LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-12-2021 to 31-12-2021)

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

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department, Peshawar and another v. Bacha Alam Khan and another
Civil Petition No.132-P 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.p._132_p_2021.pdf

Facts: Through the civil petition, judgment of High Court was challenged whereby Writ Petition filed by the respondent was allowed with the directions to consider his appointment on vacant post as recommended by KPK Service Commission despite of the fact that the respondent did not have second division in matriculation as required under the advertisement.

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Issue: Whether KPK Public Service Commission was competent to recommend a candidate who did not fulfill basic requirement of second division in matriculation but otherwise had higher qualifications more than what is prescribed under the advertisement?

Analysis: Though the eligibility criteria mentioned in Regulation 22 of the Punjab Public Service Commission Regulations 2000 is pari materia to some extent with Regulation 11 of KPK, Public Service Commission Regulations 2017 but the condition "No relaxation in this regard shall be allowed" is nonexistent and lacking in the KPK Regulations 2017. Further in the Punjab Public Service Regulation, there is also no provision that candidates who possessed qualification higher than the prescribed qualification in the relevant field of studies shall also be considered eligible. In view of clear provision incorporated in Regulations 19 (f) (ii), it is within the dominion of KPK Public Service Commission to forward the recommendations of candidate who possessed qualification higher than the prescribed qualification and in exercise of such powers, the name of respondent No. 1 was rightly recommended for consideration.

Conclusion: As per Regulations 19 (f) (ii), of KPK Public Service Commission Regulations 2-17, it is within the dominion of KPK Public Service Commission to forward the recommendations of candidate who possessed qualification higher than the prescribed qualification.

2. **Supreme Court of Pakistan**
The Chairman Agriculture Policy Institute, Ministry of National Food Security & Research, Government of Pakistan, Islamabad and another v. Zulqarnain Ali
Civil Petition No.2892 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2892_2020.pdf

Facts: Through the civil petition, judgment of Federal Service Tribunal was assailed whereby respondent was re-instated in service with back-benefits.

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Issue: Whether a daily wager employee of government can be terminated through verbal order?

Analysis: There is no provision under the Labour Laws or the Service Laws permitting the employer to terminate the services verbally without a written order containing the explicit reasons or cause of termination even in the case of termination simpliciter and for disciplinary proceedings on account of misconduct, obviously separate procedure is laid down which accentuates the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after personal hearing, appropriate action may be taken in accordance with the law. The termination of service by a verbal order is alien to the labour and service laws of this country and also against the principle of good governance which is a process of gauging whether the Government, its departments/institutions and authorities are conducting their affairs lawfully and performing their duties honestly, conscientiously and transparently including their process of decision making in accordance with rules and regulations.

Conclusion: The verbal termination order is illegal and against the principles of natural justice. Even in the case of contractual or temporary engagements, the employees should be issued appointment letters in writing with the terms and conditions of engagement and in the case of termination, explicit reasons of termination should be assigned.

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3. **Supreme Court of Pakistan**
Capital Development Authority through its Chairman, Islamabad and others v. Shabir Hussain and others
Civil Petition No.3455 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3455_2020.pdf

Facts: The respondents were regular employees of CDA and on recommendation of DPC, they were promoted to the post of Assistant Director in Engineering Cadre on acting charge and then subsequently on regular basis but after some time, the

order of promotion was withdrawn on the ground that the posts were to be filled through direct recruitment after written test and interviews and not through promotion. The writ of respondents was allowed by the High Court but the same was assailed through the civil petition.

Issue: i) Whether promotion to the next grade in accordance with recommendations of DPC can be subsequently cancelled/withdrawn by the competent authority?
ii) Whether withdrawal of promotion orders under the grab of future amendments of rules/regulations is justified?

Analysis: Once the recommendations of DPC were acted upon and respondents were promoted, a vested right was created in their favour which could not have withdrawn in such a inconsiderate and casual manner… The doctrine of vested right is quite applicable which conserves that once a right is lawfully created, its existence should be recognized and acknowledged, therefore the benefit of promotions earned on DPC recommendations have become an undeniable and incontrovertible right of the respondents which could not be cancelled or withdrawn.
ii) The existing Rules or Regulation if amended and notified by CDA will obviously come into field prospectively and not retrospectively. No such ground or reason was assigned in the withdrawal/cancellation order, albeit, the alleged intention or idea to amend the rules or regulation could not justify to undo or withdraw the promotion orders of the respondents under the garb of future amendments of rules/regulation which are non est. Even the rules are amended, the CDA would not be able to upset or disturb the past and closed transaction.

Conclusion: i) The promotion to the next grade in accordance with recommendations of DPC cannot be subsequently cancelled/withdrawn by the competent authority.
ii) The withdrawal of promotion orders cannot be made under the grab of future amendments of rules/regulations.

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4. Supreme Court of Pakistan
Uzma Manzoor Hameed-ur-Rehman Vice Chancellor Khushal Khan Khattak University, Karak and another v. Vice Chancellor Khushal Khan Khattak University, Karak and others
Civil Petition No.2913, 3224 & 3628 of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2913_2021.pdf

Facts: The University advertised some positions, and against some of the vacancies no precondition of past experience was mentioned as requirement in the advertisement, however, in short-listing the candidate, one petitioner was awarded 10 additional marks for past experience, which was challenged before the High Court by another petitioner who does not have any such past experience. The High Court allowed the petition and appointment of first petitioner was declared

null and void. The order was challenged by the university and the said aggrieved petitioner again before the High Court, who remanded the matter to the University for deciding it afresh. The same was assailed through civil petition.

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Issue: Whether it is justified to award extra marks for past experience in favor of a candidate against a post for which no precondition of past experience is mentioned in the advertisement?

Analysis: Obviously before finalizing a fit candidate by the competent authority or Selection Board, the testimonials and antecedents of each candidate shall be considered in accordance with the prescribed benchmarks but in order to maintain level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness should have been considered and adjudged in accordance with the qualification notified to apply in the advertisement and to extend any preference or favourable treatment, the settled terms and conditions cannot be disregarded. The selection process should be within the specified spectrum and attributes and due to breach of this protocol, the doctrine of legitimate expectation will come into sight for rescuing and ventilating the sufferings of the candidates who were under the bona fide belief that their applications for appointment will be considered without experience marks being not the precondition and if any additional marks are added or considered beyond the conditions to apply or contrary to the aforesaid Schedule that would be highly discriminatory to those candidates who applied as fresh candidates after completing their required education with the hope of securing jobs.

Conclusion: Though under the marking formula, the benchmark of 10 marks were dedicated to consider against the past experience of candidate which is not an offence but it would obviously apply only for those positions for which the experience was required as condition precedent to apply.

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5. Supreme Court of Pakistan
Aam Loeg Itehad & another v. The Election Commission of Pakistan and others
Civil Petition No.479-K of 2020
Mr. Justice Maqbool Baqar, Mr. Justice Sajjad Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._479_k_2020.pdf

Facts: The petitioner challenged in writ petition before High Court that the retired Judges could not have been appointed as members of the Election Commission on account of the bar contained in clause (2) of Article 207. The High Court declared that Commission is quasi-Judicial body therefore bar under Article 207 is not applicable and retired judges can be appointed so.

Issue: i) Whether the office of a member of the Election Commission is of a quasi-judicial nature?
ii) Why was an exception created in Article 207(2) in favour of the office of the CEC only and not for a member of the Commission?

Analysis: i) The nature of the office of a member of the Commission (or the CEC for that matter) must be determined by looking at the constitutional position… The conferment of the jurisdiction on the Commission cannot be part, or even indicative, of the true nature of the office of a member. It was, and is, simply an additional power, latterly conferred and ancillary to the essence of the office… This is one of the many reasons why, as noted above, the jurisdiction conferred by s. 9 is actually quite complex in nature, not easily resolvable by resort to the "normal" division into the three well known categories, which ordinarily work well enough.) We need not resolve the tension here, nor iron out the apparent contradiction. It suffices to note that clearly the legislature itself was, and remained, acutely aware that the jurisdiction could not be directly conferred on the Commission per se, i.e., acting as such. It could only be given under cover of a legal fiction requiring, for purposes of the jurisdiction, for the Commission to be regarded as that which it patently is not, i.e., an Election Tribunal. But if this is so (and the very constitutionality of a provision such as s. 9 can be regarded as being open to question) then one point is clear: it is not of the essence of the office of a member and does not, and cannot, touch upon the core or inherent nature of that office. …. that there is nothing in the would establish that the nature of the office of a member is quasi judicial.
ii) The present case is an example of the clearest of cases where the intent behind the constitutional amendments is so obvious, and so patently requires appropriate action so as not to defeat the manifest objective thereof, that the constitutional rule of "reading in" can and ought to be invoked in the narrow and limited sense. Accordingly, we hold that from the 22nd Amendment (2016) onwards, the words "or member of the Election Commission" are to be read in into clause (2) of Article 207 after the term "Chief Election Commissioner" so the two-year bar contained in Article 207(2) is not applicable to the member of Election Commission.

Conclusion: i) The office of member of Election Commission is not a quasi-judicial office.
ii) Two-year bar contained in Article 207(2) is not applicable to the member of Election Commission.

6. **Supreme Court of Pakistan**
Abdul Majid Afridi v. The State and another
Criminal Petition No.632 of 2019
Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._632_2021.pdf

Facts: The petitioner through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, sought cancellation of bail granted to the respondent by the Peshawar High Court.

Issue: i) Whether a person can directly approach to the High Court for pre-arrest bail without exhausting the remedy of approaching the court of first instance?
ii) Whether statement of one accused can be used against the other accused?
iii) What are the ingredients essential to dub any person as conspirator?

Analysis: i) There is no denial to the fact that the jurisdiction of Sessions Court and the High Court is concurrent in nature and the learned High court while adjudicating the matter has given cogent reasons especially when it is admitted that one of the deceased was himself a District & Sessions Judge. Even otherwise, the respondent has not availed one remedy, which was available to him while agitating his grievance before the High Court; therefore, he lost one opportunity causing no prejudice to complainant party.
ii) The statement of one of the assailants recorded under Section 164 Cr.P.C in all fairness is a statement of co-accused, hence, no deviation can be made against the established principle of law that statement of one accused cannot be used against the other in absence of any attending material produced by the prosecution.
iii) Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment

Conclusion: i) A person can directly approach the High Court for grant of pre-arrest bail because there is no denial to this fact that the jurisdiction of the Sessions Court and the High Court is concurrent in nature.
ii) The statement of one accused cannot be used as against the other in the absence of any attending material produced by the prosecution.
iii) instigation, engagement with co-accused and intentional aid are ingredients to dub any person as conspirator.

7. **Supreme Court of Pakistan**
Usman Ghani v. The Chief Post Master, GPO, Karachi and others
Civil Appeal No.1-K of 2021
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1_k_2021.pdf

Facts: The appellant was awarded punishment of stoppage of next annual increment etc on the basis of report of inquiry committee.

Issue: i) What is nature of Service Tribunal?
ii) How the authority conducting departmental inquiry should act?
iii) What is standard of proof in departmental inquiry?
iv) What is distinction between a regular inquiry or preliminary/fact finding inquiry
v) What is duty of service tribunal if order on the basis of inquiry report is challenged before it?

Analysis: i) The wisdom of setting up Service Tribunal under Article 212 of the Constitution is to deal and decide the matters relating to the terms and conditions of service of Civil Servants. Under Section 5 (2) of the Services Tribunal Act 1973, the Tribunal for the purposes of deciding any appeal be deemed to be a Civil Court and have the same powers as are vested in such court and even under Rule 18 of the Services Tribunals (procedure) Rules 1974, framed by the Federal Government in exercise of powers conferred by Section 8 of the Services Tribunals Act, 1973, the Tribunal may if it considers necessary, appoint an officer of the Tribunal to record evidence of a witness for and on behalf of the Tribunal and the parties and their Advocates may suggest any question to the witness and a Member may, besides such questions, put any other question to the witness.
ii) The foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution… The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and delinquent civil servant should be provided fair opportunity of being heard.
iii) The standard of proof looked-for in a departmental inquiry deviates from the standard of proof required in a criminal trial. In the departmental inquiry conducted on the charges of misconduct, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not a "proof beyond reasonable doubt", which strict proof is required in criminal trial.
iv) A distinction also needs to be drawn between a regular inquiry or preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show

cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defense and if any 5 witness is examined against him then a fair opportunity should also be afforded to cross examine the witnesses, whereas a discrete or fact finding inquiry is conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct is made out to initiate disciplinary proceedings.

v) If the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach just conclusion before confirming, reducing or setting aside the penalty.

Conclusion: i) Tribunal for the purposes of deciding any appeal be deemed to be a Civil Court.

ii) The authority conducting the departmental inquiry should be impartial and delinquent delinquent civil servant should be provided fair opportunity of being heard.

iii) The standard of proof is that of "balance of probabilities or preponderance of evidence"

iv) A regular inquiry is triggered after issuing show cause notice with statement of allegations whereas a discrete or fact finding inquiry is conducted at initial stage.

v) It is the legal duty of the Service Tribunal to give some reasons and discuss evidence.

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8. **Supreme Court of Pakistan**
Federation of Pakistan and others v. Muhammad Farhan
Civil Appeal No.3-K of 2021
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._3_k_2021.pdf

Facts: The appellant was awarded punishment of stoppage of next annual increment etc on the basis of report of inquiry committee.

Issue: How the tribunal should evaluate evidence in matters of departmental inquiry?

Analysis: The Court decisions are to be based on truth founded on evidence which is an indispensable obligation. The purpose of producing all material evidence is to assist the Court or Tribunal for reaching just conclusion in the matter, hence it is crucial for the parties to put forward all relevant and convincing evidence in support of case for meeting the standards of proof. The Court or Tribunal has to examine whether the evidence led in the matter was confidence inspiring or not... Even in the departmental inquiry the general principle of burden of proof is quite significant and whenever the matter is reached to the Tribunal arising out of the

case of misconduct in which major penalty has been imposed, the Court or Tribunal has to see in depth whether the charges against the delinquent has been proved in the inquiry or the inquiry was conducted in cursory or slipshod manner or in violation of principles of natural justice as in all fairness, due process of law is to be followed and respected.

Conclusion: Tribunal has to see in depth whether the charges against the delinquent has been proved in the inquiry.

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9. **Lahore High Court**
Ghulam Qasim and others. v. Member Board of Revenue Punjab and others
Civil Revision No.2486/2012.
The Chief Justice Mr. Justice Muhammad Ameer Bhatti
https://sys.lhc.gov.pk/appjudgments/2021LHC8002.pdf

Facts: The property was mortgaged and the mortgagor did not apply for the redemption of land-in-dispute within the stipulated period of sixty years, however, the honorable Supreme Court in a judgment (1991 SCMR 2063) declared the provisions of Section 28 of the Limitation Act, 1908, repugnant to the Injunctions of Islam and target date for the commencement of its effect was given as 31.08.1991 directing the Government to amend/promulgate the law accordingly. The respondents filed application to DDOR for redemption of mortgage which was accepted and revisions etc against said order were dismissed. The petitioners filed suit challenging the validity of orders passed by the revenue hierarchy. But the plaint was the plaint was rejected holding that the petitioners have no cause of action.

Issues: i) What is legal effect of removing the condition of sixty years for applying to get the mortgaged land redeemed?
ii) Whether evidence is required to prove limitation in cases of redemption of mortgaged land?

Analysis: i) By removing the condition of sixty years for applying to get the mortgaged land redeemed leaves no room for the mortgagees to oppose redemption process initiated on applying even after sixty years. Even otherwise before the judgment of apex Court in Maqbool Ahmad‟s case, came in the year 1991, declaring the condition to apply for redemption of mortgaged land within sixty years repugnant to Injunctions of Islam. Therefore, the respondents who were facilitated by the judgment of the apex Court were at liberty to move application for redemption of their mortgaged land at any time provided the mortgagors had not got its full ownership by obtaining any decree before 1991.
ii) Since the limitation imposed by the Limitation Act for redemption of mortgaged land had already been waived off by the honourable Supreme Court, therefore, question of limitation neither could be framed nor condensed in issue nor any evidence in this regard was required to be produced.

Conclusion: i) The mortgagees were at liberty to move application for redemption of their mortgaged land at any time provided the mortgagors had not got its full ownership by obtaining any decree before 1991.
ii) No evidence is required to prove limitation in cases of redemption of mortgaged land.

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10. **Lahore High Court**
Pacha Khan v. The State etc.
Criminal Appeal No. 1503 of 2015
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2021LHC8008.pdf

Facts: The appellant has assailed his conviction in offence u/s 9 of CNSA.

Issue: Whether the report by Chemical Examiner prepared into casual manners could be discarded.

Analysis: As general rule a report of Chemical Examiner being an expert's report has to be accepted as a whole but if it not prepared and written according to the prescribed procedure and law, it can be discarded by the court. The report of chemical examiner must mention each aspect regarding narcotics substance like chemical formula, percentage of intoxicant material i.e morphine and colour etc and such report always prepared upon a special type of paper having printed insignia/monogram bearing PFSA serial number and a stamp. Further, it also has to elaborate the intoxicating effect of such narcotics substance in the report. In this regard section 36 of the Control of Narcotic Substances Act, 1997 has mentioned the effects of imperfect report.

Conclusion: Incomplete report of chemical examiner cannot be tendered in evidence and ultimately its effect will be acquittal of accused person.

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11. **Lahore High Court**
Ali Ikram v. Mian Muhammad Ikram etc.
Crl. Revision. No. 55303/2021
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2021LHC8013.pdf

Facts: The Petition is filed before Deputy Commissioner by the father against his son with the averment that he has been illegally dispossessed from his house. The son replied that there was a civil suit for possession and permanent injunction is pending in the court of law between the parties, hence they were directed to seek the remedy from the court of law.

Issue: When the procedure is available in both laws under Special Law and General Law, which law shall be followed?

Analysis: This petition was filed under The Protection of Parents Ordinance, 2021 before the Deputy Commissioner. By giving special status to the Special Law, jurisdiction of the Deputy Commissioner is well intact. The observation is given in this judgment that the matter under discussion does not attract the procedure contained in Chapter XX of the Code of Criminal Procedure 1898, as well as the Deputy Commissioner has wrongly interpret the law. As far as the order of the Deputy Commissioner is concerned, it is noted that he has failed to exercise his jurisdiction on the pretext that the father should have his title declared from the civil court where the civil suits were pending. This appears to be a misinterpretation of sub-section 4 of Section 4 wherein the word "irrespective of any defence put up by the child" was mentioned with further word "including the defences about the construction or purchase of house the property". This word excludes the pendency of civil suit on the said subject before the civil court.

Conclusion: If the petition is filed under special law then the special law will prevail and the authorities have to exercise their jurisdiction remaining in the domain of that special law.

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12. **Lahore High Court**
Defence Housing Authority through its Secretary v. The learned District & Sessions Judge, Lahore & others
Writ Petition No.17688 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8055.pdf

Facts: The present petitioner(DHA) filed the writ petition during the pendency of the execution proceedings being aggrieved the orders of the learned executing court and the court of revisional jurisdiction u/s 47 read with order XXI of The Code of Civil Procedure 1908. The petitioner stated that the learned trial court issued robkar for the implementation of decree passed in favour of the respondents having no details of the files and without details the decree cannot be implemented.

Issues: Whether the executing court can go beyond the decree and judgment passed by the trial court when there is no specification of property in plaint?

Analysis: No doubt the executing Court cannot go behind or beyond the decree, but at the same time all ancillary questions arising out of the decree have to be decided by the learned executing Court as has been enunciated under section 47 of the Code, 1908. The learned Executing Court has powers to decide all ancillary questions submitted before it by the petitioner or the decree holder(s) as well as consider whether the decree is executable or not and then proceed further in accordance with law…. No detail of the plots with specification except 13 plots has been incorporated in the agreement to sell, on the basis of which the ex parte decree dated 20.03.2008 was passed; thus, before proceeding further, the learned

executing Court should have considered and determined that which plots were agreed to be transferred in favour of the decree holder(s) and whether the decree is executable or not, in the given circumstances.

Conclusion: The executing court has the powers to decide the questions arise out of the execution petition and should have considered and determined that which plots were agreed to be transferred and whether the decree is executable or not.

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13. **Lahore High Court**
Mst. Azizan Bibi v. Nasir Mehmood
Civil Revision No.547 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8041.pdf

Facts: This is appeal against decree passed in suit for specific performance.

Issue: i) Whether the failure on the part of the promisor/vendor to perform her part of contract could put her into a position of rescinding or revoking the contract?
ii) What is evidentiary value of document "marked" but not exhibited?

Analysis: i) The agreement between parties contained reciprocal promises on the part of vendor as well vendee and both the parties were required to perform their respective part of the contract in order to accomplish the sale transaction; however, the vendor failed to perform her part of reciprocal obligations. …. The failure on the part of the promisor/vendor to perform her part of contract could not put her into a position of rescinding or revoking the contract in terms of section 51 of the Contract Act, 1872. Moreover section 54 of the Contract Act, 1872 even makes the promisor liable to make compensation to the promise for any loss suffered by him due to non-performance of a reciprocal promise on the part of promisor.'
ii) The document which has not been produced and proved in evidence but only "marked" cannot be taken into account by the Courts as a legal evidence of a fact.

Conclusion: i) The failure on the part of the promisor/vendor to perform her part of contract could not put her into a position of rescinding or revoking the contract.
ii) Relying upon "marked" documents would be illegal.

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14. **Lahore High Court**
Muhammad Akhtar v. Abdul Rehman
Civil Revision No.13326 of 2019.
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC8048.pdf

Facts: The petitioner has challenged dismissal order of the learned trial Court upon his application under Order XXXVII, Rule 4, of the CPC, 1908 alongwith an application for leave to contest as well as application for suspension of operation

of the ex-parte decree against him.

.**Issues:** i) Whether it is necessary to explain each and every day of delay for condonation?
ii) What is effect of delay in receiving certified copies while dealing with condonation of delay.

Analysis: i) That the Limitation Act is a substantive law and after lapse of prescribed period provided under law valuable right accrues in favour of the opposite party in whose favour an order or judgment is passed and the party aggrieved has to explain delay of each and every day showing sufficient cause.
ii) The appellant applied for certified copy and he waited for a period of nearly eight months to inquire about the copy and after applying went into a deep slumber and did not enquire from the copying agency about copies. The appellant was extremely negligent in securing the certified copy of the judgment. The lethargic attitude adopted by the petitioner cannot be ignored because ignorance of law is no ground for condoning delay.

Conclusion: i) It is necessary to explain each and every day of delay for condonation?
ii) Delay in receiving certified is extremely negligent and cannot be ignored because ignorance of law is no ground for condoning delay.

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15. **Lahore High Court**
Dr. Muhammad Azeem Khan v. Federation of Pakistan etc.
W.P. No. 26387/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC8164.pdf

Facts: The petitioners are BPS-19 & BPS-20 Officers of the Police Service of Pakistan. The Central Selection Board (CSB) held its meeting for considering promotions wherein various officers including the petitioners were considered for promotion from BPS-19 to 20 and BPS-20 to 21 respectively, who earlier were superseded, however, the CSB again recommended "supersession" of the petitioners and did not promote them to BPS-20 or BPS-21. The petitioners being aggrieved of the supersession decisions by the CSB have filed these constitutional petitions.

Issue: i) Whether the High Court of a province has territorial jurisdiction in the matters where order is passed or action is taken by the authority established under the federal law which is performing function in connection with the affairs of the federation?
ii) Whether the time period of one year for reconsideration of a superseded civil servant as provided under the Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 is mandatory and must be observed by the CSB?

Analysis: i) If an authority was established under a federal law and performing functions in connection with the affairs of the federation, then regardless where the authority is

situated, if it passes any order or undertake any proceedings in relation to any person living or posted in any of the Province, then the High Court of that Province in whose territory, the order would effect that person, would be competent to exercise jurisdiction in the matter. No doubt the meeting of CSB took place in Islamabad and the impugned decisions and communication letters were also written at Islamabad. However, admittedly the petitioners are resident of Lahore and are posted at Lahore & Faisalabad. The impugned letters have been issued by respondent No.1 (Federal Government), which functions all over the country and the petitioners (who are aggrieved and effectee of the said impugned orders/letters) being residents of Lahore and posted at Lahore or Faisalabad, can agitate their grievance within the territorial jurisdiction of this High Court, in which the impugned orders have affected them.

ii) In view of explicit language and mandatory requirement of rule 10(5) of the Rules, the superseding civil servant can only be reconsidered for promotion after he earns one more PER of full one year. Mere fact that CSB in its two different meetings considered two different years' PERs, will not absolve it from following the mandatory requirement of rule 10(5) of the Rules. The obvious purpose of rule 10(5) of the Rules is to give sufficient opportunity and time to the superseded officer to improve and bring to an end the reasons on the basis of which the deferment took place. Therefore, the consideration for promotion of superseded officer must be from the date of supersession decision by CSB, so that he/she could know the reasons for supersession and may improve in one year if possible for his/her promotion in next meeting of CSB. Any other interpretation of this rule will render it redundant and purposeless.

Conclusion: i) The High Court of a province where the affectee of an order or proceedings is resident or posted has territorial jurisdiction in the matters where order is passed or action is taken by the authority established under the federal law which is performing function in connection with the affairs of the federation.

ii) The time period of one year for reconsideration of a superseded civil servant as provided under the Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 is mandatory and must be observed by the CSB and any other interpretation of this rule will render it redundant and purposeless.

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16. **Lahore High Court**

Shafqat Ali etc. v. Chairman, Pakistan Electronic Media Regulatory Authority, etc

ICA. No.213 of 2020

Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Muhammad Raza Qureshi

https://sys.lhc.gov.pk/appjudgments/2021LHC8186.pdf

Facts: The appellant and respondent no. 6 were issued license by authority under PEMRA. The appellant filed writ for cancellation of license of respondent no. 6 on the ground of alleged jurisdictional encroachment in his licensed area. The writ

petition was dismissed in limine, interalia, on the grounds; that the controversy raised by the appellant was factual in nature and same cannot be entertained in exercise of constitutional jurisdiction of this Court.

Issues: i) Where nature of controversy relating to domain of licensees can be resolved in exercise of constitutional jurisdiction?
ii) Whether Intra Court Appeal is maintainable against the Order passed by the learned Single Judge when law provided for one appeal?

Analysis: i) Under the Scheme of PEMRA Ordinance and rules framed thereunder a comprehensive mechanism has been provided to resolve the controversies in relation to the issuance of licenses, their respective operational domains and dispute resolution mechanism through Complaint Cells. The nature of controversy agitated before us itself concede that the ambit and scope of the prayer actually involves factual determination relating to domain of licensees requiring technical expertise, which this Court cannot resolve in exercise of its constitutional jurisdiction.
ii) The approval/order for issuance of License in proceedings under PEMRA Ordinance, Rules and Regulations framed thereunder was appealable under applicable provisions of law and the action/License impugned in Writ Petition was subject to appeal. Section 3(2) of the Law Reforms Ordinance, 1972 provides that no appeal will be available before a Bench of two or more Judges of a High Court from an order passed by a learned Single Judge in a constitutional jurisdiction if the petition arises out of proceedings in which the law applicable provided for at least one appeal., therefore, this Intra Court Appeal is not competent

Conclusion: i) Factual determination relating to domain of licensees requiring technical expertise, which this Court cannot resolve in exercise of its constitutional jurisdiction.
ii) Intra Court Appeal is not maintainable against the Order passed by the learned Single Judge when law provided for atleast one appeal.

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17. **Lahore High Court**
Board of intermediate & Secondary education v. Ayesha & three others.
ICA No. 96 of 2016
Mr. Justice Shams Mehmood Mirza, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5413.pdf

Facts: The minimum age of 12 years was fixed for enrollment/registration of students in Class 9 in terms of rules of calendar of Board of Intermediate and Secondary Education, Lahore and Board of Intermediate and Secondary Education, Gujranwala. Due to such rule the students who passed 8th class examination but did not meet the criteria of such rule were refused admission in 9th class which resulted into filling of Constitutional petitions.

Issue: Whether the minimum age requirement set down by the Board offends the fundamental right of education as enshrined in the Constitution of Islamic Republic of Pakistan, 1973?

Analysis: Right to education is a fundamental right as is described "an integral part of right to life" under Article 9 of Constitution of Islamic Republic of Pakistan, 1973. Article 25 of the Constitution provides the manner of providing of education and it does not call for restricting the right of children to receive education by imposing age restrictions. Imposing age restrictions on right to receive education would be negation of the right to life and to receive education as provided in Article 9 and 25-A of the Constitution as right to life includes the right to receive education… Although the Board has the power to organize, regulate, develop and control Intermediate Education and Secondary Education and to lay down conditions for admission to its examination, to determine the eligibility of candidates and to admit them to such examinations in terms of the Act but the Act cannot regulate the primary and elementary educational system and cannot prevent a student from receiving education at any age.

Conclusion: The rule restricting age for seeking admission to class 9 is considered ultra vires the Constitution is set aside.

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18. **Lahore High Court**
Muhammad Aslam etc. v. The State
Criminal Appeal No.197314 of 2018
Muhammad Akmal v. The State etc.
Criminal Revision No.135870 of 2018
Muhammad Ashraf v. Muhammad Aslam etc.
Criminal Revision No.185427 of 2018
The State v. Muhammad Akmal
Murder Reference No.32 of 2018
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Sardar Ahmad Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8084.pdf

Facts: The appellants filed criminal appeals against their convictions in murder case, the complainant filed criminal revision for enhancement of sentence awarded to respondents and trial court sent murder reference for confirmation or otherwise of the sentence awarded to the convict.

Issues: i) What is effect of late transmission of police papers to Medical Officer?
ii) How the joint identification parade of accused persons loses its credibility?
iii) What is effect of delay in sending the crime empties for forensic??

Analysis: i) The delay in submission of police papers i.e., inquest report, drafting, receiving and dispatch of complaint required for initiation of postmortem of dead body, creates doubt about availability of eyewitnesses at the relevant time. Such delay

normally happens when the occurrence is un-witnessed and the police during the intervening time usually remains busy in procuring the names of the witnesses or the complainant to cite them so in the police papers.
ii) If the identification parade is conducted jointly and all accused persons are placed in same number of row i.e. each at serial no. 04, this can possibly be a mark of help to witnesses for their identification. No credibility can be attached to such identification parade proceedings.
iii) If the crime empties are taken into possession prior to arrest of accused persons but sent for forensic with delay of eight days without any reasonable explanation and that also after arrest of accused persons, such act renders the veracity of positive forensic report doubtful and consequently, makes the evidence of the recovery inconsequential.

Conclusion: i) Delay in transmission of police papers to Medical Officer creates doubt about preparation of such papers in citing names of witnesses etc.
ii) No credibility attached to joint identification parade when all accused persons are placed in same number of row.
iii) The crime empties should be sent for forensic at earliest after taking them into possession.

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19. **Lahore High Court**
Chand Iqbal, etc. v. Province of the Punjab, etc
W. P. No. 26883 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC7833.pdf

Facts: The petitioners were appointed as Deputy Accountants (BS-16), in Finance Department, however, were terminated on withdrawal of recommendation by PPSC on the apprehension of using unfair means during recruitment examination. The termination is challenged along with the withdrawal of recommendations.

Issue: i) Whether after issuance of appointment letters against a permanent post, the appointees are considered as "Civil Servants"
ii) How the termination of probationer takes place with or without notice?
iii) Whether the fault on the part of PPSC, during conduct of recruitment examination falls in definition of "terms and conditions of service" thereby precluding High Court under article 212 to exercise jurisdiction?
iv) Whether PPSC has become functus officio after issuance or implementation on the recommendations for appointments?

Analysis: i) Since petitioners were appointed initially against permanent/sanctioned posts through prescribed procedure, therefore, are Civil Servants on probation.
ii) The termination of service for all kind of appointments is dealt with under Section 10 of the Act of 1974…. If no stigma of misconduct, inefficiency or corruption is attached with the termination of a probationer"s service then it is a

"termination simplicitor", therefore, no Show Cause Notice and subsequent procedure is required… However, if stigma is attached to termination, Show Cause Notice and proceeding thereafter are necessary

iii) When the petitioners have been terminated for a fault on the part of PPSC, during conduct of recruitment examination, which was prior to the issuance of appointment letter, therefore, cannot be construed to have any relation with the terms and conditions of petitioners" service. Nor the fault or consequent withdrawal by PPSC accrued during service after appointment letter, therefore, the disciplinary matters, if any, has no nexus with the service…. Since the termination in question does not involve terms and conditions of service after appointment as Deputy Accountants (BS-16) nor disciplinary proceeding during this service is in question, therefore, it can safely be held that "bar of jurisdiction, under the Article 212, is not attracted merely because petitioners are civil servants"

iv) PPSC does not become functus officio, in its stricto sensu, after sending the recommendations for appointment, because Regulations 26 and 63 allow withdrawal of recommendations. But where a decisive step had been taken, therefore, under the general principle of locus poenitentiae, the Commission was debarred from withdrawing the recommendations.

Conclusion: i) After the issuance of appointment letters against a permanent post, the appointees are considered as"Civil Servants".

ii) The termination of service for all kind of appointments is dealt with under Section 10 of the Act of 1974.

iii) The fault on the part of PPSC, during conduct of recruitment examination do not falls in definition of "terms and conditions of service". Therefore High Court is not precluded under article 212 to exercise jurisdiction.

iv) PPSC has become functus officio after issuance or implementation on the recommendations for appointments.

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20. **Lahore High Court**
Muhammad Liaqat Ali v. Majid Ali, etc
Writ Petition No.221102 of 2018.
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC8193.pdf

Facts: Through the present petition a challenge has been thrown to two separate orders of Rent tribunal passed on the same date on one hand, by virtue of a detailed order ALTC filed by respondent was rejected and the eviction of the said respondent was ordered and through the other order, issues were framed for determination of arrears of rent and utility bills.

.**Issues:** Whether in case application for leave to contest (ALTC) is rejected, the Rent Tribunal is bound to pass a final order rather framing of issues?

Analysis: Rent tribunal. While granting leave to contest, under Section 24 of the Punjab Rented Premises Act 2009 (Act) will direct the tenant to pay the rent due from him and also to deposit the future monthly rent as well as the outstanding utility bills. In case there is any dispute regarding the amount or rate of rent, the Tribunal has to tentatively determine the same.in case the ALTC is refused, the Rent Tribunal is bound to pass a final order. Cumulative reading of the above law would show that where an ejectment petition is filed by a landlord against a tenant ultimate result or a final order in that would be order of eviction of the tenant or the dismissal of the ejectment petition. "final order" instead of "ejectment order", leaves room for the Rent Controller to apply his judicial mind before passing a final order as required under the circumstances of each case may it be ejectment of a tenant or otherwise." Although Rent tribunal under section 26(3) of the Act could have passed any interim order before passing a final order, however, when refused the ALTC filed by respondent and passed a final order of ejectment on the ground of expiry of tenancy (and not as default), it had no jurisdiction, especially through an interim order to frame issues or to further adjudicate upon the matter, especially so when there was no rebuttal to the contents of the ejectment petition.

Conclusion: When application for leave to contest (ALTC) is rejected, the Rent Tribunal is bound to pass a final order and had no jurisdiction for framing of issues.

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21. **Lahore High Court Lahore**
Mst. Erum Latif v. Imtiaz Khan etc.
R.F.A. No.86 of 2017
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8226.pdf

Facts: This appeal was directed against judgment and decree of learned Civil Judge, Lahore whereby the suit of the appellant was dismissed.

Issue: i) Whether the legal heirs have locus standi to challenge the validity of a transaction after the demise of the owner?
ii) Whether the pleadings of the parties are substitute of evidence?

Analysis: i) It is a settled rule that if the owner of a property, despite knowledge of transactions, did not challenge the transaction in his/her lifetime for years, the legal heirs shall have no locus standi to challenge the validity of those transactions after the demise of the owner.
ii) It is a settled rule that pleadings of the parties are not substitute of evidence and that the averments made in the pleadings would carry no weight unless proved through evidence in court or admitted by the other side and that written statement filed by a defendant who was not later examined in the case could not be utilized nor any admission therein could be taken into the consideration unless proved through evidence.

Conclusion: i) The legal heirs have no locus standi to challenge the validity of a transaction after the demise of the owner.
ii) The pleadings of the parties are not substitute of evidence.

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22. **Lahore High Court**
Wasif Ali, etc. v. Mrs. Fakhra Jabeen, etc.
W.P.No.2111 of 2013
Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC7858.pdf

Facts: The wife claimed a plot/house as mentioned in column no. 16 of her Nikah Nama in lieu of her dower as mentioned in column no. 13 of Nikah Nama.

Issues: i) Whether columns No.13 and 16 of Nikahnama are to be read separately or in conjunction with each other?
ii) Whether entries in Nikahnama can operate against a person not privy to the document/Nikahnama.

Analysis: i) In construing a document, one has to read the same as a whole and not by picking and choosing a particular paragraph or portion thereof. It is trite law that deed of contract has to be construed strictly and literally without deviating or implying anything which was not supported by the intention of the parties and the language of the document. The dower specified in any Nikahnama, being consideration of the marriage, is an essential condition of the contract that has to be construed keeping in view the aforementioned principle. The wording of column no.16 is crystal clear to indicate that it refers to past transaction. It never covenants between the parties for some future liability, rather the same is considered as an explanation for an act done in compliance and in furtherance to agreed amount of payable dower. The entry in column No.13 is rider to entries in columns No.14, 15 and 16, so a bride in the first instance can lay her claim with regard to dower mentioned in column No.13 and if due to any reason, dower is not paid to her then she would become entitled to the property mentioned in column No.16 in lieu thereof.

ii) As far as operation of entries of a Nikah Nama against a person not privy to such contract is concerned, it is oft repeated principle that no one can be deprived of his property without due course of law. If the property mentioned in Nikahnama is not owned by the bridegroom, rather it is ownership of his father, mother or brother, who is neither signatory to the Nikahnama nor had agreed to transfer the same in favour of bride, entries in Nikahnama cannot be enforced against him/her and he/she cannot be deprived of his/her property. The situation, however, would become different when on behalf of bridegroom, his father, mother or any other person being owner of such property find mentioned in the Nikahnama becomes signatory of the Nikahanama, he/she binds himself/herself to

the terms and conditions and as such, he/she parts with the ownership rights of the property in favour of bride. In case any such property is jointly owned by a bridegroom and his father, mother or bother etc. who also becomes signatory of the Nikahnama, then the bridegroom along with said person would be equally liable.

Conclusion: i) The Columns No.13 and 16 of Nikahnama are to be read in conjunction with each other.
ii) The entries in Nikahnama cannot operate against a person not privy to the document/Nikahnama unless he is signatory on behalf of bridegroom.

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23. **Lahore High Court**
Mubashar Javed etc v. Province of Punjab etc
Writ Petition No.51104 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7944.pdf

Facts: The Petitioners invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution with the prayer that the term of office of a local government formed under Article 140A of the Constitution read with Section 30 of the Punjab Local Government Act, 2013 (the "Act of 2013") be declared illegal and unconstitutional.

Issue: i) Whether there is a difference between "term" and "tenure" of elected representatives under the Act?
ii) Whether the term of office mentioned in Section 30(1) of the Act is date specific or time specific or whether such time is inclusive or exclusive?

Analysis: i) In political theory, "term of office" and "tenure of office" are terms oftentimes contrasted with each other. Term of office refers to the period, either fixed by the Constitution or a Statute, within which a public official may hold office. Tenure of office, on the other hand, is the period within which a public official actually held office within a prescribed term. In other words, term of office is fixed, while tenure of office is variable.
ii) A combined reading of Section 30(1) and Section 126 of the Act of 2013 referred above makes it quite clear that if any local government is elected for a period of five years, the said period would be governed by Section 30(1) of the Act of 2013 and it would start on the date when first meeting of the elected local government was held and that too is subject to other provisions of the Act of 2013 which empowers the Government to dissolve the local government under Section 126 of the Act of 2013. The word 'term' mentioned in Section 30(1) of the Act of 2013 is fixed and definite in its nature. For the benefits of aforesaid term, it has to be read with other provisions of the Act of 2013 and the time for holding an office for a period of five years is not extendable by any means which would commence

on a date on which the members/representative of local government hold its first meeting.

Conclusion: i) Yes, there is a difference between "term" and "tenure" of elected representatives under the Act.
ii) The term of office mentioned in Section 30(1) of the Act is date specific and such time is inclusive.

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24. **Lahore High Court**
Crescent Jute Products Limited through Chief Executive Officer, Lahore v. Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 4 others
Writ Petition No.225428 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC7898.pdf

Facts: The Petitioner Company impugned the order passed by the Executive Director, Corporate Supervision Department, Company Law Division, Securities and Exchange Commission of Pakistan, Islamabad whereby it was held that the Company is liable to be wound up as its business has been suspended since 2011 and the Registrar of Company Registration Office Lahore was authorized to present a petition for winding up of the Petitioner Company. Later on, the Petitioner filed an appeal before the learned Appellate Bench of the SECP against the impugned order which was held as not maintainable due to proviso of Section 33(c) of the of the Securities and Exchange Commission of Pakistan Act 1997.

Issues: i) Whether the order by a commissioner or an officer of SECP to commence legal proceedings for winding up of company falls in definition of a sanction?
ii) Whether the appeal against sanction of commence legal proceedings for winding up of company is barred under Section 33 (1) (c) of the SECP?
ii) Whether the Petitioner has an alternate remedy under Section 485 of the Ordinance and the instant Writ Petition is not maintainable within the parlance of Article 199 of the Constitution?

Analysis: i) Perusal of clause (o) of sub-section (4) of section 20 of the SECP Act reveals that the Commission is empowered to perform any such functions which the Federal Government delegates to it or any other law enforced for the time being confers upon it. Serial No. 23 of the Schedule under the SECP Act, which has enlisted the powers and functions conferred on the Authority under the Ordinance to be exercised by the Commission clearly provides as under:- "23. To make application to the Court for winding up a company (section 309 of the Ordinance)." … Similarly, Section 309 of the Ordinance provides in an unequivocal term that an application to the High Court for the winding up of a company can be made by the Registrar, or by the Commission or by a person

authorized by the Commission in that behalf. However, sub-section (b) of Section 309 imposed a statutory condition that the Registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition. It is thus undeniably established that it is well within the power and competence of the Commission to pass a sanction authorizing the Registrar to petition for winding up of a Company if it has committed any default well within the meaning and instances of Section 305 of the Ordinance

ii) The literal interpretation of the expression 'sanction' well denotes that it is an official permission, an approval, authorization or ratification and while applying the same to case in hand, it cannot be equated with or even compared to a decision or prejudicial act since it is not a sort of final or definite outcome but an administrative official measure to draw up an action or cause before the appropriate forum and nothing more. This sanction is not a decision or judgment rather authorization to initiate legal proceedings before the Court, which is a forum to decide the matter in accordance with law and principles of legal justice.

By applying principle of literal interpretation, no inference can be drawn other than that the impugned sanction order falls well within the exception clause of Section 33 and appeal against such sanction authorizing initiation of legal proceedings before competent court of law is not amenable to appellate jurisdiction of Appellant Bench of SECP.

iii) Section 485 of the Ordinance clearly provides that any aggrieved person by an original order, directive or judgment of SECP, other than an order, directive or judgment passed on a revision or review application, may prefer an appeal before a bench of two (2) judges of the High Court within whose jurisdiction the order, directive or judgment is passed. This appeal has to be preferred as an alternative to making an application for revision or review to SECP… Now in view of Section 485 of the Ordinance, the Petitioner had an alternative efficacious remedy available, which was far from illusory and therefore this Petition has failed to meet the mandatory criterion necessary for justifying exercise of such extra-ordinary constitutional jurisdiction under Article 199 of the Constitution. In the light of aforesaid, the instant Petition is meritless hence dismissed.

Conclusion: i) The order passed by a commissioner or an officer of SECP to commence legal proceedings for winding up of company falls in definition of a "sanction".

ii) The appeal against sanction of commences legal proceedings for winding up of company is barred under Section 33 (1) (c) of the SECP.

iii) The Petitioner has an alternate remedy under Section 485 of the Ordinance therefore the instant writ petition is not maintainable within the parlance of Article 199 of the Constitution.

25. **Lahore High Court**
Akhtar Hussain v. Muhammad Jamal & 4 others
CR No. 64239 of 2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC7938.pdf

Facts: An application for restoration was filed for the restoration of an application which was already pending for the restoration of an appeal.

Issues: What would be the limitation period for filing of application for restoration of an early application for restoration of appeal?

Analysis: An application for restoration was filed for the restoration of an application, is an application under Section 151 CPC, therefore, neither provisions of Order XLI Rule 19 CPC nor provisions of Article 168 of the Limitation Act, 1908 are applicable to the same. It is observed that as no timeframe is provided under the law for filing application under Section 151 CPC for restoration of an earlier application for restoration of appeal that had been dismissed in default, therefore, the residuary Article 181 of the Limitation Act, 1908 would be applicable which provides limitation of three years for filing such applications, for which no specific Article provides any limitation.

Conclusion: The limitation period for filing of application for restoration of an early application for restoration of appeal will be three years in accordance with article 181 of Limitation Act.

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26. **Lahore High Court**
Asad Ali Khan v. Special Judge Rent etc.
Writ Petition No. 252439 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4969.pdf

Facts: The petition/tenant challenged the judgement of the Special Judge (Rent), whereby he was ordered to be evicted from the rented premises, on the ground that the said order of the Special Judge (Rent) is liable to be set aside as it did not determine the question of *Pagri* while deciding the said rent petition. The petitioner has challenged the said order/judgement despite the fact that the said order of rent controller was modified on appeal by the petitioner/tenant and the matter was remanded to the Special Judge (Rent) for decision afresh only to the extent of the payment of *Pagri*.

Issues: i) How the extension of period of tenancy is dealt with in law?
ii) Whether the determination of question of *Pagri*, taken as defence by a tenant in an eviction petition, is *sine qua non* for deciding an ejectment petition?

Analysis: i) Where the period of tenancy has expired, the tenant who relies upon its extension has to establish through cogent evidence the time period for which it has been extended otherwise, oral extension would be tantamount to extension of one month only and such tenancy has got to be extended on each and every successive month and terminable at one month's notice.
ii) It is for the petitioner to establish that as per terms and conditions of the agreement; tenancy could not be terminated without refund of *Pagri.* However the agreement in the present case is silent to that effect and Pagri is claimed to have been subsequently paid, therefore the question of *Pagri* cannot be clubbed with the question of expiry of period of tenancy in this case and both are to be dealt with separately.

Conclusion: i) The extension of period of tenancy has to be established through cogent evidence.
ii) An eviction order of a rent controller cannot be held liable to be set aside on the sole ground that the impugned order/judgement did not decide the question of *Pagri* raised by the petitioner/tenant in defence to the ejectment petition.

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27. **Lahore High Court**
Muhammad Riaz v. ASJ etc.
Writ Petition No. 126598 of 2017
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5432.pdf

Facts: The petitioner through constitutional petition challenged an order passed by the District and Session Judge as Court of Protection constituted under Mental Health Ordinance, 2001 vide which Court of Protection recalled its earlier order whereby petitioner was appointed as guardian of respondent no. 02 who was stated to be suffering from mental disorder.

Issues: i) Whether it is mandatory to keep a person under observation in a psychiatric facility for the assessment of his mental health?
ii) Whether the Court of Protection can appoint guardian of person on the basis of reports only?
iii) Whether the Court of Protection becomes *functus officio* after appointment of Guardian?
iv)What is the status of an order passed by a competent court but without following proper procedure?
v) If an order cures a manifest illegality whether extraordinary/constitutional jurisdiction can be exercised?

Analysis: i) For assessment of the mental health of a person, it is not mandatory requirement to keep him under observation in a psychiatric facility for forming a medical

opinion relating to assessment of his mental health. The medical practitioners/doctors can adopt the procedure most suitable on the case to case basis and if they require admission of patient for assessment or treatment is required he may be admitted to a psychiatric facility.

ii) When originally the guardian has to be appointed, the Court of Protection has to observe the procedure mentioned in section 30 of Mental Health Ordinance, 2001 according to which the Court of Protection has to refer the matter to any Medical Board or examine the concerned person itself before passing the order.

iii) No finality is attached to the order of appointment of guardian of a person allegedly suffering from mental disorder as the court always retains the power to amend, modify, set aside and recall such order to determine the welfare of such person and secondly, the Court of Protection is entitled to get a person suffering mental disorder re-examined in order to see whether the said person has attained his mental health in the light of section 45 of the Mental Health Ordinance, 2001.

iv) An order passed by a court of competent jurisdiction without following the procedure cannot be said to be an order passed with proper exercise of jurisdiction especially when the result reached therein has caused prejudice to any of the party and is negated by the material that has later on been brought on record. A court should not prejudice any person and where any court did not comply with the mandatory provisions of law or omitted to pass an order required by law in the prescribed manner then the litigant/parties cannot be taxed, much less penalized for the act or omission of the court.

v) When any order, even passed without jurisdiction, cures a manifest illegality and substantial justice has been done then extraordinary jurisdiction ought not to be invoked. Object of constitutional jurisdiction is to foster justice and not to perpetuate illegality and the jurisdiction must be exercised in aid of justice.

Conclusion: i) It is not mandatory to keep a person under observation in a psychiatric facility for the assessment of his mental health

ii) Court of Protection has to refer the matter to any Medical Board or examine the concerned person itself before passing the order regarding mental disability of a person.

iii) Court of Protection always retains the power to amend, modify, set aside and recall its order to determine the welfare of person.

iv) An order passed by a court of competent jurisdiction but without jurisdiction is not sustainable in the eye of law if it cased prejudice to any party.

v) If an order cures a manifest illegality then extraordinary/constitutional jurisdiction ought not to be invoked to set a side such order even the same has been passed without jurisdiction.

28. **Lahore High Court Lahore**
Akbar Ali v. Shahid Hayat Khan
F.A.O. No.36/2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2020LHC4347.pdf

Facts: A suit for recovery was filed on the basis of cheque in the district where the cheque was presented and dishonored. The defendant filed application under order VII Rule 10 CPC for return of plaint to presented before a court in the district within whose jurisdiction the cheque was issued. The said application was dismissed.

Issue: Which court will have territorial jurisdiction when a cheque is issued in one district and dishonored in other district?

Analysis: Where the cheques were issued in one district and dishonoured in other district, the suit can not only be filed at the place where the defendant resides or carries on business or works or has a branch office where cause of action has accrued but the same can also be filed in the district in the territorial jurisdiction of which the said cheques were presented in the other Bank by the plaintiff for encashment and were dishonoured as courts at both the places would have concurrent jurisdiction. In such situation, the respondent would have the option of choice of forum for filing recovery suit on the basis of doctrine of election, which not only is applicable to the available remedies but also to the available forums, if they have concurrent jurisdiction to try a matter within its jurisdiction subject to exception of mala fide choice of forum which has to be established by pleading details of such mala fide.

Conclusion: Courts at both the places would have concurrent jurisdiction.

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29. **Lahore High Court**
Nargis Naureen. v. Judge Family Court, Multan, etc.
W.P.No.5927 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC3965.pdf

Facts: The petitioner has filed a family suit for recovery of dower, maintenance etc and along with suit filed an application under order XXXIX Rule 1 & 2 to restrain the defendant to alienate the property which is given to her in Nikahnama. The said application for temporary injunction was dismissed by family court.

Issues: i) Whether application under order XXXIX Rule 1 & 2 can be treated as an application u/s 21 of Family Court Act?
ii) Whether dismissal of an application under Section 21-A of the Family Courts

Act, 1964, amounts to a final determination of claim and appeal will lie against this order?

Analysis: i) Besides mere wrong citing or relying on wrong provision of law would not be of any consequence for the court to assume jurisdiction, provided the court otherwise had jurisdiction under the Constitution, statue or any other provision of law to pass the order… The application filed by the petitioner for temporary injunction/interim relief was in fact for all intents and purposes an application under Section 21-A of the Act (which is a remedy provided under the law) and the court had jurisdiction to entertain and decide the same.

ii) Appeal under Section 14 of the Act is not barred against every interlocutory order and remedy of appeal, unless specifically barred, would be available against a decision relating to a right or a remedy provided under the law subject to the condition that finality is attached to such an order or decision and nothing remains to be further decided between the parties on the said issue. In view of the above, without commenting upon the merits of the case, the dismissal of application filed under Section 21-A of the Act is tantamount to declining the relief of preservation and protection of property that may be available to a party (if it was otherwise entitled for the same) during the pendency of suit, which amount to final determination of claim to that extent and hence, cannot be treated as an interlocutory order that does not finally determine anything. Thus such order would amount to 'a decision given' in terms of Section 14 of the Act, hence, an appeal against the same would be available before the appellate court. Consequently, this constitutional petition is not maintainable due to availability of alternate remedy and the same is dismissed as such.

Conclusion: i) The application under order XXXIX Rule 1 & 2 can be treated as an application u/s 21 of Family Court Act.

ii) Dismissal of an application under Section 21-A of the Family Courts Act, 1964, amounts to a final determination of claim and appeal will lie against this order.

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30. Lahore High Court

Dr. Manzoor Hussain Malik v. Mahar Muhammad Khalid Ahmad, Additional Commissioner (Revenue), Bahawalpur and two others

I.C.A. No. 174 of 2021 / BWP

Malik Ahmad Nawaz. v. Ashraf Bhatti and two others

I.C.A. No. 81 of 2020 / BWP

Mr. Justice Anwaarul Haq Pannun, Mr. Justice Abid Hussain Chattha

https://sys.lhc.gov.pk/appjudgments/2021LHC8059.pdf

Facts: The petitioners seek the initiation of contempt proceedings for non-implementation of injunctive orders.

Issues: i) What are the principles for initiation of contempt proceedings and appeal against orders passed in contempt proceedings?
ii) What is the distinction between civil contempt, criminal or judicial contempt?

Analysis: The principles deduced from the above deliberations are as follows:

(i) Civil contempt can only be initiated if there is an order which is duly served upon the alleged contemnor and that there is „willful" and „mala fide' non-compliance of the said order by the contemnor who is a party in the proceedings in his personal capacity;

(ii) Contempt proceedings are between the contemnor and the Court which provide no vested right to any aggrieved person to press for enforcement of contempt proceedings against the alleged contemnor;

(iii) Contempt proceedings can be initiated suo motu by the Court or at the instance of any party who has the status of a mere informer. However, once the information is laid before the Court, the informer loses his further right to pursue the same;

(iv) Contempt proceedings or an appeal there against does not lie at the desire of the litigant party;

(v) The primary purpose of civil contempt is always vindication of dignity of the Court and administration of justice but it is also an additional tool for the implementation and clarification of Court orders employed in the manner and to the extent in the sole discretion of the Court;

(vi) Further directions in contempt proceedings do not constitute contempt but their „willful disobedience" may give rise to fresh contempt and may eradicate bona fide as a defense;

(vii) Appeal is only competent as of right against an order of conviction or sentence but not against an order refusing to convict or resulting in exoneration;

(viii) As a general and normal rule, appeal is not maintainable regarding orders refusing to initiate or dropping the contempt proceedings at any stage after due satisfaction of the Court;

(ix) As an exception to the general rule, an appeal is competent regarding orders passed in contempt proceedings which are inherently without jurisdiction or void or coram non judice or for multiple reasons in the discretion of the appellate Court are of the nature requiring exercise of jurisdiction in appeal;

(x) Any observations made by the Court in original or appellate proceedings have no bearing or effect on the merits of any pending adjudication between the parties to the lis before any judicial forum; and

(xi) In exceptional and testing times, inherent discretion of the Court can be enlarged and invoked to thwart any real threat to judicial

authority and constitutional disorder.

ii) Criminal contempt brought the moral authority of the Court into disrepute and encompasses a host of situations which the Court by exercising its contempt jurisdiction is required to deal effectively to ensure due process regarding all aspects of free and fair trial as ordained by applicable law without causing prejudice to the rights and interests of all stakeholders. Judicial contempt aims to protect, preserve and uphold the authority, sanction and dignity of the Court. However, civil contempt is conspicuously different and is deliberately expanded in terms of its manifestations and ramifications. It is the only type of contempt that speaks of an „order" and includes the expression „interim" or „final", a „judgment" or „decree", or a „writ or order" passed in constitutional jurisdiction within the contemplation of the overarching term „order" employed in Section 2(a) of the Ordinance.

Conclusion: i) Contempt proceedings are between the contemnor and the Court.
ii) Criminal contempt brought the moral authority of the Court into disrepute. Judicial contempt aims to protect, preserve and uphold the authority, sanction and dignity of the Court. Civil contempt that speaks of an „order" and includes the expression „interim" or „final",

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31. **Lahore High Court**
Mst. Saira Fatima Sadozai v. D.I.G. Investigation, etc
Writ Petition No.64405 of 2021
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC7813.pdf

Facts: The petitioner has challenged the vires of order of DIG where in transfer of investigation was transferred from one circle to another circle after framing of charge.

Issues: i) Whether after framing of charge the re-investigation can be ordered?
ii) Whether the opinion of District Standing Board can be sole ground for change of investigation?
iii) What requisites should be followed while passing order of re-investigation?

Analysis: i) If after completion of investigation and sending challan report prepared under Section: 173 Cr.P.C. in the Court, it is felt or highlighted that during already conducted investigation, certain aspects regarding basic/constituting elements of the offence or version of the accused could not be investigated, new facts/better evidence or further information has become available which has direct/essential/vital nexus with alleged crime, proclaimed offender in the case has been arrested and important piece of evidence like recovery of weapon of offence is to be collected and other allied matters to be investigated, defects of vital nature in already conducted investigation has been marked/detected/pointed

out, already conducted investigation remained unsatisfactory due to non-availability of required evidence or through induction of false evidence due to corrupt behavior of Investigating Officer (concerned), then, non-conducting of further or fresh/reinvestigation would virtually amount to putting a seal on human error and with no opportunity to make amends although it be possible to do so.

ii) Opinion of District Standing Board cannot be made as a "sole" basis for change of investigation; District Police Officer is not bound to accept said opinion blindfoldly, rather after receipt of said opinion, he has to examine entire facts and then while giving express/valid reasons in writing to pass order regarding change of investigation or otherwise, as the case may be.

iii) D.I.G. Police (Investigation) after receipt of opinion of District Standing Board must examine the quality of already conducted investigation as well as conduct of first investigating officer and even without mentioning that which fact of the case has earlier not been seen/verified and now requires verification, transferred investigation through impugned order. Therefore, order does not carry valid/express reasons in writing by D.I.G. Police (Investigation), Lahore, hence, same is not fulfilling spirit of Article 18A of Police Order, 2002 as well as Section: 24-A of the General Clauses Act, 1897 and thus not sustainable.

Conclusion: i) After framing of charge the re-investigation can be ordered.

ii) The opinion of District Standing Board can be sole ground for change of investigation.

iii) The order must mention what has earlier not been seen/verified and now requires verification.

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32. **Lahore High Court**
Rao Khalid Iqbal v. State, etc.
Crl. Rev. No.94/2018
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC7894.pdf

Facts: The petitioner filed criminal revision petition against an order of trial court vide which application of petitioner, filed for recalling of order of closing right of cross examination on PW, was dismissed.

Issues: i) What is duty of court regarding cross examining, in case the accused is not legally represented?

ii) What is worth of cross examination conducted by the accused?

Analysis: i) There is no denial to the fact that in matters other than entailing capital punishment, no right is explicitly available by Statute or rules to the accused to secure legal representation at State expenses, however, in such like cases it becomes the duty of the trial judge himself to put up a cross examination on behalf of an unrepresented accused.

ii) The cross-examination is a specialized job, which can only be made by a

counsel and the accused having no sufficient expertise to cross-examine witnesses which cannot be considered as substitute to the cross-examination conducted by a defence counsel. The right of cross-examination is the right of the accused, which right he/she may forgo but one which he/she cannot be deprived of.

Conclusion: i) In case of unrepresented accused, the trail judge under obligation to put up a cross examination.
ii) The cross examination conducted by the accused cannot be considered substitute of cross examination conducted by the counsel

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33. **Lahore High Court**
C.R. No.3542 of 2014
Rajan v. Amjad Ali and others
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC7819.pdf

Facts: A blind female challenged the mutation on the basis of oral sale being fraudulent.

Issue: i) Upon whom onus to prove shifts in case of denial of mutation by a blind female?
ii) Whether evidence can be allowed regarding facts not mentioned in pleadings?
iii) What should be precautionary measures while entering into sale with blind female?
iv) What should be the responsibilities of public functionaries in sanctioning mutation of blind female?

Analysis: i) When the existence of transaction of sale and payment of consideration were outright denied by the lady who was a septuagenarian and blind. The moment she appeared before the court and made her statement on oath that she had not transacted for the sale of her property nor did she receive any valuable consideration and specifically denied having ever appeared before the concerned functionaries for attestation of mutation; heavy onus shifted upon the respondents to prove, not only the claim of genuineness of mutation proceedings but also the original transaction of sale itself.
ii) It is settled rule that material facts shall be mentioned in the pleadings and that evidence could be led to amplify the same. In a case where a material fact is not pleaded in the written statement neither any evidence could be allowed nor, if recorded, shall it be admissible in law.
iii) In case of blind female, it was also necessary for the respondents to ensure that she was duly represented and had the independent advice of some near one and dear one like son, brother, husband or father if alive, who should have been present at the time of transaction to make a blind old lady fully and reliably comprehend the alleged arrangement of oral sale as well as to ensure the security of cash if paid at that time. Before it could be convincingly claimed that she had

thumb-marked the document, it was necessary for the respondents to prove that she entered the deal with her free-will and volition.
iv) Where the alleged vendor is a blind person, extraordinary care is expected of the public functionaries, i.e. revenue officers in this case, to ensure the authenticity of the transaction by making necessary inquiry that the vendor was accompanied by some close male relative and that independent advice was available and the person concerned was made to understand the transaction which they understood with its clear impact.

Conclusion: i) Onus to prove, in case of denial of mutation by a blind female, shifts to the beneficiary made her statement on oath.
ii) Evidence cannot be allowed regarding facts not mentioned in pleadings?
iii) What should be precautionary measures while entering into sale with blind female?
iv) Extraordinary care is expected of the public functionaries, i.e. revenue officers in the case of blind female, to ensure the authenticity of the transaction.

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34. **Lahore High Court**
Nazir Ahmed (deceased) through L.Rs. v. Shaukat Ali (deceased) through L.Rs. and others
C.R. No.2452 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC7926.pdf

Facts: An application for making arbitration award as rule of court and an application for setting aside award was filed.

Issues: i) Whether arbitrators can assume jurisdiction if real owner is not party to arbitration agreement?
ii) Whether Court can approve an award issued by arbitrators in respect of property not owned by either party but owned by Municipal Committee?

Analysis: i) Real owner was not party or signatory to the Arbitration Agreement. Being not a privy to the Arbitration Agreement, Arbitrators could not assume jurisdiction to settle any question of title qua the property. In view of this inherent jurisdictional defect, the entire proceedings for alleged Award stood vitiated.
ii) Ownership being vested in Municipal Committee, it is surprising that the respondent claimed that in terms of the Award he was declared to be entitled to the transfer the ownership of shop which at that time did not vest in the petitioner. Obviously without the consent or permission of the real owner neither rights could be assigned, nor any third person could be transferred the permissive right of occupation without the prior written permission of the Municipal Committee. It could be only after impleadment of Municipal Committee and hearing the said authority that any determination could have been made which was not the case at

hand. The Arbitrators did not give any reason as to how they could assume jurisdiction firstly in respect of the property that did not belong to the petitioner or respondent or in respect of the shop which was not owned by the petitioner and was still the ownership of the Municipal Committee which was not a party to the so-called Reference. In view of the reasons supra,

Conclusion: i) Arbitrators cannot assume jurisdiction if real owner is not party to arbitration agreement?
ii) The court cannot approve an award issued by arbitrators in respect of property not owned by either party but owned by Municipal Committee.

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35. **Lahore High Court**
Khuda Bakhsh v. Province of Punjab
Civil Rivision. No.2489 of 2012
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8116.pdf

Facts: The petitioner filed suit for declaration on the basis the High Court in a constitutional petition allowed the vendees from Chotu a right to purchase the land. The grievance voiced in the suit was that the order in the Constitutional petition was not implemented by the concerned functionaries, in result, some of the purchasers instituted civil suits which were allowed and they were granted relief while the petitioner was not accorded the same relief. In this backdrop the petitioner claimed a declaration to the effect that he was owner in possession of the land as purchaser and that he shall be allowed to purchase the land @Rs. 100/- per unit regarding average price of the year 1962. Suit was contested by the Province of the Punjab and ultimately dismissed.

Issues: i) Whether the petitioner is bound to suffer consequential results of not accepting/challenging the offer or depositing the requisite amount assessed by Settlement Department?
ii) Whether the judgment in personam has any universal application like judgment in rem?

Analysis: i) The petitioner was offered to purchase the land in compliance with Order in writ petition but the petitioner admits to have not paid or deposited the amount nor challenged the price assessed in appeal for anywhere in the hierarchy of jurisdiction. Instead the suit was filed after 14 years which obviously was barred by time. Be that as it may, the petitioner did not make necessary compliance to the Order of this Court for the purchase of land and it was the petitioner who was himself to blame for not availing the option and, therefore, the grievance voiced by the petitioner as to the non-implementation of the Order was ill-founded. If the offer could not materialize the petitioner shall fault himself for the consequential results of not accepting the offer or depositing the requisite amount.

ii) The plea of discrimination was also misconceived and untenable. If in other cases with different facts some indulgence was sought from the court and relief was granted for the implementation of the earlier order that will not extend any help to the petitioner who had to make out his own case on the strength of the material or evidence produced in his own suit. The other judgments being judgments in personam could not have any universal application unlike judgments in rem, therefore, the petitioner was rightly non-suited by the courts below by properly analyzing his conduct from the evidence on record.

Conclusion: i) The petitioner is bound to suffer consequential results of not accepting/challenging the offer or depositing the requisite amount assessed by Settlement Department
ii) The other judgments being judgments in personam could not have any universal application unlike judgments in rem.

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36. **Lahore High Court**
Anjum Sarwar Butt and another v. Addl. District Judge, Gujranwala and others
W.P. No.54744 of 2019
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC7797.pdf

Facts: After one month of filling of suit for pre-emption the court ordered for deposit of zar-e-soim. The same was deposited but defendant filed application claiming therein that the suit was liable to be dismissed for violation of the mandatory provision of section 24(2) of the Punjab Pre-emption Act, 1991 as zar-e-soim had not been deposited within time i.e. within one month of filling of suit.

Issues: Whether suit for pre-emption is liable to be dismissed if the court omits to pass the order of deposit of zar-e-soim?

Analysis: True that the provisions of section 24 are mandated to verify the bona fide of the preemptor and that is why a consequential penalty in the event of violation of the order is provided; nevertheless, the provision of law pre-requires a direction for deposit of the amount of zar-e-soim with a view to attract the consequential penalty and obviously the party cannot suffer on account of any omission on the part of the court to give such direction.

Conclusion: The suit for pre-emption not to be dismissed if the court omits to pass the order of deposit of zar-e-soim.

37. **Lahore High Court Lahore**
Senior Air Hostess Samina Saleem Qureshi v. Pakistan International Airlines and others
Civil Revision No.76153 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8221.pdf

Facts: The petitioner was appointed as airhostess but her decree was found bogus hence she was dismissed. She filed suit for declaration to challenge the order of termination/dismissal wherein her plaint was rejected under Order VII, Rule 11, C.P.C.

Issue: Whether the suit for declaration to challenge the order of termination/dismissal from service of an employee in a statutory corporation having no statutory rules is maintainable.?

Analysis: It is a settled rule that in the absence of any statutory rules the employee cannot claim the rights and privileges as are available to civil servants. Instead the rule of master and servant would attract which is to the effect that unwilling employer cannot be compelled to accept the services of an employee who had been removed from service and if the employee feels that the order was not just or fair or suffered from any mala fide, the remedy will be to sue for damages and not for declaration for subsistence of service as no declaration could be issued as to the subsistence of a contract that by its own terms and conditions was terminable at the option of the employer.

Conclusion: The suit for declaration to challenge the order of termination/dismissal from service of an employee in a statutory corporation having no statutory rules is not maintainable.

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38. **Lahore High Court**
Murder Reference No. 17 of 2018 2
Mst. Ramzana Bibi v. the State &another
Criminal Appeal No. 117-J of 2018
Muhammad Ashraf @ Anwar Sayyal & another v. The State & another
Criminal Appeal No. 96-J of 2018
Inayat Ali v. The State & another
Criminal Revision No. 84 of 2018
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7877.pdf

Facts: The appellants assailed their conviction and sentence in murder case.

Issue: i) Under what circumstances evidence of a chance witness is accepted?

ii) Whether identification parade proceedings missing essential requirement can be relied upon?

Analysis: i) The evidence of a chance witness requires very cautious and close scrutiny. He must adequately explain his presence at the crime scene. In case of a chance witness, the prosecution is burdened to show that what were those special reasons that instead to be at his ordinary place he was present at a point where he was not supposed to be? If the reasons are sound, convincing, logical and corroborated from other circumstances, the statement of a chance witness can be accepted otherwise not.

ii) The important features for a valid identification parade are that the proceedings shall be conducted under the supervision of a Magistrate; proceedings shall be held inside the jail; identification shall be carried as soon as possible after the arrest of suspect; once the arrangements for proceedings have been undertaken, the Officer investigating the case and any Police Officer assisting him in that investigation should have no access whatever either to the suspect or to the witnesses; list of all persons included in identification should be prepared, which should contain their names, parentage, address and occupation; the suspects shall be placed among other persons similarly dressed up, of the same religion and of same social status; there shall be proportion of 8 or 9 such persons to one suspect; the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called upon to make identification; each witness shall be brought up separately to attempt his identification; care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communication to pass between witnesses who have been called up and those who have not; the Magistrate conducting the proceedings must take an intelligent interest in the proceedings and not be just a silent spectator of the same bearing in mind at all times that the life and liberty of someone depends only upon his vigilance and caution and that he is required to record in his report all the precautions taken by him for a fair conduct of the proceedings

Conclusion: i) If the reasons regarding presence of chance witness at alleged place of occurrence are sound, convincing, logical and corroborated from other circumstances, the statement of a chance witness can be accepted otherwise not.

ii) Identification parade proceedings missing essential requirement cannot be relied upon.

39. **Lahore High Court**
Muhammad Shakeel & 03 others v. Muhammad Tariq & 04 others.
Writ Petition No. 3610 of 2014
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC8127.pdf

Facts: During the pendency of suit for pre-emption, plaintiff died and his legal heirs were impleaded as party. The defendants filed application for rejection of plaint on the ground that after death of the predecessor-in-interest of petitioners, the petitioners have lost their alleged right of pre-emption as they have no personal property at the time of sale and the suit is not maintainable.

Issues: Whether the right of pre-emption is transferable and inheritable to the legal heirs of the deceased plaintiff?

Analysis: According to 'Hanfi' School of thought, right to sue with regard to pre-emption extinguishes after the death of the pre-emptor and the suit cannot be prosecuted by the heirs of the deceased. In Pakistan every Muslim presumes to be 'Hanfi Muslim' except pleaded contrary to it. The august Supreme Court of Pakistan and Hon'ble High Courts, keeping in view above mentioned facts, frequently held that pre-emptive right is not inheritable and the legal heirs will have no right to continue with the pre-emption suit on the death of pre-emptor during the pendency of pre-emption suit. The position altogether altered with the promulgation of the Punjab Pre-emption Act, 1991 and North-West Frontier Province Pre-emption Act, 1987 which repealed the past law and introduced section 16. Per section 16 thereof, makes the right of pre-emption heritable in all circumstances where a pre-emptor had died after making any of the demands contemplated by section 13 of the same Act. The Federal Shariat Court also declared that the provision of Section 16 is not repugnant to the injunction of Islam. Therefore, in presence of Section 16, right of pre-emption is heritable.

Conclusion: The right of pre-emption is transferable and inheritable to the legal heirs of the deceased plaintiff.

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40. **Lahore High Court**
Suba through L.Rs and others v. Mst. Halima Bibi etc.
Civil Revision No.683-D of 2009.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7961.pdf

Facts: The respondent filed suit which was dismissed and appeal was preferred. During pendency of appeal suit was withdrawn with permission to file fresh. The fresh suit was filed and dismissed. Against order of dismissal, appeal was filed which was allowed. The petitioner challenged the order of appellate court on the ground that suit was barred by limitation.

Issues: Whether after withdrawal of earlier suit limitation will be counted from the date of institution of earlier suit or of subsequent suit?

Analysis: There is no cavil to the legal proposition that after withdrawal of earlier suit limitation will be counted from the date of institution of that suit as once limitation starts on the same cause of action, it does not discontinue. The object of permission to file a fresh suit is that technicalities of law may not create hurdle in the way of the plaintiff but in no case, the Rule discussed (supra) gives protection to a plaintiff from the bar of limitation. Furthermore keeping in view the said Rule, a plaintiff will be responsible for the time he/she consumed in the earlier suit as the said period shall be counted against him/her. In case of the institution of a fresh suit on the basis of permission granted under Rule 1 of Order XXIII, C.P.C. the plaintiff is bound by the law of limitation in the manner as if the first suit had not been instituted. Therefore, it will be seen that not only the period consumed in the form of earlier suit instituted by the plaintiff is to be counted and not to be excluded for the purpose of limitation and applicability of section 14 of the Limitation Act has also been excluded as it is to be deemed that no first suit had earlier been instituted.

Conclusion: After withdrawal of earlier suit limitation will be counted from the date of institution of earlier suit.

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41. **Lahore High Court**
Ghulam Dastgeer v. The State and another
Criminal Appeal No. 2323 of 2015
Mr. Justice Muhammad Tariq Nadeem.
https://sys.lhc.gov.pk/appjudgments/2021LHC8201.pdf

Facts: The appellant/accused was convicted in a trial under section 302/34 PPC on the basis of his plea of self-defence in his statement before trial court under section 342 PPC despite the fact that the trial court disbelieved the prosecution evidence.

Issues: i) Whether the defence version of an accused in his statement recorded under section 342 Cr.PC is to be accepted or rejected as a whole
ii) Whether accused can be convicted on the statement of accused u/s 342 Cr.P.C when the prosecution failed to prove its case beyond shadow of doubt?

Analysis: i) The defence plea can be accepted or rejected in *toto* and the practice of picking and choosing some sentences favoring the prosecution in isolation of those favoring the accused/appellant is strictly prohibited by the law.
ii) It is the primary duty of the prosecution to establish its own case independently instead of depending upon the weaknesses of defence. In this case, the prosecution miserably failed to discharge its duty and did not produce sufficient

incriminating evidence to connect the appellant with the commission of offence rather tried to get favorable decision from the court only on the basis of inculpatory portion of defence plea…. If the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. The instant appeal is accepted in the given facts and circumstances.

Conclusion: i) The defence version of an accused in his statement recorded under section 342 Cr.PC is to be accepted or rejected as a whole.
ii) Accused cannot be convicted on the statement of accused u/s 342 Cr.P.C when the prosecution failed to prove its case beyond shadow of doubt.

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42. **Lahore High Court**
Muteen-ur-Rehman etc. v. The State etc.
Crl.Misc.No.67507-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8213.pdf

Facts: The petitioner seeks pre-arrest bail for an offence under section 365 PPC.

Issues: i) What is the effect of inordinate delay qua time of occurrence and registration of FIR?
ii) What is the effect of leveling an oral allegation of torture and beating without MLC of the victim?
iii) Whether merits of the case can be touched while granting pre-arrest bail?
iv) Whether it is to be proved in each and every case of pre-arrest bail that there is malafide on the part of complainant ?

Analysis: i) Delay without disclosing any exegesis by the complainant with respect to such delay, indicates the lodgment of such FIR with due deliberation and consultation.
ii) Leveling of allegations of torture and beating without having any MLC of the victim in such circumstances when admittedly there are criminal as well as civil litigation between the parties, false involvement of the petitioners in the case at the hands of the complainant party cannot be ruled out.
iii) While granting extraordinary relief of pre- arrest bail, merits of the case can be touched upon. This aspect of the law lends support from the bare reading of provisions of Section 497, 498 Cr.P.C. The word 'further inquiry' has wide connotation. Interpretation of criminal law requires that the same should be interpreted in the way it defined the object and not to construe in a manner that could defeat the ends of justice. Otherwise, an accused is always considered a 'favorite child of law'. When all these aspects are considered conjointly on the touchstone of principles of criminal jurisprudence enunciated by superior courts from time to time, there is no second thought to this proposition that the scope of

pre-arrest bail indeed has been stretched out further which impliedly persuade the courts to decide such like matters in more liberal manner.
iv) It is well settled by now that it is not possible in each and every case to prove the malafide but same can be gathered from the facts and circumstances of the case. Even otherwise, if an accused person has a good case for post arrest bail then mere at the wish of complainant, he cannot be sent behind the bars for few days by dismissing his application for pre-arrest bail.

Conclusion: i) Delayed FIR without disclosing exegesis indicates its lodgment with due deliberation and consultation.
ii) Allegations of torture and beating without having any MLC of the victim causes serious doubt upon the version of the complainant.
iii) While granting extraordinary relief of pre- arrest bail, merits of the case can be touched upon.
iv) It is not possible in each and every case to prove the malafide but same can be gathered from the facts and circumstances of the case.

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43. **Lahore High Court**
Waqas alias Kashi v. The State
Criminal Revision No.71763/2021
Muhammad Amin v. The State,etc.
Criminal Revision No.68819/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC7971.pdf

Facts: The court has summoned two witnesses, who were not cited in the report u/s 173 Cr. P.C, on the ground that evidence of these witnesses was essential for the just decision the case.

Issues: i) Whether witnesses can be called at the final stage proceedings of trial within the parameter of sec-540 Cr. P.C?
ii) Whether it is duty of the court to provide copy of statements of witnesses?
iii) What is status of witness called and examined or recalled or reexamined u/s section 540 Cr.P.C?

Analysis: i) Court while summoning any witness must bear in the mind that a witness called and examined or recalled or reexamined u/s section 540 Cr.P.C. retains his character as a prosecution or defence witness and he would be a court witness simpliciter if he was cited neither a prosecution witness nor a defence witness…. If any given up prosecution witness or defence witness is recalled, court can allow the respective party to put question to their own witnesses under Article 150 of Qanun-e-Shahadat Order, 1984 which is not meant for asking questions only to hostile or resiled witnesses… When the court summoned a witness both parties have right to cross examine such witness; therefore, no prejudice is caused to

either of them.

ii) The object and purpose of this section 540 Cr. P.C is very clear, it gets a status of overarching component of criminal justice system being a brainchild of inherent right of fair trial and due process, which now is part of constitutional regime for fundamental rights. This is the only section which is so responsive to all lame excuses in the system for non- collection of evidence and missed prosecution of the offenders. The section authorizes the court to use discretion for summoning of any person as witness at any stage of an inquiry, trial or other proceedings. The phrase "at any stage" mentioned in the section is obliviously encompasses the stage of final arguments or later if the case is pending for decision.

iii) It is trite that complainant can obtain the copies of statement of witnesses recorded u/s 161 of Cr. P.C, and court cannot refuse supply of such statement. If any given up prosecution witness or defence witness is recalled, court can allow the respective party to put question to their own witnesses under Article 150 of Qanun-e-Shahadat Order, 1984 which is not meant for asking questions only to hostile or resiled witnesses

Conclusion: i) The witnesses can be called at the final stage proceedings of trial within the parameter of sec-540 Cr. P.C.

ii) It is duty of the court to provide copy of statements of witnesses?

iii) What is status of witness called and examined or recalled or reexamined u/s section 540 Cr.P.C

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44. **Lahore High Court**
Muhammad Ghazanfar Naveed. v. The State, etc.
Writ Petition No.43081-Q/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC8241.pdf

Facts: Second FIR was lodged with respect to second marriage of husband without permission of first wife.

Issues: i) Whether High Court can quash the FIR in constitutional jurisdiction?

ii) Whether Second FIR on same facts is permissible?

iii) Whether FIR can be lodged for forgery regarding permission letter for second marriage or the matter falls within the jurisdiction of family court?

Analysis: i) Subordinate criminal courts are authorized to acquit the accused at any stage of the case and this power is synonymous to one the High Court exercise u/s 561-A Cr. P.C., but if they fail to exercise powers then High Court either under Article 199 of the Constitution of Islamic Republic of Pakistan or under section 561-A of Cr. P.C. can either quash the proceedings pending in the court subordinate thereto or quash the FIR…. Similarly, FIR being false owing to mistake of law stands

quashed.

ii) It is trite that second FIR is not permissible under the law as per dictum laid down in the case "Mst. Sughran Bibi v. The State" (PLD 2018 SC 595) that every version in an FIR put forward by the same complainant or different parties to the proceedings, would be recorded in the same FIR and if the first had stood cancelled, the concerned party may file a private complaint or may file an application for review of cancellation order

iii) The permission letter, whether forged or genuine, is a fact in issue to be decided by the family court. The petitioner is claiming that permission letter is genuine allowing him to contract second marriage, whereas, his first wife is alleging it to be forged one. Both the claims stand on the one point i.e. question of second marriage contracted with or without the permission of the first wife and there is no cavil to the proposition that entry in the Nikah Nama also contain a condition about second marriage and according to section 5 read with section 20 of the Family Court Act, 1964 it is only the family court that could decide any matter relating to terms asnd conditons of Nikah Nama and fate of such permission letter touches that condition whether it is genuine or otherwise. …. The learned Magistrate was not justified in taking cognizance of the case, which was exclusively triable by family court.

Conclusion: i) The High Court can quash the FIR in constitutional jurisdiction.
ii) The Second FIR on same facts is not permissible.
iii) The FIR cannot be lodged for forgery regarding permission letter for second marriage and the matter falls within the jurisdiction of family court.

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45. **Lahore High Court**
Faiz Ahmad v. Haji Abdul Sattar
C.R. No. 363 / 2014
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC7993.pdf

Facts: The petitioner has challenged the order wherein his application under Section 12(2) CPC seeking to set aside the ex-parte Judgment & Decree in suit for recovery based on a cheque under Order XXXVII, Rules 1 & 2 of the CPC was dismissed.

Issue: i) Whether quoting of wrong provision of law is a hurdle to decide a lis?
ii) Whether defendant can be burdened with the duty to file application for leave to defend within ten days in summary proceedings when the mandatory requirements regarding service are violated?

Analysis: i) Mere quoting of wrong provision of law is not a hurdle to decide a lis if on the basis of the contents of the application and the relief sought, a party is entitled for the same. All rules of procedure are meant to advance the cause of justice. If the

Court is vested with the jurisdiction to hear and decide the lis, it must not hesitate to decide the matter on merits if the occasion so warrants. Hence, the Courts have liberally resorted to the doctrine of „conversion" to treat one kind of proceedings into another or condone misdescription in the title of the proceedings or wrong mentioning of a provision of law with the objective to dispense substantive justice.

ii) There is no cavil to the proposition that Rule 4 of Order XXXVII of the CPC implies that an application for setting aside an ex-parte Judgment and Decree should be accompanied with an application for leave to defend where the summons in the manner stated as aforesaid are duly served upon the defendant. In other words, the Rule is attracted when it can be shown that the defendant was duly served through summons in Form 4 of Appendix B along with a copy of the plaint. Importantly, Rule 4 of Order XXXVII of the CPC does not specify a period of limitation to file an application for setting aside an ex-parte Judgment & Decree and bestows a wide discretion to the Trial Court to deal with peculiar facts and circumstances of each case by employing the test of „special circumstances" to meet the ends of justice. Therefore, residuary provision contained in Article 181 of the Limitation Act, 1908 prescribing a period of limitation of three years from the date of knowledge is attracted to compute the period of limitation regarding an application under Rule 4 of Order XXXVII of the CPC seeking to set aside the Judgment and Decree. Article 164 of the Limitation Act, 1908 is not applicable unless it can be shown that Judgment and Decree was passed after the suit had become an ordinary suit after the special procedure encapsulated in Order XXXVII of the CPC had been exhausted.

Conclusion: i) Mere quoting of wrong provision of law is not a hurdle to decide a lis.

ii) Defendant cannot be burdened with the duty to file application for leave to defend within ten days in summary proceedings when the mandatory requirements regarding service are violated.

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46. **Lahore High Court**

Mst. Anam Abid and 7 others. v. Government of the Punjab and 4 others.

Writ Petition No. 3076 / 2021

Mr. Justice Abid Hussain Chattha

https://sys.lhc.gov.pk/appjudgments/2021LHC8031.pdf

Facts: The petitioners were appointed as Junior Clerks in BS-11 on the recommendation of District Selection Committee under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (the "Rules"). In response to multiple public complaints, the Deputy Commissioner / Administrator, DEA after inquiry declared all recommendations as null and void ab initio on account of various illegalities carried out during the overall recruitment process.

Issue: i) What is principle of locus poenitentiae?

ii) Whether executive can inquire into process of recruitment upon complaint of malpractice etc?

Analysis: i) Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. Locus poenitentiae conceptually connotes, that authority which has the jurisdiction to pass an order and take an action, has the due authority to set aside, modify and vary such order / action, however there is an exception to this rule i.e. if such order / action has been acted upon, it creates a right in favour of the beneficiary of that order etc. and the order / action cannot thereafter be set aside / modified etc., so as to deprive the person of the said right and to his disadvantage. However, no valid and vested right can be founded upon an order, which by itself is against the law.

ii) The executive was well within its right to inquire into the process of recruitment amidst public complaints of malpractices, corrupt practices, illegalities and irregularities committed in the recruitment process with the objective to cure illegalities and remedy the wrong within a reasonable time frame. In fact, equal application and treatment of law, fairness, good governance and merit are indispensable dictates of the Constitution that must make way and prevail in the last resort vis-à-vis unequal treatment of law, corrupt and unfair practices and illegal processes. The rights and interests of several other applicants who were ousted from the process of recruitment on account of unfair means were equally important and precious in contrast to the claimed right of appointment by successful applicants. The impugned withdrawal orders did not cause any prejudice to the Petitioners who are free to take part in the fresh process aimed to bring transparency and fairness in the process of recruitment which would be just and equitable to the Petitioners as well as to all other eligible persons.

Conclusion: i) Locus poenitentiae conceptually connotes, that authority which has the jurisdiction to pass an order and take an action, has the due authority to set aside, modify and vary such order / action.

ii) Executive can inquire into process of recruitment upon complaint of malpractice etc.

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47. **Lahore High Court**
Noor Muhammad v. Niaz Ahmad etc.
Civil Revision No.852-D/2003
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC8093.pdf

Facts: The petitioner instituted a suit for declaration against the respondents that he was owner-in-possession of the suit property and the Permanent Transfer Order in favour of predecessor-in-interest of the respondents is liable to be set aside being inoperative against his rights to the extent of half of its portion which is the suit property. After the complete trial, the suit was dismissed and the appeal thereof was also dismissed on the ground that since the matter related to allotment of the suit property under the Displaced Persons (Compensation and Rehabilitation) Act,

1958, the civil courts had no jurisdiction by virtue of Section 25 thereof. Thereafter, the petitioner moved a revision/application with the Additional Commissioner (Revenue)/Settlement Commissioner for cancellation of the Impugned Transfer Order, which was dismissed on the ground that after promulgation of Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975, Settlement Authorities had no role to play in the matter of allotment. The petitioner then filed a second civil suit with same prayer but that was also dismissed on the basis of res judicata and the appeal was also dismissed. The respondents also instituted as suit for possession of the suit property which was decreed by the Civil Court and the appeal of the petitioner was dismissed. The petitioner filed three different civil revisions to challenge the dismissal of his two suits and the decree in suit of respondents.

Issue: i) Whether the civil court has no jurisdiction in the matter of allotment by the Settlement Authorities even after the promulgation of Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975?
ii) Whether the case should be remanded or must be decided by the Revisional Court if the oral and documentary evidence is already on record and the parties have satisfactorily availed the opportunity of leading evidence?
iii) Whether the Revisional Court can appraise the evidence of parties dully recorded in trial for the first time in its revisional jurisdiction when earlier the trial court or appellate court below has not appreciated or analyzed it?

Analysis: i) After promulgation of the Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975, Settlement Authorities have no jurisdiction to decide the matter. In view of the ratio laid down in Ghafoor Bukhsh case, it is clear that the learned court erred in deciding the suit only on the basis of jurisdiction rather the civil court has jurisdiction to decide the matter.
ii) Remand of a case amounts to replay of an agonizing and protracted trial already undergone by the parties for a long period and would demonstrate an empirical evidence of oft-used maxim justice delayed is justice denied. Moreover, remanding the matter would serve no purpose if the complete evidence of the parties has been recorded and is sufficient to sift the chaff from the grain and bring out the truth to the surface to reach a just conclusion. Remanding the matter after a long period would not only take its toll on the finance of the parties by causing further holes in the pocket but also while away the time of the parties as well as judicial apparatus of the state. This Court while exercising its revisional jurisdiction needs to remain pivoted to the object of remanding a case. Where this Court finds that sufficient material and evidence has been brought on record, remanding the matter would not serve any useful purpose. Remand of a case needs to be resorted to only in a situation where this Court feels handicapped and is unable to reach a just conclusion on the basis of material and evidence available on record. It is settled principle of law that where oral and documentary evidence is already on record and the parties have satisfactorily availed the opportunity of

leading evidence, the case must be decided and should not be remanded.
iii) This Court can do the appraisal of the evidence duly recorded in the trial for the first time in revisional jurisdiction, which admittedly was not appreciated and analyzed either by the trial court or the appellate court below. In this regard, there is no impediment, under the law, qua power of this Court to appraise the evidence for the first time in its revisional jurisdiction inasmuch as powers of this Court under Section 115, CPC are not limited in nature.

Conclusion: i) The civil court has jurisdiction in the matter of allotment by the Settlement Authorities after the promulgation of Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975.
ii) The case should not be remanded rather must be decided by the Revisional Court if the oral and documentary evidence is already on record and the parties have satisfactorily availed the opportunity of leading evidence.
iii) The Revisional Court can appraise the evidence of parties dully recorded in trial for the first time in its revisional jurisdiction even when earlier the trial court or appellate court below has not appreciated or analyzed it.

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48. **Lahore High Court**
Bashir Ahmed v. Shaheen Waheed etc.
FAO No.8/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC8153.pdf

Facts: The appellant/tenant challenged the judgement/order of Rent Controller whereby he dismissed an application filed by the appellant for extension of time to deposit the rent and accepted the application filed by the respondents for closing the right of defence of the appellant under Section 17(9) of the Cantonment Rent Restriction Act 1963 on account of failure on part of the appellant to comply with order of the rent controller and directed the appellant to vacate the rented premises. Appellant claimed that the default in payment of rent is not wilful rather COVID-19 lockdown caused complete disruption of all the business activities and the school being run by the appellant was also closed as per order of the government and therefore, the same falls under the purview of *force majeure* and the entire purpose for which the rented premises was taken by the appellant was frustrated.

Issues: i) Whether the doctrine of *force majeure* applies to a case being governed by the Rent Act when there is no *force majeure* clause in the agreement between the parties
ii) Whether mere temporary disruption or closure of a business can exempt a tenant from not making the monthly rental payments as per agreed terms?

Analysis: The availability of the relief on the basis of doctrine of *force majeure* is contingent on the availability of the relevant clause in the contract and the interpretation of applicable law on the subject. Therefore, the term *force majeure* as well as its applicability in the present case needs to be analysed in the light of relevant provisions of the Contract Act 1872 and the terms and conditions of the Rent Agreement on the basis of which the appellant was inducted as a tenant in the first place. In the absence of a *force majeure* clause in the agreement between the parties, a party thereto may attempt to invoke the doctrine of frustration embedded in Section 56 of the Act 1872, which deals with impossibility of performance and applies to cases where a *force majeure* event occurs outside the contract. Section 56 of Act 1872 does not apply to lease agreements as there is a distinction between a 'completed conveyance' and an 'executory contract' and a lease or a tenancy created under a rent deed is a completed conveyance though it involves monthly payment and hence, Section 56 cannot be invoked to claim waiver, suspension or exemption from payment of rent.

ii) The contract is not discharged merely because it turns out to be difficult or onerous for one party to perform and no one can resile from a contract for the said reason. Temporary disruption in enjoyment of demise premises is not a ground to avoid and delay the payment of rent when the tenant does not chose to avoid the lease/tenancy. In the present case, the Rent Agreement does not contain a clause providing for some sort of waiver/suspension/ delay of payment of the rent on account of force majeure, hence, the appellant cannot claim the same and plead that the default on this ground was not wilful. Doctrine of frustration, in the instant case, has not been specifically pleaded in the application for leave to defend filed before the trial court or in the present appeal and it is only during the course of arguments, learned Counsel for the appellant avers that COVID-19 lockdown frustrated the contractual obligations for the time being, however, the case of the appellant does not fall within the scope of doctrine of frustration as examined above. In view of the settled legal position, temporary non-use of premises due to the lockdown, which was placed by the government, due to the COVID-19 crisis cannot be of any help to the appellant to invoke force majeure situation under the TPA as well. Even on equitable grounds, the appellant never gave a notice of force majeure to obtain any relief for non- performance or delayed performance and only pleaded the same when the eviction petition was filed by the respondents, thus the contract should be performed in strict compliance with the terms and conditions of the Rent Agreement regarding payment of rent.

Conclusion: i) The doctrine of *force majeure* does not applies to a case being governed by the Rent Act when there is no *force majeure* clause in the agreement between the parties.

ii) Mere temporary disruption or closure of a business cannot exempt the tenant from not making the monthly rental payments as per agreed terms.

49. **Lahore High Court**
Malik Muhammad Altaf. v. Muhammad Ashraf (Deceased) through Legal Heirs and another.
R.S.A No. 226 of 2016
Mr. Justice Sultan Tanvir Ahmad.
https://sys.lhc.gov.pk/appjudgments/2021LHC7914.pdf

Facts: Appellant filed a suit for specific performance on the basis of agreement. The said suit was contested by the Respondents by filing written statement in which they admitted some points for consideration but afterwards resile from statement by filing amended written statement. The learned trial Court decreed the suit. The Judgment and Decree was challenged by way of Civil Appeal, which was accepted and Judgment and Decree passed by trial court was set aside. Aggrieved from the same, this Regular Second Appeal has been filed.

Issues: Whether through amendment in written statement one can resile from the admission if made earlier in his written statement?

Analysis: That defendant does not acquire unfettered rights to change the written statement in toto or substitute it by a completely new written statement and the Court is entitled to apply the principles relating to amendment of pleading while examining the amendment in written statement as well as without permission of the Court no party has any inherent right to amend the pleading at its own discretion.

Conclusion: Through amendment in written statement one cannot resile from the admission if made earlier in his written statement.

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50. **Lahore High Court**
Naveed Ishaq v. Ex-Officio Justice of Peace, etc.
Writ Petition No. 4190 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7979.pdf

Facts: A Justice of Peace has ordered for the registration of a criminal case against the petitioner on the basis of a "self" dishonoured cheque" on which no endorsement whatsoever in favour of the eventual bearer has been recorded.

Issues: Can a dishonoured 'self' cheque i.e. a cheque issued by an account holder i.e. drawer to 'himself' (payee) ever result in attracting criminal liability under Section 489-F PPC?

Analysis: If the payee is "self", it can be reasonably and correctly presumed that the money for which the cheque was issued was to be paid to the drawer himself and it is

also reasonable to presume that a person would not *dishonestly* issue a cheque to pay money to himself and that the cheque was not issued towards the repayment of a loan or towards the fulfillment of some legal obligation one has towards oneself. Therefore, some documentation would be required to prove that a self cheque was endorsed in favor of the holder so as to make him a holder in due course, otherwise, it shall be presumed that it was a self cheque in its true essence and not one that was endorsed in favour of the holder**.** It is also declared that a "self" dishonored cheque" (even if the reference on the cheque to a bearer is not crossed) does not entitle a bearer to request for registration of a criminal case unless and until there is a positive endorsement in favour of the bearer either on the back of the cheque in question or by means of a separate document which would make the bearer a "holder in due course".

Conclusion: A dishonored 'self' cheque i.e. a cheque issued by an account holder i.e. drawer to 'himself' (payee) cannot attract criminal liability under Section 489-F PPC.

LATEST LEGISLATION/AMENDMENTS

1. "The Punjab Local Government Ordinance 2021" is promulgated to reconstitute local governments in the Punjab.
2. In rule 6, after sub rule 2 of the "Punjab Local Council Servants (Service) Rules, 1997", a rule (3) is added.
3. "The Punjab Local Government Service (Appointment and Conditions of Service) Rule 2018" amendments are made in rule 3 sub-rule 2 clause c,d,e; rule 10, sub rule 1 clause a. In the schedule at Sr. No. 15 in column 7.

LIST OF ARTICLES

1. INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION
https://www.tandfonline.com/doi/full/10.1080/09695958.2021.2020657
The effects of basic psychological needs satisfaction and mindfulness on solicitors' well-being by James J. Walsh, Almuth Mcdowall, Kevin R.H. Teoh

Rising reports of poor mental health and well-being in lawyers across multiple jurisdictions, notably the United States of America, Australia, and the United Kingdom (UK), have led to a growing international focus on this topic. Yet there remains a paucity of empirical data on the well-being of solicitors practising in England and Wales. Framed by self-determination theory (SDT), we undertook a cross-sectional survey of 340 trainee and qualified solicitors in England and Wales to (1) benchmark the psychological well-being of solicitors against other UK occupational groups and adult population norms; and (2) test relationships between mindfulness, satisfaction of basic psychological needs (perceived autonomy, relatedness, and competence at work) and psychological well-being. The SDT components positively and significantly related to well-being. Mindfulness partially mediated the pathway between basic psychological needs

satisfaction and well-being, suggesting that satisfaction of these needs may in themselves facilitate higher mindfulness, thereby contributing to greater levels of well-being. We conceive that autonomy, relatedness, and competence at work provide the psychological space necessary for mindfulness to be cultivated, within which well-being can thrive. These findings support the importance of a systemic approach to solicitors' well-being to safeguard basic psychological needs in the workplace.

2. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/8-esg-legal-risks-to-consider-transaction-documents

8 ESG Legal Risks to Consider in Transaction Documents by Kyle Kroeger

According to the consulting firm Bain, "Covid-19 was a dress rehearsal for climate change". Unfortunately, this statement stands true, and we can't deny the impact of the pandemic on the lives of millions around the world. But while 2020 was a year of pandemic and a havoc situation, it was also a time when the environmental, social and governance (ESG) agenda became an essential topic of discussion among businesses worldwide. ESG is a complex topic that covers various areas. But majorly, it revolves around a primary aspect: the identification and mitigation of ESG legal risks. If you haven't come across such risks before, this article will help you understand them. So, dig in to explore eight main ESG legal risks to consider in transaction documents.

***3.* COLUMBIA LAW REVIEW**

https://columbialawreview.org/content/first-amendment-limitations-on-public-disclosure-of-protest-surveillance/

First amendment limitations on public disclosure of protest surveillance by Tyler Valeska

This Piece argues that wholesale dumps of unedited footage likely violate the First Amendment in at least some circumstances, including those of last summer's Black Lives Matter protests. While the Supreme Court has insulated governmental collection of protest surveillance from First Amendment challenges via its standing doctrine, public dissemination of such surveillance creates a cognizable injury that avoids standing obstacles. That injury is inflicted by governmental distribution of protest surveillance despite the public nature of protests, as protestors retain certain privacy interests in the public square. And despite the strong governmental interest in transparency surrounding police–protestor interactions, blanket dumps of footage likely fail under exacting scrutiny when they render individual peaceful protestors publicly identifiable. Threat of identification chills protestors' speech and assembly rights by subjecting them to threats of private retaliation like adverse actions by employers and violence by extremist militias. Bonta's narrow tailoring requirement likely requires police to avoid identifying peaceful protestors by blurring out faces before releasing (or while livestreaming) protest footage and by not zooming in surveillance cameras for extended, close-range livestreaming of individuals.

4. **MANUPATRA**

https://articles.manupatra.com/article-details/Rethinking-the-Prohibition-on-Advertising-for-Advocates

Rethinking the Prohibition on advertising for Advocates by Harshima Vijaivergia and Smita Pandey

The Legal Profession is one of the highly regarded professions. The profession has also been protected against commercialization by prohibiting its advertisements. However, barring the lawyers from advertising their services is proved to be futile in the present competitive scenario. The paper begins with the explanation of what exactly advertising means and briefly presents the views of the professionals in the light of this prohibition. It also supports the 'against' views in the COVID-19 crisis and the prohibition has proved to be harmful, in an attempt to save sanctity. Further, the author outlines the legal provisions that deal with 'Advertisement of services by Advocates' and emphasizes Rule 36. Furthermore, the article will encapsulate the judicial view and opinion on the ban through several Judicial pronouncements. The author discusses the status- quo of advertisement ban in different nations. The opportunities and weaknesses have been analysed in an attempt to highlight the pros and cons. The concluding part recommends changes in the laws to protect the right and profession of the lawyers, whilst upholding the sanctity of the legal profession.

5. **MANUPATRA**

https://articles.manupatra.com/article-details/Innocent-Behind-Bars-Challenges-and-Remedies

Innocent Behind Bars: Challenges and Remedies by Ritendra Gaur and Dheeraj Diwakar

The concept of Justice forms a very integral part of any civil society. Courts are primarily responsible for the proper channelization of Justice. It is the Court's behavior towards a truth that determines how much faith will people retain in them. This concept becomes more important while dealing with Criminal Justice System. There are instances when an innocent is wrongly convicted, and the real culprit is set free. This is called a miscarriage of Justice. Miscarriage of Justice is not a recent phenomenon but has been there since a long time ago. There are many instances in History where innocents were punished by the then judicial system while the main culprits were set aside. The innocent behind bars is a "SCAPEGOAT" in the Criminal Justice System. The "SCAPEGOAT" is punished due to the faulty Judicial Process. That fault may be from the side of the Police or Prosecutor or the Court itself. These kinds of mis happenings leave a very bad impression of the Criminal Judicial System on the General Public and International Image of any Nation. Other than this it also questions the rationality of the Courts.

6. **MANUPATRA**

https://articles.manupatra.com/article-details/An-Extensive-study-of-Rape-Laws-in-India

An Extensive study of Rape Laws in India by Tejaswini Mallick

This paper gives a theoretical understanding of anti-rape laws and its evolution, from being a property crime to crime against the bodily integrity of a woman. This paper traces its origin form the English common law and goes on to analyze the landmark cases from Mathura rape case to the recent Kathua rape case which brought about the progressive amendments in anti- rape laws under the Indian Penal Code. It discusses in detail the reforms made by the criminal law amendment act of 1983, 2013 and 2018. It looks into the recommendations made by the Justice Verma Committee on the controversial aspects of gender neutrality, capital punishments etc. It analyzes a series of judgments highlighting the misogynistic approach taken by courts which act as impediment for women while seeking justice even after progressive reforms. It concludes with the suggestion for change from not just the legislative level but also from the social and cultural level.

7. **MANUPATRA**

https://articles.manupatra.com/article-details/Addressing-the-Threat-of-Autonomous-Weapons-Maintaining-Meaningful-Human-Control

Addressing the Threat of Autonomous Weapons: Maintaining Meaningful Human Control by Raashi Agarwal

Autonomous Weapons is a concept which has been emerging in the debates nowadays. It is very essential to consider the boom in technological advancements which have directly affected the technological advancements worldwide in relation to war fare. The force used by some countries has advanced rapidly and has been dominated by remote warfare. Autonomous weapon means a weapon system with minimized human control or by artificial intelligence. This poses a lot of questions with regards to international relation between different member countries in regards to human decision making in war fare. This research paper examines the importance of human control on Autonomous weapons as well as impact of autonomous weapons in international law. The paper also focuses on the link between autonomous weapons to international humanitarian law.