LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN
(16-04-2022 to 30-04-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Zone-IV, Lahore v. M/s Panther Sports & Rubber Industries (Pvt.) Ltd, etc.
Civil Petition No.1691-L of 2018
Mr. Justice Umar Ata Bandial, HCJ. Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1691_l_2018.pdf

Facts: Through this petition, the petitioner seeks leave to appeal against order of the High Court whereby the notices issued to the respondent taxpayer in the years 2017 regarding tax years 2007 and 2009, seeking statements under section 165 of the Income Tax Ordinance, 2001, reconciliation statements under Rule 44(4) of the Income Tax Rules, 2002 and recovery under Section 161(1A) of the Ordinance were set aside on the ground that a taxpayer cannot be asked to furnish record beyond the period of six years after the end of the tax year to which it relates, as provided under Section 174(3) of Income Tax Ordinance, 2001.

Issues: Whether the taxpayer can be compelled to produce the record for a tax year beyond the period of six years and notice beyond a period of six years can be given effect to?

Analysis: A taxpayer is obliged to maintain the record under section 174(3) of the Income Tax Ordinance, 2001 for a period of six years and the taxpayer cannot be compelled to produce the record for a tax year beyond the period of six years as stipulated in section 174(3) of the Income Tax Ordinance, 2001. Since the aforesaid provisions of law require taxpayer to maintain record for a period of six years, hence notice beyond a period of six years cannot be given effect to.

Conclusion: The taxpayer cannot be compelled to produce the record for a tax year beyond the period of six years and notice beyond a period of six years cannot be given effect to.

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2. **Supreme Court of Pakistan**
Chairman, NAB through PG, NAB v. Nisar Ahmed Pathan & others
Civil Petitions No.1628 to 1636 of 2020.
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1628_2020.pdf

Facts: The Chairman, National Accountability Bureau through these petitions, seeks leave to appeal against the order passed by the High Court of Sindh on the constitutional petitions filed by the respondents under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, whereby the post and pre

arrest bails have been granted to them in NAB Reference pending trial in the Accountability Court, Sukkur for the alleged offence of corruption and corrupt practices, as defined in Section 9 and punishable under Section 10 of the National Accountability Ordinance 1999.

Issues: i) What is scope of interference to be made for the cancellation of bail?
ii) What is perverse order?
iii) Whether deeper appreciation of evidence is permissible at bail stage?
iv) What is perverse opinion?
v) Whether the concept of bail is borrowed from section 497 of Cr.P.C in NAB cases?
vi) Where two opinions can reasonably be formed on the basis of the same material, what course the courts should prefer and act upon?

Analysis: i) The scope of the interference to be made by this Court in its appellate jurisdiction, in such like matters, is well settled and hardly needs reiteration. This Court usually interferes on two grounds: (i) when the impugned order is perverse on the face of it, or (ii) when the impugned order has been made in clear disregard of some principle of the law of bail.
ii) A perverse order is the one that has been passed against the weight of the material on the record or by ignoring such material or without giving reasons; such order is also termed as arbitrary, whimsical and capricious.
iii) While it is one of the elementary principles of the law of bail that courts are not to indulge in the exercise of a deeper appreciation of material available on record at the bail stage and are only to determine tentatively, by looking at such material, whether or not there exist any "reasonable grounds" for believing that the accused person is guilty of the alleged offence.
iv) When two opinions can reasonably be formed on the basis of the same material, both pass as a plausible opinion; while it can be argued that one opinion is more or less plausible than the other, none of them can be termed as a perverse opinion. A perverse opinion is the one which no prudent person can reasonably form on the basis of the material available on record.
v) In NAB cases, the standard of "reasonable grounds" for making a tentative assessment of the material available on record to decide in constitutional jurisdiction under Article 199 of the Constitution, the question of detaining an accused in prison, or admitting him to bail, during his trial for the alleged offence under the NAB Ordinance is not borrowed from Section 497 CrPC, rather it emanates from the fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention guaranteed by the Constitution under Articles 9, 10, 10-A & 14 and from the operational scheme of the NAB Ordinance.
vi) Where two opinions can reasonably be formed on the basis of the same material, the courts should prefer and act upon that which favours the accused person and actualizes his fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention. To err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair

the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial.

Conclusion: i) This Court usually interferes on two grounds in bail granting order: (i) when the impugned order is perverse on the face of it, or (ii) when the impugned order has been made in clear disregard of some principle of the law of bail.
ii) A perverse order is the one that has been passed against the weight of the material on the record or by ignoring such material or without giving reasons.
iii) It is one of the elementary principles of the law of bail that courts are not to indulge in the exercise of a deeper appreciation of material available on record at the bail stage.
iv) A perverse opinion is the one which no prudent person can reasonably form on the basis of the material available on record.
v) Question of bail in NAB cases is not borrowed from Section 497 CrPC, rather it emanates from the fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention guaranteed by the Constitution under Articles 9, 10, 10-A & 14 and from the operational scheme of the NAB Ordinance.
vi) Where two opinions can reasonably be formed on the basis of the same material, the courts should prefer and act upon that which favours the accused person and actualizes his fundamental rights. To err in granting bail is better than to err in declining.

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3. Supreme Court of Pakistan
Gulzar Ahmad, etc. v. Muhammad Aslam, etc.
Civil Appeal No. 1005 of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1005_2009.pdf

Facts: This Civil Appeal has been brought to challenge the judgment dated passed by Lahore High Court in RSA, whereby, the appeal was dismissed and the judgment passed by Additional District Judge Gojra was maintained.

Issues: i) Whether the second appeal lies to the High Court against the findings on facts?
ii) Whether a party to a contract for the sale of immovable property should be allowed to evade specific performance merely because the agreement provides the penalty to be paid on default?
iii) When a person desires any court to give judgment as to any legal right or liability, whether burden lies on him to prove that those facts exist?
iv) Whether the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence?
v) Whether specific performance of a contract may be enforced against any person claiming title subsequently to the contract?

Analysis: i) Compliant with Section 100 CPC, the second appeal only lies in the High Court on the grounds that the decision is being contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law for the time being in force which may possibly have emanated an error or slip-up in the determination or decisiveness of the case on merits. Meaning thereby, it does not lie to question the findings on facts.

ii) A contract otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in the case of its breach and the party in default willing to pay the same. In this backdrop a party to a contract for the sale of immovable property should not be allowed to evade specific performance merely because the agreement provides the penalty to be paid on default.

iii) According to Article 117 of Qanun-e-Shahadat Order, 1984, a person desires any court to give judgment as to any legal right or liability, burden lies on him to prove that those facts exist.

iv) Under Article 119 of QSO the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

v) Specific performance of a contract may be enforced against any person claiming title subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Mere denial by the subsequent vendee that he had no knowledge of the prior agreement would not enough to discharge his burden of proof. It is also to be proved by the subsequent vendee that he acted in good faith and after due diligence entered into an agreement to sell. A subsequent vendee avowing bona fide intention cannot be absolved from making some cursory investigation to the title of the vendor which may include but not limited to invite public objections through public notices in order to articulate that there was no deception or fouled intention to move in the transaction and he acted in good faith or with bona fide intention without knowledge or notice of earlier sale agreement at the time of his transaction. He proceeded as a man of ordinary prudence in making inquiries anticipated as purchaser before acquiring a title of the property.

Conclusion: i) Second appeal does not lie to the High Court against the findings on facts.

ii) A party to a contract for the sale of immovable property should not be allowed to evade specific performance merely because the agreement provides the penalty to be paid on default.

iii)When a person desires any court to give judgment as to any legal right or liability, burden lies on him to prove that those facts exist.

iv) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.

v) Specific performance of a contract may be enforced against any person claiming title subsequently to the contract.

4. Supreme Court of Pakistan
M/s T & N Pakistan Private Limited v. The Collector Customs etc.
Civil Petition No.1896-L of 2020
Mr. Justice Umar Ata Bandial, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1896_l_2020.pdf

Facts: This Civil Petition for Leave to Appeal is directed against the judgment passed by Lahore High Court, Lahore, in Custom Reference which was decided against the petitioner.

Issues: i) In what circumstances Federal Government may exempt from custom duties?
ii) What is scope of remedy of reference application under section 196 Customs Act?

Analysis: Section 19 of the Custom Act, 1969, germane to the General power to exempt from customs duties. The Federal Government whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in the emergency situations, protection of national economic interests in situations arising out of abnormal fluctuation in international commodity prices, implementation of bilateral and multilateral agreements and to any International Financial Institution or foreign government owned Financial Institution operating under a memorandum of understanding, an agreement or any other arrangement with the Government of Pakistan, subject to such conditions, limitations or restrictions, if any, as it deems fit to impose, may, by notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under this Act.
ii) The fact findings recorded by the Tribunal, unless wrong-headed or unjustified in fact and law the same cannot be interfered in referral jurisdiction. The precise intent of remedy of reference provided under Section 196 to resolve and adjudicate only the question of law originating and stemming from the order passed by the Appellate Tribunal.

Conclusion: i) Under section 19 of custom Act, whenever circumstances exist to take immediate action for the purposes of national security, natural disaster etc Federal Government may exempt custom duties on any goods imported into, or exported from, Pakistan.
ii) Reference Application is a remedy meant for deciding and answering a question of law which should arise from the order passed by the Customs Appellate Tribunal and fact findings recorded by the Tribunal cannot be interfered in referral jurisdiction.

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5. **Supreme Court of Pakistan**
Farid Ullah Khan v. Irfan Ullah Khan
Civil Petition No. 287 of 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._287_2019.pdf

Facts: Petitioner seeks leave to appeal against the judgment of the Peshawar High Court, whereby his revision petition filed against the concurrent judgments passed against him by the trial and appellate courts was dismissed.

Issues: i) Whether delay in making Talb-i-Muwathibat, legally defeats right of pre-emption?
(ii) What are the essential elements of Talb-i-Muwathibat and how the same could be proved?
(iii) What is the nature of right of pre -emption and when the same is extinguished?
iv) What are the consequences where Talb-i-Muwathibat is not proved in accordance with law?
v) Generally, Superior Courts do not interfere with the concurrent findings of facts of the courts below. Whether this rule is absolute?

Analysis i) This crucial delay on his part to make Talb-i-Muwathibat, upon obtaining knowledge of the sale of the suit land, legally defeats his right of pre-emption.
ii) The fact of a sale of land is a fact that can be seen, such as, by observing or taking part in the sale -transaction or by seeing the sale deed or sale mutation. The person who conveys the information of the fact of sale must be a person who has seen the fact of sale and it is he who can then pass on the said fact to another person(s). Thus, the chain of the source of information, as to the fact of sale, from the very first person, who has the direct knowledge thereof and passes on the same to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat, which are: (i) the time, date and place when the pre -emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information.
iii) Needless to mention that right of pre-emption is of a feeble nature as it stands extinguished if the Talbs are not made in accordance with the law, and it is also deemed to have been waived, if the pre-emptor has acquiesced in the sale or has done any other act of omission or commission which amounts to waiver of the right of pre-emption.
iv) When the first and primary Talb, that is, Talb-i-Muwathibat , is found to have not been proved, we need not examine the evidence on the making of the second Talb , that is, Talb-i-Ishhad , as where Talb-i-Muwathibat is not proved to have been made then the performance of Talb-i-Ishhad and all other requirements to successfully enforce the right of pre-emption cannot withstand. The foundation of

the right of pre -emption rests on the making of Talb-i-Muwathibat; if it is not made in accordance with the law, the entire superstructure collapses.

v) The scope of interference by this Court with the concurrent finding of the courts below, as authoritatively expounded by a five-member larger bench of this Court in Federation v. Ali Ihsan, is well settled. This Court does not normally go behind a concurrent finding of fact, if that finding is not vitiated by any error in point of law, but this rule is not a cast-iron one, and there may be cases of such an unusual nature as will constrain the Court to depart from it in order to prevent a miscarriage of justice. This Court, therefore, does not hesitate to review the evidence in spite of a concurrent finding of the courts below, if it be shown with absolute clearness that some substantial error is apparent in the manner in which the courts below have dealt with the facts, or if the finding is on the face of it against the evidence or so patently improbable or perverse that to accept it would amount to perpetuating a grave miscarriage of justice.

Conclusion: i) Crucial delay in making Talb-i-Muwathibat, upon obtaining knowledge of the sale of the suit land, legally defeats right of pre-emption.

ii) Essential elements of Talb-i-Muwathibat are: (i) the time, date and place when the pre -emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information. To prove Talb-i-Muwathibat, the chain of the source of information as to the fact of sale, from the very first person who has the direct knowledge thereof and passes on the same to the person who lastly informs the pre-emptor, must be complete.

iii) Right of pre-emption is of a feeble nature as it stands extinguished if the Talbs are not made in accordance with the law, and it is also deemed to have been waived, if the pre-emptor has acquiesced in the sale or has done any other act of omission or commission which amounts to waiver of the right of pre-emption.

iv) The foundation of the right of pre-emption rests on the making of Talb-i-Muwathibat; if it is not made in accordance with the law, the entire superstructure collapses.

v) Generally, Superior Courts do not interfere with the concurrent findings of facts of the courts below but this rule in no way an absolute one and, admits exceptions depending on the facts and circumstances of each case, if it be shown with absolute clearness that some substantial error is apparent in the manner in which the courts below have dealt with the facts, or if the finding is on the face of it against the evidence or so patently improbable or perverse that to accept it would amount to perpetuating a grave miscarriage of justice.

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6. **Supreme Court of Pakistan**

Federation of Pakistan through its Secretary, Finance, Islamabad and another v. E-Movers (Pvt.) Limited and another.

Civil Petition No. 280-K of 2019

Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan

https://www.supremecourt.gov.pk/downloads_judgements/c.p._280_k_2019.pdf

Facts: Constitutional Petition was filed before the High Court of Sindh at Karachi by E-Movers (Private) Limited wherein the Federation of Pakistan, the Federal Board of Revenue, and NLC Construction Solutions (Private) Limited were respectively arrayed as respondents No. 1, 2, and 3. The High Court allowed the petition vide judgment which is impugned in this civil petition for leave to appeal ('this petition').

Issues: i) Whether Rule 17 of the Procurement Rules permits a company who had not participated in the bidding process, to be invited, and without meeting the stipulated criteria in the Expression of Interest to be awarded the Contract?
ii) Whether rule 17 certainly permits a company which does not possess requisite technical skills and ability to undertake a project and to award it a contract for the same?
iii) Whether the Tracking and Monitoring of Cargo Rules, 2012 stipulate that no company shall carry out tracking and monitoring of cargo unless it has obtained a license under these rules, and prescribed the criteria for grant of a license?

Analysis: i) The Public Procurement Rules, 2004 were made pursuant to section 26 of the Public Procurement Regulatory Ordinance, 20027 (respectively, 'the Procurement Rules' and the 'the Procurement Ordinance' and collectively 'the procurement laws'). The Procurement Ordinance was enacted 'for regulating public procurement of goods, services and works in the public sector' and to ensure that the public procurement of goods and services is done in accordance with the applicable 'laws, rules, regulations, policies and procedures'. Rule 17 of the Procurement Rules enables a procurement agency to require from a potential contractor 'to provide information concerning their professional, technical, financial, legal or managerial competence.' Rule 17 also does not permit a company, in this case NCSPL, who had not participated in the bidding process, to be invited, and without meeting the stipulated criteria in the Expression of Interest to be awarded the Contract.
ii) Rule 17 certainly does not permit a company which did not possess requisite technical skills and ability to undertake a project and to award it a contract for the same.
iii) The Tracking and Monitoring of Cargo Rules, 2012 stipulate that no company shall carry out tracking and monitoring of cargo unless it has obtained a license under these rules, and prescribed the criteria for grant of a license.

Conclusion: i) Rule 17 of the Procurement Rules does not permit a company who had not participated in the bidding process, to be invited, and without meeting the stipulated criteria in the Expression of Interest to be awarded the Contract.
ii) Rule 17 certainly does not permit a company which does not possess requisite technical skills and ability to undertake a project and to award it a contract for the same.

iii) The Tracking and Monitoring of Cargo Rules, 2012 stipulate that no company shall carry out tracking and monitoring of cargo unless it has obtained a license under these rules, and prescribed the criteria for grant of a license.

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7. Supreme Court of Pakistan
Sardar Ali Khan v. State Bank of Pakistan & others
Civil Petition No. 803 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._803_2019.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by Peshawar High Court, whereby Civil Revision was disposed of in terms of Suo Motu action initiated by Supreme Court regarding non-Payment of retirement benefits by the relevant departments.

Issues: In what circumstance a Court can go behind concurrent findings of a fact by the Courts below?

Analysis: The petitioner throughout the proceedings failed to highlight any non-reading or misreading of evidence nor any illegality or irregularity was pointed out.....This Court could not go behind concurrent findings of fact unless it can be shown that the finding is on the face of it against the evidence or so patently improbable, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible.

The issue of the Staff Circular has already taken into consideration by this Court in the aforesaid judgment which cannot be questioned or re-agitated by the petitioner for de novo consideration. The learned counsel for the petitioner miserably failed to accentuate or draw our attention to any defect or perversity in the concurrent findings recorded by the Trial Court and Appellate Court as well as in the impugned judgment of High Court.

Conclusion: A Court cannot go behind concurrent findings of fact unless it can be shown that the finding is on the face of it against the evidence or so patently improbable, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible

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8. Supreme Court of Pakistan
Muhammad Amjad Shahzad v. Muhammad Akhtar Shahzad and another
Criminal Petition No. 124 of 2022.
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._124_2022.pdf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks cancellation of bail granted to the respondent by the learned Lahore High Court, Lahore in case registered under Sections 302/109 PPC.

Issues: i) Whether divergent statement of one of the witness to the earlier statement made under Section 161 Cr.P.C., brings the case of prosecution within the ambit of Section 497(2) Cr.P.C?
ii) Whether prosecution witness at any stage can repudiate from his/her earlier statement?

Analysis: i) It is apathy to point out that the main ground on which the learned single bench granted post-arrest bail to the respondent is that one of the witness has taken a somersault contrary to the earlier statement made under Section 161 Cr.P.C. and filed a private complaint wherein she has advanced a story altogether different to the story advanced by the prosecution. This solitary ground, if taken in favour of the respondent, it will open new avenues, contrary to the safe administration of criminal justice whereby at any stage if one of the witness makes a divergent statement to the earlier one bringing the case within the ambit of Section 497(2) Cr.P.C. then it will transform into mockery in the eyes of law. We have noticed that it has become customary in number of cases that each one of the witness after settling his score with the accused party comes forward to file a complaint contrary to the prosecution case with an intent just to frustrate the case of the prosecution. This practice cannot be ordained in any manner.
ii) The prosecution witness at any stage may repudiate from the earlier statement and can make a divergent statement before the court during the course of trial enabling the prosecution an opportunity to get him declared hostile and cross-examine so that truth can be brought on the record.

Conclusion: i) Divergent statement of one of the witness, to the earlier statement made under Section 161 Cr.P.C., does not bring the case of prosecution within the ambit of Section 497(2) Cr.P.C.
ii) The prosecution witness at any stage may repudiate from the earlier statement and can make a divergent statement before the court during the course of trial enabling the prosecution an opportunity to get him declared hostile and cross-examine so that truth can be brought on the record.

9. **Supreme Court of Pakistan**
Malik Muhammad Riaz v. Muhammad Hanif & others
Civil Appeal No. 18-K of 2020
Mr.Justice Sajjad Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._18_k_2020.pdf

Facts: This Civil Appeal is directed against the judgment of the learned High Court, whereby the concurrent findings recorded by the learned Trial Court and learned first Appellate Court were upset and the civil suit filed by the appellant was dismissed.

Issues: What is the standard of proof for grant of compensation for alleged loss or the irreparable losses or mental agony?

Analysis: In order to grant compensation for alleged loss or the irreparable losses or mental agony, the learned Trial Court is required to settle issue specifically and then record specific findings on the basis of available convincing evidence. Compensation cannot be allowed merely on the ground those in terms of Section 73 of Contract Act, 1872. In case of non-framing of specific issue by the court, the party can apply for framing such specific issue regarding the claim of damages.

Conclusion: In order to grant compensation, the learned Trial Court is required to settle issue specifically and then record specific findings on the basis of available convincing evidence.

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10. **Lahore High Court**
Muhammad Hamza Shahbaz Sharif v. Province of Punjab and 02 others.
Writ Petition No. 24320/2022
The Chief Justice Mr. Justice Muhammad Ameer Bhatti
https://sys.lhc.gov.pk/appjudgments/2022LHC2975.pdf

Facts: Through this Constitutional petition the reluctance of the Governor of the Punjab to administer oath of the newly elected Chief Minister Punjab has been called-in-question.

Issues: When Governor is absent or unable to perform his functions, whether the President may nominate the speaker of Provincial Assembly and in his absence any other person for administration of newly elected Chief Minister's oath?

Analysis: When the Governor is absent or unable to perform his functions, the President of Pakistan may exercise his power provided under Article 104 of the Constitution of Islamic Republic of Pakistan, 1973, for nomination of another person, keeping in view the peculiar circumstances, for administration of newly elected Chief Minister's oath.

Conclusion: When the Governor is absent or unable to perform his functions, the President may nominate the speaker of Provincial Assembly and in his absence any other person for performance of function of Governor.

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11. Lahore High Court
Muhammad Hamza Shahbaz Sharif v. Federation of Pakistan and 04 others.
Writ Petition No. 25671/2022
The Chief Justice Mr. Justice Muhammad Ameer Bhatti
https://sys.lhc.gov.pk/appjudgments/2022LHC3096.pdf

Facts: Mandate of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution) relating to formation of the Provincial Government not being followed, reflecting from the reluctance of the Governor to take oath and consequently non exercise of power, in such eventuality, by the President of Pakistan, has been called-in-question through this constitutional petition.

Issues: i) Whether escaping to administer oath by the Governor himself is permissible?
ii) Whether writ petition is not maintainable as providing the relief claimed is out of domain of the Court's power?

Analysis: i) As the Oath is to Almighty Allah and not to the Governor, who carries-out ministerial act of administering oath, therefore, in the eventuality when he is incapable and is not willing to administer oath or when he is impracticable for any reason, and on the other hand his act of avoiding to nominate any other person amounts to transgressing the constitutional mandate as despite lapse of nine days from election of the Chief Minister, administration of oath is being avoided. It is noticed that election of the Chief Minister has not been challenged before any forum and still intact, therefore, escaping to administer oath by the Governor himself is permissible but, in such eventuality, nomination of any other person to administer oath is mandatory under Article 255 of the Constitution. this Court being custodian to protect, observe and defend the Constitution, is in all respect justified to exercise the powers provided under Article 199 of the Constitution for the supremacy of law as none whosoever highly placed is above law, constrained to issue the direction mandated by the Constitution to ensure the administration of oath in terms of Article 255 of Constitution, of the newly elected Chief Minister

of Province of the Punjab.
ii) The Court is always empowered to grant such relief as the justice of a case demand. The Court being custodian to protect, observe and defend the Constitution, is in all respect justified to exercise the powers provided under Article 199 of the Constitution for the supremacy of law as none whosoever highly placed is above law, constrained to issue the direction mandated by the Constitution to ensure the administration of oath in terms of Article 255 of Constitution, of the newly elected Chief Minister of Province of the Punjab.

Conclusion: i) Escaping to administer oath by the Governor himself is permissible but, in such eventuality, nomination of any other person to administer oath is mandatory under Article 255 of the Constitution.
ii) It is well settle law that the court is always empowered to grant such relief as the justice of case demands.

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12. **Lahore High Court**
Hussain Shah v. The State
Crl. Appeal No. 45686-J/2021
Mr. Justice Ali Baqar Najafi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC3110.pdf

Facts: Through instant criminal appeal, appellant has assailed the judgment in case registered under Sections: 11-H, 11-I, 11-J and 11-N of the Anti-Terrorism Act, 1997.

Issues: What is effect of failure to establish the safe custody and safe transmission of specimen signatures etc from date of preparation till receipt by Punjab Forensic Science Agency?

Analysis: Failure to establish the safe custody and safe transmission of receipt book from place of recovery and of specimen signatures from date of preparation till their receipt by the Punjab Forensic Science Agency would vitiate the conclusiveness and reliability of the report of Punjab Forensic Science Agency and rendered it incapable of sustaining conviction.

Conclusion: Failure to establish the safe custody and safe transmission of specimen signatures etc. would vitiate the conclusiveness and reliability of the report of Punjab Forensic Science Agency and rendered it incapable of sustaining conviction.

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13. **Lahore High Court**
Mst. Nighat Waheed and others v. Mr. Arif Latif.
R.S.A. No. 33740 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC2953.pdf

Facts: Through this instant regular second appeal, the appellants have challenged the judgment and decree whereby the appellate court dismissed the appeal consequently the suit instituted by the respondent/ plaintiff for declaration and possession stood decreed.

Issues: i) What are the basic ingredients for a valid gift and whether these ingredients are necessary to be pleaded in plaint?
ii) Whether the beneficiary is under obligation to prove the valid execution of the gift when a transaction has been challenged?

Analysis: i) The basic ingredients for a valid gift are: offer, acceptance, and delivery of possession. It is mandatory to make the description in plaint regarding the making of offer and acceptance of the same as well as names of witnesses, in whose presence such transaction took place. These ingredients are necessary to be pleaded in the plaint and duly proved but if the same are not pleaded in the plaint then these cannot be proved in evidence as a party cannot lead any evidence beyond its pleadings.

ii) When the validity and correctness of a gift transaction are challenged, it becomes mandatory and essential for the beneficiary to prove the valid execution of the gift. He has to prove with unimpeachable evidence that at what time, date, and place transaction of a gift occurred.

Conclusion: i) The basic ingredients for a valid gift are: offer, acceptance, and delivery of possession. These ingredients are necessary to be pleaded in the plaint and duly proved.

ii) The beneficiary is under obligation to prove with unimpeachable evidence that at what time, date, and place transaction of a gift occurred.

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14. **Lahore High Court**
Nazar Abbas. v. Addl. District Judge, etc.
W.P. No. 21779 of 2017
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC2881.pdf

Facts: Through the instant constitutional petition, the petitioner assailed the order passed by the learned Revisional Court, whereby, it declared that the right of rebuttal evidence of respondent No.2 in connected suit is still open.

Issues: i) Whether in case of similar issues in different suits, the said suits will be consolidated and will be decided conjointly on the basis of consolidated trial?
ii) Whether after availing the right to produce affirmative as well as rebuttal evidence in both the suits, a party can reopen the case in the garb that rebuttal evidence in the connected was not recorded?

Analysis: i) Rule 6-A, Order II has been inserted in Code of Civil Procedure, 1908, which relates to the consolidation of suits. Bare perusal of the above provision of law enunciates that in case of similar issues in different suits, the said suits will be consolidated and will be decided conjointly on the basis of consolidated trial.
ii) After availing the right to produce affirmative as well as rebuttal evidence in both the suits, a party cannot reopen the case in the garb that rebuttal evidence in the connected was not recorded.

Conclusion: i) In case of similar issues in different suits, the said suits will be consolidated and will be decided conjointly on the basis of consolidated trial.
ii) After availing the right to produce affirmative as well as rebuttal evidence in both the suits, a party cannot reopen the case in the garb that rebuttal evidence in the connected was not recorded.

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15. **Lahore High Court**
Nadeem Arshad v. The State etc.
Crl. Appeal No. 2008 of 2015
Miss Justice Aalia Neelum, Mr. Justice Raja Shahid Mehmood Abbasi
https://sys.lhc.gov.pk/appjudgments/2022LHC3015.pdf

Facts: Appellant assailed his conviction in offence under Section 9-C of Control of Narcotic Substances Act, 1997.

Issues: If the protocols of the test are not applied to a chemical analyst report, whether it can be said to be a report "in the prescribed form?

Analysis: When the report does not state the protocols of the test applied, it cannot be said to be a report "in the prescribed form." The omission to state either the result of the test or the protocols of the test applied is a substantial omission which goes to the root of the existence of the report "with prescribed form".

Conclusion: When the protocols of the test are not applied to a report, it cannot be said to be a report "in the prescribed form.

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16. **Lahore High Court**
Mst. Nasrin v. Muslim Commercial Bank Limited & 5 others.
E.F.A. No. 09 of 2019
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4992.pdf

Facts: The appellant through this Execution First Appeal has challenged the order of the learned Banking Court whereby her objection petition upon auction of the property filed under Order XXI Rule 54 CPC was dismissed.

Issue: Whether the transfer of property to legal heir through inheritance gives the fresh cause of action to agitate the matter which had already been agitated by the deceased owner and then decided?

Analysis: Any indulgence at stage of the execution proceedings would amount to frustrate implementation of the decree which otherwise has attained finality and would be tantamount to interference in the already decided matter which culminated by dismissal of objection petition filed by predecessor... Besides the claim of the appellant that transfer of property in her name through inheritance of her husband gives her fresh cause of action is without any basis and legal justification for the reasons that she has stepped into shoes of her husband and could not claim better title or rights in the property than her husband.

Conclusion: The transfer of property to legal heir through inheritance does not give fresh cause of action to agitate the matter which had already been agitated by the deceased owner and then decided.

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17. **Lahore High Court**
Muhammad Shahid & 12 others v. Vice Chancellor, Faisalabad Medical University, Faisalabad.
ICA No. 68502 of 2021
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC3020.pdf

Facts: Intra Court Appeal was filed by appellants challenging order passed by learned Single Judge in Chambers dismissing their constitutional petition agitating prayer for issuance of direction to the respondents to regularize their services with retrospective effect.

Issue: Whether appellants i.e. primarily contractual employees, could have been regularized with retrospective effect?

Analysis: Appellants had not been appointed against any sanctioned or regular post and were serving on temporary basis. Though respondents in earlier petition were directed to regularize the services of the appellant, however, no regular post existed with the respondents against which the case of the appellants for regularization could be processed. Finding imperative, respondents created said posts and the services of the appellants were regularized with effect from the date of creation of posts. It is settled by now that the date of regularization of an employee is to be determined according to the policy of regularization under which his services are to be regularized and in case the policy does not provide for any date for regularization, then the date of regularization is to be treated as

the date of regularization of services of employees. Contractual employee was appointed under a scheme, which was totally different from that of regular appointment and a contractual appointee did not enjoy the right to be appointed on regular basis or to be readily shifted into the regime of regular appointment.

Conclusion: Regularization of appellants as contract employee was a fresh appointment into the stream of regular appointment. The benefit of regularization extended to appellants was prospective in nature and there was no legal justification to give it a retrospective application.

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18. **Lahore High Court**
Abdul Wahid v. Additional District Judge etc.
Writ Petition No. 53442/2020
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC3027.pdf

Facts: Through this petition, the petitioner has assailed judgment passed by learned Additional District Judge wherein an appeal has been accepted and ejectment of the petitioner has been ordered.

Issues: i) What will be the parameters for a Rent Tribunal to decide the ejectment petition where alleged tenant has denied the relationship of landlord and tenant?
ii) Whether tenant can claim protection of his possession over the property in dispute under Section 53-A of the Transfer of Property Act, 1882?

Analysis: i) Where relationship of landlord and tenant is denied by the tenant and the landlord proves his ownership over the property in dispute, the same would be sufficient to establish the relationship qua landlord and tenant.
ii) Mere agreement to sell does not confer any right of ownership upon a tenant hence the said tenant in the ejectment proceedings cannot claim protection of his possession over the property in dispute under Section 53-A of the Transfer of Property Act, 1882.

Conclusion: i) If the landlord proves his ownership over the property in dispute, the same would be sufficient to establish the relationship qua landlord and tenant.
ii) The tenant cannot claim protection of his possession over the property in dispute under Section 53-A of the Transfer of Property Act, 1882.

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19. **Lahore High Court**
RFA No. 393 of 2014
M/s Arbab Cotton Industries & Oil Mills v. NIB Bank Limited.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir,
https://sys.lhc.gov.pk/appjudgments/2019LHC4989.pdf

Facts: Through this Regular First Appeal, filed under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("Ordinance"), the appellants have called in question the judgment and decree passed by learned Single Judge in Chambers, whereby application for grant of leave to defend filed by the appellants was dismissed and the suit for recovery filed by the respondent bank was decreed jointly and severally against appellants with costs of the suit and cost of funds as contemplated by section 3 of the Ordinance.

Issues: What is the condition precedent for grant of PLA under Financial Institutions (Recovery of Finances) Ordinance, 2001?

Analysis Availing of finance facilities, execution of documents thereunder and renewal of finance facility through letter dated 27.12.2007 is admitted by the appellants. The documents available on record have also been executed by the appellants for which there is no denial in the PLA filed by them. The appellants have failed to raise any substantial question of law and fact requiring grant of leave to defend enabling them to lead evidence in the matter. Besides, the appellants have not been able to show that the entries in the statements of account are incorrect and any payment made by the appellants is not reflected in the said statements. Even otherwise, there is no fresh ground mentioned by the appellants which was not available to them while filing their PLA. Consequently, the PLA has rightly been dismissed by the learned Single Judge in Chambers.

Conclusion: Condition precedent for grant of PLA is that defendant should raise any substantial question of law and fact requiring grant of leave to defend enabling them to lead evidence in the matter.

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20. Lahore High Court
M/S Arbab Cotton Industries and Oil Mills V. Askari Bank Limited.
RFA No. 327 of 2014
Mr. Justice Shahid Karim, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5509.pdf

Facts: Appellant preferred an appeal against judgment & decree of learned Judge Banking Court, whereby suit was decreed against the appellant for recovery of an amount including the mark-up.

Issue: i) Whether the appellant has right for leave to defend when he has admitted the requirements of Section 10 (3, 4, 5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001?
ii) Whether the mark up can be collected on principal amount when mark-up is not agreed between the parties?

Analysis: i) Availing finance facility has been admitted by the appellant and the appellant did not provide in his application that how this amount was adjusted and returned and which deposits made by the appellant have not been reflected in the statement of accounts by the respondent bank, therefore, having failed to comply with the requirement of Section 10(3,4,5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the application for leave to defend filed by the appellant was rightly dismissed by the Banking Court.
ii) As per statement of accounts (Mark A/4) relating to the term finance mark-up Rs.44,10,000/- as principal was found outstanding. No amount was allowed as mark-up against the said amount. The Banking Court disallowed mark-up on term financing amounting to Rs.2,03,387.99 as no rate of mark-up was agreed between the parties.

Conclusion: i) The respondent will not have the right for leave to defend when he/she has admitted the requirements of Section 10 (3,4,5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001.
ii) When mark-up was not agreed between the parties; the mark up cannot be collected on principal amount.

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21. Lahore High Court
M/s World call Telecom Ltd. v. Govt. of the Punjab & others
W.P. No. 1615 of 2017
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2022LHC2871.pdf

Facts: This constitutional petition challenges the Notification ("the Notification") on the ground that firstly it offends the provisions of Section 5(3) of the Punjab Sales Tax on Services Act, 2012 (Act, 2012) and secondly that it has not been issued with the approval of Cabinet sitting as a whole and has been promulgated by the Governor of Punjab.

Issues: i) Whether notification which was not laid before provincial assembly as provided under section 5(3) of the Punjab Sales Tax on Services Act 2012 is null on that account?
ii) What does term provincial government means?

Analysis: i) Sub-section (3) of section 5 of the Act, 2012 has to be read in its entirety and the intention that can be gathered upon a reading of the provision is unarguable that the government is under a bounden duty to lay the notification before the Provincial Assembly at the time of presenting the annual budget statement for the next financial year. It does not matter if the consequences have not been spelt out in the said provision yet the consequences are clear and without any shadow of doubt. (..)Section 5(3) of the Act, 2012 is not an ornamental provision to be disregarded at the whims of the Provincial Government. It is couched in

mandatory terms and the argument that the law specifies no consequences for non- compliance has no currency. If the legislature imposes a condition for exercise of a delegated power, that power cannot be used unless the condition is fulfilled. More so, if the power entails levy of a tax on a person which cannot be left unbridled and so must remain subject to the overarching regulatory authority of the Provincial Assembly. A holistic reading of section 5 enjoins enforcement of the rule given in sub-section (3) of that provision. A failure to comply with the statutory requirement delineated in subsection (3) of section 5 renders the notification null and of no effect.

ii) The term Provincial Government would connote the Chief Minister and Provincial Ministers taken together which means that the decision by the Provincial Government has to be taken by the Cabinet as a whole as delineated in Article 130 of the Constitution.

Conclusion: i) A failure to comply with the statutory requirement delineated in subsection (3) of section 5 of the Punjab sales Tax on Services Act 2012 renders the notification null and of no effect.

ii) The term Provincial Government would connote the Chief Minister and Provincial Ministers taken together.

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22. **Lahore High Court**
Aman Ullah Shah etc. v. The State, etc.
Criminal Appeal No. 56573/2019
Amjad Ali v. The State, etc.
Criminal Revision No. 56778/2019
The State, etc. v. Aman Ullah Shah
Murder Reference No. 203 of 2019
Mr. Justice Sardar Ahmed Naeem, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC2904.pdf

Facts: Appellants filed criminal appeal against conviction and sentences awarded to them by the learned trial Court whereas complainant filed criminal revision for enhancement of sentence awarded to accused. Murder reference was also sent for confirmation or otherwise of the death sentence awarded to the appellant.

Issues: i) Whether the prosecution is bound to produce all the witnesses to prove its case?

ii) What would be effect if best evidence/injured witness is withheld by the prosecution?

iii)Whether the conviction of accused can be sustained if majority of co-accused is acquitted on the same set of evidence?

iv) Whether motive is necessary in murder case, and if motive is set up and not established then what would be its effect?

v) Whether the statement of witnesses who sustained the injuries at the time of occurrence is always believed in evidence?
vi) What is the effect of delayed post-mortem on prosecution case?
vii) Whether a single doubt is sufficient for acquittal of accused even offence is heinous?

Analysis: i) The prosecution is not bound to produce all the witnesses to prove its case and even a case can be concluded/decided on the basis of solitary statement.
ii) If best evidence is withheld by the prosecution then necessary inference under Article 129(g) of Qanun-i-Shahadat, 1984 has to be raised that had the given up injured witnesses been produced at trial, they would not have supported the prosecution version.
iii) It is settled by now that if the majority of the co-accused is acquitted on the same set of evidence, the conviction cannot be sustained if the strong corroboration is not forthcoming on record.
iv) It is settled law that the motive is not the component of murder and some crimes are motiveless. Even otherwise, the motive is hidden deep in the mind of the perpetrators of the crimes and the prosecution is not bound to introduce any motive but once a particular, motive is set up and not established then, it militates against the prosecution.
v) The injuries sustained by a witness may reflect his presence at the crime scene but on the basis of that injury it cannot be determined that the witnesses described the whole truth, half truth or that he cannot be disbelieved for sustaining such injury.
vi) Delayed post-mortem makes the prosecution case doubtful…
vii) It is by now settled that benefit of doubt, if found in the prosecution's case, the accused shall be held entitled to the benefit, thereof. It is also settled principle of criminal administration of justice that if there is element of doubt, as to the guilt of accused, it must be resolved in his favour. For acquittal of accused in an offence, how-so heinous it may be, only a single doubt in the prosecution evidence is sufficient.

Conclusion: i) The prosecution is not bound to produce all the witnesses to prove its case.
ii) If best evidence is withheld by the prosecution then necessary inference under Article 129(g) of Qanun-i-Shahadat, 1984 has to be raised.
iii) If majority of co-accused is acquitted on the same set of evidence, the conviction of accused cannot be sustained if the strong corroboration is not forthcoming on record.
iv) Motive is not the component of murder but if motive is set up and not established then it militates against the prosecution.
v) The statement of witnesses who sustained the injuries at the time of occurrence is not always believed in evidence as the injuries sustained by a witness may reflect his presence at the crime scene.
vi) Delayed post-mortem makes the prosecution case doubtful.
vii) A single doubt is sufficient for acquittal of accused even offence is heinous.

23. **Lahore High Court**
Anjum Latif v. The State, etc
Criminal Appeal No. 23157/2019
Amjad Latif, etc. v. The State, etc
Criminal Appeal No. 24016/2019
The State, etc. v. Anjum Latif
Murder Reference No. 88/2019
Mr. Justice Sardar Ahmed Naeem, Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC2931.pdf

Facts: The appellants challenged their convictions and sentences awarded by the learned trial Court. Murder Reference is sent by trial court for confirmation or otherwise of the death sentence awarded to one of appellant.

Issues: i) What is value of statement of a witness who related to deceased?
ii) What are provisions which deal with recording of evidence of a witness who is deaf and dumb?
iii) What steps should be taken by the trial court while examining a deaf and dumb witness?
iv) What is procedure for collection, preservation and transportation of firearms and tool marks?
v) Whether same set of evidence can be relied upon for acquittal of some accused and conviction of others?
vi) Whether a single doubt in prosecution evidence is sufficient for acquittal of accused even in heinous offence?

Analysis: i) It is settled by now that statement of a witness related to deceased should be corroborated rather the statement of a worst enemy could be relied upon, if it inspires confidence and intrinsic worth of a statement is not shaken. It may be observed that mere relationship of the witnesses with the deceased is not a ground for discarding their statements when otherwise, confidence inspiring and finds corroboration from the independent witnesses.
ii) There is no statutory provision which specifically deals with the opportunity of recording evidence of a witness who is deaf and dumb, however, Article 3 of the Qanun-e-Shahadat, 1984 contemplates that all persons are competent to testify, unless they are prevented from understanding the questions put to them or from giving rational answers to those questions. Further Article 59 of the Qanun-e-Shahadat, 1984 read with section 543, Cr.P.C are relevant but they also do not directly deal with the mode of recording evidence of a deaf and dumb witness.
iii) While examining a deaf and dumb witness, following steps should be taken by the learned trial Courts: • To ascertain whether such a witness possesses the requisite amount of intelligence; • Whether he understands the nature of oath; •

Trial Court is also required to record his satisfaction to that effect; • The trial Court is required to ascertain, if the witness either by writing or sign can make intelligible of what he has to speak; • If he is able to communicate his statement perfectly by writing, it will be more satisfactory method of taking evidence; • When such a witness is unable to write, then he can make sign showing what he wants to say; • If it is by signs, those signs must be recorded by the learned trial Court and not only the interpretations of those signs; • It is necessary to enable the appellate Court to know whether the interpretation of the sign is correct or not; • It is not safe for a trial Court to embark upon the examination of a deaf and dumb person on his own without help of an expert or a person familiar with his mode of conveying ideas to others in day to day life; • The interpreter should not be a interested person, who had participated in the investigation and who is a witness in the same trial; • Interpreter should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.

iv) Following inferences are drawn from the study of case laws regarding procedure of collection, preservation and transportation of firearms and Tool Marks: • Investigating Officer should record the statements under section 161, Cr.P.C mentioning parcel and recovery contained in such parcel; • The weapon/recovery should be placed in safe custody at "Malkhana" of the Police Station; • There should be entry/report of such recovery in the "Malkhana" of the Police Station; • Entry/report of such recovery in the "Malkhana" of the Police Station should be produced before the trial Court to corroborate the version of prosecution; • Incharge of the "Malkhana" should be produced and examined regarding safe custody of the recovery/weapon; • Safe transmission of the recovery/weapon to the Forensic Science Laboratory should be proved; and • Evidence of police official with regard to safe transmission of weapon/recovery to the Forensic Science Laboratory is to be recorded.

v) It is also settled law that if the majority of the accused nominated in a case is acquitted on account of false implication by the eye witnesses, then, allegations qua remaining accused on the basis of same set of evidence cannot be sustained without strong/independent corroboration.

vi) It is by now settled that doubt if found in the prosecution's case, the accused shall be held entitled to the benefit thereof. It is based on maxim that it is better to acquit ten guilty persons rather than to convict one innocent person. For acquittal of accused in an offence, how-so heinous it may be, only a single doubt in the prosecution evidence is sufficient.

Conclusion: i) If evidence of witness who is related to deceased is confidence inspiring and finds corroboration from the independent witnesses, it cannot be discarded.

ii) There is no specific provision for recording of evidence of witness who is deaf and dumb. Article 59 of the Qanun-e-Shahadat, 1984 read with section 543, Cr.P.C are relevant but they also do not directly deal with the mode of recording evidence of a deaf and dumb witness.

iii) Above mentioned steps should be taken by the trial court while examining a deaf and dumb witness.
iv) Above mentioned procedure for collection, preservation and transportation of firearms and tool marks ought to be used.
v) Without strong/independent corroboration, same set of evidence cannot be relied upon for acquittal of some accused and conviction of others.
vi) A single doubt in prosecution evidence is sufficient for acquittal of accused even in heinous offence.

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24. **Lahore High Court**
Safdar Hayat v. The State, etc.
Crl. Revision No. 13763-2022
Mr. Justice Sardar Ahmed Naeem
https://sys.lhc.gov.pk/appjudgments/2022LHC3063.pdf

Facts: Petitioner called into question the legality of the orders of the trial court wherein his applications seeking rectification of record i.e. answer to question for producing evidence under section 342, Cr.P.C. and the other for summoning the record of rescue 15 along-with its custodian were dismissed.

Issues: i) What is the concept of a fair trial under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973?
ii) Whether the trial Court can provide an opportunity of producing evidence to an accused in his defence after recording of statement under section 342, Cr.P.C.?

Analysis: i) The right to fair trial by way of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 was given to the accused by way of the Constitution (18th Amendment Act), 2010. The meanings of the words of the Constitution are clear, everyone is to be given a fair trial as we have discussed, the concept of a fair trial is more or less synonymous with the concept of presumption of innocence. This is decipherable by the vast amount of treaty language that treats true concepts together. Furthermore, even an average, "man on the street" knows that in order for a criminal trial to be fair their needs to be a presumption of innocence. Access to justice includes fair and expeditious trial. Right to fair hearing finds its roots from the maxim audi alteram partem meaning that the conviction should be made after hearing. The expression purely infers that a person must be awarded an opportunity of hearing for the purpose to defend him. In administrative side, this principle has secured right of fair play and justice to an accused person. In a constitutional system, the presumption of innocence seeks to maintain the rule of law and the legitimacy of the criminal law by making sure that the people do not loose faith in the judicial system.
ii) The prosecution has closed its evidence and statement of petitioner under section 342, Cr.P.C has been recorded, thus, without touching this aspect that answer to question No.18 was not correctly written, suffice it to observe that the

accused is favorite child of law and must be provided fair and adequate opportunity, of course, permissible under the law to disprove the charge. As mentioned above, the plea raised by the petitioner during trial find mentioned in details under question No.16 as well as the trend of cross-examination referred to above. I have also no doubt that the plea of summoning record of rescue 15 was afterthought. The applications were not filed by the petitioner with inordinate delay but the trial Court without considering all the above said aspects proceeded to dismiss the above applications without any cogent/valid reasons which has caused serious prejudice to the petitioner-accused, thus, the impugned orders cannot be sustained and liable to be set aside.

Conclusion: i) The concept of a fair trial under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 is more or less synonymous with the concept of presumption of innocence.
ii) The trial Court should provide an opportunity of producing evidence to an accused in his defence after recording of statement under section 342, Cr.P.C. to disprove the charge.

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25. Lahore High Court

Commissioner Inland Revenue, Sialkot v. M/s Chaudhry Steel Mills S.I.E., Daska
PTR No. 335 of 2013
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC3042.pdf

Facts: Through this consolidated judgment this court decides reference application under section 133 of the Income Tax Ordinance, 2001 along with connected cases as common question of law and facts are involved.

Issues: i) What does rectification of mistake u/s 221 of Income Tax Ordinance means?
ii) What is deemed assessment order?
iii) How the word assessment order treated as issued u/s 120 used in section 122(1) is distinguishable from the words used in section 221 of ordinance, 2001?
iv) What is scope of rectification of mistake under section 221 of ordinance, 2001?

Analysis: i) The essential condition for exercise of power of rectification of mistake u/s 221 of ordinance is that the mistake should be apparent on the face of record; mistake which may be seen floating on the surface and does not require investigation or further evidence. The mistake should be so obvious that on mere reading the order, it may immediately strike on the face of it. Where an officer exercising such power enters into the controversy, investigates into the matter, reassesses the evidence or takes into consideration additional evidence and on that basis interprets the provision of law and forms an opinion different from the order, then it will not amount to `rectification' of the order. Any mistake which is not patent

and obvious on the record cannot be termed to be an order which can be corrected by exercising power under section 221.

ii) The procedure for submission of income tax returns, assessments of the income and amendment of assessments is duly provided in Sections 114, 120, 121 and 122 of the Ordinance of 2001. If the return is complete in terms of Section 114(2), the same is taken as deemed assessment order within the contemplation of Section 120(1), on the day the return was furnished.

iii) The words "an assessment order treated as issued under section 120" used in section 122(1) of the Ordinance are clearly distinguishable from the words used in section 221 of the Ordinance which says "any order passed by him". The act of passing of formal order by any Officer of Inland Revenue presupposes an application of mind and in most cases adjudication on merits after hearing the parties. Thus, there is a marked distinction between the deemed order and the order passed by the authority after fully applying his mind and giving proper opportunity of being heard to the person. Thus, rectification is permissible only to "amend any order passed by him" and not the order treated to have been issued under section 120 of the Ordinance because the deemed order did not amount to an order passed by the authority.

iv) The powers under Section 221 are quite limited to the extent of mistakes apparent from record since there are other provisions of law which deal with the authority of department officials with regard to reopening of assessment, revision etc. in cases where the department is of the view that certain income had escaped from the chargeability of tax, but for exercising powers under Section 221 of the Ordinance, there must be a mistake apparently floating on the surface which is so obvious to strike one's mind without entering into long drawn process of reasoning, detailed deliberation etc.

Conclusion: i) The provision of Section 221 neither creates nor takes away any right or privilege in or from anyone, it rather provides for rectification of mistake(s) apparent from the record.

ii) If the return is complete in terms of Section 114(2), the same is taken as deemed assessment order within the contemplation of Section 120(1), on the day the return was furnished.

iii) Rectification is permissible only to amend any order passed by authority and not the order treated to have been issued under section 120 of the Ordinance because the deemed order did not amount to an order passed by the authority.

iv) For exercising powers under Section 221 of the Ordinance, there must be a mistake apparently floating on the surface which is so obvious to strike one's mind without entering into long drawn process of reasoning, detailed deliberation etc.

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26. Lahore High Court
Commissioner Inland Revenue, Lahore v. M/s Descon Engineering Limited, Lahore
PTR No. 112 of 2014
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC3034.pdf

Facts: Through instant Reference Application under Section 133 of the Income Tax Ordinance, 2001 questions of law, urged to have arisen out of order passed by learned Appellate Tribunal Inland Revenue have been pressed.

Issues: i) What is mode of payment of workers welfare fund by and recovery from industrial establishments?
ii) Whether taxation officer is required to give notice to industrial establishment prior to determination of WWF under section 4(4) of WWF ordinance?
iii) Whether taxing authorities are under obligation to issue notice for fixing liability even same is not specifically incorporated in relevant provision?

Analysis: i) Section 4 of WWF Ordinance deals with the mode of payment of WWF by, and recovery from industrial establishments. An industrial establishment, coming within the scope of sub-section (1) of Section 4 of WWF Ordinance, is under legal duty to pay due amount of WWF @ 2% of its total yearly income and furnish a proof of such payment along with a copy of income tax return to the Taxation Officer having jurisdiction over the industrial establishment for the purposes of the Ordinance of 2001. However, as per sub-section (4), if the Taxation Officer does not agree, he shall determine the actual payable amount through a written order, which shall be paid by the industrial establishment till expiry of time specified in such order.
ii) The language of section 4(4) of WWF ordinance especially the word 'shall' clearly binds the Taxation Officer, where he is not inclined to endorse the paid WWF as "due amount", to make determination of due amount of WWF by way of an order in writing requiring the industrial establishment to make up the deficiency by assigning a target date. An order in writing must fulfill the requirements of a speaking decision / order for which it is essential that the party against whom such order is being passed must be given a proper notice confronting the relevant material and providing fair chance to explain its stance and raise all legal and factual objections. Needless to say that minimum requirement of principles of natural justice, especially principle of audi alteram partem i.e. no one should be condemned unheard, must be observed in all proceedings concerning determination of rights of a party, pertinently when certain liability is being created.
iii) Taxing authorities cannot demand amount without issuing a show cause notice, and providing opportunity of hearing and fixing liability in terms of the relevant provisions of law. Needless to say that provision of notice to a person, who is being proceeded against, must be read in every statute, irrespective of the

fact that whether or not such provision was incorporated therein.

Conclusion: i) An industrial establishment, coming within the scope of sub-section (1) of Section 4 of WWF Ordinance, is under legal duty to pay due amount of WWF @ 2% of its total yearly income and if the Taxation Officer does not agree, he shall determine the actual payable amount through a written order.
ii) Taxation officer is required to give notice to industrial establishment prior to determination of WWF under section 4(4) of WWF ordinance.
iii) Taxing authorities are under obligation to issue notice for fixing liability even same is not specifically incorporated in relevant provision.

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27. Lahore High Court
Altaf Ahmad Makhdoom v. Inspector General of Police, Punjab etc.
Writ Petition No. 55811 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC2891.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner (Complainant of FIR No. 16/2021) has challenged Order passed by Inspector General, whereby, the investigation of the case was transferred.

Issues: i) Whether there is any legal bar on reinvestigation even after the submission of final report under section 173 Cr.P.C?
ii) Whether reinvestigation or further investigation permissible subject to Article 18A of the Police Order 2002 are allowed as routine matter?

Analysis: i) There is no legal bar on reinvestigation even after the submission of final report under section 173 Cr.P.C. If any embargo is placed on investigation after the framing of charge, it would make Article 18A of the Police Order 2002 redundant which cannot be permitted.
ii) In the context of Article 18A of the Police Order 2002, the DSB, RSB and the Review Board are obligated to formulate their recommendations in such a manner that it shows that they have duly examined the case file and considered the material placed before them. The Inspector General's SOPs dated 24.4.2014 also cast this duty on the DSB and RSB but, in view of the law discussed above, the Review Board has the same obligation. Article 18A expressly requires the Heads of the District Police and the Regional Police Officers to record reasons when the recommendations of the DSB and the RSB, as the case may be, are placed before them. This statutory duty would not be discharged by simply reproducing those recommendations. The order must demonstrate due application of mind by them otherwise it would be regarded arbitrary and struck down.

Conclusion: i) There is no legal bar on reinvestigation or further investigated after the submission of final report under section 173 Cr.P.C. and more particularly after the accused is/are indicted.
ii) Reinvestigation or further investigation is permissible, subject to Article 18A of the Police Order 2002 and it does not mean that it can be ordered in routine.

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28. **Lahore High Court**
Abid alias Chirri v. The State etc.
Crl. Misc. No. 411/B/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC3073.pdf

Facts: Through this application the Petitioner seeks post-arrest in case FIR registered for an offence under section 9(b) of the Control of Narcotic Substances Act, 1997 (the "CNSA").

Issues: i) When the court proposes to release the offender on probation whether it should nominate sentence after convicting him?
ii) Whether the conviction of an offence regarding which the offender has been placed on probation shall be reckoned as conviction for any purpose?

Analysis: i) The words "instead of sentencing the person at once, make a probation order" in section 5 of the Ordinance clearly show that when the court proposes to release the offender on probation it should not nominate sentence after convicting him. In other words, there is conviction without a sentence. It is well settled that the order of probation is not rendered illegal by the mere fact that the court has nominated a sentence while convicting an accused.
ii) Section 11(1) enjoins that the conviction of an offence regarding which the offender has been placed on probation shall not be reckoned as conviction for any purpose other than the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the Ordinance. Section 11(2) stipulates that such conviction shall, in any event, be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons.

Conclusion: i) When the court proposes to release the offender on probation it should not nominate sentence after convicting him.
ii) The conviction of an offence regarding which the offender has been placed on probation shall not be reckoned as conviction for any purpose other than the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the Ordinance.

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29. **Lahore High Court**
Bank of Punjab v. Fazal Abbas and others
RFA No. 177 of 2018
Mr. Justice Jawad Hassan, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4985.pdf

Facts: Through this regular first appeal, filed under section 22 of Financial Institutions (Recovery of Finances) Ordinance,2001 ("Ordinance"), the appellant bank ("appellant") has called in question the judgment and decree ("impugned decree") passed by Banking Court-III, whereby appellants suit for recovery with markup, cost of funds and other charges was dismissed.

Issues: i) Whether plaint should be supported by the statement of accounts?
ii) What are the basic requirements while filing the suit under section 9(3) of the Ordinance)?

Analysis: i) Section 9(2) of the ordinance provides that plaint to be supported by the statement of accounts, duly certified under Banker's Book Evidence, 1891(…) the said statement of account had neither been produced from proper custody by following the proper procedure nor has been proved in accordance with law especially Section 9(2) of the Ordinance and consequently cannot be relied upon.
ii) As per section 9(3) of the Ordinance while filing the suit appellant is required to specify (a) the amount of finance availed by the respondents from the financial institution (b) amounts paid by the respondents to the financial institution with dates of payment and (c) the amount of finance and other amounts relating to finance payable by the respondents to the appellant up to the date of institution of the suit.

Conclusion: i) As per section 9(2) of the ordinance, the plaint should be supported by the statement of accounts, duly certified under Banker's Book Evidence, 1891.
ii) As per section 9(3) of the Ordinance it is essential that the plaint should disclose the amount of finance, amount paid and the amount of finance and other amounts relating to finance payable up to the date of institution of suit.

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30. **Lahore High Court**
Asad Mahmood and 4 others v. Government of Punjab through Chief Secretary Punjab, Lahore and 20 others
Writ Petition No. 2656 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC2838.pdf

Facts: The Petitioners have challenged the establishment of Stone Crushing Unit(s) in District Jehlum without proper approval by the relevant Authorities through the instant Constitutional Petition.

Issues: Whether Constitutional Petition is maintainable in the presence of alternate remedies available under the Environmental Protection Act, 1997?

Analysis: Provincial Environmental Protection Agency has been specifically empowered under Section 6(2)(a) & (b) of the Environmental Protection Act, 1997, to undertake inquires or investigation into environmental issues, either of its own accord or upon complaint from any person or organization, and to request any person to furnish any information or data relevant to its functions……In this regard, Section16 of the Act has empowered the Agency to issue EPOs, after fulfilling the above requirements of the law, to direct such person responsible to take necessary measures……. If such person does not comply with the directions in EPO, the Agency is authorized to initiate proceedings against him under the Act or the rules and regulations, or to itself take the necessary measures specified in EPO and recover costs of those measures from such person as arrears of land revenue…….All contraventions concerning certain discharges or emissions (Section 11), IEE and EIA provisions (Section 12) and EPOs (Section 16) are exclusively tried by the Tribunal. Under Section 21(3) of the Act, the Tribunal is required to take cognizance of any offence on, amongst others, complaint in writing by complaint by an aggrieved person, who has served a notice of at least thirty days to the Agency of the alleged contravention and his intention to make a complaint to the Tribunal. It is essential to highlight that the aggrieved persons also have remedy to approach the Tribunal for contravention of Sections 11, 12 and 16 after serving a notice of at least thirty days to the Agency of the alleged environmental contravention of the stone crushing business and their intention to make a complaint to the Tribunal. It is also significant to highlight that Section 21(9) of the Act, ousts jurisdiction of other courts in any matters to which the jurisdiction of the Tribunal extends.

Conclusion: The instant Constitutional Petition is not maintainable in the presence of alternate remedies available to the petitioners under the Environmental Protection Act, 1997.

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31. **Lahore High Court**
Muhammad Hamza Shahbaz Sharif v. Federation of Pakistan and another
Writ Petition No. 27186 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC3116.pdf

Facts: The petitioner has filed a Constitutional Petition under Article 199 of the Constitution of Islamic republic of Pakistan 1973 for the implementation of earlier judgments of Lahore High Court, Lahore regarding administration of oath to the newly elected Chief Minister of the Province of Punjab.

Issues: Whether a Constitutional Petition is maintainable for implementation of decision of earlier Constitutional Petition of the same Court?

Analysis: When an order passed by the High Court in the exercise of writ jurisdiction is not complied with, two procedures are open to the person aggrieved. He may pray for further directions when there can be a bona fide dispute as to what is the effect of the order or he may apply for under the contempt of Courts Act, 1926. In the first case, the Court may after determining the effects of its order give further directions for its enforcement. Such an order would not be an order in the exercise of its criminal jurisdiction. The Court which issues a writ can be moved for its implementation, but such further proceedings would be proceedings in the very same petition for it. If a court has already issued a writ, the Court can be approached for an interpretation of its orders for its enforcement, but these proceedings which may be call proceedings in execution or proceedings in implementation, are a continuation of the previous proceedings.

Conclusion: A Constitutional Petition is maintainable for the implementation of decision of earlier Constitutional Petition of the same Court.

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32. **Lahore High Court**
Muhammad Yar and four others v. Ghulam Haider and two others
Criminal Revision No. 1177 of 2015
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC2820.pdf

Facts: Through instant revision petition, petitioners have challenged the vires of order passed in complaint case by learned Addl. Sessions Judge / trial court whereby petitioners/accused persons have been summoned to face the trial.

Issue: i) Whether there is any time limitation provided in law to file private complaint?
ii) What is impact of implicating in complaint different set of accused with different set of witnesses and with different mode of occurrence?
iii) What is the requirement for issuance of process for the purpose of summoning the accused in the private complaint?

Analysis: i) There is no time period provided in the law for filing the complaint and it is common practice that the aggrieved person first approaches the police for redressal of his grievance through registration of the case, if remains dissatisfied, then files application under Section: 22-A (6) Cr.P.C. before Ex-Officio Justice of Peace and sometime also invokes constitutional jurisdiction of this Court as well as of Hon'ble Supreme Court of Pakistan for registration of the case and usually complaint is filed as a last resort. Delay by itself in filing the complaint cannot be taken as fatal to reject the evidence in support thereof, which may otherwise be entitled to credence. Even otherwise, delay in filing the complaint is examined in the light of peculiar facts and circumstances of each case.

ii) By now it is well settled that feeling dissatisfied by the registration of case and/or investigation conducted by the police, aggrieved person can file complaint and even against those persons, who were not nominated as accused in the first information report registered by the police regarding the same occurrence; complaint can be filed against different set of accused persons with different set of witnesses as well as with different mode of occurrence as compared to state/challan case but said difference cannot be considered as a bar for entertaining the complaint or proceeding with the same and due to said difference, complaint cannot be dismissed.

iii) For issuance of process for the purpose of summoning the accused in the complaint, law only requires availability of "sufficient ground" as provided under Section: 204 Cr.P.C. and not the "reasonable ground". Term "sufficient ground" for "proceeding" against the accused person in complaint mentioned in Section: 204 Cr.P.C. cannot be equated with term "reasonable ground" for "believing" against the accused that he has been guilty of the offence within the contemplation of Section: 497 (1) Cr.P.C. "Prima facie case", does not mean a case proved beyond shadow of doubt but a case which can be established if evidence led in support of the same is believed. At the time of summoning the accused, material available on record is not assessed in depth i.e. its relevance is seen and not the admissibility or evidentiary value, which was to be established at regular trial.

Conclusion: i) There is no time limitation provided in law to file private complaint.

ii) Complaint can be filed against different set of accused persons with different set of witnesses as well as with different mode of occurrence as compared to state/challan case but said difference cannot be considered as a bar for entertaining the complaint.

iii) The requirement for issuance of process for the purpose of summoning the accused in the private complaint is only availability of "sufficient ground" as provided under Section: 204 Cr.P.C. and not the "reasonable ground".

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33. **Lahore High Court**
M/s Ohad Motors (Pvt) Ltd. v. Govt. of Punjab and others
W.P. No. 64587/2021
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC2860.pdf

Facts: Instant petition questions vires and legality of amendments in the Punjab Motor Vehicles Rules 1969 through adding Rules 197-A, 197-B and 197-C.

Issues: i) What is effect of insertion of Rules 197-A, 197-B and 197-C in the Punjab Motor Vehicles Rules 1969?

ii) Whether condition of subsequent publication, prescribed under section 22 of West Pakistan General Clauses Act, 1956 can be cause of declaring rules 197-A to 197-C void?

Analysis: i) Impugned rules envisage the requirement of seeking license; making

manufacturing or assembling subject to the specifications prescribed by the Provincial Transport Authority. Impugned rules indicate that authorization was extended to the Motor Vehicles Examiner for issuance of certificates regarding confirmation of standards specified; rules prescribed tenure of the licenses and quantum of fees payable; provides for provisioning of powers and conditions for the cancellation of licenses and establishment of appellate forum. It is evident that persons likely to be covered under or affected by the impugned rules are prospective manufacturers and assemblers of the product, who are required to seek license before undertaking licensing activity.

ii) In the absence of any prejudice, financial loss or infringement of legal right, mere inadvertent mistake on the part of the department does not constitute sufficient ground to declare the Notification void and ineffective and consequently declaring all actions taken, licenses issued and renewed, solely because rules 197-A to 197-C were not re-published after draft rules being published earlier.

Conclusion: i) In brief, rules 197-A to 197-C established a licensing regime for the manufacturing and assembling of motor cab rickshaw / motorcycle rickshaw.

ii) In the absence of any prejudice, financial loss or infringement of legal right, mere inadvertent mistake on the part of the department does not constitute sufficient ground consequently declaring void all actions taken, licenses issued and renewed, solely because rules 197-A to 197-C were not re-published after draft rules being published earlier.

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34. **Lahore High Court**
Haider Ali v. The State and another.
Criminal Appeal No. 654 of 2020
Mr. Justice Sohail Nasir, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC3006.pdf

Facts: Through this Criminal Appeal, the petitioner has challenged judgment passed by the learned Additional Sessions Judge whereof he was convicted and sentenced under Section 9(c) of the Control of Narcotic Substances Act, 1997 for possessing the Heroin 5324 grams and under Section 9(c) of the Control of Narcotic Substances Act, 1997 for keeping 2680 grams of Charas.

Issues: Whether recovery of contraband of more than one kind can be considered single recovery against an accused?

Analysis: It is held that in case of recovery of contraband of more than one kind, it will be considered single recovery against an offender with accumulative weight.

Conclusion: Recovery of contraband of more than one kind will be considered single recovery against an accused.

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35. **Lahore High Court**
Muhammad Hamza and another v. The State and another.
Criminal Appeal No. 907 of 2017
Mr. Justice Sohail Nasir, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC2827.pdf

Facts: Through this criminal appeal, the appellants have challenged the judgment passed by the learned Judge Anti-Terrorism Court on the basis whereof both the appellants were convicted and sentenced under Section 4 of the Explosive Substances Act, 1908, under Section 7(B) of the Anti-Terrorism Act, 1997 and under Section 13(2) (c) of the Arms Ordinance, 1965.

Issues: i) What is the difference between 'safe custody' and 'chain of safe custody'?
ii) Where do the principles of 'safe custody' and 'chain of safe custody' apply?

Analysis: i) There is a difference between 'safe custody' and 'chain safe custody'. 'Safe custody' means, if the case property is with any official/individual that has to be in accordance and under an authority of law or at a secured place like 'Malkhana' where access has to be under a specified procedure and law. Whereas 'chain of safe custody' means that if case property is transferred or transmitted from one place to other place or from one official to other official, such transmission has also to be under a recognized method.
ii) The principles of 'safe custody' and 'chain of safe custody' do not confine to any specific case or situation but in every case where prosecution demands conviction against an offender on the basis of any material that constitutes an offence.

Conclusion: i)'Safe custody' means, if the case property is with any official/individual whereas 'chain of safe custody' means that if case property is transferred or transmitted from one place to other place or from one official to other official.
ii) The principles of 'safe custody' and 'chain of safe custody' do not confine to any specific case or situation but in every case where prosecution demands conviction.

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36. **Lahore High Court**
Muhammad Akram alias Akri v. The State
Crl. Appeal No. 47529 of 2017
Zulfiqar Ahmad and another v. The State
Crl. Appeal No. 224696 of 2018
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC2979.pdf

Facts: Appellants assailed their convictions and sentences through the titled appeals in case FIR registered under sections 302, 460, 412, 34 PPC.

Issues: i) Whether an adverse inference can be drawn against prosecution due to delay in conducting postmortem?

ii) What is the evidentiary value of an identification of an accused without reference to the role allegedly played by him?

iii) What is the evidentiary value of identification parade when there is no description of the accused in the FIR?

vi) What is the effect of dishonest improvements made by a witness in his statement on a material aspect of the case?

v) What is the evidentiary value of a recovery when there is a violation of section 103 Cr.P.C?

vi)How the benefit of doubt is given to the accused?

Analysis: i) The postmortem examination on the dead body of the deceased was conducted by Doctor on 19-01-2014 at about 10:00 a.m.. with the delay of 07 hours after the occurrence. Keeping in view this material discrepancy arising out from the prosecution case, an adverse inference to the prosecution's case can be drawn that the intervening period had been consumed in fabricating a story creating serious doubt regarding the prosecution case.

ii) Although, the complainant identified the accused person during the course of identification parade but he did not disclose the role played by the said appellant during the occurrence in issue. It has repeatedly been held by the august Supreme Court that identification of an accused person without reference to the role allegedly played by him during the occurrence is shorn of any evidentiary value.

iii) The PWs had not described the complete features, physiques, and complexions of any of the unknown accused persons. Selection of the suspects, without any correlation with description of the accused in the first information report, raises doubts and makes the identification proceedings unsafe and doubtful rendering the identification evidence inconsequential.

iv) A witness is untrustworthy if he makes dishonest improvements in his statement on a material aspect of the case in order to fill gaps in the prosecution case or to bring his statement in line with the other prosecution evidence.

v) When witnesses of recovery memo are police officials and no independent witness was examined by the prosecution. Thus, the investigation officer while effecting the recovery of the pistol at the instance of the accused person has committed a violation of section 103 Cr.P.C. which creates doubt with regard to the recovery of said pistol.

vi) In the event of a doubt, the benefit must be given to the accused not as a matter of grace, but as a matter of right. The prosecution must prove its case against the accused beyond a reasonable doubt, and if it fails, the accused is entitled to the benefit of the doubt. The golden rule, also known as the rule of benefit of doubt, is essentially a rule of prudence that must be followed when dispensing justice in accordance with the law.

Conclusion: i) Yes, an adverse inference can be drawn against prosecution due to delay in conducting post mortem that the intervening period had been consumed in fabricating a story.
ii) Identification of an accused without reference to the role allegedly played by him during the occurrence is shorn of any evidentiary value.
iii) When there is no description of the accused in the FIR, it makes the identification parade unsafe and doubtful rendering the identification evidence inconsequential.
iv) A statement is untrustworthy when dishonest improvements are made by a witness in his statement on a material aspect of the case.
v) When there is a violation of section 103 Cr.P.C, it creates doubt with regard to such recovery.
vi) In case of any doubt, the benefit is given to the accused not as a matter of grace, but as a matter of right.

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37. **Lahore High Court**
Omer Nazeer v. The State etc.
Writ Petition No. 7952-Q of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC2884.pdf

Facts: Through this Constitutional Petition, the petitioner assailed the vires of FIR registered under sections 419 & 420 PPC, being false owing to mistake of law on score that subject matter of FIR requires investigation and adjudication by Pakistan Telecommunication Authority (hereinafter called as PTA) only.

Issues: Can FIR be registered for offences under PTA, if not, what could be ultimate remedy?

Analysis: As per Section 31(2) of The Pakistan Telecommunication (Re-organization) Act, 1996, every offence specified in sub-section (1) shall be punishable with imprisonment which may extend to two years, or with fine which may extend to ten million rupees, or with both. Section 31(5) of the Act ibid states that no Court shall take cognizance of any offence punishable under this Act except on a complaint in writing by an officer authorized by the Authority or the Board. There is a difference between registration of FIR and taking cognizance; yet FIR could only be registered in cognizable offence and The Pakistan Telecommunication (Re-organization) Act, 1996 does not carry any provision which could label any such act as cognizable offence. It is clear from the reading of Section 5 of Code of Criminal Procedure, 1898 that if the procedure is not given in any special law; then one prescribed under Code of Criminal Procedure, 1898 shall be followed. According to second schedule if an offence is punishable with imprisonment for one year and upwards but less than three years, the offence shall be non-cognizable. PTA being special law has an overriding effect as per Section 58 of

said Act. It is to be given space and alleged corresponding sections in Pakistan Penal Code cannot be stretched for registration of FIR.

Conclusion: FIR for offences under PTA cannot be registered. The complainant of FIR could have filed an application in this respect or an appeal as mentioned in section 7 of The Pakistan Telecommunication (Re-organization) Act, 1996.

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38. **Lahore High Court**
Sonhara v. Faiz Ellahi alias Faizan Mai, etc.
Civil Revision No. 121-D of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC2961.pdf

Facts: Through this civil revision petitioner has challenged the judgment and decree passed by learned Addl. District Judge by virtue of which an appeal filed by respondent No.1 (now deceased) was accepted and the suit for declaration and cancellation of mutation of Tamleek filed by her, which had been dismissed by the learned trial court, was decreed.

Issue: i) Whether a fact which has not been originally pleaded by a party in the pleadings, can subsequently be setup and proved during the evidence?
ii) Whether it is necessary for the donee / beneficiary to prove the transaction of gift independent to compliment the gift mutation?

Analysis: i) It is trite that a fact which has not been agitated in a written statement cannot be brought in evidence. In "Faiz Ahmad v. Mst. Soni and 2 others" (2020 CLC 148), it has been held that the parties are bound by their pleadings and evidence produced beyond pleadings is not permissible under the law. A party has to plead facts and then prove the same through evidence since no one can be allowed to prove a case beyond what has originally been set up in the pleadings. It follows that evidence or arguments with regard to a plea not taken in the pleadings cannot be looked into and no one is allowed in judicial proceedings to adduce evidence in support of a contention not pleaded by him.
ii) It was incumbent upon the petitioner to furnish proper particulars of the gift before the trial court which he abysmally failed to do. No time, date or place of the transaction of gift having been mentioned in the written statement. In the present matter, it is quite obvious that the petitioner failed to even remotely establish the transaction of gift or for that matter the offer of gift or the aspect of acceptance or why the other heirs were being disinherited. It is also obvious that the petitioner could not and did not try to even remotely prove the gift in question which was absolutely necessary so as for the gift to compliment the mutation of Tamleek.

Conclusion: i) A fact which has not been originally pleaded by a party in the pleadings cannot subsequently be setup and proved during the evidence.

ii) It is necessary for the donee / beneficiary to prove the transaction of gift independent to compliment the gift mutation.

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39. **Lahore High Court**
Sumaira Ashraf v. Dr. Muhammad Shafiq etc.
Writ Petition No. 25290 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC3088.pdf

Facts: The petitioner filed an application before trial court for grant of permission to produce some documents which according to the petitioner were absolutely germane to the matter in issue. The learned Judge seized of the petition under section 25 of the Guardians and Wards Act, while relying on section 9 of the West Pakistan Family Courts Act, 1964, dismissed the application of the petitioner.

Issues: i) Which provision of the Act 1890 ousts other procedures when a Family Court deals with matters of guardian petition?
ii) Whether the requirements of Section 9 of the Act, 1964, of attaching all the documents are to be fulfilled by defendant and he can be refused to produce documents at later stage by Family Court in guardian petition?

Analysis: i) Section 25 of the Guardians and Wards Act, 1890 reads that the process envisaged in the Guardians and Wards Act has to be followed to the ouster of all other procedures when a Family Court deals with matters specified in the Guardians and Wards Act, 1890.
ii) The words "…..notwithstanding anything contained in this Act, shall, in dealing with matters specified in that Act, follow the procedure prescribed in that Act," as enacted in Section 25 of Family Court Act, 1964 are unambiguous and clear; they first exclude the procedure prescribed in Family Courts Act, 1964 and then emphasize on adopting the procedure given in Guardians and Wards Act, 1890. Hence the requirements of section 9 of the Act 1964 of attaching all the documents, which are intended to be produced at the time of evidence are not necessarily to be fulfilled as Guardians and Wards Act, 1890 has its own provisions on the matter.

Conclusion: i) Section 25 of the Act 1890 ouster of all other procedures when a Family Court deals with matters of guardian petition.
ii) The requirements of Section 9 of the Act, 1964, of attaching all the documents are to be fulfilled by defendant and he cannot be refused to produce at later stage by Family Court in guardian petition.

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40. **Lahore High Court**
W.P.No.1787 of 2022
Syed Ahmad Sher v. Addl. District Judge, etc.
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC3000.pdf

Facts: Through this writ petition, the petitioner has challenged the order and decree passed by the learned Judge Family Court, under Section 17A of the Family Courts Act, 1964 whereby suit filed by respondent No.3 for the maintenance of respondent No.4 (minor son of the petitioner) has been partially decreed at the rate of Rs.15000/- per month with 10% annual increase payable with effect from institution of the suit till the age of majority, as well as the consolidated judgment and decree passed by the learned Additional District Judge, in appeals preferred by the parties whereby the aforementioned order and decree passed by the learned trial court was upheld.

Issues: i) what does the expression "defence struck off" means and whether court could rely on any defence set up by defendant in his Written Statement after his defence is struck off?
ii) whether decree passed in terms of Section 17A(1) of Family Courts Act is confined to the claim for maintenance allowance only?
iii) whether the decree passed by the Family Court for the recovery of maintenance under Section 17A(1) of the Act can only be for the period commencing the date of decree and not prior to that?

Analysis i) The striking off of the defence in the case of default in the payment of interim maintenance is mandatory and no discretion in this regard is conferred upon the Court. Likewise, the striking off of the defence in such cases is automatic (i.e. not dependent upon any order of the Court in this regard), which is reflected from the use of legislative expression "the defence of the defendant shall stand struck off". The expression "defence struck off" means the defendant would not be entitled to rely on any defence set up by him in his Written Statement and the Court would not give any weight to the same, however, the Court has been required by the legislature to decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.
ii) Being a clause contemplating penal consequences for failure to pay the maintenance, it has to be strictly construed, therefore, the decree passed in terms of Section 17A(1) ibid is confined to the claim for maintenance and shall not cover any other claim of the plaintiff before the Family Court.
iii) To answer that question, it is imperative to refer to certain fundamental principles governing the grant of relief in suits. For it to succeed, the claim of a party against another must be based on a cause of action i.e. infringement of a right, title or interest recognized by law of the land. Generally speaking, in civil litigation, the entitlement to any relief covers the period commencing accrual of

the cause of action. Such entitlement may, however, be controlled, curtailed or restricted by an appropriate legislature by express words or necessary implications. Additionally, in cases where claimants succeed in establishing a cause of action but without proof of the exact date of accrual thereof, relief is usually granted from the date of institution of the suit. If a cause of action is recurring or continuous one, the relief is granted for the future period covering entitlement of the claimant. (…) There is nothing in the language of Section 17A(1) of the Act that suggests expressly or by necessary implication that after striking off defence of a defendant the decree passed by the Family Court for the recovery of maintenance allowance shall be restricted or limited to the period commencing the date of decree and not before that. In the absence of any such restriction or limitation in Section 17A(1) ibid, a claimant is entitled to the maintenance when the respondent failed to maintain his wife or son even for the period prior to the date of institution of the suit.

Conclusion: i) The expression "defence struck off" means the defendant would not be entitled to rely on any defence set up by him in his Written Statement and the Court would not give any weight to the same.

ii) Decree passed in terms of Section 17A(1) of Family Courts Act is confined to the claim for maintenance allowance only.

iii) After striking off defence of a defendant under Section 17A(1) of the Act, the decree passed by the Family Court for the recovery of maintenance allowance shall not be restricted or limited to the period commencing the date of decree and claimant is entitled to the maintenance even for the period prior to the date of institution of the suit.

LATEST LEGISLATION/AMENDMENTS

1. Amendment in the Punjab Government Rules of Business 2011, in second schedule under the heading 'Agricultural department' for Sr. No. 8.

2. Amendments in the Punjab Social Welfare and Bait-ul-Mal Department (Directorate) Service Rules, 2009, in the Schedule
   (i) At Serial No. 09 in column no. 03 and column no. 07
   (ii) At Serial No. 17 in column no. 03 and column no. 10

3. Amendments in the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, word 'West Pakistan' replaced with word 'punjab' and rule 1 & rule 2 clause c whrereas in rule 2 after clause (c), clause (ca) is inserted and in Form II, serial no 26 is inserted.

4. Amendments in the Punjab Printing and Stationary Department Posts (Head Office) Rules, 1989, in the Schedule at serial no. 1 (Column no. 7), serial no. 02 (column no. 07), serial no. 03 (column no. 05, column no. 07 and column no. 10),serial no. 04 (column no. 07) serial no. 05 (column no. 5, column no. 07, column no. 10) and serial no. 06 (column No. 5 and column no. 10).

5. Amendments in the Punjab Irrigation Department (Engineering Posts) Service Rules 2013, in the schedule, at serial no. 04 (column no. 07) and serial no. 06 (column no. 03).

6. Amendments in the Notification No. 1835-2019/625-CS(II), dated 13.09.2019 of Government of Punjab Colonies Department, at introductory para, sub para (1) and after sub parar (5), sub para (6) is inserted.

7. Vide Notification no. SO(E&M)1-7/2011(P-X)(Vol-V) dated 17th March 2022 of Government of the Punjab Excise, Taxation and Narcotics Control Department fixation of prices of security featured retro reflective number plates.

8. In the Pakistan Prisons Rules, 1978 after rule 15, rule 15A is inserted.

SELECTED ARTICLES:

1. **THE NATIONAL LAW REVIEW**
   https://www.natlawreview.com/article/whistleblowers-don-t-always-look-edward-snowden

   Whistleblowers Don't Always Look Like Edward Snowden by Tycko & Zavareei

   When hearing the term "whistleblower," some of the names that may automatically come to mind include famous whistleblowers that have been covered in the news: Edward Snowden, the controversial whistleblower who

leaked documents regarding National Security Agency surveillance programs; to "Deep Throat" of Watergate, the FBI whistleblower who would later be named as Mark Felt; and even Frances Haugen, the recent Facebook whistleblower. These whistleblower cases may have been highly publicized across news stations, but they are some of the many whistleblowers across a number of different industries who help uncover fraud and corruption and in turn, help make America a more equitable place. A whistleblower is a private individual who comes forward with evidence regarding fraud, corruption, waste, or abuse and reports it to law enforcement or the appropriate government agency. Whistleblowers help expose illegal or unethical behavior by providing inside information that otherwise would not have become known to the public. Whistleblowers are also known as qui tam relators and are usually employees, former employees, contractors, freelancers, or other individuals with non-public information regarding crimes, unethical behavior, corruption, or fraud against the government. Common examples of whistleblowers include a healthcare worker that witnesses medical billing fraud or a defense contractor employee noticing inferior products being substituted and sold to the U.S. government. Whistleblowers are incentivized to come forward with the potential of receiving a financial reward by various state and federal laws which also serve to provide whistleblowers with protection against retaliation.

2. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/birth-injury-lawsuits

Birth Injury Lawsuits by Lawrence J. Buckfire

Medical malpractice attorneys often represent clients for several types of birth injuries and birth defects. Filing a medical malpractice claim can result in much needed financial assistance for medical expenses and other costs. These cases require the specialized skill and knowledge of a birth injury lawyer. Many types of injuries can occur during pregnancy, labor, or after birth. Birth trauma is an injury to the child during the delivery. Many times, these injuries are not preventable and not caused by medical negligence. However, there are births that result in serious harm to the baby that could have been prevented with proper care. Medical errors can cause birth injuries or can increase their severity or permanence. These errors include failing to anticipate birth complications like a baby's twisted umbilical cord, the failure to respond appropriately to bleeding, and the failure to respond to fetal distress. Also, a delay in ordering a cesarean section when medically necessary can lead to permanent damage to a baby. Other errors include the misuse of forceps or a vacuum extractor during delivery, or poor after-care after delivery.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/attorney-client-privilege-issues-when-directors-can-access-privileged-corporate

Attorney-Client Privilege Issues: When Directors Can Access Privileged Corporate Records by Adam Diederich, Kirstie Brenson, Alec Kraus

Those with ownership stakes in privately held businesses, partnerships, or family offices need to closely collaborate with and trust others. When disagreements and disputes over rights and responsibilities arise, individual emotions and personalities can complicate matters. This ongoing series will help owners anticipate potential problems when structuring their businesses and find solutions to issues that commonly arise among owners of privately held businesses, both before and during litigation.

4. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-022-09900-x

Hate Crimes: The legality and Practicality of Punishing Bias—A Socio-Legal Appraisal by Natalie Alkiviadou

This paper assesses the extent to which enhancing a penalty for hate crimes is a necessity. It conducts its analysis by looking at the theoretical justifications for and against such enhancement and also the impact of hate crimes on their victims, their groups and society, in comparison to non-bias crimes. It recognizes the particularly damaging effect of hate crimes on these three levels (micro, meso and macro) but argues that care must be taken to ensure a high threshold framework and a clear vision in terms of protected characteristics. It argues that if penalty enhancements are to be any use, victims should be empowered to access the criminal justice system whilst the right to freedom of expression must be preserved. The paper commences with a definitional and conceptual framework of hate crimes, proceeds with the theoretical argumentations for and against hate crime legislation, conducts a legislative analysis of hate crimes, using examples from around the world as well as an assessment of the approach of the European Court of Human Rights to hate crime.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s10982-021-09435-5

The Force of Law? Transparency of Scientific Advice in Times of Covid-19 by Neus Vidal Marti

Freedom of Information Acts (FOIA) are valuable legal tools to access information held by public authorities but during the first wave of the Covid-19 pandemic time frames to reply to requests were de jure or de facto suspended in many countries. However, the lack of effective legal tools to achieve transparency was not automatically paired with governmental secrecy. This research paper analyses which are the factors that prompted some governments to move from secrecy to transparency while the essential legal tool to achieve disclosure of information was not available. It focuses on the role of 'ecologies of transparency', a concept developed by Seth Kreimer to describe how FOIA needs to be understood as functioning within a collection of factors and actors. Yet, can transparency ecologies still force disclosure of information when FOIA is suspended? Research focuses on a comparative case study about transparency of scientific committees advising governments on Covid-19 in the UK and in Spain. In both countries, members and minutes were initially secret, but the British government published information before being forced by FOIA, while the Spanish executive only released partial information when FOIA was reactivated. The paper argues that information disclosure processes can be understood as supply and demand models. On the demand side, it highlights the role of adversarial press, scientific community, whistle-blowers, the opposition and critics within the governing party as decisive factors within the transparency ecology. On the supply side, it focuses on legitimation needs from the government to explain different outcomes.