LAHORE HIGH COURT

BULLETIN

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

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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2022 to 15-05-2022)

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

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Syed Kausar Ali Shah etc v. Syed Farhat Hussain Shah and others.
Civil Petition Nos. 3041 and 3061 of 2018
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3041_2018.pdf

Facts: Through the civil petitions in question the petitioners have assailed the three concurrent judgments pronounced against them in furtherance of cancelation of inheritance mutation in favor of respondent side.

Issues: i) Whether a deprived heir can challenge the inheritance mutation after creation of third party interest in the disputed land?
ii) Whether a person demonstrated acquiescence against the adverse title could challenge subsequent mutation while avoiding limitation?

Analysis: i) There is a clear distinction between (a) cases in which an heir alleges that his/ her rights to inheritance have been disregarded and his/ her share not mentioned in the inheritance mutation, and (b) those cases in which such an heir sits idly by, does not challenge mutation entries of long standing, or acquiesces, and only comes forward when third party rights in the subject land have been created. To succeed in respect of the latter (b) category cases an heir must demonstrate that he/ she was not aware of having been deprived, give cogent reasons for not challenging the property record of long standing, and show complicity between the buyer and the seller (the ostensible owner) or that the buyer knew of such heir's interest yet proceeded to acquire the land.
ii) The law of limitation is not entirely to be ignored or brushed aside whenever property is claimed on the basis of inheritance. The conduct of such claimant may become relevant and material when the bar of time limitation is pleaded by the adversary. A defendant may show that the plaintiff by her or his acts, overt or implicit, had demonstrated acquiescence in the defendant's title to the suit properly thereby allowing him to deal with it as exclusive owner. When in such circumstances the defendant/ heirs transfers the property for valuable consideration the transferee is entitled to believe that the transferor had a valid title to transfer.

Conclusion: i) No, a deprived heir cannot challenge the inheritance mutation in circumstances when creation of third party interest in the disputed land with entries of long standing, or acquiesces.
ii) No, a person demonstrated acquiescence against the adverse title could not challenge subsequent mutation while bypassing limitation.

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2. **Lahore High Court**
Nusrat Aftab v. Rabeah Hussain and 4 others.
F.A.O. No. 26851 of 2022
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC3139.pdf

Facts: Along with the main suit, an application of temporary injunction was filed, which was dismissed by the learned trial Court, against which the appellant filed an appeal before this Court which too was dismissed with a direction to the learned trial Court to decide application of appointment of receiver, within one month positively. The learned Trial Court after hearing both the parties accepted the application for appointment of receiver; hence this appeal.

Issues: i) What is the requirement for appointment of a receiver by the Court?
ii) What is the legal obligation of the Court while appointing a receiver?
iii) What is the nature of discretionary power of appointment of receiver and how it should be exercised?
iv) Whether the material prepared through electronic devices is admissible in evidence?

Analysis: i) One who seeks appointment of receiver is required to satisfy the Court that the protection and preservation of subject-matter because of expected waste or peril to such property, right and interest of the plaintiff therein is necessary. A person who is found to be in possession of a property in his own right and title should not be lightly dispossessed unless some peculiar circumstances or instance of waste and damage to property is shown. The appointment of receiver by dispossessing a party is a very harsh action which should not be resorted to lightly unless a strong case of damage or waste to the property is made out.
ii) While appointing a receiver under Order XL, rule 1, C.P.C., the trial Court is under legal obligation to appoint a receiver himself by conferring upon him all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property alongwith collection of rents and profit thereof or any other powers as the Court thinks fit.
iii) The words 'just' and 'convenient' are required to be given their due weight because an order under this provision, though is interim in nature, yet is penal in its nature whereby one (person in possession) is removed from control and possession of such a property, therefore, such discretionary power are not to be exercised in routine but only in case(s) where it, prima facie, stood established that continuity of possession and control of property shall result in wastage or dissipation thereof resulting into irreparable loss/injury to party, seeking appointment of receiver. The party seeking such appointment therefore, has to show emergency or danger or loss to the property demanding immediate action.
iv) Learned Trial accepted the application filed by the respondents-plaintiffs while relying upon emails despite the fact that same could not be referred until and unless they were proved in terms of the provisions of Electronic Transactions

Ordinance, 2002 read with Articles 46- A and 78-A of the Qanoon-e-Shahadat Order, 1984. The Apex Court of the country in the case of Ali Raza alias Peter and others v. The State and others (2019 SCMR 1982), while dealing with admissibility of material in evidence, prepared through electronic devices, has inter-alia observed as under:- "***** Article 164 of the Order ibid invests the Court with wide powers to make use of evidence generated by modern devices and techniques; Articles 46-A and 78-A of the Order ibid as well as provisions of Electronic Transactions Ordinance (LI of 2002) have smoothened the procedure to receive such evidence, subject to restrictions/limitations provided therein".

Conclusion: i) One who seeks appointment of receiver is required to satisfy the Court that the protection and preservation of subject-matter because of expected waste or peril to such property, right and interest of the plaintiff therein is necessary.
ii) The trial Court is under legal obligation to appoint a receiver himself by conferring upon him all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property etc.
iii) The discretionary power of appointment of receiver is penal in its nature and it should not be exercised in routine unless there is emergency or danger or loss to the property demanding immediate action.
iv) The material prepared through electronic devices is admissible in evidence subject to restrictions/limitations provided under the law.

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3. **Lahore High Court**
Yasmin Jang v. Advocate General, Punjab etc.
Intra Court Appeal No.37924 of 2021
Mr. Justice Shahid Waheed
https://sys.lhc.gov.pk/appjudgments/2022LHC3202.pdf

Facts: The procedure for obtaining consent of Advocate General before approaching the Court for appointment of guardian of mentally disordered person under Mental Health Ordinance 2011 (Ordinance) is in question in this intra court appeal.

Issues: i) What basic questions the Advocate General will address himself when considering an application for his consent, and on what principles his powers will be governed?
ii) Whether the applicant of the Consent Application has to be a resident of the area which falls within the jurisdiction of the Court?
iii) Whether the power exercisable by the Advocate General under section 29 of the Ordinance is a judicial power and whether the resultant act is a judicial order?
iv) Whether any law firm or advocate on the basis of Wakalatnama alone could apply to the Advocate General for obtaining his consent within the scope of section 29 of the Ordinance?

Analysis: i) For the purposes of grant of consent to allow the matter to go to the Court, the

Advocate General needs to confine himself only to four questions, that is, first whether the person about whom proceedings are to be initiated possesses any property, secondly, whether such person is alleged to be mentally disordered, thirdly, whether alleged mentally disordered person resides within the jurisdiction of the Court, and lastly, whether the applicant is a relative of the alleged mentally disordered person? Indeed, save in so far as may be necessary to make some inquiries into the above questions to satisfy himself, the Advocate General is not at this stage concerned with the merits of the case at all. These will be for the Court to consider if he decides to refer the case to it. It is pertinent to clarify here that although it is salutary to follow the judicial forms of procedure in the investigation of the above questions, indeed advisable, to dispel fear or apprehension of arbitrariness in the mind of the aggrieved person, there is no compelling statutory obligation on the part of the Advocate General to hear witnesses, to admit documentary evidence etc. when he is moved under section 29 of the Ordinance, but as the Principal Law Officer of the Provincial Government and closely associated with its agencies or instrumentalities, it is incumbent upon him to make an inquiry, at least by getting a verification report from all concerned about the supporting documents of the Consent Application, such as the Family Registration Certificate (FRC), property documents, medical certificate of a Psychiatrist, and certificate issued by the concerned agency relating to the place of residence of the alleged mentally disordered person, and then grant his consent, and doing so, will establish that the applicant has disclosed a prima-facie case to be referred to the Court for trial, which in turn, will also facilitate the Court to speedily attend to all the issues relating to the appointment of a guardian/manager of the mentally disordered person.

ii) The applicant of the Consent Application does not have to be a resident of the area which falls within the jurisdiction of the Court, as the place of residence is one of the factors on which the Court, determines the suitability of a person, including the applicant, and appoints him/her as the guardian or manager of the mentally disordered person.

iii) The granting or refusing consent by the Advocate General under section 29 of the Ordinance is no judicial determination of any legal rights of the parties to the intended action… Even if the Advocate General has to hold an enquiry, he is merely to see whether there is a prima facie case that should be allowed to go to the Court. When he gives his consent to the filing of petition he does nothing more than this. Needless to observe here that an executive act with the trappings of a judicial procedure is still an executive act, though overlaid with a judicial cover, and it cannot be invested with judicial character. Thus the decision of the Advocate General cannot be called a judicial or quasi-judicial one. It is, for all intents and purposes, merely an administrative or executive act or decision.

iv) No statutory law defines Wakalatnama. However, given the provisions of Rule 4 of Order III CPC read with subsection (3) of section 22 of the Legal Practitioners & Bar Council Act, 1973, it can be safely said that it is a document in writing signed by a person or by his recognized agent or some other person

duly authorized by him appointing an advocate to appear or act on his behalf in any Court. This means that the appointment of an advocate through a Wakalatnama gives him the power to appear and act for any person in any Court, but not before any office such as the Advocate General, and if so, we can safely conclude that the application made by the law firm/advocate to the Advocate General without the signature of party/relative of patient was not proper and competent, nor it can be considered that it was filed by any relative of the patient.

Conclusion: i) Advocate General will deal with questions that the person about whom proceedings are to be initiated possesses any property, and he is alleged to be mentally disordered and resides within the jurisdiction of the Court, and the applicant is a relative of the alleged mentally disordered person…It is incumbent upon him to make an inquiry, at least by getting a verification report from all concerned about the supporting documents of the Consent Application and then grant his consent, and doing so, will establish that the applicant has disclosed a prima-facie case to be referred to the Court for trial.

ii) The applicant of the Consent Application does not have to be a resident of the area which falls within the jurisdiction of the Court.

iii) The power exercisable by the Advocate General under section 29 of the Ordinance is not a judicial power and the resultant act is not a judicial order.

iv) Any law firm or advocate on the basis of Wakalatnama alone cannot apply to the Advocate General for obtaining his consent within the scope of section 29 of the Ordinance.

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4. **Lahore High Court**
Mansab Ali v. The State etc.
Crl. Revision No. 17417/2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC3395.pdf

Facts: The accused/petitioner is local Rikshaw Driver who abducted the passengers/complainant and committed rape with her and her daughter. Criminal case is lodged under Sections 365-A, 392, 376(ii), 376(iii) PPC & 7 of the Anti-Terrorism Act, 1997 against him. The petitioner has filed Criminal Revision against order passed by the Judge, Anti-Terrorism Court whereby application filed by the petitioner for the transfer of trial of case to ordinary court was dismissed.

Issues: i) Whether section 365-A PPC is attracted in cases of abduction for sole purpose of commission of Zina?

Analysis: i) Forcing a woman to illicit intercourse has already been made an offence under Pakistan Penal Code, 1860 for life imprisonment u/s Section 365-B PPC. Besides, under Section 376 PPC, such an act is made a separate offence.. Under Section 365-A PPC, the element of extortion from the person or kidnapping or abducting

for the purpose of any property movable or immovable, valuable security or other demand whether cash or otherwise for obtaining release of any kidnapped or abducted person was made punishable with death or imprisonment for life. If the elements referred above are not available in the FIR, then section 365-A PPC would not be attracted…. The irrational interpretation of the word "any other demand" by extending it to compel a woman for a sexual intercourse cannot be adopted by this Court particularly when offence under Section 365-B PPC and Section 376 PPC exclusively deal with the offence of rape; sexual intercourse with a woman against her will by putting her under fear of death, etc.

Conclusion: i) Section 365-A PPC is not attracted in cases of abduction for sole purpose of commission of Zina.

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5. **Lahore High Court**
D.G. Khan Cement Company Limited etc v. The Federal Board of Revenue etc.
Writ Petition No.15880/2021.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC3288.pdf

Facts: Through this judgment, several writ petitions and Intra Court Appeals are decided together as a common question of law and facts are involved in all these petitions and ICAs. The legal proposition involved in all these cases is that whether the Commissioner Inland Revenue (Commissioner) could initiate proceedings against the petitioner's/appellants in terms of section 25 of the Sales Tax Act, 1990 (Act) and section 177 of the Income Tax Ordinance, 2001 (Ordinance), in the wake of Federal Board of Revenue (FBR) instructions/directions issued to the Chief Commissioner and other field formations for audit of various sectors.

Issues: i) Under what law powers are vested with the Commissioner to select and conduct audit of any tax payer?
ii) What is the purpose of providing power of audit to Commissioner under Income Tax Ordinance, 2001?
iii) When a particular authority is vested with the power to discharge any statutory duty, whether the authority alone has to apply its independent mind or it may be influenced by any other authority?

Analysis: i) Under section 120(1) of the Ordinance, the return of income tax filed by taxpayer is deemed to be assessment order, however, section 120(1A) provides that notwithstanding section 120(1), the Commissioner may conduct audit under section 177 of the Ordinance. Thus on one hand the prevailing law presumed the income declared by taxpayer in his return as deem assessment order but at the same time, powers are vested with the Commissioner under section 177 of the Ordinance to select and conduct for audit of any taxpayer.

ii) The purpose of audit under section 177 of the Ordinance is to ensure that self-assessment scheme under the Ordinance may not be misused or abused by taxpayers. Unlike section 214-C of the Ordinance, which has to ensure general compliance with law by tax payer, section 177 of the Ordinance focus on the tax return of individual tax payers.

iii) Under section 177 of the Ordinance and 25 of the Act, the discretion lies with the Commissioner to initiate the audit proceedings to select and conduct audit on the basis of available record and to arrive at this conclusion, he is not to be controlled even by the higher authority, likewise the higher authority is not to interfere with the independent power of the Commissioner which is statutorily conferred upon him. Even the higher authority cannot provide any guide line or direction to the authority under the statute, to act in a particular manner. It is also salutary principle of law that a quasi-judicial authority cannot afford to act on the direction of a superior officer or authority. Once a discretion is vested with a certain authority, he alone should exercise that discretion vested under the statute and if he acts in accordance with "the direction or any compliance with some higher authorities instruction" it would be a case of failure to exercise discretion altogether.

Conclusion: i) Under section 177 of the Income Tax Ordinance, 2001 powers are vested with the Commissioner to select and conduct for audit of any taxpayer.

ii) The purpose of providing audit under section 177 of the Income Tax Ordinance, 2001 is to ensure that self-assessment scheme under the Ordinance may not be misused.

iii) When a particular authority is vested with the power to discharge any statutory duty, the authority alone has to apply its independent mind without being influenced by any other authority, even by the higher authority.

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6. **Lahore High Court**

Mst. Shah Khanum v. Member (Judicial-V), Board of Revenue / Chief Settlement Commissioner etc.

W.P.No.12451/04/2017 etc

Mr. Justice Ch. Muhammad Iqbal

https://sys.lhc.gov.pk/appjudgments/2022LHC3335.pdf

Facts: The Chief Settlement & Rehabilitation Commissioner cancelled the allotment on the basis of fraud and also declared all the subsequent mutations / alienation of the said land as illegal. Thus ordered the resumption of land in favor of state.

Issue: i) Whether fraud vitiates the proceedings and automatically dismantles gain achieved?

ii) Whether Chief Settlement Commissioner has jurisdiction to initiate inquiry or take cognizance of the matter regarding transfer of the evacuee land?

iii) Whether the Chief Settlement & Rehabilitation Commissioner can reverse its earlier order?

iv) Whether subsequent purchasers have protection of law if any infirmity, deficiency or flaw subsequently emerges in the title of owner / vendor?

v) Whether the Notified Officer/Chief Settlement Commissioner has jurisdiction to alienate the evacuee land?

vi) Whether the Civil Court has jurisdiction to intrude into the jurisdictional realm of the settlement department in relation to evacuee property?

Analysis: i) Fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, stand automatically dismantled and any ill-gotten gain achieved by fraudster cannot be validated under any norms of laws and any order obtained through fraud, misrepresentation of true facts, cannot assume the status of past and close transaction and that illegal order always remain vulnerable to the legal proceedings of investigation.

ii) Any evacuee land obtained by committing misrepresentation of the facts and fraud in that eventuality, the Chief Settlement Commissioner, being successor of Custodian of the evacuee land / property and Claims Officer, has jurisdiction to initiate inquiry or take cognizance of the matter regarding transfer of the evacuee land….. when a matter of alienation of evacuee land is re-opened, the Settlement Authority has the jurisdiction to re-examine all the facts pertaining to the title of the parties from the very inception of claim and to decide the matter according to available record as per law.

iii) If any order is obtained from the authorities through misrepresentation, fraud and forgery, in that eventuality the same authority can undo such illegal order either on its own motion or on the information received to it through any application. In the case of obtaining evacuee land through fraud, the settlement authority may reverse such allotment order and in such like matter, the superior Courts can withheld the exercise of their discretionary writ jurisdiction to annul the order of authority, even though it was clearly without jurisdiction… Section 21 of the General Clauses Act, 1897 confers an inherent jurisdiction to an authority or its successor authority to reverse its earlier erroneous or illegal order.

iv) Bona fide purchasers of the land in question and have protection of law, suffice it to say that admittedly they derived alleged right from their vendor whose allotment has been declared as fraudulent and same has been cancelled, thus subsequent purchasers who only stepped into shoes of their vendor are debarred to claim any better title than that of their vendor and they (subsequent purchasers) have no protection under Section 41 of Transfer of Property Act and

v) That the Notified Officer / Chief Settlement Commissioner has no jurisdiction to alienate the evacuee land through any private treaty and the only mode for disposal of the state assets is to put the same to unrestricted transparent open public auction.

vi) As the land in question is “evacuee” one, thus as per law, the Civil Court has no jurisdiction to intrude into the jurisdictional realm of the settlement department

under Section 41 of the Pakistan Administration of Evacuee Property Act, 1957 and Sections 22 & 25 of Displaced Persons (Land Settlement) Act, 1958 and even if any decree passed by the Civil Court, that would be without jurisdiction and nullity in the eyes of law or void ab-initio and same is in-executable.

Conclusion: i) Fraud vitiates the proceedings and automatically dismantles gain achieved.
ii) Chief Settlement Commissioner has jurisdiction to initiate inquiry or take cognizance of the matter regarding transfer of the evacuee land.
iii) The Chief Settlement & Rehabilitation Commissioner can reverse its earlier erroneous or illegal order.
iv)If any infirmity, deficiency or flaw subsequently emerges in the title of owner / vendor that shall always travel with the land and subsequent purchasers are precluded to raise plea of protection of bona fide purchaser under Section 41 of the Transfer of Property Act.
v)The Notified Officer/Chief Settlement Commissioner has no jurisdiction to alienate the evacuee land except unrestricted transparent open public auction.
vi) The Civil Court has no jurisdiction to intrude into the jurisdictional realm of the settlement department in relation to evacuee property.

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7. **Lahore High Court**
Yasir Parvez & others v. The State.
Criminal Appeal No.53173-J of 2017
Ansar v. The State.
Criminal Appeal No.53156-J of 2017
The State v. Yasir Parvez.
Murder Reference No.253 of 2017
Sadiq Ali v. The State & others.
Criminal Revision No. 183857 of 2018
Mr. Justice Sardar Ahmad Naeem, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC3266.pdf

Facts: By filing Criminal Appeal, appellants have challenged their convictions and sentences in murder case. Murder Reference has been sent by learned trial court for confirmation of death sentence awarded to appellant. Complainant has filed Criminal Revision seeking enhancement of sentence of appellants.

Issues: i) What would be the effect of dishonest improvements in testimony of a witness of ocular account?
ii) What are the essential ingredients for considering the evidence of chance witness?
iii) Whether the courts can presume the existence of any fact?
iv) Whether the presence of burning around the entry wound is natural if the fire range is about three feet?
v) Whether conviction can be based upon the ocular account evidence when it

lacks the test of credibility?

vi) What would be the effect on other evidence when the evidence of ocular account is full of doubts?

vii) What would be the effect if the comparison report of Punjab Forensic Science Agency is absent?

viii) Whether mere heinousness of crime is sufficient for conviction?

Analysis: i) It is by now settled principle of law that if improvements are found to be deliberate and dishonest, same would cast doubt qua the veracity of the testimony of such witness of ocular account and no reliance can be placed on such testimony for conviction on a charge entailing death penalty for the simple reason that when a witness makes dishonest improvement while deposing before the court, he simply exposes himself to his own dishonesty that ipso facto is sufficient to discard his evidence by counting him a dishonest person.

ii) For considering the evidence of chance witness two essential ingredients are required to be established; firstly that whether witness reasonably explained his presence at the spot and secondly narration of incident as given by such witness should also inspire confidence.

iii) Provisions of Article 129 of Qanun-e-Shahadat Order, 1984 allow the courts to presume the existence of any fact, which it think likely to have happened in the ordinary course of natural events and human conduct in relation to the facts of a particular case.

iv) If the fire range is not more than three feet, presence of burning around the entry wound is quite natural in view of principles of medical jurisprudence.

v) It is established principle of criminal jurisprudence that conviction can only be based on evidence of unimpeachable character leading to certainty of the guilt of the accused and even a single doubt arising in the prosecution case must be resolved in favour of the accused. When evidence of ocular account lacks the test of credibility and is not found worthy of reliance for being not inspiring confidence, same cannot be accepted and cannot be made basis for the conviction and sentence on capital charge.

vi) It is an established principle of law that where prosecution case was mainly based on the evidence of ocular account and the moment truthfulness and intrinsic worth of evidence of ocular account has come under the clouds of doubts and is disbelieved, no other evidence even that of a high degree and value would be sufficient for recording conviction for a crime entailing capital punishment.

vii) In absence of any comparison report of Punjab Forensic Science Agency, recoveries of pistols are simply inconsequential.

viii) It may be observed that mere heinousness of crime, if it has not been proved upto the hilt is not sufficient to provide a valid basis for conviction of the accused.

Conclusion: i) Dishonest improvement would cast doubt qua the veracity of the testimony of such witness of ocular account and no reliance can be placed on such testimony for conviction.

ii) First essential ingredient is that witness should explain his presence and secondly his narration should be confidence inspiring.

iii) Article 129 of Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it think likely to have happened in the ordinary course of natural events.

iv) If the fire range is not more than three feet, presence of burning around the entry wound is quite natural.

v) Conviction cannot be based upon the ocular account evidence when it lacks the test of credibility.

vi) If ocular account has come under the clouds of doubts and is disbelieved, no other evidence even that of a high degree and value would be sufficient for recording conviction for a crime entailing capital punishment.

vii) In absence of any such comparison report of Punjab Forensic Science Agency, recoveries of pistols are simply inconsequential.

viii) Mere heinousness of crime is not sufficient to provide a valid basis for conviction.

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8. **Lahore High Court**
Amna Arshad v. Government of the Punjab etc.
Writ Petition No. 65074/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3214.pdf

Facts: The petitioner and her husband are visually impaired persons. Both are civil servants. The petitioner sought her transfer on the ground of disability and wedlock policy which was dismissed by the department.

Issues: i) Whether the writ for transfer of visually impaired civil servant is maintainable as mater of "terms and conditions of service" is in question?

ii) What are the aims of Convention on the Rights of Persons with Disabilities (CRPD?

iii) Whether the concept of reasonable accommodation articulated in CRPD should be followed in Pakistan?

iv) Whether provisions of a treaty signed by the state are automatically incorporated into municipal law?

Analysis: i) It is true that all transfer matters fall within the ambit of "terms and conditions of service" and the Service Tribunal has exclusive jurisdiction in respect thereof under Article 212 of the Constitution. This case, however, involves interpretation of fundamental rights with reference to persons with disabilities so the objection is overruled.

ii) The CRPD aims to ensure full measure of human rights and fundamental freedoms for all persons with disabilities and, to this end, promotes the following principles:

(a) Respect for inherent dignity, individual autonomy including the

freedom to make one's own choices, and independence of persons;
(b) Non-discrimination;
(c) Full and effective participation and inclusion in society;
(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
(e) Equality of opportunity;
(f) Accessibility;
(g) Equality between men and women;
(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

iii) The concept of reasonable accommodation articulated in CRPD should be followed in Pakistan in true spirit in as much as we have ratified the Convention.

iv) The general rule is that the provisions of a treaty are not automatically incorporated into municipal law and a country's legislature must enact law to implement them. In Pakistan, even where such legislation has not been passed, the courts are required to interpret and apply every statute, as far as its language admits, in accordance with the principle of comity of nations and established rules of international law.

Conclusion: i) The writ for transfer of visually impaired civil servant is maintainable as it involves interpretation of fundamental rights with reference to persons with disabilities.

ii) The CRPD aims to ensure full measure of human rights and fundamental freedoms for all persons with disabilities.

iii) The concept of reasonable accommodation articulated in CRPD should be followed in Pakistan in true spirit in as much as we have ratified the Convention.

iv) The provisions of a treaty signed by the state are not automatically incorporated into municipal law.

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9. **Lahore High Court**
Muhammad Yaqoob v. Muhammad Ashiq.
C.R. No.29162 of 2019
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC3406.pdf

Facts: Through this Civil revision petitioner has called into question the order of the learned appellate court where, the appeal was allowed and the order of learned trial court of dismissal of application under Order IX, Rule 13, C.P.C. was set aside.

Issues: i) How the disputed service of summons is required to be proved?
ii) How the service can be effected when personal service is not possible?

Analysis: i) It is a settled rule that where the service is disputed the person claiming service needs to prove the same through affirmative evidence; more particularly by

producing the process server. The recording of statement of the process server to satisfy as to how and in what manner the service was effected, upon whom the service was made and as to whether there was any plausible reason for the process server to deliver a notice to a third person instead of the party itself; rather than making repeated efforts by visiting the house of defendant to procure his personal service and whether in the given circumstances it could be considered to be a case of due diligence on the part of process server is required by law.

ii) As a matter of fact under Order V, Rule 15, C.P.C. the notice shall be served upon the party personally and acknowledgement of receipt shall be obtained by the process server who shall record in his report the name of the person who identified the recipient of the notice, the residence of the defendant and the witnesses in whose presence the notice was delivered or served and that in case the personal service is not possible, the notice could be delivered on a male member of the family living in the house of defendant in the suit permanently. The person being not a son or a descendant of the defendant and in the absence of any evidence to prove that he had any relationship with the respondent or that he was a living in the same house where the respondent was residing he could not be deemed to be a family member of the respondent.

Conclusion: i) Where the service is disputed the person claiming the same is required to prove it through affirmative evidence; more particularly by producing the process server.

ii) When personal service is not possible then service can be effected on male member of the family living in the house of the defendant permanently.

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10. **Lahore High Court**
S. Akmal (deceased) through Legal-Heirs, etc v. Model Town Cooperative Housing Society, etc.
C.R. No.224476 of 2018
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC3369.pdf

Facts: Through this Civil Revision petitioners challenged concurrent decisions of learned trial and first appellate court, whereof their suit of Declaration, Permanent Injunction and Cancellation of deed of Memorandum of gift was dismissed.

Issues: i) Whether the transaction of oral gift can be proved by relying on the Memorandum of gift?

ii) Whether a certified copy is admissible in evidence without fulfilling requirements of producing secondary evidence?

iii) On whom burden of proof lies when the legal heirs challenge the factum of gift on plea of fraud and denial of inheritance?

Analysis: i) Unless the transaction of oral gift is proved, the factum of alleged acknowledgement of gift, simply, would be of no tenable assistance. There is no

cavil that irrespective of subsequent registration of acknowledgment of previous gift, made orally, the transaction of oral gift had to be proved / established independently and through convincing evidence. The transaction of oral gift had to be proved independently and mere reliance on the Memorandum of gift, claimed to be registered document, is not enough.

ii) Memorandum of gift in original was not produced. Certified copy was produced without fulfilling requirements of producing secondary evidence, and without providing satisfactory reasoning for non-production of the original or proof of loss of the original.

iii) When the legal heirs have challenged the factum of gift on plea of fraud and denial of inheritance share in the estate of the deceased, in which case heavy burden is laid upon the beneficiary of the transaction, having the effect of exclusion of the legal heirs.

Conclusion: i) The transaction of oral gift is required to be proved independently and reliance on the Memorandum of gift, claimed to be registered document, is not enough.

ii) A certified copy is not admissible in evidence without fulfilling requirements of producing secondary evidence.

iii) When the legal heirs challenge the factum of gift on plea of fraud and denial of inheritance, heavy burden is laid upon the beneficiary of the transaction.

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11. **Lahore High Court**

Irfan Javed & two others v. Additional District Judge, Toba Tek Singh & 2 others.

Writ Petition No. 52389 of 2019

Mr. Justice Shakil Ahmad

https://sys.lhc.gov.pk/appjudgments/2022LHC3383.pdf

Facts: The petitioners through the instant Writ Petition have assailed the order & judgment and decrees of the learned Trial Court / Family Court and the Appellate Court whereby suit filed by respondent No.3 against petitioners for recovery of dowry articles was decreed by learned Family Court as a consequence of special oath taken by respondent No.3 and the decree was maintained in appeal by learned Additional District Judge.

Issue: i) Whether the learned counsel for a party is competent to make the offer for decision of case on the basis of special oath or to accept the offer made by rival party?

ii) Whether Family Court can decide the matters on special oath?

Analysis: i) Section 2 of the Power of Attorney Act, 1882 deals with execution under power of attorney. This section applies to the power of attorney created by an instrument. Similarly, provisions of sections 182 to 238 of the Contract Act, 1872 deal with the appointment and authority of agents. A counsel who is appointed to represent his client proceeds to act on behalf of principal as per the powers so conferred on

him under the ordinary rules governing the relationship of principal and agent as determined by the terms of power of attorney. Powers so conferred on a counsel would indeed create mutual obligations inter se the parties and an attorney would fall within the definition of agent as contemplated under section 182 of the Contract Act, 1872. The contract between an advocate and his client is essentially governed by the general rules of contract as embodied under the various provisions of Contract Act. It is almost an established principle of law that power of attorney should be construed strictly and be interpreted to give only such authority as it confers expressly or by necessary implication. … Reliance in this regard may safely be placed on "Haji Dilbar Khan Mahaar, AAG Mewo and another v. Mst. Lal Khatoon" (PLD 1962 Kar. 162), wherein it was held that an Advocate empowered by a party to enter into a compromise etc., was fully competent to make an offer to abide by the special oath and in doing so he must be deemed to have been instructed by his client.

ii) There is no cavil with the proposition that by dint of section 17(2) of Family Courts Act, 1964, provisions of sections 8 to 11 of Oaths Act, 1873 are made applicable to the proceedings before Family Courts. The underlying wisdom of above hinted provision of Family Courts Act, 1964 is swift and expeditious settlement of Family disputes for the simple reason that a Family dispute is not limited to the four walls of home between two persons viz., man & wife, rather it has impact on the souls and minds of all near and dear to the contesting parties and it may disrupt not only the mental fabric of both the parties but also of those who are not even party to it directly particularly the children and the parents of the parties.

Conclusion: i) Learned counsel for a party can make the offer for decision of case on the basis of special oath and can accept the offer made by rival party if so empowered by the party.

ii) Family Court can decide the matters on special oath as provisions of sections 8 to 11 of Oaths Act, 1873 are made applicable to its proceedings.

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12. **Lahore High Court**
Mst. Shabnam Bibi v. Imran.
T.A. No.12276 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC3159.pdf

Facts: Through this application under Section 25(A) of the West Pakistan Family Courts Act, 1964, the applicant prays that the guardian petition may be withdrawn from the Court of Senior Civil Judge (Family Division)/Guardian Judge, Attock and be entrusted to the Court of Senior Civil Judge (Family Division)/Guardian Judge, Multan where a guardian petition between the same parties is pending adjudication.

Issues: What is the pivotal point for adjudication about territorial jurisdiction of guardian petition?

Analysis: The main concern is the convenience of the wards who are to be brought to the Court to convene meeting. The purpose behind the law is that the wards should be facilitated in all respects. The travelling of the minors in the company of their mother from one station to another will not only cause heavy expenses but it will also cause physical and mental inconvenience to the wards.

Conclusion: The pivotal point for adjudication about territorial jurisdiction of guardian petition is the convenience of the wards who are to be brought for visitation purpose.

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13. **Lahore High Court**
Rana Imran Khan v. Imran Aizad.
R.F.A No.222980 of 2018
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC3225.pdf

Facts: Through this regular first appeal the appellant has challenged the validity of judgment and decree passed by learned Addl. District Judge, whereby, the suit of the respondent/plaintiff under defamation Ordinance 2002 for recovery of amount was partly decreed in his favour and against the defendant/appellant.

Issues: i) Whether suits for damages can be decreed without proof of every averment in the plaint?
ii) Whether it is necessary before filing suit for damages to give notice to the wrongdoer for publication of defamatory material?
iii) What are the ingredients which constitutes defamation under defamation Ordinance, 2002?

Analysis: i) The suits for damages cannot be decreed without proof and every averment in the plaint has to be separately and individually, proved by evidence, on each point. General, vague and scanty evidence cannot be relied upon. The damages suffered and the quantity of the amount claimed item-wise has to be proved by cogent evidence. Mere assertion in the plaint and replication in evidence is of no avail to the party.
ii) The provisions of special law make it clear that before initiating proceedings under the Ordinance ibid, one has to give fourteen days' notice to the wrongdoer within two months of the publication of defamatory material or its knowledge and if there is no response by the other side, then the suit for defamation can be filed under the law.
iii) The main ingredient constituting defamation is publication of defamatory statement in widely circulated newspaper or spoken in a large gathering which is not available in the instant case, therefore such necessary requirements are missing, hence, case does not fall under defamation Ordinance, 2002.

Conclusion: i) The suits for damages cannot be decreed without proof and every averment in the plaint has to be separately and individually, proved by evidence, on each point.
ii) One has to give fourteen days' notice to the wrongdoer within two months of the publication of defamatory material or its knowledge and if there is no response by the other side, then the suit for defamation could be filed under the law.
iii) The main ingredient constituting defamation under defamation Ordinance, 2002 is publication of defamatory statement in widely circulated newspaper or spoken in a large gathering.

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14. Lahore High Court
Muhammad Iqbal Khan, etc v. Rehmat Bibi, etc.
Civil Revision No.44 of 2010
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC3185.pdf

Facts: The respondent no. 01 filed suit for declaration on the basis of inheritance which was dismissed. Feeling aggrieved, the respondent no. 01 preferred an appeal which was allowed. Instant Civil revision was directed against the judgment & decree of learned appellate court.

Issue: i) What will be the status of allottee of property under the Colony if the allottee has not paid the full purchase money?
ii)Whether Bahawalpur Shariat Act (Qanun-e-Nifaz-e-Shariat Islamia 1951) could have repealed provisions of The Colony Act, 1912?

Analysis: i) According to Section 15 of Colony Act 1912, a purchaser from Government of land placed in possession of the land by order of the Collector is to be deemed a tenant of such land until the full amount of the purchase money with any interest due thereon has been paid and the other conditions set-forth in the statement of the conditions of sale issued by the Collector have been fulfilled.
ii) Bahawalpur Shariat Act (Qanun-e-Nifaz-e-Shariat Islamia 1951) repealed S. 5 of the Punjab Laws Act, 1872 and made the Mohammadan Law of Succession applicable to all cases of inheritance of Mohammadans. It was published in the gazette on 5th of March, 1951 but had received assent on 4th of March, 1951. Bahawalpur Shariat Act (Qanun-e-Nifaz-e-Shariat Islamia 1951) was a general statue dealing with Government Grants & tenancies. Bahawalpur Shariat Act which is a general statue cannot repeal provisions of the Colony Act, 1912 which is a special enactment.

Conclusion: i) The status of allottee of land under the Colony Act 2012 would be that of tenant till payment of amount settled with Government.

ii)Bahawalpur Shariat Act was a general statue and couldn't have repealed provisions of The Colony Act, 1912 which is a special enactment.

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15. **Lahore High Court**
Muhammad Arif, etc v. Aziz-ur-Rehman, etc.
Writ Petition No.4348 of 2011
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC3194.pdf

Facts: Through this constitutional petition, the petitioners called in question the validity and legality of judgment/order of the learned trial and appellate Court; whereof the documents exhibited by them were de-exhibited on the ground that the petitioners remained fail to produce said documents at the time of institution of the suit and mention them in the list of reliance.

Issues: i) Whether the documents which were neither produced at the time of institution of the suit nor relied upon in the list of reliance, can be produced at the subsequent stage of the proceedings?
ii) Whether the Court can de-exhibit the documents at any subsequent stage which were exhibited without any objection?

Analysis: i) If a party rely on any document, he should have filed the same along with the plaint, and if he relies on any other documents, whether or not in his possession or power, as evidence in support of his claim then such documents are required to be entered in a list to be added or annexed to the plaint as provided in Rule 14 of Order VII C.P.C. That provision of law laid down that no documentary evidence in possession or powers of any party which should have been but has not been produced in accordance with the requirement of Rule 1 shall be received at any stage of the proceedings unless good cause is shown to the satisfaction of the Court for non-production thereof and the Court receiving any such evidence shall record the reasons for doing so.
ii) When a document has been exhibited in evidence without any objection and the same was allowed to be brought on record by the court could be deemed as proved in all respect. The party not objecting for production of such documents in court would be presumed to have waived such objection. However, the court is not prevented from adjudicating its nature, whether it is valid or not, or whether it is fake or not. The expression of de-exhibit is not defined nor mentioned in the Code of Civil Procedure. Although Rule 3 of Order XIII empowers the Court that it can reject irrelevant or inadmissible documents but it is not the intention of legislation to remove the documents from the record after they have been received and marked as Exhibit.

Conclusion: i) The documents which were neither produced at the time of institution of the suit nor relied upon in the list of reliance cannot be produced at the subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court and

the Court shall record the reasons for doing so.

ii) When a document was exhibited in evidence without any objection and the same was allowed to be brought on the record; it cannot be de-exhibited at any subsequent stage.

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16. **Lahore High Court**
Muhammad Ramzan v.The State etc.
Criminal Revision No.15474 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC3171.pdf

Facts: The petitioner filed instant revision petition against order passed by learned ASJ vide which application of the petitioner was dismissed to the effect of declining exclusion of hearsay evidence, recording of objections and decision thereon as per law.

Issues: i) What are different forms and classification of judicial evidence?
ii)What is relevant evidence?
iii) What is the concept of admissibility of evidence in the light of exclusionary rules of evidence?
iv) Whether relevant evidence is always admissible under the rules of evidence?
v) What the expressions "relevancy" & "admissibility" mean?
vi) When hearsay evidence even relevant is excluded?
vii) What facts are open to proof or disproof in court of law?
viii) How and when the court should decide objections with regard to admissibility of any evidence?

Analysis: i) Judicial evidence takes only three forms, namely (i) oral evidence, (ii) documentary evidence and (iii) things. Judicial evidence, however, is open to classification not only in terms of the form in which it may be presented in court but also in terms of its substantive content, the purpose for which it is presented and the rules by which its admissibility is determined. Thus, any given item of judicial evidence may attract more than one of the labels by which the varieties of evidence have been classified. The principal labels are (i) Testimony, (ii) Hearsay Evidence, (iii) Documentary Evidence, (iv) Real Evidence and (v) Circumstantial Evidence.

ii) It reads in Chapter-1, Part: E of High Court Rules & Orders that in recording evidence, Magistrates should take care to see that it is relevant & admissible under the provisions of the Qanun-e-Shahadat, 1984. Chapter-III of QSO, 1984 deals exhaustively with production of relevant evidence, while Article 18 ordains that evidence may be given of “fact in issue” and “relevant fact”. Any evidence is relevant if it assisting the process of proving or disproving a fact in issue.

iii) Though by judicial reasoning relevant evidence is usually admissible but there are certain restrictions on admissibility depending upon the exclusionary rules of evidence. These artificial restrictions on the process of judicial reasoning known as the rules of evidence are not uniform in the policy they seek to implement. They may be classified according to their underlying policy; they are as under; (a) Structural rules (e.g., rules about the burden and standard of proof, authentication of exhibits), (b) Preferential rules (e.g., the best evidence rule), (c) Analytic rules

(e.g., the rules against hearsay), (d) Prophylactic rules (e.g., the rules generally excluding evidence of previous convictions), (e) Simplificatory rules (e.g., The rule permitting summaries of voluminous documents),. (f) Quantitative rules (e.g., rules requiring corroboration) (g) Policy-based rules (e.g., privileges), (h) Discretionary rules, designed to allow the judge to override the rules of evidence in the interest of justice or expedition.

iv) Two forms of admissibility are most common to be used to bring on record the relevant evidence, one whereof is Multiple admissibility i.e. where evidence is inadmissible for one purpose, it cannot be excluded if it is admissible for another and for example thereof an out of court statement maybe inadmissible for the purpose of proving the truth of its contents because of the rule against hearsay, but admissible as original evidence for the purpose of proving that this statement was made. The other form of admissibility is Conditional admissibility i.e. an item of evidence, viewed in isolation, may appear to be irrelevant and therefore inadmissible, but taken together with or seen in the light of some other item of evidence, its relevance may become apparent. Admissibility involves exclusively a determination of whether the law of evidence permits relevant evidence of a particular kind to be received by the court.

v) The expression "relevancy" & "admissibility" have their own distinct legal implications under the Qanun-e-Shahadat as, more often than not; facts which are relevant may not be admissible. A fact is "admissible" if it is relevant and not excluded by any exclusionary provision, express or implied. What is to be understood is that unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law. Inadmissible evidence cannot be received by the court, whatever its relevance and indeed however cogent it might have been.

vi) Hearsay evidence can be excluded, even though relevant, because of the danger of unreliability inherent in repeated statements and because it cannot be cross examined on effectively.

vii) The Facts which are open to proof or disproof in court of law are (i) facts in issue, (ii) relevant facts and (iii) collateral facts. Fact in issue is regarded as “factum probandum” i.e., the principal fact, whereas relevant fact is termed as “factum probans” i.e., the evidentiary fact from which the principal fact follows immediately or by inference, or from which existence or nonexistence of a fact in issue may be inferred. Collateral facts, sometime referred as ‘subordinate facts’ are of three kinds: (i) facts affecting the competence of witness (ii) facts affecting the credibility of a witness and (iii) facts, sometimes called ‘preliminary facts’ which must be proved as a condition precedent to the admissibility of certain items of evidence tendered to prove a fact in issue or a relevant fact. A collateral fact of the third kind may be illustrated by the reference to an exception to the rule against hearsay. All facts which are incidental to main fact or explanatory to it are regarded as relevant facts or collateral facts which can be deposed even carrying status as “*res gestae*” evidence. What facts could be incidental or explanatory to main fact have very elaborately been counted in Articles 21 and 22 of QSO, 1984. A fact which shows preparation of any fact in issue or relevant fact must be allowed to bring on record and similarly if some facts explain further, support or rebut any of the fact in issue or relevant fact could safely be made part of evidence.

viii) It is trite that any objection on admissibility of evidence by any party is to be attended by the court then and there and decide the same first so as to proceed

further in the matter. Such objection should not be reserved for its decision at the fag end of trial which usually skipped decision due to not reminding the court at that time and in this way inadmissible evidence is brought on record which prejudices the mind of the court, consequently led to wrong decision. While admitting evidence must refer gist of evidence or question to be asked, objection if any, reply thereto, and decision thereon before it is made part and parcel of judicial record.

Conclusion: i) Oral & documentary evidence and things are forms of evidence. Judicial evidence is classified as testimony, hearsay, documentary, real and circumstantial evidence.
ii) Any evidence is relevant if it assist the process of proving or disproving a fact in issue.
iii) The concept of admissibility of evidence is based on exclusionary rules of evidence which are (a) Structural rules (b) Preferential rules (c) Analytic rules, (d) Prophylactic rules, (e) Simplificatory rules, (f) Quantitative rules, (g) Policy-based rules (h) Discretionary rules.
iv) A "relevant" fact would be "admissible" unless it is excluded from being admitted, or is required to be proved in a particular mode(s) before it can be admitted as evidence, by the provisions of the Qanun-e-Shahadat.
v) Unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law.
vi) Hearsay evidence can be excluded, even though relevant, because of the danger of unreliability inherent in repeated statements and because it cannot be cross examined on effectively.
vii) The Facts which are open to proof or disproof in court of law are (i) facts in issue, (ii) relevant facts and (iii) collateral facts.
viii)If any objection is raised by any party on the form of a question or admissibility of a fact or evidence, it shall be attended by the trial court forthwith and the particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded in accordance with law.

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17. **Lahore High Court**
Gulfam v. The State etc.
Crl. Misc. No. 2781-B/2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC3127.pdf

Facts: Through this petition, petitioner has sought post arrest bail in case FIR registered under Sections 337-F(iii),337-A(i),334 PPC.

Issues: i) Whether tissue can be termed as organ or limb?
ii) Whether section 334 of PPC is applicable in case if missing of any tissue affects the functioning, power and capacity of any organ permanently?

Analysis: i) The definition and explanation of tissue as per medical literature hardly helps to label it as complete organ or limb of the human body. Obviously tissue is not an organ nor can it be termed as limb.

ii) If missing of any tissue affects the functioning, power and capacity of any organ permanently then at the most offence under Section 336 PPC "Itlaf-i-Salahiyat-i-Udw" would be attracted.

Conclusion: i) Tissue is not an organ or limb.
ii) If missing of any tissue affects the functioning and power of any organ then section 336 PPC would be attracted.

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18. **Lahore High Court**
Ghous Bakhsh v. Government of Punjab, etc.
Writ Petition No.855 of 2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC3163.pdf

Facts: Through the present constitutional petition, the petitioner, who is father of deceased constable, is seeking setting aside of order passed by respondent No.2 and direction to respondents No.1 to 3 for grant of benefits to the legal heirs of the deceased constable, after declaring the deceased constable as 'Shaheed' in terms of Rule 12 of Punjab Police Department Rules, 1989, since the deceased was murdered while performing his watch and ward duties.

Issue: Whether police official can be declared as 'Shaheed' in terms of Rule 12 of Punjab Police Department Rules, 1989, if he was murdered out of enmity while performing his watch and ward duties?

Analysis: Rule 12 has been couched in a simple and plain language and being free of any ambiguity and makes it clear that if the official/officer of police is killed in encounters including death in bomb blasts, riots, watch and ward duties or terrorist activities but not including death in accident, he is entitled to be declared as 'Shaheed' with all the benefits attached to such status. It does not exclude the applicability of the said Rule in cases where some officer/official is killed out of enmity. The self-assumed insertion/interpolation of such eventuality like personal enmity to deprive the legal heirs of deceased of such status is bereft of legal underpinnings.

Conclusion: If a police official dies during the performance of watch and ward duties and death does not fall under the ambit of an accident, the said official is entitled to grant of compensation in the category of „Shaheed". It does not exclude the applicability of the said Rule in cases where some officer/official is killed out of enmity.

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19. Lahore High Court
Bakhsha (deceased) through legal heirs etc. v. Sh. Qadir Bakhsh (deceased) through legal heirs etc.
Civil Revision No.138-D/2006
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC3232.pdf

Facts: The predecessor of the petitioners filed execution petition of pre-emption decree wherein the respondents no. 47 to 51 filed objection petition on the ground that pre-emption decree was not executable. The objection petition was accepted and decision was upheld in appeal. Both the findings have been impugned through the present civil revision.

Issues: i) What would be effect on rights of mortgagor of mortgaged property that is mutated in favor of central government as evacuee property?
ii) What would be status of right of pre-emptor if the pre-empted property is a mortgaged property?
iii) Whether the rule that executing court cannot go beyond the decree is absolute and invariable rule of law?

Analysis: i) It has become settled position of law that only the right and/or interest of the evacuee can be transferred to Custodian Authorities and/or the Central Government and the right of non-evacuee mortgagor to redeem the mortgaged property always remains in existence and would not be extinguished.
ii) Since the right of pre-emption is a mere right of substitution for one of the parties to the transaction, the defect in the title of the vendor or the vendee will be transferred to the pre-emptor along with the subject of sale, the necessary consequence of which would be that the pre-emptor's right can be defeated in the same manner in which vendee's right can be defeated by a person having locus standi to challenge the same.
iii) There is no cavil to the proposition that the executing court cannot go beyond the decree and it is obligated to adhere to the decree as it comes before it for execution but this rule is not an absolute and invariable rule of law rather the same is subject to certain exceptions as expounded by the superior courts. Thus the issue of the inexecutability can be validly raised in the execution proceedings.

Conclusion: i) Only interest of the evacuee can be transferred to Custodian Authorities and/or the Central Government and non-evacuee mortgagor's right to redeem remains in field.
ii) The defect in the title of the vendor or the vendee will be transferred to the pre-emptor along with the subject of sale.
iii) The rule that executing court cannot go beyond the decree is not absolute and invariable rule of law.

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20. **Lahore High Court**
Mst. Sharaini Bibi, etc v. Addl. District Judge, etc.
Writ Petition No. 218561 of 2018
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC3131.pdf

Facts: The petitioner through the instant Writ Petition has assailed the judgments and decrees of the learned Trial Court / Family Court and the Appellate Court through which her claims of past maintenance allowance and recovery of dowry articles was dismissed.

Issue: i) Whether delivery of dowry articles by parents to bride can generally be presumed if the rukhsati has taken place?
ii) Under what circumstances the Court can takes judicial notice of a fact?

Analysis: i) It has been held by the Hon'ble Superior Courts that giving dowry articles to daughters is in line with customs/traditions and practices which are deeply entrenched in the society and are followed by parents of all classes irrespective of their financial status. That, in an arranged marriage, and in line with customs which are deeply rooted and entrenched in our society, parents whether rich or poor always give dowry to their daughters at the time of marriage. In terms of the law laid down in "M. Jaffar v. Additional District Judge and others" (2005 MLD 1069) delivery of dowry articles can be presumed if Rukhsati takes place.
ii) Although the application of Qanun-e-Shahadat Order, 1984 has been deliberately ousted from the proceedings before Family Courts, however, the principles of proving a fact can be applied. Judicial notice is used by a court when it declares a fact presented as true without a formal presentation of evidence i.e. allowing a fact to be introduced into evidence if the truth of that fact is so notorious or well known, or so authoritatively attested, that it cannot reasonably be doubted. This rule is codified in Articles 111 and 112 of Qanun-e-Shahadat Order, 1984. Other than the facts mentioned in Article 112, no other fact can either be assumed or taken as proven without evidence; let alone be used as a basis for adjudication of rights. Neither the financial status of a girl's parents nor the custom of Pathans regarding dowry is one of such judicially noticeable facts, hence, none of these can either be inferred nor any judgment can be delivered on the basis of the same.

Conclusion: i) Delivery of dowry articles by parents to bride can generally be presumed if rukhsati takes place.
ii) The Court can takes judicial notice of a fact if the truth of that fact is so notorious or well known, or so authoritatively attested, that it cannot reasonably be doubted.

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21. Lahore High Court
Yar Muhammad v. Chairman, Pakistan Atomic Energy Commission, etc.
Writ Petition No.9656 of 2017
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC3321.pdf

Facts: Through this Constitutional petition, petitioner being a temporary employee sought claim of 'lien' in respect of a post of Tech-IV (SPS-I) in the Pakistan Atomic Energy Commission.

Issues: i) Under what principle the claim of a temporary employment is governed and whether the temporary employee falls under the definition of "Civil Servant"?
ii) Whether a temporary employee is entitled to claim lien in respect of the post?

Analysis: i) Claim of any right in respect of a temporary employment has been pronounced by Full Bench of Hon'ble Islamabad High Court to be governed under the principle of "master and servant" and the rules regulating the employees and their terms of service will continue to enjoy the status of being non statutory unless two specific conditions are fulfilled i.e approval by the Federal Government, meaning the Federal Cabinet and its notification in the official gazette. It is noted that these two conditions are for the purpose of clarity and does not impose a binding obligation on the Federal Government to give its approval. The Federal Government may or may not alter the non-statutory status of the rules by giving approval and thereafter notifying it in the official gazette.
ii) Rule-3 of the Civil Servants (Confirmation) Rules, 1993 clearly states that confirmation of an employee initially appointed to a post on probation shall only be made against a permanent post. Even more interesting is Rule-4 of the said Rules which rules out automatic confirmation and provides a method and regime for the purpose of confirmation. Hence, confirmation in service or for that matter gaining permanence in service is not automatic but is subject to further administrative action delineated in Rule-4 of the Civil Servants (Confirmation) Rules, 1993. Rule 5 of the Civil Servants (Confirmation) Rules, 1993 which speaks about lien is only triggered and comes into play when once an employee gains confirmation in a permanent post. In terms of the applicable legal regime an employee working with and in the Federal Government can only claim lien if the two riders of confirmation or permanence in respect of a permanent and not a temporary post are met. This is significant since only when an appointment gains the status of permanence and only when such permanent employee is sent to some other department, he while still remaining a permanent employee of the parent department, can retain lien on the post at his parent department.

Conclusion: i) Claim of any right in respect of a temporary employment is to be governed under the principle of "master and servant" and it does not fall under the definition of "Civil Servant".
ii) A temporary employee is not entitled to claim lien in respect of the post.

LATEST LEGISLATION/AMENDMENTS

1. The definition of "biometric verification" is included and Rule 4.107-A is newly inserted in the Subsidiary Treasury Rules issued under the Treasury Rules (Punjab)

SELECTED ARTICLES

1. **HUMAN RIGHTS QUARTERLY (JOHNS HOPKINS UNIVERSITY PRESS)**
https://muse.jhu.edu/article/853936

The Application of Human Rights Treaties in Dualist Muslim States: The Practice of Pakistan by Niaz A. Shah

I argue that Islamic law treats ratified human rights treaties as part of the law of the land and as directly applicable in courts in Muslim states such as Pakistan where Sharia is the main source of law. The Islamic approach is the better and more effective approach for the enjoyment of human rights. Article 227(1) of the 1973 constitution of Pakistan demands Islamization of all existing laws and prohibits the enactment of laws incompatible with Islamic law. Pakistan has failed to Islamize its constitutional provisions on the ratification and status of ratified treaties and continues to practice the dualist doctrine inherited from the British colonial era. Pakistan has acceded to seven core human rights treaties, but they are not incorporated in the legal system of Pakistan. This has led to a legal culture where human rights treaties are seen as applicable on the international plane only. I make a case for the Islamization of the constitutional provisions in relation to human rights and other treaties and until the constitution is amended under Article 227(1), I propose an ad hoc framework for relying on unincorporated human rights treaties and customary international law based on the developed British dualist doctrine which will contribute to the enjoyment of human rights in Pakistan.

2. **MANUPATRA**

https://articles.manupatra.com/article-details/Right-to-vote-A-legal-right

Right to vote: A legal right by Amit Pandey and Swastika Sharma

A Democratic state is a state where a person can elect his representative by voting a candidate of his choice and that person will be responsible to govern the state. In the process of election one vote is enough to determine the win and loss of the party. Power of one vote cannot be ignored as it is sufficient to make a person representative of everyone. Hence ignoring one voter will affect the security of all. Each person is responsible not only for his security but also for the security of everyone. Vote is an instrument by which a person elects his representative to represent him before the sovereign and the elected representative reflects and represents the people by whom he is elected. Voting is one of the biggest assets available to the people of a democratic country. If a

person is elected through voting his accountability towards the public increases as a result of which his performance and work for public welfare becomes for accurate which further results in creation of a welfare state. Vote is to express one's opinion formally, as at an election. Voting simply means making a choice between two parties or two candidates by casting a ballot or by raising your hand or by any other way to manifest your choice and that chosen candidate who received maximum votes will be the winner and the face of the people of the nation. One of the most critical ways that individuals can influence governmental decision-making is through voting. Voting is a formal expression of preference for a candidate for office or for a proposed resolution of an issue. Voting generally takes place in the context of a large-scale national or regional election, however, local and small-scale community elections can be just as critical to individual participation in government.

3. **MANUPATRA**

https://articles.manupatra.com/article-details/THE-PERNICIOUS-SYSTEM-OF-DOWRY-A-SOCIAL-DISGRACE

The pernicious system of dowry: A social disgrace By Anshika Singh

The practice or tradition of dowry is prevalent from ancient India and is still actively pervasive in many parts of the country. It is a well-accepted truth that dowry is a custom practiced in the Indian community, that influences several menaces upon a female life. The verbatim or literal meaning of dowry can be understood by mentioning a voluntary act or custom of giving property, money, or valuable goods to the groom or his family as security and consideration for the bride's portion of her marriage. Dowry is one of the most prominent and major challenges faced by the women of India. Though the wealth and property received by the bride were considered as a financially independent means of sustaining her livelihood even if the marriage is dissolved, it never served the concerning purpose and has always shown and reflected its ill effects at worst. The threatening ritual of dowry is one of the fundamental root causes of all the acts of violence faced by women. This evil practice if not fulfilled by the bride's family can not only result in taking away her mental, physical and emotional peace but can also her life. This article primarily aims to shed some light on the major issues, challenges, causes, and judicial interpretations on the subject of the dowry system in India. The author fundamentally focuses on critical analysis of the issue and conducts an evaluative and interpretative study of the menace. This article also aims to provide the reader with plausible solutions and recommends certain practical approaches to address the issue for its eradication from society.

4. **SPRINGER LINK**

https://link.springer.com/article/10.1007/s42439-022-00061-w

The End of Globalization: Cosmopolitanism, Militancy, and the Promises of Jus Cogens by Claudio Corradetti

The new millennium has now begun and the world commercial exchanges are progressively shrinking. Is the end of globalization also the end of liberal cosmopolitan values? Will the new millennium see an unreserved struggle

between nationalist autocracies and cosmopolitan states? Can we reconcile cosmopolitanism with selective citizenship? Cosmopolitanism and globalization are not — in principle — coextensive terms. This has never been so since the first modern theorizations of liberal cosmopolitanism. Kantian cosmopolitanism, for instance, never required but simply permitted a globalized world. Kant's notion of "the right to visit" ultimately understood as non-refoulement is the quintessential, non-derogable, protection that cosmopolitanism requires, but one which excludes the possibility that commercial visits are also mandatory rights. Kant's cosmopolitanism can afford itself to survive in a minimalist way even if it incorporates a constructivist — maximalist — dynamic. In times of hardships, as they are today, cosmopolitanism should be seen in terms of militant cosmopolitanism.

5. YALE LAW JOURNAL

https://www.yalelawjournal.org/article/whose-child-is-this

Whose Child Is This? Improving Child-Claiming Rules in Safety-Net Programs by Jacob Goldin & Ariel Jurow Kleiman

To address the staggering problem of child poverty in the United States, policymakers distribute a host of safety-net and transfer programs designed to support children and families. All of these programs require rules to determine how benefits are distributed. Among the more important of these are "child-claiming" rules. These rules determine which adults can receive benefits for which children, driving how well a program helps recipients and satisfies societal goals. This Article critically assesses the design of child-claiming rules for safety-net programs, using as case studies the Child Tax Credit and the Earned Income Tax Credit. It considers how best to design child-claiming rules to achieve specific program goals, the foremost of which is supporting children's well-being. This analysis illustrates that no single rule regime dominates. Rather, policymakers must compromise between important objectives such as channeling benefits to children's caregivers and providing flexibility to claimants' households. Informed by a principle-driven framework, the Article considers how best to navigate these difficult tradeoffs and proposes specific child-claiming rules under several different benefit structures. The analytical framework can inform the design of administrable and inclusive child-claiming rules across safety-net programs.

6. HAVARD LAW REVIEW

https://harvardlawreview.org/2022/05/assembly-line-plaintiffs/

Assembly-Line Plaintiffs by *Daniel Wilf-Townsend*

Around the country, state courts are being flooded with the claims of massive repeat filers. These large corporate plaintiffs leverage economies of scale to bring tremendous quantities of low-value claims against largely unrepresented individual defendants. Using recently developed litigation-analytics tools, this Article presents the first nationwide study of these "assembly-line plaintiffs,"

examining the top civil filers in a range of state courts across the country going back to 2004. It documents the pervasive nature of this litigation, finding that in many court systems just the top ten private filers account for between one fifth and one third of all civil litigation. This pattern raises serious concerns. Drawing on existing empirical literature and a sample of 1000 recent case dockets, the Article describes how these cases turn state courts into near-automatic claims processors for large corporations, transferring assets from mostly absent defendants without significant scrutiny of the underlying claims. These defendants, moreover, are often particularly vulnerable low-income consumers or members of other marginalized groups. And although many concerns raised by this litigation overlap with those related to unrepresented litigants more broadly, the structural features of assembly-line litigation — its one-sidedness, high volume, and low claim value — present distinctive challenges. The Article concludes by considering a few specific potential reforms designed to meet those challenges: assessing a surcharge on frequent filers as a form of congestion pricing; enabling common defenses to be asserted as affirmative causes of action to facilitate aggregation; and moving courts away from one-case-at-a-time adjudication toward a more investigative, administrative-agency-like model.