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FORTNIGHTLY CASE LAW BULLETIN

(01-02-2022 to 15-02-2022)

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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LATE$T LEGI$LATION/AMENDMENT$

$ELECTED ARTICLE$

1. **Supreme Court of Pakistan**
Muhammad Shabbir etc v. Quaid-e-Azam University through its vice Chancellor, Islamabad and others.
Civil Appeals No.803 and 804 of 2016
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Umar Ata Bandial, Mr. Justice Ijaz ul Ahsan, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._803_2016.pdf

Facts: Instant matter has been taken up by larger Bench, in which the appellants have assailed the judgment of Islamabad High Court, Islamabad in which the decision of trial court during interregnum period was set aside.

Issues: i) Whether the repeal of any law/enactment has any effect upon the previous operation of law?
ii) Whether procedural law applicable with retrospective effect?
iii) What will be remedy during interregnum period when the special law ceases to exist?
iv) Whether the de-facto doctrine can be applied when public office ceased to exist?

Analysis: i) Article 264 of the Constitution of Pakistan provided that where a law is repealed, the repeal shall not affect the previous operation of law. It provides protection to the operation of law, rights, liabilities accrued, and penalties incurred in respect of any repealed law and does not state that it would provide protection to the laws previously in force.
ii) It is well-settled principle of interpretation of statute that where a statute affects a substantive right, it operates prospectively unless by express enactment or necessary indictment retrospective operation has been given. However statute, which is procedural in nature, operates retrospectively unless it affects an existing right on the date of promulgation or causes injustice or prejudice the substantive right. The procedural law has retrospective effect unless contrary is provided expressly or impliedly.
iii) When no law holding the field than in the absence of special law the ordinary/general laws come forward to fill in the vacuum providing the remedies to aggrieved ones.
iv) The common and pre-dominant feature of de facto doctrine is in relation to exercise of power by holder of the public office. Necessary ingredient for de-facto exercise of power by the holder of public office is that, the office should exist in the first place. If there is no public office in existence then there is no concept in law of holder of public office.

Conclusion: i) The repeal of any law/enactment has no effect upon the previous operation of law.

ii) The procedural law has retrospective effect unless contrary is provided expressly or impliedly.
iii) In the absence of special law the general laws come forward to fill in the vacuum.
iv) When there is no public office in existence, there remains nothing on which de-facto doctrine could be applied.

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2. **Supreme Court of Pakistan**
Divisional Accounts Officer, Pakistan Railways, Rawalpindi (in CA. 7S6/2021), Finance Secretary, Finance Division, M/o Finance, Islamabad (in CRP. 11/2021) v. Muhammad Yasin (decd) through L.Rs. and others.
Civil Appeal No.756 of 2021
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._756_2021.pdf

Facts: The Respondent was a pensioner of Pakistan Railways who retired from service on 31.03.2000 and he was allowed move-over to BS-16 with effect from 01.12.2000. The Government of Pakistan announced pay scales with allowances as well as Medical Allowance was allowed to the pensioners at the following rates:- (i) From BS-1 to 15 at rate of 25% of the pension and (ii) From .BS-1 6 to 22 at rate of 20% of the pension. In view of the fact that the Respondent had been granted move-over to BS-16, he was allowed medical allowance at rate of 20% of his pension. The Respondent claimed that since his substantive grade was BS-15 he was entitled to medical allowance at rate of 25% of the pension. His departmental representation was not responded, so he approached the Tribunal which allowed his Service Appeal, which is impugned through the present appeal.

Issues: What is the deciding factor in determining the medical allowance payable to pensioner/ Respondent in light of interpretation of "OM" dated 05.07.2010?

Analysis: The entire case turns on the interpretation of "OM " dated 05.07.2010 through which the medical allowance was payable with effect from 01.07.2010 to all civil pensioners of the Federal Government including civilians paid from Defense Estimate and Civil Armed Forces. The reasoning given by the Tribunal in allowing the Service Appeal is that the Respondent was holding a post in "substantive Grade-15", which was alien term to the considerations for grant of medical allowance as incorporated in the " OM" that was the subject matter of interpretation. So, in the first instance, the Respondent had been granted move-over to BS-16 at his own option. Further, the rate of medical allowance was to be calculated on the basis of pension drawn and the Respondent drew pension on his last drawn pay which was in BS-16.

Conclusion: On a correct construction and interpretation of the "OM", the respondent was entitled to 20% of the "pension drawn" which is the deciding factor in determining the amount of medical allowance payable to a Pensioner.

3. **Supreme Court of Pakistan**
Pakistan Electric Power Company v. Syed Salahuddin & others
Civil Appeal No. 749 of 2021
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._749_2021.pdf

Facts: Through this civil appeal the appellant has assailed the judgment of the High Court of Balochistan at Quetta on the grounds that respondents were a separate and distinct legal entity incorporated under Companies Ordinance, 1984 did not have any statutory rules and in its absence would not attract the constitutional jurisdiction of the High Court.

Issues: Whether the employees of any company being separate legal entity having no statutory rules could invoke the constitutional jurisdiction when any controversy arises?

Analysis: Where conditions of service of employees of a statutory body are not regulated by rules/regulations framed under the statute but only by rules and instructions issued for its internal use, any violation thereof could not normally be enforced through constitutional jurisdiction and they would be governed by the principle of "master and servant". QESCO is a distinct and separate legal entity having been incorporated in erstwhile Companies Ordinance, 1984 and has its own Board of Directors. Just by reason of the fact that QESCO had adopted existing rules of WAPDA for its internal use does not make such rules statutory in context of QESCO.

Conclusion: The employees of any company being separate and distinct legal entity having no statutory rules could not invoke the constitutional jurisdiction when arises any controversy.

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4. **Supreme Court of Pakistan**
Mian Hikmatullah Jan son of Mian Abdul Wahid, resident of Tanijabba District Nowshera v. Chairman and Members of Selection Board Constituted for Selection and Interview for the Post of Additional District and Sessions Judges for District Subordinate Judiciary Khyber Pakhtunkhwa, Peshawar High Court, Peshawar and another.
Civil Petition No.4740 of 2017
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4740_2017.pdf

Facts: The appellant was disqualified for the post of Additional District & Sessions Judge. He filed writ petition with a prayer that he may be allowed to appear in the interview and may be considered for the post of Additional District and Sessions Judge on merit. But his writ petition was dismissed.

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Issue: Whether the very advertisement for appointment to the post of Additional District and Sessions Judges specifically require the candidate to be a practicing advocate, which condition was not fulfilled by the petitioner?

Analysis: The very advertisement for appointment to the post of Additional District and Sessions Judges specifically requires the candidate to be a practicing advocate, which condition was not fulfilled by the petitioner. The High Court in the impugned judgment has addressed this very aspect of the matter and found that the petitioner was not a practicing advocate when he applied for being appointed as an Additional District and Sessions Judge. The petitioner was not a practicing advocate at the time when he applied for being appointed to the post of Additional District and Sessions Judge, thus, was not eligible for being appointed.

Conclusion: The very advertisement for appointment to the post of Additional District and Sessions Judges specifically requires the candidate to be a practicing advocate, which condition was not fulfilled by the petitioner.

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5. Supreme Court of Pakistan
Deputy Director, Finance & Administration FATA through Additional Chief Secretory, FATA Peshawar & others etc. v. Dr. Lal Marjan & another etc.
Civil Appeals No. 231, 233, 235, 236, 238, 241, 242, 243, 256, 260, 262, 263, 264, 266, 278, 279, 281, 286, 287, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300, 304 & 306 of 2020
Mr.Justice Gulzar Ahmad HCJ. Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._231_2020.pdf

Facts: Through the instant appeals, the appellants have challenged the judgments passed in writ petitions by Honorable Peshawar High Court wherein prayer of the respondents for regularization of their services has been allowed.

Issues: i) Whether High Court can apply KP Employees (Regularization of Services) Act, 2009 on FATA/PATA?
ii) Whether 25th amendment to the Constitution of Islamic Republic of Pakistan has retrospective effect and the respondents can be given any benefit?
iii) Whether High Court has jurisdiction in a Tribal Area i.e. FATA/PATA?

Analysis: i) The preamble of Employees (Regularization of Services) Act, 2009 on FATA/PATA makes its purpose and scope clear that it was enacted for regularization of certain categories of employees of province of Khyber Pakhtunkhwa. It has not been provided that it shall be applicable on FATA/PATA. Section 2(d) specifically defines "Government" as the Government of KP.

. ii) 25th amendment to the Constitution has no retrospective effect. Giving the 25th Amendment retrospective application would open a floodgate of unnecessary

legal and constitutional complications which can and should be avoided by giving effect to the letter and spirit of the Constitution and the intent and purpose of Article 247 and its subsequent omission by way of the 25th amendment to the Constitution.

. iii) Article 247 of the Constitution has provided that the High Court or the Supreme Court cannot exercise jurisdiction in a Tribal Area i.e. FATA/PATA unless the Parliament has provided otherwise. The only exception provided in the said sub-article is that nothing would affect the jurisdiction of the High Court or Supreme Court in relation to a Tribal Area immediately before the commencing day.

Conclusion: i) High Court cannot apply Employees (Regularization of Services) Act, 2009 on FATA/PATA.
ii) 25th amendment to the Constitution of Islamic Republic of Pakistan has no retrospective effect.
iii) High Court has no jurisdiction in a Tribal Area i.e. FATA/PATA unless the Parliament has provided otherwise.

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6. Supreme Court of Pakistan
Syed Arshad Ali v. Secretary m/o Housing & Works, Islamabad & Others
Civil Appeal No.799 of 2021
Mr. Justice Gulzar Ahmad HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._799_2021.pdf

Facts: The appellant being aggrieved submitted representation against final seniority list which was not responded, thereafter appellant filed appeal before Federal service Tribunal which was dismissed, hence this appeal.

Issues: How seniority to be determined under repealed Rule 6 of the Civil Servants (Seniority) Rules, 1993?

Analysis: As per Rule 6 of the Civil Servants (Seniority) Rules, 1993, (subsequently amended but amended rule not applicable in present case) the persons appointed by transfer in a particular calendar year shall as a class be senior to those appointed by promotion or by initial appointment to such post in that year, and persons promoted to higher post in a particular calendar year as a class be senior to those appointed by initial appointment to such post in that year. This rule makes it quite clear that persons appointed by transfer in a particular calendar year shall as class be senior to those appointed by promotion or by initial appointment to such post in that year.

Conclusion: The said repealed rule provides that persons appointed by transfer in a particular calendar year shall as class be senior to those appointed by promotion or by initial appointment to such post in that year.

7. **Supreme Court of Pakistan**
Saqib Ali Khokhar, Director STEVTA v. Inayatullah Lohar & others
Civil Appeal No.607 of 2021
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz Ul Ahsan and Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._607_2021.pdf

Facts: The Appellant and Respondent No. 1 belonged to two different departments of the Government of Sindh with different cadres. The administrative control of the said departments was transferred to the Sindh Technical Education and Vocational Training Authority (STEVTA) by the Government of Sindh. The Appellant was promoted under STEVTA Rules of which Respondent No.1 was aggrieved and had challenged the promotion of the Appellant before the Sindh Service Tribunal Karachi. The Appellant has assailed the judgment of said Tribunal wherein the service appeal filed by the Respondent No.1 was allowed and a direction was issued to Sindh Technical Education and Vocational Training Authority (STEVTA) to grant promotions, etc. in accordance with the provisions of Rules framed under Sindh Civil Servants Act 1973 and not under the provisions of STEVTA Act and its Rules.

Issues: Whether the employees transferred from different government departments of Sindh to STEVTA are to be governed under the STEVTA Act or under the Sindh Civil Servants Act 1973?

Analysis: By virtue of an amendment in STEVTA Act, 2009 subsections (4),(5) and (6) of Section 15 thereof were omitted with the obvious result that the rule which envisaged that the employees transferred to STEVTA shall cease to be employees of the government was removed from the statute book. After omission of the said three subsections, the only clear clause that remained governing the status of the employees transferred to STEVTA was subsection (3) of section 15, which is to the effect that employees transferred under subsection (2) to STEVTA shall continue to be employees of the government and could be transferred back to the government unless absorbed by consent in service of authority in such manner as may be prescribed. Admittedly, the appellant and respondent no.1 belonged to two different departments with different cadres and such employees had to be promoted through their parent channels under the rules framed under the Act, 1973. The terms and conditions of civil servants can only be altered by an Act of parliament enacted in exercise of powers under Article 240 of the Constitution of Islamic Republic of Pakistan, 1973 while in the instant case STEVTA Act and the rules framed thereunder were not enacted in exercise of powers available under article 240 of the Constitution.

Conclusion: The employees transferred from different government departments of Sindh to STEVTA are to be governed under the Sindh Civil Servants Act 1973.

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8. **Supreme Court of Pakistan**
Sindh Irrigation & Drainage Authority v. Government of Sindh & others
C.A.10-K to 17-K of 2019
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz ul Ahsan,
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._10_k_2019.pdf

Facts: The Respondents filed a Writ Petition before the High Court for release of their salaries which was remitted to the Service Tribunal. The Service Appeal of the Respondents was disposed of with directions to the Department to process the case. The said directions were allegedly not complied with, prompting the Respondents to file execution applications. In execution proceedings, the Appellants filed an application under Section 12(2) of the CPC which was dismissed. Appellants have challenged the consolidated judgment of the Sindh Service Tribunal, Karachi.

Issues: i) What is difference between Department of government and an Authority?
(ii) What is difference between the "Public servants" or "Civil servants"?
(iii) Did the Service Tribunal have jurisdiction to entertain an application under Section 12(2) of the CPC?

Analysis i) A Department of the Government generally operates under the control of the Government. This essentially means that the autonomy of a department is limited insofar as its operations and management are concerned. An Authority on the other hand is generally autonomous. It can regulate its internal affairs and formulate policies after seeking approval from the governing body of the Authority in question.
ii) Civil servant is someone who has been employed by the competent authority i.e., either the Provincial or Federal Public Service Commission, in the prescribed manner after following due process of law and having gone through the process of competition … A public servant may be a person who is employed in the public sector. However, not all public servants are civil servants unless they are appointed in the prescribed manner discussed above.
iii) Section 5 of the Sindh Service Tribunals Act, 1973 categorically provides that the Service Tribunal shall have all powers available to a Civil Court. (…) This is further evidenced by the fact that the word "including" is in Section 5(2) which shows that the Tribunal's powers are broad and have not been limited by the Act. It has the same powers as available to a Civil Court. Deciding an application under Section 12(2) is a power vested with the Civil Court. …When the law categorically provides the Service Tribunal with powers to adjudicate a matter, it cannot restrict itself from doing what it is required by law to do. The Service

Tribunal was required to decide the application under Section 12(2) of the Appellant-Interveners on merits, based on the material before it.

Conclusion: i) A "Department of the Government" operates under the control of the Government, whereas an "Authority" is generally autonomous.
ii) Civil servant is employed by the competent authority in the prescribed manner, whereas a public servant may be a person who is employed in the public sector. All public servants are not civil servants.
iii)Service Tribunal has jurisdiction to entertain an application under Section 12(2) of CPC.

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9. Supreme Court of Pakistan
Secretary Finance, Finance Division, Pak. Secretariat Islamabad v. Muhammad Farooq Khan son of Adil Khan etc.
Civil Appeal No.550 of 2020
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._550_2020.pdf

Facts: Through this civil petition, the appellant challenged the judgment of Federal Service Tribunal in which the Tribunal directed the appellants to grant one premature increment to the respondent on his time scale promotion from BPS-17 to BPS-18 without setting aside the Notification dated 11.04.2013.

Issue: Whether the relief of premature increment can be granted on time scale promotion?

Analysis: The Notification dated 11.04.2013 shows that it was issued in pursuance of Finance Division's Office Memorandum dated 18.02.2011 and Establishment Division's Office Memorandum dated 19.09.2011. The Establishment Division specifically noted in the said O.M. that time scale formula is simply grant of higher grade on completion of required years of service without any change in designation of posts and does not involve up-gradation of posts and amendment in recruitment rules. Thus, in order to succeed to the claim that granting of time scale promotion, is a promotion and the respondent was entitled to grant of one premature increment, the very Notification dated 11.04.2013 was required to be challenged.

Conclusion: In presence of the Notification dated 11.04.2013 granting of time scale promotion is not considered as a promotion; therefore, the relief of premature increment cannot be granted.

10. **Supreme Court of Pakistan**
Abdul Sattar Jatoi etc. v. Chief Minister Sindh through Principal Secretary, Chief Minister Secretariat, Karachi and others.
Civil Petition No. 1167 of 2020
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Ijaz ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1167_2020.pdf

Facts: The appellant assailed the impugned judgment of the Tribunal, whereby, the promotion of the appellant was set aside as an officer of BPS-20.

Issue: i) Whether the Service Tribunal had jurisdiction to entertain the service appeal filed by the respondent?
ii) Whether the competent authority while considering grant of promotion is duty bound and obliged under the law to consider merit of all the eligible candidates?

Analysis: i) The proviso (b) of Section 4 of the Act of 1973, bars filing of a service appeal before the Tribunal against an order or a decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. In the present case, no such order or decision, determining the fitness or otherwise of a person to be appointed, has either been made by the departmental authority nor the question of fitness of the appellant to be promoted has at all been raised. The grievance in the service appeal filed by the respondent before the Tribunal was that the departmental authority did not at all consider the case of the appellant's own batch-mates including the respondent who were working in the post of BPS-19 in the Health Department for promotion to the post of BPS-20, in that, only the appellant was picked up by the departmental authority for grant of promotion to him in BPS-20 and the senior batch-mates of the appellant have altogether not been considered for granting of promotion to the post of BPS-20. Had the departmental authority considered the case of promotion of all the batch-mates of the appellant working in BPS-19 in the Health Department and the respondent having been found not fit for promotion to the post of BPS-20 by the departmental authority, the service appeal on such question would have been barred before the Tribunal, such is not the case in hand before the Court.
ii) The law regarding grant of promotion by the competent authority is well settled that the competent authority while considering grant of promotion is duty bound and obliged under the law to consider merit of all the eligible candidates and after due deliberations, to grant promotion to such eligible candidates who are found to be most meritorious among them. The law does not permit to the competent authority to just pick one specific person and amend the rules for him and then create a post and oblige and grant promotion to that one person. Non-considering of an officer being equally eligible for promotion is a serious matter and not only undermines discipline but creates serious bad blood and heart burning among the rank and file of civil service. In the matter of civil service, there should not at all be any instance where the competent authority is found to

be accommodating any one civil servant for grant of promotion and availing of better service benefits leaving all other equals and even seniors abandoned.

Conclusion: i) The Service Tribunal had jurisdiction to entertain the service appeal filed by the respondent.
ii) The competent authority while considering grant of promotion is duty bound and obliged under the law to consider merit of all the eligible candidates.

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11. **Supreme Court of Pakistan**
President, Zarai Taraqiati Bank Limited, Islamabad and others v. Agha Hassan Khursheed
Civil Petition no. 1165 of 2021
Mr. Justice Gulzar Ahmad HCJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1165_2021.pdf

Facts: The petitioners challenged the order of the Hon'ble High Court vide which petitioners were given one month time to conclude the enquiry with the observation and directions passed by the court in previous Writ Petition.

Issues: Whether powers of Supreme Court exercised under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973 are dependent on filing of application by a party to case?

Analysis: Under Article 187 of the Constitution of the Islamic Republic of Pakistan, 1973, the Supreme Court has been given power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it. This very power of the Supreme Court is very much inherent and could be exercised without being handicapped by any technicality or rule or practice, nor exercise of such power is dependent upon any application being filed by a party to the case. It is enough that it is brought to the notice of the Court, while hearing a case, that an order has been passed by a forum below which has bearing on the case and causes injustice to one of the parties, and the Court will not be hesitant for a moment to correct such injustice.

Conclusion: Powers of Supreme Court exercised under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973 are not dependent on filing of application by a party to case.

12. **Supreme Court of Pakistan**
Muhammad Amjad v. The Director General, Quetta Development Authority and another.
Civil Appeal NO. 202 OF 2021
Mr. Justice Gulzar Ahmed HCJ, Mr. Justice Muhammad Ali Mazhar and Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._202_2021.pdf

Facts: The appellant claimed that he was recommended for promotion and adjustment in BPS-19 as Chief Officer in City District Government Quetta by the Governing Body of QDA on 03.12.2004 which was not actualized despite his representation. However he was promoted to the post of Chief Accounts Officer BPS-19 on 27.09.2012 with immediate effect while he claimed the promotion effective from 03.12.2004. The appellant filed a Constitutional Petition in High Court in this regard which was dismissed vide the impugned judgement.

Issues: Whether for consideration of a promotion matter, the availability of a post in the service structure is necessary?

Analysis: The claim of the appellant for his antedated promotion w.e.f. 2004 seems to be quite illogical and irrational when the post on which promotion was claimed was neither created, nor it was part of service structure/ schedule appended to the Quetta Development Authority (Employees Service) Regulations enacted in 1977 that were in vogue. No upgradation Policy document of QDA was presented which could apply or cover the case of appellant in 2004. However, an upgradation policy formulated by Government of Balochistan, Finance Department dated 23.04.2007 is available on record which delineates salient features, *inter alia*, that, consequent upon upgradation of a post, its method of recruitment and qualification has to be prescribed in the relevant Recruitment Rules with further conditions that upgradation of post never implies automatic elevation of the incumbent holding post and as the matter of Rules, appointment to the upgraded post has to be made in the prescribed manner, as per relevant rules of concerned department and in this very policy, in paragraph No.3, the procedure for upgradation has also been laid down . No vested right can be claimed on the basis of promotion issued without any legal sanction or authority. In these circumstances, the doctrine of locus poenitentiae has no application. It is an admitted fact that the post claimed by the appellant i.e. Director Finance-cum-Chief Accounts Officer was created in 2012 by the governing body of QDA and no such post was in field in the service regulations 1977 of QDA which were repealed by the service regulations 2010.

Conclusion: For consideration of a promotion matter, the availability of a post in the service structure is necessary.

13. **Supreme Court of Pakistan**
Government of KPK through Secretary Health, Civil Secretariat, Peshawar and others v. Dr. Liaqat Ali and others
Civil Appeal No.835 of 2021
Mr. Justice Gulzar Ahmad HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._835_2021.pdf

Facts: The appellants challenged the judgment of service tribunal vide which penalty imposed upon respondent was modified from removal from service into compulsory retirement.

Issues: Whether the service tribunal/court can modify the penalty imposed by the competent authority?

Analysis: The competent authority is fully empowered to impose such penalty upon its employee on finding him guilty of commission of misconduct as it considers appropriate and normally the Court will not interfere in such exercise of power by the competent authority. The conversion of penalty imposed by the competent authority will require a strong justifiable reason. The Court is not empowered to arbitrarily and whimsically find the penalty imposed by the competent authority to be harsh merely, on the ground that the respondent has put in 24 years' of service and is entitled to grant of retirement benefits. The quantum of punishment has to be left with the competent authority and the Court cannot without any strong reason interfere with the same.

Conclusion: The Court/tribunal cannot without any strong reason interfere with the decision of competent authority.

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14. **Supreme Court of Pakistan**
Fawad Ahmad Mukhtar & others v. The Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan etc.
Civil Appeals No.1521 to 1526 of 2018
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1521_2018.pdf

Facts: These cross appeals by both taxpayers and the department, arise under the Income Tax Ordinance, 2001 ("Ordinance") against a judgment of the learned High Court. The taxpayers/appellants are shareholders of a company (which is the respondent in the department's appeal) owned shares in another company, transferred some (or all) of its shareholding in another company and accounted for the same in its books as payment of dividend in specie. The transferee company did not make any deductions on the basis that the dividend in question, being in specie, did not involve any "payment" within the meaning of Sec. 150. The department initiated proceedings under Sec. 161 against Transferee Company. The appeal of the department was dismissed before the Appellate Tribunal and the

tax reference filed by it in the learned High Court was dismissed by means of the impugned judgment.

Issues: i) Whether the "dividend" falls under the ambit of "income"?
ii) Whether the Clause 103-B of the Income Tax Ordinance, 2001 had retrospective effect?
iii) Whether Clause 103B of the Income Tax Ordinance, 2001 has "absolute" exemption?
iv) How do Sections 5 and 150 of the Income Tax Ordinance, 2001 operate?

Analysis: i) It is well established that the term "income" has the widest possible connotation even within the four corners of the Ordinance and income tax law. Its constitutional meaning (i.e., in terms of entry No. 47 of the Federal Legislative List) is broader still. The definition in Sec. 2(29) is inclusive and not exclusive. The definition of "dividend" in Sec. 2(19) is also inclusive and not exclusive. A dividend in specie clearly falls within the scope of clause (a) of the expanded meaning. Therefore, it is a term with an expanded meaning ("dividend") nested within another term which has a (much) wider meaning ("income"). Further, if that dividend had been paid in money terms then it could obviously not have been claimed that it was not income within the meaning of the Ordinance.
ii) It is well established as a fundamental principle of income tax law that each tax year is a separate unit of account and taxation and the law has to be applied as it stood in respect of that tax year alone. Clause 103-B of the Income Tax Ordinance, 2001 which was added by the Finance Act, 2010 had no retrospective effect. Simply because a statutory provision has a beneficial effect does not mean that it automatically has, or can have, retrospective effect. It can be overridden by the legislative will. But that must be done either expressly or shown to be the necessary intendment of the provision sought to be applied retrospectively. There is nothing in either Clause 103-B or the Finance Act, 2010 that expressly gave it retrospective effect.
iii) In Clause 103-B, the exemption is "absolute" only if the shares in question are never disposed off; otherwise, the tax liability is only deferred till the disposal. That liability is reduced in terms as stated in the proviso. A reduction in tax liability is, strictly speaking, supposed to be the subject of Part III of the Second Schedule. Clause 103-B was therefore best regarded as an amalgam of Parts I and III, the first operating immediately and the latter with a time lag.
iv) Section 5 speaks of the dividend being "received" by a person from a company, while Sec. 150 speaks of the dividend being "paid" by the latter. The former is a general expression, bringing to tax all that is received by way of dividend. The latter is limited to the requirements of Sec. 150, i.e., requiring a deduction to be made on the dividend paid. Any equivalence between Sec. 5 and Sec. 150 is illusory. One relates to the charge of the tax and the other to a mechanism of payment or recovery. If at all the recovery mechanism of Sec. 150

was not applicable to the case, the matter simply shifted to the general provisions otherwise available.

Conclusion: i) The "dividend" falls under the ambit of "income".
ii) Clause 103-B of the Income Tax Ordinance, 2001 has no retrospective effect.
iii) Clause 103-B of the Income Tax Ordinance, 2001 has no "absolute" exemption.
iv) Section 5 speaks of the dividend being "received" by a person from a company, while Sec. 150 speaks of the dividend being "paid" by the latter.

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15. **Supreme Court of Pakistan**
Muhammad Shifa and others v. Meherban Ali and others
Civil Appeal No. 1389 of 2014
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1389_2014.pdf

Facts: This appeal has been filed as of right since the High Court had set aside the judgment of the Appellate Court and restored that of the Civil Judge, who had dismissed the suit filed by the appellants/their predecessors-in-interest.

Issue: Whether the principle of res judicata is not applicable in cases of Muslim Personal Law?

Analysis: The learned Judges in the case of Muhammad Zubair, with utmost respect, whilst referring to the Act assumed that the Act had stipulated that res judicata and/or sections 11 and 12 of the Code were not applicable to Muslim Personal Law. However, the Act does not state this. Not every statement or observation in a judgment of this Court creates a precedent to become binding on courts. The case of Muhammad Zubair did not decide the question whether the principle of res judicata was not applicable to Muslim Personal Law in terms of Article 189 of the Constitution. In the present case the Appellate Court had disregarded the principle of res judicata /section 11 of the Code and the High Court corrected this mistake of law, and having done so it followed that the suit filed in the year 1997 by the respondents had to be dismissed, because the very same matter had already been decided almost forty years earlier. Public policy also requires that disputes once finally decided should not be reopened.

Conclusion: The principle of res judicata is not applicable in cases of Muslim Personal Law.

16. **Supreme Court of Pakistan**
Chaudhry Nadeem Sultan v. The State Through P.G Punjab and another
Criminal Petition No. 852 of 2021
Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._852_2021.pdf

Facts: Through this petition the petitioner has assailed the order of the learned Single judge of the Lahore High Court, Rawalpindi Bench, Rawalpindi, with a prayer to grant post-arrest bail in offences under sections 302/324/449/109/34 PPC.

Issues: Whether lodging of an FIR makes a person an accused?

Analysis: Any person against whom an accusation is made cannot be dubbed as an accused unless and until he is found involved by the Investigating Officer and in this regard a specific order for his arrest is made by him. Mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused.

Conclusion: Mere lodging of an FIR does not make a person an accused.

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17. **Supreme Court of Pakistan**
Mst. Lubna Bibi v. Azhar Javed Abbasi and another
Criminal Petition No. 577 of 2021
Mr. Justice Maqbool Baqar ,Mr. Justice Sayyed Mazahar Ali Akbar Naqvi.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._577_2021.pdf

Facts: The petitioner filed a petition under Article 185(3) of the Constitution of Pakistan, 1973 and seeks cancellation of bail granted to the respondent under Sections 337A(ii)/337A(iv)/147/149 PPC.

Issues: Whether the opinion of the first medical officer has to be given precedence over the Medical Board?

Analysis: Medical Board comprised of four senior doctors having superior qualification and experience. It is established law that when there is conflict in opinions of the medical experts, the expert having better qualification, insight, experience, and more particularly the joint consensus of the members richly equipped has more weightage, hence it has to be given precedence over the first examination conducted by a junior doctor, especially when members of Board while examining in the Board are four in number, whereas the first doctor who examined the injury at the first instance was only a single member assigned the duty to examine the injured person. If the finding of the hierarchy of first instance is to be given precedence, that would frustrate the whole system.

Conclusion: No. The opinion of the first medical officer should not be given precedence over the Medical Board.

18. **Supreme Court of Pakistan**
M/s. Mardan Ways CNG Station v. General Manager SNGPL & others
C.P.L.A No.2063 of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan and Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2063_2020.pdf

Facts: The Petitioner filed a suit for declaration and mandatory injunction against the respondents that no arrears are outstanding against the plaintiff-petitioner CNG station and sought to restrain the respondents from disconnecting its gas connection. The Managing Director SNGPL also filed a suit for recovery against the petitioner while both the said suits were consolidated. The said suit of the plaintiff was dismissed while that of respondents was decreed. In Regular First Appeal before the Peshawar High Court against the consolidated judgment the findings of the trial court were upheld. After said dismissal of the appeal, instant petition for leave to appeal was filed.

Issues: i) Whether a suit can be filed against the General Manager and other officials of the SNGPL in their personal capacity without impleading SNGPL being a company?
ii) Whether a Civil Suit is maintainable against SNGPL before a Civil Court?

Analysis: i) It is well settled law that as per company laws, a company is a separate legal entity distinct from its owners or shareholders or directors or officials or employees. A company has a perpetual existence and can sue and be sued in its own name. Any director or employee of a company is not personally liable for the liability of the company even if he acted on behalf of the said company. Conversely, a company is also not liable for the liability of its directors/employees arising out of an act in their individual capacity. Therefore a suit against employees of a company is not proceedable without impleading a company.
ii) Under the Oil and Gas Regulatory Authority Ordinance, 2002 the Oil and Gas Regulatory Authority has the exclusive jurisdiction to determine the matters in its jurisdiction as set out in the Ordinance and the jurisdiction of the Civil Court was barred as held by this court in case titled General Manager SNGPL Peshawar vs. Qamar Zaman (2021 SCMR 2094). In the said judgment, this Court, while examining section 43 of the Ordinance, held that the provisions of the Ordinance have overriding effect and the Authority shall, subject to provisions of the Ordinance, be exclusively empowered to determine the matters in its jurisdiction set out in the Ordinance. In the said judgement this court also held that a mechanism for redressal of disputes has been provided by filing a complaint under section 11 of the Ordinance and section 12 of the Ordinance provides for the right of appeal. In such view of the

matter, it was held that even in the absence of any specific bar provided in the statute over the jurisdiction of the Civil Court, the above-referred provisions reflect the intent of the legislature and therefore, the Jurisdiction of the Authority is exclusive and the jurisdiction of the Civil Court is barred but this would be an implied bar, very much permissible under the settled law and it will be equivalent to the specific bar provided in any statute. Therefore, this Court held that a civil suit for declaration filed before the Civil Court of plenary jurisdiction was not maintainable and as wrongly entertained by the Civil Court.

Conclusion: i) A suit cannot be filed against the General Manager and other officials of the SNGPL in their personal capacity without impleading SNGPL being a company.
ii) A Civil Suit is not maintainable against SNGPL before a Civil Court.

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19. **Supreme Court of Pakistan**
Pir Fazal Rabbani & others v. Ghulam Akbar & others
Civil Appeal No.1421 of 2015
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1421_2015.pdf

Facts: The Plaintiffs-Respondents filed a suit for declaration and in alternative for specific performance regarding a mutation in favour of predecessors of respondents by the predecessors of the appellants and subsequently as per endorsement in the said mutation, the mutation was cancelled on the basis that the event of transaction of sale has been cancelled. The said suit was dismissed by trial court but the findings were reversed by first appellate court and suit was decreed while the said decree was upheld by the Peshawar High Court. The Appellant has assailed the judgement of said High Court in the instant appeal.

Issues: Whether a mutation of land can be cancelled by the revenue officials when the transaction of sale consideration was proved to be paid to the owner and the possession was delivered?

Analysis: The case of the appellants was that the predecessor of the respondents was their tenant upon the suit land and he has wrongly claimed the sale and entrance of subject mutation in his favour. The case of the appellants that predecessor of respondents was cultivator as tenant at the time of alleged entrance of mutation is not confirmed by the documentary evidence, whereas after the entrance of mutation the entry of possession of the predecessor of plaintiffs-respondents at least confirms that they were put to possession though it is mentioned as "GhairDakheelKaar", that is why the revenue officials do not mention the entry of possession on the basis of any agreement because for mentioning of that entry under any agreement they are required to attest a mutation first of that event

that may be the transfer of possession under any agreement, thereafter, they can endorse the entry of possession on the basis of any mutation or agreement. It is normal practice that revenue officials take the easy way, normally mention the entry as tenant instead of attesting the mutation for any other event and mentioning that endorsement in the column of possession. Further the endorsement of cancellation of mutation on the ground that the sale transaction has been cancelled between the parties now at least confirms that there was a sale transaction and transaction money was paid and mutation was entered and proceedings were carried on, on this mutation. In the suit though a declaration and in the alternative specific performance was prayed, in the circumstances of the case, when the transaction of sale consideration was proved to be paid to the owner, the possession was delivered, the only action remains with the revenue officials to attest a mutation, if parties have completed their part of contract.

Conclusion: A mutation of land cannot be cancelled by the revenue officials when the transaction of sale consideration was proved to be paid to the owner and the possession was delivered.

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20. **Supreme Court of Pakistan**
Ch. Riaz Ahmad v. Munir Sultan Malik
Civil Appeal No. 1798 of 2016
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin ud Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1798_2016.pdf

Facts: Through this appeal filed under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973 appellant challenged the judgment passed by the High Court whereby revision petition filed by the respondent/vendee/defendant was allowed and judgment and decree of both the fora below decreeing the pre-emption suit of the appellant were set aside.

Issues: i) What are the requirements for performance of Talabs in a suit of pre-emption?
ii) What is the right of the witness when any part of the statement is wrongly recorded?

Analysis: i) To succeed in a suit for pre-emption the first and foremost condition is that plaintiff has to plead that before filing of suit he has fulfilled the requirements of Talabs and thereafter he has to prove the performance of Talb-e-Muwathibat and Talb-e-Ishhad. For proving Talb-e-Muwathibat there must be specific time, date and place of knowledge pleaded in the plaint as well as in the notice of Talb-e-Ishhad and thereafter plaintiff is required to prove the same by proving the gaining of knowledge at specific place, time and date and thereafter sending of notice attested by two truthful witnesses through registered post acknowledgement due where the postal facilities are available and thereafter to prove the delivery of notice to the addressee-vendee defendant or its refusal by

producing a Postman in the Court while producing evidence to prove the above-mentioned pleadings.

ii) Order XVIII Rule 5 of the CPC provides the procedure of taking evidence of a witness in appealable cases. The said provision provides that after recording statement it is read over to a witness. If anything was a slip of tongue or wrongly recorded the party has a right to move for correction of the same before the completion of the proceedings.

Conclusion: i) The plaintiff is required to plead the Talabs in the plaint and prove the same while producing the evidence.
ii) A witness has a right to move for correction if any part of the statement is wrongly recorded.

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21. **Supreme Court of Pakistan**
Province of Punjab through DO(R) Sheikhupura, etc. v. Javed Akbar & others
Civil Petitions No.2338-L & 2258-L of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sajjad Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2338_l_2017.pdf

Facts: The respondents instituted a civil suit when the petitioners started construction of two way road, by claiming that the road and proposed wall in front of their land will not only block the view and exposure of the land but also will cause hindrance in approaching the main road. Petitioners contested the matter with plea that the property was acquired by the Provincial Government from the predecessor of the respondents who never raised any objection at any stage. Learned Trial Court dismissed the suit whereas appeal of respondents was allowed and thereafter in the revision petition of the petitioners, a direction was given to them for providing a passage of 20ft to the respondents. The petitioners have challenged the direction only whereas the respondents have challenged the entire judgment of the Hon'ble High Court.

Issues: i) Whether the Courts can grant declaration relating to a new right if it does not pre-exist?
ii) Whether a court can direct the owner of land for provision of passage to other party when there is no claim of right of easement?

Analysis: i) When neither revenue documents show any passage passing through the land of the petitioners to the land of the Respondents nor the respondents produced any document or evidence to show that any such passage ever existed and no evidence was produced showing that any objection was taken at any stage with reference to the passage then the existence of any passage claimed by the respondents was never established. Under the law, the Courts can issue declarations relating to existing rights and cannot create fresh/new rights in favour of the either party.

ii) The land in question is agricultural in nature and no commercial building/ shopping plaza or offices, etc. exist on the same. When no such commercial activity is being undertaken on the land of the Respondents, there is no ground for them to raise an objection relating to blockage of view of the same. Further, we are not convinced that in the facts and circumstances of the case, the owner of the land abutting the road can be stopped from utilizing it in a manner for which it was specifically acquired and how and under what law can a Court carve out a passage in the land of another person specially when no right of easement is claimed or asserted.

Conclusion: i) The Courts cannot grant declaration relating to a new right if it does not pre-exist.

ii) The court cannot direct the owner of land for provision of passage to other party when there is no claim of right of easement.

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22. **Supreme Court of Pakistan**

Government of KP through Secretary, Home Department & others v. Wali Khan, Zahid, Ghanimullah, Aurarigzeb Imran, Gohar Zaman, Saif ur Rehman, Mir Shaid, Akhtar Ali & Kamran Shah, etc.

CPLA No. 287-P of 2016, 290-P to 295-P, 310-P, 110-P & 111-P of 2019

Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

https://www.supremecourt.gov.pk/downloads_judgements/c.p._287_p_2016.pdf

Facts: The petitioners through these Civil Petitions have assailed the judgments of the Hon'ble Peshawar High Court, Peshawar whereby the Constitutional Petitions of the respondents were accepted and they were allowed the remissions as prayed for and their sentences were either suspended or the punishments which they were awarded were remitted.

Issue: i) Whether a class of prisoners can be granted remissions when that specific class of offences is excluded from remissions by the President of Pakistan through notification of remission?

ii) Whether Superintendent of a jail can issue notifications and grant remissions to the prisoners?

iii) Whether classification of offences while granting remissions through notifications is a violation of Article 25 of the Constitution of The Islamic Republic of Pakistan?

Analysis: i) The main purposes of a punitive and retributive system are to socially oust criminals in an exemplary manner, in the larger interest and protect law abiding citizens from criminal acts. The prisoners having committed crimes of heinous nature were denied remissions by the President while exercising his authority under Article 45 of the Constitution. The prisoners falling in the category of

excluded offences were not entitled to remissions.

ii) Rule 207 of the Pakistan Prison Rules empowers the Superintendents of the respective jail to grant remissions. The Superintendent does not grant executive clemency. He exercises authority under the relevant law by allowing only those remissions granted to prisoners which are provided in the law. The superintendent cannot therefore issue a notification on his own volition and allow prisoners remissions on various occasions. His actions must be backed by the law. The President on the other hand, may issue such notifications and allow remissions in exercise of his Constitutional powers.

iii) Article 25 of the Constitution provides that all citizens are equal and are entitled to equal protection of the law. The state is, however, empowered to create classifications based on intelligible differentia. This means classifications on a rational or reasonable basis, having a nexus with the object sought to be achieved. The President is fully empowered to make such a classification and exclude those who have committed serious crimes such as murder, abduction, terrorism etc. This concept of classifications is not alien to criminal jurisprudence. There is denial of remissions even in the Prison Rules to those convicted of espionage/anti-state activities and it is the argument that if a class is created based on intelligible differentia, backed by reasonable or rational basis, it does not violate the Constitutional mandate of Article 25.

Conclusion: i) A specific class of prisoners cannot be granted remissions when that class of offences is excluded from remissions by the President of Pakistan through notification of remission.

ii) The Superintendent of a jail cannot issue notifications and grant remissions to the prisoners, however he can allow only those remissions granted to prisoners which are provided in the law.

iii) The classification of offences while granting remissions through notifications is not in violation of Article 25 of the Constitution of The Islamic Republic of Pakistan.

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23. **Supreme Court of Pakistan**
Ikram Ullah Khan Yousafzai,Excise & Taxation Officer, Peshawar and others v. Dr. Rizwan Ullah & others
Civil Petition No.2420 of 2015
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin -ud-Din Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2420_2015.pdf

Facts: Through the present petition since converted into appeal the petitioners have assailed the vires of the Peshawar High Court Peshawar in impugned order in which the court directed registration of a criminal case against them.

Issues: i) Whether the obstruction with the performance of State business is interference to its writ?

ii) Whether Independence is sole prerogative of any particular limb of the state?

Analysis: i) State authority is a sacred trust which vests in its functionaries to accomplish purposes designated by law. But the functionaries must act in a manner most benign with a degree of restraint, expedient to avoid transgression. At the same time, a reasonable freedom for the functionaries is most essential to effectively perform the duties they are tasked with. Any obstruction with the performance of State business is interference with the writ thereof and cannot be tolerated without grievously undermining its authority.

ii) Independence is not sole prerogative or attribute of any particular limb of the state as within the defined limits of law, each department, must be sovereign to effectively ensure its functionality so as to achieve statutory purpose, there being no sword of demolces hanging over the head. It is even more important for those who are assigned with the responsibility of enforcement of law or for collection of State revenue and, thus, while there must be an unblinking judicial vigil over alleged transgressions, the Court must simultaneously give effect to statutory presumption attached to official acts as contemplated by Article 129 (e) of the Qanun-i-Shahdat Order, 1984 as well as Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: i) Yes, any obstruction with the performance of State business is interference with the writ thereof.

ii) Independence is not sole prerogative or attribute of any particular limb of the State.

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24. **Supreme Court of Pakistan**
Mst. Kalsoom Bibi & others v. Muhammad Amin Agha (Deceased) through LRs and others
Civil Appeal No. 822 of 2014
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._822_2014.pdf

Facts: The respondents filed a suit for possession which was dismissed and appeal filed before learned ASJ was also dismissed. The respondents filed civil revision before Hon'ble High Court which was accepted, hence instant civil appeal by appellants.

Issues: Whether the ownership can be claimed on the basis of adverse possession?

Analysis: For claiming an adverse possession it becomes admitted position that a party claiming adverse possession admits the ownership of other side and on the basis of long uninterrupted hostile possession claims the adverse possession. Claiming the ownership on the basis of allotment at one stage and raising the plea of adverse possession at the other are self-destructive. Even otherwise the ownership on the basis of adverse possession is contrary to the Islamic Injunctions.

Conclusion: The ownership cannot be claimed on the basis of adverse possession.

25. **Supreme Court of Pakistan**
Muhammad Iqbal v. State.
Jail Petition No. 516 of 2018
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail

https://www.supremecourt.gov.pk/downloads_judgements/j.p._516_2018_detailed.pdf

Facts: A foreign buyer preferred a complaint against petitioner for failing to timely ship an order of bath towel, with the request that the Trade Development Authority of Pakistan ("TDAP") take legal action against the latter entity. TDAP filed a complaint before the Special Court (Commercial), Karachi against the petitioner. On conclusion of trial, petitioner was convicted under section 5(b) of the Imports and Exports (Control) Act, 1950 read with section 4(a) of the Export (Quality Control) Order, 1973. Sindh High Court maintained the conviction; however, the sentence was reduced to one already undergone. The petitioner preferred present jail petition seeking special leave to appeal the decision of the High Court along with an application for condonation of delay of 762 days.

Issues: i) Whether involvement of constitutional questions in appeal and lack of paying capacity of appellant are sufficient reasons to condone the delay?
ii) Whether commercial court is empowered to make order for refund of certain amount to foreign buyer from Revolving Fund and what will be procedure to recover the same from exporter?
iii) Whether convict could be confined for indefinite period for default in payment?

Analysis i) The petitioner is in the prison for more than eight (08) years only because he could not pay the compensation amount. Since the legality of the condition set down on the release of the convict raises certain constitutional questions, this Court has ample power to condone the delay in filing of appeal in such like cases.
ii) The plain reading of Section 5 of Imports and Exports (Control) Act, 1950 states that the Commercial Court is empowered to direct the exporter/seller to refund or pay certain amount with or without damages to the foreign buyer and in case of his failure to pay that amount, it shall be recoverable as an arrear of land revenue along with interest at the prevailing bank rate for the period following the expiration of the time within which such amount was payable and it shall be credited to the Revolving Fund. The Commercial Court, "may direct the payment of such Compensation from out of the Revolving Fund set up by the Federal Government." …. Therefore, to improve our exports, we as a citizen and nation need to improve foreign buyers' trust in our system as a reliable trade partner. The Commercial Court could have and, in this case, should have directed refund to the buyer from the Revolving Fund if the same was immediately not payable by the exporter. On the other hand, the law clearly tells that if the exporter fails to pay the amount to the buyer within the time specified by the Court, the said amount

can be recovered as an arrear of land revenue.

iii) The law does not call for indefinite incarceration in case of default in payment. In the circumstances of the case, indefinite confinement in return for default in payment is violative of Articles 9, 10 and 14 of the Constitution and we do not see any justification for that.

Conclusion: i) Involvement of certain constitutional questions and lack of paying capacity of the petitioner which prevented his release and filing of appeal, could be appropriate reasons for condonation of delay.

ii) The Commercial Court could direct refund to the buyer from the Revolving Fund and said amount can be recovered as an arrear of land revenue from exporter.

iii) Convict could not be kept in confinement for indefinite period for default in certain payment.

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26. **Supreme Court of Pakistan**
Abdul Aziz v. Abdul Hameed (decd) thr. LRs.
Civil Appeal No. 219 of 2015
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._219_2015.pdf

Facts: The appellant filed a suit for declaration against his real brother for the transfer of immovable property on the basis of a compromise and statements recorded in an earlier suit filed by the father of the parties against the deceased respondent alleging him to be a "*Benami*" owner wherein he agreed to transfer six acres to the appellant and his two other brothers but thereafter the deceased respondent refused to transfer two acres to the appellant. The suit was dismissed by the learned Trial Court. The appeal thereof was also dismissed and the civil revision filed by the appellant before Hon'ble Lahore High Court was also dismissed.

Issue: i) Whether the presumption of correctness and sanctity is attached to the judicial proceedings and record?

ii) Whether a registered document carries the presumption of correctness and how its contents are proved?

iii) Whether the suit for declaration under section 42 of the Specific Relief Act is competent in circumstances favoring the plaintiff although he is not recorded as owner in the record?

Analysis: i) The law is well settled that strong presumption of correctness and sanctity is attached to judicial proceedings and records and to outweigh the same, strong and unimpeachable evidence is required.

ii) Registered document carries presumptions attached to it under sections 35, 47 and 60 of the Registration Act, 1908 and under Article 90 of the Qanoon-e-

Shahadat Order, 1984 and the court will presume correctness of the registered document in accordance with the presumptions attached unless the same are disputed or rebutted. Moreover, with respect to the proof of "contents of document" Article 72 of Qanun-e-Shahadat Order, 1984 provides that contents of documents may be proved either by primary or secondary evidence. The best evidence about the contents of a document is, therefore, the document itself and it is the production of the document that is required by law in proof of its contents.

iii) So far as the discussion and observation made by the learned High Court that a suit under section 42 of the Specific Relief Act was not competent when the plaintiff was not recorded owner of the suit land, we observe that when a previous suit was filed by the father of the present defendant against the present defendant on the basis that defendant is a "*Benami"* owner of the whole of the land and subsequently the statement for compromise was made which is proved that father of the parties to the suit was real owner which has not been challenged by the predecessor of respondents till date and when the said compromise and admission that he will transfer two acres in favour of present appellant admitting that it was a "*Benami*" transaction leads us to conclude that in the peculiar circumstances of this case the suit filed under section 42 for declaration of title was competent.

Conclusion: i) Strong presumption of correctness and sanctity of high order is attached to judicial proceedings and records and to outweigh the same, strong and unimpeachable evidence is required.

ii) A registered document carries the presumption of correctness and the contents of documents may be proved either by primary or secondary evidence. The best evidence about the contents of a document is the document itself.

iii) The suit for declaration under section 42 of the Specific Relief Act is competent in circumstances favoring the plaintiff although he is not recorded as owner in the record.

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27. **Lahore High Court**
Khairat Ali v. Saqib Ashfaq & others.
R.F.A. No.7934 of 2020
Mr. Justice Shahid Waheed, Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC498.pdf

Facts: The appellant has assailed the order through which his suit for possession through specific performance is dismissed due to non-deposit of remaining sale consideration.

Issue: i) Whether it is necessary to caution the plaintiff about the consequences of non-deposit of sale consideration before dismissing the suit for specific performance?
ii) Whether the court is bound to grant decree for specific performance?
iii) Whether court should invoke penal provision after giving last opportunity to a party for doing a certain act?

Analysis: i) The wisdom behind ordering a vendee to deposit the remaining sale consideration is not only to see the bona fides of the vendee and his seriousness about fulfilling his contractual obligation but also to safeguard the rights of the vendor, therefore, any such order of deposit would definitely allure to the benefit of both the parties… However unless a party would have been put to notice that the non-deposit of the balance sale price would be deemed to be his incapability of performing his part of the contract as envisaged under section 24(b) rendering the contract non-enforceable, the suit could not have been dismissed.
ii) According to Section 22 of the Specific Relief Act, 1877, the jurisdiction to issue a decree of specific performance is discretionary in nature as it is an equitable relief, thus, the court is not bound to grant such relief merely because it is lawful to do so.
iii) Once last opportunity is given to a litigant for doing a certain act and he fails to do the same, the penal provision has to be invoked, otherwise, it will amount to making mockery of law.

Conclusion: i) It is necessary to caution the plaintiff about the consequences of non-deposit of sale consideration before dismissing the suit for specific performance.
ii) The court is not bound to grant decree for specific performance.
iii) The court has to invoke penal provision after giving last opportunity to a party for doing a certain act.

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28. **Lahore High Court**
Independent Media Corporation (Pvt.) Ltd v. Federation of Pakistan & others
W.P. No.100 of 2022
Blitz Advertising (Pvt.) Limited v. Federation of Pakistan & others
W. P. No.1524 of 2022
Mr. Justice Shahid Waheed
https://sys.lhc.gov.pk/appjudgments/2022LHC704.pdf

Facts: The petitioners called in question the legality of the joint venture formed by the PTVC with two private entities (ARY/GroupM), to writ, with the plea that the PTVC without asking it or other broadcasters could not contract directly with ARY/GroupM.

Issues: i) Whether PTVC should be regarded as instrumentality or agency of the government performing functions in connection with the affairs of the Federation or a Province?
ii) Whether the commercial transactions of the Government or its instrumentalities or agency can be brought under judicial review?

Analysis: i) PTVC is a public limited company with an authorized capital and the Government holds entire paid up share capital. The objective of the PTVC is to establish a network of television stations in Pakistan by erecting, constructing, maintaining and improving television stations at places approved by the

Government of Pakistan, and to carry out instructions of Government of Pakistan with regard to general pattern of policies of programs, announcements and news etc. It will thus, be seen that the Government of Pakistan has full control of the working of the PTVC and it would not be incorrect to say that in the affairs of the PTVC, the voice is of the Government of Pakistan and the hands are also of the Government of Pakistan. I must, therefore, hold that the PTVC is an instrumentality or agency of the Government and does fulfill the above-stated diagnostic test to qualify as a person performing functions of the Federation.

ii) A study of case-law suggests certain principles relating to scope of judicial review of administrative decisions and exercise of contractual process by government bodies and they are: (a) the basic requirement in fairness in action by the Government, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to judicial review only to the extent that the Government must act validly for a discernible reason and not whimsically for any ulterior purpose. If the Government acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities, (b) in the matter of awarding a contract, greater latitude is required to be conceded to the Government unless the action of the Government is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted, (c) if the Government or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim a fundamental right to carry on business with the Government, (d) the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made, (e) the Court does not have the expertise to correct the administrative decision.

Conclusion: i) As the Government of Pakistan has full control of the working of the PTVC; therefore it is regarded as instrumentality or agency of the government with regard to performing functions of television stations in Pakistan in the Federation or Province.

ii) Under the power of judicial review; the Court does not sit as a court of appeal but merely reviews the commercial transactions of the Government or its instrumentalities or agency when they are found to be malicious and a misuse of statutory powers.

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29. **Lahore High Court**
Atif Abbas v. The State
Crl. Appeal No.18570/2019
Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC568.pdf

Facts: The appellant has assailed the judgment passed by Special Judge, Anti-Terrorism Court, Sargodha, whereby he was convicted and sentenced for offences under sections 4&5 of the Explosive Substances Act, 1908, Section: 13(2A) of the Pakistan Arms Ordinance XX, 1965 and Section: 7 of the Anti-Terrorism Act,

1997. The appellant took the stance that he was abducted much prior to the registration of instant case FIR by the agencies and subsequently he was roped in this case in order to save their skin. The appellant submitted copy of FIR regarding his said alleged abduction in his defense u/s 342 Cr.P.C.

Issues: Whether an unattested copy of a public document produced by an accused in his defense u/s 342 Cr.P.C can be considered as legal evidence of a fact?

Analysis: The Appellant has produced copy of F.I.R which was got recorded by his real brother regarding his said abduction but mere production of said document *ipso facto* does not advance defence plea/ version. Perusal of aforementioned copy of F.I.R reflects that it was merely containing stamp of police station and not containing certificate as required under Article 87 of Qanun-e-Shahadat Order, 1984. Perusal of aforementioned article reveals that until copy has not been issued by concerned custodian and certificate regarding its correctness is mentioned therein till then, neither it can be termed as "**certified copy**" nor any value can be attached with the same, so, aforementioned copy of F.I.R which was only containing stamp of the police station and neither name of the person who issued the same nor any certificate regarding its correctness is available in the same, can neither be termed as certified copy nor any value can be attached with the same. It is trite law that producing/exhibition of documents and proving the same are different things; admissibility of document in evidence would not absolve the party from proving its contents; party relying on documents is bound to prove the same and documents not proved in evidence could not be considered as legal evidence of a fact.

Conclusion: An unattested copy of a public document produced by an accused in his defense u/s 342 Cr.P.C cannot be considered as legal evidence of a fact.

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30. **Lahore High Court**
Asma Parveen v. The Secretary School Education etc.
ICA. No.4266 of 2022
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2022LHC602.pdf

Facts: The appellant was a contract employee and her contract was terminated on the basis of poor performance/un-satisfactory report. The appellant has challenged such termination on different forums by disclosing the facts partially but intentionally concealing certain facts before such forum/court, hence , this intra court appeal.

Issues: i) Whether is it a pre-requisite, that the person seeking to invoke extra ordinary jurisdiction of the Court ought to come with clean hands?
ii) Whether suppression or concealment of relevant facts can be termed as a "jugglery which has no place in the equitable and prerogative jurisdiction"?
iii) Whether a contractual employee is debarred from approaching this court in its

constitutional jurisdiction for re-instatement or extension of contract?

Analysis: i) It is a fundamental principle, rather a pre-requisite, that the person seeking equitable relief must approach the Court, by making full, candid, truthful, frank and open disclosure of all the relevant facts, particularly the facts having a bearing on the merits of the case. The jurisdiction of this Court under Article 199 of the Constitution is discretionary and equitable in character. The appellant seeking to invoke its extra ordinary jurisdiction ought to come with clean hands because "he who seeks equity must come to the Court with clean hands".
ii) Suppression or concealment of relevant facts has been rightly termed as a "jugglery which has no place in the equitable and prerogative jurisdiction".
iii) Being a contractual employee, the relationship between the appellant and respondent/Government of Punjab will be governed by the principle of master and servant and the appellant has to serve till the satisfaction of her master. Hence, in view of established principle of law that a contract employee is debarred from approaching this Court in its constitutional jurisdiction for re-instatement or extension of contract and only remedy available to a contract employee is to file suit for damages alleging any breach of contract or failure to extend the contract... Even otherwise, in view of the availability of an alternate efficacious remedy/claim of damages/compensation, if any, to the appellant/a litigant under the law, constitutional jurisdiction of this Court is also barred.

Conclusion: i) It is a pre-requisite, that the person seeking to invoke extra ordinary jurisdiction of the Court ought to come with clean hands.
ii) Suppression or concealment of relevant facts can be termed as a "jugglery which has no place in the equitable and prerogative jurisdiction".
iii) A contractual employee is debarred from approaching this court in its constitutional jurisdiction for re-instatement or extension of contract.

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31. **Lahore High Court**
United Bank Limited v. Muhammad Usman Arshad and one other
ICA No.111/2017
Mr. Justice Abid Aziz Sheikh, Mr. Justice Shahid Jamil khan
https://sys.lhc.gov.pk/appjudgments/2022LHC528.pdf

Facts: The appellant filed this Intra Court Appeal under Section 3 of the Law Reforms Ordinance, 1972 (Ordinance 1972) has filed against the order, passed by the learned Single Bench of this Court in Writ Petition.

Issues: i) Whether a private Bank is not amenable to the Constitutional jurisdiction under article 199 of Constitution of Islamic Republic of Pakistan, 1973 (Constitution)?
ii) Whether impugned direction could be issued to State Bank of Pakistan to decide the representation against termination order of the employee of the private Bank?

Analysis: i) There is no dispute that appellant bank (UBL) was originally a government owned and controlled bank, however, in the year 2002, the UBL was privatized and since then functioning as limited company. It is also not disputed that after privatization, majority of its shares have been acquired and vested to private parties, therefore, State/Federation has neither any financial interest in the UBL nor it controls the affairs thereof. Thus, the appellant Bank being a private Bank is not amenable to the Constitutional jurisdiction under article 199 of Constitution of Islamic Republic of Pakistan, 1973 (Constitution).

ii) The State Bank is a regulatory authority for all banks operating in Pakistan and its functions are contemplated under Banking Companies Ordinance, 1962 (Ordinance 1962), with respect to the activation and operation of banks and for carrying out purpose of Ordinance 1962 and matter ancillary thereto. There is no statuary duty and obligation of State Bank of Pakistan in the Ordinance 1962 to direct a private bank to perform its functions in respect of its employee terms and conditions of service.

Conclusion: i) A private Bank is not amenable to the Constitutional jurisdiction under article 199 of Constitution of Islamic Republic of Pakistan, 1973.
ii) Impugned direction could not be issued to State Bank of Pakistan to decide the representation against termination order of the employee of the private Bank.

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32. **Lahore High Court**
Industrial Development Bank Limited (formerly Industrial Development Bank of Pakistan) v. Ch. Nazar Muhammad & others
RFA No.98 of 2015
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC8777.pdf

Facts: Appellant-bank filed an application for amendment before trial Court in suit for recovery which was dismissed and R.F.A was also dismissed whereas Civil Petition before August Court was withdrawn by appellant. Thereafter the suit of the appellant was partly decreed and partly dismissed. Feeling aggrieved, appellant filed instant appeal wherein also challenged the order of dismissal of his application for amendment.

Issues: i) Whether the parties can go beyond the pleadings?
ii) Whether delay disentitles a person from seeking amendment in the pleadings?

Analysis: i) It is settled law that the parties cannot be permitted to go beyond what they had setup in their pleadings, and during judicial proceedings, neither a party can be allowed to adduce evidence in support of a contention not pleaded by it nor can the decision of the case rest on such evidence.
ii) Ordinarily, delay may not disentitle a person from seeking amendment in the pleadings, but the Courts can consider said fact in cases before them. According

to settled law, it is the discretion of the Court to permit or refuse amendment in the pleadings; however, the Court is not bound to allow the amendment in all the cases.

Conclusion: i) The parties cannot go beyond the pleadings.
ii) Delay may not disentitle a person from seeking amendment in the pleadings.

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33. **Lahore High Court**
MEPCO Chief Executive Officer, etc. v. M/s Fazal Cloth Mills Ltd. etc.
W.P. No.16328/2015
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC738.pdf

Facts: The respondent No.1 is an industrial consumer of the petitioners/MEPCO who claimed refund due to difference of billing from Peak to Peak-off hours units.

Issues: i) Which law shall prevail for determining limitation period for the suits, applications or appeals where special law exists?
ii) Whether provisions of section 5 of Limitation Act apply to Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997?
ii) Whether the government case barred by time will be given preferential treatment?

Analysis: i) Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed under the Limitation Act, then period prescribed in special or local law will prevail.
ii) The expression "local or special law" has not been defined in the Limitation Act but according to Black's Law Dictionary, "local law" means a law, which operates over a particular locality instead of whole territory, while the expression "special law" means a law made for individual cases and include law operating upon a selected class, rather than the public at large. The perusal of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 shows that its provisions are to provide for Regulatory, Generation, Transmission and Distribution of Electric Power and matters connected therewith and incidental thereto to selected class of persons mentioned in the Act. Therefore, for all intent and purposes, the Act is a special law, hence the provision of Section 5 of the Limitation Act shall not apply, in view of Section 29(2)(b) of the Limitation Act, to condone the delay beyond the period of limitation of thirty(30) days prescribed under Section 38(3) of the Act.
ii) As per law settled by the Hon'ble Supreme Court, no preferential treatment can be given to the government in cases filed beyond the period of limitation.

Conclusion: i) Special law shall prevail where the limitation period is stipulated in the act.
ii) Provisions of section 5 of Limitation Act do not apply to Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997

iii) No preferential treatment shall be given to the government cases barred by time.

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34. **Lahore High Court**
Fatima Nadeem v. Province of the Punjab and others
W.P. No. 6700 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC555.pdf

Facts: The petitioners are aggrieved of declining or not entertaining their request of including their improved marks, obtained in Special Examination, while preparing final merit for admission in MBBS/BDS.

Issue: Whether act of respondents for not allowing petitioners, on basis of technicality, to submit their improved marks in final merit for admission in MBBS/BDS is contrary to fundamental rights guaranteed in constitution and petitioners are entitled for admissions in question?

Analysis: After declaration of original result for HSSC & A-level examination, having already filed online applications for admission in MBBS/BDS on the basis of original result of Higher Secondary School Certificate, petitioners & other candidates appeared in respective Special Examination to attempt for improvement of the marks and their results have been declared on the same dates. Applicants intending to improve their marks were asked to register their intention by selecting the category 'delayed result candidates' in the system, but petitioners failed to select said category and now system is not allowing them to submit their improved marks. Candidates selecting category of 'delayed result candidates' and petitioners (improvers/repeaters) are one class. But, a class has been created within similarly placed person by introducing technical condition in the computer system. Article 37 (c) enjoins upon the State that it shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit. Article 25 ensures equality and equal protection before law. Final merit list is yet to be prepared.

Conclusion: Respondents are ousting petitioners from being considered on merit mere for a technicality. The technicality introduced in the system is though a policy matter but it offends and is in violation to fundamental right of 27 candidates under Article 37(c) read with Article 25 of the Constitution by creating a class within a class.

35. **Lahore High Court**
Ghulam Raza, etc. v. Mureed Abbas, etc.
C.R.No.2517 of 2014
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2017LHC5470.pdf

Facts: A suit for declaration and perpetual injunction was instituted by alleging that land in dispute was gifted to petitioners by deceased, subsequent to which the oral gift was reduced into writing and a gift deed was also executed. Petitioners also challenged mutation of inheritance sanctioned after the death of deceased. Through this civil revision concurrent judgments and decrees of trial court and appellate court, respectively, have been assailed.

Issues: i) what necessary details of oral transaction, the beneficiary of transaction was required to mention in plaint and prove the same?
ii) what are the necessary ingredients of gift?
iii) whether minors are competent to execute documents qua gift and complete the necessary ingredients of gift?
iv) whether the stipulation which is beyond the pleading could be relied upon?
v) Whether the concurrent findings of two courts below can be interfered in the exercise of revisional jurisdiction?

Analysis i) It is mandatory for a beneficiary of an oral transaction to prove through positive evidence the day, the venue, the persons/witnesses in whose presence the alleged transaction was made, the time thereof, the month and year and even the consideration and in order to prove this at the outset all these details are to be mentioned in the pleadings.
ii) For performing and proving a gift, there are three necessary requisites/ingredients which, (…) have to be proved by the donee, which for convenience are reproduced hereunder:

a) Proposal by the donor;
b) Acceptance by the donee; and
c) Delivery of possession to the donee.

iii) that petitioners were minors when the gift was made (oral as well as written). In this background a perusal of the plaint would show that nothing has been mentioned therein with regard to the fact that who accepted the gift on behalf of the petitioners and to whom possession was given as the said exercise could not be undertaken by the petitioners being minors. Similarly, there is no explanation that when the petitioners were minors, how they could execute Exh.P1.
iv) Petitioners were well aware of the above lacunae left by them in their plaint and in order to fill the same, one of the petitioners who appeared as PW.2 has mentioned the names of the persons in presence of whom oral gift was made. The said stipulation is clearly beyond the scope of pleadings, thus, the same cannot be relied upon.
v) Since the learned counsel for the petitioners has not been able to point out any

jurisdictional defect or procedural impropriety in the impugned judgments and decrees passed by both the learned courts below, therefore, no interference can be made by this Court in the concurrent findings rendered by the courts below.

Conclusion: i) It is mandatory for a beneficiary of an oral transaction to prove through positive evidence the day, the venue, the persons/witnesses in whose presence the alleged transaction was made, the time thereof, the month and year and even the consideration and in order to prove this at the outset all these details are to be mentioned in the pleadings.
ii) There are three necessary ingredients of gift. a) Proposal by the donor b) Acceptance by the donee and c) Delivery of possession to the donee.
iii) Minors are not competent to execute document or to complete the necessary ingredients of gift.
iv) The stipulation, which is beyond the scope of pleadings, cannot be relied upon.
v) The concurrent findings of two courts below cannot be interfered in revisional jurisdiction when there is no jurisdictional defect or procedural impropriety in the impugned judgments and decrees.

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36. **Lahore High Court**
Wali Muhammad etc v. Shaukat Ali etc
W. P. No. 226293/2018
Mr. Justice Faisal Zaman Khan.
https://sys.lhc.gov.pk/appjudgments/2022LHC487.pdf

Facts: Through this writ petition the petitioners have assailed impugned order of striking off their right of defence in consequence of decision in revision petition due to non-observance of the mandate of Section 6 of the Punjab Partition of Immovable Property Act, 2012.

Issue: Whether an omission to comply with the mandatory provision of statute to file written statement cause its penal consequences?

Analysis: In section 6 of the Punjab Partition of Immovable Property Act, 2012, a period of 30 days has been provided to a defendant for filing the written statement which starts from the date of first appearance of defendant before the Court. Mandate of Section 6 ibid is very clear and unequivocal as a categoric duty has been cast upon the defendant with regard to filing the written statement within the stipulated time and the court is not invested with the power to extend the said period. In sub-section (2) of Section 6 of the Act, penalty has been provided that if the written statement is not filed within the stipulated time and in case of such default, the Court "shall" strike off the defence of the said defendant as a consequence to which he shall also not be allowed to lead his evidence.

Conclusion: The omission to adhere the mandatory provision of statute to file written statement causes its penal consequences.

37. **Lahore High Court**
Naeem Ahmad v. Registrar, Lahore High Court
Service Appeal No.04 of 2017
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC8787.pdf

Facts: Through instant appeal, appellant has assailed notifications issued by respondent, whereby appellant's services were terminated under Section 10 of the Punjab Civil Servants Act, 1974 during period of probation and his representation in this regard was also declined.

Issues: i) Whether regular inquiry can be dispensed with when there is likelihood of imposition of major penalty?
ii) Whether competent authority can differ with recommendations of inquiry officer?

Analysis: i) When appellant has refuted the allegations, in such eventuality, the matter involving controversial questions of facts could not have been decided without detailed scrutiny and holding a regular inquiry. Termination of services with stigmatic charges, without holding a regular inquiry, degenerates a host of adverse assumptions against one's character, which has a bearing on his / her reputation and goodwill for his / her future service career. Thus, it offends right to life and dignity of man as enshrined in Articles 9 & 14(1) of the Constitution of the Islamic Republic of Pakistan, 1973. The competent authority must not dispense with the regular inquiry that may be necessary to probe into charge, particularly when there is a likelihood of imposition of major penalty of termination from service if the allegation is proven because it would result into grave miscarriage of justice and prejudice to the aggrieved civil servant. If at all, regular inquiry is to be dispensed with, plausible reasons should have been provided.
ii) Undoubtedly, under the law, the competent authority is not bound by the recommendation of the Inquiry Officer / Hearing Officer and has the powers to differ with it however; such power has to be exercised on the basis of record and for cogent and valid reasons duly recorded.

Conclusion: i) Competent authority must not dispense with the regular inquiry particularly when there is a likelihood of imposition of major penalty of termination from service.
ii) Competent authority can differ with recommendations of inquiry officer on the basis of record after recording of cogent and valid reasons.

38. **Lahore High Court**
Holy Family Hospital etc. v. Muhammad Adeel etc.
ICA No.90 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC470.pdf

Facts: The respondents were appointed on contract basis by appellants in BS-1 to BS-15 and their employments were extended from time to time. A notification of S & GAD (Regulations Wings) was issued conveying the orders of the Chief Minister regarding regularization of services of contract employees. The respondents feeling aggrieved filed constitutional petitions which were allowed. The appellants feeling aggrieved filed this Intra Court appeal.

Issues: i) Whether pre-admission notices and notices in case of admission are required to be issued in constitutional petition?
ii) What is scope of right of equality under Article 25 of Constitution of Islamic Republic of Pakistan, 1973?

Analysis: i) Part-II of Part-J, Volume-V of Rules & Orders of the Lahore High Court provides that in case of admission of the petition, notice(s) be issued to the party(s). By virtue of Rule 4-subject to directions of the Court, notice of every application shall be served on all parties directly affected and for this purpose the applicant shall file within a week of the admitting order as many authenticated copy of the application and affidavit as there are parties to be served and the prescribed process fee, provided that at the hearing of the application any person, who desires to be heard in opposition appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with a notice and subject to such condition as to costs as the Court may deem fit to impose. These are procedural requirements meant to enable the respondents in the constitutional petition to defend their cause before the Court. Issuance of pre-admission notice is clearly alien to the Rules & Orders of the Lahore High Court.
ii) Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 though guarantees the right of equality of citizens but such right is founded on an intelligible differentia. Right of equality is always to be weighed amongst equal in all respects and it is not necessary that every citizen shall be treated alike in all eventualities.

Conclusion: i) In case of admission of the petition, notice(s) are issued to the party(s) whereas issuance of pre-admission notice is clearly alien to the Rules & Orders of the Lahore High Court.
ii) Right of equality under Article 25 does not provide that necessarily every citizen shall be treated alike in all eventualities.

39. **Lahore High Court**
Agha Muzammal Khan(deceased) through his legal heirs etc v. Member Board of Revenue /Chief Settlement Commissioner etc.
W.P. No.88-R-2013 etc
Mr. Justice Ch. Muhammad Iqbal.
https://sys.lhc.gov.pk/appjudgments/2021LHC8792.pdf

Facts: Through this writ petition the petitioners sought direction to the revenue hierarchy to correct the entries of the revenue record in their favor on the basis of agreement to sell. In the same way along with other connected writ petitions the other petitioners assailed the orders of Chief Settlement Commissioner / Administrator (Residual Properties) Punjab who after affording hearing to the concerned parties, cancelled the mutations etc regarding allotment of evacuee land.

Issues: i) Whether the alienation of the evacuee land after the partition of sub-continent was barred?
ii) Whether in the absence of a necessary party, effective decree or order can be passed?
iii) Whether agreement void ab-initio is enforceable?
iv) Whether any order passed by the authority can undo the same?
v) Whether deficiency in title of vendor can be cured by the plea of Bona-fide purchaser by the vendee?

Analysis: i) After partition of sub-continent an Authority of Custodian was established and jurisdiction with regard to the evacuee land, management, resumption, taking possession etc was bestowed to Custodian subjected to mandatory permissive certificate of the said Authority. Thus, all the lands abandoned by the evacuee in Pakistan became evacuee land/property w.e.f. 01.03.1947 which stood vested with the Central Government and the jurisdiction of Civil Court was barred in such matters.
ii) It is settled law that in the absence of a necessary party, no effective decree or order can be passed. In the same way, Section 79 of the CPC is a mandatory provision to the extent that where the Government is not made party to the suit, such actions will render the suit invalid.
iii) Agreement which is treated as void ab-initio cannot be enforceable. Every agreement of which the object or consideration is unlawful, in violation to the provisions of statutory law or policy is void and the same is not enforceable.
iv) Any order obtained from the authorities through misrepresentation, fraud and forgery etc, then in that eventuality the same authority can undo such illegal order either on its own motion or on the information received to it through application.
v) Subsequent purchasers only steps into shoes of their vendors and are debarred to claim any independent better title than that of their vendor and they have no protection in case of any infirmity in the title of vendor under plea of protection of bona fide purchaser.

Conclusion: i) Yes the alienation of the evacuee land after the partition of sub-continent was

barred w.e.f. 01.03.1947.
ii) No, in the absence of a necessary party, effective decree or order cannot be passed.
iii) An agreement void ab-initio is not enforceable.
iv) Yes, an authority can undo the order passed by it.
v) Yes, deficiency in title of vendor cannot be cured by the plea of Bona-fide purchaser by the vendee.

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40. **Lahore High Court**
Dr. Maha Fatima Tariq v. Government of Punjab through Chief Secretary, Lahore & others
W.P. No. 68978 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC8765.pdf

Facts: Through instant petition, petitioner has sought direction from Court for the respondent-authorities to issue appointment letter in her favour as Woman Medical Officer.

Issues: How the discretion vested with the public authorities should be exercised in respect of appointments in public sector?

Analysis: Appointment in public sector is the trust in the hands of public functionaries and it is their moral duty to discharge their trust with zeal, efficiency and fairness as per law. Public authorities cannot be allowed to play havoc with the fate of the masses. Discretion vested with the public authorities should be exercised with reasonableness and nobody can be left unbridled to tinker with the future of the selected / recommended candidates against their fundamental rights guaranteed under Articles 9, 18, 25 & 27 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: Discretion vested with the public authorities should be exercised with reasonableness in respect of appointments in public sector.

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41. **Lahore High Court**
Zafar Iqbal Versus Assistant Commissioner Chunnian, District Kasur & others W.P. No.43583 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC677.pdf

Facts: Through instant petition, petitioner has called in question the act of respondents of demolishing the property of petitioner and sought direction for said respondents to conduct fresh demarcation of the property along with payment of liquidated damages / compensation.

Issue: i) Whether unlimited time is available to finalize the acquisition proceedings?

ii) Whether Section 12 of the Land Acquisition Act, 1894 requires the Collector, to give immediate notice of the making of the award to such of the persons interested or not present when an award is made?

Analysis: i) Law on the subject is very clear that unlimited time is not available to finalize the acquisition proceedings and respondents were required to complete the process of acquisition within a reasonable time as the land owners, whose lands were proposed to be acquired, could not be put in agony of uncertainty for such a long period spreading over years.
ii) Section 12 lays down that the award shall be final and conclusive but it also requires the Collector, to give immediate notice of the making of the award to such of the persons interested or not present when the award is made. The service of notices as required under Sections 9 and 12 of the Act of 1894, according to the scheme of law which is mandatory requirement which cannot be dispensed with. If such notices were not given it would be a non-compliance with an obligatory part of the statute and the result would be that the award given by the Collector would be vitiated and action under section 11 shall have to be taken afresh so that a new award be made.

Conclusion: i) Unlimited time is not available to finalize the acquisition proceedings.
ii) Section 12 requires the Collector, to give immediate notice of the making of the award to such of the persons interested or not present when the award is made.

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42. **Lahore High Court**
Zulfiqar @ Bhutto v. The State etc.
Crl. Misc. No. 155-B of 2022
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC446.pdf

Facts: Petitioner sought post arrest bail on the fresh ground of hardship due to prolonged and continuous incarceration as well as on statutory ground of delay in conclusion of trial in case FIR registered under sections 302, 148, 149 PPC.

Issues: i) Whether non-compliance of the directions issued to trial Court to conclude the trial expeditiously can be considered as a valid ground for grant of bail?
ii) Whether after the expiry of certain period, benefit of 3rd proviso to section 497 (1), Cr.P.C. could be claimed by the accused as a statutory ground for bail?

Analysis: i) Mere non-compliance of the directions issued to trial Court to conclude the trial expeditiously or within some specified time cannot be considered as a valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C, so the accused cannot claim bail on this ground as a matter of right.
ii) As per 3rd Proviso to Section 497, Cr.P.C., an accused of an offence punishable with death, if detained for such an offence for a continuous period exceeding two years shall be released on bail, of course, with the exception contained in the 4th Proviso to section 497, Cr.P.C. that the provisions of 3rd

proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person, who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

Conclusion: i) Non-compliance of the directions issued to the trial Court to conclude the trial expeditiously is not a valid ground for grant of bail being alien to the provisions of section 497, Cr.P.C.
ii) After the expiry of prescribed period, benefit of 3rd proviso of section 497 (1), Cr.P.C. could be claimed by the accused as a statutory ground for grant of bail.

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43. **Lahore High Court**
Sheikh Shan Ilahi v. Federation of Pakistan etc.
W. P. No. 30013/2021
In the allied case – W.P. No.5734/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC683.pdf

Facts: The petitioners through these writ petitions challenged the vires of blacklisting being without lawful authority and of no legal effect.

Issue: i) Whether the right to travel could be syncopated without a duly enacted law?
ii) Whether para 51 of the Passport and Visa Manual 2006 is ultra vires the constitution?

Analysis: i) The right to travel is now globally recognized as one of the basic human rights. Article 13 of the Universal Declaration of Human Rights (1948) declares that everyone has the right to freedom of movement and residence within the borders of each State, to leave any country, including his own, and to return to his country. Similar provisions are found in Article 12 of the International Covenant on Civil and Political Rights (1966) and some other international instruments. The right to travel abroad is not expressly guaranteed by Article 15 or any other provision in Chapter 1 of Part II of the Constitution but our courts have invoked Article 4 (right to be treated in accordance with law) and Article 9 (right to life and liberty) to support it. The right to travel and to go abroad is an integral part of the fundamental rights to life and liberty and can be restricted only under a law made in the public interest.
ii) Admittedly, the Manual has been prepared to carry out the aims and objects of the Passports Act so that is the governing law. The section 8 of the Passports Act talks only about cancellation, impounding and confiscation of passport. It does not say anything about blacklisting which is a category apart. The Passports Rules, 1974, are equally silent on the issue. Para 51 goes beyond the legislative policy of the Passports Act and is, therefore, ultra vires. The Exit Control Ordinance has its own sway and the parameters for placement of a person's name on ECL which are prescribed by Rule 2 of the Exit from Pakistan (Control) Rules, 2010. Para 51

being an administrative instructions is at a lower pedestal so it cannot change or add to that regime.

Conclusion: i) The right to travel can not be syncopated without a duly enacted law.
ii) Yes, Para 51 of the Passport and Visa Manual 2006 is ultra vires the Constitution.

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44. **Lahore High Court**
Muhammad Azeem v. The State etc.
Crl. Misc. No. 54789/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC8820.pdf

Facts: Through this application the petitioner seeks pre-arrest bail for offences under section 337-F(i), 337-F(iii), 34 PPC.

Issues: i) In which situations animals can become relevant in crimes?
ii) Whether the Petitioner's dog bit the complainant by accident and petitioner could at the most be accused of negligence in handling the animal which attracts section 289 PPC?

Analysis: i) Animals can become relevant in crimes in a number of situations. Firstly, when they are "partners" with the humans and are used for the commission of offence. For example, where a human drives, rides, leads or otherwise controls an animal to execute his plot or employs it in crimes like witchcraft. Secondly, where the animals are themselves the subject of crime like dogfighting or other forms of abuse. Thirdly, where they are human property and are stolen, poached, damaged, rustled or otherwise misappropriated, and fourthly, when they are used as weapons − as an instrument of physical or psychological terror by one human against another.
ii) The Penal Codes in most jurisdictions do not contain specific provisions to cater for the situations in which a canine is used to attack or threaten a human or to commit a crime (robbery, for instance) but the courts do recognize it as a weapon of offence. A bare reading of section 289 PPC shows that it sanctions negligent conduct. In the instant case, there is a specific allegation against the Petitioner that he sicced his dog on the Complainant which nipped his right leg near the ankle. PWs Muhammad Yousaf and Babar Bashir have got their statements recorded under section 161 Cr.P.C. in support of the prosecution case and, according to them, the incident was not an accident. Medical evidence corroborates the ocular account and the doctor has declared the injuries sustained by the Petitioner as Ghyr Jaifah Damiyhah and Ghyr Jaifah Mutalahimah which attract section 337-F(i) and 337-F(iii) PPC respectively. On a tentative assessment of the available evidence and considering the fact that there is also previous rivalry between the accused and the Complainant, section 289 PPC does not apply. 'Negligence' which is the foundational element for this provision is

missing.

Conclusion: i) Animals become relevant in crime when they are "partners" with human or when they are themselves subject of crime.
ii) On a tentative assessment of the available evidence and considering the fact, section 289 PPC does not apply. 'Negligence' which is the foundational element for this provision is missing.

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45. **Lahore High Court**
Lt. Gen. (Retd.) Mahmud Ahmad Akhtar and another v. M/s Allied Developers (Private) Limited and others
Civil Original No.14 of 2009
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC659.pdf

Facts: Petitioners seek the original jurisdiction of High Court being a Company Judge under Section 152 of the Companies Ordinance, 1984 for the rectification of register of shareholders of the Respondent Company in connection thereto transfer of shares in their names.

Issues: Whether the High Court has the jurisdiction under Section 152 of the Ordinance for rectification of register of a Company?

Analysis: Section 152 of the Ordinance provides a special remedy to approach High Court being the court of "original jurisdiction" to resolve disputes summarily erupting between the Company and the members of the company. Literal study of Section 152 read with Section 7 of the Ordinance provides a right to an aggrieved person or any member of the Company to make an application before the High Court for the purposes of rectification of register of members or register of debenture holders of a company in a case where name of a person is fraudulently or without sufficient cause entered in or omitted from said registers. On such application, the High Court is also empowered to decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the registers and generally may decide any question which is necessary or expedient to decide for rectification of the registers.

Conclusion: The High Court has the jurisdiction for rectification of register of a Company as provided in Section 152 of Ordinance 1984.

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46. **Lahore High Court**
Hafeez-ur-Rehman Choudhary v. Federation of Pakistan etc.
W. P. No. 321/2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC672.pdf

Facts: Petitioner made various requests/applications to the Cabinet Division which were neither considered nor decided, hence petitioner has sought direction to

respondents to do, what is required by law to do, specifically under the Federal Rules of Business, 1973.

Issues: Whether writ is maintainable when plea is sought against the basic structure of the Constitution?

Analysis: The Full Bench of the Supreme Court of India in the famous case reported as Kesavananda versus State of Kerala (AIR 1973 Supreme Court 1461) has held that the basic structure and frame work of the Constitution cannot be altered as it was made by the chosen representatives of the country. The leading Jurist of India namely Nani Ardeshir Palkhivala in Kesavananda's Case (supra) convinced the Supreme Court of India by stating that creature of the Constitution, cannot become its master.

Conclusion: Writ is not maintainable when plea is sought against the basic structure of the Constitution.

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47. **Lahore High Court**
Mst. Saima Ashiq v. Election Commission of Pakistan and others
W. P. No.3315 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC611.pdf

Facts: Through this petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner seeks to set aside order passed by the Election Commission of Pakistan whereby she being a returned candidate has been declared as disqualified from the seat of Member Cantonment Board.

Issues: i) Whether the ECP is competent to de-notify a Returned candidate on the basis of a pre-election disqualification under Section 9 of the Election Act, 2017?
ii) Whether the jurisdiction of High Court is barred in lieu of Section 9(5) of the Election Act, 2017?

Analysis: i) The Commission might exercise power to declare a poll void before the expiration of sixty days after publication of the name of returned candidate in the official gazette; and, where the Commission did not finally dispose of a case within the said period, the election of the returned candidate would be deemed to have become final, subject to a decision of a Tribunal. It is unequivocal that the ECP is not competent to de-notify a returned candidate on the basis of pre-election disqualifications under Section 9 of the Act and this section relates to the illegalities/violation as to the process of poll only.
ii) From bare reading of the section 9 (5) of Act it is very much clear that remedy of appeal is available before the Hon'ble Supreme Court of Pakistan. In the wake of availability of an alternate efficacious remedy, jurisdiction of this Court under Article 199 of the Constitution cannot be invoked because the said Article opens with the words to the effect that High Court may exercise its powers under said

Article only if it is satisfied that no other adequate remedy is provided by law.

Conclusion: i) It is unequivocal that the ECP is not competent to de-notify a returned candidate on the basis of pre-election disqualifications under Section 9 of the Election Act, 2017.

ii) In the wake of availability of an alternate efficacious remedy under Section 9(5) of the Election Act, 2017 jurisdiction of High Court under Article 199 of the Constitution cannot be invoked.

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48. **Lahore High Court**
Ume Jameela v. Province of Punjab and others
W. P. No.2538 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC626.pdf

Facts: The petitioner was appointed on contract basis for five years and said period was further extended for one year. The services of persons appointed with the petitioner were regularized but petitioner was denied, hence, this petition.

Issues: Whether Courts can interfere into policy matters?

Analysis: It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and acceptable or whether better policy could be drafted. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution. It is for the Department to decide how and in what manner the reservations should be made and such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness.

Conclusion: A policy decision normally would not be open to challenge subject to its passing the test of reasonableness.

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49. **Lahore High Court**
Sahibzada Haroon Ali Syed v. Additional District Judge and others.
W.P. No.3405 of 2019.
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2022LHC634.pdf

Facts: The suit for recovery of maintenance allowance etc was ex-parte decreed. During execution proceedings, the petitioner appeared and filed application for setting aside ex-parte decree which was allowed and suit was restored. Thereafter the petitioner again failed to appear and the suit was ex-parte decreed. The petitioner again filed an application for setting aside ex-parte decree which was dismissed by the learned trial as well as appellate court. Hence this petition.

Issues: i) Whether an indolent may seek remedy beyond lawful justification in extra ordinary circumstances?

ii) Whether current family laws provide protection to women litigants from agony of trial?

Analysis: i) It is well settled principle that law helps the vigilant and not the indolent. When a person deliberately disappeared from scene despite having knowledge of the proceedings of suit and no valid justification is set out by him regarding his said default then he cannot be granted any relief by the court.
ii) Before the promulgation of the Family Courts Act, 1964, female litigants had to wait for years to meet with final reliefs i.e. recovery of dower, maintenance, other ancillary matters and particularly, in cases of dissolution of marriage. To curb and suppress the mischief of delaying tactics on the part of unscrupulous husbands, several amendments were introduced to the Family Court Act, 1964, the aim and object of which was to address and minimize miseries & plight of the wives seeking relief through the obsolete law then in vogue.

Conclusion: i) An indolent cannot seek remedy beyond lawful justification in extra ordinary circumstances.
ii) Current family laws provide protection to women litigants from agony of lengthy trail.

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50. **Lahore High Court**
Government of Pakistan through Secretary Ministry of Defence, etc. v. District Bar Association, Rahim Yar Khan, etc.
ICA No.23 of 2018
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC719.pdf

Facts: The appellants have challenged through this ICA an order wherein the learned Single Judge in Chambers while relying only on a small portion of the comments filed by the Deputy Commissioner concerned without reference to context has disposed of the writ petition by observing, "this petition bears fruit, disposed of accordingly."

Issues: i) How the court as well as the public functionaries ought to pass orders to redress grievances of citizens?
ii) What are the basic ingredients of a valid order?

Analysis: i) The court as well as the public functionaries are required to pass clear and speaking orders to redress grievances of citizens, with reasons manifesting by itself that the court applied its mind to issues involved in the case and litigant should not be pushed to realm of guesswork, where in an uncertain situation, he was unable to proceed and did not know in what manner he had to comply with orders of the court or what had been decided in his favor.
ii) A valid order should be a speaking order disclosing what has been decided and passed after providing opportunity of hearing to necessary parties to advance their respective stance while observing principles of natural justice and also based on proper appreciation of facts of the case and law on the subject.

Conclusion: i) The court as well as the public functionaries ought to pass speaking orders with reasons to redress grievances of citizens.
ii) A valid order should be speaking order on facts and law and with reasons passed after observance of principles of natural justice.

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51. **Lahore High Court**
Amir Sohail v. Judge Family Court etc.
ICA. No. 439/2021 in W. P. No. 19490 of 2021
Mr. Justice Muzamil Akhtar Shabir and Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2021LHC8719.pdf

Facts: Upon request of counsel of appellant, his constitutional petition was disposed off with the direction to the learned Guardian Judge to decide the pending matter of custody of appellant's minor son on priority basis preferably within three months. Appellant in intra court appeal is of contention that his other prayer regarding maintenance allowance of his minor son was not addressed in impugned order.

Issue: i) Whether impugned order was passed regarding entire disputed matter with consent of appellant and intra court appeal is not maintainable against said order?
ii) Whether Family court could have decreed past maintenance allowance of appellant's minor son for time period exceeding three years?
iii) Whether interim maintenance allowance paid during the pendency of relevant suit was deductable from decretal amount?

Analysis: i) Impugned order does not mention that it was confined to the extent of relief for custody of minor only and not to the extent of the challenge to the decree of maintenance allowance ... Presumption of regularity is attached to all judicial and official acts including orders of courts … Appellant never objected when the impugned order had been dictated nor he raised any objection through any review application asserting that consent had not been given for passing the said order.
ii) Law of limitation in Article 120 provides six years period limitation for filing suit for past maintenance allowance.
iii) It is settled position of law that the interim maintenance allowance paid during the pendency of the suit in compliance of orders passed by the court is to be adjusted from the amount determined in the final decree.

Conclusion: i) Impugned order for all intents and purposes is a consent order for the entire matter, which cannot be called in question through intra court Appeal.
ii) Trial court rightly allowed maintenance allowance from the date falling within the period of six years prior to filing of the suit.
iii) Interim maintenance allowance paid by the Appellant to the minor during the pendency of the relevant suit shall be taken into consideration by the learned Executing Court while adjusting & seeking recovery of decreed amount of maintenance allowance.

52. **Lahore High Court**
Mst. Kundan Mai. v. Judge Family Court, Multan, etc.
W.P.No.20358 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC8729.pdf

Facts: The petitioner through instant constitutional petition has challenged the order of learned family court through which application filed by petitioner under section 21-A of Family Court Act, 1964 for protection of property was dismissed.

Issues: Whether an order passed under Section 21-A of the Family Courts Act, 1964 is amenable to the jurisdiction of appellate court by way of filing an appeal?

Analysis: Where an express provision of law provides a right or remedy to enforce said right and the court passes an order relating to the same, which order even if an interlocutory order and has finality attached to it for a particular purpose provided by the said provision of law, the same becomes a challengeable decision under Section 14 of the Family Courts Act, 1964. The dismissal of the application under Section 21-A, through which interim relief of protection of property during the pendency of pending Family suit has been refused is 'a decision given', which is appealable in terms of Section 14 of the Act, hence, without availing the said remedy, direct constitutional petition is not ordinarily maintainable due to availability of alternate remedy.

Conclusion: Yes, an order passed under Section 21-A of the Family Courts Act, 1964 is amenable to the jurisdiction of appellate court by way of filing an appeal.

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53. **Lahore High Court**
Shazia Parveen v. ADJ etc.
W.P No. 213 of 2017
Mr. Justice Muzamil Akhtar Shabi
https://sys.lhc.gov.pk/appjudgments/2018LHC3979.pdf

Facts: The Petitioner has assailed the judgment passed by Judge Family Court, Rahim Yar Khan whereby the said court dismissed the suit of the petitioner for recovery/possession of House in lieu of dower agreed to be paid by respondent No.3 in terms of Column No.16 of the Nikahnama.

Issues: Whether an admission of the person during evidence can be considered in piecemeal by a court while deciding a matter?

Analysis: It appears that the admission of the petitioner has been considered in piecemeal before using the same for decision of the matter. It is settled by now that the admission is to be accepted or rejected as a whole.

Conclusion: An admission of the person during evidence cannot be considered in piecemeal by a court while deciding a matter.

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54. **Lahore High Court**
Abdul Jabbar v. Mohammad Shafique, etc.
C.R. No.792-2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC3977.pdf

Facts: The petitioner/plaintiff through this civil revision has challenged the order passed by learned Addl. District Judge wherein his application for comparison of thumb impressions and signatures was dismissed in a suit for recovery.

Issues: Whether refusal of application for comparison of thumb impressions and signatures at the stage of rebuttal evidence of plaintiff can be challenged in civil revision?

Analysis: The order for allowing or declining such comparison at the stage of rebuttal evidence, when such request had not been made at the time of leading examination of witnesses was discretionary with the court and such exercise of jurisdiction by declining such prayer does not fall within the ambit of jurisdictional defect against which Civil Revision may be exercised at this stage unless some illegality, violation of any law or procedural defect going to the root of the matter is pointed out which has not been done or established on the record and challenge to the said order at this stage would be premature. The said order could, however, may be challenged as an additional ground while challenging the final order/judgment/decree passed by the court.

Conclusion: Assailing in civil revision, an order refusing the prayer for comparison of thumb impressions and signatures made through application at the stage of rebuttal evidence of plaintiff, would be premature. However, said order could be challenged as an additional ground while challenging the final judgment.

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55. **Lahore High Court**
Jam Meeran v. ADJ etc
W.P No. 9021 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC3975.pdf

Facts: The petitioner challenged the orders passed by executing court and the appellate court vide which both courts refused the prayer of petitioner in execution proceedings regarding permission to give some other property as dower instead of the property decreed and directed him to pay price of the property decreed in alternate.

Issues: Whether the executing court or the appellate court has power to give some other property as dower instead of the property for which decree was passed or direct to

pay price of the decreed property in the alternate?

Analysis: Substituting the property would amount to amending the decree by an executing court, which is not permissible in law. As the executing court cannot go beyond the decree, therefore, this Court while hearing constitutional petition against an order passed in execution petition can also not vary the terms of the decree, which can only be done by consent of the parties which has not been given by the respondents. Where the property decreed as dower was not available for transfer, the court was justified to fix its value of price to be paid in the alternate for the satisfaction of decree.

Conclusion: The executing court or the appellate court has no power to give some other property as dower instead of the property for which decree was passed and in case of non-availability of property decreed, the court may fix its value/price to be paid in the alternate for the satisfaction of decree.

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56. **Lahore High Court**
Muhammad Amjad Amin Lodhi v. Addl. District Judge, Bahawalpur, etc.
W.P.No.7235 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC8754.pdf

Facts: Petitioner called in question the judgment and decree of the learned appellate court, whereby the appeal was dismissed on the same day when order of transfer of said appeal to another court was made by the learned District Judge on administrative grounds.

Issues: What would be the fate of proceedings conducted on the same day when transfer order was made?

Analysis: Section 24 of CPC and the principles laid down in the judgments of apex courts makes it clear that as the District Court/District Judge without notice could pass a transfer order for transfer of suit, appeal or other proceedings (i.e. appeal in this case) from one court subordinate to it to another, and the transferee Court thereafter was to proceed with the matter, therefore as a necessary corollary the court that was proceeding with the matter prior to transfer order would no longer hold authority to proceed with the matter or decide the same and the said transfer order/order of withdrawal of case would tantamount to stay/injunctive order passed against the Transferor Court immediately restraining it to further proceed with the matter, the moment the said order is passed even though no prior notice was issued and said order was not communicated within time.

Conclusion: Proceedings conducted on the same day when transfer order was made are declared as corum non judice and without jurisdiction due to withdrawal of suit from the said court with immediate effect.

57. **Lahore High Court**
Riaz Hussain v. Judge Anti Terrorism Court & 6 others
W.P. No.19063 of 2021
Ghulam Abbas v. Judge Anti Terrorism Court & 6 others
W. P. No.19064 of 2021
Mr. Justice Sohail Nasir, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC507.pdf

Facts: Petitioners have challenged the orders on the basis of which, while proceedings against under Section 514 Cr.P.C., their immoveable properties were attached and directed to be sold.

Issues: i) What is the first step which can be taken against the surety?
ii) What is the purpose of show cause notice to the surety?
iii) What is the pre-requisite of issuing warrant of attachment?
iv) What kind of property of a surety can be ordered to be attached and sold?

Analysis: i) The proceedings against the surety start only when there is forfeiture of bond and not otherwise.
ii) An opportunity must be granted to the surety to submit his reply because there can be various bona fide reasons but if the surety fails to offer any sufficient cause, the court has to pass the order for imposition of penalty.
iii) Before issuance of warrant of attachment, a chance must be given to the surety, if he desires to pay the penalty by providing him some reasonable time. Even the surety can be permitted to deposit the penalty in installments, to be determined by the court keeping in view his financial condition.
iv) Sub-section (2) of Section 514 Cr.P.C speaks loud and clear that only 'Moveable Property' can be attached and directed to be sold. The provisions of Section 514 Cr.P.C has clearly imposed a restriction on the court to attach 'Immovable Property' while proceeding against surety.

Conclusion: i) The First step to be taken against the surety is forfeiture of bond.
ii) The purpose of show cause notice to the surety is to provide an opportunity to him to submit his reply because there can be various bona fide reasons.
iii) Pre-requisite of issuing warrant of attachment is to provide reasonable time to surety to pay the penalty.
iv) Only movable property of a surety can be ordered to be attached and sold.

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58. **Lahore High Court**
Muhammad Munir Akhtar v. Government of Punjab & 5 Others
W. P. No. 19236 Of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2022LHC596.pdf

Facts: An advertisement was published in newspapers on behalf of Executive Engineer Public Health & Engineering Department Division Multan (respondent No.3)

inviting the bids for 'Civil Work' with one of the conditions notified as that; "The bid security at rate of 5% of estimated cost, in the shape of deposit at call from the schedule Bank in the name of Executive Engineer, PHE Division Multan will be accompanied with the bid and the CDR Number, Date, Amount & Bank Name also mentioned on bid, failing which the bid documents shall not be entertained". The Petitioner deposited CDR with his bidding document whereas, respondent No.6 attached CDR of lesser amount and submitted 'Bank Guarantee' for the rest amount. The Tender Opening Committee rejected the bid of respondent No.6 for non-compliance of the condition about CDR. The Grievance Redressal Committee **(GRC)** accepted the application and respondent No. 6 was permitted to deposit the 'Bank Guarantee' and 'CDR'. Resultantly, the bid of respondent No. 6 was accepted by the Chief Engineer South (respondent No.2). Petitioner being aggrieved from the decision of **GRC** has filed the instant writ petition.

Issues: i) What is "bid security?
ii) Whether any alteration or modification made in the form of the "Bid Security" can be allowed after the closing time for the submission of the Bid?
iii) How change can be made in procurement process?

Analysis: i) The *'Bid Security'* has been defined under Rule 2(h) of the Punjab Procurement Rules, 2014 (PEPRA Rules) which makes it clear that the bid security can be the 'Bank Guarantee' or 'other form of security' submitted by a bidder together with a bid, therefore only 'Bank Guarantee' is not a bid security. The word used '***or***' before the words '***other form of security***' means that it is within the domain of competent Authority either to ask a 'Bank Guarantee' or 'other form of security' which certainly includes CDR.
ii) Under Rule 33(1) no bidder shall be allowed to alter or modify his bid after the closing time for the submission of the bids. However under Rule 33(2) there is a limited authority available to the Procuring Agency that it may, if necessary after the opening of the bids, seek and accept such clarifications of the bid as do not change the substance of the bid. The words used *'do not change the substance of the bid'* have made it clear that the conditions so specified, non-compliance thereof, cannot be compromised.
iii) Rule 25(4) of the 'PEPRA Rules' says that:-"Where any change becomes essential in the procurement process, such change shall be made in a manner similar to that of the original advertisement". ..Otherwise only that bid shall be accepted that is in accordance with the conditions notified in the advertisements as under Rule 55 of the 'PEPRA Rules'.

Conclusion: i) The bid security can be the 'Bank Guarantee' or 'other form of security'.
ii) Any alteration or modification in the form of the "Bid Security" cannot be allowed after the closing time for the submission of the Bid.
iii) With regard to change in conditions, the powers can be invoked under Rule 25(4) of the 'PEPRA Rules'

59. **Lahore High Court**
Tanveer Abbas v. The State & another
Criminal Appeal No. 620 of 2016
Mr. Justice Sohail Nasir.
https://sys.lhc.gov.pk/appjudgments/2022LHC798.pdf

Facts: Appellant has assailed his order of conviction in murder case.

Issues: i) Whether conviction can be granted on sole basis of circumstantial evidence?
ii) Whether extra-judicial confession has value in the eye of law?
iii) Whether delay in recording statement under Section 161 Cr.P.C. is reliable?

Analysis: i) Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined. Mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, can create a specious appearance, leading to fallacious inferences. Circumstantial evidence, in a murder case, should be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused. Chain of such facts and circumstances has to be completed to establish guilt of the accused beyond reasonable doubt. Any link missing from the chain breaks the whole chain and renders the same unreliable and in that event, conviction cannot be safely recorded, especially on a capital charge.
ii) Extrajudicial confession also under the recognized principles is the weakest type of evidence and no conviction can be recorded on the basis thereof.
iii) The witness who got the important information about the occurrence he must appear before the police on the same day for recording his statement under Section 161 Cr.P.C. The principles cannot be ignored that delayed statement of an important witness without offering any explanation is not reliable.

Conclusion: i) Conviction cannot be granted on sole basis of circumstantial evidence.
ii) Extra-judicial confession has no value in the eye of law.
iii) Delayed statement of an important witness without offering any explanation is not reliable.

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60. **Lahore High Court**
Muhammad Hussain v. Rana Sohail Anjum etc.
Civil Revision No. 2020 of 2014
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC775.pdf

Facts: Through the civil revision, the petitioner challenged the validity and legality of judgments/orders passed by the Courts below whereby, the application filed by petitioner for setting aside ex-parte proceedings as well as ex-parte judgment/decree was dismissed concurrently.

Issues: i) What are the conditions of setting aside ex parte decree?
ii) What is the due service of summons on a party?

iii) When court has to order the service of summons through substituted service as provided under Order V Rule 20 CPC?

iv) What are the requirements of substituted service as provided under Order V rule 20 CPC?

v) What is the period of limitation for filing of an application for setting aside of ex parte decree?

vi) How is the rule of 'audi alteram partem', interpreted by the superior judiciary of the Sub-Continent?

Analysis: i) Order IX Rule 13 of C.P.C, provides the requisites of setting aside ex parte decree. A defendant seeking setting aside of ex parte decree has to satisfy the Court that:- (i) summons was not duly served on him; or (ii) that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. It is not essential that both the conditions should be satisfied simultaneously as the satisfaction of either of the conditions was sufficient in the eye of law, to recall the ex parte decree.

ii) Provisions of Order V, C.P.C provides mode of effecting service of summons that a summon is ordinarily to be served on the defendant personally or through an agent or through a male member of the family. It is established as per rules of the said Order that in a case where the serving officer delivers or tenders a copy of the summons process server is bound to write down acknowledgment of personal service or refusal in writing on the original summons or he has to affix a copy of the summons on the conspicuous part of the house where the defendant resides etc. The process server has to write down the name and the address of the persons who identified the house in whose presence the copy was so affixed along with time.

iii) While proceeding under Rule 20 before passing of an order of substituted service, the Court is bound to record his satisfaction to the effect that there is reason to believe that the defendant is keeping out of the way to avoid service and thereafter the court is to order the service of summons through substituted modes in terms of rule 20 of Order V.

iv) Order V Rule 20 provides that after the court satisfied itself that it is a case for substituted service; it shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house. It is further required that a copy was also to be affixed upon some conspicuous part of the house in which the defendant is known to have resided or carried on business, or in such other manner as the Court thinks fit. Substituted service has the same effect as personal service.

v) As per Article 164 of the Limitation Act, the period of limitation for filing of an application for setting aside of ex parte decree is thirty days in cases where the summons is duly served with effect from the date of decree and in cases where the summons is not duly served with effect from the date from the acquisition of the knowledge of the decree.

vi) The rule of 'audi alteram partem', as a salutary rule, has gained much

importance in civilized States of the world. It is equally a weighty rule in the administration of justice contemplated by injunctions of Islam. In presence of consensus of the superior judiciary of the Sub-Continent, it is invariably deemed expedient not to punish a party on account of its minor negligence in defending an action in the court of law unless such negligence was found accompanied by a willful and deliberate act.

Conclusion: i) To recall the setting aside of ex parte decree the defendant has to satisfy that either summons was not duly served or he was prevented by any sufficient cause from appearing.
ii) Provisions of Order V, C.P.C provides mode of effecting service of summons.
iii) When court satisfied itself that there is reason to believe that the defendant is avoiding service the court has to order the service of summons through substituted service as provided under Rule 20 Order V CPC.
iv) Through substituted service, the summons is served by affixing a copy thereof in some conspicuous place in the court-house or where the defendant resides etc.
v) The period of limitation for filing of an application for setting aside of ex parte decree is thirty days but when summons were not duly served, the period of limitation, start from the date of acquisition of the knowledge by the petitioner.
vi) The consensus of the superior judiciary of the Sub-Continent on the rule of 'audi alteram partem' is invariably deemed not to punish a party on account of its minor negligence unless such negligence was found accompanied by a willful and deliberate act.

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61. **Lahore High Court**
Basharat Ali v. Subedar Khan etc.
Civil Revision No. 193043 of 2018
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC791.pdf

Facts: The petitioner through this civil revision challenged the judgments & decrees of learned courts below whereby his suit for possession through pre-emption was rejected under order VII rule 11 C.P.C.

Issues: i) Whether the court is bound to require the pre-emptor to deposit 1/3rd of the sale price (Zar-e-Soim)?
ii) What is the impact of the non-deposit of Zar-e-Soim, if the court fails to direct the same?
iii) Whether the suit is to be dismissed if the deposited amount is lesser than Zar-e-Soim?

Analysis: i) The Court is bound to require the pre-emptor to deposit 1/3rd of the sale price (Zar-e-Soim) of the property sought to be pre-empted within a maximum period of 30 days from the filing of the suit.
ii) The required deposit is subject to the order of the Court, therefore, if the Court

failed to pass an order to deposit Zar-e-Soim then the pre-emptor cannot be penalized for such non-deposit as it is a settled principle of law that no one shall be prejudice by an act of the court.

iii) If the petitioner/plaintiff deposited deficient amount due to direction of court to deposit an amount with wrong calculation such a bona-fide mistake or lapse in good faith on the part of petitioner deserves serious, earnest and compensate consideration as the Courts are under obligation to decide the lis on merit rather as per technicalities.

Conclusion: i) The court is bound to require the pre-emptor to deposit 1/3rd of the sale price (Zar-e-Soim).

ii) The pre-emptor cannot be penalized for such non-deposit if the court fails to direct the same.

iii) The suit cannot be dismissed if the deposited amount is lesser than Zar-e-Soim due to wrong calculation of court.

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62. **Lahore High Court**
Mst. Hira Bibi v. The State etc.
W.P. No. 1556 / 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC436.pdf

Facts: The petitioner through this writ petition has challenged the order of learned Judicial Magistrate Section-30 whereby he refused to record her statement under section 164 Cr.P.C on the ground of having no territorial jurisdiction as per section 12(2) Cr.P.C as FIR was registered in another district.

Issue: i) What does the word "any Magistrate" means as used in the section 164 Cr.P.C?

ii) Whether any Magistrate in exercise of his ordinary powers is competent to record the statement or confession under section 164 Cr.P.C irrespective of his territorial jurisdiction?

Analysis: i) The word "any Magistrate" means as explained in section which includes Judicial Magistrate and Special Judicial Magistrate as per definition of "Magistrate" given in section 4(ma) of Cr.P.C, even if they have no jurisdiction in the case. Some of the offences have a recurring effect which starts in one district but ensued in another; in such eventuality if a witness is found out of district or an accused is arrested as such and police, in order to secure the evidence cannot take risk of their transportation before the concerned district, can produce them before the nearest Magistrate, so that evidence may be recorded at every early possibility, that is the reason section 164 Cr.P.C. contains word "any Magistrate", even if he has no jurisdiction at all.

ii) Ordinary Powers of Magistrate as enumerated in Third Schedule of Cr.P.C. include power to record statement and confession under Section 164 Cr.P.C.

which fact is listed at Serial No. '7a' of said schedule under Ordinary Powers of a Magistrate of the First Class. So, it is clear that Magistrate appointed in a district is whenever approached for the purpose of recording statement of a witness he cannot refuse recording thereof on the ground that case is one which has not been registered in his local district. Section 12(2) of Cr.P.C means that a Magistrate working in a district can act as a trial court and exercise ordinary powers as Magistrate within the precincts of that district only. A Magistrate appointed in a District 'A' and he while posted as such cannot be called to District 'B' for exercising his ordinary powers as Magistrate but if somebody approaches him from any other district and solicits to exercise his ordinary powers like recording of statement or confession, he cannot refuse to honour such request when section 164 Cr. P.C authorizes him to forward such statements or confessions to the Magistrate by whom the case is to be inquired into or tried. It is also in consonance with the explanation attached to section 164 Cr.P.C. which says that it is not necessary that Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Conclusion: i) The word "any Magistrate" includes Judicial Magistrate and Special Judicial Magistrate even if they have no jurisdiction in the case.
ii) Any Magistrate in exercise of his ordinary powers is fully competent to record the statement or confession under section 164 Cr.P.C irrespective of his territorial jurisdiction.

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63. **Lahore High Court**
Zeeshan Anjum v. The State, etc.
Crl. Misc. No.1006-B/2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC549.pdf

Facts: The petitioner through instant criminal petition seeks pre-arrest bail in case registered under Section 462-I PPC.

Issues: i) Whether registration of F.I.R. for offences under Chapter XVII-B, PPC is permissible as all the offences have been shown cognizable in Schedule II of Cr.P.C?
ii) Whether the complaint with reasons to be recorded in writing by duly authorized officer (not below grade 17) of the Government or the distribution company is required to be filed with report under section 173 Cr.P.C.

Analysis: i) A new Chapter XVII-B was inserted in Pakistan Penal Code, 1860 through "The Criminal Law (Amendment) Act, 2016" to deal with such offences and Schedule II of Code of Criminal Procedure, 1898 was also amended so as to make offences mentioned in the above Chapter as cognizable and non-bailable, which means that for cognizable offence, registration of FIR is permissible.

ii) In ordinary offences, court u/s 190 Cr.P.C. is authorized to take cognizance plainly on a police report or on a private complainant within the contours of such section without attending any peculiar condition; but in certain situations, cognizance is restricted based on public policy in order to govern the cases with controlled prosecution. Section 195 to 199 of Cr.P.C. is the response of what has been stated above. Similarly, present Chapter XVII-B also gives a tinge of controlled prosecution so as to eliminate the interference by general public in initiation process. The words "reasons to be recorded" are very valuable and meaningful because electricity theft is gauged through technical report which requires an expert opinion so as to facilitate the court to reach out direct to the essence of the offence and may not remain entangled about an exercise of applicability of offences for proper charging. Then requisite complaint is required to be filed with report under section 173 Cr.P.C. before the learned trial court. Prosecutors are expected to scrutinize such complaint and report under section 173 Cr.PC before forwarding it to the court concerned so as to make it conformable with the requirement of section 462-O PPC.

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Conclusion: i) Registration of F.I.R. for offences under Chapter XVII-B, PPC is not barred, because all the offences have been shown as cognizable in Schedule II of Cr.P.C.
ii) The complaint with reasons to be recorded in writing by duly authorized officer (not below grade 17) of the Government or the distribution company is required to be filed with report under section 173 Cr.P.C.

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64. **Lahore High Court**
Muhammad Ashraf v. Sh. Muhammad Akram, etc.
F.A.O. No.50 of 2013
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC8740.pdf

Facts: The appellant filed under Sections 25 and 28 of the Punjab Consumer Protection Act, 2005 with the averments that the appellant got booked his commodities through cargo service of the respondents but the same were lost on 20.01.2012. However his claim was dismissed being time barred.

Issues: i) What is time limit for issuance of written notice under section (1) of section 28 of Punjab Consumer Protection Act, 2005?
ii) Whether the consumer court can condone the delay in filing the claim?
iii) What is scope of provisos to sub-section 4 of section 28 Punjab Consumer Protection Act, 2005?

Analysis: i) The written notice is to be served immediately on the accrual of cause of action because the limitation period of thirty days to approach the Consumer Court includes the service of written notice, which is condition precedent to approach the Consumer Court in terms of sub-section (3) of Section 28 Punjab Consumer Protection Act, 2005.
ii) The legislature not only provided special limitation period for filing claim

under the Punjab Consumer Protection Act, 2005, but also vested jurisdiction in the Consumer Court to condone delay in filing the claim in cases where sufficient cause for such delay is established to the satisfaction of the Consumer Court as is evident from the first and second proviso to sub-section (4) of Section 28 of the Act.

iii) It is well settled law that proviso in a statute by no means could be construed in a manner so as to make the main section redundant. The provisos to sub-section (4) of Section 28 of the Act cannot be so interpreted as to make sub-section (4) itself redundant, which provides limitation period of thirty days as 'the specified period' for filing of the claim. Thus, the natural interpretation is that the first proviso modifies the scope and effect of sub-section (4) to the extent that the general period of limitation provided under sub-section (4) may be relaxed/extended/modified in cases where the Consumer Court is satisfied that there was sufficient cause for not filing the complaint within the specified time and the second proviso to subsection (4) of Section 28 of the Act is a qualifying provision, which limits the discretion vested in the Consumer Court through first proviso qua 'the specified period' and gains traction from the use of words "such extension" in the second proviso. It is also settled law that a proviso is applicable only to such provision which precedes it. Thus, it is sub-section (4) which precedes the provisos and therefore, both the provisos have to be read in conjunction with the main provision i.e., sub-section (4) of Section 28.

Conclusion: i) The written notice is to be served immediately on the accrual of cause of action.
ii) Consumer court can condone the delay in filing the claim in the light of the first and second proviso to sub-section (4) of Section 28 of the Act.
iii) Both provisos to sub-section (4) of Section 28 of the Act have to be read in conjunction with the main provision i.e., sub-section (4) of Section 28.

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65. **Lahore High Court**
Farooq Arshad etc v. Mst. Shazia Waseem etc.
Civil Revision No. 557-D/2021 converted into Writ Petition No. 2048 of 2022.
Mr. Justice Muhammad Shan Gul.
https://sys.lhc.gov.pk/appjudgments/2022LHC725.pdf

Facts: Through this revision petition since converted into writ petition the petitioners have assailed judgment passed by the Additional District Judge where by appeal filed against order of trial Court was interfered and restraining orders were passed against them.

Issues: i) Whether a civil revision can be ordered to be converted into a constitutional petition?
ii) Whether trial court should decide the application for interim relief by means of a one-liner observation?

Analysis: i) Court has the jurisdiction to convert one type of proceedings into another. No fetters or bar could be placed on the High Court to convert and treat one type of proceeding into another type and proceed to decide the matter either itself provided it has jurisdiction over the lis before it in exercise of another jurisdiction vested in the very court or may remit the lis to the competent authority/forum or court for decision on merits.
ii) The trial court must not adjudicate the application for interim relief in a lackadaisical and perfunctory manner. While taking into account the averments raised by the plaintiff and alluding to the documents presented by them order passed by trial court must qualify as a proper judicial order containing adequate reasons for refusing or granting the interim relief in question.

Conclusion: i) Civil revision can be ordered to be converted into a constitutional petition.
ii) Trial court should not decide the application for interim relief by means of a one-liner observation.

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66. **Lahore High Court**
Riasat Ali etc. v. Yaseen etc.
Civil Revision No. 414-D of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC516.pdf

Facts: Through this Civil Revision; petitioner challenged the judgment and decree of learned appellate and trial court wherein his suit for possession along with permanent injunction was dismissed on the ground that they failed to prove illegal occupation.

Issues: i) If the controversy cannot be resolved on the basis of evidence available on record then how such controversy can be resolved?
ii) What is the scope of revisional jurisdiction of the High Court?

Analysis: i) When controversy cannot be resolved on the basis of oral as well as documentary evidence available on record. It was required by the learned Courts below to have appointed a local commission to conduct investigation and demarcation at the spot to ascertain the existing construction and its location. The specific procedure laid down in the High Court Rules and Orders (Volume 1) is to be followed in such-like cases.
ii) Revisional jurisdiction of the High Court is always discretionary and equitable in nature and no party is entitled to it as of right and while no hard and fast rule can be laid down to tie down the hands of a Superior Court, Superior judiciary always acts in aid of justice subject to the law and the Constitution. The aim of revisional jurisdiction is to see whether the subordinate court has acted with material irregularity resulting into a miscarriage of justice.

Conclusion: i) When controversy cannot be resolved on the basis of available evidence then such controversy can be resolved by appointment of a local commission to

conduct investigation and demarcation at the spot to ascertain the existing situation.

ii) Revisional jurisdiction of the High Court is always discretionary in nature and the aim of revisional jurisdiction is to see whether the subordinate court has acted with material irregularity.

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67. **Lahore High Court**
Jamshaid Akhtar v. Abdul Hamid Khan
Civil Revision No. 796 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC455.pdf

Facts: The petitioner filed suit for declaration that he never sold his property and sale deed in favour of respondent is result of fraud. His suit was decreed on the ground that respondent being beneficiary failed to produce original sale deed. The respondent filed appeal against order of trial court and also filed an application for permission to produce additional evidence. The learned appellate court remanded the matter for decision afresh.

Issue: i) Whether an order remanding a matter can only be interfered with?
ii) Whether an order of remand is justified where major issues have been left unattended?
iii) Whether an application for additional evidence can be allowed at a belated stage?

Analysis: i) An order remanding a matter can only be interfered with if the same is perfunctory, perverse, without jurisdiction or extremely arbitrary.. Against such an order the facility of a civil revision is only available when the order directing remand is manifestly perverse or evidently illegal.
ii) An order of remand, as a general rule would not be objectionable if an important and vital point in the controversy has been left unattended by the trial court.
iii) Delay per se is no ground to disallow the parties to lead additional evidence.

Conclusion: i) An order remanding a matter can only be interfered with if the same is perfunctory, perverse, without jurisdiction or extremely arbitrary.
ii) An order of remand is justified where major issues have been left unattended.
iii) An application for additional evidence can be allowed at a belated stage.

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68. **Lahore High Court**
Muhammad Adeel v. Deputy Commissioner.
W.P. No.1800 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC749.pdf

Facts: The petitioner claimed that his grandfather was employed with the Border

Military Police who died and after his death, father of petitioner filed application in terms of Rule 17-A of PCS(Appointment and conditions of service) Rules, 1974 but was not accommodated due to his age. After death of petitioner's father, the petitioner filed same application which is pending, and petitioner filed instant petition.

Issues: i) What is object of Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules 1974?
iii) How beneficial, remedial and delegated legislative instruments should be interpreted?

Analysis: i) Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules 1974 is a manifestation of the State's attempt at dispensing obligations imposed by Article 38 of the Constitution i.e ensuring that the family of a Civil Servant who has rendered service to the State is not left a financial destitute or a 'have-not'. The concession offered through Rule-17-A is not munificence offered to a Civil Servant or his family but is rather an acknowledgement by the State that it is bound to offer care to the family of a Civil Servant which suddenly stands deprived of its bread earner, by death or incapacitation.
iii) All beneficial and remedial legislative and delegated legislative instruments must be interpreted and applied in a way to stimulate and heighten the cause and purpose behind the enactment. All such instruments should be read in coordination with and be applied to further the mandate and command of the constitution. It is not the letter of such instrument but the purpose and motive behind the enactment of the same which should be kept in mind at the time of application.

Conclusion: i) Object of rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules 1974 is that the family of a Civil Servant who has rendered service to the State is not left a financial destitute or a 'have-not'.
ii) All beneficial and remedial legislative and delegated legislative instruments should be read in coordination with and be applied to further the mandate and command of the constitution.

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69. **Lahore High Court**
Bashir Ahmad v. Shahid Nadeem.
Civil Revision No.636 of 2021.
Mr. Justice Raheel Kamran.
https://sys.lhc.gov.pk/appjudgments/2022LHC744.pdf

Facts: Through this revision petition the petitioner has challenged the order passed by the learned Additional District Judge, whereby his application under Article 84 of Qanun-e-Shahdat Order, 1984 has been dismissed.

Issues: Whether in the presence of direct evidence there is need for expert opinion?

Analysis: It is a settled principle of law that report of a handwriting expert on its own cannot be made basis to discard the direct evidence and when direct evidence is available, there is no need for expert opinion. A defendant could discharge burden of proof placed upon him under Section 118 of the Act by producing reliable evidence showing that by relying upon facts and circumstances of the case and also by referring to flaws in the evidence of plaintiff.

Conclusion: When direct evidence is available, there is no need for expert opinion.

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70. **High Court of Justice in Northern Ireland**
John Joseph o'connor v. Greece
[2017] NIQB 77
Morgan LCJ, Gillen LJ and Burgess J
https://www.bailii.org/nie/cases/NIHC/QB/2017/77.html

Facts: On 11 December 2015, His Honour Judge Devlin made an order for the extradition of Mr O'Connor to Greece in accordance with a European Arrest Warrant. Pursuant to section 26(4) of the Extradition Act 2003, Mr O'Connor then had seven days in which to give notice of any application for leave to appeal against this order. Mr O'Connor's solicitor lodged this application on 16 December 2015 but failed to serve notice of the application on the Appellant until 4 January 2016 owing to an oversight.

Issue: When considering section 26(5) of the Extradition Act 2003, can a distinction properly be drawn between the actions of a person who has done everything reasonably possible to give notice of the appeal and the actions of that person's solicitor who has not?

Analysis: Section 26 of the 2003 Act provides for an appeal to the High Court where a judge orders a person's extradition. Order 61A(3) of the Rules of the Court of Judicature (Northern Ireland) 1980 provides that a copy of the application for leave to appeal is served on the proposed respondent within the 7 day period. The jurisdiction to entertain an application for leave to appeal outside the seven-day period in section 26(5) was introduced by the Antisocial Behaviour, Crime and Policing Act 2014. The issue between the parties in this case was the applicable law. There was no dispute about the fact that the appellant had instructed his solicitors to appeal, that they had indicated orally on the day of the judgement that he intended to pursue the appeal, that the solicitors indicated during the bail application on 18 December 2015 that they had lodged the application for leave to appeal and that the appellant himself would have had no reason to think that the application had not been pursued in accordance with the Rules. Accordingly the appellant did everything reasonably possible to ensure that the notice was given as soon as it could be given.

Conclusion: A distinction can properly be drawn between the actions of a person who has done everything reasonably possible to give notice of the appeal and the actions of that person's solicitor who has not.

LATEST LAGISLATION/AMENDMENTS:

1. Rule 2.2 of the Punjab Subsidiary Treasury Rules issued under the Treasury Rules (Punjab) is substituted.
2. Sub-rule 1 of Rule 9 of the Punjab Treasury Rules is amended.
3. Rule 12.17 of the Punjab Financial Rules Volume-I is amended.
4. Amendments in Schedule Clause (III & IV) are made in eligibility criteria for posts of Special Branch, Punjab, Lahore in Punjab Police, Special Branch (Technical Cadre) Service Rules 2016.

LIST OF ARTICLES

1. **HAVARD LAW REVIEW**
https://harvardlawreview.org/2022/02/enforcement-lawmaking-and-judicial-review/
Enforcement Lawmaking and Judicial Review by Z. Payvand Ahdout

It is — and has long been — well known that the Executive's power is expanding. To date, there are two dominant analyses of the judiciary's role in that expansion: the judiciary is intrinsically too weak to check the Executive or the judiciary has actively facilitated the Executive's unprecedented enlargement of power. This Article challenges those views. It argues that the judiciary is very much engaged in devising techniques to check executive power. Through developments that are managerial and doctrinal, substantive and procedural, high-profile and seemingly mundane, federal courts have subjected an important set of executive actions that this Article terms "enforcement lawmaking" — the exercise of enforcement discretion in a manner that goes beyond simple policy and that shares attributes of law — to judicial oversight. Together, these developments reveal a potential shift in the structure of separation of powers. Courts have leveraged their inherent case-management powers — the procedures that shepherd lawsuits through the process of judicial review — to force transparency on the Executive and to hold it to account. This Article maps the effects of these "managerial checks," which render the simple existence of judicial review powerful, particularly when viewed together with the extension of justiciability and remediation doctrines. Courts have authorized judicial review earlier and to greater effect by redefining when executive action is ripe for judicial review. They have created new avenues for multiparty public litigation through developments in standing doctrine. And they have increasingly deployed a muscular remedy, the nationwide injunction, to counterbalance increasingly muscular forms of executive action. This Article argues that these developments along the entire life cycle of suits challenging enforcement lawmaking — from standing, to ripeness, to judicial recordkeeping and management, to remedies — should be viewed together and in separation-of-powers terms.

2. **YALE LAW JOURNAL**
https://www.yalelawjournal.org/forum/in-search-of-good-corporate-governance
In Search of Good Corporate Governance by Dorothy S. Lund

In this Forum Response, Dorothy Lund considers whether the "corporate governance gap" between large and small public companies is the product of harmful or beneficial forces, and in so doing, rejects the idea that there is a single governance framework that is optimal for all public companies.

3. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s10982-021-09437-3
Criminal Theory and Critical Theory: Husak in the Age of Abolition by Alice Ristroph

Political theorists imagine a world without government ("a state of nature") in order to assess the legitimacy of existing states. Some thinkers, such as philosophical anarchists, conclude that in fact no state can be justified. Should theorists of criminal law similarly imagine away the very thing they seek to theorize? Doug Husak has claimed that "the object of criminal theory is to offer suggestions to improve the content of the criminal law … not to abolish it." But this Essay argues that abolitionist-leaning scholarship reflects several welcome developments in criminal theory: a concern with the state; attention to empirical data and the distinction between normative claims and descriptive ones; recognition of enforcement as an essential element of criminal law; and above all, a demand that criminal law prove itself—a refusal to grant to criminal law a presumption of legitimacy. These theoretical orientations did not appear for the first time in abolitionist scholarship. In fact, all are calling cards of Husak's own work, and cause to celebrate it.

4. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s10982-021-09434-6
Abetting a Crime: A New Approach by M. Beth Valentine

In "Abetting a Crime," Husak puzzles over what, exactly, abettors are held liable for. Having (correctly) dismissed the proposal that derivative liability can ground the imposition of punishment, he then turns to fair labeling concerns to further highlight problems surrounding current Anglo-American complicity laws. The best moral solution, according to Husak, is a drastic but ultimately unworkable revising of our laws. Loosely, he presents a two-horned dilemma: the laws are either insufficiently detailed to respect fair labeling practices or too detailed to be workable. Though I agree with his assessment derivative liability, I advocate for a more optimistic outlook. Specifically, I advocate for having multiple new crimes of "abetting ," where the blank is filled in by reference to a particular existing crime for which we think it should be wrongful to help another. This framework offers significant advantages over current complicity laws while escaping the two pitfalls Husak highlights.

5. **MANUPATRA**
https://articles.manupatra.com/article-details/Emerging-trends-in-digital-copyrights-in-the-new-age-of-NFTs
Emerging trends in digital copyrights in the new age of NFTs? by Rhea Mukkatira Biddappa

Over the years, technology has transformed and eased out many crucial functions impacting our lives on a global scale. The far overreaching innovations and their metamorphosis has become an integral part of our society, with technology gaining momentum while it continues to evolve on a rapid scale. The digital medium is seen as a platform to direct and target the delivery of digital content to the audience as per their needs. The growth of digital content on the internet has progressively led to the manipulation, distribution and reproduction of the content available in the digital arena. Copyrights and technological advancements are thoroughly integrated; however, this problem arises when the content is driven on a single digital platform that impacts the rights of the holders. In addition, the digitalization of content has, on countless occasions, impacted copyright specific industries. The digital medium is seen as a platform to direct and target the delivery of digital content to the audience as per their needs. Copyrights issues have existed in the digital space previously. This paper addresses the challenges faced in NFT transaction with respect to copyrights. This paper highlights various intricacy involved in these new age platforms.

6. **MANUPATRA**
https://articles.manupatra.com/article-details/Trademarks-and-trade-names-What-s-the-Connection
Trademarks and trade names: What's the Connection? by SHAKSHI

This study examines the relationship between trademarks and trade names. When a mark is used as a trade name for a different group of goods, infringement is permitted. The article emphasizes how the determinants when a trademark is utilized as a trade name on a diverse range of goods and services; it might have an impact of the outcome. One of the most significant reasons to distinguish between trade names, trademarks is that if a company begins to use its trade name to identify products and services, it may be mistakenly assumed that the company is now using its trade name as a trademark, infringing on existing trademarks. A trade name is also known as a fake name, a corporate name, or a conducting business name. This indicates that a trade name is the name under which a company does business. It's usually a good idea to register your business name as a trademark. A corporation or limited liability partnership (LLP) must register its trade name with the appropriate government agency. The corporation is recognized as a separate legal entity when it is registered. Following registration, the corporation or limited liability partnership can engage into contracts and do business using its registered trade name. Other firms will be unable to use a company's trade name for their own products as a result of this. Trademark registration offers comprehensive protection, allowing the trademark owner to prevent infringement.

7. **MANUPATRA**
https://articles.manupatra.com/article-details/Analysis-of-Law-regulating-Mergers-and-Acquisition-in-UAE-and-USA

Analysis of Law regulating Mergers and Acquisition in UAE and USA by Muhammed Ijaz

Merger & Acquisition (M&A) is a process by which the incorporated business entities consolidate into a single large entity to attain greater synergy and thereby expanding its market presence and profits simultaneously. It is one popular business expansion technique that has been in practice since the inception of trade and business across the globe. Although M&A is a mere tool of business consolidation and to share the resultant economic and business consequences between the engaging parties, it has an equally significant potential to influence and impact the entire business environment of the countries where such deals are targeted to operationalize their business and where the engaging parties are incorporated. Dwelling into statistics of the Merger and Acquisition deals across the world during the last two decades will indisputably prove the fact that Mergers and Acquisition have been growing exponentially across the globe ranging from developed economies like the USA towards the emerging and developing countries like UAE and other middle eastern and African Countries. M&A deals in the United States of America in last two decades has grown from a mere number of 2309 successful M&A deal valued around 306 billion US Dollar in 1985 to a humungous 18074 successful deals valued around 1680 billion US Dollar in the single year 2019. Similarly, M&A statistics from the United Arab Emirates(UAE) in the last two decades growing on par with the global pace, it expands from mere 26 deals in the year 1990 valued at around.25 billion US Dollars, towards 116 successful deals valued at around 24 Billion US Dollar in 2019.Following the booming spike in the M&A deals across the world, the regulatory frameworks have equally evolved to demarcate and restrain the unfair business emerging in consequence of such rampant mode of business consolidation practice across the world. This article will essentially overview the existing and significant Merger and Acquisition regulatory frameworks of UAE and the USA.