LAHORE HIGH COURT

BULLETIN

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

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FORTNIGHTLY CASE LAW BULLETIN

(15-06-2021 to 30-06-2021)

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

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SELECTED ARTICLES

1. **Lahore High Court**
Government of the Punjab & others v. M/s Muhammad Asad & Co.
FAO No.2885 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1853.pdf

Facts: The application moved by the appellants u/s 34 of the Arbitration Act, 1940 for staying the proceedings of respondent's suit and referring the matter/dispute to the Arbitrator for decision as per arbitration agreement, was dismissed by the civil court.

Issue: At what stage the application for stay of proceedings u/s 34 of Arbitration Act, 1940 (the Act) is required to be made?

Analysis: The Legislature has, of course, clearly implied in the language used in Section 34 of the Act, that the arbitration clause should be respected, but has also made it abundantly clear that the party seeking to avail of the provision of stay under this section must clarify its position at the earliest possible opportunity, so as to leave no manner of doubt that it wishes to have resort to arbitration proceedings. If it hesitates in this regard, or allows the suit to proceed in any manner, that conduct would indicate that such party has abdicated its claim to have the dispute decided under the arbitration clause, and thereby had forfeited its right to claim stay of the proceedings in the Court. Even if the matter has been adjourned by the Court in routine for filing of a written statement, the defendants, if they want to opt for the dispute resolution mechanism contained in the contract, can take corrective steps and inform the Court, without any delay, about their intention to seek stay of the suit. Since the appellants have not taken up the issue of sending the matter to the arbitrator at the earliest, thus, relinquished/waived their right for such request.

Conclusion: The party which intends to get a suit stayed u/s 34 of the Act must, at the earliest, inform the court about their desire for the resolution of the matter through Arbitration as contained in their agreement with the opposite party.

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2. **Lahore High Court**
Raja Azhar Hayat v. Additional District Judge/ Gas Utility Court & others
W.P. No.19738 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC1872.pdf

Facts: In a civil suit for recovery by SNGPL, the civil court proceeded ex-parte against the petitioner and recorded evidence. Subsequently, the matter was transferred to the Additional District Judge/Gas Utility Court, who ex parte decreed the suit. Thereafter, the application moved by the petitioner for setting aside ex parte proceedings and decree, was dismissed.

Issue: i) Whether it is necessary to examine the process server before making the order for substituted service?

ii) Whether the transferee court is required to issue notice to a party against whom ex parte proceedings were already made by the transferor court?

Analysis: i) In terms of Order V Rule 19 C.P.C., the Court was required to examine the Process Server on oath, make further inquiry in the matter and declare that the summons were duly served, but it is not discernible from record that any such exercise was undertaken by learned Trial Court, rather it straightaway ordered publication in the newspaper. Therefore, it was not a proper service within contemplation of Order V Rules 19 & 20, C.P.C.

ii**)** On transfer, Gas Utility Court did not issue any fresh process for appearance of the petitioner and did not record evidence by itself, rather proceeded to pass decree on the basis of proceedings undertaken and evidence recorded by the Civil Court. Needless to say that Gas Utility Court was obliged under the law to issue process/notice to petitioner to impart him information that the case had been transferred to it and in absence of such notice, petitioner was well within his rights to plead lack of knowledge regarding Court in which he had to appear. The ex parte proceedings already made against petitioner do not deprive him of a right to receive notice on transfer of suit.

Conclusion: i) Examination of the process server is compulsory before making order for substituted service or further proceedings.

ii) Transferee Court should issue notice to a party even against whom ex parte proceedings have already been made to give that party intimation that the case has been transferred to it.

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3. **Lahore High Court**
Board of Intermediate and Secondary Education Multan & another v. Muhammad Ans, etc.
Review Application No.34 of 2019
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC2107.pdf

Facts: The petitioner sought review of consolidated judgment passed in intra-court appeal.

Issue: Whether review of a judgment is permissible to ascertain further questions of law?

Analysis: One of the most essential requirements for invoking review jurisdiction of a Court is that important evidence having a material bearing upon the merits of the case and decision thereof was subsequently discovered, which was neither in the possession nor in the knowledge of the aggrieved party before passing of the judgment/order sought to be reviewed and further that the important evidence referred to was in existence when the judgment/order was made. The power of review can only be exercised when an error or mistake is manifestly shown to float on the surface of record, which is so patent that if it allowed to remain intact, would perpetuate illegality and gross injustice. Categorical findings recorded after careful and conscious appreciation of all pros and cons of the matter and cannot be re-opened

with a view to re-appraising the same and for taking a contrary view, which otherwise did not suffer from misconstruction or mis-appreciation of the law applicable to the facts of the case. Review jurisdiction cannot be invoked as a routine matter or to re-hear a case which has already been decided.

Conclusion: The points already raised and considered cannot be re-agitated in review jurisdiction and the review cannot be made a pretext for re-arguing whole case and matter cannot be re-opened under the garb of review application.

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4. **Lahore High Court**
Shahbaz v. Fakhira Bibi
W.P No.31627 of 2021
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC1994.pdf

Facts: The appellant filed an Intra Court Appeal under section 19 of the Contempt of Court Ordinance, 2003 against the order of a single judge whereby his criminal original was disposed of on the ground that the order of the Court was complied with by the respondent authority.

Issue: Whether intra court appeal is maintainable against the order of Single Judge, wherein contempt proceedings were not initiated against the contemnor and case was disposed of?

Analysis: In the order passed by single judge no contempt proceedings were initiated against the contemnor and the disposal of the criminal original does not amount to an order which is appealable under section 19 of the Contempt of Court Ordinance, 2003. Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 conferred jurisdiction to the Superior Courts of the country to punish those persons who committed violence or deny complying with order of the Superior Courts. In this regard The Contempt of Court Ordinance, 2003 was promulgated wherein jurisdiction has been provided under section 5 of the provisions of the Ordinance ibid to the Superior Courts to convict and punish the contemnor in contempt of court. Section 19 of the Ordinance ibid provides a remedy of appeal. The conjoint reading of definition of the word "order" or "orders" provided in section 2(14) of C.P.C. and in Order XLIII, C.P.C. it can be said that the word "order" means "the formal expression of any final decision" and any order which is not founded on any decision is devoid of attaining the status of an order. The challenge of each and every interim procedural kind of order will over-flood the litigation and would make the very litigation as well as the proceedings where under as unending. This liberty would practically negate the spirit and intent behind the legislation of Article 204 of the Constitution the entire proceedings conducted in original jurisdiction of the superior court (High Court) would become virtually in executable and worthless. Only such orders, decisions, judgments which finally terminate the contempt proceedings against the contemnor are appealable.

Conclusion: The word "order passed in contempt" means the order only awarding punishment and it is the said order which can be assailed in Intra Court Appeal, whereas the interlocutory, interim or procedural orders do not fall within the ambit of the 'order' passed in contempt of Court, therefore, order disposing of petition being not an order inflicting punishment is not appealable.

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5. **Lahore High Court**
Muhammad Shafeeq v. United Bank Limited
Execution First Appeal No. 30756 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC2193.pdf

Facts: Court, at the request of decree holder bank issued non-bailable warrants of arrest against the Appellant to satisfy the decree despite of the fact that the decree holder bank did not file any application under Order XXI Rule 37 CPC.

Issue: Under what circumstances, a judgment debtor can be arrested in execution proceedings?

Analysis: The detention of the judgment debtor can be ordered in accordance with Section 51 read with Order XXI, Rule 37 to Rule 40 of the Code of Civil Procedure, 1908…. Request on the basis of bald allegations without reference to any material evidence or fact merely to procure a coercive order, without adequate efforts to satisfy the decree by adopting the other modes provided in law is highly unjustified. No mechanical order for detention or arrest can be passed. The precondition for issuing of warrants of arrests should be proved to have satisfied and the Courts should ensure that the debtor is likely to leave the limits of the Court to frustrate the decree or execution thereof or debtor has dishonestly transferred the property to avoid the decree or he has means to pay the decree and neglecting to do the same must be reflected from the record before adopting such coercive measures.

Conclusion: See above

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6. **Lahore High Court**
Shahbaz v. Fakhira Bibi
W.P No.31627 of 2021
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC1942.pdf

Facts: The petitioner challenged the judgment and decree of Family Court wherein dissolution of marriage was decreed against him on the ground that he was not given sufficient time for reconciliation.

Issue: Whether wife is entitled to claim Khula as a matter of right, despite unwillingness of the husband to release her from the matrimonial tie?

Analysis: The decree passed on the basis of *Khula* has been declared as non-appealable in terms of section 14(2) of the Family Court Act, 1964 seemingly for the reasons that wife cannot be compelled to live with the husband against her wishes and secondly to protect *wife* from costly and prolonged litigation.

Conclusion: Not only according to the Injunctions of Islam but also according to Family Court Act, 1964, the wife cannot be compelled to live with her husband against her wishes; hence always entitled to seek dissolution of marriage through 'Khula'.

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7. **Lahore High Court**
Ahmad Khan v. Muhammad Azam
Civil Revision No.123 of 2013
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC2160.pdf

Facts: The respondent claimed that the suit property was purchased by him vide oral agreement and mutation was sanctioned in this regard.

Issue: How a mutation is to be sanctioned?

Analysis: Unless the mutation is of inheritance or it is followed by a registered deed or it is under an order of the Court, the same is required to be in presence of that person whose right has been acquired and it is necessary that such person is identified by two responsible persons preferably Lambardar, Member Union Committee, Union Council or Town Committee. The signatures or thumb impressions of the aforesaid two persons should be obtained by the Revenue Officer. In the absence of fulfillment of the aforesaid requirement of law, the factum of entry in the record cannot carry any presumption of truth.

Conclusion: See above.

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8. **Supreme Court of Pakistan**
Muhammad Siddique v. Senior Executive Vice President, PTCL
Civil Appeal No. 1477 of 2019
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel,
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1477_2019.pdf

Facts: The pay of petitioner was Rs. 8070/- but in oral evidence he stated it to be 7605/-.

Issue: Which piece of evidence will be given preference, whether oral or documentary?

Analysis: There is a well-known dicta that 'a man can tell a lie but a document cannot'. If a person has or has been bestowed some legal right and he omitted to claim such legal right through oral assertion but the best documentary evidence of which the case in

its nature is susceptible is found in his favour then the documentary evidence in favour of a person should be given credence.

Conclusion: Documentary evidence shall be given credence over the oral account of a witness.

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9. **Supreme Court of Pakistan**
Muhammad Asif Awan v. Dawood Khan
Civil Appeal No. 1767 of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah,
Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1767_2019.pdf

Facts: The appellant filed a suit for specific performance. The respondent denied the execution of agreement to sell and claimed it to be forged and fictitious. On the application of the respondent, the appellant was directed to deposit entire sale consideration, deeming it mandatory. Trial court extended the time to deposit the sale consideration. Revision against this order was dismissed by District Court but High Court set aside the revisional order and non-suited the appellant.

Issue: i) Whether it is mandatory for the vendee to apply for deposit of balance sale consideration in all situations in the light of Hamood Mehmood case 2017 SCMR 2022?
ii) Whether court may extend time to deposit balance sale consideration?

Analysis: i) There is no provision in the Specific Relief Act which, upon filing of the suit seeking specific performance of an agreement in respect of an immovable property, casts any duty on the court or requires the vendee to first deposit the balance sale consideration, however, since the law of Specific Relief is based on the principles of equity and that the relief of specific performance is discretionary and cannot be claimed as a matter of right; therefore, the court in order to ensure the bona fide of the vendee at any stage of the proceedings may put him to terms…..The vendee while seeking specific performance must state that either he has performed all the conditions which, under the contract, he was bound to perform and/or that at all times right from the date of the agreement down to the date of filing the suit, he has been ready and willing to perform/fulfill his part of the deal. He is not only supposed to narrate in the plaint his readiness and willingness at all material time to fulfill his part of the agreement but also is bound to demonstrate through supporting evidence such as pay orders, Bank statement or other material, his ability to fulfill his part of the deal leaving no doubt in the mind of the court that the proceedings seeking specific performance have been initiated to cover up his default or to gain time to generate resources or create ability to fulfill his part of the deal. It is in that pursuit that the court to weigh his capacity to perform and intention to purchase may direct the vendee to deposit the balance sale consideration. The readiness and willingness on the part of the vendee to perform his part of obligation also prima facie demonstrate that the non-completion of the contract was not the

fault of the vendee and the contract would have been completed, if it has not been renounced by the vendor…..Case of Hamood Mehmood (2017 SCMR 2022) is a leave refusing order and cannot be held to be an enunciation of law by this court as it has been settled by this court in a number of cases that an order granting and /or refusing leave is not a judgment which decides a question of law and therefore, it should not be followed necessarily and imperatively.

ii) Non-compliance of the directions of the court by a vendee to deposit the balance sale price while keeping the lis of specific performance alive has totally different consequences… In this case, the court does not lose its jurisdiction to review its order by extending time for depositing the balance sale price for the simple reason that the vendee on the face of denial or plea of termination of agreement has only to establish his bona fide/seriousness to standby his part of the commitment… However, in cases where the court while directing the balance price terminates the lis or where direction to deposit the balance sale price is issued at the instance of the vendor, who has shown his readiness to perform his part of the contract, the court ordinarily becomes functus officio and loses its authority on the lis and consequently has no jurisdiction to extend time for the deposit of the balance sale price.

Conclusion: i) It is not mandatory for the vendee to apply for deposit of balance sale consideration in all situations in the light of Hamood Mehmood case 2017 SCMR 2022.

ii) Court may extend time to deposit balance sale consideration where the suit is alive.

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10. **Lahore High Court**
Muhammad Ashraf Iqbal, etc. v. Abid Hussain, etc.
W.P No.2939 of 2016
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC2088.pdf

Facts: The petitioner assailed the judgment of trial Court and order passed in Revision by the first appellate Court wherein his suit for recovery of possession under Section 9 of Specific Relief Act was dismissed concurrently.

Issue: What are the requirements to file a suit for recovery of possession under Section 9 of Specific Relief Act?

Analysis: The plaintiff was bound to prove that he was in possession of the suit property and had been dispossessed by the defendant other than in due course of law. Mere recital in the sale deed regarding boundaries of the plot and delivery of possession is not enough to succeed. The petitioner miserably failed to prove that they were in possession of the suit property and the respondents/defendants have forcibly occupied their land without adopting due course of law.

Conclusion: It is necessary to prove specific possession upon the suit property through strong and un-impeachable evidence prior to dispossession and thereafter dispossession from the defendants' side without due course of law.

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11. **Lahore High Court**
Allah Wasai (deceased) through L.Rs. v. Khuda Bukhsh, etc.
Civil Revision No. 964-D of 2003
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC1988.pdf

Facts: The petitioner challenged a gift mutation that was sanctioned in favour of the respondents by depriving her right of inheritance on the grounds of being entered into without any jurisdiction and legality.

Issue: What are the requirements of proving a gift made by a donor, who was suffering from serious illness leading to his death at the time of making gift?

Analysis: The deceased father of the parties was admittedly suffering from some serious diseases before his death and even P.W.2 admitted that he was paralyzed about 3/4 days before his death. Meaning thereby deceased was incapable of getting his statement recorded and even to understand the events of alleged gift, entered in the revenue record, in favour of the respondents/sons, by depriving the present petitioner/daughter.

In this case the petitioner was deprived of her share in inheritance through purported gift deeds, which were not proved by the respondents as per requirement of law, because the basic ingredients for gift i.e. offer, acceptance and delivery of possession are missing in the plaint, as the plaintiffs could not plead as to when, where and in whose presence the deceased Ghulam Ali made offer for gifting out the property, which was accepted in presence of such and such witnesses, whereafter possession was delivered to the respondents/sons as entering the mutation of gift a subsequent event and when the respondents failed to prove the prior event, entering of mutation and alleged Roznamcha are not helpful to them.

Moreover, it was incumbent upon the respondents, being beneficiaries to bring on record cogent and plausible evidence showing that the deceased was enjoying good health and was in good senses when he gifted out the property to them; as against them it has come on record that he was suffering from some serious diseases and was paralyzed about 3/4 days before his death, so in such an eventuality any transaction, allegedly made by him, cannot be said to be with an independent mind; thus, when the revenue officer/AC-II found unable to make statement, he had rightly cancelled the alleged gift mutations.

Conclusion: See above.

12. **Lahore High Court**
The State through Prosecutor General Punjab Vs. Duty Magistrate etc
Writ Petition No. 22107 of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2020LHC3796.pdf

Fact: The request of the Investigating Officer in offence under section 9(c) of the Control of Narcotic Substances Act, 1997 for judicial remand was turned down and the accused was discharged from the abovementioned case on the ground that name of informer is not mentioned in FIR

Issue: i) Whether the name of informer is necessary to mention in FIR?
ii) What is status of police witnesses in narcotics cases?
iii) Whether complainant police officer can be investigating officer in narcotics cases?
iv) Whether previous acquittal of accused justifies his discharge in subsequent cases?

Analysis: i) Article 8 of Qanun-e-Shahadat Order, 1984 clearly states that no Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence. Therefore the complainant is legally not bound to mention the name of informer (spy) in the FIR and he had legal protection to keep secret the name of informer (spy).
ii) That association of private witnesses at the time of recovery of narcotics or recording the statement of any person of the locality to ascertain that as to whether or not, an accused runs the business of narcotic substances was not mandatory in the case in hand. Moreover, it is by now well settled that in the cases registered under the Act ibid, the police officials are as good witnesses as private/public witnesses.
iii) There is no legal bar that a complainant of the case registered under the Act, 1997, cannot be the Investigating Officer of the said case. It is by now well settled that functioning of a police officer in a case of Narcotic, in his dual capacity as a complainant and as an Investigating Officer is neither illegal nor unlawful, so long as it does not prejudice the case of the accused person.
iv) Every criminal case has to be decided on the basis of its own peculiar facts and acquittal of an accused in an earlier case does not mean that he has to be discharged in all subsequent cases, irrespective of the merits of the said cases.

Conclusion: i) The name of informer is not necessary to mention in FIR.
ii) The police witnesses are as good as private witnesses in narcotics cases.
iii) The complainant police officer can be investigating officer in narcotics cases.
iv) Previous acquittal of accused does not justify his discharge in subsequent cases.

13. **Lahore High Court**
Crl.Misc.No.25040-B of 2021
Da Yong Wu v. The State & another.
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC2171.pdf

Facts: A Chinese national was arrested from whose possession 5100 grams of Ketamine was recovered. A criminal case was registered against him under section 9(c) of CNSA, 1997. He has applied his post arrest bail.

Issue: Whether the recovered substance falls within the ambit of narcotic drug or psychotropic or controlled substance and whether registration of case under section 9 of CNS Act, 1997 was justified?

Analysis: The mischief of section 9 of CNS Act, 1997, attracts if a person is found to have contravened the provision of sections 6, 7 and 8 of the Act ibid. For entailing consequences of section 9 of CNS Act, 1997 the recovered substance must be declared as narcotic drug, psychotropic or controlled substance. Under section 7 (2) of CNS Act,1997, Federal Government can make rules to permit and regulate the import, export and transshipment of narcotic drugs, psychotropic or controlled substance under a license or permit, needless to mention here for the purposes of medical, scientific or industrial purposes. Under section 2(za) of CNS Act, 1997, a substance can be declared as psychotropic substance by notifying it in official gazette.

Ketamine hydrochloride was declared as psychotropic substance vide SRO No.446 (1)/2020 dated 06.04.2020 issued by Government of Pakistan Ministry of Narcotics Control. The Ketamine is generally used for medical purposes and even on occasions as an anesthesia medicine thus probably was felt that it comes within the exceptions mentioned in section 6 of CNS Act, 1997. As a necessary consequence, the SRO No.446 (1)/2020 was later withdrawn on 21.08.2020 vide Notification No.13-20/14 Police-I.

Conclusion: After withdrawal of SRO No.446 (1)/2020, Ketamine is not a psychotropic substance. Its recovery in no manner entails consequences of a criminal case registered under section 9 of CNS Act, 1997. Bail application was allowed.

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14. **Lahore High Court**
The State v. Zahid Latif & another
Criminal Appeal No. 2030 of 2010
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1900.pdf

Facts: The State filed appeal against the order of acquittal of respondents in a case registered under Section 9-C CNSA, 1997.

Issue: Whether injection manufactured by a pharmaceutical company and labeled as Buepron but actually containing Buprenorphine (Buepron) comes within the ambit of Special Court under CNSA or in the domain of Drug Court?

Analysis: Buprenorphine is a Psychotropic Substance and is mentioned in schedule issued under section 2(za) of CNSA, 1997 at serial No. 7, whatever the name a substance is labelled by a manufacturing company on the injection, tablets or syrup is matter for the purpose of trading and copy rights protection; therefore, it does not eject such substance from the definition of Psychotropic Substance. On de-sealing of case property when instead of Buprenorphine, the name Buepron printed on injection was found, it does not change its status unless it is proved that both are different drugs. Buprenorphine Injections and Tablets and opium concentrated Syrup are regarded in the Act as manufactured drugs as per section 2(q) of the Act and all manufactured drugs fall within the definition of Narcotic Drug which is defined in Section 2 (s) of the Act. In order to determine whether the recovered material was psychotropic substance or manufactured drugs, it would only be determined by the Government Analyst appointed in Federal or Provincial Narcotics Testing Labs as per Section 35 & 36 of CNSA, 1997 and his report shall be admissible in evidence of the facts stated therein without formal proof and such evidence shall, unless rebutted, be conclusive.

Conclusion: Injection labeled as Buepron but actually containing Buprenorphine (Buepron) comes within the scope of psychotropic substance; hence triable under special court under CNSA, 1997.

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15. **Lahore High Court**
Muhammad Ashraf v. The State
Crl. Misc. No. 33182-B of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2020LHC3793.pdf

Fact: Petitioner seek post arrest bail in offences under sections 324/148/149/337A(ii)/ 337F(i)/337F(iii)/337L(ii) PPC. The petitioner has been assigned the role of making a fire shot at the chest of PW-1 and inflicted butt blow of rifle on the head of PW.

Issue: Whether the petitioner is entitled to grant of bail in matter of cross version?

Analysis: This is case of cross version and accused has also sustained injuries. His MLC is not challenged by complainant party. Although it is argued that the injuries of the petitioner were simple in nature, whereas the injuries sustained by the complainant party are grievous but it is by now well settled that nature of injuries is not relevant at bail stage, in a case of cross versions. It will be determined by the learned trial Court after recording of evidence that as to who was the aggressor and who was aggressed upon.

Conclusion: The petitioner is entitled to grant of bail.

16. **Lahore High Court**
Mst. Zainab Bibi alias Gudo v. The State
Criminal Appeal No. 05 of 2021
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2013.pdf

Facts: The Appellant was convicted and sentenced for commission of offence punishable u/s 9 (c) of CNSA, 1997.

Issue: i) What is the importance of examination of accused u/s 342 CrPC in a criminal trial?

ii) What will be the effect of not putting any piece of evidence to an accused in her/his examination u/s 342 CrPC?

Analysis: i) Under Section 342 of the Code of Criminal Procedure, 1898, it is the duty of trial Court to examine the accused. Power to examine an accused under the settled principles of law is not mere a formality but a mandate to enable the accused to explain any circumstance appearing against him in evidence. During this exercise every piece of evidence which can be used against the accused for the purpose of conviction is required to be put to him, so he may be in a position to respond thereto. Every piece of evidence certainly includes the documentary evidence also. Said examination of accused is based on the principle involved in maxim "Audi Alteram Partem" that means, no one should be condemned unheard". These circumstances to be put to accused are also called 'incriminating pieces of evidence'. The word incriminating means "a material that has harmful effect". Therefore, deviation from said duty shall render the conviction invalid.

ii) We have perused the examination of the accused recorded by learned Trial Court u/s 342 CrPC. Where though in question No. 5 only there is mention of sending the sample to PFSA yet report of PFSA (PE) was never put to the accused through any question for enabling her to explain that piece of evidence. Such omission is not curable under the law and has caused miscarriage of justice.

Conclusion: i) Examination of accused u/s 342 CrPC is mandatory to enable the accused to explain any circumstance appearing against him in evidence.

ii) Failure of putting any piece of evidence to the accused in her/his examination u/s 342 Cr.P.C is an incurable mistake and causes miscarriage of justice.

17. **Lahore High Court**
Dawood Abdul Ghafoor v. Justice of Peace etc.
W.P. No.9086 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1916.pdf

Facts: The petitioner filed this petition against the order passed by a Justice of Peace, whereby, on the basis of an application disclosing the commission of a cognizable offence, he proceeded to direct the S.H.O. to register a criminal case under section 489-F PPC.

Issue: i) What is the rationale and ethos of section 154 Cr.P.C?
ii) Whether registration of FIR is an adverse action and that the person against whom the FIR is being registered should, therefore, be heard before its registration?
iii) Registration of FIR and arrest of accused person are two different concepts under the law.

Analysis: i) It is clear from a reading of Section 154 Cr.P.C. that the word 'shall' which carries a mandatory connotation has been used and is clearly indicative of the intent of the legislature. There is no subjective or even objective discretion left to the police officer by this section. The strict statutory prescription makes this provision a self-executory mechanism. Furthermore, the term 'information' appearing in section 154 Cr.P.C. is not qualified or conditioned upon any prefixed terms such as reasonable, credible, believable, truthful etc. It is also evident that what is required and necessary is only that the information given to the police must disclose commission of a cognizable offence.
ii) Section 154 Cr.P.C. is clear and unambiguous and it would be legally impermissible to allow the police to read the term 'preliminary inquiry' or 'prior hearing' into the provision before registering an FIR. The reliability, genuineness, credibility, reasonableness, veracity and any opinion pertaining to the information so received has never remained a relevant precedent fact for registering a case under section 154 Cr.P.C. Mere registration of FIR could bring no harm to a person against whom it has been recorded. Section 154 Cr.P.C. does not envisage a right of hearing in the provision itself.
iii) Arrest of a person accused in an FIR is not a natural or obvious consequence of registration of FIR. While registration of FIR may be mandatory, arrest of accused immediately after registration of FIR is not at all mandatory.

Conclusion: See above.

18. **Lahore High Court**
Muhammad Mukhtiar & another v. The State
Crl. Appeal No.44 of 2018
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1953.pdf

Facts: Allegedly the accused was caught making adulterated carbonated drinks of famous brands.

Issue: Whether the question of chain of safe custody is applicable only in cases of recovery of Narcotics or does it also apply to other cases where prosecution relies upon the report of an expert?

Analysis: The argument that the question of chain of safe custody is applicable only in case of recovery of Narcotics is devoid of force. For safe administration of justice, in every case where prosecution relies on the report of an expert and demands conviction on the basis thereof, it cannot deviate from the duty to establish the chain of safe custody which means safe transmission of the alleged material from spot of recovery till its receipt by the Government Analyst. Therefore prosecution must prove that: -

i) Parcels were made at crime scene in accordance with the procedure prescribed by the law.
ii) Before dispatch of parcels of samples to the Government Analyst, those were kept in safe custody by an authorized officer.
iii) Those were deposited by an official in the office of Government Analyst.

Conclusion: Question of chain of safe custody is not only applicable in the cases of recovery of Narcotics but in every case where the prosecution relies upon the report of expert and seeks conviction on its basis.

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19. **Lahore High Court**
Shafqat Masih etc v. The State etc.
Criminal Appeal No. 769/2014
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC2033.pdf

Facts: The appellant filed appeal against his conviction in offences punishable under section 295-B, 295-C, 201 of PPC and section 25-D of the Telegraph Act, 1885.

Issue: Whether 'SMS' delivered through a Mobile Phone is admissible in evidence, if yes, what is the mode of proving it in the Court?

Analysis: Article 164 of the QSO may be termed as the enabling provision. The procedure to prove the evidence collected through modern techniques is laid down in Articles 46-A and 78-A thereof and the Electronic Transactions Ordinance, 2002. In Ishtiaq

Ahmed Mirza and 2 others v. Federation of Pakistan and others (PLD 2019 SC 675) the Hon'ble Supreme Court held that this has "smoothened the procedure to receive such evidence." SMS, "is one of the most deliverable forms of communication worldwide." Research shows that it has a delivery rate of 99.9% and 90% of the text messages are opened within three minutes of receipt. SMS is covered by Article 164 of the QSO and is admissible to prove a fact subject to the following three conditions:

i) the fact sought to be proved is relevant, i.e. it must be "of consequence to the determination of the case";
ii) the text is not a hearsay; and
iii) its authenticity is duly established at the trial.

Conclusion: SMS through a Mobile Phone is admissible in evidence as per Article 164 and it shall be proved in court subject to the procedure laid down under Articles 46-A and 78-A of QSO 1984.

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20. **Lahore High Court**
Raja Fahad v. The State, etc.
Murder Reference No.79 of 2019
Mr. Justice Ch. Abdul Aziz, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC1741.pdf

Facts: The complainant of the case claimed to be present at the crime scene and witnessed the occurrence alongwith the others when the assailants, nominated in the FIR, assaulted on his brother (deceased) and another (injured). During examination u/s 342 Cr.P.C accused/present appellant denied all the allegations; however he neither appeared as his own witness u/s 340(2) Cr.P.C. nor produced any evidence in his defence. He was convicted and awarded death sentence as Ta'zir and further to pay compensation u/s 544-A Cr.P.C.

Issue: Whether, without examination of the doctor/para medical staff who conducted CT Scan and prepared a report accordingly, any probative value can be attached to it where the CT Scan and other documents were considered by the Medical officer to form his opinion about death of the deceased?

Analysis: Medical Officer had given his opinion regarding the cause of death while going through the documents produced before him by the Medical Superintendent, which included notes by Surgical Unit doctors and Ward files, including notes by Neurosurgery Unit and death slip and the treatment documents suggested that he was labeled as a case of head injury. Although CT Scan Film and X-rays were not produced before him, however, the death slip indicated CT Scan findings, which was consistent with head injury. But during the course of trial, the prosecution has produced only the Medical Officer, who conducted medical and postmortem examination of the deceased but the Technician and doctor/radiologist, who got

conducted the CT Scan had not been adduced as prosecution witnesses before the leaned trial court. Even both of them were not associated by the investigating agency during the course of investigation……. The law is very clear that only report of Chemical Examiner or Serologist etc., are per se admissible under section 510 of the Code of Criminal Procedure, 1898 (Cr.P.C.) and the CT Scan report submitted by the Radiologist was not covered under the said provision of law and it was incumbent upon the prosecution to produce the said witness, who got conducted the CT Scan as a witness.

Conclusion: No probative value can be attached with the CT scan report or other documents on the basis of which opinion about cause of death is made out, unless the scribers of such documents/reports are examined as a witness before the Court.

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21. **Lahore High Court**
Tahir Naqash v. The State etc.
Criminal Appeal No. 70487 of 2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1896.pdf

Facts: Through appeal, judgment of conviction passed against the appellant, in a narcotics case, was assailed on the grounds of lapse in the chain of custody.

Issue: Whether the police can claim privilege regarding Register No. 19; and if not how it is to be proved?

Analysis: If Register No. 19, has been summoned by the court then court should look into its relevancy and admissibility first and then allow the defence to prove it through primary evidence as mentioned in Article 161 of the Qanun-e-Shahadat Order, 1984. Though public documents are proved through certified copies yet they should be in the form as required u/a 87 of the Qanun-e-Shahadat Order, 1984. Any person when applying for such document can face question of any privilege claimed on it. It is the court which would decide whether the claimed privilege sustains or not. In the present case, register No. 19 was not duly proved; therefore, any page/part of register bringing on record without formal proof would amount to improper admission of evidence. It is trite law that if such practice is allowed to continue then every junior ranked police official, while bringing on record any register and claiming it as genuine, real and true without the knowledge of senior officers in the hierarchy of police station or the department, can thwart the sanctuary of the prosecution case.

Conclusion: Police usually claim privilege against unpublished official record for its production before the court as mentioned in Rule 27.24 of Police Rules, 1934, wherein certain documents are under absolute privilege though other not, yet police can also claim privilege on it; therefore, it is the court which after summoning and examining the document without showing it to the parties would decide whether it is privileged document or not; if court declares it as not privileged, then would ask the party to

prove the document through primary evidence with any exception as highlighted in Article 161 of Qanun-e-Shahadat Order, 1984 and not in any other manner. .

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22. **Lahore High Court**
Mst. Aziz Mai v. The State etc.
Criminal Appeal No. 271-J of 2010
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1936.pdf

Facts: The appellant assailed her conviction under section 302(b) PPC and sentence of imprisonment for life on the allegation of killing a seven month old baby with blow of iron pipe.

Issue: What is the legal effect of inconsistency between oral and medical evidence as to an injury with iron pipe causing a simultaneous fracture of temporal, frontal and occipital bones?

Analysis: The injury observed by the doctor during Post mortem is subjacent to the area of impact and not perfectly opposite to it; therefore, it can be regarded as coup injury and not a contre coup; but confusion still persists that an injury with iron blow pipe can cause a simultaneous fracture of temporal, frontal and occipital bones; obviously not. Now if it was caused by falling then there must be a contre coup injury which is missing in this case; it was probably due to the reason that bones of child of this age are soft and elastic and injuries usually cause greenstick fractures; therefore, there must be depressed fracture in this case but doctor observed otherwise. Thus, it is clear that injury probably was sustained when head struck against a hard surface, i.e., by falling, yet from a considerable height. Investigating officer didn't appear as witness to prove that there was hard surface at the place of occurrence.

Conclusion: Hitting of iron blow pipe with force cannot cause simultaneous fracture of temporal, frontal and occipital bones; therefore, medical evidence contradicts with ocular which makes the story of prosecution doubtful.

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23. **Supreme Court of Pakistan**
Secretary Agriculture, Livestock & Cooperation Department, v. Anees Ahmad
Civil Appeal No.40 of 2021
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._40_2021.pdf

Facts: The respondent was not considered for promotion by DPC due to his retirement.

Issue: Whether despite retirement, an employee has right to be considered for promotion, when his case for promotion stood mature and working paper was placed before DPC prior to his retirement?

Analysis: Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice to respondent.

Conclusion: Despite retirement, employee has a right to be considered for promotion, when his case for promotion stood mature and working paper was placed before DPC prior to his retirement.

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24. **Lahore High Court**
Mst. Ashi. v. Province of Punjab
Writ Petition No.12022 of 2021
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2202.pdf

Facts: The petitioners were appointed in the Board of Revenue, against the post of Assistant Director Land Records, pursuant to an advertisement, got published by the Punjab Public Service Commission (PPSC) in the National Press on the requisition of the Board of Revenue (BOR). Thereafter they were transferred to Punjab Land Records Authority. They are aggrieved of their non-regularization.

Issue: Whether the government employees, transferred to a body corporate, are competent to file writ petition in respect of regularization when they are no more civil servants?

Analysis: Prior to their transfer to PLRA the terms and conditions of service of the petitioners were governed under the Punjab Directorate of Land Records Posts Service Rules, 2010 (the Rules 2010) which were further amended in the year 2016 and the same having been framed under the statutory provision of section 23 of the Punjab Civil Servants Act, 1974, cannot be termed as non-statutory….The petitioners were adjusted in PLRA in the light of section 31(f) of the Act, 2017. Since the petitioners have sought enforcement of the terms and conditions of service while serving in BOR, in terms of section 31(f) ibid, their request cannot be considered as non-maintainable as enforcement of a statutory provision can be sought from this Court.

Conclusion: The government employees transferred to a body corporate may file writ petition.

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25. **Lahore High Court**
Muhammad Muazam, etc v. Govt. of the Punjab, etc
Intra Court Appeal No.56-2021
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC1636.pdf

Facts: Through this Intra Court Appeal, under Section 3 of the Law Reforms Ordinance, 1972, the appellants have challenged the judgment passed by the learned Single

Judge dismissing the writ petition filed by the appellants regarding the extension of their service contract.

Issue: Whether the appellants being contract employees have a vested right to claim extension of contract through constitutional jurisdiction of the Court under Article 199 of the Constitution?

Analysis: Admittedly, the appellants duly agreed and accepted the terms and conditions contained in the job offer letter. In terms of clause 3 upon completion of the initial contracts period of 1½ year, the appellants' contracts of service were further extended to four months through. Subsequently, the performance of the appellants was not found satisfactory and consequently their contracts were not extended further accordingly.

The extension of contracts cannot be granted to the appellants as of law as well as of right, firstly, because on the day when the appellants invoked the Constitutional jurisdiction of the Court their status was of an employee whose contracts had expired and the Court under its constitutional jurisdiction through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which had already expired. Secondly, in the Intra Court Appeal the Court cannot embark on a factual inquiry i.e. whether the performance of the appellants was satisfactory or not. Thirdly, it is not the case of the appellants that non-extension of their contracts suffers from mala-fide in law as neither the Contract Policy, 2004 has been challenged nor any statutory instrument or order has been assailed. The nature of challenge put forward by the appellants at maximum can be termed as mala-fide in fact, which this Court in exercise of its constitutional jurisdiction cannot entertain, as such kind of allegations require strict factual proof.

Conclusion: The appellants being contract employees do not have a vested right to seek extension of their contracts through constitutional jurisdiction.

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26. **Lahore High Court**
Muhammad Waris v. Director General, Punjab Emergency Services, Lahore & others
Writ Petition No. 39812 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC2152.pdf

Facts: The petitioner was a driver of Rescue-1122. While responding to an emergency call, allegedly under the influence of sleep, he struck his ambulance with a trolley and caused huge damage to that. The authority served him with show cause notice and finding his reply unsatisfactory, ordered his removal from service. His appeal was also got dismissed.

Issue: i) Under which law disciplinary proceedings against the employees of Rescue-1122 are taken?

ii) When major penalty can be passed after dispensing with a regular inquiry?

Analysis: i) The services of employees of Rescue-1122 are governed by the Punjab Emergency Service Act, 2006 (IV of 2006). In exercise of powers conferred under Section 26 of the Act ibid, the Punjab Emergency Service Leave, Efficiency and Discipline Rules, 2007 have been framed. According to rule 7 of said rules proceedings against an official of Rescue-1122 are to be conducted in accordance with Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (XII of 2006).

ii) Removal from service is a major penalty as contemplated in Section 4(b)(v) of PEEDA Act. Section 9 deals with procedure of inquiry to be followed by competent authority. The spirit of law is that major punitive action against an employee should be taken after an inquiry within contemplation of law. The competent authority may, in exercise of the powers under PEEDA Act, 2006, by dispensing with the requirement of regular inquiry, follow the summary procedure, but this power must be exercised in exceptional cases, in which either there is no factual controversy or the facts are admitted. The competent authority may, without holding a regular inquiry, pass the final order, if the charge is not based on disputed questions of facts, otherwise dispensation of regular inquiry would amount to depriving of a person from right of defence and fair opportunity of hearing.

Conclusion: i) Disciplinary proceedings against the employees of Rescur-1122 are governed by the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (XII of 2006).

ii) The competent authority, without holding a regular inquiry, may pass a major penalty if the charge is not based on disputed questions of facts.

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27. **Lahore High Court**
Muhammad Irshad v. Government of Punjab, etc.
I.C.A.No.160 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC748.pdf

Facts: The appellant sought modification of his retirement order issued on the basis of superannuation instead of retirement on the basis of medical invalidation.

Issue: Whether notification of retirement, once issued, can be modified with retrospective effect or not?

Analysis: It is settled position of law that once an order of retirement from service of a civil servant is issued, the same cannot be re-opened in ordinary circumstances being past and closed transaction to which finality is attached. For retirement of the appellant on medical ground basis, order to that effect by the competent authority was required to be passed by application of mind to the facts and circumstances of

the case, which order had not been passed till the date of superannuation as the report of Medical Superintendent to provide information of countersign/confirming it by Director General, Health Services, Punjab, Lahore, was awaited and same was received on 21.12.2019 after appellant already stood retired on superannuation. By the said time, the competent authority had become *functus officio*.

Conclusion: Retirement order with retrospective effect could not be passed on the basis of medical invalidation when the appellant earlier stood retired on the basis of superannuation.

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28. **Lahore High Court**
Muhammad Shahid v Secretary Food, etc.
W.P. No.8943 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1801.pdf

Facts: The petitioner has challenged the Order passed by Secretary, Government of Punjab, Food Department whereby his deputation period of three years has been cut short by six months and he has been surrendered to his parent department.

Issue: Does a deputationist has any vested right to remain at the post of deputation indefinitely or even for a stipulated period?

Analysis: The term 'deputation' has not been defined either in the Punjab Civil Servants Act, 1974 or in the Rules made thereunder. The Superior Courts including the Hon'ble Supreme Court of Pakistan have judicially interpreted the term deputation in a number of judgments while taking into account Chapter IX of the Establishment Manual Volume-I**.** Deputation is made purely on account of administrative exigencies and for the purpose of administrative convenience. As and when a particular department is faced with a shortfall of technically savvy personnel trained in a particular field, it can seek the services of technically qualified persons in that field from some other department of the same government or even from another government of the country. It is for the borrowing department to decide as to when a deputationist is no more required. A deputationist, therefore, cannot be thrust upon an unwilling department. This would compromise the autonomy of the department besides heightening and accentuating a non-existent vested right which is alien to trite and established law. Deputation is in the nature of a three way contract and can be continued only if all the parties want it to continue. The moment this tripartite agreement is repudiated by means of non-adherence by the departments, the employee has no legally enforceable right to continue to complete the agreed period of his deputation. It is also well settled that a deputationist does not have any vested right to remain at the post of deputation indefinitely or even for a stipulated period. He can be repatriated to his parent department at any time.

Conclusion: A deputationist has no vested right to remain at the post of deputation indefinitely or even for a stipulated period. .

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29. **Lahore High Court**
Mohammad Umer Khalid v. Government of Punjab etc.
Writ Petition No. 9010 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2096.pdf

Facts: The petitioner seeks reinstatement in contractual service and also submits that since he had completed three years in service, therefore, he was eligible and qualified to be considered for regularization in terms of the Regularization of Service Act 2018.

Issue: Whether a contractual employee can seek extension in contractual service or for that matter reinstatement in service?

Analysis: In the garb of seeking regularization, the petitioner wants this Court to first reinstate him in service. This is not possible because the Hon'ble Supreme Court of Pakistan has held that a contractual employee, even in the event of his arbitrary dismissal, can only seek damages from the Civil Court since his relationship with his employer is governed by the principle of master and servant. It may also be noted that the provisions of the Act of 2018 are more in the nature of self-executory provisions inasmuch as these are not dependent on any further legislative action outside of the Act of 2018. The considerations for being regularized, the eligibility thereof, the posts against which such regularization is permissible, the posts against which such regularization is not permissible, the qualifying criteria and factors, are all provided in the Act of 2018 itself and the Act does not require the crutches of any other rules, bye-laws, policy or notifications for being brought into force.

Conclusion: It is trite and established that a contractual employee cannot seek extension in contractual service or for that matter reinstatement in service.

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30. **Lahore High Court**
M/s Colony Textile Mills Limited and another v. First Punjab Modaraba
Regular First Appeal No. 214624 of 2018
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC1774.pdf

Fact: This appeal is filed against judgment passed by the Banking Court wherein the suit for recovery under Financial Institutions (Recovery of Finances) Ordinance, 2001 was decreed with cost of suit and cost of fund after rejecting leave to appear and defend the suit. The appellants assert that before passing final judgment, the Banking Court should have decided the three applications filed by them: (i) the application to produce some original documents; (ii) the application for referring documents to a handwriting expert; (iii) The application for seeking appointment of Chartered Accountant as Amicus-Curiae.

Issue: Whether miscellaneous applications are maintainable before grant of petition for leave to defend?

Analysis: i) The miscellaneous applications were not maintainable before the Banking Court before the grant of the PLA. In fact, such pleas could have been taken in the PLA itself.
ii) Under Section 22(3) of the Ordinance, the High Court shall, at the stage of admission of the Appeal, decide by means of a reasoned order whether the Appeal is to be admitted in part or in whole. Also under Order XLI, Rule 11 of the CPC, the appellate court has power to dismiss Appeal without sending notice to the lower Court. This appeal is at limine stage and in view of the afore discussion, it is a fit case to apply doctrine of "Limine Control".

Conclusion: The miscellaneous applications are not maintainable before grant of petition for leave to defend.

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31. **Lahore High Court**
The Bank of Punjab v. Mr. Manzoor Qadir and another
Regular First Appeal No. 300 of 2016
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC2234.pdf

Fact: The appellant filed suit for recovery under the Financial Institutions (Recovery of Finances) Ordinance, 2001. The respondents were summoned and they filed an application for leave to defend (PLA). During the pendency of the PLA, certain amounts were paid by the respondents and some amount was deposited in the Court. When the PLA was taken up for decision by the Banking Court, the respondents contended that they have paid back their entire liability. The Banking Court held that nothing was recoverable at the time of decision of PLA and that cost of suit and cost of funds could only be awarded if a decree of some amount already outstanding was to be passed. The Banking Court straightaway dismissed the suit

Issue: i) Whether the Banking Court was justified to dismiss the suit without first accepting or rejecting the PLA?
ii) Whether the refusal to pass the decree with reference to cost of funds was in accordance with law on the ground that amount was paid during pendency of suit and nothing was outstanding at the time of decision?

Analysis: i) The Banking Court is well within its legal right to reject or return a plaint by invoking any provision under the CPC before summoning the defendant or before fixing a specific date of hearing of the PLA. However, once a date of hearing of the PLA has been fixed, it ceases to take any further step under the provisions of the CPC without first deciding the PLA. The Banking Court is duty bound to, first, grant or reject the PLA before taking any other step towards the progress and continuation of the suit. After doing so, the provisions of the CPC are again

available to the Banking Court as the facts and circumstances of the case may warrant.

ii) Section 17 of the Ordinance provides that the final decree shall be passed with respect to payment from the date of default of the amounts determined to be payable by the Banking Court on account of default in fulfillment of the obligation and for costs including in the case of a suit filed by a financial institution cost of funds. Where no amount is payable by the borrower or even excess amount has been paid by the borrower, the Banking Court can and should pass a decree regarding the cost of funds subject to offsetting the excess amount, if any, which can be determined at the stage of execution.

Conclusion: i) The banking court was not justified to dismiss the suit without first accepting or rejecting the PLA.

ii) The Banking Court can and should pass a decree regarding the cost of funds. .

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32. **Lahore High Court**
Nasir Ali v. Govt. of Punjab and another
Writ Petition No. 8666 of 2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC2175.pdf

Fact: The petitioner claims to be an owner of "Dredger Machines" and contends that the respondent has illegally registered these machines. The petitioner sought the cancellation of registration of "Dredger Machines" before the Motor Registration Authority with assertion that these do not fall within the parameter of section 2(23) of the West Pakistan Motor Vehicles Ordinance, 1965. Registration was accordingly cancelled. The respondent filed appeal before Director Excise and Taxation who restored the registration.

Issue: i) Whether the ownership and possession of "Dredger machines" can be determined by High Court in its constitutional jurisdiction?

ii) Whether the registration of "Dredger Machines" was in accordance with the law?

Analysis: i) The matter regarding ownership and possession pertains to factual inquiry and recording of evidence, therefore the same cannot be decided in exercise of extra ordinary and discretionary jurisdiction of the High Court.

ii) The facts and circumstances of the case clearly suggest that the Registration Authority did not physically examine the Dredger Machines before registering the same as was required under section 27 of the Ordinance to satisfy the requirements of section 73 read with Section 2(23) of the Ordinance. The vital aspects of the definition of "Motor Vehicle" as contemplated by section 2(23) of the Ordinance were also not taken into consideration.

Conclusion: i) The High Court cannot decide the question of ownership and possession of D.M in its constitutional jurisdiction as factual inquiry is required for that purpose.

ii) The registration of "Dredger Machines" was not in accordance with law; therefore, Registration Authority was directed to decide the question of registration after physical examination of machine.

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33. **Lahore High Court**
Commissioner of Income Tax, Large Taxpayers Unit, Legal Division, Lahore v. M/s Service Industries Limited, Services House, 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. A challenge was made by the respondent to the assessment order by filing an appeal before the Commissioner of Income Tax (Appeals) who dismissed the same. The respondent filed an appeal before the Income Tax Appellate Tribunal which was allowed by declaring the transaction of sale as a slump transaction and by deleting the addition made by the assessing officer.

Issue: Whether in present case Income Tax Appellate Tribunal (ITAT) was justified to hold that sale/transfer of 51% shares by the taxpayer is a slump transaction?

Analysis: Concept of slump sale is derived from section 2(42C) of Indian Income Tax Act 1961 according to which 'slump sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. The idea of a slump sale is the transfer of an undertaking as a whole. In case where liabilities have not been transferred, it cannot be said that the 'undertaking' has been transferred as a whole and consequently the provisions of slump sale shall have no applicability to such a transfer. The concept of slump sale, however, is alien to the erstwhile Income Tax Ordinance, 1979 or the Income Tax Ordinance, 2001. 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. 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. 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. 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. 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. 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. The assessing officer was right in making the addition whereas the Income Tax Appellate Tribunal did not take into account the relevant provisions of the Income Tax Ordinance, 1979 in allowing the appeal of the respondent.

Conclusion: Transaction in question by the taxpayer was not a slump sale transaction; hence the decision rendered by Income Tax Appellate Tribunal was set aside.

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34. **Lahore High Court**
Commissioner Inland Revenue, Lahore v. M/s Kamal Steel Re-Rolling Mills Limited, Lahore
PTR No.400 of 2010
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad Raza Qureshi,
https://sys.lhc.gov.pk/appjudgments/2021LHC2140.pdf

Facts: The respondent-taxpayer filed income tax return for tax year 2004, which was treated as assessment order in terms of Section 120 of the Ordinance of 2001. Later on, the Taxation Officer observed that respondent-taxpayer was a manufacturer, thus, liable to pay Workers Welfare Fund ("WWF") under Section 4 of the Workers Welfare Fund Ordinance, 1971. Therefore, in 2008 after issuance of notice under Section 221 of the Ordinance, order for amended assessment was passed against the respondent. The respondent successfully challenged that order in appeal. The order by the appellate forum was later on upheld by the appellate tribunal.

Issue: When a change in a substantive law, that adversely affects the rights of the parties, would come into operation retrospectively?

Analysis: Change in substantive law, which divested and adversely affected the vested rights of the parties should always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication such law had been made applicable retrospectively. Substituted section cannot obliterate accrued rights. It is well-settled that the Courts lean against giving retrospective operation where no vested rights or past transactions prejudicially affect or exist. Legislation does not operate retrospectively if it touches a right in existence at time of passing of legislation. Rights of parties are to be decided according to law existing when action began unless provision made to contrary. Where statute itself does not make its operation retrospective, it would not be reasonable to claim that by necessary implication it has retrospective operation.

Conclusion: A change in substantive law that adversely affects the rights of the parties always applies prospectively.

35. **Lahore High Court**
Ramzan Sugar Mills Limited v. Federal Board of Revenue etc.
W.P No.39256 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC1961.pdf

Facts: The petitioner assailed the notice issued by the Respondent under Section 122(9) read with Section 122(4) of the Income Tax Ordinance 2001 wherein he was asked to furnish some documents to amend the assessment.

Issue: Whether Commissioner Income Tax is authorized to issue notice to a taxpayer and ask for documents to further amend an already submitted assessment?

Analysis: Sub-Section (4) of Section 122 of the Ordinance, provide that the Commissioner, which is defined in Section 2(13) of the Ordinance as the Commissioner Inland Revenue, may further amend, as many times as may be necessary, the original "assessment" order within five years from the end of the financial year in which he has issued or is treated as having issued the amended assessment order to the taxpayer as per Section or otherwise one year from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer. Section 122(4) of the Ordinance states that the assessment order, which is defined under Section 2(5) of the Ordinance, means an assessment which includes the (i) provisional assessment; (ii) re-assessment and (iii) amended assessment while cognate expressions shall be construed accordingly and the Commissioner may further amend, as many times, the original assessment within the time prescribed in Sub-Sections (a) and (b) of Section 122(4) of the Ordinance. The matter of seeking record and information under various Sub-Sections of Section 122 of the Ordinance, squarely falls within domain of the FBR as well as the government officers appointed under the Ordinance and such matters need no interference by this Court as required in the Constitutional jurisdiction.

Conclusion: Commissioner Income Tax is empowered under Section 122(4) of the Ordinance to further, amend the original assessment order, as many times, as he deems fit if read with all Sub-Sections of Section 122 of the Ordinance.

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36. **Lahore High Court**
Salman Shahid v. University of Management and Technology.
I.C.A.No.454/2016
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2058.pdf

Facts: The appellant is a student of University of Management and Technology, Lahore (UMT). According to the appellant, he completed thirty credit hours required for the award of degree of MS/M. Phil, but the requirement of submission of thesis equivalent to six credit hours by UMT is not justified. The Constitutional petition

filed by the appellant in this regard was dismissed as being not maintainable, hence this appeal.

Issue: Whether constitutional petition filed by the appellant against UMT was maintainable under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973?

Analysis: The test to determine whether UMT is a "person" amenable to judicial review can be ascertained firstly from the functions performed by UMT, and secondly the status of administrative and financial control of the government with respect to UMT. The Courts generally classified it as "functional test". According to Abdul Wahab case (**2013 SCMR 1383**) as a functional test, two factors are the most relevant i.e. the extent of financial interest of the state in an institution and dominance in the controlling affair thereof. Under Section 14 of the University of Management and Technology Act, the administration and management of the UMT vests in the Board, wherein the majority members are private individuals. Funds of UMT are also generated from private source including fee etc. and government has no direct financial control on the UMT. Holistic reading of the Act shows that functions of the UMT being a private sector University is also for private gains and profits and not exclusively for the benefit of public without any profits. Considering the above factors, it cannot be said that UMT is a "person" performing functions in connection with the affairs of Federation, Government or Local Authority for the purpose of judicial review under Article 199 of the Constitution. Mere fact that UMT has been established under a statute will itself not be sufficient to treat UMT as a "person" for the purpose of Article 199(5) of the Constitution.

Conclusion: UMT is a private sector university and does not perform functions in connection with the affairs of Federal or Provincial Government or Local Authority in terms of Article 199(1)(a) of the Constitution; hence not amenable to judicial review.

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37. **Lahore High Court**
Hamza Bashir etc. v. Pakistan Medical Commission through its president etc.
WP No.30346/2021
Mrs. Justice Ayesha A Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC1832.pdf

Fact: The petitioners have passed the Medical and Dental Colleges Admission Test ("MDCAT") and the interview. They were admitted in the respective colleges and have commenced their education in terms thereof. The petitioners have challenged the advertisement issued by the Examination Department, Pakistan Medical Commission, Islamabad ("PMC") wherein the process of re-admission is to take place in said colleges. The respondents raised preliminary objection regarding maintainability of the petitions on the ground that remedy of appeal under Section 37 of the Pakistan Medical Commission Act, 2020 ("PMC Act") is available to

petitioners and the re-admission is directed due to violations of the admission regulation.

Issue: i) Whether the High Court is competent to grant a relief in its constitutional jurisdiction if alternate remedy of appeal is available to a person?
ii) Whether PMC is justified to decide a number of complaints through a general order instead of deciding each complaint separately?
iii) Whether re-admission process is justified after completion of admission process?

Analysis: i) The general rule is that where there is a statutory remedy available, then writ jurisdiction should not be invoked; however there are exceptions to this rule. If the remedy is not adequate and efficacious to redress the grievance appropriately, then High Court can exercise constitutional jurisdiction. Furthermore, High Court can always review the decision making process in order to ensure that the competent authority has acted in accordance with law, maintained the principles of natural justice and due process and has not in any manner abused its authority.
ii) On the basis of the 2021 Regulations, PMC can decide a complaint and it can declare the admission of a candidate illegal or irregular thereby cancelling it subject to granting the college and the affected students a right of hearing. This procedure was not adopted and there is no clear and specific order on a complaint made before the PMC rather an omnibus order has been passed with respect to all the colleges. Although it was argued that the 2021 Regulations came in June 2021 and the impugned orders and advertisement were issued before the 2021 Regulations, yet PMC is obligated to follow the principles of due process, justice and to avoid vague and generalized enforcement as it affects the requirements of predictability and stability leaving potential for unfair surprises in their decision making. Even though the 2021 Regulations were notified in June 2021, this is the PMC's own doing and there is nothing in the 2020 Regulations or the PMC Act which permits PMC to pass a general order on all complaints. This by itself is a violation of the mandate under the PMC Act and the Medical Tribunal Act, 2020 ("MT Act").
iii) The change in law and admission processes should never be made at the last moment, before the MDCAT exam or during an academic session so as to disturb the preparation that candidates have made in anticipation of the MDCAT exam. The re-admission process has created disruption by placing the petitioners and other admitted candidates in a state of flux. The manner in which the PMC is attempting to resolve the problem is in contravention to its own 2020 and 2021 Regulations and in negation to the authority it can exercise under the PMC Act.

Conclusion: i) The High Court has jurisdiction under article 199 of the Constitution if alternate remedy is not adequate or efficacious.
ii) PMC cannot decide a number of complaints through a general order. PMC is obligated to follow principles of due process on each complaint and pass a clear and specific order

iii) Once the admission process has completed, the advertisement for re-admission is not legally justified.

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38. **Supreme Court of the United States**
Guerrero-Lasprilla v. Barr 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-776_8759.pdf
https://ballotpedia.org/

Facts: It is a case concerning the authority of courts to review agency decisions in deportation cases involving people convicted of crimes. In 1998, Pedro Pablo Guerrero-Lasprilla, a Colombian national living in the United States, was deported after being convicted of aggravated felonies. In 2016, Guerrero-Lasprilla petitioned to reopen his removal proceedings. An immigration judge denied the petition on the grounds it was untimely. The Board of Immigration Appeals and the 5th Circuit Court of Appeals also dismissed the petition.

Issue: Is a request for equitable tolling (i.e. tolling is a legal doctrine that allows for the pausing or delaying of the running of the period of time set forth by a statute of limitations) as it applies to statutory motions to reopen, judicially reviewable as a question of law?

Analysis: The decision gave people convicted of crimes more opportunities to challenge agency decisions to deport them by allowing courts to decide whether to reopen those deportation cases beyond the normal 90-day time limit. In 2005, Congress limited judicial review in those cases to questions of law and the court concluded that whether courts should extend the time limit for immigrants to challenge their removal from the United States fell within the definition of a question of law

Conclusion: The court ruled 7-2 that lower courts may review whether immigration agencies properly applied relevant laws to a given set of facts in such cases. Justice Breyer opined that the request for equitable tolling was judicially reviewable as a question of law the court vacated and remanded the case.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   COURT'S DISCRETION IN GRANTING SANCTIONS: CONSECUTIVE OR CONCURRENT RUNNING OF SENTENCES by Abhishek Goyal

   In its function, the power to punish is not essentially different from that of curing or educating…… Indian Courts have unswervingly recognized that a decision which is presented at the stage of sentencing is enormously complex, as the consequences of a sentence are of the 'highest order'. In fact, the Hon'ble Apex Court in this regard, in Dilbag Singh v. State of Punjab has quoted with affirmation that a sanction, "[i]f too short or of the wrong type, it can deprive the law of its effectiveness… If too severe or improperly conceived, it can reinforce the criminal

tendencies of the defendant." Therefore, it is quite understandable that the Hon'ble Apex Court has consistently cautioned that an undue sympathy, to impose inadequate sentence, "would do more harm to the justice system to undermine the public confidence in the efficacy of law." However, at the same time, Courts are not unmindful of the fact that, "many a times crimes are committed in the "heat of passion" or even categorised as "hate crimes". Emotions like anger, compassion, mercy, vengeance, hatred get entries in criminal trials….most of these emotions may become relevant only at the stage of punishment or sentencing….. The aforesaid factors, then, become either mitigating/ extenuating circumstances or aggravating circumstances." Therefore, a Judge's task in determining the type and quantum of a sanction involves; ensuring a balanc5 between the rights of victim and State to seek redressal of their grievances, on one hand, and adopting a certain degree of humanitarian and compassionate approach towards the convict, on the other.

2. **THE NORTHERN UNIVERSITY JOURNAL OF LAW**
https://doi.org/10.3329/nujl.v4i0.25942

A CONTEXTUAL ANALYSIS OF THE MEDICAL NEGLIGENCE IN BANGLADESH: LAWS AND PRACTICES by Khandakar Kohinur Akter

Medical negligence is a clear violation of right to health by a professional group who are actually on duty to protect when emergency strikes and the health rights are under threat. Medical negligence is lately a popular topic of attention and discussion in many developed states and consequently many of them have enacted and established separate Acts and courts to strengthen health care laws. However in Bangladesh there is no specific and comprehensive legislation to prevent medical negligence though many legal provisions are there under different statutes which are not precisely codified. This article in this background has made an effort to define medical negligence, present laws concerning medical negligence of Bangladesh with their major loopholes and lastly recommends some actions to come on strong preventing such violation of health-care rights.

3. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12536

"THIS CASE IS ABOUT YOU AND YOUR FUTURE": TOWARDS JUDGMENTS FOR CHILDREN by Helen Stalford and Kathryn Hollingsworth

A handful of 'child-friendly' judgments have emerged in the UK in recent years, attempting to adopt a child-centred approach to the decision-making stage of the legal process. Most notable is Sir Peter Jackson's judgment in Re A: Letter to a Young Person which, in taking the form of a letter to the child, has been applauded as a model of how to achieve 'child friendly justice'. This article examines how and why the form and presentation of judicial decisions is an important aspect of children's access to justice, considering not just the potential but the duty of judges to enhance children's status and capacities as legal citizens through judgment writing. We identify four potential functions of judgments written for children

(communicative, developmental, instructive and legally transformative), and call for a radical reappraisal of the way in which judgments are constructed and conveyed with a view to promoting children's access to justice.

4. **COLUMBIA LAW REVIEW**
https://live-columbia-law-review.pantheonsite.io/content/delegation-at-the-founding/
DELEGATION AT THE FOUNDING by Julian Davis Mortenson & Nicholas Bagley

This Article refutes the claim that the Constitution was originally understood to contain a nondelegation doctrine. The Founding generation didn't share anything remotely approaching a belief that the constitutional settlement imposed restrictions on the delegation of legislative power—let alone by empowering the judiciary to police legalized limits. To the contrary, the Founders saw nothing wrong with delegations as a matter of legal theory. The formal account just wasn't that complicated: Any particular use of coercive rulemaking authority could readily be characterized as the exercise of either executive or legislative power, and was thus formally valid regardless of the institution from which it issued.