive family pension the minute she is married. Both these conditions must be met by her own self irrespective of the pension. She must acquire a regular income of her own expertise and efforts. The disqualification mentioned in the amendment brought about in the Rules, must be independent of the family pension and pension itself cannot constitute a ground for disqualification.

**Conclusion:** An unmarried daughter of deceased civil servant parents is entitled to draw the pension of both her parents simultaneously.

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**16. Lahore High Court**  
**Samina Farooq v Govt. of Punjab etc**  
**W.P. No.168241/2018**  
**Mr. Justice Muhammad Ameer Bhatti**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC157.pdf>

**Facts:** Petitioner claims advance increments, in pursuance of notifications issued from time to time, on the premise of attaining additional qualification over and above the minimum prescribed qualification. These notifications were eventually declared redundant and practice to grant increment was discontinued.

**Issue:** Whether a leave refusing order, in spite of an authoritative judgment of apex court holding otherwise, is binding?

**Analysis:** There is no other view than the one that Hon’ble Supreme Court of Pakistan has diligently, equitably and justly approved the effect of notifications, in its judgment reported as Government of the Punjab through Secretary Education & others vs. Faqir Hussain and 5-others [2004 PLC (C.S.) 491] and thereby unequivocally directed discontinuation of the practice of granting increments as such.... Since the leave refusing order referred by the learned counsel for the petitioner had been rendered without referring to the authoritative principle flowing from the said given judgment of Hon’ble Supreme Court, therefore, mere factum of leave refusing order can hardly be characterized to have a binding force as against the spirit of the finding of the apex court recorded in the afore-referred judgment because adjudication was conclusive and equitable; hence judgment in rem.

**Conclusion:** Leave refusing order rendered without referring to the authoritative principle flowing from the earlier judgment of Hon’ble Supreme Court on the subject does

not have any binding force as against the spirit of the finding of the apex court recorded in the earlier judgment because adjudication was conclusive and equitable.

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**17. Lahore High Court**  
**Bushra Khushi Muhammad v. Punjab Public Service Commission through**  
**Chairman, etc.**  
**Writ Petition No.116118/2017**  
**Mr. Justice Abid Aziz Sheikh**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC535.pdf>

**Facts:** The posts of Sub-Inspector in service quota were advertised. The petitioner, who is Head Constable, cleared the written test, however, was not recommended for appointment against post of Sub-Inspector on the premise that the petitioner did not fulfill the required three years' service experience. The petitioner being aggrieved has filed this Constitutional petition.

**Issue:** Whether three years' experience prescribed in the advertisement for the post of Sub-Inspector based on rules is against or beyond the provisions of the Act?

**Analysis:** When Section 2(3)(c) of the Act itself says that same is subject to Rules, it cannot be said that experience prescribed in the Rules is beyond the scope of the Act. By rendering provision of the Act subject to rules, the legislature in its wisdom, left certain details to be decided by the rule making authority and if any additional criteria is prescribed in rules, it cannot be said that same is beyond the scope of the Act.

**Conclusion:** Where the Act itself gives precedence to the Rules framed under the Act, the same cannot be held ultra-vires the Act, if some additional qualifications are prescribed therein.

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**18. Supreme Court of India**  
**Civil Appeal No.3894 of 2020**  
**The State of Rajasthan & Ors. V. Love Kush Meena**  
[https://main.sci.gov.in/supremecourt/2019/46786/46786\\_2019\\_38\\_1501\\_27192\\_Judgement\\_24-Mar-2021.pdf](https://main.sci.gov.in/supremecourt/2019/46786/46786_2019_38_1501_27192_Judgement_24-Mar-2021.pdf)

**Facts:** Respondent was involved in a case under section 302,323,341/34 IPC with a role of inflicting knife injuries to the witnesses. A compromise was effected between the parties to the effect of compoundable offences while to the extent of non-compoundable offences, witnesses turned hostile and all the accused person were acquitted by giving them benefit of doubt. Respondent applied for a post of Constable but was denied the post due to the reason that he could not win clean/honorable acquittal from trial court. A circular was also issued to the effect, inter alia, that a person acquitted due to the benefit of doubt can be employed in service. Plea of candidate/respondent was accepted by the lower courts.

**Issue:** i) Whether a benefit of doubt resulting in acquittal of the respondent in a case charged under Sections 302,323,341/34 of the Indian Penal Code [IPC] can

create an opportunity for the respondent to join as a constable in the Rajasthan Police service?

ii) Whether a circular can take precedence over decisions of Supreme Court?

**Analysis:**

Acquittal in a criminal case was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents. Thus, unless it is an honourable acquittal, the candidate cannot claim the benefit of the case.

It is difficult to define precisely what is meant by the expression “honourable acquittal”, an accused who is acquitted after full consideration of the prosecution evidence and prosecution has miserably failed to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In this context, it has been specifically noticed by this Court that entry into the police service required a candidate to be of good character, integrity and clean antecedents.

Even after the disclosure is made by a candidate, the employer is entitled to take into account the job profile for which the selection is undertaken, the severity of the charge leveled against the candidate and whether acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt as a result of composition. There is also the absence of any suggestion that the decision was actuated by malafide or suffered on other accounts except the issue raised of the subsequent circular applicable.

This is a clear case where the endeavour was to settle the dispute, albeit not with the job in mind. This is obvious from the recital in the judgment of the Trial Court that the compoundable offences were first compounded during trial but since the offence under Section 302/34 IPC could not be compounded, the Trial Court continued and qua those offences the witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

ii) Circular is undoubtedly very wide and gives the benefit to candidates including those acquitted by the Court by giving benefit of doubt. However, such circular has to be read in the context of the judicial pronouncements and when this Court has repeatedly opined that giving benefit of doubt would not entitle candidate for appointment. Despite the circular, the impugned decision of the competent authority cannot be said to suffer from infirmity as being in violation of the circular when it is in conformity with the law laid down by this Court.

**Conclusion:**

i) Acquittal was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents.

ii) A Circular cannot take precedence over judicial pronouncements.

- 19. Lahore High Court**  
**Commissioner of Income Tax, Large Taxpayers Unit, Legal Division, Lahore**  
**v. M/s Service Industries Limited, Main Gulberg, Lahore**  
**PTR No. 225 of 2008**  
**Mrs. Justice Ayesha A. Malik**  
**Mr. Justice Shams Mehmood Mirza**  
<https://sys.lhc.gov.pk/appjudgments/2021LHC592.pdf>

**Facts:** The assessing officer made an addition of Rs.96,177,786/- while passing the assessment order for the tax year 1999-2000 on account of sale of syringe division of the respondent to M/s Becton Dickinson Services (Pvt.) Limited. The respondent challenged the assessment order by filing an appeal before the Commissioner of Income Tax who dismissed the same. The respondent then filed an appeal before the Income Tax Appellate Tribunal (ITAT) which was allowed and the sale transaction was declared as a 'slump transaction' consequently the addition made by the assessing officer was deleted.

**Issue:** Whether the ITAT was justified to hold that sale/transfer of 51% shares by the taxpayer to M/s BD Limited was a 'slump transaction'

**Analysis:** The concept of slump sale is alien to the erstwhile Income Tax Ordinance, 1979 or the Income Tax Ordinance, 2001 which do not contain any provision in this regard. The principles of taxation laid down in the Indian Income Tax Act, 1961 relating to slump transaction shall have no applicability to the transfer of the Syringe division of the respondent in favour of the joint venture company. It can be seen that the transaction in question is squarely covered by Clause 7 read with Clause 8 of the Third Schedule to the Income Tax Ordinance, 1979. The exemption from payment of tax could only be sought with reference to the Second Schedule of the said Act. The respondent, however, could not pinpoint to any provision therein granting it exemption from payment of tax on sale of its syringe division.

The term 'Income' is defined in section 2 (24) of the erstwhile Income Tax Ordinance, 1979 which includes "(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Ordinance under any head specified in section 15; (b) any loss of such income, profit or gains; and". Section 15 specifically mentioned "Capital gains" under head of 'Income'. It is thus apparent that capital gains form part of income of a person and is liable to tax.

Even if the concept of slump transaction is deemed applicable to our jurisdiction on the terms as it has been enunciated by the Indian judgments, the transaction in question would not qualify as a transfer of an undertaking. In order to qualify as a slump transaction, it needs to be proved that the undertaking of a business as a whole is transferred as a going concern along with its goodwill, assets, liabilities etc. A simple sale of assets shall not suffice. From the record, it is not apparent that apart from the plant, machinery and building the transfer also included the intangible assets including the liabilities, if any. The Income Tax Appellate Tribunal did refer to some of the stipulations of the Master Agreement which do

not demonstrate that the necessary ingredients of slump sale were met with. The basic question is whether the transaction in question was in fact a sale in the commercial sense between two different entities. The answer is in affirmative. As per the ratio of B.M. Kharwar, it is open to Revenue to unravel the device and to determine the true character of the relationship if the parties chose to conceal their legal relation in the contract. As noted above, Clauses 7 and 8(5) of the Third Schedule of the Income Tax Ordinance, 1979 were squarely applicable to the facts of the present case.

**Conclusion:** The transaction in question was not a ‘slump sale’.

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**20. Supreme Court of the United States**  
**Ford Motor Company v. Montana Eighth Judicial District Court**  
[https://www.supremecourt.gov/opinions/20pdf/19-368\\_febh.pdf](https://www.supremecourt.gov/opinions/20pdf/19-368_febh.pdf)

**Facts:** It is a case involving personal jurisdiction of a state court in product liability lawsuits. The case, consolidated with Ford Motor Co. v. Bandemer, involved two product liability lawsuits brought against the Ford Motor Company at the state level related to two drivers' injuries in separate accidents. In both cases, Ford vehicles were driven in car accidents. In one case based in Minnesota, a passenger sustained a severe brain injury and filed a claim against Ford Motor Company for vehicle defect alleging that the passenger-side airbag failed to deploy. In the second case based in Montana, one of the vehicle tires experienced a tread/belt separation, the car lost stability and rolled into a ditch, and the driver perished at the scene. A personal representative filed claims against Ford for liability and negligence. Ford Motor Company moved to dismiss both claims in state district court, citing a lack of personal jurisdiction. In both cases, Ford's motions were denied. On appeal in both cases, the state courts of appeal affirmed the rulings of the district courts. Ford appealed the cases to the state supreme courts which affirmed the rulings of the courts of appeal.

**Issue:** Whether the “*arise out of or relate to*” requirement of the Fourteenth Amendment's due process clause permits a state court to exercise specific personal jurisdiction over a nonresident defendant?

**Analysis:** Ford challenged the lawsuits as the vehicles in question were manufactured elsewhere so the states did not have personal jurisdiction over that conduct. The Supreme Court ruled in a 8–0 decision that because under the Due Process Clause, the claims “arise out of or relate to” Ford's business and marketing activities, those activities gave sufficient claim for the states to assert personal jurisdiction over the liability lawsuits. Justice Elena Kagan wrote the majority opinion and was joined by Chief Justice John Roberts and Justices Stephen Breyer, Sonia Sotomayor, and Brett Kavanaugh. Kagan wrote that “*By every means imaginable — among them, billboards, TV and radio spots, print ads and direct mail — Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias*”, and among other numerous business activities, Ford “*encourage[s] Montanans and*

*Minnesotans to become lifelong Ford drivers."* Thus, the states had ample reason to find that the claim made "arise out of or relate to" Ford's activities, as established by the Due Process Clause.

**Conclusion:** In a unanimous ruling, the court affirmed the decisions, holding that Ford's contacts and activities within the states were sufficient to give Montana's and Minnesota's courts specific jurisdiction over Ford.

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## LIST OF ARTICLES

### 1. MANUPATRA

<https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4>

Contempt of Court: Are the decisions of the Court unchallengeable and can there be a fair criticism of Court Decisions by Jitendra Mahapatra

*It must be made sure that the judiciary must work independently without any hindrance if courts are being obstructed by the people by producing unreasonable criticisms then the court will be left with no other option than to punish such person for committing contempt of court. But if the criticisms so produced before the court are fair/positive then the court must accept the same because such criticisms help the judiciary to develop and also maintains a sense of trust within the people, by positive criticisms people keep a check upon the powers of the judiciary and thus they are not forced to blindly accept anything that is laid before them by the court even if it is wrong. Till the criticisms are fair the court may not misuse its power to punish such criticisms for contempt of court.*

### 2. STANFORD LAW REVIEW

<https://review.law.stanford.edu/wp-content/uploads/sites/3/2020/07/73-Stan.-L.-Rev.-Online-Schwartz.pdf>

Contracts and COVID-19 by Andrew A. Schwartz

*Part I of this Essay will describe the legal doctrines of Impossibility and Restitution and how they might apply to a contract undermined by the COVID19 pandemic. Part II will explain how a Force Majeure clause alters those background doctrines to give—or withhold—relief to a party whose performance has been thwarted by the pandemic. Finally, Subpart II.C will peer into the future and predict that many parties will likely revise their Force Majeure clauses to ensure they cover a pandemic like this.*

### 3. COURTING THE LAW

<https://courtingthelaw.com/2021/03/16/commentary/legal-and-technological-approaches-to-tackle-online-child-abuse/>

Legal and Technological Approaches to Tackle Online Child Abuse by Co Authored

*Online child abuse is a novel way of committing criminal abuse against children and can have harmful repercussions for young individuals. It enables perpetrators to carry out abusive acts from behind their computer screens while maintaining anonymity. Despite recent legislative enactments and the use of new technological tools, Pakistan still has long way to go in its efforts to curb online child abuse. While borrowing from the most effective practices of other jurisdictions, our government must also recognize that the new and emerging methods of committing crimes can only be tackled by a well-oiled collaboration between lawmakers, enforcement agencies and cutting-edge technologies.*

#### **4. THE IN-HOUSE LAWYER**

<https://www.inhouselawyer.co.uk/legal-briefing/recent-shifts-in-indias-anti-bribery-and-anti-corruption-strategy/>

Recent shifts in India's anti-bribery and anti-corruption strategy by Legal Briefing

*It is an undeniable truth that the regulatory framework and law in relation to anti-corruption in India has undergone a significant change in the last couple of years. Considerable amendments have been made that have tightened disclosure requirements in the light of swelling number of financial frauds in India. To that end, the government of India in 2020 continued to remodel the anti-corruption regulatory landscape. We have analysed below the two most crucial developments in recent times.*

