LAHORE HIGH COURT

BULLETIN

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

Volume - II, Issue - XXII

01 - 12 - 2021 to 15 - 12 - 2021

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://lhc.gov.pk/news_letters

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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2021 to 15-12-2021)

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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LATEST LEGISLATION/AMENDMENTS

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1. **Supreme Court of Pakistan**
Government of the Punjab, through Secretary, Schools Education Department, Lahore etc v. Abdur Rehman
Civil Appeal No.414 & 817 of 2021
Mr. Justice Gulzar Ahmed, HCJ Mr. Justice Mazhar Alam Khan Miankhel. Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._414_2021.pdf

Facts: The respondents applied for the posts of AEOs but they were not considered for appointment as AEOs allegedly on the ground that their qualifications were not at par. The respondents filed complaint before the Complaint Redressal Cell (CRC which was accepted. The Appellant filed an appeal which was allowed. The respondents filed a Writ Petitions which were allowed on the ground that instead of filing a review petition before the Complaint Redressal Cell, directly an Appeal has been filed against the rules.

Issue: i) Whether appeal can be filed against the order of CRC without filing review petition before CRC?
ii) How quasi-judicial power is exercised by authority?
iii) What is scope of doctrine of "Ex Debito Justitiae"?

Analysis: i) In the TORs, right to file review petition was extended to the EDO or the complainant within thirty days and in Clause (d), it was further provided that the EDO or the complainant against the decision of CRC on the review petition may also file appeal to the Secretary School Education within thirty days. In paragraph No.22 of the Recruitment Policy, further emphasis were made that if any direction contrary to the Policy is passed by the CRC at Divisional level or any legal forum, the review petition shall be filed within the stipulated period. The composite effect of Clauses (c) & (d) of TORs jot down in Paragraph No.21 read with Paragraph No.22 makes it quite discernible without any ambiguity that before invoking appellate remedy, filing of review petition was mandatory before the CRC. In our comprehension and understanding, the right of filing of review petition was in fact allowed before the CRC for expeditious disposal of the matter and if some wrong recommendations were made by them, an opportunity was provided by way of review petition before CRC to revisit the decision as the matter pertained to the Recruitment of educators which could not be left unattended, dragged or uncompleted for an unlimited period of time. Unless the review petition was filed and CRC arrived at decision, no appeal could have been filed before the Secretary, School Education. The remedy of appeal before the Secretary was not provided against each and every order but for all intents and purposes, this right was available to invoke only to challenge the decision of review petition which could have filed by the CEO if in his understanding, some errors were apparent on the face of the record or the recommendations of CRC were beyond the scope of Recruitment Policy but he failed to fulfill the elementary requirement of the Policy.

ii) The quasi-judicial power is a duty conferred by words or by implication on an officer to look into facts and to act on them in the exercise of discretion and it lies in the judgment and discretion of an officer other than a judicial officer. A quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as incidental to the administration of matters assigned or entrusted to such officer or authority.

iii) The lexicons of law provide definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex-debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process…. We are sanguine to the well settled doctrine of "ex debito justitiae" entrenched and engrained in the legal system but each case has to be decided in its peculiar facts and circumstances therefore while applying this doctrine, the conduct of the parties is also very relevant and significant which cannot be ignored lightly under its domain and realm.

Conclusion: i) The appeal cannot be filed against the order of CRC without filing review petition before CRC.

ii) A quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion

iii) "Ex Debito Justitiae" (Latin) applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant

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2. Supreme Court of Pakistan
Divisional Superintendent, Quetta Postal Division and others v. Muhammad Ibrahim and others
Civil Appeal No. 508 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._508_2020.pdf

Facts: The respondent No. 1 was appointed as Postman and was also assigned as officiating postmaster. He was alleged to have misappropriated public money belonging to exchequer. The respondent was proceeded against the said accusation resulting into registration of a criminal case and departmental inquiry.

Issues: i) Whether a postman is a civil servant in terms of Section 2(b) of the Civil Servants Act, 1973, entitling him to avail remedy before the Service Tribunal?

ii) Being a worker, under which law the respondent will have remedy, i.e., the Balochistan Industrial Relations Act, 2010 or the Industrial Relations Act, 2012?

iii) Whether the Industrial Relations Act, 2012, will override the provisions of the

Balochistan Industrial Relations Act, 2010?

iv) Whether Section 1(4)(b) of Balochistan Industrial Relations Act, 2010, in so far as it deals with the workmen of Pakistan Post, has become ultra vires of the Constitution and the Industrial Relations Act, 2012?

Analysis: i) The term "civil servant" includes a person who is or has been a civil servant within the meaning of the Civil Servants Act, 1973. In the instant case sub-clauses (i), (ii) of section 2(1)(b) of the Act are not relevant as the respondent postman is neither a contract employee nor on deputation and, therefore, sub-clause (iii) would be applicable. …. The term "workman", as defined in Section 2(1)(n) read with Second Schedule of the Workman's Compensation Act, 1923, includes any person who is employed in any occupation ordinarily involving outdoor work in the 'Posts and Telegraphs Department', meaning thereby that such person will be excluded from the definition of "civil servant" and the Service Tribunal shall not have jurisdiction in respect of such person.

ii) The workmen of the Post Office Department are subject to the Industrial Relations Act, 2012 and not the Balochistan Industrial Relations Act, 2010.

iii) From the combined reading of Section 1(3) of the Industrial Relations Act, 2012, Section 1(4) of the Balochistan Industrial Relations Act, 2010 and Article 143 of the Constitution, it is clear that Section 1(3) of the Industrial Relations Act, 2012, where it has been applied to workmen employed in the administration of the State (which includes the Postal Service Department) will override the provisions of Section 1(4)(b) the Balochistan Industrial Relations Act, 2010.

iv) Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, insofar as it deals with the workmen of Pakistan Post, is repugnant and void in terms of Article 143 of the Constitution and the Industrial Relations Act, 2012.

Conclusion: i) A postman does not fall within the definition of civil servant in terms of Section 2(b) of the Civil Servants Act, 1973, thus the Service Tribunal shall not have jurisdiction in respect of such person.

ii) The workmen of the Post Office Department are subject to the Industrial Relations Act, 2012 and not the Balochistan Industrial Relations Act, 2010.

iii) Section 1(3) of the Industrial Relations Act, 2012, where it has been applied to workmen employed in the administration of the State (which includes the Postal Service Department) will override the provisions of Section 1(4)(b) the Balochistan Industrial Relations Act, 2010.

iv) Section 1(4)(b) of the Balochistan Industrial Relations Act, 2010, insofar as it deals with the workmen of Pakistan Post, is repugnant and void in terms of Article 143 of the Constitution and the Industrial Relations Act, 2012.

3. **Supreme Court of Pakistan**
Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another.
Civil Appeal No.764 of 2021
Mr. Justice Gulzar Ahmed, HCJ , Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._764_2021.pdf

Facts: The appellant/Principal (BPS-20) was extended monetization allowance under the Monetization of Transport Facility Policy dated 12.12.2011 meant for Civil Servants in BS20 to BS-22. However his Monetization Allowance was discontinued which action was challenged by the appellant on the ground that same is allowed to continue to doctors but discontinued for teachers is a discriminatory action.

Issue: i) What is monetization?
ii) What is austerity?
iii) What is object of monetization policy of transport facility?
iv) How doctrine of locus poenitentiae is applied?

Analysis: i) The word "monetization" exactly and plainly connotes to transform something into money which also expresses the transfiguration into revenue generating reformations and restructurings or conversion of something into source of income.
ii) The phrase "austerity" defines a launch of economic policies which in fact a government executes and embarks on to control public sector debts/liabilities. Austerity derives are in fact introduced for restoring financial health/stability and lowering government expenditures.
iii) The basic objective of the aforesaid Policy was to eliminate any possibility of misuse of official vehicles as well as to restrict the maintenance expenditure of the vehicles to the bare minimum in line with the observance of austerity measures and this policy was made applicable across the board in all Ministries, Divisions, Attached Departments and Sub-ordinate Offices and responsibility of compliance entrusted to all Principal Accounting Officers with the mandatory condition of obtaining Certificates from each entitled officer in BS-20 to BS-22 that he is not in possession or in use of any project vehicle or the departmental operational/general duty vehicle as well as any vehicle of an organization or body corporate in his ex-officio capacity as member of its Board, except the only vehicle allocated to him through the Monetization Policy.
iv) The doctrine of locus poenitentiae means an opportunity to repent. An opportunity for the parties to an illegal contract to reconsider their positions, decide not to carry out the illegal act, and so save the contract from being void. This Latin phrase is connected with contractual law which expresses an opportunity to withdraw from a contract or obligation before it is completed but in our comprehension, there is no hard and fast rule that if some benefit was wrongly extended due to some misunderstanding, error, misconception of law or without sanction of competent authority, that act should be treated so sacred and sacrosanct which could not be withdrawn to retrace or redo the wrong decision or action under the guise of locus poenitentiae principle. A wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of this doctrine depends on the circumstances of

each and every case and cannot apply universally or randomly without adverting to the merits of each case in its peculiar circumstances.

Conclusion: i) "monetization" exactly and plainly connotes to transform something into money
ii) "austerity" defines a launch of economic policies which in fact a government executes and embarks on to control public sector debts/liabilities
iii) The basic objective of the aforesaid Policy was to eliminate any possibility of misuse of official vehicles as well as to restrict the maintenance expenditure of the vehicles to the bare minimum
iv) A wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of doctrine locus poenitentiae depends on the circumstances of each and every case and cannot be applied universally.

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4. **Supreme Court of Pakistan**
Mamoon Wazir, etc. v. ABWA Knowledge Village (Pvt) Limited Faisalabad etc.
C.M.A. 5777/2021
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._5777_2021.pdf

Facts: The Judgment of the High Court in ICA was assailed by the petitioners, who were enrolled in medical and dental undergraduate program of the respondent/a private college but their admissions were subsequently cancelled due to their failure to pass the "medical and dental colleges admissions test" ("MDCAT"). They challenged the pre-admission requirement of MDCAT introduced through section 18 of the Pakistan Medical Commission Act, 2020 on the ground that it is violative of Regulations No.13 and 14 of the Admission Regulations (Amended) 2020-2021 in as much as the admissions to a private medical college is governed by the respective prospectus of the medical college, which in this case, did not require the petitioners to take MDCAT. The petition was not allowed by

.

Issue: Whether requirement of MDCAT is also mandatory for admission in a Private Medical College?

Analysis: Section 18 of the Act clearly mandates that the Authority (i.e., the National Medical Authority constituted under section 15 of the Act) shall conduct MDCAT, which shall be a mandatory requirement for all students seeking admission to medical or dental undergraduate program anywhere in Pakistan. Sub-section 2 provides that no student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining the admission in a medical or dental college in Pakistan. MDCAT is the basic minimum mandatory requirement, across the board, for admission to all medical and dental colleges, both public or private, in Pakistan. This requirement has been made applicable to students who have enrolled in the medical and dental

undergraduate program for the year 2021 and onwards. Section 8(3) of the Act when read with sections 8(1) & (2) shows that while the private colleges enjoy the flexibility of setting their own admission criteria including an entrance test (detailed in their prospectus) any such criteria or entrance test are over and above the basic statutory minimum requirement of MDCAT, which is mandatory for admission to both the private or public medical and dental colleges. Proviso to section 18(3) lays down that public colleges are to assign 50% weightage to MDCAT, while no such weightage requirement is provided for the private colleges. However, for the enrollment in the year 2021 (as in this case) the weightage of 50% was retained by the private colleges and is not in dispute or under challenge in this case.---Regulation 13 reiterates the mandatory requirement of MDCAT for private colleges and is, therefore, in sync with section 18.

Conclusion: Regulations 13 and14, in no manner authorize the private colleges to dispense with the requirement of MDCAT or are inconsistent with section 18 of the Act. The criteria, as well as, other entrance tests devised by private colleges are in addition to MDCAT, which is the basic minimum statutory requirement for admissions to any medical college in Pakistan, be it private or public.

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5. **Supreme Court of Pakistan**
Hasnain Raza etc. v. Lahore High Court, Lahore & others
CPLAs No.1862-L & 1863-L of 2021.
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1862_l_2021.pdf

Facts: The Petitioners, being civil judges, sought expunction of the stricture and directions passed against them by the High Court in its judgment passed in appeal against their judicial orders which was impugned before the High Court on the ground of being contrary to the principles enunciated by the Honorable Supreme Court in *Nusrat Yasmin v. Registrar, PHC (PLD 2019 SC 719)* and *Aijaz Ahmed v.State (PLD 2021 SC 752)*

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Issue: i). Whether a High Court, or any other appellate court, can record in its judgment a stricture against the judge of the lower court whose judgment or order is impugned before it, relating to his or her efficiency or conduct.
ii) What is the binding effect of an earlier decision of the Supreme Court on a particular question of law?

Analysis: i). Public reprimand of a judge of the lower court regarding his judicial conduct by an appellate court while sitting in judgment over his or her judicial decision, either by recording a stricture or a censorious remark in its appellate judgment or by summoning the judge and reproaching him orally in open court, does not behove the judiciary of a constitutional democracy which boasts of the independence of judiciary as its salient pillar. Any such public condemnation of a

judge lowers the public trust in the judicial institution, besides the harmful effect it has on the morale and confidence of the judge concerned as well as of his colleagues.

The District Judiciary is the backbone of our judicial system, and the judges of the District Judiciary perform the onerous task of dispensing justice at the frontline by dealing with a large number of cases in a difficult and demanding environment. The judges of the higher courts must appreciate the stressful and challenging conditions in which these judges perform. Our judicial system acknowledges the fallibility of judges, and hence provides for appeals and revisions. Higher courts everyday come across orders of the lower courts which are not justified either in law or in fact and modify or set them aside; that is the function of an appellate court. It is often said that a judge who has not committed an error is yet to be born. This applies to all judges, no matter how high or low in rank they maybe. The intemperate or extravagant criticism on the ability of a person having a contrary view is often founded on one's sense of his own infallibility. This must be avoided, and the judicial approach should always be based on the consciousness that everyone may make a mistake.

ii). To appreciate the scope and extent of the binding force and authority of judicial precedents, they may be classified into two categories: vertical and horizontal precedents. Vertical precedents mean the decisions of a higher court, and horizontal precedents mean the decisions of the same or coordinate court. All courts are absolutely bound by the vertical precedents of a higher court. This binding tie is often said to be a matter of "owing obedience". Articles 189 and 201 of our Constitution also reinforces the binding effect of the vertical precedents. Judges are therefore obliged to follow a vertical precedent even when they disagree with it; this ensures a degree of national uniformity in judicial decisions. The judges have little room to decide how much weight or value is to be given by them to that precedent. Unless we wish anarchy to prevail within the judicial system, a precedent of the apex Court of the country must be followed by all other courts of the country who owe unflinching fealty to its decisions under the Constitution.4 Ignoring or refusing to follow the controlling precedent of this Court amounts to judicial effrontery, offends the constitutional mandate, and weakens the public confidence in the decisions of the apex Court of the country.-----a higher court generally adheres to horizontal precedents-its own earlier decisions - but it may depart from or overrule any of its own decisions by sitting as a larger bench if there is a compelling justification to do so.

Conclusion: i). While examining the decision of a court below, the higher court is to assess the reasoning and the legality of the decision challenged before it and not the ability or conduct of the author judge. The latter is the function of the disciplinary authority. The higher court, if so decides, can refer the matter to the disciplinary authority, in the manner elucidated in *Nurat Yasmin case,* only on the administrative side.

ii). A decision of Supreme Court, to the extent it decides a question of law or enunciates a principle of law, is binding on all other courts of the country including the High Courts, under the mandate of Article 189 of the Constitution of the Islamic Republic of Pakistan 1973.

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6. **Supreme Court of Pakistan**
Principal Public School Sangota v. Sarbiland and others
Civil Appeal No. 71-P & 864/2014
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._71_p_2014.pdf

Facts: A suit in representative capacity was filed by the respondent in the year 2002 that land was *shamilat*, village common land, but its ownership was wrongly shown in the settlement records of 1985-86 as that of the Provincial Government, and the possession of it was wrongly with the appellant school since 1964. The Suit was decreed by the civil court but the decree was set aside by the first appellate court, however, civil revision thereagainst was allowed by the High Court.

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Issue: Whether periodical updating and the preparation of every fresh *Jamabandi* gives rise to a fresh cause of action?

Analysis: It is true that in case of mere correction of an entry in the revenue record, every new adverse entry in the revenue record of rights (*Jamabandi*) gives rise to a fresh cause of action to the person aggrieved of such an entry if that person is in possession of the land regarding which the entry is made. But, this was not only a matter of correction of an adverse entry having been made in the settlement/revenue record with regard to the ownership of the land but also a case in which possession had been assumed or, as alleged by the plaintiffs they were dispossessed. The suit was filed thirty-eight years after possession of the land was taken over by the School and sixteen years after the entry was made in the *Jamabandi*. The suit was clearly time barred and, leaving aside the other contentions which have been raised, it would fail on this ground alone.

Conclusion: Every new adverse entry in the revenue record of rights (*Jamabandi*) gives rise to a fresh cause of action to the person aggrieved of such an entry if that person is in possession of the land regarding which the entry is made.

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7. **Supreme Court of Pakistan**
Jehangir v. Mst. Shams Sultana and others
Civil Appeal No. 177-P of 2020
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._177_p_2020.pdf

Facts: On the death of predecessor his estate was inherited by the appellant, his four sisters and mother. Three sisters sold some land to the appellant through impugned mutation, which was challenged by one sister by filing a suit. which

was decreed by the High Court primarily on the ground that the sale was not established and merely because the transaction/sale mutation was thirty years old would not by itself validated it.

Issues: i) Whether Qanoon Shahadat Order, 1984 will be applicable to prove a document, executed prior to its promulgation?

ii) Whether it is necessary to call an attesting witness in proof of the execution of a document, where its execution is not specifically denied by its executant?

Analysis: i) The sale mutation is of the year 1975 when the Qanun-e-Shahadat Order, 1984 and its Article 79 prescribing two attesting witnesses was not applicable. Instead, the Evidence Act, 1872 held the field, and its section 68 provide mode to Prove execution of document required by law to be attested.

ii) According to the Proviso of section 68 of the Evidence Act, 1872 it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

Conclusion: i) Qanoon Shahadat Order, 1984 will not be applicable to prove a document, executed prior to its promulgation. Such document will be proved according to the Evidence Act, 1872.

ii) It is not necessary to call an attesting witness in proof of the execution of a document, where its execution is not specifically denied by its executant.

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8. **Supreme Court Of Pakistan**
Muhammad Ismail v. The State & others
Criminal Petition No.275 of 2021
Mr. Justice Maqbool Baqar, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._275_2021.pdf

Facts: The accused was nominated as a suspect of murder through supplementary statement. He was admitted to anticipatory bail for the reason that some other co-accused persons were granted post arrest bail by the High Court.

Issue: Whether protection of pre-arrest bail is an entirely different regime, governed by considerations hardly applicable to post arrest bail?

Analysis: An accused of a cognizable offence scheduled as non-bailable can only claim protection of pre-arrest bail by reasonably demonstrating his intended arrest being planned by considerations mala fide and sinister, designed to abuse process of law. It is a judicial protection rooted into equity; whereas an accused in custody after completion of investigation can be released on bail on the touchstone of consideration statutorily enumerated in subsection 2 of section 497 of the Code of Criminal Procedure, 1898, these two have no parallels. Admission to pre-arrest bail is a huge concession to an accused, required to be arrested in a cognizable

offence as it exempts him from remission into custody, irreversibly foreclosing avenues for the prosecution to possibly secure further evidence, consequent upon disclosures, therefore, such a relief must only be extended in the face of considerations fairly convincing.

Conclusion: Protection of pre-arrest bail is an entirely different regime, governed by considerations hardly applicable to post arrest bail and such a relief must only be extended in the face of considerations fairly convincing.

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9. **Supreme Court of Pakistan**
Muhammad Amjad Khan Afridi v. Shad Muhammad
Civil Appeal No.263 of 2014
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._263_2014.pdf

Facts: The appellants were minor and their father was appointed as their guardian for the suit (guardian ad litem) to represent and defend them in the suit. When the case was fixed for evidence, the appellants along with other defendants were proceeded against ex-parte and ultimately the suit was decreed ex parte. The appellants filed application for setting aside ex-parte decree but their application was dismissed.

Issue: Whether the application for setting aside ex-parte decree should be allowed in view of the fact that applicants were at that time minors?

Analysis: Rule 11 of Order XXXII leaves little room to speculate as to what a Court is to do if the guardian *ad litem* appointed by it does not do his duty. As per the said Rule, where the guardian for the suit does not do his duty, the Court is to remove him and appoint a new guardian in his place. The failure of a guardian *ad litem* to appear in Court to defend the minor is by itself a clear proof of the fact that he has failed to do his duty of protecting the interests of the minor. The Court, in such circumstance, must act in accordance with Rule 11 of Order 32 of the CPC, remove that guardian, and appoint a new guardian in his place, for the protection of the interests of the minor.

Conclusion: The application for setting aside ex-parte decree should be allowed in view of the fact that applicants were at that time minors.

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10. **Lahore High Court**
Mst. Khanai and others. v. Ghulam Rasool and others.
Civil Revision No.2374 of 2012
The Chief Justice Mr. Justice Muhammad Ameer Bhatti HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC7468.pdf

Facts: The transfer of property through gift mutation in favour of one daughter was challenged by the legal heirs of other daughter on the ground of fraud.

Issues: i) What are the essential constituents of a valid gift?

ii) What specifications/particulars are necessary to bring forth to prove a valid gift transaction?

iii) Who is bound to prove a transaction wherein a gift mutation has been challenged on the premise of fraud and misrepresentation?

iv). What particulars are required to be entered by a Patwari Halqa in Roznamcha Waqiati (Daily Diary) before sanctioning a gift mutation?

v). What is the significance of Roznamcha Waqiati within the dictates of section 42 of Land Revenue Act 1967 and Rule 34 of the Land Revenue Rules 1968?

vi). Can a party lead evidence beyond pleadings?

Analysis: i) The essential constituents of a valid gift are offer, acceptance, and handing over of the possession. If any of these ingredients is found missing, it would be fatal for the claimant's case.

ii**)** To prove a valid gift transaction, the beneficiary is required to bring forth the information regarding time, date, and the place where the transaction entered into *inter se* the parties. Moreover, where a transaction took place at any other place, at a different time and date, then all the particulars of that transaction should, on their narration, be incorporated in the Roznamcha Waqiati.

iii) Any transaction of a land/property made through a gift wherein a fraud or misrepresentation has been alleged, the burden to prove its authenticity and validity lies on the beneficiary. In such a scenario, the beneficiary is bound to produce direct and confidence-inspiring evidence relating to the fulfillment of basic ingredients of valid transaction of gift, i.e., offer, acceptance, and delivery of possession.

iv) Roznamcha Waqiati is the most important evidence/document to find-out particulars of performance of a valid gift to transfer the land on the terms settled *inter se* the parties. Before sanctioning a mutation, the Patwari has to incorporate the desire of the parties in the form of a report in the Roznamcha Waqiati. It signifies that the parties have made their offer, acceptance, and handing-over the possession before the Patwari about completion of transaction along with all the particulars narrating the detail of the transaction in the Roznamcha.

v) Section 42 of the Land Revenue Act 1967 makes it obligatory upon a person who acquires a right in the immovable property within an estate as a landowner by way of gift or otherwise to report this factum to the concerned Patwari within three months from the date of acquisition of such right, and Patwari is bound under the law to record the same in Roznamcha Waqiati. The culmination point in the form of sanctioned mutation is always an outcome of the initial entry duly recorded in the Roznamcha Waqiati by the Patwari and there is no other option except to follow the procedure provided under the Land Revenue Act, 1967.

"….Rule 34 of West Pakistan Land Revenue Rules also stipulates that Patwari is to maintain Roznamcha Waqiati (Daily Diary) under clause (a) of sub section (1) of section 42, in accordance with the Form XX, wherein five columns are provided to specifically state serial number, date, heading of entry, occurrence

and remarks. In order to further ensure correctness and authenticity of the information recorded in the said Diary, Sub-Rule 3 also made it obligatory that the Patwari shall prefix to every entry, in the Roznamcha a separate serial number, in large and clear figures. Every entry shall be closed by an asterisk, and no blank line shall be left between two consecutive entries. It also stipulates that such orders and instructions as relate to rules of practice, shall be entered in red ink and the date of each day's entries shall be given according to the official calendar…."

vi) It is settled law that no party could be allowed to lead evidence beyond pleadings and, if brought, it could not be read in evidence.

Conclusion: i). The essential constituents of a valid gift are offer, acceptance, and handing over of the possession.

ii) To prove a valid gift transaction, the beneficiary is required to bring forth the information regarding the date, time, and the place where the transaction took place between the parties.

iii) It is a well-established principle of law that where a transaction of gift mutation has been challenged on the premise of fraud and misrepresentation, the burden of proof lies on the beneficiary of the gift.

iv) Roznamcha Waqiati is the first document wherein the fact of acquiring any right and ownership in the immovable property through any mode, including gift, is ought to be recorded.

v) Roznamcha Waqiati is the most important evidence/document to find-out particulars of performance of a valid gift to transfer the land on the terms settled between the parties as per the statutory command of Section 42 of the Land Revenue Act 1967 and that of Rule 34 of the Land Revenue Rules 1968.

vi) A party cannot lead evidence beyond pleadings.

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11. **Lahore High Court**
Ghulam Ullah deceased through L.Rs. v. Ghulam Hassan and others.
Civil Revision No.3788 of 2016
The Chief Justice Mr. Justice Muhammad Ameer Bhatti HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC6847.pdf

Facts: During pendency of appeal a referee was appointed and accordingly the appeal was decided in terms of the conclusion drawn by the referee. This order was challenged by the present petitioners through application under Section 12(2), C.P.C. alleging therein that on the statement of Advocate the referee was appointed whereas they never appointed Advocate as their counsel nor any Power of Attorney was executed in his favour. The said application was dismissed summarily without recording evidence.

Issues: Whether it is necessary to frame the issues and record evidence if fraud is alleged in the application under Section 12(2), C.P.C?

Analysis: For determination of such fraud and misrepresentation not only the framing of issues was essential but recording of evidence was also obligatory in order to provide the opportunity to the parties to prove the factual dispute elaborately inserted in the application under Section 12(2), C.P.C. as envisaged under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which stipulates that while deciding the matter fair trial and due process shall be granted to the litigant.

Conclusion: It is necessary to frame the issues and record evidence if fraud is alleged in the application under Section 12(2), C.P.C

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12. **Lahore High Court**
Meezan Bank Limited v. Wapda First Sukuk Company Limited etc.
RFA No. 54274/2017
Mrs. Justice Ayesha A.Malik, Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7308.pdf

Facts: The Wapda First Sukuk Company (Sukuk Company) issued sukuk certificates for the purpose of raising money for the Mangla Dam Project. NFC purchased 300 physical sukuk certificates (each having 5000 sukuk units) of total value Rs 750,000,000, for which Ijara Rentals were to be paid semi-annually. On 12-02-2009, Sukuk Company received a letter from NFC for transfer of its 72 out of 300 sukuk certificates (36000 sukuk units) of value Rs 180, 000,000 in name of SES. Upon this letter, Wapda after compliance of all inter-se formalities transferred the sukuk certificates in name of SES. Thereafter upon request of SES, 72 sukuk certificates (each of 5000 sukuk units) were replaced with 6 new sukuk certificates (each of 6000 sukuk units). Afterwards the 6 new sukuk certificates were sold by SES to AIMC after converting 6 physical certificates into CDS. AIMC sold its 1000 sukuk units to Bank Islami, 4000 sukuk units to Soneri Bank Limited and 22000 sukuk units to Meezan Bank Limited who purchased sukuk units through the CDC. In April 2009, NFC informed Wapda that they have not received Ijara rentals for sukuks of 180,00,000/-. Upon their inquest. Wapda informed NFC that they have sold the same to SES through letter dated 12-02-2009 but NFC denied the execution of this letter and transfer of sukuk and produced original sukuks in their possession. So presuming a fraud, Wapda lodged FIR in FIA wherein it was found during investigation that SES was a fake entity and some employees of Wapda were involved in the fraudulent activities. So there arose rival claimants for sukuk certificates of 180,000,000/- i.e. NFC & AIMC etc. All rival claimants filed different suits against Wapda for recovery etc. Meanwhile Wapda filed interpleader suit in civil court, without impleading SES, to decide as to who is lawful owner of sukuk certificates either NFC or AIMC (and their subsequent purchasers)

Issue: i) What are general principles relating to fraud in civil cases?
ii)What is standard of proof in civil cases and when does the burden of proof loses its significance?

iii) Whether forensic report can be relied in civil case without production of its author?
iv) Whether judgment of criminal court is binding on civil court?
v) What is impact of Section 11 of the Central Depositories Act, 1997 in fraud cases?
vi) What is scope of interpleader suit and whether the alternative prayers can be granted in the interpleader suit?

Analysis: i) In a civil case where fraud is alleged, the general rule is that the person who pleads fraud must establish fraud. So the burden is on the person alleging fraud. The requirement of law is that the alleged fraud must be detailed, such that the person alleging fraud must set out all the details of the fraud that was committed with clarity and certainty. This is because the allegation of fraud is a serious allegation with significant consequences. Fraud is a term with wide connotations and cannot be construed within a strict definition. It has to be appreciated within the set of facts it is alleged and it has to be asserted through evidence. … In a case of fraud, the pleadings have to clearly spell out a case of fraud. Further we find that when a deed is fraudulent it is a void transaction but if it is a voidable transaction then the court has to decide the matter accordingly.

ii)The standard of proof in civil cases is on the balance of probabilities that is what fact is more likely to have happened based on the evidence. This means every fact becomes relevant, its falsity is relevant, the deceitor's intent is relevant and the injury is relevant. The court will first ascertain the facts and once the facts are established decide whether they amount to fraud. …. the issue is to be decided on the basis of the evidence produced and placing onus to produce on one or the other party looses significance as the issue has to be decided on the preponderance of evidence… it is mandatory for the court in a civil trial to look at the entire evidence and decide the case on the basis of the evidence before it. Hence the overall appreciation of evidence is relevant and the burden of proof looses significance as that is relevant only to set out who is to adduce evidence. Also relevant is that the civil courts need to determine what facts are 'proved' or 'disproved' because it is on the basis of the facts that a case of fraud is to be established.

iii) The forensic report cannot be relied upon because the author of the report was never examined in court. For the purposes of the trial court, the author of the report had to appear in court as a witness and had to be subjected to cross examination. Without this, the evidence is inadmissible as this fact has not been proven.

iv) That a court has to judge upon the facts in the case before it, established by evidence and cannot rely on the findings in some other case. The august Supreme Court of Pakistan also held that the findings in a criminal case are not binding on a civil court because the findings in a criminal case are not relevant for a civil dispute which has to be decided on the preponderance of probabilities.

v) Section 11 of the CD Act prohibits any rectification on the CD Register and requires the aggrieved party to approach the court for relief in the form of damages. However the CD Register cannot be ordered to be rectified. Clearly this means that even in a case of fraud at best, the aggrieved party can damages but cannot seek rectification of the CD Register.

vi) The person filing the suit being the stakeholder should be neutral so far as the rival claims to the debt or property are concerned for which the parties have been interpleaded. However claims that are incidental to the title dispute must be addressed because if they are not decided in the interpleader suit, one consequence of the decision in the interpleader suit is that it will discharge the stakeholder of all liabilities towards the debt or property and the decision will operate as res judicata against all claims. This is detriment to the rights of the claimants. It also means that multiple cases can be filed with reference to allegations of negligence, breach of fiduciary duty and capacity which may lead to decisions in various claims which are inconsistent with one another. Furthermore the stakeholder cannot use the interpleader suit to protect itself from any liability, meaning that a valid interpleader action cannot be a shield for the stakeholder from counter claims, where the stakeholder is not free from blame with reference to the disputed claimant. In this context while reading Section 88 of the CPC, the words "for the purposes of obtaining a decision" means that an interpleader suit shall be filed where a person fears multiple claims for the same debt or money or property so as to ensure that ownership or title is decided in one suit, where all parties are interpleaded. So the person filing the suit has some obligation to discharge with reference to the debt, money or property and needs to know whom to discharge it against. This being the primary purpose of the suit will not restrict a decision on liabilities that are related to the title dispute. There is nothing in Section 88 CPC which prevents a decision on claims against the person filing the suit which are related to its obligation to pay the debt, money or property…. No doubt there are conflicting claims for the same debt or property, however the plaintiff cannot escape the outcome of its liability simply by electing to file an interpleader suit. Hence the interpleader suit will not discharge the plaintiff from allegations of negligence, fraud or on fiduciary duty which go to the duties and obligations and capacity of the plaintiff and gives rise to a counter claim of damages and loss.

Conclusion: i) The general rule is that the person who pleads fraud must establish fraud.

ii) The issue is to be decided on the basis of the evidence produced and placing onus to produce on one or the other party looses significance as the issue has to be decided on the preponderance of evidence.

iii) The forensic report cannot be relied in civil case without production of its author.

iv) The judgment of criminal court is not binding on civil court.

v) Under section 11 of CD Act, even in a case of fraud at best, the aggrieved party can be awarded damages but cannot seek rectification of the CD Register.

vi) The alternative prayers can be granted in the interpleader suit.

13. **Lahore High Court**
Three Stars Hosiery Mills Pvt. Limited etc v. Federation of Pakistan etc
I.C.A. No.66182 of 2021
Shadab Textile Mills Limited & others Vs. Federation of Pakistan & another
I.C.A. No.66178 of 2021
Mr. Justice Shahid Waheed, Mr. justice Ch. Muhammad iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC7732.pdf

Facts: The appellants were the consumers of natural gas. They have not paid some dues in view of interim orders passed by the learned Single Bench of this Court in the writ petitions filed by them challenging the Notification enhancing the natural gas tariff rates. After dismissal of their writ petition, they were charged with late payment surcharge (LPS).

Issue: Whether the late payment surcharge (LPS) can be charged if payment of dues was not made on or before the due date in view of interim orders passed by the court?

Analysis: The quintessence of the maxim "Actus Curiae Nemi-nem Gravabit" is to undo the wrong done to a party by the act of the Court, for, by the law of nature it is fair that no one becomes richer by the loss and injury of another. In legal parlance, this is called restitution and sometimes this is expressed as reversing a transfer of value. This is a tool of corrective justice. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been, had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim order. The injury, if any, caused by the act of the Court then shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so, otherwise the party would continue to get benefit of the interim order even after losing the case in the Court.

Conclusion: The late payment surcharge (LPS) can be charged if payment of which was not made on or before the due date in view of interim orders passed by the court.

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14. **Lahore High Court**
The State. v. Muhammad Hafeez.
Criminal Appeal No.616 of 2013
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC6869.pdf

Facts: The appellant/State challenged the order passed by Special Court CNS, Lahore whereby vehicle/car used in commission of offence was given to the brother of convict who was owner of vehicle.

Issue: Whether the vehicle can be given on superdari to its registered owner, who is brother of convict?

Analysis: Since the respondent had shown to the learned trial court that he was the legal owner of the vehicle, its possession was rightly handed over to him after due verification. Moreover, person seeking possession of such vehicle should not be an associate or a relative of the accused or an individual having nexus with the accused. The respondent was although the real brother, but was the owner prior to the commission of the offence and as per record had no knowledge that offence under CNSA, 1997 could be committed in that vehicle.

Conclusion: Respondent being the registered owner of the vehicle prior to the commission of crime, though real brother of accused, having no knowledge of the offence could be given possession of subject vehicle.

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15. **Lahore High Court**
Tereze Hluskova v. The State etc.
Criminal Appeal No.19382 of 2019
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Muhammad Sarfraz Dogar,
https://sys.lhc.gov.pk/appjudgments/2021LHC6856.pdf

Facts: The appellant was convicted under section 9 (c) of the Control of Narcotic Substances Act, 1997.

Issues: Why it is necessary for prosecution to establish the safe custody of sample parcel and the case property?

Analysis: The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

Conclusion: Chain of safe custody is necessary to establish because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner.

16. Lahore High Court
SEPCOIII Electric Constructions Co. Ltd Vs. Federation of Pakistan etc
ICA No.68823 of 2021
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi,
https://sys.lhc.gov.pk/appjudgments/2021LHC7689.pdf

Facts: The appellant participated in a bid through letter and bid security in the form of Bank Guarantee whereas appellant was required to furnish unconditional credit line which the appellant submitted but concerned bank withdrew the same and respondent no. 02, after withdrawal by bank assumed withdrawal of bid by appellant and proceeded for encashment of bid guarantee which was declined by the bank. The appellant filed writ against said demand of respondent no. 02 which was dismissed, thereafter, appellant filed this intra court appeal.

Issues: i) Whether matters of contractual obligation can be adjudicated in constitutional petition?
ii) What is obligation of Banker regarding bank guarantee?

Analysis: i) The superior Courts should not involve themselves into investigations of disputed question of facts which necessitate taking of evidence. The normal remedy under law regarding eventualities/ disputes/controversies arising out of a contract can be availed by a suit for enforcement of contractual rights and obligations instead of invocation of Art.199 of the Constitution merely for the purpose of enforcing contractual obligations.
ii) A Bank Guarantee is an independent/autonomous contract between the Bank and Customer and Bank authorities must construe it independent of the principle/primary contract. When Bank Guarantee furnished by the Bank contains undertaking and imposes absolute obligations on the Bank to pay the amount then irrespective of any dispute between the parties to the principle contract, there is an absolute obligation upon the banker to comply with the terms as enumerated in the bank guarantee and to pay the amount stipulated therein and Bank cannot be prevented by the party at whose instance Guarantee was issued, from honoring the credit guaranteed.

Conclusion: i) Contractual rights etc. have to be enforced through courts of ordinary jurisdiction and not be adjudicated in constitutional petition.
ii) Bank guarantee being independent contract of the principle contract, bank cannot be prevented by the party to pay, at whose instance guarantee was issued.

17. **Lahore High Court**
Ijaz Ahmad and others v. Khizar Hayat and others
R.S.A. No.123 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC6957.pdf

Facts: Through this second regular appeal, the appellants have challenged two concurrent findings of courts below whereby his suit for declaration and permanent injunctions was dismissed on the ground that he failed to prove the contents of plaint through reliable evidence.

Issue: i) What is legal value of recitals of pleadings and admission in the written statement?
ii) Whether limitation run against fraudulent transaction specially in inheritance matters and whether the ingredients of oral gift were fulfilled?

Analysis: i) Recitals of plaint and written statement have no value in the eye of law until the same are proved by trustworthy and confidence inspiring evidence. Mere admission in the written statement that too, in joint written statement, is not sufficient to prove the factum of gift to the donee, unless the maker thereof records and owns such statement by appearing in person before court. Hence, the principle "admitted facts need not be proved" does not apply in this case.
ii) Limitation does not run against fraudulent transaction especially when question of deprivation of some legal heirs from the inheritance is involved, because fraud vitiates the most solemn transaction.

Conclusion: i) Recitals of plaint and written statement have no value in the eye of law until the same are proved by trustworthy and confidence inspiring evidence.
ii) Limitation does not run against fraudulent transaction specially in inheritance matters and whether the ingredients of oral gift were fulfilled.

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18. **Lahore High Court**
Muhammad Rafiq v. Hussain and another
R.S.A. No.132 of 2013
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC6963.pdf

Facts: The appellant instituted a suit for specific performance of agreement to sell and cancellation of three sale mutations by alleging that he purchased the suit property through agreement to sell by paying the earnest money but during the pendency of execution of this agreement, the property was sold to a subsequent vendee without notice and without making any inquiry of prior sale to him.

Issue: Whether the protection under section 27(b) of the Specific Relief Act, 1877 is available to subsequent vendee who purchased without inquiry?

Analysis: Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property in question, he would not be deemed to have purchased property in question for value, in good faith and without notice of original contract/sale.

….The initial onus to prove was on the subsequent vendee who did not make inquiry even in a summary manner regarding the prior sale in favour of appellant.

Conclusion: The protection under section 27(b) of the Specific Relief Act, 1877 is not available to subsequent vendee who purchased without conducting inquiry.

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19. **Lahore High Court**
Sawera Ikram V Amir Naveed
Transfer Application No. 71691of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7744.pdf

Facts: The petitioners filed transfer applications seeking transfer of execution petitions from one district to another district etc. Hence above captioned transfer application too.

Issue: What should be the procedure for execution of decree passed by family Court?

Analysis: The following directions are issued to be followed by the District Judges of the Punjab and the Family Courts in future:-

1. While passing the money decree in respect of maintenance allowance, alternate prices of dower or dowry articles, the provisions of section 13(3) of the Family Courts Act, 1964 should be adhered to, which provides that, „Where a decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court [not exceeding thirty days] the same shall, if the Court so directs, be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.“
2. The District Judge will designate a Civil Judge as Executing Court in the District as well as Tehsils, as the case may be, where the execution petitions for satisfaction of decrees passed by the Judge Family Court will be filed and executed/satisfied in accordance with law by adopting all measures in this regard.
3. In case the judgment debtor resides in some other District and owns property, precept will be transmitted for attachment purposes and further proceedings will be taken in accordance with law

Conclusion: Money decree is to be executed as arrears of land revenue. And in case judgment debtor is resident of other district the precept will be transmitted and there is no need to transfer the execution proceedings to other district.

20. **Lahore High Court**
SME Bank Limited v. M/s Punjab Store & another
RFA No.40272 of 2021
Mr. Justice Abid Aziz Sheikh, and Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7673.pdf

Facts: The default, to clear their repayment obligations by the respondents, prompted the appellant/bank to institute suit for recovery. However during the proceedings of that suit, the respondents paid the principal debt amount, along-with mark up, upon which the Banking Court dismissed the suit as being infructuous and disentitled the bank to get cost of funds as well as costs of the suit.

Issue: Whether under section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the defaulting customer is liable to pay the costs of funds even after making payment of the principal amount and mark-up to the bank?

Analysis: It is provided in Section 3 of the Ordinance that customer at default in fulfillment of obligations shall be liable to pay cost of funds for the period from date of default till realization. The aforesaid provision is not procedural in nature as it imposes a pecuniary burden on a defaulting customer and entails a substantive obligation. Banking Court has been empowered to the award cost of funds as compensation to the financial institution for the finance blocked/stuck up due to breach in the fulfilment of obligation by the customer, after determining the date of default. It is well settled principle of interpretation of statutes that when a statute creates rights and obligations and prescribes the mode of its enjoyment or enforcement, such provision is considered mandatory and that the Legislature intends compliance of such provision to be essential to the validity of the act or proceedings. Earl T. Crawford in his book The Construction of Statutes Chapter XXIV Mandatory and Directory Or Permissive Statutes (Published by Pakistan Law House, 2014) stated that a statute which creates a new right, privilege or immunity, and regulates the manner of its exercise, will be construed as mandatory; such right can be exercised only in the manner and within the time prescribed; and similarly, when a statute gives a new right and prescribes a particular remedy for its recovery, such remedy must be strictly pursued. Under Section 3 of the FIO, 2001, it is the duty of the customer to fulfil his obligations to the financial institution. In case of default he being principle debtor along with his surety / guarantor would be under legal obligation to discharge the debts along with cost of funds. Section 3 of the FIO, 2001, being mandatory in nature, is required to be strictly adhered to, followed and enforced without interpreting / construing it in any manner liberally.

Conclusion: U/s 3 of the Ordinance it is obligatory upon the defaulting customer to pay cost of funds to the bank.

21. **Lahore High Court**
Muhammad Saleem & others v. Pak Brunei Investment Company Ltd.
FAO No.40322 of 2020
Mr. Justice Abid Aziz Sheikh, and Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7667.pdf

Facts: The appellants filed a suit for declaration against the respondent inter alia to the effect that the act of respondent to claim existence of mortgage in respect of the suit properties was illegal and that the respondents be permanently restrained from taking possession of said properties and alienating them. The respondent had filed the application for leave to defend the suit, when the learned Judge Banking Court, returned the plaint of the suit under Order VII Rule 10 C.P.C., on the ground that it lacked pecuniary jurisdiction in the matter.

Issue: i) What a Court is supposed to do when it disagrees with the valuation of the suit made in the plaint?
ii) Whether it is legal for the banking Court to return or reject a plaint under the Code of Civil Procedure, 1908 when it had already summoned the defendant pursuant to which he had filed the leave application?

Analysis: i) Under the law, the pecuniary jurisdiction of the Court has to be determined with reference to the valuation given in the plaint. In the plaint, the appellants have valued the suit for the purpose of jurisdiction and Court Fee as Rs.15,000/-, therefore, if the Court disagrees with the value assessed by the appellants, it should fix value of the suit under the provisions of the Suits Valuation Act, 1887 after holding such inquiry and collecting such material as may be deemed expedient by the Court and thereafter, matter could have been referred to the Court of competent jurisdiction for decision in accordance with law.

ii) The Banking Court is well within its legal right to reject or return a plaint by invoking any provision under the C.P.C. before summoning the defendant under section 9(5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the Ordinance) or before fixing a specific date of hearing of the leave application. However, once the Banking Court, after examining the plaint, is satisfied that the same is in order as per the requirements of Section 9 and has proceeded to issue summons to the defendant under section 9(5) ibid, pursuant to which a defendant has filed the leave application and a date of hearing of the leave application has been fixed, it ceases to take any further step under the provisions of the C.P.C. without first deciding the leave application in accordance with the requirements of Section 10 of the Ordinance. The Banking Court, in such circumstances, is duty bound to first grant or reject the leave application in terms of Sections 10(9), 10(11) or 10(12) of the Ordinance before taking any other step towards the progress and continuation of the suit.

Conclusion: i) If a court disagrees with the valuation made in the plaint, it should determine the correct valuation of the suit under the provisions of the Suits Valuation Act, 1887 after holding such inquiry and collecting such material as may be deemed expedient.

ii) Once the Banking court summons the defendant under section 9(5) of the Ordinance, pursuant to which the leave application is filed, it ceases to take any further step under the provisions of the C.P.C, without first deciding the leave application in accordance with the requirements of Section 10 of the Ordinance.

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22. **Lahore High Court**
Atta Muhammad & another v. Mst. Farrukh Batoo
Review Application No.3 of 2019
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC6881.pdf

Facts: The Civil Revision was dismissed on merits without deciding a pending miscellaneous application.

Issue: Whether the failure to decide the miscellaneous application vitiates the judgment or decision of the main case?

Analysis: The Courts in discharge of their legal and judicial duties are emphatically required to decide the miscellaneous applications before or at the time of final disposal of the lis and omission to do so can ipso facto nullify the decision in the main case. However, in performance of such function, it is also the responsibility of the learned appellate or revisional Courts or the learned higher foras to keep in mind the object of filing such unattended application, its relevance and any bearing on the merits of the case. When miscellaneous application is totally irrelevant and/or does not have any bearing on the merits of the case as well as when unattended application, on face of it, is an attempt by a delinquent to cause delay by misuse of process of law, the non-disposal of miscellaneous application alone, cannot be a reason to interfere with a judgment, which otherwise is as per the law and is based on sound reasoning.

Even otherwise, to bring the case within the ambit of Order XLI, Rule 1 of the Code of Civil Procedure, 1908, it is incumbent upon the applicant to establish that the mistake apparent on the face of record, if considered will effect decree or order as well as error must be so manifest that no Court could permit it to remain on record. The Court cannot commence to hear the matter as an appeal against its own judgment, which would akin to infringing the principle of finality firmly embodied in our judicial system as well as Order XX Rule 3 of the Code of Civil Procedure, 1908.

Conclusion: The failure to decide the miscellaneous application does not vitiates the judgment or decision of the main case if miscellaneous application is totally irrelevant and/or does not have any bearing on the merits of the case.

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23. **Lahore High Court**
Syed Gul Hassan Gillani etc. v. House Building Finance Corporation Ltd.
RFA No.180 of 2015.
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Muhammad Raza Qureshi,
https://sys.lhc.gov.pk/appjudgments/2021LHC7539.pdf

Facts: The suit for recovery of Bank was decreed after dismissal of PLA of appellants.

Issue: Whether the non observance of requirements of section 10(3) and (4) of the FIO, 2001 is fatal to PLA leading to its dismissal?

Analysis: The FIO, 2001 is a special law which, inter alia, provides its own procedure for determination of a banking suit. A careful perusal of PLA exhibits that it lacks framing of questions of law as well as facts, which may require recording of evidence and therefore, is bereft of mandatory requirements contained in Section 10(3) of the FIO, 2001 and failure of the Appellants to comply with such mandatory provisions entails legal consequences such as rejection of their PLA and non-entitlement under Section 10(1) to claim a permission to defend the suit.

Conclusion: The non observance of requirements of section 10(3) and (4) of the FIO, 2001 is fatal to PLA.

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24. **Lahore High Court**
Muhammad Ejaz @ Aju v The state etc.
Cr. Appeal no. 452/2016
The state v. Muhammad Ijaz @ Aju
C.S.R. No.01 of 2016
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC4908.pdf

Facts: The appellant assailed his conviction in offences under sections 302/148/149 of PPC read with section 7 of Anti-Terrorism Act, 1997. The appellant filed criminal appeal against his conviction whereas learned trial court sent C.S.R for confirmation of his death sentence.

Issues: i) When offence of firing in court becomes triable by an Anti-Terrorism court?
ii) When a case becomes case of terrorism for the purpose of recording convictions and sentences under section 6 read with section 7 of the Anti-terrorism court?

Analysis: i) By virtue of item no. 04(iii) of the 3rd Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism court if use of firing or explosive including bomb blast in the court premises is involved in the case.

ii) The entry of item no. 04(iii) in the 3rd schedule only makes a case triable by an Anti-Terrorism court if use of firing or explosive including bomb blast in the court premises is involved in the case but such a case does not ipso facto becomes a case of terrorism for the purpose of recording convictions and sentences under section 6 read with section 7 of the Anti-terrorism court unless there was a design or object contemplated by section 6 of Anti-Terrorism Act, 1997. Mere firing at one's personal enemy in the backdrop of a private vendata or design does not ipso facto bring the case within the purview of section 6 of Anti-Terrorism Act, 1997, so as to brand the action as terrorism.

Conclusion: i) Offence of firing in court becomes triable by an Anti-Terrorism court.
ii) A case does not ipso facto becomes a case of terrorism for the purpose of recording convictions and sentences under section 6 read with section 7 of the Anti-terrorism court unless there was a design or object contemplated by section 6 of Anti-Terrorism Act, 1997.

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25. **Lahore High Court Lahore**
Aqeel Hasnain v. The State & another
Crl. Appeal No.472/2016
Ghulam Shabbir v. The State & 2 others
Crl. Appeal No.616/2016
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC7173.pdf

Facts: The appellant has assailed his conviction in offence under Sections 336-B, 336, PPC, read with Section 7 of the Anti-Terrorism Act, 1997.

Issue: i) What is nature of the medical evidence to the extent of locale and specification of injury, cause of injury and time when injury was caused?
ii) Can improvements once found deliberate and dishonest cast serious doubt on the veracity of prosecution story?
iii) Whether motive is a proof of a crime?
iv) Where few co-accused are acquitted discarding the testimony of prosecution witnesses, conviction of other co-accused can be based on the testimony of same set witnesses?

Analysis: i) The medical evidence neither pin point the perpetrator of the crime nor corroborative in nature, rather a confirmatory piece of evidence to the extent of locale and specification of injury, cause of injury and time when injury was caused.
ii) Where a witness who makes dishonest improvements while deposing before the court on material aspect is not worthy of reliance. Deliberate and dishonest improvement made by the prosecution witnesses, while deposing before the court on oath departing from his previous statement made under section 161 Cr.P.C. or

any other previous statement, make their statements highly doubtful and unreliable. Deliberate and dishonest improvements made by a witness in his statement to strengthen the prosecution case cast serious doubts on his truthfulness and makes him untrustworthy and unreliable.

iii) Motive itself is not proof of a crime rather a cause of a crime, which needs to be proved through coherent and tangible evidence. Existence of motive/enmity is neither a substantive nor a direct evidence. It is not a corroborative piece of evidence either. The motive/enmity is only a circumstance, which may lead to the commission of an offence.

iv) Few co-accused are acquitted discarding the testimony of prosecution witnesses, conviction of other co-accused cannot be based on the testimony of same set of witnesses in absence of strong and independent evidence.

Conclusion: i) Medical evidence is a confirmatory piece of evidence to the extent of locale and specification of injury, cause of injury and time when injury was caused.

ii) Improvements once found deliberate and dishonest cannot cast serious doubt on the veracity of prosecution story.

iii) Motive itself is not proof of a crime rather a cause of a crime.

iv) Where few co-accused are acquitted discarding the testimony of prosecution witnesses, conviction of other co-accused cannot be based on the testimony of same set of witnesses in absence of strong and independent evidence.

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26. **Lahore High Court**

Muhammad Shabbir Ahmed Minhas Versus Lahore High Court, Lahore through Registrar etc.

Service Appeal No.13 of 2004.

Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Sardar Muhammad Sarfraz Dogar

https://sys.lhc.gov.pk/appjudgments/2021LHC7714.pdf

Facts: The appellant assailed order imposing major penalty of removal from service.and his departmental representation was also dismissed.

Issues: i) Whether delay in completion of inquiry proceedings vitiates the inquiry proceedings?

ii) Whether regular inquiry can be dispensed with?

Analysis: i) If the delay in concluding the inquiry proceedings causes the prejudice to the concerned accused person then it would vitiate the inquiry proceedings. However, if no prejudice has been caused rather the delay is on the part of the accused person then such delay would not vitiate the inquiry proceedings.

ii) When there is sufficient documentary evidence available, regular inquiry could be dispensed with to secure expeditious conclusion of departmental proceedings after confronting the delinquent officer with the available evidence and providing him an opportunity to explain his position.

Conclusion: i) If the delay in concluding inquiry causes prejudice to accused person then it would vitiate the inquiry proceedings.
ii) Regular inquiry could be dispensed with to secure expeditious conclusion of departmental proceedings.

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27. **Lahore High Court**
Gulzar Hussain Versus The Registrar, Lahore High Court, Lahore
Service Appeal No.08 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC7706.pdf

Facts: The appellant assailed order imposing major penalty of removal from service.and his departmental representation was also dismissed.

Issues: i) Whether the interaction of judicial officer with litigant falls under definition of misconduct?
ii) What factors a competent authority is required to consider while awarding punishment?

Analysis: i) Article 12 of the Principles of Judicial Ethics framed by the General Council of The Judiciary specifically prohibits the judges from maintaining any contact with the parties appearing in their Courts. Article 111 of the Bangalore Principles of Judicial Conduct clarifies that speaking privately to the litigants by a judge, even when the conversation is on an unrelated topic, is against the propriety of his office. The interaction of a Judicial Officer with a litigant is questionable as it is against service discipline or conduct unbecoming of an officer and comes within the definition of 'misconduct' provided in Rule 2(e) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999
ii) The penalty should commensurate with the magnitude of the misconduct committed. The extreme penalty for an act of a lesser degree would definitely defeat the reformatory concept of punishment in administration of justice. While punishing an employee found guilty of misconduct, the employer / competent authority is required to take into account the total length of service of the delinquent officer and his past record, the gravity of misconduct found proved and its impact on the organization or department.

Conclusion: i) A judicial officer is required to avoid interaction with litigant.
ii) The penalty should commensurate with the magnitude of the misconduct committed.

28. **Lahore High Court Lahore**
Adnan Pervaiz & another v. The State & another
Criminal Appeal No.349 of 2019
The State v. Adnan Pervaiz & another
Murder Reference No.25 of 2019
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC7753.pdf

Facts: The appellants assailed his sentence in offence under Sections 302, 201 & 34 PPC.

Issue: i) Whether for securing conviction, the incriminating circumstances must be interwoven with each other so as to make an unbroken chain?

ii) To what extent an exculpatory retracted confession can be used against a co-accused and in what circumstances?

Analysis: i) For securing conviction, the incriminating circumstances must be interwoven with each other so as to make an unbroken chain, the one part of which must be touching the corpse and other end the neck of accused. Each circumstance of such chain must be comprising upon an impeccable event and should not be inadmissible in evidence. The inadmissible evidence invariably breaks the chain of incriminating circumstances rendering the prosecution case unworthy of any credence.

ii) According to Article 43 of the Qanun-e-Shahadat Order, 1984, a proved confession can be used against its maker as a proof and against other accused as circumstantial evidence only. The confession of an accused is to be used only as a circumstantial evidence against co-accused after subjecting it to a strict and cautious appraisal. The confession of a co-accused is generally regarded as weak type of incriminating circumstance and solely cannot be used for awarding conviction to another accused. In Islamic Jurisprudence, there is a consensus that since after making confession about the commission of crime, an accused becomes fasiq, thus his deposition loses purity and cannot solely be used for the conviction of another accused.

Conclusion: i) For securing conviction, the incriminating circumstances must be interwoven with each other so as to make an unbroken chain, the one part of which must be touching the corpse and other end the neck of accused.

ii) The confession of a co-accused is generally regarded as weak type of incriminating circumstance and solely cannot be used for awarding conviction to another accused.

29. **Lahore High Court**
Rai Muhammad Ashraf v. Additional District Judge, Nankana Sahib & others
W.P. No.44985 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7645.pdf

Facts: The petitioner failed to submit written statement despite getting five opportunities, so the trial court closed his right to file the written statement u/s 26-A of the Code of Civil Procedure 1908. Said order was upheld by the revisional court.

Issue: Whether the provision of section 26-A CPC is directory or mandatory?

Analysis: The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that the usage of the word "shall" generally carries the connotation that a provision is mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision. In the above provision, not only the word "shall" has been used, but penal consequences for failure of the defendant to file the written statement within the specified period have been prescribed. The legislative intent behind this provision appears to cut short the unnecessary delay that occurs at the time of submission of written statement, therefore, the provisions of section 26-A CPC, being mandatory in nature, are required to be complied with.

Conclusion: Provision of section 26-A CPC is mandatory in nature.

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30. **Lahore High Court**
Muhammad Yousaf v. Additional District Judge, Fereozewala, District Sheikhupura & others
W.P. No.30112 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7641.pdf

Facts: The petitioner filed a suit against the respondent No,3 for specific performance of agreement to sell of immovable property. Respondent No.4 claiming himself to be a co-owner in the joint Khewat filed an application u/o I rule 10 of the Code of Civil Procedure, 1908, (CPC) requesting that he should also to be impleaded as a party in the suit. His request was turned down by the trial court; however the revisional court accepted that application.

Issue: i) What is the difference between the terms 'necessary party' and 'proper party'?

ii) Whether in a suit for specific performance of contract regarding immovable property, the other co-sharer(s) in the joint Khewat could be considered as a necessary or proper party?

Analysis: i) A party, without whose absence a suit cannot be proceeded with and a final and binding decree cannot be passed, is called "necessary party". A person whose presence is necessary for the adjudication of all issues and matters involved in the suit and whose interest in or against the relief or the subject matter of the suit may be marginal, nominal, limited or none, is a "proper party". A person against whom no relief is asked for could hardly be a necessary party but may be a proper party. Another difference between the effect of non-impleadment of a necessary or a proper party is that a suit in which a necessary party is not impleaded, is bad while a suit in which a proper party is not impleaded, is not bad.

ii) In the case in hand, if petitioner succeeds in getting a decree of specific performance, it would not prejudice ownership rights of respondent No.4. Furthermore, there is no legal hurdle in proceeding with the suit without impleading respondent No.4 and his presence is also not necessary to settle points of controversy between petitioner and respondent No.3, thus, he is neither necessary nor proper party to the suit.

Conclusion: i) There could be following differences between a necessary and proper party:

1. Necessary party is the main interested party in the suit while the proper party may have marginal, nominal or no interest at all in the matters involved.
2. One against whom no relief is asked could be a proper party but not a necessary party.
3. Non-impleadment of a necessary party is bad while it is not the case if proper party is not impleaded in the case.

ii) Co-owner in joint Khewat would ipso facto is neither a necessary nor a proper party.

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31. **Lahore High Court**
Rahim Dad v. Saeeda Khanum
Civil Revision No.30037 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7661.pdf

Facts: The petitioner was previously a tenant of the agricultural property of the respondent. He filed a suit against the respondent for specific performance of agreement to sell, whereas the respondent filed a counter suit for possession of the suit property along with recovery of mesne profits. However both the suits were dismissed by the civil court. The appellate court upheld the order of dismissal of petitioner's suit; however it decreed the suit of possession by the respondent against the petitioner.

Issue: i) Whether a suit for possession of agricultural land by a person against his former tenant could be maintainable before a civil court when the tenant had himself

denied his status of being a tenant and had also filed a suit for specific performance qua that property against the landlord?
ii) What are the essential conditions for the applicability of the doctrine of judicial estoppel?

Analysis: i) The petitioner by filing a suit for specific performance of contract has himself denied his status of a tenant. Similarly, in the suit for possession against him, he reiterated his position to be owner of the suit land rather than holding that under the landlord. Therefore, at this stage, the petitioner, under principle of estoppel, is estopped from claiming that Revenue Court is required to decide the eviction suit against him under the Act of 1887, with the admission that relationship of landlord and tenant was existing between the parties.

ii) Estoppel is a collective name given to a bunch of legal doctrines whereby a person is prevented from making assertions, which are contradictory to his prior position on certain matters before the Court. According to the Supreme Court of United States in case cited as New Hampshire v. Maine (**532 U.S. 742**), for the applicability of the doctrine of judicial estoppel, three conditions are required to be satisfied: (i) the party's later position must be clearly inconsistent with its earlier position; (ii) whether the first Court had accepted the earlier position; and (iii) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. Nevertheless, the two crucial conditions are the first and the third. If they are met, even if the second condition is unsatisfied, still the doctrine of judicial estoppel would apply.

Conclusion: (i) The suit would be maintainable before a civil court as the tenant will be estopped from claiming himself to be a tenant when he had himself denied that relationship.

(ii) Judicial estoppel would apply if the following two conditions are satisfied:

1) the party's later position must be clearly inconsistent with its earlier position;
2) the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

32. **Lahore High Court**
Sui Northern Gas Pipelines Ltd v. M/s Aliz International (Pvt.) Limited & others
W.P. No.60974 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC7656.pdf

Facts: The petitioner made an application u/o XIII rule 3 of the Code of Civil Procedure, 1908 (CPC) for determining the admissibility of certain documents already exhibited by the Gas Utility Court. However the court rejected the application by observing that it would decide that at the time of final judgment.

Issue: Whether the question of admissibility of documentary evidence is required to be decided when it is raised, or the court can postpone its decision to a subsequent date?

Analysis: The Court relying upon the provisions of Order XIII Rules 3, 4 & 6 of CPC, and case law from the Indian jurisdiction i.e. [1961 AIR (SC) 1655], [2008(6) ALL MR 352], & [1978 AIR (SC) 1393], concluded that a Trial Court is required to decide the objection of admissibility of a document as and when such objection is raised in the first instance instead of deferring it for future. However, only exception of postponing is that if admissibility of such document is dependent on receipt of further evidence.

Conclusion: The question of admissibility of a document is required to be decided by the Trial Court as and when raised instead of deferring it to future date unless admissibility of said documents is dependent upon further evidence.

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33. **Lahore High Court**
Nirma Shahzadi v. The State etc.
Writ Petition No. 57738/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC7699.pdf

Facts: The petitioner through a writ petition challenged the vires of order passed by the Judicial Magistrate, First Class, Lahore, whereby, he dismissed the second application of petitioner for recording of her statement u/s 164 Cr.P.C., being without justification.

Issue: Whether section 164 Cr.P.C. expressly or impliedly prohibit recording of statement for second time?

Analysis: Section 164 Cr.P.C. does not prohibit the Magistrate from taking down the statement of a person if he has got one recorded earlier. However, the person making the request must give good reasons for it and the Magistrate may decline it if he is not satisfied. Such decision must depend on the facts of each case. Nevertheless, it may be emphasized that where a person alleges that his previous

statement was involuntary or procured through coercion, the onus is on him to prove that it was so. There should be exceptional circumstances to justify the reasons for recording the statement u/s 164 Cr.P.C. for second time.

Conclusion: Section 164 Cr.P.C. does not prohibit the Magistrate from taking down the statement of a person if he has got one recorded earlier. However, the person making the request must give good reasons for it and the Magistrate may decline it if he is not satisfied.

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34. **Lahore High Court**
Malik Azmat Ullah Vs. Federation of Pakistan etc.
Writ Petition No. 49287of 2021
Mr. Justice Tariq Saleem Sheikh,
file:///C:/Users/lhc/Downloads/Writ%20Petition%20No.49287-2021.pdf

Facts: Through this writ petition the petitioner sought protective/transitory bail who was nominated in criminal case for offences u/s 302,148, 149 PPC in year 2016 and petitioner left Pakistan shortly after registration of FIR. The accused was declared proclaimed offender and his name was placed in the ECL.

Issues: i) When access to justice is deemed to be denied?
ii) What are responsibilities of state regarding access to justice?
iii) What is purpose of protective bail?

Analysis: Access to justice is defined as the ability of the people to seek and obtain a remedy through formal or informal institutions of Human Rights. There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system.

ii) States not only have a negative obligation not to obstruct access to those remedies but, in particular, a positive duty to organize their institutional apparatus so that all individuals can access those remedies. To that end, States are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice.

iii) The high court, while invoking the provisions of section 561A of Cr.P.C. and Article 199 of constitution of Pakistan deals with request for protective bail and does not touch the merits of the case. The protective bail has a limited purpose and is for a fixed period. It is not in the nature of anticipatory or pre-arrest bail granted under section 498 Cr.P.C. Importantly, when the accused appears before the concerned court it deals with him independently and protective bail does not entitle him to pre-arrest bail as of right.

Conclusion: The concept of protective/transitory bail must be examined in the constitutional context of liberty, dignity, access to justice and fair trial and the right to be treated in accordance with law.

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35. **Lahore High Court Lahore**
Rizwan Baig Rubi v. Khurram Shahzad, etc.
I.C.A.No.70693 of 2021
Mr. Justice Jawad Hassan, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6774.pdf

Facts: Through a Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order passed by learned Single Judge-in-Chambers, whereby contempt of court petition filed by the appellant against the official respondents No. 1 to 7 and 10 and private respondents No. 8 and 9 for non-compliance of order passed by the same learned Single Judge in Writ Petition.

Issue: i) Whether the order passed by the learned Single Judge-in-Chambers had merged in the order passed by the Hon'ble Supreme Court of Pakistan?
ii) Whether an appeal in the contempt of court matters lies only against such orders in which a party is proceeded against for committing contempt of court and some final order is passed against him/her?

Analysis: i) The doctrine of merger is duly applied to the reversal and modification cases and also to all those cases in which the judgment etc. of a lower forum has been affirmed in appeal or revision by a higher forum. The rule of merger shall also extend to the writ jurisdiction of the learned High Court(s) where the decisions of the lower fora, such as Tribunals and special Courts etc. when challenged have been affirmed by the court in exercise of its constitutional jurisdiction.
ii) An appeal in the contempt of court matters lies only against such orders in which a party is proceeded against for committing contempt of court and some final order is passed against him/her but appeal is not maintainable when the court does not feel it necessary to proceed further in the matter of contempt of court.

Conclusion: i) The order passed by the learned Single Judge-in-Chambers had merged in the order passed by the Hon'ble Supreme Court of Pakistan.
ii) An appeal in the contempt of court matters lies only against such orders in which a party is proceeded against for committing contempt of court and some final order is passed against him/her.

36. **Lahore High Court**
Sohail Shahzad. v. Chief Election Commission of Pakistan, etc.
W.P. No. 75594 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC7454.pdf

Facts: The District Monitoring Officer (DMO) imposed fine on rival candidates of petitioners for persistently violating mandatory conditions mentioned in Para-25 of the Code of Conduct. The petitioner challenged the order on the ground that DMO must have declared the rival candidates as disqualified instead of imposing fine.

Issue: Whether the remedy of appeal provided under Section 234 of Elections Act, 2017 only meant to be available to the persons upon whom fine was imposed or to any other aggrieved person?

Analysis: The perusal of the sub-section (5) of Section 234 of the Act shows that any person aggrieved from order of the nominated officer (i.e., DMO in this case) has remedy of appeal available to him, which phrase 'any person' includes not only the persons against whom fine was imposed but also the person (i.e., a contesting candidate) who was seeking modification of the order, therefore, the ground raised by the petitioner that his constitutional petition is maintainable due to non-availability of alternate remedy, is not spelt out from perusal of the afore referred sub-section (5)…… Without availing the remedy of appeal, the petitioner could not circumvent the procedure provided under the law to directly approach this Court through the constitutional petition as it is settled by now that party complaining of some violation of statue/law, must first avail remedy / particular mechanism for impugning a particular action provided by the statue before applying for any other remedy.

Conclusion: The remedy of appeal provided under Section 234 of Elections Act, 2017 is available to "any person" aggrieved by order of DMO therefore the petitioner has alternate remedy and constitutional petition is not maintainable.

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37. **Lahore High Court Lahore**
M. Haroon Ashraf v. Dr. Fayyaz Ranjha, etc.
W.P.No.62143 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6874.pdf

Facts: The petitioner was a medical officer and through a writ petition, he claims that he was removed from his job on the basis of baseless and mala fide allegations levelled against him relating to his habitual absence and harmful presence for the patients.

Issue: Whether factual disputes can be resolved in constitutional jurisdiction of High Court?

Analysis: Facts narrated in a confused manner, the authenticity of which cannot be determined in constitutional jurisdiction of this Court as the same requires deeper probe into the disputed factual aspect of matter and recording of evidence for its resolution, which is not permissible in ordinary circumstances. High Court is not to resolve disputed question of facts in exercise of Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: Factual disputes cannot be resolved in constitutional jurisdiction of High Court.

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38. **Lahore High Court Lahore**
Amir Saleem v The State
Criminal Appeal no. 231377/2018
Abdul Rehman. etc v The State
Crminal Appeal No. 231407/2018
Mr. Justice Ch. Abdul Aziz, Mr. Justice Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC7219.pdf'

Facts: The appellants have challenged their convictions and sentences through two separate criminal appeals.

Issue: i) Whether the prosecutors can propose proper sentencing?
ii) How the punishment should proportionate to the seriousness of crime?

Analysis: i) By insertion of sub section 8 to section 9 in Punjab Criminal Prosecution Service (Constitution, Function and Power) Act, 2006, the prosecutors have been given a say even to speak for accused in the matters of sentencing and this Act has an overriding effect, requires the prosecutor to assist the court with proposals for proper sentencing during the trial.

ii) The principle of sentencing emerged from different sentencing theories; 1. Deterrence, 2. Incapacitation,3. Rehabilitation, 4. Retribution. The first three theories broadly look to the consequences of punishment. They focus more on the future benefits that may convert a loathsome to a useful citizen. The shared goal of all three is crime prevention. The fourth theory is about "Let the punishment fit the crime" captures the essence of retribution which is based upon the principle of just deserts; it advocates the proportionality of sentence with acclaimed crime. It defines justice in terms of fairness and proportionality. Ideally, the harshness of punishments should be proportionate to the seriousness of crimes. Retribution is a backward-looking theory of punishment. It looks to the past to determine what to do in the present. No legislated mitigating factors for reduction in sentence is available in our criminal justice system to meet the situations except some judicial precedents of superior courts which are usually followed; However, section 75 of PPC, section 382-C of Cr. PC hold the field for enhance sentence. Provincial

legislature has attempted to fill out this vacuum through promulgation of the Punjab Sentencing Act, 2019, yet it has not been operationalized so far.

Conclusion: i) The prosecutors are required to assist the court with proposals for proper sentencing during the trial.
ii) The harshness of punishments should be proportionate to the seriousness of crimes.

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39. **Lahore High Court**
M/s 3N-LIFEMED Pharmaceuticals v. Government of Punjab
W.P.No.65575/2021
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC7445.pdf

Facts: The Petitioner being aggrieved of certain conditions and requirements referred in pre-qualification of interested applicants for participation in the bid challenged them on the premise that inclusion of such conditions / requirements besides being unnecessary and irrelevant are prejudicial and detrimental to the interests of local manufacturers of medical devices/drugs and were introduced specifically to exclude local manufacturer from the procurement process.

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Issue: Whether the policy decisions, whereby certain conditions / requirements were incorporated to pre-qualify the bidders / applicants attracts exceptional situation, requiring indulgence by courts?

Analysis: Incorporation of the conditions of pre-qualification, prescribing fiscal limits for prospective firms / bidders, to ascertain their financial capability to honour potential commitments undertaken, are not unreasonable. Placement of condition of showing strong financial position – meeting desired business / financial turnover benchmarks – is otherwise not violative of Article 18 of the Constitution of Islamic Republic of Pakistan 1973 – which too permits lawful qualifications upon conduct of trade or business. ---There is no legal objection that why cannot the conditions be introduced in lawful exercise of authority by the executive, for ensuring high quality and efficiency standards qua manufacturing and procurement of required medical devices / drugs. This court, while exercising judicial review jurisdiction, cannot assume the role of healthcare expert to probe into the efficacy and relevance of certification / approval, with reference to the drug/device let the responsibility befalls on the relevant persons, having expertise, experience, and requisite knowledge / know-how. This court otherwise lacked finesse and expertise. Judicial Review jurisdiction cannot be stretched to delve into and adjudge policy decision / administrative policies to ascertain their validity, relevancy, and rationality in this case conditions prescribed requiring approvals / certifications and ascertaining requisite financial capacity – and unwarranted assumption and exercise of jurisdiction has social, political and fiscal costs.

Conclusion: When the condition imposed is a policy decision, relevance, rationality and effectiveness thereof cannot be reviewed or adjudged by invoking judicial review jurisdiction – unless it is shown that policy decision or conditions prescribed do infringe any of the constitutionally provided fundamental rights, found deficient in meeting legislative competence test or manifest erroneous assumption and exercise of powers / jurisdiction.

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40. **Lahore High Court**
Syed Riaz Husain Shah v. Government of Punjab & 2 others
Writ Petition-Civil Misc (Writ)-12(2) CPC 15433 of 2021.
Mr. Justice Sohail Nasir ,Mr. Justice Ahmad Nadeem Arshad,
https://sys.lhc.gov.pk/appjudgments/2021LHC7528.pdf

Facts: Through the instant application under Section 12(2) CPC applicant has called in question the legality of transfer order of criminal cases from courts of ordinary jurisdiction to the Special Court.

Issue: i) What is object of trial by one court in cross cases or cases outcome of one and the same FIR?
ii) Whether the transfer of cross and cases outcome of same FIR from court of ordinary jurisdiction to ATC court means that the accused persons will face the charges under any of the schedule offences?

Analysis: i) The provisions of the Code of Criminal Procedure, 1898 (Code) are silent on procedure of trial of cross cases or cases outcome of one and the same FIR. Therefore, in such situation the court has to see that what can be the best way to come out from the said challenge because the ultimate duty of the court is to do the complete justice that means justice for all concerned to the cases without causing any miscarriage of justice or prejudice. The sole object of side by side trials in such cases is to give the trial Judge a complete picture of the whole situation with a view to help him in a proper assessment and appreciation of the evidence in each case, which must be decided on its separate evidence and record without any importation of the evidence of the other case.
ii) The cases were sent to ATC not for the reason that these are exclusively triable by that court but only by following the rule of propriety so as to avoid the conflict judgments.

Conclusion: i) The sole object of trial by one court is to give the trial Judge a complete picture of the whole situation with a view to help him in a proper assessment and appreciation of the evidence in each case.
ii) The transfer of cross and cases outcome of same FIR from court of ordinary jurisdiction to ATC court does not mean that the accused persons will face the charges under any of the schedule offences

41. **Lahore High Court**
Muhammad Younas vs. The State & another
Criminal Revision No. 285 of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC7395.pdf

Facts: The petitioner has assailed his conviction in offence u/s 324 PPC.

Issue: i) Whether question of substitution do arise in case of single accused?
ii) What does blackening injuries depicts in medical jurisprudence?

Analysis: i) It is not a universal principle that in case of single accused question of substitution does not arise. It may be a case of single accused or otherwise, the duty of prosecution shall remain there to prove its case beyond reasonable doubt, who cannot take benefit from weakness of defence.
ii) It is an admitted proposition under the medical jurisprudence that blackening occurs on a wound when fire is made from a close contact that is not more than three feet.

Conclusion: i) The question of substitution do arise in case of single accused.
ii) That blackening occurs on a wound when fire is made from a close contact.

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42. **Lahore High Court**
Province of Punjab, through D.O.(R) Sahiwal.v District Judge, etc.
Writ Petition No. 7044 of 2008.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7773.pdf

Facts: The suit for declaration of ownership was decreed by the court on the basis of consent statement of defendant.Feeling aggrieved the petitioner/Province of Punjab filed an application under section 12(2) C.P.C. with the contention that respondents got decreed the suit through fraud and collusiveness in order to evade payment of Government dues such as capital tax, value tax, registration fee and municipality fee etc. The said application was allowed by the court.

Issue: i) Whether the petitioner/Province of Punjab has locus standi to file application u/s 12(2) CPC in case of declaratory decree between private parties?
ii) What is the legal value of the declaratory decree obtained on the basis of agreement to sell?
iii) Whether the decree should be set aside if it is obtained to avoid the payment of government dues?

Analysis: i) If the lawmaker had intended to restrict the right of filing application only to the person who was party to the suit, then the word party ought to have been used. … When the petitioner was deprived of collection of government's dues, which were otherwise received if a decree for specific performance was passed or a sale deed

was executed, therefore, valuable rights of the petitioner were directly affected through the decree under challenge and petitioner has every right to file an application under section 12(2), C.P.C.

ii) According to section 42 of Specific Relief Act, a person could seek a declaratory decree where his legal character or any right to any property was either denied or necessity arose to deny any such claim or interest if raised by another person. A declaratory decree procured by any person on the basis of agreement to sell is void ab-initio; therefore, the same is of no avail to him to use as a plank. An agreement to sell would not confer any proprietary right on the vendee, therefore, a declaratory decree as envisaged by Section 42 of the Specific Relief Act, 1877 could not be awarded to a vendee because declaration could only be given in respect of a legal right of the character.

iii) The respondent instituted suit for declaration instead of suit for specific performance of an agreement, only just to evade payment of Government dues, etc. at the time of the decree of the suit and in this way from the conduct of respondent No.3 fraud is very much clear and instituting of a declaratory suit instead of suit for specific performance of the agreement will absolve respondent No.3 from the payment of Government dues such as registration fee, capital value tax, transfer of immovable property fee as well as Municipal Committee's fee etc. Hence, the suit for declaration and permanent injunction was not maintainable in peculiar circumstances of the present case.

Conclusion: i) The petitioner/Province of Punjab has locus standi to file application u/s 12(2) CPC in case of declaratory decree between private parties.

ii) The declaratory decree obtained on the basis of agreement to sell is void ab initio.

iii) The decree should be set aside if it is obtained to avoid the payment of government dues.

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43. **Lahore High Court**
Sardar Ali. v Abdul Ghafoor and others.
Civil Revision No.269 of 2020.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7380.pdf

Facts: During the execution proceedings a sale deed was executed and registered and consequently possession was also delivered to the decree holder. Respondent No.1 who claimed to be the owner of suit property prior to the institution of the suit, filed an objection petition and an application for cancellation of that sale deed before the learned Executing Court, after taking its replies, both petitions were accepted, consequently the registered sale deed was cancelled and the execution petition was dismissed. Feeling aggrieved, the petitioner preferred an appeal which was dismissed by the learned appellate court. Having dissatisfied with regard to both the judgments/ orders of learned courts below he filed the

instant civil revision.

Issue: i) What is the meaning of word execution under Section 47CPC and when executing court becomes functus officio?
ii) What is difference between representative and legal representative?

Analysis: i) The word "execution" means to carry out and perform and it derived from the word "execute" which means command. As is evident from the word "determine" the Executing Court possesses jurisdiction to finally dispose of all questions, arising out of execution, discharge or satisfaction of a decree and to grant a relief. An Executing Court becomes functus officio once the decree is fully discharged. The term "discharge or satisfaction" has not been defined, and a flexible and liberal interpretation should be given to these words in keeping with the object behind section 47 CPC, however that words in their context would be limited to the matters arising after the passage of the decree and arising in course of or in connection with the execution of the decree.
ii) The term used 'representative' has a much wider connotation than the term 'legal representative' and means any representative in interest of a party to the suit by assignment etc.

Conclusion: An Executing Court becomes functus officio once the decree is fully discharged.

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44. **Lahore High Court**
Nazir Ahmad v. CCPO, Lahore, etc.
Criminal Misc No. 68909-H of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC7155.pdf

Facts: The petitioner filed instant habeas petition for recovery of his son from unlawful custody of police official in which direction was issued to SHO to produce detenue before court on 08-11-2021. As per police, the alleged detenu was arrested on 06.11.2021 and his physical remand was obtained on 07.11.2021. The SHO and investigating officers were directed to produce the register roznamcha of police station before the Court and the same was produced and examined by court.

Issue: i) Whether the investigation officer has power to get drafted the case diaries from his subordinates?
ii) What are prime considerations for grant of physical remand?

Analysis: i) The investigation officer has no power to get drafted the case diaries from his subordinates. Similarly, it amounts to delegate his power to someone else which is not a mandate of law. In this case the investigation officer concerned has not described any reason due to which he was incapable to write down the case diary himself.
ii) Physical remand of an accused person in a criminal case can only be granted when sufficient incriminating material is available which connect him with the commission of crime. It is prime duty of the learned Magistrate seized with the matter to pass a well-reasoned and speaking order after going through the record

of the case for the grant of physical remand. In this case neither the contention of accused has been mentioned nor any plausible reasoning has been given by magistrate concerned for granting physical remand.

Conclusion: i) The investigation officer has no power to get drafted the case diaries from his subordinates.

ii) Physical remand of an accused person in a criminal case can only be granted when sufficient incriminating material is available.

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45. **Lahore High Court Lahore**
Muhammad Shahzad v The State, etc.
Criminal Appeal no. 642/2017
Irfan Ullah V Muhamad Shahzad and another
Criminal revision no. 380/2017
Mr. Justice Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC7503.pdf

Facts: The appellant was absconder in murder trial and during his abscondance all accused persons were acquitted. Appellant was re-arrested and put to trial. The complainant and two witnesses were dead. The prosecution procured previous statement of complainant and one witness whereas a witness as secondary evidence of one witness (investigating officer) was produced. The appellant was convicted and he challenged his conviction.

Issues: i) How location of fatal firearm injury affects physical activity?

ii) Whether the statement of dead witness (complainant) recorded in earlier trial could be read against accused?

iii) Can copies of previous statement be transposed into trial?

iv) When procedure of "Shahada ala al-Shahadah" can be resorted to?

Analysis: i) The location of fatal fire arm injury and organ involved are important facts to throw light on possibility of physical activity and condition of victim during the duration between injury and death.

ii) Article 154 of Qanun-e-Shahadat Order, 1984 requires that previous statement under Article 46 & 47 would first be proved and then its corroboration would be taken up.

iii) Unlike code of Civil Procedure, 1908, there is no specific provision in Cr. P.C which deals with transposition of statements in subsequent trial; nor any provision exist relating to calling for record of any criminal court for the purpose of inspection and using it as evidence. Order XIII rule 10 of CPC gives power to court to send for either from its own record of any other suit proceedings. This provision of CPC cannot be stretched for inspection of court record by a criminal court in a criminal trial. Though section 94 of Cr. P.C and Article 158 & 161 give power to the criminal court to call for any document yet it does not include court record. In the circumstances, right course would be resort to certified copies of such statements for using as evidence because statements recorded in an earlier trial are termed as public documents as per Article-85 (3) of Qanun-e-Shahadat Order, 1984.

iv) "Shahada ala al-Shahadah" a principle of evidence highlighted under Article 71 of Qanun-e-Shahadat Order 198, by which a witness can appoint two witnesses to depose on his behalf, except in the case of Hudood, is an exception to hearsay evidence and can successfully be used to prove the case in a situation when witnesses could not appear as being dead or for any other reason stated in the proviso under discussion.

Conclusion: i) Condition of victim during the duration between injury and death depends upon location of fatal fire arm injury.

ii) Article 154 of Qanun-e-Shahadat Order, 1984 requires that previous statement under Article 46 & 47 would first be proved and then its corroboration would be taken up.

iii) There is no specific provision in Cr. P.C which deals with transposition of statements in subsequent trial.

iv) "Shahada ala al-Shahadah" is an exception to hearsay evidence.

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46. **Lahore High Court**
Mehmood Idrees v. Khalid Hussain etc.
W.P. No. 9926 / 2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC7480.pdf

Facts: Co-owner of property instituted a suit for the partition and recovery of mesne profit against the petitioner alleging that parties are co-owner in the suit property and the petitioner has rented out the whole suit property to different persons and receiving rents.

Issue: Whether the court can order for deposit of interim mesne profit under section 7 of the Punjab Partition of Immovable property Act, 2012 even if there is a dispute of title and ownership between the parties as per section 8 of the Act, 2012?

Analysis: Section 7 calls upon the court to determine interim mesne profits pending adjudication of the suit. Section 7 is an interim arrangement whereby the co-owner in possession of immovable property is to be directed to deposit in the court the interim mesne profits pending adjudication of the suit. On the other hand, where there is a dispute as to title or share, the court is to decide such question before proceeding further in terms of Section 8. This implies that the determination of the title or share under Section 8 is to be through a full-fledged trial as the same is to be deemed as a decree under the Act, 2012. Bare perusal of the provision indicates that purpose is to ensure that a person who is deprived of his possession, as well as income being derived from the property forming subject matter of the suit under the Act, 2012 can obtain such compensation by way of approximate rental of the suit property. As interim mesne profits are to be determined at the first date of hearing, the dispute as to title or share amongst the parties may arise in myriad manner variable with the facts of each case all of which may not be conceived and which requires full fledge trial. The stage of the suit at which such dispute as to title or share may arise can vary and differ in each case. Therefore, the legislature

does not seem to have intended to render the operational scope of Section 7 subservient to Section 8 or to ring-fence and put Sections 7 and 8 in a bracket or in other words to make applicability of Section 7 contingent upon Section 8, rather both of them operate independent of each other.

Conclusion: The court may direct the party in possession to deposit interim mesne profit under section 7 of the Punjab Partition of Immovable property Act, 2012 even if there is a dispute of title and ownership between the parties.

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47. **Lahore High Court**
Hameedan Bibi etc. v. Manzoor ul Haq Malik etc.
Civil Revision No.769/2010
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC7489.pdf

Facts: Predecessor-in-interest of respondent instituted a suit for declaration with the prayer to declare the registered sale deed executed in favour of predecessor-in-interest of the petitioner as ineffective, illegal, void, based on fraud and misrepresentation as the vendor had less entitlement in whole joint *khata* than she transferred through the impugned sale deed. Predecessor-in-interest of the petitioner also instituted a suit for possession and through the consolidated judgment, the suit for declaration was decreed whereas that of possession was dismissed and the two separate appeals of petitioner thereof were also dismissed. The petitioner then challenged the concurrent findings of both courts through this civil revision.

Issue: i) Whether the *Chaant* prepared by the *Patwari* / revenue department can be relied upon by the court?

ii) Whether the plea of cancellation of any instrument is prayed under section 39 or section 42 of the Specific Relief Act, 1877?

iii) Whether the concurrent findings of two courts below can be interfered in the exercise of revisional jurisdiction?

Analysis: i) The *Channt* is prepared by a *Halqa Patwari*, who works in one or more *Patwar* circle by maintaining various registers including Register *Daakhil Kharij* (*inteqalaat*), which primarily is the transfer record in a *patwar* circle that archives all land transactions. Said register is record of the total quantity of land a seller owns in a *khata*, the exact area of the land sold by the seller from that *khata* and also the area of land the seller is left with after a transaction takes place in that *khata*. It is on the basis of this Register *Daakhil Kharij* (*inteqalaat*) that a *Chaant* is prepared, as a part of practice, so as to ascertain the exact status of transactions, which a seller made in his entire *khata*. Perusal of the *Chaant* prepared in fact enables the third parties to understand and examine the status of share of a person in a *khata* before dealing with the same and hence, cannot be termed as something in violation of any provision of law.

ii) An instrument can be declared void and its cancellation can be prayed under

Section 39 of the Specific Relief Act, 1877 whereas suit for declaration is filed under Section 42 of the Act, 1877. A suit for cancellation of an instrument by a third party, which is not executant of the instrument, is not maintainable. It has been held that proper remedy in such like case is a suit for declaration by the person to declare his document or possession to be lawful.

iii) As a general, the High Court has avoided interference into concurrent findings of courts below in the exercise of revisional jurisdiction, but this is not a legally impervious position rather concurrent findings can be interfered and pierced through if they are found to be perverse and result of non-reading and/or misreading.

Conclusion: i) The *Chaant* prepared by the *Patwari* / revenue department is not in violation of any provision of law and it can be relied upon by the court.

ii) The plea of cancellation of any instrument can be prayed by the executant under section 39 of the Specific Relief Act, 1877. Other person may file suit for declaration under section 42 of the Act, 1877 to declare his document or possession to be lawful.

iii) The concurrent findings of two courts below can be interfered in the exercise of revisional jurisdiction if they are found to be perverse and result of non-reading and/or misreading.

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48. **Lahore High Court Lahore**
Nadeem Akhtar v. The State & another
Crl. Appeal No.94/2017
Mr. Justice Ali Zia Bajwa, Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC6747.pdf

Facts: The appellant assailed his conviction in offence under Section 9(c) of the Control of Narcotic Substances Act, 1997.

Issue: Whether the prosecution is under bounden duty to establish every limb of safe custody of the recovered contraband?

Analysis: The law on the subject is very much settled that the prosecution is under bounden duty to establish every limb of safe custody of the recovered contraband and in case it is not established beyond doubt, the same cannot be used against the accused.

Conclusion: Where chain of safe custody and transmission for forensic analysis is compromised, the benefit of doubt is extended to the accused.

49. **Lahore High Court**
Khan Muhammad v. Muhammad Aslam
R.F.A No. 64 / 2018
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC7414.pdf

Facts: The suit for recovery upon execution of promissory note was decreed by trial court.

Issue: i) Whether upon signatures by the marginal witnesses, the promissory note stood converted into a Bond and summary proceedings under Order XXXVII of the Code of Civil Procedure, 1908 are not attracted to the case?
ii) Whether any presumption is attached to promissory note?

Analysis: i). Perusal of section 4 of Negotiable Instruments Act, 1881 (NIA) reflects that promissory note is an instrument having following ingredients: (i) Must be in writing, and (ii) contains undertaking of payment of money, and (iii) undertaking must be unconditional, and (iv) sum should be determined, and (v) such instrument must be signed by the maker. Section 4 and 13 of NIA do not provide for any requirement of attestation by witnesses or attestation if made by witnesses having some consequences and bearing on the nature of the instrument. Not necessitating attestation by witness on the promissory note simply has effect that requirement of Article 17(2)(a) of the Qanun-e-Shahadat Order, 1984, is not mandatory to be fulfilled. It does not mean that if attestation is made, it automatically stands converted into a Bond, which by its own nature and characteristics and purpose is distinct from promissory note. The characteristics of bonds include being conditional, not payable to order or to bearer etc.
ii) Section 118 of NIC 1881 clearly provides that until contrary is proved it is to be presumed that the holder of the instrument is a holder in due course and the same is drawn for consideration. Once the instrument is exhibited and brought on record as well as evidence is led in the support thereof, the forgery or fraud with respect to the instrument or want of consideration or challenge that holder is not holder in due course is on the person who is challenging the holder's rights.

Conclusion: i) Upon signatures by the marginal witnesses, the promissory note does not stand converted into a Bond and summary proceedings under Order XXXVII of the Code of Civil Procedure, 1908 are not attracted to the case
ii) The presumption is that the holder of the instrument is a holder in due course and the same is drawn for consideration.

50. **Lahore High Court**
Muhammad Abdul Rehman Versus Additional District Judge and 2 Others
W.P.No. 16168 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC7553.pdf

Facts: The suit for recovery of dower was partially decreed. During execution proceedings, the petitioner filed objection petition, pleading that payment has already been paid out of the Court, for the satisfaction of the decree and the matter has been settled. Decree holder contested the said objection while denying any payment for the satisfaction of the decree as well as any settlement out of the Court. This objection petition was rejected.

Issue: i) How plea of out of court payment can be proved before court?
ii) Whether affidavit of stranger to lis regarding out of court payment can be taken into consideration for deciding the question of satisfaction of decree out of court?

Analysis: i) Combined reading of Order XXI Rule 1 & 2 does not leave a lurking doubt that plea of out of Court payment, if not supported by proof of payment through banking instrument, postal money-order or clearly evidenced in writing carrying signatures of the decree-holder or his authorised agent, the executing Court cannot accept such an out of Court payment, unless it is confirmed by the decree-holder to the executing Court. Order XXI Rule 1 and 2 while requiring a decree to be satisfied before the Court or the payment through irrefutable instrument or supported by unquestionable evidence, contains clear wisdom to avoid another round of litigation with respect to the satisfaction of decree and multiplicity of litigation.
ii) The affidavits are given by the strangers to the lis or the decree in question. Also the receipt does not contain the signatures of the decree-holder and it is purportedly issued by the brother of the decree-holder, without any proof of the fact that he was recognized and authorised agent of the decree-holder. .. Such documents cannot satisfy the requirements laid down by Order XXI Rule 1 and 2 of the Code.

Conclusion: i) Plea of out of court payment can be proved before court only in accordance with the provisions of Order XXI Rule 1 & 2 and not otherwise.
ii) The affidavit of stranger to lis regarding out of court payment cannot be taken into consideration for deciding the question of satisfaction of decree out of court.

51. **Lahore High Court**
Muhammad Aslam v. Mst. Tahira Parveen
First Appeal against Order No. 29 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7515.pdf

Facts: The Respondent instituted a suit for possession with partition of suit property, which was partially decreed against which both parties preferred their separate appeals before a District Judge. During the pendency of such appeals, the appellant filed two applications, one for production of additional evidence and the other for seeking amendment in the written statement but a learned Addl. District Judge dismissed the appeal filed by the appellant without deciding the applications while partially allowed the appeal filed by the respondent. The appellant preferred Civil Revision and the matter was remanded to the 1st Appellate Court for its decision on merit. The Appellate Court again dismissed the application for production of additional evidence, which necessitated the appellant to file an appeal against the said order.

Issue: Whether application for additional evidence can be filed before appellate court U/O XLI, Rule 27 CPC, at belated stage, that too, without disclosing sufficient grounds?

Analysis: Inadvertence of a competing party, ignorance of law, second opportunity to adduce evidence and negligence of a competing party are not recognized and acknowledged grounds for allowing an application for additional evidence. The requirement of additional evidence must be the requirement of the court and not of a party. Since the appellant has not mentioned why these documents are essential; since the appellant has not mentioned as to why these were not sought to be produced earlier and since the appellant has not cited any reason why these were not relied upon or produced at the time of trial, and application does not at all reveal why production of these documents is necessary now. The application filed by the appellant mentions no ground whatsoever, alludes to no reason whatsoever and likewise provides no other substantial cause for being allowed to produce such documents at this belated stage.

Conclusion: The facility of allowing additional evidence to be brought on record is not meant to allow a litigant to fill up a lacuna in his case or to make good his omission in the trial especially and particularly when no ground whatsoever is taken in the application filed for such a purpose.

52. **Lahore High Court**
Shahid Akhtar v. Muhammad Azam Abbas
Regular First Appeal No. 24 of 2017
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7427.pdf

Facts: The appellant filed the suit U/O XXXVII CPC 1908, for the recovery of money lent to respondent through cheque. The District Court, after appraising evidence, dismissed the suit.

Issue: Whether presumption under Section 118 of the Negotiable Instruments Act 1881 is not a conclusive presumption rather it is rebuttable in nature and initially burden of proving that the Negotiable Instrument is executed against consideration is on the plaintiff?

Analysis: The claim of the appellant is so outrageous in its defiance of logic that this court would ever draw the conclusion that the appellant loaned an amount of Rs.15,00,000/- to the respondent and which appellant neither maintained a bank account, was an electrician by profession, had no other source of income, had no property or landed property in his name, whose main witness had resiled, whose evidence was full of contradictions and whose other witness did not give trustworthy evidence. It may also be added here that the presumption attached with Negotiable Instruments contained under section 118 of the Negotiable Instruments Act 1881, is always rebuttable if the plaintiff fails to produce trustworthy evidence as was held in "Salar Abdur Rauf v. Mst. Barkat Bibi" (1973 SCMR 332).

Conclusion: When a plaintiff fails to prove his source and capacity to advance a loan, the presumption contained in Article 118 stands rebutted since the court has to act on the basis of preponderance of evidence.

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53. **Lahore High Court**
Mst. Haseena Bibi v. Civil Judge Ist Class Vehari and another.
Writ Petition No. 18067 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7404.pdf

Facts: Through this constitutional petition, the petitioner/decree holder has challenged an order passed by executing court wherein it framed issues while deciding an objection petition filed by respondent/judgment debtor in an execution petition in consequence of judgment/decree of Family Court.

Issue: Whether an executing court can take benefit of the provisions of the Code of Civil Procedure, 1908 while executing a judgment and decree passed in terms of the family law jurisdiction.

Analysis: Family Court is a quasi-judicial forum which can organize and has been implicitly authorized to adopt and pursue any procedure which is not specifically barred or prohibited. As long as there is no conflict between the provisions of CPC, 1908, and those of the Family Courts Act, 1964, such provisions and procedure can be employed and adopted. A Family Court can, therefore, proceed on the premise that every procedure is permissible unless a clear prohibition is forthcoming. The impugned order has been passed so as to address and resolve the issue existing between the parties and that there is no other way for the executing court to determine questions pertaining to the execution of judgment and decree in question; that in the absence of any procedure envisaged by the Family Court Act itself, wisdom and nuances of procedure may be borrowed by the Family Court from the CPC, 1908 and that section 47 CPC invests the executing court with the jurisdiction and power to determine all questions pertaining to a decree.

Conclusion: Family Court is well within its jurisdiction to borrow procedure from available avenues stipulated by statute and there is no embargo on a Family Court to employ provisions contained in Order XXI of Code of Civil Procedure, 1908, which itself acknowledges an executing court to frame issues, record evidence and adjudicate objection petitions.

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54. **Lahore High Court**
Times Institute (Al-Syal Education Trust) V FOP etc.
Writ Petition No. 19914 of 2019
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7560.pdf

Facts: Different petitioners filed 21 constitutional petitions to challenge decisions of the Executive Board of National Highway Authority taken in its meeting and consequently issued demand notices on various dates.

Issues: Whether the court can take away the authority and power of determination of public body through medium of judicial review?

Analysis: Where the existence or determination of a fact is left to discretion of a public body and such determination involves analyzing the obvious as also the debatable, it is the duty of the court to leave such a decision to the public body to whom Parliament has entrusted the decision making power save in a case where it is obvious that the public body is acting perversely. Therefore, while greater latitude conferred by Parliament must be respected, it is unimaginable to allow it to be ousted from the purview of the judicial review. It must be remembered that in case of greater statutory latitude, a higher threshold of judicial review based on doctrines of restraint, deference, mutual respect and the forbidden substitutionary approach is adopted and employed In considering whether a public body has abused its powers, the courts must not abuse theirs. The aim of judicial review is to uphold and implement the intent of the Parliament as contained in a statute.

Conclusion: Where determination is entrusted to the primary decision maker, the court through medium of judicial review cannot take away from the Authority the power and discretion properly vested in it by law and substitute its own opinion.

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55. **Lahore High Court**
Riaz Ahmad v. Maula Bakhsh.
C.R. No.891-D of 2011
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7803.pdf

Fact: The petitioner assailed the dismissal of his suit for pre-emption.

Issued: i) Whether it is necessary to fulfill the statutory requirements pertaining to the performance of Talbs in terms of Section 13 of the Punjab Preemption Act, 1991?
ii) How Talb-e-Muwathibat is proved?

Analysis: It may be straightaway observed that for a suit of preemption to be successful the Talbs have to be proved in accordance with law and even if one of the Talbs is not proved in accordance with law then the entire foundational basis of the right to assert preemption stands defeated.
ii) In order to prove Talb-e-Muwathibat, besides the date, time and place of performance of Talb-e-Muwathibat the preemptor also has to prove beyond doubt that the Talb-e-Muwathibat had been performed in a Majlis/meeting…. 8. It may also be added here that in order to prove Talb-e-Muwathibat it is necessary that two independent witnesses in addition to an informer must be produced

Conclusion: i) It is necessary to fulfill the statutory requirements pertaining to the performance of Talbs in terms of Section 13 of the Punjab Preemption Act, 1991.
ii) The date, time and place of performance of Talb-e-Muwathibat is to be proved.

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56. **Supreme Court of UK**
R (on the application of Majera (formerly SM (Rwanda)) v. Secretary of State for the Home Department
On appeal from: [2018] EWCA Civ 2838
LORD REED, Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose
https://www.supremecourt.uk/cases/uksc-2020-0008.html

Facts: In this case SM, a Rwandan national, is challenging the Court of Appeal's decision that the purported grant of bail by the Tribunal was void from the outset. SM served a prison sentence for robbery between 17 December 2005 and 30 March 2015. The Parole Board recommended his release on licence and he was moved into immigration detention. On 30 July 2015 First-tire Tribunal Judge Narayan decided SM could be released on immigration bail. Although no one notice this at the time, Judge Narayan's order did not comply with the Immigration Act 1971 because it did not require SM to surrender to an

immigration officer at a specified time and place of at all. The Home Secretary imposed restrictions on SM. On a judicial review by SM, Judge Peter Lane held that SM remained on bail granted by Judge Narayan and therefore the Home Secretary's restrictions (save for the restriction prohibiting SM from entering employment paid or unpaid) had no legal effect. On appeal, however, the Court of Appeal decided the defects in Judge Narayan's order made it unlawful from the outset, so SM was never validly bailed and the Home Secretary was free to impose her own restrictions.

Issue: Whether an unlawful act or decision can be described as void independently of, or prior to, the court's intervention?

Analysis: If an unlawful administrative act or decision is not challenged before a court of competent jurisdiction, or if permission to bring an application for judicial review is refused, the act or decision will remain in effect. Equally, even if an unlawful act or decision is challenged before a court of competent jurisdiction, the court may decline to grant relief in the exercise of its discretion, or for a reason unrelated to the validity of the act or decision, such as a lack of standing or an ouster clause. In that event, the act or decision will again remain in effect. An unlawful act or decision cannot therefore be described as void independently of, or prior to, the court's intervention. Even where a court has decided that an act or decision was legally defective, that does not necessarily imply that it must be held to have had no legal effect. A court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation).

Conclusion: An unlawful act or decision cannot therefore be described as void independently of, or prior to, the court's intervention

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LATEST LEGISLATION/AMENDMENTS

https://na.gov.pk/en/acts-tenure.php

1. Section 94 & Section 103 of "The Elections Act 2017" is amended by "The Election (Second Amendment) (LV of 2021)"
2. "The International Court of Justice (Review and Re-consideration) Act, 2021" is enacted to provide for the right of review and reconsideration to foreign nationals, in relation to orders and judgments of military courts
3. "The Islamabad Capital Territory Charities Registration, Regulation and Facilitation Act, 2021 (XXV of 2021)" is enacted to regulate the registration, regulation and facilitation of charities in the Islamabad Capital Territory
4. Sections 5,9, 13, 24 & 28 of "The SBP Banking Services Corporation Ordinance, 2001 are amended through "The SBP Banking Service Corporation (Amendment) Bill, 2021 (XXVI of 2021)".
5. "The National College of Arts Institute (XXVIII of 2021)" is enacted to reconstitute National College of Arts.

6. Section 7 of "The Muslim Family Laws Ordinance, l96l (VIll of 1961)" is amended through "The Muslim Family Laws (Amendment) 2021 (XXVIII of 2021)".
7. Section 7 of Muslim Family Laws Ordinance, l96l (VIll of 1961) is amended through "The Muslim Family Laws (Amendment) 2021 (XXIX of 2021)
8. "The Anti-Rape (investigation and Trial) Act (XXX of 2021) is enacted to ensure expeditious redressal of rape and sexual abuse crimes
9. "The Hyderabad Institute for Technology and Management Sciences Act 2021" is enacted to provide for the establishment of institute of Hyderabad institute for Technology and Management Sciences
10. "The Corporate Restructuring Companies Act. 2016" is amended by "The Corporate Restructuring Companies (Amendment (XXXII of 2021) wherein Section 4, 5, 6, 10 are amended while Section 6-A, 6-B, 7-A, 7-B, 8-A, 8-B & 19 are inserted.
11. "The Financial institutions (Secured Transactions) Act, 2016 (XXXI of 2016)" is amended by "The Financial Institutions (Secured Transactions) (Amendment((XXXIII of 2021) wherein Sections 1, 2, 5, 6,8,9,10,14,15,18,19,20,21,22,23,24,25, 26, 28, 30, 31, 32, 33, 34, 38, 42, 46, 47, 48, 49, 50, 52-A, 55, 59, 61, 63, 68, 70, 73 are amended. Section 66 & 72 are substituted. Section 55-A, 56-A, 56-B, 65-A, 65-B are inserted.
12. "The Federal Public Service Commission (Validation of Rules) Act 202l" (CCCIV of 2021) is enacted to validate the rules for regulating the competitive examination conducted by the Federal Public Service Commission in the year,2016 and 2017
13. "The University of Islamabad Act 2021 (XXXV of 2021)" is enacted to provide for establishment of the University of Islamabad, Islamabad and for the matters connected therewith and ancillary thereto.
14. Section 3 & 4 of "The loans for Agricultural, Commercial and Industrial Purposes Act, l971 (XLll of 1973) is amended by the "The loans for Agricultural, Commercial and Industrial Purposes (Amendment) (XXXVI of 2021)"
15. "The Companies Act, 2017 XIX of 20l7)" is amended through "The Companies (Amendment) (XXXVII of 2021). Sections 2, 6, 17, 18, 23, 31, 37, 62, 83, 83-A, 86, 88, 137, 140, 179, 201, 203, 227, 287, 337, 435 are amended. Section 23 & 234 are omitted. Section 458-A is inserted.
16. Section 21 is added in "The National Vocational and Technical Training Commission Act, 2011 (XV of 2011) through amendment "The National Vocational and Technical Training Commission (Amendment) (XXXVIII of 2021).
17. Sections 2, 4, 7, 8, 10, 12, 13, 16, 18, 19 of "The Pakistan Academy of Letters Act 2013 (lV of 2013) are amended through "The Pakistan Academy of Letters (Amendment) (XXXIX of 2021)"
18. Section 2, 6, 7,8,10,11,12,13,14,25,26,30,31,32,51,56,57,63,69,70 of "The Port Qasim Authority Act, 1973 (XLIII of 1973) are amended through "The Port Qasim Authority (Amendment) Act, 2021"
19. Sections 2, 13, 14, 15, 17, 18, 19, 20, 29, 30, 32, 38 & 40 of "The Pakistan National Shipping Corporation Ordinance, 1979 (XX of 1979) are amended through "The Pakistan National Shipping Corporation (Amendment) Act, 2021".

20. Sections 2,6,7,8,13,14,20,25,26,29,30,31,32,51,52,53,60,66,70,71,72,73,75,77 of "The Gwadar Port Authority Ordinance, 2002 (LXXVII of 2002) are amended through "The Gwadar Port Authority (Amendment) Act, 2021"

21. Sections 3,4,5,15,17 & 19 of "The Maritime Security Agency Act, 1994 (X of 1994)" are amended through "The Maritime Security Agency (Amendment) Act, 2021".

22. "The Privatization Commission Ordinance, 2000 (LII of 2000) is amended through "The Privatization Commission (Amendment) Act, 2021". Section 7 is amended while section 19 is substituted.

23. "The COVID-19 (Prevention of Hoarding) Act, 2021" is enacted to provide for the prevention of hoarding in respect of scheduled articles in an emergent situation resulting from the outbreak of the Corona virus pandemic (COVID-19) and for matters connected therewith and ancillary thereto.

24. "The Pakistan Penal Code, 1860 (Act XLV of 1860)" and "The Code of Criminal Procedure, 1898" are amended through "The Criminal Laws (Amendment Act 2021). Section 375, 376 of PPC are amended while section 375-A is inserted. Similar changes are made in Schedule II of Cr.P.C.

25. "The Islamabad Rent Restriction Ordinance, 2001 (IV of 2001) is amended through "the Islamabad Rent Restriction (Amendment) Act, 2021". Section 2, 5, 8, 21, 23 are amended. Section 10 & 16-A are substituted.

26. "The Al-Karam International Institute Act, 2021" is enacted to provide for the establishment of the Al-Karam International institute in the private sector for promotion of special studies and for matters ancillary thereto.

27. "The Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021" is enacted to make provisions for the protection of children against corporal punishment by any person, at work place, in all types of educational institutions including formal, non-formal, and religious both public and private, in child care institutions including foster care, rehabilitation centers and any other alternative care settings both public and private, and in the Juvenile Justice System.

28. "The Islamabad Capital Territory Food Safety Act 2021" is enacted to protect public health, to provide for the safety and standards of food, to establish the Islamabad Food Authority and for other connected matters:

29. "The Unani, Ayurvedic and Homoeopathic Practitioners (Amendment) Act 2021 is enacted to bring meaningful and significant amendment in the Unani Ayurvedic and Homoeopathic Practitioners Act, 1965.

30. Section 2, 5, 5B, 5C of "The Prevention Of Corruption Act. 1947 are amended through "The Prevention of Corruption (Amendment) Act, 2021."

31. Section 112AA is inserted in "The Provincial Motor vehicles Ordinance, 1965" Through "The Provincial Motor Vehicles (Amendment) Act 2021"

32. "The Protection of Journalists and Media Professionals Act, 2021" is enacted ta promote. protect and effectively ensure the independence, impartiality, safety and freedom of expression of journalist and media professionals.

33. Sections 3, 5 of "The Regulation of Generation, Transmission and Distribution of Electric Power Act, I 997" are amended through "The Regulation of Generation, Transmission and Distribution of Electric Power (Second Amendment) Act 2021".

34. Section 8 of "The National Accountability Ordinance, 1999" is amended through "The National Accountability (Amendment) Act, 2021".

35. Section 6, 11 of "The Higher Education Commission Ordinance,2002" is amended through "The Higher Education Commission (Amendment) Act 2021 (XXI of 2021)"

36. Section 2, 6 & 3 of "The Higher Education Commission Ordinance,2002" are amended through "The Higher Education Commission (Second Amendment) Act 2021 (XXII of 2021)"

LIST OF ARTICLES

1. **COLUMBIA LAW REVIEW**
https://columbialawreview.org/content/the-goals-of-class-actions/
THE GOALS OF CLASS ACTIONS by Andrew Faisman

Class actions for monetary relief have long been the subject of intense legal and political debate. The stakes are now higher than ever. Contractual agreements requiring arbitration are proliferating, limiting the availability of class actions as a vehicle for collective redress. In Congress, legislative proposals related to class actions are mired in partisan division. Democrats would roll back mandatory arbitration agreements while Republicans would restrict class actions further.

This Note explains that many of the battles over class actions for monetary relief can be understood as disagreements over what goals they are supposed to serve. It examines two broad justifications for class actions: efficiency and representation. It then offers a taxonomy of the goals of class actions. The efficiency justification is associated with the goals of compensation and monetary deterrence; the representation justification is associated with the goals of providing access to justice and shaping laws and norms. An analysis of recent legislative proposals demonstrates that congressional Republicans prioritize the goal of compensation while congressional Democrats prioritize both representational goals.

2. **STANFORD LAW REVIEW**
https://www.stanfordlawreview.org/print/article/policing-under-disability-law/
POLICING UNDER DISABILITY LAW By Jamelia N. Morgan

This Article centers disability theory as a lens for understanding the problems of policing and police violence as they impact disabled people. In doing so, the Article examines how federal disability law addresses these ongoing problems. Disabled plaintiffs have alleged disability discrimination and challenged policing and police violence under both Title II of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973, another federal disability law and the precursor to the ADA. The Supreme Court has yet to decide whether Title II of the ADA applies to arrests, and federal appellate courts are split on whether and to what extent Title II's antidiscrimination provisions apply to street encounters and arrests. Although the Court granted certiorari to a case presenting the question, City & County of San Francisco v. Sheehan, it subsequently dismissed that question as improvidently granted. There is no telling when the question will reach the Supreme Court again, but before it does, it is important to develop a

theory not just of liability but also of disability under Title II that is consistent with the text, history, and animating goals of the ADA.

3. HAVARD LAW REVIEW
https://harvardlawreview.org/2021/12/the-incoherence-of-prison-law/
THE INCOHERENCE OF PRISON LAW by Emma Kaufman & Justin Driver

In recent years, legal scholars have advanced powerful critiques of mass incarceration. Academics have indicted America's prison system for entrenching racism and exacerbating economic inequality. Scholars have said much less about the law that governs penal institutions. Yet prisons are filled with law, and prison doctrine is in a state of disarray.

This Article centers prison law in debates about the failures of American criminal justice. Bringing together disparate lines of doctrine, prison memoirs, and historical sources, we trace prison law's emergence as a discrete field — a subspeciality of constitutional law and a neglected part of the discipline called criminal procedure. We then offer a panoramic critique of the field, arguing that prison law is predicated on myths about the nature of prison life, the content of prisoners' rights, and the purpose of penal institutions. To explore this problem, we focus on four concepts that shape constitutional prison cases: violence, literacy, privacy, and rehabilitation. We show how these concepts shift across lines of cases in ways that prevent prison law from holding together as a defensible body of thought.

4. HAVARD LAW REVIEW
https://harvardlawreview.org/2021/12/structural-deregulation/
STRUCTURAL DEREGULATION by Jody Freeman & Sharon Jacobs

Modern critics of the administrative state portray agencies as omnipotent behemoths, invested with vast delegated powers and largely unaccountable to the political branches of government. This picture, we argue, understates agency vulnerability to an increasingly powerful presidency. One source of presidential control over agencies in particular has been overlooked: the systematic undermining of an agency's ability to execute its statutory mandate. This strategy, which we call "structural deregulation," is a dangerous and underappreciated aspect of what then-Professor, now-Justice Elena Kagan termed "presidential administration."

5. HUMAN RIGHTS LAW REVIEW (OXFORD ACADEMIC)
https://academic.oup.com/hrlr/advance
article/doi/10.1093/hrlr/ngab027/6457966?searchresult=1
INTERPRETING THE RIGHT TO INTERPRETATION UNDER ARTICLE 6(3)(E) ECHR: A CAUTIOUS EVOLUTION IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS? By Nikos Vogiatzis

This article explores how the European Court of Human Rights has interpreted the right to interpretation under Article 6(3)(e) ECHR—a topic which, despite its significance for the rule of law and access to justice, has received, to date, very

limited scholarly attention. The key finding is that we are witnessing a 'cautious evolution': the Court has progressively—yet simultaneously cautiously—developed the standards and guarantees of this right, which is one of the rights of defence under Article 6(3) ECHR and a requirement of the fair trial. The analysis focuses, in particular, on (i) how general interpretative techniques that have been developed by the Strasbourg Court were applied by the Court in its jurisprudence concerning the said provision; (ii) on the interplay between the overall fairness of the trial and Article 6(3)(e) ECHR; and (iii) on Article 6(3)(e) ECHR and the relationship between legal assistance/legal aid and the right to interpretation. In addition, the article identifies possible areas of further development of this right.

6. **COURTING THE LAW**
https://courtingthelaw.com/2021/11/03/commentary/pakistani-law-and-online-marketplaces-an-enigma/
PAKISTANI LAW AND ONLINE MARKETPLACES – AN ENIGMA by Zealaf Shahzad

The current gaps and flawed nature of the existing laws continue to be ignored in Pakistan. As a result, any company seeking to provide e-commerce software or, more specifically, establish an online marketplace shall be subject to the payment systems law and licensing requirements. Moreover, the enforceability of the PS&EFT Act and PSO/PSP Rules remains questionable as various leading players in the e-commerce and digital market of Pakistan continue to operate without licensing. In order for the legislative and regulatory framework to be potent, it is pertinent for the State Bank of Pakistan to address the perplexed nature of the payment systems law. Until this is achieved, the disparity in licensing and operations of the online marketplace sector shall remain disordered and hinder the growth of e-commerce in Pakistan. It remains to be seen whether the SBP shall take heed in this regard.