LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2022 to 31-01-2022)

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**
Bashir Ahmed Badini, D&SJ, Dera Allah Yar etc. v. Hon'ble Chairman & Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balochistan etc.
Civil Appeals No.446 TO 454 OF 2021
Mr. Justice Gulzar Ahmad, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._446_2021.pdf

Facts: The appellants challenged the common judgment of Balochistan Subordinate Judicial Service Tribunal, Quetta vide which antedated promotions were allowed to some respondents.

Issues: i) Whether acting charge appointment is appointment by promotion on regular basis?
ii) How the criterion for promotion is adjudged?
iii) What is Ad-hoc appointment?
iv)Whether services of employee on Ad-hoc basis prior to regularization can be counted for seniority?
v) What is object of ante dated promotions?
vi) What is doctrine of merger?
vii) What is meant by cause of action for deciding a lis by court of law?

Analysis: i) The acting charge appointment does not amount to an appointment by promotion on regular basis for any purpose including seniority and also does not confer any vested right for regular promotion to the post held on acting charge basis.
ii) It is a well settled principle that eligibility itself is not the benchmark for promotion, rather the most vital yardstick is fitness, which can be judged from the service record which includes ACRs, qualification, length of service in a particular grade/scale, integrity, knowledge and proficiency in the work/assignments, all of which are essential dynamics for weighing and appraising the merits for promotion to the selection post which is quite common procedure and practice articulated under the law for considering the promotions on merit.
iii)The word "Ad hoc" is a Latin phrase which connotes in essence "to this". To all intents and purposes, the appointment on ad-hoc position is a stopgap arrangement or as a temporary solution till the post is virtually filled on regular basis in accordance with the rules of recruitment.
iv) It is well settled exposition of law that the services rendered by the employees on ad-hoc basis prior to their regularization cannot be counted for the purpose of their seniority but their seniority will be counted from their substantive/regular appointments.
v) In the event of some inevitable circumstances, ante-dated promotion can be granted in the appropriate cases. If the DPC meeting is not convened within a reasonable period of time despite of availability of vacant situations for

promotion, then obviously, this creates frustration and despondence amongst the civil servants/employees. Where the meeting of DPC scheduled to be held is postponed or adjourned without announcing any future date or not convened within reasonable period to the prejudice of an officers/employee, the competent authority in order to foster justice may grant antedated promotion to the higher post bearing in mind the eligibility and fitness in the DPC.

vi) In case an appeal or revision is provided before a superior court against an order passed by any Court or Tribunal or any other authority and the superior court where appeal is preferred modifies, reverses or affirms the decision of lower fora then the order or decision passed by subordinate or lower forum is merged into the decision rendered by superior courts which will remain operative for enforcement in accordance with law.

vii) The Court of law does not decide the lis on mere sentiment, presumption or mere apprehension but the cause of action should be based on a real cause for remedying the wrong into right. The court cannot hear any case nor render any decision without a valid cause of action or without accrual of right to sue. The party seeking relief should have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim.

Conclusion: i) The acting charge appointment does not amount to an appointment by promotion on regular basis.

ii) Eligibility itself is not the benchmark for promotion, rather the most vital yardstick is fitness which can be adjudged from service record.

iii) The services rendered by the employees on ad-hoc basis prior to their regularization cannot be counted for the purpose of seniority.

iv) Ad-hoc position is a stopgap arrangement till the post is virtually filled on regular basis.

v) Due to inordinate delay in holding DPC, the competent authority in order to foster justice may grant antedated promotion to the higher post bearing in mind the eligibility and fitness in the DPC.

vi) The superior court where appeal is preferred modifies, reverses or affirms the decision of lower fora then the order or decision passed by subordinate or lower forum is merged into the decision rendered by superior courts.

vii) The set of circumstances and facts which give rise to institute and lodge the claim in the court of law but not any premature claims or grievances.

2. Supreme Court of Pakistan
Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc. v. Intizar Ali etc.
Civil Appeals no. 759/2020, 1448/2016, 1483/2019, 760/2020, 761/2020, 1213/2020 TO 1230/2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._759_2020.pdf

Facts: The Federal Government enacted the Sacked Employees (Re-instatement) Act, 2010 for the purpose of providing relief to persons who were dismissed, removed or terminated from service. Following, the provincial Government of KPK also promulgated the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 for reinstatement of sacked employees. The respondents were not given the said relief. However through the impugned order of learned Peshawar High Court, they were re-instated in service under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. Hence this appeal.

Issues: i) What is difference between permanent and temporary employees?
ii) What does term "ultra vires" signifies?
iii) Whether Superior Courts should engage in factual controversies?

Analysis: i) Permanent or regular employment is one where there is no defined employment date except date of superannuation whereas temporary position is one that has a defined/limited duration of employment with specified date unless it is extended. If a person is employed against a permanent vacancy, there is specifically mentioned in his appointment letter that he will be kept on probation for a specific period of time but in the case of a temporary employee it is mentioned that he is employed on temporary basis either for a cutoff period of time or for the completion of a certain period either related to a project or assignment.
ii) The term 'ultra vires' literally means "beyond powers" or "lack of power". It signifies a concept distinct from "illegality". In the loose or the widest sense, everything that is not warranted by law is illegal but in its proper or strict connotation "illegal" refers to that quality which makes the act itself contrary to law. Constitution is the supreme law of a country. All other statutes derive power from the constitution and are deemed subordinate to it. If any legislation over-stretches itself beyond the powers conferred upon it by the constitution, or contravenes any constitutional provision, then such laws are considered unconstitutional or ultra vires the constitution. When two laws are enacted for the same purpose though in different jurisdictions and one of the same has been declared ultra vires the Constitution by the Apex Court of the country, then according to the dictates of justice, the other enacted on the same analogy also looses its sanctity and ethically becomes null and void.
iii) It is settled law that superior courts could not engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court.

Conclusion: i) Permanent or regular employment is one where there is no defined employment date except date of superannuation whereas temporary position is one that has a defined/limited duration of employment.
ii) The term 'ultra vires' literally signifies a concept distinct from "illegality". If

any legislation over-stretches itself beyond the powers conferred upon it by the constitution, or contravenes any constitutional provision, then such laws are considered unconstitutional or ultra vires the constitution.
iii) The Superior Courts should not engage in factual controversies.

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3. **Supreme Court of Pakistan**
Justice Qazi Faez Isa (in CRP No.296/2020) etc., v. The President of Pakistan and others (in CRP.296-301, 308, 309 & 509 of 2020) etc.
Civil Review Petitions No.296 to 301, 308, 309 & 509 of 2020. and C.M.A No.4533 of 2020.
Mr. Justice Umar Ata Bandial, Mr. Justice Maqbool Baqar, Mr. Justice Manzoor Ahmad Malik, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin-ud-Din Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._296_2020_29012022.pdf

Facts: The petitioners filed the review petitions against the directions made by the Hon'ble supreme court to the Chairman, Federal Board of Revenue ("FBR") regarding the un-declared properties of the family members of Justice Isa [but not against Justice Isa], under the ITO.

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Issue: i) Whether the dissenting Judges in review jurisdiction have judicial power?
ii) Whether the violation of principle of audi alteram partem vitiates the proceedings?
iii) Whether the officers of the Federal or Provincial Governments or of the autonomous bodies or authorities under the control of such Governments are allowed or empowered to file complaints before Supreme Judicial Council concerning or emanating from their official actions against Judges?
iv) How the powers of review can be exercised by Supreme Court?
v) What is effect of proceedings taken if basic order is without lawful authority?

Analysis: i) As the judgment of the Court is considered to be the judgment of all the members of that Bench, irrespective of its being majority judgment or unanimous judgment, there can be no difference in judicial powers of the members who earlier delivered the majority or minority judgment while hearing the review petition, under Article 188 of the Constitution, against the judgment of the Court, i.e., the majority judgment. This is because the judgment of the Court is under review and not the view of the majority judges. There is nothing in the Constitution or the Supreme Court Rules 1980 that restricts the judicial power of dissenting Judges in review jurisdiction in comparison to that of the Judges who delivered the majority judgment. The dissenting Judges, subject to their availability, being necessary members of the review Bench possess the same judicial power as that of the other members of the Bench.

ii) In order to act justly and to reach at just ends by just means, a deciding authority is to comply with and implement, in all circumstances, these elementary and essential requirements of principle of fairness and right of hearing. The violation of principle of audi-alteram-partem vitiates the proceedings and makes the action taken therein to be illegal, as the violation of this principle is considered as a violation of law. If the Court is found to have power to issue the directions under Article 187(1) of the Constitution, the express mentioning of that Article while making the directions was not necessary.

iii) Provisions of Articles 209 and 211 of the Constitution ensure the independence of the Council: only the President of Pakistan, acting in accordance with the constitutional procedure prescribed under Article 209 read with Article 48(1), can direct the Council to inquire into the matter of alleged misconduct or incapacity of Judges of the constitutional courts. If the officers of the Federal or Provincial Governments or of the autonomous bodies or authorities under the control of such Governments are allowed or empowered to file complaints concerning or emanating from their official actions against Judges of the constitutional courts who, in exercise of their constitutional jurisdiction, make judicial review of official actions and inactions of such officers, there would be disastrous consequences for the independence of judiciary.

iv) The review jurisdiction is vested in the Hon'ble Supreme Court by Article 188 of the Constitution and is subject to the provisions of any Act of Parliament and of any rules made by this Court. This Court has, however, made rules to regulate its power of review, which are contained in Order XXVI of the Supreme Court Rules, 1980. This Rule has, subject to the law and the practice of the Court, limited the review jurisdiction of this Court in criminal proceedings to one ground only, viz, an error apparent on the face of the record, while has made reference for review in civil proceedings to the grounds mentioned in rule 1 of Order XLVII of the Code of Civil Procedure, 1908 which provides three grounds for review: (1) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of, or could not be produced by, the party seeking review at the time when the decree was passed or order made; (2) some mistake or error apparent on the face of the record; (3) or any other sufficient reason.

v) When the basic order is without lawful authority, then the entire superstructure built on it falls on to the ground automatically. Thus, any proceedings taken, orders passed or actions made in pursuance of the impugned directions being a superstructure built on those directions loses their legal status and effect, when their very foundation, viz, the impugned directions, is found to have been laid without lawful authority. They have, therefore, no legal status and effect.

Conclusion: i) Yes, the dissenting Judges in review jurisdiction have judicial power.

ii) The violation of principle of audi alteram partem vitiates the proceedings.

iii) The officers of the Federal or Provincial Governments or of the autonomous bodies or authorities under the control of such Governments are not allowed or

empowered to file complaints before Supreme Judicial Council concerning or emanating from their official actions against Judges.

iv) The power of review is subject to the provisions of any Act of Parliament and of any rules made by Supreme Court.

v) When the basic order is without lawful authority, then the entire superstructure built on it falls on to the ground automatically.

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4. **Supreme Court of Pakistan**
Commissioner of Inland Revenue v. M/s Mughal Board Industry
Civil Petition No.1026-L of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1026_l_2019.pdf

Facts: The benefit of the amnesty notification was denied to the petitioner by the department on the ground that it was only applicable to registered persons against whom the principal amount of sale tax was outstanding on 01.06.2012. The High Court while hearing the sales tax reference filed by the respondent disagreed with the view of the department and allowed the benefit of the amnesty notification to the respondent. The order of the High Court has been assailed by the department.

Issues: Whether the benefit of SRO 606(I)/2012 dated 01.06.2012 ("amnesty notification"), can be extended to the respondent, who deposited the whole of the principal amount of sales tax payable in lieu of illegally adjusted input tax much before 01.06.2012 (date of the amnesty notification)?

Analysis: The spirit and object of the amnesty notification is to incentivize quick recovery of stuck up tax revenue, hence the notification offers that if only the principal amount of illegally adjusted sales tax is deposited by 25th June, 2012 the default surcharge and penalties stand exempted. The importance is of the cut-off date i.e. 25th June, 2012. There appears to be no bar in the notification and no possible disadvantage caused to the department, if the principal amount of sales tax is deposited prior to the date of the amnesty notification. In fact it is advantageous for the department as the stuck up tax revenue has been voluntarily deposited by the taxpayer, which is in line with the scheme of the amnesty being offered by the department.

Conclusion: The benefit of "amnesty notification" can be extended to the respondent, who deposited the whole of the principal amount of sales tax payable in lieu of illegally adjusted input tax much before 01.06.2012.

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5. **Supreme Court of Pakistan**
Muhammad Uneeb Ahmed v. Federation of Pakistan, etc.
Civil Petition No.271 of 2021.
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmad
https://www.supremecourt.gov.pk/downloads_judgements/c.p._271_2021.pdf

Facts: The Pakistan Engineering Council ("PEC") constituted under the Pakistan

Engineering Council Act, 1976 ("Act") restricted the admission of candidates with Diploma of Associate Engineers ("DAE") to the B.Sc. (Engineering) program by reserving 2% seats for them, as opposed to allowing them to apply on open merit for the said program, like the candidates holding an F.Sc degree. The grievances of the petitioners, who are holders of DAE, having secured more than 81% marks, have challenged this restriction.

Issues: Whether the ("PEC") constituted under the ("Act") is empowered to restrict the admission of candidates with ("DAE") to the B.Sc. (Engineering) program by reserving 2% seats?

ii) Whether holders of DAE should be considered at par with the F.Sc students on open merit when both of them are eligible for admission under the regulations?

Analysis: i) There is no provision in section 8 that authorizes the Council to reserve admission seats to an engineering program. In the absence of any such power available with the Council, the Governing Body, which under section 3, exercising the powers of the Council, is also unable to impose such a condition. Section 25A of the Act also does not authorize the Governing Body of PEC to reserve admission seats to the B.Sc. (Engineering) program. The only restriction that can be imposed under section 25A, in the context of the present case, is the minimum qualification for admissions to an engineering institution.

ii) The issue of equivalence of F.Sc. and DAE also comes to an end, as both the holders of F.Sc. and DAE are considered eligible qualifications for the purposes of seeking admission to the B.Sc. (Engineering) program under Article 2 of the Regulations. In the absence of any power to reserve seats for admission to the B.Sc (Engineering) program, both the set of candidates with F.Sc. and DAE have to be treated at par. This parity is created by equal eligibility of DAE for admission.

Conclusion: i) The PEC constituted under the Act is not empowered to restrict the admission of candidates with ("DAE") to the B.Sc. (Engineering) program by reserving 2% seats. Such restriction is ultra vires.
ii) The holders of DAE should be considered at par with the F.Sc students on open merit.

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6. **Supreme Court of Pakistan**
Province of Sindh and others v. Mir Shahzad Hussain Talpur.
Civil Petition No. 407-K of 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._407_k_2019.pdf

Facts: The respondent was terminated from service because he was illegally selected and appointed to the post of Special Auditor by the Secretary of the department. The

Sindh Service Tribunal set aside the order of his dismissal. Hence, instant petition was filed against order of tribunal.

Issues: i) Whether a Special Auditor can be selected and appointed by the Cooperative Department or by the Secretary?
ii) Whether mentioning of name and designation of *competent authority* is necessary?

Analysis: i) Section 5 of the Sindh Civil Servants Act, 1973 and section 7 of The Sindh Public Service Commission Act, 1989 stipulate that in respect of higher grades it is the Commission which selects candidates, and does so after conducting requisite tests. A Special Auditor is required to be selected by the Commission. Even if the post of Special Auditor is of grade 16, selection to grade 16 posts is also to be done by the Commission. Special Auditor being post of grade 17, therefore, Secretary is not authorized to either select or appoint a person in grade 17. Assuming, for the sake of argument alone, that the Secretary can select and appoint a Special Auditor, it can only be after conducting the requisite departmental test/interview of all applicants.

ii) It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power. There is a need to put a stop to the use of the illusive and elusive term – the competent authority without disclosure of the competent authority's designation and name. Therefore, Government i.e. Provincial and Federal, office of Supreme Court, High Court and District and sessions Court whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.

Conclusion: i) A Special Auditor can be selected and appointed by the Cooperative Department and not by Secretary.
ii) Mentioning of name and designation of *competent authority* is necessary.

7. **Supreme Court of Pakistan**
Gul Nawab v. The State through A.G. KPK and another
Criminal Petition No. 172-P of 2021
Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazhar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._172_p_2021.pdf

Facts: The petitioner nominated in murder case seeks his post arrest bail.

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Issue: i) Whether case of two versions squarely invites provisions of section 497(2) Cr.P.C?
ii) Whether mere absconsion can be a ground to discard the relief sought for grant of post arrest bail?

Analysis: i) There is no denial to this fact that the occurrence described in the other crime report was not outcome of the same occurrence, which clearly reflects that the complainant has concealed the real facts while lodging the crime report in which the petitioner is seeking the relief of bail. It is established principle of law that when there are two versions of the occurrence, it squarely invites the provisions of Section 497(2) Cr.P.C. calling for further probe into the occurrence, which is apparent in this case.
ii) Mere absconsion cannot be a ground to discard the relief sought for as it is established principle of law that disappearance of a person after the occurrence is but natural if he is involved in a murder case rightly or wrongly. Mere absconsion is not a proof of guilt, hence, cannot be made sole ground to discard the relief sought for. Even otherwise, it is most cardinal principle of law that each criminal case has its own facts and circumstances and that have to be weighed accordingly.

Conclusion: i) Case of two versions squarely invites provisions of section 497(2) Cr.P.C.
ii) Mere absconsion cannot be a ground to discard the relief sought for grant of post arrest bail.

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8. **Supreme Court of Pakistan**
Abdul Saboor v. The State through A.G. KPK and another.
Criminal petition no. 1384 of 2021.
Mr. Justice maqbool baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1384_2021.pdf

Facts: The petitioner seeks post-arrest bail in case registered under Section 489-F PPC who was behind the bars since last 6 months.

Issues: If offence u/s 489-F does not fall within prohibitory clause then grant of bail is a rule and refusal is an exception?

Analysis: Punishment of section 489-F PPC is three years and the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal

is an exception. Prima facie Section 489-F of PPC is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under Section 489-F PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of CPC. At this stage, only a tentative assessment of the matter is required and we cannot presume dishonesty on the part of the petitioner as any such determination would prejudice his right to a fair trial guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. The law is very liberal especially when it is salutary principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception. By following the aforesaid principle and taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

Conclusion: Offence u/s 489-F does not falls within prohibitory clause and thus grant of bail is a rule and refusal is an exception.

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9. **Supreme Court of Pakistan**
Muhammad Anwar v. Chairman Wapda and others
Civil Petition No.231-K of 2020
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._231_k_2020.pdf

Facts: The petitioner was retired on attaining the age of superannuation. But for the calculation of monthly pension, the effect or benefit of Special Additional Allowance was not afforded to him while working out his pensionary benefits.

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Issue: What is scope of emoluments under Civil Service Regulations?

Analysis: Consistent with the CSR 486, the emoluments mean the emoluments which the officer was receiving immediately before his retirement. In fact, the Civil Service Regulations (CSR) encompasses and comprehends Government instructions for standardizing and regulating the terms and conditions of service including the pay, leave, pension and other allowances payable to the Government servants in their respective departments. In order to rationalize and restructure these Service Regulations according to ongoing need and pressing priority, certain changes and revisions are brought in from time to time or intermittently to maintain harmony and uniformity. In the case of Sultan Ahmad Shams (2014 SCMR 570), this Court while considering the effect of CSR-486, held in paragraph 9 that on reading of the above definition of emoluments, it is clear that the terms emoluments are to be calculated upon what the officer was receiving immediately before his retirement i.e. Basic Pay, Senior Post Allowance, Special Pay of all types and nature, Personal Pay, Technical Pay, Index Pay, increments accrued during LPR, any other emoluments which may be specially classed as pay. The term “emoluments”

as is defined by this CSR apparently seems to be all inclusive and though the word "include" has been used but it does not seem to enlarge the scope from the one that is enumerated in its items (a) to (h). The term "include" as appearing in this CSR will not include alien and extraneous elements for calculation of emoluments rather it will confine itself to the incidence attached to or connected with enumerated items (a) to (h). It was further held that the learned Tribunal in its impugned judgment has altogether omitted to consider this CSR although the appellant in its para-wise comments has specifically raised the defense that the CSR 486 does not include the allowances claimed by the respondents in the emoluments reckonable towards calculation of pension.

Conclusion: The term "emoluments" as is defined by this CSR apparently seems to be all inclusive and though the word "include" has been used but it does not seem to enlarge the scope from the one that is enumerated in its items (a) to (h).

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10. **Supreme Court of Pakistan**
Salman Khan v. State
Crl.P. No. 127-Q/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._127_q_2021.pdf

Facts: The petitioner seeks his post arrest bail in offences punishable under Sections 302, 324 and 34, PPC.

Issues: Whether offence under section 322 PPC falls outside the prohibitory clause of Section 497(1), Cr.PC?

Analysis: Section 322, PPC falls outside the prohibitory clause of Section 497(1), Cr.PC while section 319, PPC is bailable.

Conclusion: Offence under Section 322, PPC falls outside the prohibitory clause of Section 497(1), Cr.PC.

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11. **Lahore High Court**
The State v. Muhammad Naveed.
Murder Reference No. 629 of 2017
Muhammad Naveed vs. The State etc.
Crl. Appeal No. 112953 of 2017
Mr. Justice Malik Shahzad Ahmad Khan J, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8676.pdf

Facts: The appellant filed criminal appeal against his conviction and sentence in murder and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellant being originated from the same judgment.

Issues: i) Whether single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?
ii) Whether it is safe to rely on mere corroborative piece of evidence?

Analysis: i) It is, by now well established principle of law that it is the prosecution, which has to prove its case against the accused by standing on its own legs and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession It is also well established principle of law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused. The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep rooted in our jurisprudence for safe administration of criminal justice. Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.
ii) It is not safe to rely on such a weak piece of prosecution evidence, which even otherwise is merely corroborative of direct evidence and is not the evidence of charge, hence, does not offer any help to the prosecution case in the absence of any trustworthy and confidence inspiring eye witnesses account.

Conclusion: i) Yes single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.
ii) It is not safe to rely on mere corroborative piece of evidence.

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12. **Lahore High Court**
The State v. Muhammad Javed.
Murder Reference No. 653 of 2017
Muhammad Javed v. The State etc.
Crl. Appeal No. 119423 of 2017
Mr. Justice Malik Shahzad Ahmad Khan J, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8662.pdf

Facts: The appellant filed appeal against his conviction & sentence in murder case and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellant.

Issues: i) What is effect of delayed postmortem?
ii) What is evidentiary value of chance witness who failed to prove reasons of his presence at the place of occurrence?
iii) What will be the effect, if the prosecution sets up a motive but fails to prove it?
iv) Whether multiple doubts are necessary to dent the case of prosecution?

Analysis: i) An adverse inference to the prosecution's case can be drawn that the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made

witnesses subsequently, otherwise there was no justification for not dispatching the dead body to the mortuary and providing police papers with such delay.
ii) Prosecution eye-witnesses are chance witnesses and they could not prove the reason of their presence at the spot at the time of occurrence, therefore, their very presence at the place of occurrence at the relevant time becomes doubtful.
iii) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
iv) The responsibility to prove its case beyond any shadow of reasonable doubt squarely lies with the prosecution and if it fails to successfully discharge it, the only result can be the extension of benefit of doubt to the accused person and it is, by now, established proposition that multiple doubts are not required in this regard, even a single circumstance creating doubt in a prudent mind is sufficient. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.

Conclusion: i) Delayed postmortem will raise adverse inference to the prosecution case.
ii) Evidentiary value of chance witness who failed to prove reasons of his presence at the place of occurrence becomes doubtful.
iii) If prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
iv) It is, by now, established proposition that multiple doubts are not required in this regard, even a single circumstance creating doubt in a prudent mind is sufficient to create dent in prosecution case.

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13. **Lahore High Court**
Syed Hammad Raza v. Special Secretary, Govt. of the Punjab etc
Writ Petition No. 60128 of 2021
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC72.pdf

Facts: Disciplinary proceedings were initiated against the petitioner while serving as Inspector, Market Committee. Upon conclusion of inquiry, major penalty was imposed upon him.

Issue: i) Whether Compliance of illegal/void orders of the superior officers can be used as defence in inquiry of misconduct?
ii) Whether it is justified to impose lesser punishment to the Secretary on the ground that he was not directly involved in the matter while to impose major penalty on Administrator on same set of fact?

Analysis: i) Compliance of illegal/void orders of the superiors by a government servant itself constitutes misconduct and said fact cannot be used as defence. The Apex Court of the country sensitized the civil servants that they are not bound to succumb to the

illegal orders passed on the basis of political pressure rather they are supposed to act in accordance with law.

ii) The Inquiry Officer, while finalizing his recommendations, proposed imposition of major penalty of compulsory retirement against the petitioner/ Administrator whereas penalty of withholding of one increment for two years was proposed against the then Secretary, Market Committee, by holding that the petitioner was directly involved in collection of time barred dues and issuance of illegal receipts. While recommending so, the Inquiry Officer omitted to note that responsibility to guide the Administrator in procedural matters lied with the Secretary, Market Committee in the light of rule 69 ibid. if the Administrator, Market Committee passed an illegal order without taking the Secretary, Market Committee into confidence, or without his guidance, even after deposit of outstanding dues and issuance of receipts, the Secretary Market Committee could bring the matter into notice of the Administrator for taking further steps in line with the law on the subject but shyness on his part speaks volumes about his dubious conduct towards performance of his duties. A cursory glance over the inquiry report, coupled with the orders passed by the competent authority, shows that it is case of clear discrimination inasmuch as no distinguishing feature for imposition of harsher penalty against the petitioner as compared to the Secretary, Market Committee was mentioned. This act of the departmental authorities being violative of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973

Conclusion: i) Compliance of illegal/void orders of the superior officers cannot be used as defence in inquiry of misconduct.

ii) Imposition of major penalty upon Administrator while lesser penalty upon Secretary is discriminatory on the ground that Secretary was not directly involved is discriminatory because responsibility to guide the Administrator in procedural matters lied with the Secretary.

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14. **Lahore High Court**
Muhammad Ibrahim etc. v. The State etc
Criminal Appeal No.8689 of 2021
Mr. Justice Ali Baqar Najafi, Mr. Justice Sardar Ahmad Naeem
https://sys.lhc.gov.pk/appjudgments/2022LHC110.pdf

Facts: The appellant has assailed his conviction in case registered under Sections 11-N, 11-H(1-2-3), 11-J of Anti-Terrorism Act, 1997.

Issues: i) Whether it is necessary to prove cause and effect of occurrence for punishing under section 11-F and 11-H of Anti-Terrorism Act. 1997?

ii) Whether inciting public to raise funds for Jahad is allowed to individuals in an Islamic State?

Analysis: i) The facts that no other donors were arrested; no person to whom the funds were

transferred was arrested; no membership card of the proscribed organization was recovered from the possession of the appellants, are the arguments relating to the cause and effect of the occurrence but under the provisions of Sections 11-F and 11-H of Anti-Terrorism Act, 1997 mere receiving and donating of money as donation for any proscribed organization with a likelihood that it may be used for terrorism has been made punishable.

ii) Inciting public to raise funds for Jahad is obviously not allowed to individuals in an Islamic State as this may be considered as "Baghawat". At the most it may be a job of the State to collect national funds for a declared war, if essential, which cannot be raised privately by any organization.

Conclusion: i) Mere receiving and donating of money as donation has been made punishable under section 11-F and 11-H of Anti-Terrorism Act, therefore it is not necessary to prove cause and effect of occurrence.

ii) Inciting public to raise funds for Jahad is not allowed to individuals in an Islamic State.

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15. **Lahore High Court**
Afzaal Ahmad Buttar & another v. Muhammad Yousaf
Civil Revision No.520 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC85.pdf

Facts: The respondent/mother/guardian of minor entered into agreement to sell pertaining to property of minor with the petitioner. After receiving sale consideration, she refused to act upon the agreement. The suit for specific performance of agreement to sell filed by petitioner was dismissed ex-parte on the ground that mother of minor has not obtained permission from court to sell property of minor.

Issues: What is legal status of an agreement to sell executed by the guardian of the minor with regards to property, owned by the minor, without taking prior-permission from the competent court?

Analysis: As per section 29 of the Guardian and Wards Act, 1890, before entering into any transaction with the petitioners, the guardian of the minor had to obtain permission of the Court concerned. The alleged agreement to sell was entered into by mother/guardian of the minor without seeking prior permission of the Court concerned, therefore, the same is void *ab initio*.

Conclusion: An agreement to sell by the guardian of the minor with regards to minor's property, without taking prior permission of the competent court, is void-ab-initio.

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16. **Lahore High Court**
Noor Zaman v. Mst. Gullan (deceased) through L.Rs.
Civil Revision No.70819 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC89.pdf

Facts: The suit of petitioner was transferred under administrative order. The learned transferee court closed petitioner's right to lead evidence as well as dismissed his suit for want of evidence without issuance of notice pervi.

Issue: Whether it is necessary to issue notice pervi upon transfer of case under administrative order?

Analysis: Para 6, Chapter XIII, Volume I of High Court Rules and Orders dealing with transfer of a case by administrative order requires the Presiding Officer of the Court from which it has been transferred to inform the parties regarding the transfer & of the date on which they would appear before the transferee Court and the District Judge passing the order of transfer is required to see that the records are sent to the Court concerned & parties informed of the date fixed with the least possible delay. Moreover, in the event of transfer of a case by judicial order, the transferee court is required to fix a date on which the parties should attend the Court.

Conclusion: It is necessary to issue notice pervi upon transfer of case under administrative order.

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17. **Lahore High Court**
Maratib Ali Alvi v. The Punjab Bar Council
Writ Petition No.63835/202
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC368.pdf

Facts: The petitioner sought direction against respondent not to charge exorbitant amount of subscription of General Fund and Benevolent Fund and consequently issue Bar Council license forthwith to the petitioner.

Issues: Whether constitutional petition for direction of restraining the Punjab Bar Council from charging amount of subscription/fund is maintainable?

Analysis: The Pakistan Bar Council and Provincial Bar Councils including Punjab Bar Council are established under the provisions of the Legal Practitioners and Bar Councils Act, 1973. Under the provision of the Act like Pakistan Bar Council, the Punjab Bar Council is also a statutory body but same is autonomous and generates its own funds independently. Other than the Advocate General of Province being the ex-officio member and Chairman of the Punjab Bar Council, nothing in the Act suggests that any administrative or financial control is being exercised by the Federal or Provincial governments over the affairs of the Punjab Bar Council.

Thus Punjab Bar Council is not performing any functions in connection with affairs of the Federation or Province or a local authority. The Punjab Bar Council is also an autonomous private body without any Government control, though constituted under the Act, hence Constitutional petition seeking direction against Punjab Bar Council to restrain from charging subscription fee is not maintainable.

Conclusion: The constitutional petition for direction of restraining the Punjab Bar Council from charging amount of subscription is not maintainable.

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18. **Lahore High Court**
Bahria Town Private Limited v. District Consumer Court and others
Writ petition no.3642 of 2019
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC19.pdf

Facts: The Respondent No.2 purchased plots from the Society and when possession of plots was not delivered, he filed a complaint under Section 25 of the Punjab Consumer Protection Act, 2005 before the Consumer Court. In response to aforesaid complaint, the Society filed an application under Section 35 of the Act read with Order VII Rule 11 and Section 151 of CPC on various grounds including maintainability of the complaint as well as jurisdiction of the Consumer Court. The consumer court dismissed the said application with observation that the society developer is a service provider.

Issues: i) Whether the Consumer Court has Jurisdiction to entertain and decide case of breach of terms and conditions of contract regarding sale/purchase of immoveable land?
ii) Can 'land' be termed as a 'product' under Punjab Consumer Protection Act, 2005?

Analysis: i) The 'services' mentioned under Section 2(k) of the Act includes provision of facilities or advice or assistance of medical, legal or engineering related services but Section 2(k)(i) of the Act specifically put a restriction on a consumer to bring his claim before the Consumer Court if the services relate to a contract of personal nature. It is noted that under Section 2(j) of the Act, the word 'immovable' is mentioned but it is clearly restricted to 'product'. A combined reading of both Section 25 and Section 28 of the Act makes it clear that a claim for damages can only be filed by a consumer when the products hired from a service provider for consideration are defective or faulty and the conduct of manufacture for rectifying such defects or faults caused mental torture, loss of money and wastage of time. Therefore, the case in hand purely relates to rights and liabilities of the parties out of sale/purchase of plots in lieu of consideration shaping up under a contract as well as non-fulfillment of contractual obligation and not of the 'services' as mentioned under Section 2(k) of the Act.
ii) The claim relates to sale/purchase of immoveable property which does not come within the ambit of the Act and also it is not a 'product' as defined under

Section 2(7) of the Sales of Goods Act, 1930. The 'product' is defined under Section 2(j) of the Act and has been given synonymous status of the term 'goods' under the Sale of Goods Act, 1930. The purchased plots/land can neither be termed as 'product' as defined under Section 2(j) of the Act nor can be termed as 'services' as per section 2(c) (ii) of the Act. A joint analysis of Section 2(j) of the Act and Section 2(7) of the Sales of Goods Act, 1930 makes it abundantly clear that 'land' cannot be termed as a 'product'

Conclusion: i) The Consumer Court has no Jurisdiction to entertain and decide case of breach of terms and conditions of contract regarding sale/purchase of immoveable land.
ii) 'Land' cannot be termed as a 'product' under Punjab Consumer Protection Act, 2005.

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19. **Lahore High Court**
Tehniat Zia v. The President, National Bank of Pakistan, etc.

ICA. No.121 of 2019
Mr. Justice Ch. Muhammad Masood Jahangir & Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC8689.pdf

Facts: The applicant being daughter of deceased retired employee seeks her appointment as per circular creating an employment opportunity for sons and daughters of in service, regular, deceased and retired/GHS/VHS Optants in clerical and non clerical cadres. The brother of appellant has already been inducted in service. Yet she claimed her independent right.

Issues: i) Whether the Circular/instrument under which the Appellant is asserting her right is statutory or non-statutory in its nature, scope and ambit?
ii) Whether petitioner is entitled to claim relief through writ petition after about 18 years of retirement of her father?

Analysis: i) The National Bank of Pakistan was duly constituted as a body corporate under National Bank of Pakistan Ordinance No. XIX of 1949. Its few Rules, Regulations, Circulars and Notifications are statutory in nature whereas the remaining are non-statutory, hence, not enforceable in exercise of Constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. For example, National Bank of Pakistan (Staff) Service Rules, 1973 were framed with the previous approval of the Federal Government by virtue of the powers under section 32 of the National Bank of Pakistan Ordinance, 1949, hence these rules were statutory in nature whereas National Bank of Pakistan (Staff) Service Rules, 1980 were non statutory, as the Federal Government's prior approval was never obtained. Reliance in this regard is placed on National Bank of Pakistan and another vs. Punjab Labour Appellate Tribunal and 2 others (1993 SCMR 105). The subject matter NBP Circulars are not protected by any statutory backing rather have been issued for the human

resource management merely with the approval of Board of Directors of National Bank of Pakistan and therefore, cannot be construed having a statutory backing, therefore any right arising under this instrument is not amenable and cannot be enforced by this Court in exercise of Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) The Writ Petition filed by the Appellant suffered from laches as her father retired from service in year 1994 and died in year 2000 and Writ Petition was filed by her in year 2012, therefore, we hold that the Writ Petition filed by the Appellant suffered from inordinate delay and she was indolent in asserting her purported right and neither a satisfactory nor a plausible explanation has been pleaded.

Conclusion: i) The Circular/instrument under which the Appellant is asserting her right is non-statutory in its nature, scope and ambit therefore any right arising under this instrument is not amenable and cannot be enforced by this Court in exercise of Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) The petitioner is not entitled to claim relief through writ petition after about 18 years of retirement of her father.

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20. **Lahore High Court**
Public Interest Law Association of Pakistan v. Environmental Protection Agency, Punjab through Director General & others
W.P No.9429 of 2021
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2022LHC129.pdf

Facts: All the petitions challenged the legality of a project known as Ravi River Front Urban Development Scheme **("the Project**") which has been conceived and proposed to be accomplished by Ravi Urban Development Authority **("RUDA/The Authority")** set up under Ravi Urban Development Authority Act, 2020 ("**Act, 2020).**

Issues: i) Whether the Provisions of "Act, 2020" are *ultra vires* to the constitution?

ii) Whether "Ravi Urban Development Authority (Amendment) Ordinance, 2021" is *ultra vires* to the constitution?

iii) Whether the non-compliance of provisions of "Act 2020 also renders the actions of RUDA/ The Authority as ultra vires?

iv) Whether the acquisition proceedings initiated before the environmental approval are illegal and void?

v) Whether the just compensation in acquisition proceedings includes only monetary loss?

Analysis: i) Section 6 of the "Act, 2020" run counter to holding of the Supreme Court in *Imrana Tiwana* case and also Article 140A of the Constitution. Similarly, section 18(2) of the "Act, 2020" provides that the "RUDA/ the Authority" shall exercise

land use control and perform housing functions in the area without having any interference from any other authority or local government or government agency. This provision too has to be struck down because the Constitution requires all functions to be performed with the agreement of the local government concerned. Sections 29, 30 and 31of the "Act, 2020" do not conform with the fundamental right of protection of property rights enshrined in Article 24 of the Constitution.

ii) Through Ravi Urban Development Authority (Amendment) Ordinance, 2021, certain amendments were made in the "Act, 2020" and the essential pre-condition of an action has been completely erased as if it did not exist and thereafter a retrospective validity has been sought to be conferred. This is an unconstitutional exercise of the power under Article 128. No material was available on the record to justify the action of the Provincial Government to promulgate the Amendment Ordinance 2021 in haste and under the extraordinary powers conferred by Article 128 of the Constitution**.** Hence, the Amendment Ordinance 2021 is unconstitutional in totality especially, section 4 of the Amendment Ordinance, 2021 is unconstitutional being in contravention of Article 140A of the Constitution, consequently section 6 in the original "Act, 2020" stands revived.

iii) In fact, "RUDA/The Authority" did not prepare an independent Master Plan for the area but merely adopted a Master Plan which was purportedly prepared by LDA some five years ago which was in contravention of the provisions of the "Act, 2020". Moreover, there is violation of section 6 of the "Act 2020" as the new area has been specified in the first schedule on 18.10.2021, while the Master Plan was approved by the Authority/RUDA on 14.10.2020 more than a year prior to specification of new area therefore, such Master Plan will have no validity. As RUDA has failed to prepare an independent Master Plan in accordance with the provisions of the "Act, 2020" so, any further schemes prepared in the absence of a Master Plan are unlawful. Also, the loan borrowed by RUDA offends section 26 of the Act, 2020. Hence, it is held to be null and of no effect.

iv) There is no doubt that in the case of present Project, converting over 77000 acres of agricultural land will have a detrimental impact on the supply of food. The Act, 1894 in its present form offends Article 9 of the Constitution because it fails to deal with the issue of acquisition relating to agricultural and cultivated farmlands. It is evident that the acquisition proceedings carried out in the present case are *void* as they were admittedly initiated before the environmental approval was granted in terms of section 12 of PEPA Act, 1997. Any acquisition of agricultural land can only take place after a legal framework has been put in place by making necessary amendments in the Statute.

v) The public purpose must be such that it overrides and stumps the individual interest. The intention of the legislature is that no acquisition should be permitted which would be hazardous to public health or agricultural economy. The estimation of loss must necessarily include not only the immediate loss suffered by the land owner and to be compensated in monetary terms but also the wider loss likely to be faced by the community at large. This would be a compensation not only to the environment but also serve the purposes of climate and inter-

generational justice and must be done while awarding compensation to the land owner under the Act, 1894. "Just compensation" must include within it the process of rehabilitation of affected persons, not only as regards their homes and abodes but also with regard to their vocation, business and means of livelihood etc. The policy of the Act, 1894 clearly has its provenance in the Constitution of Pakistan because right to property is a fundamental right, while compulsory acquisition is a serious invasion on that right and must be scrupulously and jealously guarded

Conclusion: i) Sections 6, 18(2), 29, 30, 31, of the "Act, 2020" are *ultra vires* to the constitution.
ii) The "Amendment Ordinance 2021" is *ultra vires*.
iii) Thus purpose of the "Act, 2020" has been thrown to the winds in the decision-making process adopted by the members of RUDA, hence it renders all the actions of RUDA/The Authority *ultra vires* to the Constitution and the "Act, 2020",
iv) The acquisition proceedings initiated before the environmental approval are illegal and void.
v) "Just compensation" must include within it the process of rehabilitation of affected persons, not only as regards their homes and abodes but also with regard to their vocation, business and means of livelihood etc.

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21. **Lahore High Court**
Mst. Ghulam Fatima etc. v. Pahar Khan etc.
Civil Revision No. 194-D of 2012.
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC8610.pdf

Facts: The respondents filed an appeal against decree and judgments of trial court in suit for declaration. During pendency of appeal, the petitioners moved an application for production of additional evidence. The said application as well appeal was dismissed. Hence, this revision.

Issues: Is it incumbent upon the court to first decide the application and then advert to the merits of the case?

Analysis After having an overview of the principles laid down herein-above, it can safely be inferred that in case of pendency of some miscellaneous application, it is incumbent upon the court to first decide the application and then advert to the merits of the case. The primary object is that a lis should be buried in all respects as per canons of justice and by deciding the miscellaneous application in the first instance, allowing parties to retrace the steps fairly and equitably. Allowing a court to decide the application for additional evidence alongwith the appeal would amount to give a premium to decide such application in negative. The joint decision of the miscellaneous application and appeal would not be even possible, if the court ultimately reaches at the conclusion that the application has due force and it is to be accepted. It would thus be in all fairness that the court should first

decide the miscellaneous application and then pass final order/judgment qua the lis.

Conclusion: Court should first decide the miscellaneous application and then pass final order/judgment qua the lis.

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22. **Lahore High Court**
Zahid Mehmood and another v. Malik Muhammad Fahad and 3 others
Writ Petition No.124 of 2018
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC8622.pdf

Facts: This respondent filed suit for permanent injunction which was dismissed on statement of petitioners. The respondent filed application under Order XXI Rule 32 CPC. During the proceedings, the respondent filed application for appointment of local commission which was allowed. The petitioner has assailed the said order.

Issues: Whether learned executing court is vested with the power to appoint local commission during the execution proceedings?

Analysis: From the bare language of the Order XXVI Rule 9, it is manifestly clear that power of the court to appoint local commission is restricted to the proceedings in the suit. It is not in dispute that the application under Order XXI Rule 32 of "CPC" comes under proceeding in execution. There is also no cavil to the proposition that the learned executing court is not a civil court.

Conclusion: Executing court is not vested with any power to appoint local commission

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23. **Lahore High Court**
Hamza Yaqoob v. The State
Criminal Appeal No.776 of 2018
Zeeshan Mehmood alias Shani v. The State
Criminal Appeal No.956 of 2018
The State v. Hamza Yaqoob
Murder Reference No.71 of 2018
Mr. Justice Raja Shahid Mehmood Abbasi & Mr. Justice Ch.Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2022LHC384.pdf

Facts: The appellants have challenged their conviction in murder case while the trial court sent reference under Section 374, Cr.P.C. for the confirmation or otherwise of death sentence awarded to one of the convicts.

Issues: Whether the test identification parade can be discarded solely on account of having been jointly conducted in respect of more than one accused?

Analysis: The Hon'ble Supreme Court of Pakistan in the case of *Kanwar Anwaar Ali* (PLD 2019 Supreme Court 488), dilated in-depth upon the test identification parade and about the joint identification proceedings held that if there are more accused persons than one who have to be subjected to test identification, then the rule of prudence laid down by the Superior Courts is that separate identification parades should ordinarily be held in respect of each accused person. From the aforesaid, it evinces that the joint identification is not prohibited by Rules & Orders of the Lahore High Court, Lahore, Chapter 11, Part-C but identification proceedings are desired to be conducted separately in pursuance of rule of prudence. Secondly, the Hon'ble Apex Court used the word "ordinarily" and the expression can be taken in suggestive form and not as mandatory in nature. In our humble view, if identification test proceedings are otherwise impeccable in nature, these cannot be discarded solely on account of having been jointly conducted in respect of more than one accused, more importantly when each suspect is placed in a separate row and mixed with required quantity of dummies

Conclusion: The test identification parade cannot be discarded solely on account of having been jointly conducted in respect of more than one accused.

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24. **Lahore High Court**
Mehr Ashraf and another v. Station House Officer etc.
Writ Petition No. 66032/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC8695.pdf

Facts: The Petitioner alleges that his father lost his mental balance and respondent/sister and her husband have illegally confined him and even stopped them from meeting him. The petitioner filed habeas corpus petition in the Sessions Court which was dismissed after recording statement of the alleged detenue with observation that detenue is "enjoying good physical and mental health". Therefore the petitioner has moved this Court for expunction of observation of court on the ground that Mental Health Ordinance, 2001, has the exclusive jurisdiction to determine whether a person is mentally disordered and the Additional Sessions Judge was not the Court of Protection so he was not competent to comment on the mental health in habeas corpus proceedings

Issue: i) What is importance of preamble in a statute?
ii) Whether Court of protection has jurisdiction over every matter involving a mentally disordered person?
iii) Whether the Additional Sessions Judge was justified in recording observation regarding mental health of detenue in a habeas corpus proceedings in presence of Mental Health Ordinance 2001?
iv) What should be considerations to award cost?
v) How the proceedings can be termed as "frivolous"?
vi) How the proceedings can be termed as "vexatious"?

vii) What is difference between cost under section 35 & 35-A?
viii) Whether High Court has powers to impose (special/exemplary) costs over and above the amount stipulated in section 35A CPC?

Analysis: i) Preamble is a part of a statute though not its operative part. Nevertheless, it provides a useful guide to find out the legislative intent. Coke said: "The preamble of the statute is a good means to find out the meaning of the statute, and as it were a key to open the understanding thereof." According to another jurist, it "is a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress."

ii) The Ordinance is a special law and its application is limited to the subjects dealt by it. Therefore, the Court of Protection may not necessarily have jurisdiction over every matter involving a mentally disordered person.

iii) Ordinance does not apply to the instant case as the proceedings were under section 491 Cr.P.C. and not under section 29 of the Ordinance. Secondly, Petitioner No.1 had taken a specific plea in his habeas corpus petition that his father was mentally disordered and Respondent No.3 & 4 had wrongfully confined him. The Additional Sessions Judge was under a bounden duty to decide both these issues and for that purpose he was required to engage with the detenue when he was brought before him, to form an opinion about his mental health and then record his statement. He adopted this very course and the impugned observation is a part of those proceedings.

iv)) Imposition of costs on the losing party is one of the effective means to curb frivolous and vexatious litigation, yet costs should not obstruct access to courts and justice. The costs should not be a deterrent for the people with genuine claims and for those members of the weaker sections of the society whose rights have been affected to approach the courts

v) A claim or defense is 'frivolous' (a) if it is taken primarily for the purpose of harassing or maliciously injuring a person, or (b) if the lawyer is unable to make a good faith and rational argument on the merits of the action, or (c) if the lawyer is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law.

vi) Vexatious claim is one that is "brought or maintained in 'bad faith', which may include conduct which is arbitrary, vexatious, abusive, or stubbornly litigious, and may also include conduct aimed at unwarranted delay or disrespectful of truth and accuracy." Vexatious litigation is a type of malicious prosecution.

vii) Section 35 aims at reimbursement of reasonable litigation expenses to the successful party, the costs awarded under this section should be realistic. In contrast, the compensatory costs envisaged by section 35A CPC are a compensation for false and vexatious claims and defences and are in addition to the actual costs. In awarding them the court does not take into account the actual injury to the person or property of party which can be claimed in a separate suit for damages.

viii) The courts dealing with civil suits are bound by the provisions of CPC and

must award costs in accordance with them. Their discretion is circumscribed by these provisions. However, while exercising constitutional jurisdiction, the High Court may invoke its inherent powers to impose (special/exemplary) costs over and above the amount stipulated in section 35A CPC.

Conclusion: i) The preamble is a legitimate aid in discovering the purpose of a statute.
ii) Court of protection may not necessarily have jurisdiction over every matter involving a mentally disordered person.
iii) The Additional Sessions Judge was justified in recording observation regarding mental health of detenue in a habeas corpus proceedings in presence of Mental Health Ordinance 2001.
iv) Costs should not obstruct access to courts and justice.
v) Frivolous "being legal position wholly without merit, that is, without rational argument based on law and evidence to support litigant's position".
vi) Proceedings are vexatious if they are instituted with intent to annoy or embarrass the opposite party.
vii) Section 35 aims at reimbursement of reasonable litigation expenses while section 35A CPC are a compensation for false and vexatious claims.
viii) High Court has powers to impose (special/exemplary) costs over and above the amount stipulated in section 35A CPC.

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25. **Lahore High Court**
Ali Hussain Manzoor v. Federation of Pakistan, etc.
W.P. No. 4146 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC10.pdf

Facts: Petitioner moved instant writ petition seeking direction to respondents for undoing his impugned result card & reviewed result for onward evaluating his result in the light of the report furnished by the skilled evaluators of Quaid-e-Azam University and for enhancing his grace marks.

Issue: Whether there is any alternate remedy available to petitioner for correction of his result card?

Analysis: Section 3 of the Medical Tribunal also provides right of an appeal to a person aggrieved by an act or order before the Medical Tribunal constituted under Section 4 of Medical Tribunal Act, S. 6(11) whereof explains that the Tribunal shall hear and decide all the appeals within stipulated time of 120 days without exception. Therefore, the Petitioner, if so advised, can file an Appeal under Section 37 of the PMC Act read with Section 6(11) of the MT Act before the Tribunal.

Conclusion: The petitioner has alternate remedy to file appeal under section 3 of the MT Act.

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26. **Lahore High Court**
Syed Faisal Mehboob v. Federation of Pakistan etc.
W.P.No.145/2022
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2022LHC48.pdf

Facts: Petitioner claimed illegal interference of respondents into peaceful possession of his property under the provisions of Rule 68 of the Civil Aviation Rules, 1994. The petitioner also sought relief of interim injunction against the respondents.

Issue: i) Whether judicial restraint should be exercised for passing any adverse order, which can potentially hinder or nullify any government initiative?
ii) How the courts should grant interim relief in writ petitions?

Analysis: i) While exercising powers under Article 199 of the Constitution, any restraining order, can possibly put a complete halt and hiatus to the initiatives taken by the Government for encouraging security plans/activities in country by enhancing security environment through the aviation industry to avoid any incident of aero plane. In the absence of any glaring illegality or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any government initiative, particularly, taken for the security enhancement because judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own powers to intervene in the matters relating to policy of the Government having financial perspective.
ii) Moreover, in a writ petition, an interim relief can only be granted as per mandate of Article 199(4) of the Constitution where it has been clearly stated that under writ jurisdiction, before making an interim order, the Court has to look into the public interest which should not be harmed/hampered in any manner.

Conclusion: i) Judicial restraint should be exercised for passing any adverse order, which can potentially hinder or nullify any government initiative.
ii) Before making an interim order, the Court has to look into the public interest.

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27. **Lahore High Court**
Javed Iqbal v. The State, etc.
Crl. Revision No.307 of 2021
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC418.pdf

Facts: Through the instant petition in terms of section 439, 435, Cr.P.C., the petitioner has called in question the vires of order passed by the learned Judge, Model Criminal Trial Court/ASJ, D.G. Khan, whereby hard disks, containing video of the occurrence, were ordered to be excluded from evidence.

Issue: Whether the modus operandi adopted by the learned Trial Court, whereby a constable, present in court was asked to prepare copy of the hard disks, was proper rather warranted under the law?

Analysis: The hard disk containing the video film of the crime scene is the evidence, the importance of which is paramount in nature to determine the fate of the case and guilt or otherwise of the accused persons and this was one of the piece of evidence, being relied upon by the prosecution. The court must have sent the hard disks to an I.T. Dept. of the investigating agency/police or to the Punjab Forensic Science Agency (PFSA) for preparation of its copies.

Conclusion: The modus operandi adopted by the learned Trial Court, whereby a constable, present in court was asked to prepare copy of the hard disks, was not proper rather unwarranted under the law.

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28. **Lahore High Court**
Muhammad Ijaz v. The State etc.
Crl. Misc. No.8802/B/2021
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC413.pdf

Facts: Through instant petition, petitioner seeks post-arrest bail in case registered u/s 302, 148, 149, PPC.

Issues: i) Whether the plea of alibi supported by the investigation outcome makes the case one of further inquiry and probe?
ii) Whether, at bail stage, the court can consider the fact of placing the accused in column No. II of report u/s 173 Cr.P.C by investigation officer and the complainant has neither challenged his opinion before any higher forum of the police hierarchy nor filed private complaint?

Analysis: i) The Investigating Officer has seen the video film of the wedding ceremony and noticed that at the relevant time, the accused was present there. The Investigating Officer got associated number of persons in investigation, and the statement of 6/7 persons have been recorded in the case diaries verifying 'plea of alibi' of petitioner. It is sufficient evidence to make the case of the accused one of further inquiry.
ii) Response and attitude of the complainant, firstly by not challenging the opinion of the Investigating Officer and then by not filing a private complaint, showed that in fact the complainant is satisfied with the outcome of the investigation.

Conclusion: i) When the plea of alibi is supported by the investigation outcome, it makes the case one of further inquiry and probe.
ii) The court at bail stage can consider the fact of placing the accused in column No. II of report u/s 173 Cr.P.C by investigation officer and when the complainant has neither challenged his opinion before any higher forum of the police hierarchy nor filed private complaint.

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29. **Lahore High Court**
SEPCOIII Electric Power Construction Co. Ltd. v.
Federation of Pakistan and others
W.P. No.67659 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC8651.pdf

Facts: The petitioner participated in the tender for procurement along with financial statement and bank letter of credit promise. He submitted bank guarantee. During the evaluation process petitioner was notified that the first bank letter of credit promise was conditional bank credit letter of promise and that unconditional bank credit letter of promise was required. Which he ultimately could not filled. So the respondent proceeded to issue encashment of bank guarantee on the ground that the bidder has violated the subject Tender Documents clauses during the validity of his bid and notified the bank, to honor its commitments.

Issues: i) Whether the bank can escape from its liability once it has unconditionally undertaken to pay bank guarantee on first demand?
ii) Whether controversy regarding violation of terms of bid could be determined by High Court while exercising its extra-ordinary jurisdiction?

Analysis: i) Where the bank guarantee furnished, contained a categorical undertaking and imposed absolute obligation on the bank to pay the amount; irrespective of any dispute which may arise between the parties regarding breach of contract, the courts must give effect to the covenants of bank guarantee, as these guarantees are independent contracts and the bank authorities must construe them independent of primary contracts; and that the bank should encash the guarantee notwithstanding any dispute arising out of the original contract between the parties and that encashment of bank guarantee could not be postponed pending decision of the arbitration proceedings which may take years to conclude. It is settled rule that where the bank has unconditionally undertaken to pay the amount of bank guarantee on receipt of first demand from the beneficiary, then it cannot possibly express any reluctance in the matter or escape its liability; nor it is obliged to seek concurrence of party on whose behest the bank guarantee was furnished.
ii) As to whether the petitioner breached the terms of the bid documents or whether the project was sabotaged as alleged and whether the petitioner, in the peculiar circumstances, could be deemed to have withdrawn from the bid are questions that require determination of factual controversy that cannot be launched in the extraordinary, summary and Constitutional jurisdiction of this Court and may be a subject-matter of determination in a regular suit before the court of general jurisdiction.

Conclusion: i) The bank cannot escape from its liability once it has unconditionally undertaken to pay bank guarantee on first demand
ii) Controversy regarding violation of terms of bid cannot be determined by High Court while exercising its extra-ordinary jurisdiction.

30. **Lahore High Court**
Ali Ahmad, etc. v. Office of the Ombudsperson (Mohtasib) Punjab, etc.
Writ Petition No. 63956 of 2021
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC398.pdf

Facts: Petitioners challenged the legality of decision of Ombudsperson Punjab under section 7 of Punjab Enforcement of Women's Property Rights Act, 2021 with the contention that Ombudsperson lacked jurisdiction to take cognizance of the complaint when the case was already pending in a court of law.

Issues: i) Whether the pendency of civil suit restricts or bars initiation of proceedings or cognizance exercised by the Ombudsperson Punjab?
ii) Whether in case of summary proceedings the submission of pending proceedings of the court and its orders are imperative in nature?

Analysis: i) In terms of sub-section (1) of section 7 of Act, 2021, pendency of civil suit would not restrict or bar initiation of proceedings or cognizance taken by Ombudsperson in relation to the ownership or possession of any property claimed to be owned by a woman either on its own motion or on complaint. Hence, initiation of proceedings on complaint manifests no illegality.
ii) In terms of sub-section (2) of section 7, Ombudsperson is required to make preliminary assessment of the complaint through Deputy Commissioner for determining that whether matter at hand requires further probe or investigation, and if it does not require further probe or investigation and intends to proceed to decide complainant, then sub-section (3) of section 7 requires, submission of report in the court recommending that the proceedings in the court may be terminated or put in abeyance unconditionally or subject to any order of the court, and awaiting for further orders are imperative and mandatory in nature. In fact, the jurisdiction(s) conferred are not mutually exclusive but structured to avoid conflict, confusion and disarray. Ombudsperson without adhering to the requirement(s) of filling report in the court, in which case is pending, making recommendations accordingly and waiting for the permission of the court to take further proceedings, summarily proceeded to decide the matter, which significant lapses, in the context of sub-section (3) of section 7 ibid, manifest failure to adopt and adhere to the prescribed statutory requirements, indicating erroneous exercise of jurisdiction.

Conclusion: i) The pendency of civil suit does not restrict or bar initiation of proceedings or cognizance exercised by the Ombudsperson Punjab.
ii) In case of summary proceedings submission of report of pending proceedings in the court of law with recommendations of abeyance of its proceedings and waiting of orders of the court are imperative and mandatory requirement of law.

31. **Lahore High Court**
Muhammad Nawaz alias Nazi & another v. The State
Criminal Appeal No.1577 of 2019
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2022LHC94.pdf

Facts: Through this appeal, the appellants challenged their conviction and fine in murder case.

Issues: i) Whether non-mentioning of Section 302 PPC in charge of second accused and non-framing of joint charge vitiate the trial?
ii) Whether non-appearance of complainant in witness box was fatal to prosecution case?
iii) Whether non-production of daughter of the complainant present at crime scene amounts to withholding the best evidence?
iv) Whether it was a case of defective investigation due to non- investigation of plea of alibi?

Analysis: i) After the submission of supplementary report under Section of 173 Cr.P.C (Challan), no doubt that a joint charge was required to be framed against both the appellants in terms of Section 239 Cr.P.C. and Section 302 was also not mentioned in charge framed against second accused but it was a procedural irregularity on the part of learned trial court which can be fatal to prosecution only if the appellants are succeeded to show that because of such omission in fact they were misled and it had occasioned a failure of justice. Under Section 232 Cr. P.C, this Court, in the given circumstances, as a Court of appeal or revision can interfere only if it is found that by such error or omission appellants were misled in their defence. When prejudice is not caused to appellants and there was no failure of justice, no benefit can be extended to appellants because of said omission in the charge.
ii) The complainant of the case, before could attend the witness box had taken his last breath therefore appellants cannot take any benefit of the act of GOD in particular when two eyewitnesses Musharraf Ali (Pw-7) and Ghulam Farid (Pw-8) are still in the credit of prosecution.
iii) These are the recognized principles of law that prosecution is not bound to produce each and every witness of the case and that it is the quality and not the quantity that has to prevail for the purpose of arriving at a just decision of the case. If two eye witnesses were produced and the daughter of complainant was not produced, that by no means can be stated as a damaging factor for the prosecution.
iv) One of the appellants had taken plea of alibi but after two years and nine months of the occurrence when he was arrested. It is settled principle of law that the plea of alibi being special plea must be taken at first available opportunity and being a distinct plea is required to be substantiated by adducing cogent and concrete evidence. The appellant before he was arrested by the police, never agitated anywhere even by moving any application to any authority that he was not present at crime scene. Although in cross-examination he suggested to the

Investigating Officer about such plea and the person with whom he was present but that person was not produced by him in his defence.

Conclusion: i) When prejudice is not caused to appellants no benefit can be extended to appellants because of the omission or procedural defect in the charge.
ii) Death of complainant was an act of GOD and his non-appearance in particular case when two eyewitnesses were produced cannot be fatal to prosecution case.
iii) Prosecution is not bound to produce each and every witness of the case and non-production of daughter of the complainant present at crime scene does not amount to withholding the best evidence.
iv) Plea of alibi being special plea must be taken at first available opportunity. If such plea is taken at belated stage and not proved then non-investigation of the same does not amount to defective investigation.

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32. **Lahore High Court**
Muhammad Ajmal v. The State and another
Crl. Misc. No. 4516-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC119.pdf

Facts: The petitioner applied for the post-arrest bail in a case FIR registered under Sections 496-A, 376, 420, 468 & 471 PPC.

Issue: i) Whether the previous divergent statements of the abductee / victim make her case doubtful even if she has got recorded statement u/s 161 Cr.P.C?
ii) Whether the case becomes one of further inquiry if the medical evidence does not support the prosecution version?

Analysis: i) When the alleged abductee / victim herself earlier filed a petition under sections 22-A/22-B Cr.P.C. in the court of learned Ex-Officio Justice of Peace and a private complaint before learned Area Magistrate and deposed that she contracted marriage with the alleged accused with her own free will and consent then even in the presence of implicating statement of abductee / victim under section 161 Cr.P.C, her case becomes doubtful.
ii) Another intriguing aspect of the case is that medical evidence does not support the prosecution version because no mark of violence was observed by the Lady Doctor on the body of the abductee/victim. This facts makes the case of the petitioner as one of further inquiry as contemplated under section 497 (2) Cr.P.C.

Conclusion: i) The previous divergent statements of the abductee / victim make her case doubtful even if she has got recorded statement u/s 161 Cr.P.C.
ii) The case becomes one of further inquiry if the medical evidence does not support the prosecution version.

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33. **Lahore High Court**
Imtiaz Ali v. The State etc.
Crl. Misc. No. 4323-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC124.pdf

Facts: The petitioner applied for the post-arrest bail in a case FIR registered under Sections 337-F(v), 337-F(i) & 337-A(i) PPC.

Issue: i) Whether liberty of a person can be curtailed in a case which does not fall within the prohibitory clause of section 497 Cr.P.C. having no exceptional circumstances?
ii) Whether the post-arrest bail can be refused if the trial is going to be commenced?

Analysis: i) It is settled proposition of law that if the offences do not fall within the prohibitory clause of section 497 Cr.P.C. then basic rule is bail not jail and refusal an exception if there are no exceptional circumstances available, like previous conviction in such like cases. Even otherwise, liberty of a person is a precious right which has been guaranteed in the Constitution of Islamic Republic of Pakistan, 1973.
ii) Even if the report under Section 173 Cr.P.C is submitted before the learned trial Court and trial is to commence in near future, even then the bail cannot be withheld as it is settled proposition of law that mere commencement of trial is no ground for refusal of bail if an accused has made out a case of further inquiry.

Conclusion: i) Liberty of a person cannot be curtailed in a case which does not fall within the prohibitory clause of section 497 Cr.P.C. having no exceptional circumstances.
ii) The post-arrest bail cannot be refused even if the trial is going to be commenced, if an accused has made out a case of further inquiry.

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34. **Lahore High Court**
Muhammad Zahid Amjad v. The State, etc.
Crl.Misc.No.37739-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8603.pdf

Facts: The Petitioner has sought pre-arrest bail in respect of offences under Sections 302, 148, 149 PPC.

Issues: Can a court touch the merits of the case while deciding a pre-arrest bail petition to ascertain *mala fide* intention and ulterior motive?

Analysis: It has been well settled by now that *mala fide* can be gathered from the facts and circumstances of the case also. Although, it is a pre-arrest bail application and merits for grant of bail before arrest and after arrest all altogether different but in

a recent pronouncement of Apex Court of the Country in case titled as "*Khair Muhammad and another Vs. The State through P.G.Punjab and another"(*2021 SCMR 130), the court can touch the merits of the case

Conclusion: A court can touch the merits of the case while deciding a pre-arrest bail petition to ascertain *mala fide* intention and ulterior motive.

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35. **Lahore High Court**
Muhammad Asif v. The State & another
Crl. Appeal No.81066 of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8596.pdf

Facts: The appellant along with co-accused were tried by learned trial court and after conclusion of the trial the appellant was convicted and sentenced while acquitting the co-accused.

Issues: i) Who is interested witness in criminal matters?
ii) Whether conviction stands even if recovery is disbelieved by the court?

Analysis: i) When the ocular account is furnished by related and interested witnesses, the law is quite settled on the point that an interested witness is the one who is interested in the conviction of an accused for some ulterior motive.
ii) If the Court exclude the evidence of recovery from consideration which has already been disbelieved by the learned trial court in its judgment, and the prosecution still successfully proved its case against the appellant, which is strongly corroborated by medical evidence that has led this Court to an irresistible conclusion that the convictions and sentences of the appellant are neither unfounded nor the same suffers from any legal infirmity.

Conclusion: i) An interested witness is the one who is interested in the conviction of an accused for some ulterior motive.
ii) Conviction stands if besides recovery all other evidence is strongly corroborated then it cannot affect the merits of the case.

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36. **Lahore High Court**
Mst. Ayesha Anwar v. The State and another
Crl. Misc. No. 43499-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8516.pdf

Facts: The petitioner applied for the pre-arrest bail in a case FIR registered under Sections 406, 380, 448, PPC.

Issue: i) Whether mere breach of promise, agreement or contract *ipso facto* attracts the definition of criminal breach of trust in terms of section 405 PPC?

ii) Whether the grounds *mala fide* intention or ulterior motive of the police if not apparent, can be gathered from the facts and circumstances of the case?
iii) Whether involvement of accused in similar cases is sufficient ground to refuse bail?

Analysis: i) Volunteer entrustment of property is *sine qua none* to constitute an offence under section 406 PPC. In the absence of clear entrustment mere breach of promise, agreement or contract does not *ipso facto* attract the definition of criminal breach of trust in terms of section 405 PPC.
ii) As far as the principles for grant of pre-arrest bail, i.e. *mala fide* intention or ulterior motive of the police is concerned, it is not possible in every case to prove the same, however, these grounds can be gathered from the facts and circumstances of the case.
iii) Mere registration of cases without conviction in any of them cannot be deemed sufficient to label a person as a dangerous or a habitual criminal entailing dismissal of petition.

Conclusion: i) Mere breach of promise, agreement or contract does not *ipso facto* attract the definition of criminal breach of trust in terms of section 405 PPC.
ii) If the grounds for grant of pre-arrest bail, i.e. *mala fide* intention or ulterior motive of the police are not apparent, that can be gathered from the facts and circumstances of the case.
iii) Involvement of accused in similar cases without conviction is not sufficient ground to refuse bail.

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37. **Lahore High Court**
Shahbaz alias Gillu v. The State
Crl. Appeal No. 560-J of 2016
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC8521.pdf

Facts: The appellant has assailed his conviction in murder case.

Issues: i) Whether delay in conducting postmortem of deceased makes any dent in the story of prosecution?
ii) Whether prosecution evidence can be discarded if it has been disbelieved to the extent of co-accused having somewhat similar role?
iii) Whether recovery of weapon of offence without report of PFSA has any evidentiary value?
iv) Whether absconsion of the accused leads to heavy presumption of his guilt?

Analysis: i) Delay in conducting postmortem casts serious doubts. It happens when the complainant party remains busy in consultation regarding nomination of the accused persons and police party indulges in preliminary inquiry and wasting

more than due time in preparing police papers to be handed over to doctor for the purpose of conducting postmortem.
ii) It is trite principle of evidence and justice that once prosecution witnesses are disbelieved with respect to a co-accused and his acquittal thereupon was neither challenged by the state nor the complainant, they cannot be relied upon with regard to the other accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.
iii) Recovery of weapon of offence has been affected but report from PFSA has not been sought. Recovery of weapon of offence is a corroborative piece of evidence and conviction cannot be solely based upon it.
iv) Mere absconscion of accused is not the conclusive proof of his guilt and it is only a suspicious circumstance against the accused that he was under the guilty conscious. However, suspicions after all are suspicions and the same cannot be given the place of proof and the value of absconscion always depends upon the facts of each case. The absconscion of the accused may be consistent with his guilt or innocence, which is to be decided keeping in view overall facts of the case

Conclusion: i) Delay in conducting postmortem of deceased creates dent in the story of prosecution.
ii) Prosecution evidence can be discarded if it has been disbelieved to the extent of co-accused having somewhat similar role who has been acquitted and his acquittal has not been challenged.
iii) Recovery of weapon of offence without report of PFSA has no evidentiary value.
iv) Mere absconscion of accused is not the conclusive proof of his guilt.

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38. **Lahore High Court**
Muhammad Faheem Zafar v. Government of the Punjab and three others
W. P. No. 17603 of 2021
Mr. Justice Abid Hussain Chattha.
https://sys.lhc.gov.pk/appjudgments/2022LHC423.pdf

Facts: Through this writ petition petitioner assailed impugned order passed by respondent no.3 who returned the case of the Petitioner regarding grant of pension followed by the order of retirement passed by competent authority on the ground of being unlawful in violation of Section 12 of the Punjab Civil Servants Act, 1974 (the "Act") as amended on 29.10.2021.

Issue: i) Whether a statute or a provision thereof applicable retrospectively?
ii) Whether administrative officials/officers are vested with any constitutional or legal authority to interpret a provision of law?
iii) Whether an authority through an order once creating a right in favor of the beneficiary of that order subsequently can recall the same?

Analysis: i) It is general rule of common law that the statute changing the law ought not to apply, unless the intention appears with reasonable certainty to be understood as applied to facts, to events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined with references to past events.

ii) Interpretation of law is purely and exclusively a judicial function under the scheme of trichotomy of power enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") and jurisprudentially entrenched in our legal system through consistent and exhaustive pronouncements of the Apex Court. Hence, it is established that administrative instructions or notifications which do not even fall in the category of delegated legislation cannot be allowed to apply in derogation of law.

iii) The authority who is empowered to pass an order and take an action is also empowered to set aside, modify and vary such order or action subject to an exception, that is, if by such an order an action has been acted upon, thereby, creating a right in favor of the beneficiary of that order and in such event, such an order or action cannot be set aside or modified so as to deprive the person of the said right to his disadvantage. Once a right is created by extending benefit after complying with all codal formalities, the same cannot be destroyed or withdrawn as legal bar would come into play under the principle of "locus poenitentiae"

Conclusion: i) A statute or a provision thereof would ordinarily have a prospective effect unless the same made applicable retrospectively.

ii) The administrative officials not vested with any constitutional or legal authority to interpret a provision of law.

iii) Once a right has been created by a competent authority in favor of the beneficiary the same cannot be recalled under the principle of "locus poenitentiae".

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39. **Lahore High Court**
Ameer Hamza v. District & Sessions Judge, etc.
Writ Petition No.13705/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC8567.pdf

Facts: The petitioner applied for for appointment as a Junior Clerk, under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 after about 28 years of retirement of his father. But his application has been rejected on the ground that Rule 17- A is a benefit, which cannot be claimed after lapse of considerable period of time.

Issues: i) What is object of promulgation of Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974?

ii) How the word 'at any time' in Rule 17-A be interpreted?

iii) Whether benefit of Rule 17-A can be granted to unborn child of retired civil servant?

Analysis: i) The object and underlying purpose of Rule 17-A is to enable the family to get over with the financial crisis, which it faces at the time of the death or permanent invalidation of the sole breadwinner in government service, and hence, the beneficiaries are widow/wife and/or one of his child which is to be operative and implemented even during the period when there might be a ban on the recruitment/appointment. Prima facie, employment envisaged by virtue of Rule 17-A is compassionate in nature and not an inheritable right, which can be claimed at any time by a legal heir of the retired or deceased employee.

ii) The principle embodied in the legal maxim "Noscitur a sociis" (it is known by its associates), means that the word should be known from its accompanying or associating words. It is not a sound principle in interpretation of statutes to lay emphasis on one word disjointed from its preceding and succeeding words. The words 'at any time' when put in juxtaposition with the words 'wife/widow/one child' as well as the words 'even during a ban' clearly lead to one interpretation i.e., when an employee dies or is incapacitated during service and is retired, his widow or wife, as the case may be, or one child can immediately get the relief by way of an appointment in a particular class even if the ban is imposed at that point of time. Had the relief not intended to be of immediate nature, the words 'even during a ban' were not required as in that eventuality, the appointment could be deferred till such time the ban was removed.

iii) Such an interpretation would engender a situation where an unborn child of deceased or incapacitated employee would come to this world with an assurance of job on attaining majority. This would not only be counter-productive to the society but would also retard the said child from utilizing his faculties to the fullest level as job assurance in a world characterized by competition would lead to permeation of complacency in such a child. He might have been conferred by nature with much exalted faculties and abilities to be an asset to the society but the job assurance of BS-1 to BS-7 may curtail and curb his faculties and abilities. Therefore, such an interpretation would do more harm not only to the individual child but also the society as a whole, which runs the risk of being deprived from the utilization and benefits thereof to the society, which is an essential element of human and social advancement.

Conclusion: i) The object of Rule 17-A is to extend immediate relief/financial assistance in the form of a job to the family of a deceased/retired employee to reduce their affliction.

ii) The use of words "at any time" mean ban on recruitment/appointment or such like eventualities that have been rendered subservient to the right of appointment under Rule 17-A by the use of words "at any time, even during a ban".

iii) The benefit of Rule 17-A cannot be granted to unborn child of retired civil servant.

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40. **Lahore High Court**
Muhammad Nasir v. Justice of Peace, etc.
Writ Petition No.17716 of 2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC8554.pdf

Facts: The Petitioner challenged the dismissal order of his petition for registration of criminal case.

Issues: Whether any probative and evidentiary value can be attached to an opinion rendered by the Medical Examiner without furnishing cogent reasons in support of his opinion?

Analysis: Opinion of a medical examiner is not only relevant but also most pivotal in criminal justice system and at times it plays a decisive role coupled with other evidence. Guarantee of fair trial under Article 10-A of the Constitution is a wishful expectation without a medico legal system comprising of true experts having adequate qualification and skills. According to the revised SOPs for medico-legal cases bearing No. S.O (H&D) 7-2/2019-(MLC) dated 13th October 2020, the Medical Officer/Women Medical Officer, after physical examination of an injured person, while issuing the Medico-legal Certification, holding the possibility of fabrication of any injury as "Yes", he/she must record reasons in an unambiguous term (s) on the basis of principles of Medical Jurisprudence… Rendering such opinion without offering convincing reasons/justification is not in accordance with the settled norms of justice…No probative and evidentiary value can be attached to an opinion rendered by the medical examiner without furnishing cogent reasons in support of his opinion. Medical examiners are under a bounden duty to furnish reasons in support of their opinion in order to make it having evidentiary sanctity in court of law. Opinion of an expert should be buttressed by the reasons or it shall lose its sanctity.

Conclusion: No probative and evidentiary value can be attached to an opinion rendered by the medical examiner without furnishing cogent reasons in support of his opinion.

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41. **Lahore High Court**
TCS (Private) Limited v. Mst. Haseena Begum
F.A.O. No.101 of 2012
Mr .Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC8579.pdf

Facts: Suit for damages against courier service for delayed delivery of parcel was filed by the respondent before the consumer court**.** The suit was deccreed. Both the parties have filed the appeals against the judgment pronounced by the consumer court.

Issues: i) Whether both the hirer who paid and the beneficiary of service can maintain action against faulty service?
ii) When service provider can be held liable for faulty service?
ii) What are the parameters to adjudge special damages claimed by the consumer?

Analysis: i) Both the hirer who paid consideration for the services and beneficiary of such service are covered within the definition of the Customer as provided in section 2(c)(iii) of the Act. Section 2(c): 'Customer' means a person or entity who - (i) xxx (ii) Hires any services for a consideration and includes any beneficiary of such services; Above definition is comprehensive enough to include the one who hired the service for consideration and at the same time in view of the broad definition even other beneficiaries cannot be denied the action, provided the same is brought due to damage caused by any faulty service and it is not permissible for a service provider to take a position that there is no privity of contract.
ii) Careful examination of section 15 and 13 as well as its surrounding provisions reflects that a customer who suffers a harm/damage meets the criteria when the claimed damages have proximate relationship with the faulty service. The word "proximity" is normally used as a convenient label to describe a relationship between the parties by virtue of which the defendant can reasonably foresee that his Act or omission is liable to cause damage to the claimant of the relevant type
iii) The losses capable of calculation with reasonable certainty being special damages can only be allowed when not just explicitly pleaded but proof of each item of such claimed losses is given with reference to the evidence on record, whereas inexact losses like pain, suffering etc. can be compensated as general, which can be assessed by the Courts in its discretion, required to be exercised according to the facts and circumstances of each case. Non-pecuniary losses may not be accurately calculated in terms of coins, but for this reason alone, courts do not decline to grant compensation. The vital canon followed by judicial mind in such cases is that the conscience of Court should be satisfied that damages awarded would, if not completely, satisfactorily compensate the aggrieved party. However, adequate care should be taken in this regard while dilating on the quantum of awards and the Courts should be vigilant to see that claim is not fanciful or remote.

Conclusion: i) Both the hirer who paid and the beneficiary of service can maintain action against faulty service.
ii) The service provider can be held liable for faulty service when the claimed damages have proximate relationship with the faulty service.
iii) Special damages can only be allowed when not just explicitly pleaded but proof of each item of such claimed losses is given with reference to the evidence on record.

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42. **Lahore High Court**
Mst. Akbari Begum and another v. Mst. Ishrat Bano (deceased) and
Civil Revision No.1156-D of 2018
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC372.pdf

Facts: The respondents filed suit for declaration and permanent injunction regarding entitlement of the share in the pensionary benefits. The said suit was decreed. Hence, this revision.

Issue: i) Whether in the absence of independently deciding or even discussing the Additional Issue, after hearing the both sides, has caused miscarriage of justice?
ii) Whether when both parties have led sufficient and relevant evidence, allocation of onus of proof has relevance?

Analysis: i) Under Order XIV Rule 1 of the Code, when one party affirms material proposition of fact or law and the other denies the proposition, the Court is ought to frame issue as this disputed material proposition. If more than one material propositions, independent of each other, are disputed by the parties separate issues can be framed. While farming the issues the Courts can also look into the material indicated in Order XIV Rule 3 of the Code. Duty is also imposed on the parties to get proper issues framed and come forward with relevant objection as well as suggestions with respect to such material propositions in dispute and divergence of stances of the parties that require formulation of issues. However, if composite issue is framed that encompasses more than one contradictory stance, interconnected to each other, the same does not per se vitiate the trial. The party challenging the same has to show some serious prejudice caused by not framing independent issues. It is also settled now that when composite issue(s) regarding merits of the case is framed and parties being fully cognizant of the real matter, have led evidence accordingly, in such eventuality contention qua the non-framing of issue fades as inconsequential, as long as judgment fulfills the requirement of law.
ii) When both disputants have led sufficient and relevant evidence, allocation of onus of proof has no relevance.

Conclusion: i) In the absence of independently deciding or even discussing the Additional Issue, after hearing the both sides, has not caused miscarriage of justice.
ii) When both parties have led sufficient and relevant evidence, allocation of onus of proof has no relevance.

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43. **Lahore High Court**
Kousar Parveen v. Govt. of the Punjab, etc.
Writ Petition No.18509/2019
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC8638.pdf

Facts: The petitioner was appointed as primary school teacher on the basis of matriculation certificate. After completion of service, she was retied but later on

she was deprived of pensionary benefits on the ground that matriculation certificate issued to the Petitioner in year 1976 has been found to be bogus.

Issues: i) Whether pension can be termed as property of retiring employee of civil/public servant as a matter of right upon the completion of his/her service?
ii) Whether any department can initiate proceedings under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 against the retired employees?
iii) How the Government may withhold or withdraw a pension of a retired employee?

Analysis: i) The pension is the property of retiring employee of civil/public servant as a matter of right upon the completion of his/her service, which is a regular source of livelihood, thus is protected by the right to life and rights enshrined in and guaranteed by the Articles 9, 14, 23 and 24 of the Constitution.
ii) The mandate of law contained in the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 demonstrates that any proceedings against the retired employee under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 can only be initiated during his service or within one year of his retirement and proceedings so initiated are bound to conclude and finalize not later than two years of retirement of the employees. The applicable provisions of section 1(4)(iii) as well as proviso to section 21 of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 from their language reflect that these are mandatory in their nature, ambit and scope.
iii) It is evident from Rule 1.8(a) of s Punjab Civil Servants Pension Rules, 1963 that Government may withhold or withdraw a pension if the pensioner is convicted in a serious crime or has been found guilty of grave misconduct during or after the completion of service. The proviso to sub rule (a) envisages that before an order to this effect is passed, the Pension Sanctioning Authority shall give opportunity to the petitioner to vindicate his position. Pursuant to sub-rule (b) the scheme of Pension Rules is aimed towards closure of departmental proceedings after retirement of an employee as for attraction of sub-rule (b) the fundamental condition is that the departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner. For safeguarding public policy, it is held that provisions of Rule 1.8 of Pension Rules are mandatory.

Conclusion: i) The pension is a property of retiring employee of civil/public servant as a matter of right upon the completion of his/her service.
ii) The department can initiate proceedings under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 against the retired employee within one year of his retirement.
iii) The government can withheld pension only within scope of Rule 1.8 of s Punjab Civil Servants Pension Rules, 1963 that too after providing opportunity to them to vindicate his position.

44. **Lahore High Court**
Rana Ghafoor Ali v. Province of Punjab etc.
Writ Petition No.17726/2021
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC8629.pdf

Facts: The petitioner called into question the legality and propriety of notices issued by Inspector, Environment Protection Agency, Multan to his brick kiln for recovery of Rs, 1,00,000/- as fine. The contention of petitioner is that his brick kiln/ manufacturing unit is at hiatus. Therefore he is not liable to pay.

Issues: i) Whether show cause notice to pay fine without providing a right to due process of law would be violative of fundamental rights?
ii) Whether the writ is maintainable in cases of wrongful exercise of statutory power exercised by regulatory authority?

Analysis: i) The mandate of law has always aimed to secure the inviolable Constitutional rights of every citizen available for protection under the doctrine of access to justice. It is an obligation of State functionaries to follow the mandate of law in its letter and spirit and it is a right of every citizen under Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 to be provided a right to due process of law, right of hearing and right to explain the fact as well as law. This object can only be achieved if someone is confronted with an allegation against him, otherwise, an action or notice in failure to provide a right to due process of law would not only be violative of fundamental rights but also against the statutory provisions of law. .. Notice has been issued without first satisfying the flow of statutory measures for confronting the Petitioner with allegations against him or granting him an opportunity to satisfy whether he has violated the provisions of law, SOPs or Orders of this Court. therefore, I find the Impugned Notice suffering from jurisdictional defect and hence unlawful.
ii) Every fiscal law or regulatory statute and any law of this nature may provide a remedy of appeal against a lawful notice or legal action but under the law, there cannot be any remedy against a wrongful, illegal or unlawful notice. The issuance of Impugned Notice actually presupposes that the Petitioner has committed a violation, which means that the issuing authority of the Impugned Notice was sitting with a preconceived mind. In such circumstances, High Court has the judicial power to intervene in cases of wrongful exercise of statutory power in excess of jurisdiction, illegal exercise of discretion or abuse of power, procedure and course.

Conclusion: i) The show cause notice to pay fine without providing a right to due process of law would be violative of fundamental rights.
ii) The writ is maintainable in cases of wrongful exercise of statutory power exercised by regulatory authority.

45. **Lahore High Court**
Muhammad Aslam Wadani v. Presiding Officer, etc.
F.A.O. No.75 of 2014
Rafique Ahmad v. Presiding Officer, etc.
FAO No.133 of 2014
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC8530.pdf

Facts: The respondent purchased an already used vehicle through show room of appellant no. 1 upon assurance that its engine is 100% in order and that the said car has not been re-painted. But later on, it was found that engine is defective and car is repainted. Therefore he filed a complaint under Section 25 before the learned Consumer Court whereby he accepted the claim in part and awarded him compensation.

Issues: i) What should be the attributes of a judicial Order, in order for it to qualify as a valid judgment/Order?
ii) What are powers of learned consumer court under section 31 of Punjab Consumer Protection Act 2005?
iii) Whether reasons to give judgment/order are necessary?

Analysis i) A judgment/Order must of necessity clearly highlight the issues which require adjudication and provide reasons for adjudication made on the said issues (on the basis of law and evidence/proof)…. judicial Orders were gauged against the barometer of clear ascertainment of issues requiring judicial determination i.e settling of facts in issue and relevant facts (to prove which evidence must be adduced), evidence adduced by parties, evaluation of such evidence and then decision reached by means of clear and apparent application of judicial mind to the issues and evidence. The Orders and judgments lacking such ingredients were considered as nonexistent.
ii) Irrespective of the issue of strict application of Code of Civil Procedure, 1908 or Qanun-e- Shahadat Order, 1984, the learned Consumer Court is bestowed with powers to adjudicate upon the rights and liabilities of the parties and to pass legally binding, judicially executable judgments/Orders imposing fulfilment of obligations upon parties and directing payment of compensation as well as damages under Section 31 of the Act, 2005.
iii) Provision of reasons in a judgment/Order is as necessary and imperative as water is for fish. Reasons inject life into a judgment/Order and provide its basis.

Conclusion: i) A judgment/Order must clearly highlight the issues which require adjudication and provide reasons for adjudication.
ii) Learned Consumer Court is bestowed with powers to adjudicate upon the rights and liabilities of the parties.
iii) Provision of reasons in a judgment/Order is as necessary and imperative.

46. **Lahore High Court**
Muhammad Imran v. Judge Family Court, etc
W.P. No.278 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC26.pdf

Facts: The petitioner has challenged the order of family court wherein breast feeding allowance is awarded.

Issues: What are the precautionary measures which ought to be considered by the Family Courts while granting breast feeding allowance?

Analysis: Sub-section (4) of 17(A) of Family Court Act clearly allows the trial court the facility of summoning relevant documentary evidence to determine the estate and resources of a husband who is to be saddled with the responsibility of providing maintenance allowance. The learned Judge Family Court ought to have probed and examined the financial status, worth of estate of and availability of resources with the petitioner before deciding the question of breast feeding maintenance. Learned Judge Family Court ought to have appreciated the fact that such precedent enquiry was facilitated by the amended provision itself. The learned Judge Family Court ought to have also appreciated the intent of the legislature in bringing about an amendment in Section 17-A. Even if breast feeding maintenance allowance had to be awarded the trial court could only have ordered such breast feeding maintenance allowance after gauging and determining the financial position of the petitioner and not otherwise.

Conclusion: The Family Court should adopt the procedure which is given in section 17(A) of the Family Court Act, 1964.

47. **Lahore High Court**
Abdul Waheed, etc. v. Mst. Rubina Shaheen.
C.Rs. No.52-D of 2022, No.53-D of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC57.pdf

Facts: The suit for declaration for cancellation of Hibanamas as well as mutation, filed by petitioners, was dismissed under order VII Rule 11 CPC being barred by limitation.

Issues: i) Whether question of limitation in matters of fraud can be determined by Court?
ii) Whether the civil revision aimed against orders of remand are maintainable?

Analysis: i) Where fraud was alleged in the matter of inheritance, limitation starts from the date of knowledge of fraud and not before. Trial court was wrong in treating the question of limitation as being purely one of law if its determination hedged

on facts. Limitation will be a pure question of law where such plea was not dependent upon any factual determination and that those cases which require a factual foundation and adjudication for the purposes of settling a legal issue could not be said to be pure questions of law. The question in issue of limitation is a mixed question of law and fact and which can only be determined after recording of evidence produced by the parties

ii) In matters where a case is remanded, the facility of civil revision is only (and repeat only) available when the order directing remand is absolutely perfunctory, manifestly perverse or evidently illegal. A civil revision, against an order of an appellate court whereby the appellate court remands the matter to a trial court, is not maintainable.

Conclusion: i) Limitation is a mixed question of law and facts and can only be answered after recording of evidence.
ii) Matters where a case is remanded, the civil revision is not maintainable.

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48. **Lahore High Court, Lahore**
Muhammad Ramzan v. The State, etc.
W.P. NO. 253 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC348.pdf

Facts: In murder case, police reproduced one of accused on expiry of four days physical remand and requested for his judicial remand on score that in investigation he was found unarmed and nothing was left to be recovered from him, but Magistrate discharged said accused whilst declining aforementioned request of local police.

Issue: i) What are stages & object of discharge of accused?
ii) When should a discharge order be passed?
iii) Whether accused can be discharged in presence of statements of eyes witnesses of occurrence?

Analysis: i) An accused may be discharged U/S 63 Cr.P.C during investigation or at the time of submission of final report U/S 173 (3) Cr.P.C after investigation. It is primary duty & obligation of Magistrate to safeguard liberty of citizens and to protect them from frivolous criminal prosecution.
ii) An order of discharge of an accused (i) must be a reasoned order based upon evaluation of evidence by judicial application of mind and (ii) should not have the effect of choking investigation at a nascent stage and in the circumstances should not kill the case of prosecution prior to giving the complainant an opportunity to prove the case against accused… It is only when the circumstances of the case viewed with the evidence available obviously dispel the involvement of an accused in the commission of an alleged offence that a magistrate is empowered to discharge the accused and the order of a Magistrate must pass the test of a speaking, reasoned and judicial order which must show application of judicial

mind upon the facts of the case, shed light on the extent of investigation conducted in the matter, evidence collected and the probability of incrimination of accused on the basis of present or prospective investigation.

iii) Where prosecution witnesses have fully implicated the accused in their statements recorded under section 161, Cr.P.C, Magistrate cannot discharge the accused on the basis of police opinion…… there is no reasonable ground and justification to disbelieve the evidence of the P.Ws. at this initial stage of the case.

Conclusion: i) Order of discharge can be passed during investigation or at the time of submission of final report/173 Cr.P.C.

ii) Discharge should not have the effect of choking investigation.

iii) Accused cannot be discharged in presence of statements of eyes witnesses of occurrence.

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49. **Supreme Court of UK**
Rahman PWR etc., v. Director of Public Prosecutions
[[2020] EWHC 798]
Lord Justice Holroyde, Mr Justice Swift
https://www.supremecourt.uk/cases/uksc-2020-0084.html

Facts: The appellant preferred appeal against the judgment of court of magistrate and Crown Court, whereby, he was convicted under the Terrorism Act 2000.

Issue: i) Does section 13(1) of the Terrorism Act 2000 create a strict liability offence?
ii) If so, is section 13(1) compatible with Article 10 of the European Convention of Human Rights.

Analysis: i) Section 13 is in my view entirely clear and unambiguous: a person commits the offence if he wears, carries or displays an item of clothing or an article in such a way or in such circumstances as to arouse the relevant reasonable suspicion. This does require that the person who is wearing, carrying or displaying the item or article in question (hereafter, "the wearer") must act deliberately in the sense that he must know that he is wearing, carrying or displaying that item or article. Parliament has legislated to proscribe certain terrorist organisations, and the purpose of section 13 is to give practical effect to such proscription. The mischief at which it is aimed is conduct which leads others reasonably to suspect the wearer of being a member or supporter of a proscribed organisation, that being conduct which gives rise to a risk that others will be encouraged to support that proscribed organisation or to view it as legitimate. The case law makes clear that the inclusion of an express element of mens rea in other offences created by the same Act is not conclusive, it is relevant to take into account that the 2000 Act does also create offences which require mens rea. The Parliament clearly intended by section 13 to create an offence which does not require mens rea, and it is not open to the court to interpret the section as if it had been drafted in different terms.

ii) Section 13 of the Act 2000 is not a disproportionate interference with article 10 rights because it does not require the impugned expression to incite or encourage violence. Section 13 offence is compatible with article 10. It imposes a restriction on freedom of expression which is required by law; is necessary in the interests of national security, public safety, the prevention of disorder and crime and the protection of the rights of others; and is proportionate to the public interest in combating terrorist organisations.

Conclusion: i) Yes, section 13(1) of the Terrorism Act 2000 creates a strict liability offence. ii) Yes, section 13(1) compatible with Article 10 of the European Convention of Human Rights.

LATEST LAGISLATION/AMENDMENTS:

1. Section 1 & 8 of The Punjab Aab-e-Pak Authority Act 2019 was amended through Punjab Aab-e-Pak (amendment) Ordinance 2022.
   https://punjabcode.punjab.gov.pk/en/show_article/UmJSZAIzW2gFbA--

2. Punjab Immovable Public Properties (Removal of Encroachment) Ordinance 2022 is promulgated by the Governor of Punjab.
   https://punjabcode.punjab.gov.pk/en/show_article/BDRRZ1FgBjNXNw--

3. Juvenile Justice System Act, 2018 is amended through the "Juvenile Justice System (Amendment) Act, 2022.
   https://na.gov.pk/uploads/documents/61f0ef2b71afe_800.pdf

4. Certain amendments are made through Finance (Supplementary) Act, 2022
   https://na.gov.pk/uploads/documents/61e7fc759b23b_666.pdf

   a. Sections 25A, 25D, 80, 81, 194A, 196 of Customs Act, 1969 are amended;
   b. Sections 2, 3, 23, 33 & third, fifth & sixth & eighth Schedule of Sales Tax Act is amended while section 30CA is added.
   c. Section 3 & Schedule of Islamabad Capital Territory (Tax on Services), Ordinance 20001 is amended.
   d. Section 2, 21, 165A, 216, 233, 236C, 236Q 7 First schedule of Income Tax Ordinance 2001 is amended.

LIST OF ARTICLES

1. **MANUPATRA**
   https://articles.manupatra.com/article-details/Compulsory-License-The-Exception-to-the-Patent-Rights
   Compulsory License: The Exception to the Patent Rights by Ved Prakash Patel

Patent is an exclusive right granted to the creator of an invention for limited time period during which the patentee can exclude others from making, using or selling the patented product. A patent is granted for a product or a process which does something new or solves any existing problem in a new specialized manner. Patents are also granted for new chemicals, medicinal products and the process for efficiently producing them. To get an invention patented it must be novel and useful. Whereas the compulsory license is an authorization which allows a third party to use, make or sell an invention for which a patent has already been granted, without the consent of the owner of the patent as against the exclusive rights that are conferred on a patentee to use, make or sell a patented invention and stop unauthorized and illegal use by third parties. Compulsory licensing within the context of Patent laws is granted by countries to affect monopolies acquired in intellectual property rights. It prevents the abuse of patent for commercial exploitation by the patent holder. The Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Doha Declaration provide for compulsory licensing in specified circumstances, including concerns on public health or public interest.

2. **MANUPATRA**

https://articles.manupatra.com/article-details/Medical-Evidence-Pivotal-Role-in-Criminal-Jurisdiction

Medical Evidence: Pivotal Role in Criminal Jurisdiction by Sonali Priyadarsani

Starting with the conductance of a crime or not, when a petitioner files a case before the court of law for getting the accused punished or an accused files a case for granting of relief, what plays the most important role in deciding such matters is called Evidence. Such evidence has to be produced by the state before the court to prove the guilt or innocence of the accused. There are many different types of evidences and the person who prepares an evidence report by gathering the required information from the statements, facts and other basic knowledge of the field of the said evidence is called an Expert. But this evidence provided by an expert is kind of considered as an opinion whose evidentiary value has to be decided upon the court's discretion. One such type of evidence is Medical evidence which being an amalgamation of medicine and law plays an important role in matters of criminal jurisdiction. When a crime is conducted, starting from the crime spot, till the post-mortem report, all of these are examined by a Medical expert in order to submit the final report of medical evidence before the court. In general sense, the use of medical evidence, its relevance or even the basic knowledge about it is unknown to the common man. Given to the complexity of the subject matter, it is not expected out of a layman to understand the value or use of medical evidence in the legal field or criminal cases for that matter. However the medical evidence produced by an expert before the court holds a significant value when it comes to deciding the matter wherein a person has died. In such cases, owing to the death of an individual when suit is pending before the court of law, medical evidence becomes an important part of the court proceedings. Such medical evidence is produced by an expert in the said field who gathers the required information from the post-mortem report. In matters like these, the prosecution bears the burden of proof while establishing the guilt of the accused.

In India, the Apex Court has time and again ruled in affirmation with the admissibility of the medical evidence and has further declared that there is no rule which goes against its admissibility.

3. MANUPATRA

https://articles.manupatra.com/article-details/Medical-Evidence-Pivotal-Role-in-Criminal-Jurisdiction

Use of Technology in Arbitration – What Will The Future of Arbitration Look Like? Srishti Sinha

With the Covid-19 pandemic compelling all industries to adopt flexible working practices, there has never been a more important time than 2020 to grasp the wonders of technology. Throughout the year, technology has kept businesses, workplaces, and all other entities up and operating. This is also true in the arbitration field. The majority of international arbitral institutions were obliged to use remote forms of dispute resolution as a result of global lockdowns, raising several questions about the system's hazards and benefits. Today, as time passes, the technologies used in and for human services are becoming more advanced. We are seeing how these types of technologies are becoming more prevalent in our life. Despite being able to demonstrate your own good, one of these new technologies is Al technology. Artificial intelligence (Al) is the simulation of human intelligence in robots that have been trained to think and act like humans. The phrase can also refer to any machine that demonstrates human-like characteristics like learning and problem-solving. This usually entails taking traits from human intelligence and converting them into computer-friendly algorithms. Depending on the requirements, a more or less flexible or efficient strategy might be used, which determines how artificial the intelligent behavior seems. Many people appear to have deduced that this future is inevitable, much as the concept of cleaning robots or self-driving automobiles, even though we do not yet have a fully established technology that could take over. We are only now predicting the changes that will occur throughout time. The coming of the digital judge is unavoidable for various reasons. Every year, we humans cause billions, if not tens of billions, of disagreements. This escalation of conflict shows no signs of slowing down. The inability of humans to solve problems quickly is putting a strain on the system. Further, it is widely assumed that artificial intelligence (Al) will be able to play a substantial role in arbitrations. Al systems are thought to be more precise and effective. So, does this suggest that an Al-based system can be as effective as a human arbitrator with a little additional calibration and feeding of relevant data sets?

4. STANFORD LAW REVIEW

https://www.stanfordlawreview.org/print/article/qualified-and-absolute-immunity-at-common-law/

Qualified and Absolute Immunity at Common Law by Scott A. Keller

Qualified immunity has become one of the Supreme Court's most controversial doctrines. But while there has been plenty of commentary criticizing the Court's existing clearly-established-law test, there has been no thorough historical analysis examining the complicated subject of state-officer immunities under nineteenth-century common law. Yet the legitimacy of state-officer immunities, under the Court's precedents, depends on the common law as it existed when

Congress passed the Civil Rights Act of 1871. In the Supreme Court's own words, it cannot "make a freewheeling policy choice" and must apply immunities that Congress implicitly adopted from the "common-law tradition. "This Article therefore provides the first comprehensive review of the common law on state-officer immunities around 1871. In particular, it canvasses the four nineteenth-century treatises that the Supreme Court consults in assessing officer immunities under the common law of 1871: Cooley's 1879 Law of Torts; Bishop's 1889 Commentaries on Non-contract Law; Mechem's 1890 Law of Public Offices and Officers; and Throop's 1892 Law Relating to Public Officers. Not only do these treatises collect many overlooked state common law precedents, but they rely heavily on the Supreme Court's own, often ignored, nineteenth-century decisions. These historical sources refute the prevailing view among modern commentators about one critical aspect of qualified immunity. This Article confirms that the common law around 1871 did recognize a freestanding qualified immunity protecting all government officers' discretionary duties—like qualified immunity today. But many other important features of the Supreme Court's current officer-immunity doctrines diverge significantly from the common law around 1871: (1) High-ranking executive officers had absolute immunity at common law, while today they have only qualified immunity; (2) qualified immunity at common law could be overridden by showing an officer's subjective improper purpose, while today a plaintiff must satisfy the stringent clearly-established-law test; and (3) the plaintiff had the burden to prove improper purpose with clear evidence, while today there is confusion over this burden. Restoring the common law around 1871 on state-officer immunities could address many modern problems with qualified immunity, and these three features from the common law provide a roadmap for reforming the doctrine. If high-ranking executive officials have absolute immunity, that would sufficiently protect the separation of powers without resort to the clearly-established-law test—which frequently denies plaintiffs money damages when their constitutional rights are violated by lower-ranking executive officials. At the same time, if plaintiffs in qualified immunity cases have the burden to prove lower-ranking officers' subjective bad faith with clear and convincing evidence, then officer defendants and courts will have significant procedural mechanisms to dismiss insubstantial claims before trial.