LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-09-2021 to 30-09-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

12.	Lahore High Court	Right of movement; Concept of Judicial Restraint	Constitutional Jurisdiction	9
13.		Jurisdiction of High Court when the matter is relating to an Authority established under Federal law		11
14.		Types of damages falls within the jurisdiction of Banking Court	Banking Laws	12
15.		Duties of a guardian	Guardian Laws	12
16.		Promotion during pendency of an inquiry	Service Laws	14
17.		Maintainability of suit for cancellation of a mutation after 30/40 years	Specific Performance	14
18.		Distance of a land to determine the prohibitive zone around a municipal area	Revenue Laws	15
19.		Discretion of Collector to grant proprietary rights to any other person in presence of his legal heirs, upon the death of tenant	Colonization of Government Lands (Punjab) Act, 1912	16
20.		Power of Syndicate to appoint Registrar of the University	Islamia University Bahawalpur Act, 1975	17
21.		Statutory delay and period of declaring a child accused as juvenile	Juvenile	18
22.		The person best entitled to custody of minor	Custody Law	19
23.		Proper forum to try a complaint under section 6(5) (b) of The Muslim Family Laws Ordinance, 1961	Family Law	19
24.		Recording defence evidence; Expression, "written statement"; Defence plea of an accused could have value without his appearance as a witness	Cr.P.C	20
25.		Scope of Section 20 of the Arbitration Act, 1940	Arbitration Act, 1940	22
26.		Rival claims and authority of Revenue officials	Revenue Laws	22
27.		Limitation as preliminary issue	Limitation	23

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammad Arshad Nadeem etc.v. The State
Criminal Petition No.408-L of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._408_l_2021.pdf

Facts: Post arrest bail of accused was dismissed by the High Court. He approached the Hon'ble Supreme Court through application for leave to appeal after a delay of 72 days. He cited his incarceration as his disability to approach the Supreme Court within limitation period and prayed to treat it as sufficient cause for condonation of delay.

Issue: i) How the sufficient cause is to be viewed in case of accused behind the bars with reference to his application for condonation of delay?
ii) What is the consideration behind refusal to grant bail?

Analysis: i) In a criminal case where the liberty and freedom of a person is at stake, "sufficient cause" is to be viewed by the Court through the lens of fundamental rights guaranteed under the Constitution, in particular through the right to liberty, dignity and fair trial guaranteed to an accused under Articles 9, 14 and 10A of the Constitution, which primarily translates into providing the accused, behind bars, with equal access to court and proper opportunity to defend and avail remedies allowed by law, as are available to a free person…… It would be fair to assume that a person approaching a court of law for the redressal of his grievance from behind bars, suffers a disability in comparison to those who enjoy liberty and freedom of movement. Therefore, incarceration of the petitioner seeking post arrest bail by itself constitutes "sufficient cause" to allow condonation of delay, unless it is established that the delay was caused by the petitioner due to some ulterior motive.

ii) Refusal of bail to an accused found prima facie involved in the commission of offences falling within the prohibitory clause of Section 497(1) CrPC is not a punitive measure but is more of a preventive step, taking care of the bifocal interests of justice towards the right of the individual involved and the interest of the society affected. The law presumes that the severity of the punishment provided for offences falling within the prohibitory clause of Section 497(1) CrPC is such that it is likely to induce the accused person to avoid conviction by escaping trial or by tampering with the prosecution evidence including influencing the prosecution witnesses. … BY declining bail, the courts ensure the presence of the accused person to face trial and protect the prosecution evidence from being tampered with or the prosecution witness from being influenced. The courts attempt to balance the interest of the society in bringing the offenders to justice and the presumption of innocence in favour of the accused person, by determining whether or not there are reasonable grounds for believing that the

accused person has committed the offence, in exercising their discretion to grant or decline the relief of bail.

Conclusion: i) See above.
ii) See above.

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2. **Supreme Court of Pakistan**
Muhammad Iqbal Khan Noori v. National Accountability Bureau etc
Civil Petitions No.3637 & 3638 of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3637_2019.pdf

Facts: The National Accountability Bureau has arrested and detained the petitioners in the course of investigation in NAB Case. The petitioners filed two separate writ petitions in the Islamabad High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 praying for their release on bail till decision of the case. The High Court dismissed their petitions while observing that offence with which the petitioners were charged fell within the prohibitory clause of section 497 Cr.P.C. They have, therefore, filed the present petitions, under Article 185(3) of the Constitution, for leave to appeal against the said order of the High Court.

Issue: What grounds are relevant for consideration in deciding post arrest bail application while exercising jurisdiction under Article 199 of the Constitution of Pakistan?

Analysis: The High Court while exercising its jurisdiction under Article 199 of the Constitution for the enforcement of fundamental rights can pass appropriate orders, which include an unconditional release or release on bail, to grant the relief to the aggrieved person. It is for the enforcement of fundamental rights under the Constitution and not the sub-constitutional statutory grounds provided in Section 497 CrPC, that this Court has been granting bails to the accused persons in NAB cases in exercise of constitutional jurisdiction under Article 199 read with Article 185(3) of the Constitution, mainly on the grounds of: (i) delay in conclusion of the trial,9 (ii) life-threatening health condition of the accused,10 and (iii) non availability of sufficient incriminating material against the accused.

Conclusion: It is for the enforcement of fundamental rights under the Constitution and not the sub-constitutional statutory grounds provided in Section 497 CrPC, that this Court has been granting bails to the accused persons in NAB cases in exercise of constitutional jurisdiction under Article 199 read with Article 185(3) of the Constitution, mainly on the grounds of: (i) delay in conclusion of the trial,9 (ii) life-threatening health condition of the accused,10 and (iii) non availability of sufficient incriminating material against the accused.

3. **Supreme Court of Pakistan**
Sajid Hussain @ Joji v. The State and another
Criminal Petition No. 537 of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._537_2021.pdf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks pre-arrest bail in murder case.

Issue: Whether merits can be touched in deciding pre-arrest bail?

Analysis: This Court has broadened the scope of pre-arrest bail and held that while granting extraordinary relief of pre-arrest bail, merits of the case can be touched upon……When all these aspects are considered conjointly on the touchstone of principles of criminal jurisprudence enunciated by superior courts from time to time, there is no second thought to this proposition that the scope of pre-arrest bail indeed has been stretched out further which impliedly persuade the courts to decide such like matters in more liberal manner.

Conclusion: While granting extraordinary relief of pre-arrest bail, merits of the case can be touched upon.

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4. **Lahore High Court**
Muhammad Zubair Waseem etc.v. Muhammad Anwar, etc.
Crl. Misc. No.47481-B/2021 etc
Mr. Justice Muhammad Ameer Bhatti CJ, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4585.pdf

Facts: Petitioners sought their post arrest bail in offence under section 365-A PPC and 155(c) of Police Order, 2002

Issue: Where there exists reasonable possibility of other view about the guilt based on material available on record, may the matter be termed as of further inquiry?

Analysis: If there existed any possibility to have a second view of the material available on the record then the accused was entitled for the relief of bail in the spirit of S.497(2), Cr.P.C.

Conclusion: Where there exists reasonable possibility of other view about the guilt based on material available on record, the matter may be termed as of further inquiry.|

5. **Lahore High Court**
Yasir Aurangzaib v. The State, etc..
Criminal Appeal No.3873-ATA/2015.
Mr. Justice Muhammad Ameer Bhatti CJ, Mr. Justice Tariq Saleem Sheikh
01) 12 (lhc.gov.pk)

Facts: Prosecution remained failed to prove its case wherein accused introduced his own version in his statement under section 342 Cr.P.C.

Issue: When statement of accused under section 342 Cr.P.C can be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984.?

Analysis: When on the basis of evidence produced, the prosecution has failed to establish guilt against the appellant, his statement u/s 342 Cr.P.C would be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984.

Conclusion: When on the basis of evidence produced, the prosecution has failed to establish guilt against the appellant, his statement u/s 342 Cr.P.C would be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984.

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6. **Lahore High Court**
Mst. Naheed Shahid etc v. Muhammad Tariq
Civil Revision No.234103/2018
Mr. Justice Muhammad Ameer Bhatti CJ
https://sys.lhc.gov.pk/appjudgments/2021LHC4633.pdf

Facts: Plaintiffs have challenged the gift of ancestral property in favour of their brother/defendant alleging it to be fraudulent.

Issue: Who is under legal obligation to prove the validity of transaction when females have been deprived of their right of inheritance through gift?

Analysis: It is well settled law that beneficiary is under legal obligation to prove the validity of the transaction particularly where females have been deprived of their legitimate rights of inheritance through purported gift deed.

Conclusion: Beneficiary is under legal obligation to prove the validity of the transaction particularly where females have been deprived of their legitimate rights of inheritance through purported gift deed.

7. **Lahore High Court**
Sajjad Ashraf v. The State, etc.
C.M.No.01-2019 and Main Case.
PSLA. No.6266/2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC4808.pdf

Facts: The petitioner has filed special leave to appeal against acquittal of respondents which is barred by time by ninety seven (97) days and also moved an application under section 5 of the limitation Act, 1908 for condonation of delay in filing the said petition.

Issue: Whether strike of lawyers is sufficient cause for condoning the delay in filing petition?

Analysis: Allowing such application of condonation of delay on ground of lawyers' strike abstaining deliberately from the court work or going on strike boycotting the courts' working is not only against the spirit of public policy, but is such an act of contempt of court that should not be respected in any way. Allowing such application on ground of lawyers' strike would amount to recognizing the lawyers' strike as sufficient ground for not appearing in the court. This situation cannot be accepted in public interest as well as in interest of justice.

Conclusion: Strike of lawyers, cannot be accepted as sufficient cause for condoning the delay in filing petition.

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8. **Lahore High Court**
Malik Usama Bin Tahir Awan v. The State & Another
Crl.Misc.No.1600-B of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC4604.pdf

Facts: The petitioner has filed this petition under Section 498 of Cr.P.C. for grant of pre-arrest bail, for offences under Sections 279, 337-G, 427, 302 and 34 of PPC. The petitioner was nominated through supplementary statement.

Issues: How the term ‘malafide’ can be proved?

Analysis: The term “mala fide” is not a uniformly identified term. It can be gathered from the attending circumstances. Being a state of mind, the term “mala fide” cannot always be proved through direct evidence, and it is often to be inferred from the facts and circumstances of the case.

Conclusion: The term “mala fide” cannot always be proved through direct evidence, and it is often to be inferred from the facts and circumstances of the case.

9. Lahore High Court
Election Commission of Pakistan Through its Secretary, Islamabad v. Appellate Authority, District Judge, Rawalpindi and 2 others
Writ Petition no.2543 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC4609.pdf

Facts: The Respondent/ petitioner of the connected petition filed his nomination papers to contest election from Ward No. A on general seat. The nomination papers were rejected during scrutiny by Returning Officer, on the ground that the name of "respondent" was figuring in the electoral roll of Ward No. B. Being aggrieved the respondent preferred an appeal before respondent No.1, which was accepted. In the connected petition grievance of "respondent" is that after passing of order when he approached the District Election Commissioner, he issued vote certificate showing his vote falling in Ward No. A. He then submitted vote certificate to Returning Officer with the request to accept his nomination papers and to allow him to contest election. It is his grievance that vide order he has been disallowed to contest the election.

Issues: i) Who can qualify to be elected or chosen or to hold an elective office or membership of a local government?

ii) Whether an appellate authority can issue order for revision, correction and transfer of the vote from one electoral area to another?

Analysis: i) Section 60 of Cantonments Ordinance, 2002" lays down the qualifications for candidates and elected members. It is manifestly clear from the section 60 of the Ordinance that a person can only qualify to be elected or to be chosen or to hold an elective office or membership of a local government if he is enrolled as a voter in the electoral roll of the relevant ward… By virtue of Rule 19(4) of Cantonments Local Government (Election) Rules, 2015 the Returning Officer is empowered to reject nomination papers if he is satisfied that a candidate is not qualified to be elected as a member.

ii) Chapter IV of the Elections Act, 2017 deals with the electoral rolls and provides a self-explanatory mechanism for preparation and correction of electoral rolls. In terms of Section 39 of the Act ibid certain restrictions have been placed on the revision, correction and transfer of the vote from one electoral area to another. If a candidate suffers with a defect of substantial nature, he cannot be allowed to contest the election from such ward. If a candidate is not registered voter in a particular Ward, it would be beyond the mandate and scope of the Appellate Authority to direct the Election Commission for shifting/transfer of his vote from one Ward to the other Ward and re-scrutiny of his nomination papers thereafter. Guidance in this respect, if needed, can be sought from NADEEM SHAFI versus TARIQ SHUJA BUTT and others (PLD 2016 Supreme Court 944) and Federation of Pakistan v. Mian Muhammad Nawaz Sharif (PLD 2009 SC 284) wherein the August Court held that: "..Rule 14(7) of the 2013 Rules only

empower a Returning Officer to allow a defect other than one of a substantial nature to be remedied, such as the name, or the corresponding serial number in the electoral roll or other particulars of the candidates or his proposer or seconder and son as to ensure that the same are accurate. But if the name of the candidate and his particulars are altogether missing and/or same is the position of the proposer/seconder the Returning Officer cannot be allowed to add these afresh…The Returning Officer and the Appellate authority are barred from correcting a defect of a substantial nature; if the fact that the proposer and/or seconder is not a voter of the constituency is not a defect of a substantial nature, then what is? Therefore, there can be no valid appellate orders allowing substitution or rectification of a defective nomination paper.

Conclusion: i) A person can only qualify to be elected or to be chosen or to hold an elective office or membership of a local government if he is enrolled as a voter in the electoral roll of the relevant ward.

ii) An appellate authority cannot issue order for revision, correction and transfer of the vote from one electoral area to another, as the Appellate authority is barred from correcting a defect of a substantial nature.

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10. **Lahore High Court**
Mian Zahid Daultana v. Begum Tehmina Daultana etc.
F.A.O No.51220/2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC4304.pdf

Facts: The Appellant was appointed as guardian of person and manager of properties of his mother, under the Mental Health Ordinance, 2001. Later on the sister of Appellant/ Respondent No.2 filed an application under Section 41 read with section 37 of the Ordinance ibid for removal of the appellant as guardian and manager of properties of mentally disordered lady, on the ground of non-fulfillment of his duties as well as embezzlement and misappropriation in assets. The appellant filed an application for disposal of the case with the assertion that his mother had expired and after her death, the Court of Protection has no jurisdiction to proceed further with the matter as the said proceedings stand abated automatically.

Issues: Whether after the death of the mentally disordered person, all the proceedings emerging out of the guardianship of the mentally disordered person's assets & properties stand abated?

Analysis: The custody of assets of an incapacitated/ mentally disordered person is a sacred trust and guardian / manager is placed under extraordinary stringent obligation to maintain the accurate accounts or use the same with honest care & caution and court which is the ultimate legal custodian/guardian of the mentally disordered person's assets/property, has the jurisdiction to scrutinize the transparent utilization of the assets and under the law, the guardian/manager is placed under

unalienable obligation to furnish meticulous details of assets/properties, income whereof and expenditures for the period he remained custodian of mentally disordered person, and death of the disordered person or removal of the guardian does not absolve guardian/ manager from his responsibility to avoid the tendering of the income/expenditure detail statement. Where the right to sue is still in existence as enunciated under Section 41(2) of the Ordinance ibid read with Order 22 C.P.C, the proceedings remain continue and do not abate.

Conclusion: Due to the death of the mentally disordered person, all the proceedings emerging out of the guardianship of the mentally disordered person's assets & properties do not stand abated.

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11. **Lahore High Court**
Sajjad Ahmad Saleem etc v. Industrial Development Bank of Pakistan etc.
C.R.No.46895/2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC4315.pdf

Facts: The respondent No.1/ bank filed an application for the sale of mortgaged/suit property for the satisfaction of the outstanding amount, which was accepted by the learned District Judge. The respondents did not challenge the aforesaid judgment in appeal. The respondent-bank thereafter filed an execution petition, which is still pending. The predecessor-in-interest of the petitioners No.1 to 9 filed application/objections to attachment of the suit property, claiming that he purchased the suit property in good faith but said application was dismissed. The Hon'ble Supreme Court of Pakistan also upheld the order of the learned District Judge, Lahore. Now the petitioners filed an application before the learned executing Court seeking permission to pay the decretal amount in installments which was dismissed by the learned executing court.

Issues: i) Whether successors can claim better title than that of their predecessor, whose right has already been denied up to the Hon'ble Supreme Court?

ii) Whether strangers to the lis, can pay decretal amount?

Analysis: i) Successors derive right from their predecessor and they will step into the shoes of their predecessor and are debarred to claim any independent better title than that of their predecessor. A matter, which has already been finalized up to the Hon'ble Supreme Court of Pakistan and has attained the status of past and closed transaction, it cannot be re-opened or re-adjudicated merely on the whims and caprice of a litigating party.

ii) A person, who is neither interested party nor has any cause of action and being strangers to the lis, has no right to request the learned executing Court for making deposit of the decretal amount. Strangers to the lis have no locus standi to file application for making deposit of the decretal amount in installments rather these

proceedings must be tainted with mala fide to frustrate the execution proceedings.

Conclusion: i) Successors cannot claim better title than that of their predecessor, whose right has already been denied up to the Hon'ble Supreme Court.

ii) Sstrangers to the lis, being neither interested party nor having any cause of action, have no right to pay decretal amount.

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12. **Lahore High Court**
Muhammad Umais v. Cantonment Board Rawalpindi and others.
W.P No. 1355 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC4758.pdf

Facts: The petitioner challenged the establishment of Food Street in Rawalpindi and declaring the part of road as pedestrian zone from sunset to late night on the touchstone of infringement of his fundamental right to movement under Article 15 of the Constitution.

Issue: i) Whether right of movement provided under Article 15 is absolute or qualified?
ii) What is the concept of Judicial Restraint?
iii) Whether Cantonment Board is empowered to declare a particular part of the road as Pedestrian zone/walking street from sunset to late night to regulate the traffic load?

Analysis: i) Freedom of movement of a citizen of Pakistan or any other person who is within the territorial bound of the country is his fundamental right as provided under Article 15 of the Constitution. Nevertheless, this fundamental right is not absolute rather it is qualified and reasonable restriction can be imposed in the exercise of this right through law in public interest. However, it is the duty of the Court to examine, that if any restriction is imposed by law or by an authority established under the law, whether such restrictions advancing the public interest, is within the judicious bound of 'reasonableness' or not and whether the imposed restriction only regulates and not totally negates the freedom of movement on the touchstone and pretext of public interest….. Eminent Jurist John Salmond defined a legal right as an interest, recognized and protected by the rule of legal justice. Fundamental rights are those rights which are recognized, provided and pledged by the State to its citizens regardless of their color or creed and belief or believes. However, each fundamental right is attached to a corresponding responsibility i.e., the right to be recognized equally before the law implies the responsibility to abide by the laws.

A plain reading of Article 15 made it abundantly clear that it is a fundamental right of every citizen to move freely throughout Pakistan. However, reasonable restriction can be imposed to further the public interest by law on the exercise of such right of free movement. Now the question arises, what amounts to 'reasonable restriction'. The word 'reasonable' implies intelligent care and

deliberation, that is the choice of a course which reasons dictates. In other words, the concept of reasonableness is nothing but that of harmonizing individual right with collective interest. However, for the sake of determining reasonableness of a restriction so imposed, the basic principle must be kept in mind that the power to impose restriction granted under the Constitution does not mean or include the power to destroy the very right, which is the subject matter of such regulatory dominion because the existence of right cannot be undone to nihility by way of authority to administrate its exercise. The right is basic and fundamental whereas the power to administer the same is auxiliary and supplemental. A right is independent whereas the power to regulate the same does not exist independently, and always dependent and contingent to the right so attached with.

ii) In the absence of any glaring illegality or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any initiative taken by government or any Statutory Body/Board to encourage and promote the business activities and to ensure the provision of places of public entertainment for the general public as mandated by Article 26 of the Constitution.

iii) The qualification for imposition of 'reasonable restriction' on the fundamental right of freedom of movement as envisaged under Article 15 of the Constitution is that it must be imposed in the public interest whereas Section 117 sub-section (K) of Cantonment Act, 1924, empowers the Board to perform discretionary functions if it is likely to promote the safety, health or convenience of the inhabitants of the Cantonment. Under Section 108 of the Cantonment Act, all streets and the pavements appertaining to streets are provided and maintained by the Board and therefore it was competent to regulate the flow of traffic by way of declaring the portion of Road as Pedestrian Street/walking street from sunset to midnight because it offered a solution to the problem of heavy influx of traffic in the area and regulated the flow of the same and thus directly promoted the convenience of the inhabitants as provided under Section 117(K) of the Act.

Conclusion: i) A citizen of Pakistan or any other person who is within Pakistan for the time being has fundamental right of freedom of movement under Article 15 of the Constitution. However, this fundamental right is not absolute rather it is qualified and reasonable restriction can be imposed in the exercise of this right through law in public interest.

ii) Judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own powers to intervene in the matters relating to policy of the Statutory Bodies/Board having financial perspective and outcome.

iii) The Cantonment Board is competent to regulate the flow of traffic by way of declaring the portion of a Road as Pedestrian Street/walking street from sunset to midnight because u/s 117(K) of the Act, it has discretion to take any action which promote convenience of the public.

13. Lahore High Court
M/s Jet Green (Pvt.) Limited v. Federation of Pakistan etc.
I.C.A No. 54648 of 2021
Mr. Justice Jawad Hassan, Mr. Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC4654.pdf

Facts: Petitioner's writ petition seeking direction against Civil Aviation Authority for issuance of regular public transport license was disposed of by Single Bench on the ground of that since the office of the Authority was in Karachi so the Court did not have territorial jurisdiction in the matter.

Issue: Whether High Court is competent to assume jurisdiction when the matter is relating to an Authority established under Federal law and performing functions in connection with the affairs of federation regardless of the fact that the particular office is not within its territorial jurisdiction?

Analysis: The celebrated maxim of Common Law *"boni judicis est ampliare jurisdictionem"* laid down the principle that it is the duty of a Judge to extend (or use liberally) his jurisdiction whereas the maxim *Boni judicis est ampliare justitiam* set down the idea that it is the duty of a good judge to enlarge or extend justice. In a nutshell, it is the duty of Court to amplify, enhance and extend its jurisdiction to advance justice and for that purpose it must adopt an approach to embrace rather to deny. The CAA is a statutory authority, which is a creation of federal law and it performs functions in connection with the affairs of the Federation, which is the mandatory and required criteria to pass a direction in the nature of Mandamus as ordained under Article 199(1)(ii) of the Constitution. Admittedly, the Appellant is residing within the territorial jurisdiction of this Court and carrying out its business throughout Pakistan through his office situated within the territorial bound of this Court and the prayer it has made regarding the issuance of RPTL from the Respondent, if granted, will also take effect and going to be operative and effective throughout the Country including the Province of Punjab. Moreover, the subject matter of the Petition, the RPTL, whether granted or denied by the Respondent, will directly have an impact on the rights and interests of the Appellant, which is residing for the purposes of carrying out business through its office within the jurisdictional limits of this Court and since any order of the Respondent will directly affect the functionality and operation of the Appellant within the limits of this Court, therefore this Court has got the jurisdiction to entertain and decide the instant Petition.

Conclusion: If an authority, which is established under a federal law and performing functions in connection with the affairs of federation, no matter where the head office is situated, in the Capital or in any other city of a Province, if it passes any order or undertakes any proceedings in relation to any person living or doing business in any of the Provinces, then the High Court of the Province, in whose territory the

order would affect that person, would be competent to exercise jurisdiction in the matter.

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14. **Lahore High Court**
Inamullah Khan Mazari v. Bank Al-Falah & 3 others
RFA No. 259 of 2013
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC4559.pdf

Facts: The appellant obtained financing facility from respondent Bank for purchase of car. He could not pay three installments but when he went for payment of outstanding installments; his car was snatched and ultimately auctioned by Bank. He was also humiliated by Bank officials. Therefore he filed suit for recovery of twenty millions as damages but it was dismissed. So he filed this appeal.

Issue: i) Which type of claim of damages falls within the jurisdiction of Banking Court?
ii) Whether the customer has good case to claim damages from Bank upon repossessing vehicle in case of non-payment of installments?

Analysis: i) The claim for damages caused on commission of tort or by breach of a contract has nothing to do with the default in the fulfillment of an obligation arising from a financial facility and covered under the definition of finance as provided in Section 2(d) of the Ordinance. Obviously such plea cannot be agitated before the Banking Court. Whereas, a claim for damages, on account of an injury or loss, caused by the Financial Institution in the fulfillment of its obligation in relation to finance, certainly falls within the domain of Banking Court... The Banking Court has no jurisdiction in matters of recovery of damages on account of defamation.
ii) The customer has no good case in his favor for the reason that under Section 3 of the Ordinance, it shall be the duty of a customer to fulfill his obligations to the financial institution otherwise he has to face the music. He cannot challenge the powers of Bank for repossessing the vehicle. Therefore if the officials of the Bank had taken into possession the car from appellant, no question arises to hold that the said action was wrong or unjustified.

Conclusion: i) See above
ii) The customer has no good case to claim damages from Bank upon repossessing vehicle in case of non-payment of installments with a plea of humiliation.

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15. **Lahore High Court**
Muhammad Javed Iqbal v. Rao Shahzeb & 3 others
Regular Second Appeal No. 91 of 2018, Civil Revision No. 1572-D of 2018
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC4871.pdf

Facts: The appellant filed a suit for specific performance of agreement to sell regarding the property of minors, claiming that the mother of the minors (respondent)

entered into impugned agreement to sell. She got transferred the land in favour of appellant to the extent of her share through a registered sale deed; Respondent No.1 also instituted a suit for declaration against his brothers, sister, mother and appellant and called in question the legality of disputed agreement.

Issues: i) Whether a mother can enter into an agreement to sell qua the property of her minor children without being the legal guardian of their person and property?
ii) What are the duties of a guardian?

Analysis: i) By now these are the settled principles based on Mohammadan Law, a mother of minor is not the natural guardian to deal with the property of her minor child and that at the most, she can be his/her de facto guardian in terms of Section 361 of the Mohammadan Law having no powers to make any transaction about the property of minor child. The apex Court in Muhammad Haneef vs. Abdul Samad & others PLD 2009 SC 751, when a mother had made an exchange of property of her minor child, was pleased to hold that, "The respondent No.6, albeit mother of respondent No.7, was not the natural guardian to deal with the property of her minor daughter, the respondent No.7, under the Mohammadan law. At the most, she was the de facto guardian of the property of her daughter…. As regards a de facto guardian, it is laid down in section 361 a person may neither be a legal guardian (section 359) nor a guardian appointed by the Court (section 360) but may have voluntarily placed himself incharge of the person and property of a minor. Such a person is called de facto guardian. A de facto guardian is merely a custodian of the person and property of the minor. Section 364 leaves no doubt that a de facto guardian (section 361) has no power to transfer any right or interest in the immovable property of the minor."

ii) The guardianship is a legal process used to protect individuals who are unable to care for their own well-being due to infancy, incapacity or disability. The court appoints a legal guardian to care for an individual, known as a ward, who is in need of special protection. A guardian has to act within four corners specified and the authority given by the guardian court. Each act including the sale of property has to be for the benefit of the minor with prior permission of the court. In general, a guardian does not have the authority to make contract for the ward without specific permission from the court. Finally every act of guardian must be in the better interest of minor and not otherwise.

Conclusion: i) A mother, being de facto guardian, cannot enter into an agreement to sell qua the property of her minor children without being the legal guardian of their person and property.

ii) See above.

16. **Lahore High Court**
Hafiz Muhammad Kaleem ud Din v. Province of the Punjab etc.
W.P. No.3963 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4838.pdf

Facts: Promotion of the petitioner was deferred due to alleged pending inquiry and incomplete service record while the juniors of the petitioner were promoted. The petitioner approached the respondents who demanded from him NOCs and service record which petitioner produced before them. Thereafter, Director Anti-Corruption Establishment, sent for droppage of inquiry and preparation of cancellation report which was agreed by the competent authority. The petitioner attained the age of superannuation but respondents did not consider his case for pro forma promotion and refused to give promotion as well as pro forma promotion to the petitioner.

Issue: Whether mere pendency of an inquiry is a ground to withhold promotion?

Analysis: It is settled law that mere pendency of the inquiry is no ground to deprive the petitioner from his lawful right. Even otherwise, petitioner cannot be kept waiting indefinitely for redressal of his grievance and deprived of his lawful right of promotion when inquiry against him has been dropped.

Conclusion: Mere pendency of an inquiry is no ground to withhold promotion.

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17. **Lahore High Court**
Mst. Sheedan Begum etc. v. Muhammad Usman Khan etc.
R.S.A. No.21 of 2011.
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4844.pdf

Facts: The appellants, being legal heirs of the deceased, filed a suit for declaration and challenged the mutations, gift deeds and Tamleek Namas on the ground of fraud. Through instant R.S.A. appellants have challenged the order passed by learned trial court whereby application under order VII rule 11 C.P.C. filed by respondents was accepted and plaint filed by appellants was rejected concluding that appellants have no cause of action to file the suit.

Issues: i) Whether legal heirs of deceased can challenge a mutation on the ground of fraud, after the death of their predecessor?
ii) Whether a suit for cancellation of a mutation on the basis of fraud, filed after 30/40 years of sanctioning of such mutation, is maintainable?

Analysis: i) The registered document attaches sanctity and there is no ground to disbelieve those documents. The other important question in this proposition was the locus standi to the appellants to agitate/challenge those mutations after a period of more

than 30/40 years. The owner remained alive for remarkable period and appellants did not challenge anything in his life time. Inheritance opens after death of the owner of the property and not during the life. These mutations were sanctioned during life time of the owner. Being descendants definitely appellants have no locus standi to challenge the aforesaid mutations.

ii) As per Article 120 of the Limitation Act, 1908, maximum six years are provided to seek such right but appellants remained silent for decades and did not agitate or assailed any mutation, gift deed or Tamleek specially during life time of their predecessor, therefore, wisdom of the statute is that such matters where limitation affects the rights of other person and also where prima facie locus standi of the claimant persons is doubted such matters should be straight way refused to entertain. As per mandate of section 3 of Limitation Act, Court is under obligation to scrutinize the plaint, the application and the appeal on the point of limitation regardless of the fact that the said point has been agitated by either party or not… Moreover, it is an established principle by now that law of limitation is not merely a formality/technicality, rather said statute furnishes certainty and regularity to the human affairs, matters and dealings. It is also well settled principle that law helps the vigilant and not the indolent. Furthermore, delay of each and every day has to be explained satisfactorily, otherwise the delay cannot and should not be condoned.

Conclusion: i) Legal heirs of deceased cannot challenge a mutation on the ground of fraud, after the death of their predecessor, especially when the owner remained alive for remarkable period and the transaction was not challenge during his life time.

ii) See above.

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18. **Lahore High Court**

Muhammad Farooq etc. vs Member (Judl-II) Board of Revenue, Punjab Lahore etc.

W.P.4399 of 2017.

Mr. Justice Safdar Saleem Shahid

https://sys.lhc.gov.pk/appjudgments/2021LHC4832.pdf

Facts: On 26.11.1961 land was allotted to the predecessor of present petitioners under the Tube Well Sinking Scheme by the order of District Collector, which was resumed in favour of the State vide order dated 25.03.1968 by the Deputy Commissioner/Collector. After failure to get relief from various revenue forums, the petitioners approached Lahore High Court in writ jurisdiction which was accepted. However in 1979 the District Collector again resumed land in favour of the State. In 2nd round of litigation, the petitioners again did not get any relief from the revenue forums. This time their writ was disposed of with the direction to approach the District Collector who was directed to consider the case of allotment of alternative land in lieu of land resumed earlier according to law. The District collector in the year 2002 once again resumed land in favour of the State on the ground that the land was situated in the prohibitive area its proprietary

rights could not be granted. Once more the petitioners going through various revenue forums invoked constitutional jurisdiction of the High Court.

Issue: Whether the distance of a land to determine the prohibitive zone around a municipal area is to be measured from the date when the allotment was made or the date when proprietary rights conferred upon the allottee?

Analysis: As regards the prohibited zone, the instructions were that the distance should be measured as required when the allotment was made and not as when the proprietary rights are conferred……..The date of allotment was the crucial one, which was to be kept in view while deciding the propriety rights of the land to an allottee……..At the time of allotment of the subject land to the predecessor-in-interest of the petitioners, the same was not falling within the prohibited zone and there was no need to hold inquiry in this regard. Hence, the instant writ petition is accepted.

Conclusion: The distance of a land should be measured from the date when the allotment was made and not when proprietary rights conferred upon the allottee.

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19. **Lahore High Court**
Mst. SharifanBibi (deceased) through L.Rs. etc. v. Mst. IrshadBibi etc.
Civil Revision No.13-D/2009
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4819.pdf

Facts: The petitioner challenged the concurrent judgments of the trial court and first appellate court whereby the suit for declaration of the respondent was decreed and appeal of the petitioner against that was dismissed.

Issue: i) Whether Revenue Court has jurisdiction to adjudicate upon the question of title particularly in inheritance matters and whether limitation will apply in inheritance cases?
ii) Whether, upon the death of tenant, the Collector has discretion to grant proprietary rights to any other person in presence of his legal heirs under Section 20 of the Colonization of Government Lands (Punjab) Act, 1912.

Analysis: i) Civil Court is the competent forum to see such issues where the matter of title is involved and the matter of inheritance is specifically agitated because the revenue authorities are not having jurisdiction to decide the matter of inheritance. It is settled rule that the limitation in inheritance cases would not run, speciallywhen there is an evidence that the inheritance mutation was fraudulently sanctioned by the revenue department
ii) The bare reading of Sections 19 & 19-A establishes that under this Act the tenancy shall devolve upon the heirs in accordance with the Muslim Law. This is important that Section 19-A was enacted in 1951. Prior to that Section 20 was applicable to the succession of tenants acquiring otherwise than by succession.

The contention of the petitioner is that Section 19-A of the Act was not applicable at the time when Hakim Ali died, whereas Jalal Din died after a long time of the death of Hakim Ali deceased. Under Section 20 of the Colonization of Government Lands (Punjab) Act, 1912, the property was to devolve upon the widow of the tenant until she dies or remarries or loses her rights under the provisions of this Act; the unmarried daughters of tenant until they die or marry or lose their rights under the provisions of this Act. After the death of Hakim the allottee the land was to be devolved under Section 20 of the Act to the widow and the daughter till their entitlement. It has been noted with great concern that neither the District Collector made any inquiry before issuance of Pata Malkiyat or grant of proprietary rights as required under this Act, nor the predecessor-in-interest of the petitioners disclosed the fact that under which capacity he was claiming the proprietary rights.

Conclusion: i) See above.
ii) Under Section 20 of the Colonization of Government Lands (Punjab) Act, 1912, the Collector has no discretion to grant proprietary rights to any other person in presence of the legal heirs. Therefore, his order confirming the proprietary rights to defendant was rightly declared null and void by the learned Courts below.

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20. **Lahore High Court**
Shahid Mahmood v. Islamia University Bahawalpur etc.
W.P No. 3972 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4791.pdf

Facts: The petitioner assailed the notification whereby respondent was appointed as Registrar of Islamia University Bahawalpur by the Syndicate without giving prior advertisement in the Newspaper.

Issue: Whether Syndicate is competent to appoint Registrar of the University without giving advertisement in the newspaper?

Analysis: The University is an independent autonomous/statutory body which has its own constitution; and appointment of Registrar is regulated under Section 16 of the Islamia University Bahawalpur Act, 1975, --- Syndicate was fully authorized under Section 33 of the Act to make rules to regulate any matter relating to the affairs of the University. Rules for appointment to the posts of Registrar, Treasurer and Controller of Examinations were approved and all the terms and conditions were settled in the Minutes of 74th and 75th meetings of Syndicate on the basis whereof respondent No.3 was appointed as Registrar. The Honorable Supreme Court in **(2021 SCMR 977)** has held that *Where a matter related to the internal working and procedures of the Syndicate, then in the absence of bias, partiality or lack of transparency on the part of a Committee (acting on*

instructions and authorization of the Syndicate) the same could not be interfered with and High Court in its constitutional jurisdiction cannot substitute the findings of the Syndicate without proof of mala fides, bias, illegality or lack of transparency."

The University has produced advertisements for the post of Registrar, previously advertised by them, which show that there was no malice on their part to appoint respondent as Registrar. As the University has to run all its administrative affairs through the Registrar and in case as a result of advertisement if no one qualifies for that post, the Syndicate had no option but to make Rules and appoint somebody on the said post in order to run the affairs of the University under the relevant rules of the Act, 1975.

Conclusion: Under Section 16 of the Islamia University Bahawalpur Act, 1975, the Syndicate is empowered to make the appointment of Registrar by approving new rules when no suitable candidate was approved for the post as a result of previous advertisements.

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21. **Lahore High Court**
Muhammad Tanveer v. The State etc.
Criminal Misc. No. 22244-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4334.pdf

Facts: The petitioner (a juvenile) sought bail after arrest, in a case under section 302 PPC, on merits as well as on the ground of statutory delay in conclusion of trial.

Issues: Whether the period of declaring a child accused as juvenile can be attributed to such juvenile while considering his bail petition on the ground of statutory delay?

Analysis: Section 6(5) of Juvenile Justice System Act, 2018 provides that the juvenile will be entitled to be released on bail if he has been detained for a continuous period exceeding six months while his trial has not been concluded, unless the delay has been occasioned by the act or omission of such juvenile. The period consumed in deciding such application for declaring the child as juvenile cannot be attributed to the juvenile, if he did not contribute towards the delay, because it is a procedural delay and no one can be deprived of any legal right… It has been consistently held by superior courts of the country that if a case, on such statutory delay in conclusion of trial, is made out then ordinarily bail should not be refused on hyper technical grounds.

Conclusion: A period of declaring a child accused as juvenile cannot be attributed to such juvenile while considering the ground of statutory delay, if he did not contribute towards such delay.

22. **Lahore High Court**
Dr. Islam Ullah Khan Lodhi v. CCPO, etc.
W.P. No. 49238 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4339.pdf

Facts: Through this writ petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioner (father) sought custody of his two daughters.

Issues: Who is the best person entitled for the custody of minor children?

Analysis: According to the Fatawai Alamgiri, the mother amongst all is the best person entitled to the custody of her minor children during the connubial relationship as well as after its dissolution, and similar is the position as laid down regarding the custody of the minors by the mother in Muhammadan Law, pages 222-223, Edition 1965. It is thus clear that this right belongs to the mother which cannot be taken from her except her own misconduct. Similarly, the tenderness of their ages or the weakness of their sex, renders a mother's care necessary. Mohammdan Law supports the mother's natural right qua the custody of the children and similarly according to the Hanafi doctrine the mother is entitled to the custody of their children until they arrive at puberty.

Conclusion: Amongst all, the mother is the best person who is entitled to the custody of her minor children.

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23. **Lahore High Court**
Muzaffar Nawaz v. Ishrat Rasool and another
Criminal Revision No.168/2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC4594.pdf

Facts: Against the decision of Judicial Magistrate Sec. 30, wherein the petitioner was awarded sentence to undergo three months imprisonment and pay a fine to the tune of Rs. 500,000/- U/Sec. 6(5)(b) of the Muslim Family Laws Ordinance 1961 (Ordinance), the petitioner preferred an appeal before the learned Additional Sessions Judge, which was dismissed. Being aggrieved, the petitioner invoked revisional jurisdiction of High Court mainly on the ground that the learned Judicial Magistrate had no jurisdiction to entertain the private complaint U/Sec. 6(5)(b) of the Ordinance.

Issue: What would be the proper forum to try a complaint under section 6(5) (b) of The Muslim Family Laws Ordinance, 1961 i.e. a Judicial Magistrate simpliciter or necessarily it be a Judge Family Court who also enjoys the powers of a Judicial Magistrate, as required by section 20 of the West Pakistan Family Courts Act, 1964 (amended by Family Courts (Amendment) Ordinance 2002)?

Analysis: Under section 5 of the West Pakistan Family Court Act 1964 (Act), the Family Court has exclusive jurisdiction to try the offences specified in Part II of the Schedule. Moreover, under section 20 of the Act, a Family Court exercises the powers of a Judicial Magistrate First Class while trying the offences enshrined therein the schedule. The legislative intent behind conferring jurisdiction upon Family Court to try offences under the schedule is to fold all family affairs under an umbrella so that the sanctity of family affairs and dignity of spouses could be saved from public exposure in ordinary courts. The word "exclusive" used in Section 5 of the Act makes it quite clear that no other court can exercise jurisdiction in respect of provisions of the Muslim Family Laws Ordinance except the one constituted under the Act. Therefore, once it is obvious that the complaint pertains to any of the offences specified in the schedule, the Family Court has jurisdiction to entertain the matter. Accordingly, a complaint filed under section 6(5)(b) of the Ordinance is within the exclusive domain of the Family Court. In the present case, it was held that Magistrate had erroneously assumed the jurisdiction; hence, the trial stood vitiated, consequently, the proceedings were quashed.

Conclusion: The Family Court has exclusive jurisdiction to entertain a complaint under section 6(5) (b) of the Muslim Family Laws Ordinance 1961.

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24. **Lahore High Court**
Muhammad Akhtar, etc. v. The State
Criminal Appeal No.167/2011.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC4570.pdf

Facts: In a case registered under section 302/34 PPC, the trial court convicted two accused/appellants and awarded the sentence of life imprisonment, while acquitting the remaining two. Against the sentence, the appellants knocked at the door of Hon'ble Lahore High Court and preferred an appeal. On the other hand, the complainant invoked revisional jurisdiction of the court, praying for the enhancement of the sentence of the appellants.

Issue: i) What is the procedure for recording defence evidence?
ii) What does the expression, 'written statement' appearing in section 265-F Cr.P.C., connote, and how it may be filed by an accused?
iii) Whether courts can summon/call defence witnesses on the request of the accused and whether defence plea of an accused could have value without his appearance as a witness under section 340(2) Cr.P.C.?

Analysis: i) After recording evidence of the prosecution and conducting an examination of the accused, the accused shall be asked whether he means to produce evidence, and if he opts to do so, the accused may bring on the record the evidence either

through submitting a written statement or adducing evidence/producing witnesses. Meaning thereby, the court shall call on the accused to enter on his defence and produce evidence. Here, the expression "entering on to defence" means the accused shall appear as his witness as required under section 340(2) Cr. P.C for the recording of his statement. Also, he shall be obliged to go through the test of cross-examination. Thereafter, he shall bring witness(es) in support of his defence.

ii) The use of the expression 'written statement' in section 265-F Cr.P.C. is to be viewed under the concept of written statement as detailed therein the Code of Civil Procedure 1908 (CPC). Under Order VI, Rule 1, CPC, a written statement, being part of pleading carries certain legal requisites that it must have verification (on oath or solemn affirmation) at the bottom that the contents of such and such paragraphs are based on one's personal knowledge or from information received, as required under Order VI Rule 15 of CPC. So, if the accused wishes to file a written statement, instead of entering as a witness in his defence, the format of the written statement must be the one as detailed given therein the CPC. This helps the court to consider the facts based on oath as probable if it wishes to summon any material witness as DW or CW, or call for any document, indicated in said written statement, which is necessary for the just decision of a case. Such written statement shall form part of the record as evidence.

iii) The court could call the defence witnesses only after the accused himself has appeared as a witness under section 340(2) Cr.P.C. or has filed a written statement in his defence. Where the accused opts to file a written statement, he may liberate himself to face the check of cross-examination. "….Usually both the parties bring on record their respective stances which could only be verified or defied with a third stand/stance and that third stance is in the form of witness to the parties. So, a witness in support of party would only be called if the party first raises a stance through approved legal procedures. The intent and purpose of the legislature to balance the opportunities for adducing evidence by both the parties is reflected from the relevant section which in fact saves the fundamental right of fair trial; it must be followed by all subordinate courts conducting trials under Chapter XXII-A of Cr. P.C…." In the present case, the accused being failed to bring on record his stance and defence witness in the process through formal ways; therefore, his plea could not be substantiated during the trial which disentitled him (one accused) to claim acquittal.

Conclusion: i) See above.
ii) See above.
iii) See above.

25. **Lahore High Court**
Lahore Development Authority v. Habib Construction Services
FAO No. 52305 of 2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4209.pdf

Facts: The petitioner has filed this appeal against the decision rendered by the Civil Court, on the application of the respondent against the appellant under Section 20 of the Arbitration Act, 1940, whereby the Court while accepting the application directed to file the arbitration agreement between the parties in the Court and appointed the arbitrator to resolve the dispute between the parties through arbitration. While the petitioner alleged that there was no dispute at all between the parties, so matter could not be referred to arbitrator.

Issues: What is the scope of Section 20 of the Arbitration Act, 1940?

Analysis: Section 20 of the Arbitration Act, 1940 underlines the sanctity of an arbitration agreement and reinforces the basic principle that where the parties to an agreement have undertaken to resolve their inter se disputes through arbitration, the intention of the parties ought to be respected and given effect. Section 20 fundamentally is limited to the determination of existence of a real and alive dispute between the parties in a summary procedure. The Court is only required to prima facie satisfy itself regarding the existence of the dispute measured with the yardstick of "sufficient cause"… The scope of Section 20 of the Act restricts the Court to give findings on issues emanating from an agreement itself regarding which the parties have agreed to resolve through arbitration. The Court is only required to satisfy itself regarding the existence of a real and alive dispute between the parties. The rationale of the same is that reference to arbitration cannot be a futile exercise hence, the Court may not blindly refer a non-existent dispute to arbitration but is required to satisfy itself that there is a tangible prima facie dispute between the parties which requires resolution through arbitration as agreed by the parties. The Court, however, is empowered to determine if the application under Section 20 of the Act itself was barred by time or not.

Conclusion: The scope of Section 20 of the Arbitration Act, 1940 is limited to the determination of existence of a real and alive dispute between the parties in a summary procedure. The Court is only required to satisfy itself regarding the existence of a real and alive dispute between the parties.

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26. **Lahore High Court**
Muhammad Saleem v. The Province of Punjab and three others
W. P. No. 2112 / 2019 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4638.pdf

Facts: The Respondent filed a suit for declaration and permanent injunction to the effect that he is and be declared as owner in possession of the property and the petitioner

has no connection with the property, as he has tempered the impugned mutation. The said suit was unconditionally withdrawn by the respondent. At the same time, the respondent also filed an appeal before the Assistant Commissioner / Collector under Section 161 of Land Revenue Act, 1967 for correction of the mutation by taking plea of fraud. The said appeal was allowed. The order of the Assistant Commissioner was upheld by the Member (Judicial-II), Board of Revenue, Punjab, Hence, this Petition.

Issues: Whether in case of rival claims of ownership or possession or any right pertaining to the same property on the basis of a mutation, Revenue officials are the competent authority to decide the matter?

Analysis: The legislature was conscious of the fact that Civil Court under the general law is the competent forum for the determination of mutual rights and liabilities of the parties under the applicable civil law through free and fair trial. Hence, to settle and adjudicate rights of title, possession and rights requiring recording of evidence through a fair trial, the institution of a suit for a declaration of rights under Chapter IV of the Specific Relief Act, 1877 was recognized under Section 53 of the Land Revenue Act. Thus, only such cases of correction of mutations which are undisputed not involving adversarial claims or which happen due to inadvertent typographical or arithmetical mistakes of Revenue officials and are not long-standing entries can be corrected under Section 172(1) & (2)(vi) of the Act. The simple test to determine as to whether the issue falls under Section 53 or Section 172(2)(vi) of the Act is as to whether the claimed correction affects the rights or interests of the other party and if so whether the other party concedes or objects to the correction of such mutation under Section 172(1) & (2)(vi) of the Act. If the right or interest of the other party is affected through correction and such person objects to such correction, the Revenue Officials are duty bound to refer the matter to the Civil Court under Section 53 of the Act.

Conclusion: Where two or more persons allege rival claims of ownership or possession or any right pertaining to the same property on the basis of a mutation, its real nature and character is that of determination of title, possession or rights between adversaries which would squarely fall within the jurisdiction of civil courts.

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27. **Lahore High Court**
Munir Ahmad v. Hassan Hussain
W. P. No. 132489 / 2018
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4943.pdf

Facts: The respondents no. 1and 2 filed a suit for specific performance of agreement to sell and alleged that total consideration amount was paid. The petitioner/defendant filed an application under order 7, Rule 11(d) for rejection of plaint, alleging therein that the suit is hopelessly time barred, which was dismissed by the courts below.

Issues: If in a case limitation is a mixed question of law and fact, can it be decided as preliminary issue?

Analysis: In some cases, the question of limitation is mixed question of law and fact and evidence is required to decide such question. To decide the issue after recording evidence will not prejudice the rights of the petitioner. The petitioner can still produce evidence to prove the issue of limitation. In Aamir Shahzad Dhody v. Adamjee Insurance Co. and others 2020 CLD 1329, it was held that 'once a question qua limitation has been framed and the court has initiated the process of recording the evidence, then preferred course is to take the case to its logical ends.' The observations were made by following the case of Irshad Ali v. Sajjad Ali and 4 others, PLD 1995 SC 629; and the case titled, Haji Abdul Sattar and others v. Farooq Inayat and others, 2013 SCMR 1493

Conclusion: Where the question of limitation is mixed question of law and facts and evidence is required to decide the issue of limitation. To decide the issue after recording evidence will not prejudice the rights of the petitioner.

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28. **Lahore High Court**
Irfan alias Imran alias Kadu v. The State & another
Crl. Appeal No.478/2012
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4796.pdf

Facts: The appellant assailed his conviction and sentence under Section 376, PPC through the instant appeal.

Issue: i) What is essential condition for any person to appear and testify as a witness in a court of law?
ii) To what extent DNA test may be relied?

Analysis: i) Plain scrutiny of the provisions of Qanoon-e-Shahadat, 1984 reveals that the essential condition for any person to appear and testify as a witness in a court of law is that he/she should possess the capability and intellect of understanding the questions put to him/her, and also be able to rationally respond thereto. This threshold has been referred to as passing the *"rationality test"*, and the practice that has developed with time in our jurisdiction is for the same to be carried out by the presiding Judge prior to recording the evidence of a witness.
ii) It is consistent view of the superior courts of the country that DNA technology is the mean of identifying perpetrator with a high degree of confidence. It has been held in a recent verdict of Honorable Supreme Court of Pakistan that DNA test not only plays a vital role in bringing the actual culprits to book but it is also very helpful to exonerate the innocent. DNA test is considered, due to its scientific accuracy and conclusiveness, as a gold standard to establish the identity of an accused.

Conclusion: i) Essential condition for any person to appear and testify as a witness is that he/she should possess the capability of understanding the questions put to him/her, and also be able to rationally respond thereto.
ii) DNA test is considered, due to its scientific accuracy and conclusiveness, as a gold standard to establish the identity of an accused.

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29. **Lahore High Court**
Rana Kashif Ali Versus Chief Secretary, etc
W.P. No.10683 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC4742.pdf

Facts: The petitioners have challenged various orders of transfer, posting, suspension and dismissal from service passed by the Administrative Department of Local Government & Community Development, Province of Punjab.

Issue: i) What is the effect of non-extension of order granting injunctive relief when the said relief had been granted till next date of hearing?
ii) Whether in case of violation of injunctive order, the High Court can restore the party to the position where it originally stood?

Analysis: i) The injunctive relief once granted by a High Court, even if granted till the next date of hearing, remains in force and its operation remains in effect till the time the Court itself positively intervenes in the matter and by means of application of judicial mind recalls, modifies, vacates or suspends such injunctive relief itself.… That when no request was made for discharge of injunctive relief, the legal position would be that the injunctive relief would continue despite no specific order having been passed extending the order granting injunctive relief
ii) By contravening an injunctive order the party against whom the order is passed has done something for its own advantage to the disadvantage of the other party, this Court under its inherent jurisdiction in terms of Section 151 CPC can bring back the party and restore to its position where it originally stood by deeming that the violation never occurred.

Conclusion: i) Interim orders (specifically stay orders affecting rights of the parties) even if issued "till the next date of hearing" are presumed to be in force until final adjudication or until such orders are specifically modified or vacated.
ii) In case of violation of injunctive order, the High Court can restore the party to the position where it originally stood.

30. **Lahore High Court**
Zarmeen Abid v. National Database and Registration Authority, etc.
Writ Petition No.7102 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC4733.pdf

Facts: The petitioner's biological father was unknown. Her CNIC was blocked by NADRA on the application of the husband of petitioner's foster mother, whose name was mentioned in the column of father in adopted capacity on her CNIC, as he contended that she is not her real daughter.

Issue: i) Whether right to identity and issuance of CNIC is fundamental right of a person?
ii) Whether the petitioner, whose biological father is unknown, is entitled to have CNIC from NADRA and what would be the mode regarding mentioning the name of father?

Analysis: i) Under International Law, a human rights based lens is adopted with respect to state obligations. ---The obligation to respect identity means that state must refrain from actively interfering with the individual's identity. This responsibility encompasses protection from arbitrary denial of identity documents, as that directly violates the individual's right to identity, and interferes with her name and ties to family, place and nation. The obligation to protect identity means that state must take necessary measures to prevent others from interfering with the individual's identity. On a global level, this responsibility requires states to register their populations, since civil registration in turn protects citizens and other individuals within a state's territory from vulnerability to criminal activity like human trafficking, forced prostitution, bonded labour, etc.
Therefore, it is immaterial whether the national framework expressly includes this right. For example, in the case of Pakistan, the Constitution of Pakistan does not expressly include a 'right to identity', as such and it is deduced from a range of positively recognized rights and principles of policy. These include, *inter alia*,the right to life, inviolability of dignity, and equality of citizens. It is a concomitant right of such positive rights.
ii) Guaranteeing a national identity document to those aged 18 and above is integral to ensuring protection from criminal activity and general menaces which tend to benefit from the lack of identity documentation of individuals, especially vulnerable population groups like women, persons with disabilities, indigenous people, transgender persons etc. The Director General, National Database and Registration Authority was asked to take heed from an enlightening judgment of this Court "*Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others*" **(PLD 2018 Lahore 54)**, wherein on account of the indulgence shown by the Court, the National Database and Registration Authority authorities framed a policy for issuance of identity cards to Eunuchs. The Policy dated 21.8.2017 titled **issuance of CNIC to Eunuchs** recognizes orphans with unknown parentage and

since in the judgment in question Eunuchs with unknown parentage had been ordered to be granted identity cards by filling in their parentage columns with random names culled from National Database and Registration Authority database, the Director General, National Database and Registration Authority was sensitized to follow suit. He was reminded about Article 25(2) which allowed for affirmative action in favour of women!. The Director General, National Database and Registration Authority has made arrangements for a fresh identity card to be issued in the name of the petitioner with the same (imaginary) yet necessary parentage of Abid-ur-Rehman and now the petitioner stands entitled and eligible to enjoy the rights guaranteed to her by the Constitution of Islamic Republic of Pakistan, 1973. It may be mentioned here that the name Abid-ur-Rehman which shall now figure in the column of parentage of the petitioner is not of the same Abid-ur-Rehman who was previously married to the petitioners' mother but is rather in the nature of the imaginary '**Guru**' recognized and noted with approval in "*Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others*" **(PLD 2018 Lahore 54)**

Conclusion: i) The right to identity is a fundamental, non-derogable, independent and autonomous right which is rooted in human dignity and preserves each human's distinct existential interest.
ii) See above.

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31. **Supreme Court of UK**
R (on the application of TN (Vietnam)) v. Secretary of State for the Home Department and another
On appeal from: [2018] EWCA Civ 2838
Lord Lloyd-Jones, Lord Briggs, Lady Arden, Lord Sales and Lord Stephens
http://www.bailii.org/uk/cases/UKSC/2021/41.html

Facts: The appellant has challenged the decision of the Court of Appeal by which she lost her appeal against the Secretary of State's decision to object her asylum claim under the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, contending the FTR 2005 fell to be quashed. The Honorable Judge, who heard her application, agreed on that issue. But the Appellant then contended that the decision of the First-tier Tribunal ("FTT") in her case also fell automatically to be quashed.

Issue: Whether the systemic unfairness inherent in the FTR 2005 meant that the determination of appeal by First-tier Tribunal ("FTT") is also nullified automatically?

Analysis: The FTT's jurisdiction is set out in the 2002 Act, and, as Lord Sales points out, in the events which happened its jurisdiction was solely governed by its obligation to act judicially, that is in this case, to act fairly. Provided that the FTT was fair in its conduct of the appeal, its decision was accordingly valid. In turn if, because of

following the rules, its determination was unfair, the FTT would have no jurisdiction, and the resultant determination should be set aside. On this analysis, there is no automatic nullification of the FTT's decision. In relation to judicial decisions, the rationale of the principle must be to bring litigation to an end and to promote certainty, especially in property and status matters. The principle and its rationale would be undermined if the consequence of the systemic failings in the FTR were that tribunal decisions were automatically null and void. It would undermine confidence in the legal system if automatic nullification were the result, which is one of the reasons why it is in the public interest that there should, at an appropriate stage, always be finality in litigation… It is well established that the decision-maker is not constrained by rules of evidence and has to consider all material considerations when making an assessment about the future. It is important to analyze carefully whether there was unfairness in the course of the hearing and, if so, whether that was caused by the FTR 2005 and what the effects of that unfairness were. In this analysis it may be helpful to follow the methodology in *The Right to a Fair Trial in International Law*, Clooney and Webb, (Oxford, 2021) which disaggregates the right to a fair trial into a number of separate elements, such as the right to an independent tribunal, the right to prepare a defence, the right to adequate time and facilities to prepare a defence, the right to be present, the right to examine witnesses, the right to an interpreter and so on. A disaggregated analysis may assist the court to form a clearer view as to the causes, and causative effect, of any departure from what fairness required. Of course, at the end of the day, the court must look at the matter in the round and determine whether the hearing, as a whole, was unfair because of the FTR 2005. A careful analysis is called for, remembering always that the asylum claimant does not have to establish his or her claim to the same standard of proof as a civil claimant. But the system is not inquisitorial but adversarial. The trial takes place at the hearing, and it is not a continuous fact-finding process which goes beyond that hearing. So even where the alleged unfairness stems from the provision of a defective system the court will look at the impact of the system, and not simply set aside the order without considering the impact. In order for the FTT decision to be found to be a nullity, it would have to be established that it was ultra vires in the sense that it was taken by the FTT without jurisdiction in the wide *Anisminic* sense. That means that it would have to be established that it was a decision arrived at outside the jurisdiction conferred by section 82(1) of the 2002 Act. That provision includes as an implied condition that a decision should be arrived at fairly: that means, fairly in the circumstances of the individual case.

Conclusion: The fact that the FTR 2005was held to be structurally unfair does not mean that the hearing of a case, when these rules were applied, is itself unfair. Thus the determination of appeal by First-tier Tribunal will not be nullified automatically?

32. **Supreme Court of the United States**
Babb v. Wilkie, No. 18-882, 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-882_3ebh.pdf

Facts: Dr. Noris Babb, a pharmacist working at the VA Medical Center in Bay Pines, Florida, sued the U.S. Department of Veterans Affairs (VA) secretary, alleging age and gender discrimination and a hostile work environment. The Middle District of Florida rejected Babb's claims, granting summary judgment to the VA secretary. On appeal, the 11th Circuit Court of Appeals reversed the district court's ruling on Babb's gender discrimination claim and affirmed the district court's ruling on Babb's age discrimination and hostile-work-environment claims. The court remanded the case. Babb petitioned the U.S. Supreme Court for review, arguing the 11th Circuit's decision disadvantaged federal employees bringing discrimination claims under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA) of 1967.

Issue: Scope of protections for federal employees in the Age Discrimination in Employment Act of 1967.

Analysis: The Court ruled that plaintiffs only need to prove that age was a motivating factor in the decision in order to sue. However, establishing but for causation is still necessary in determining the appropriate remedy. If a plaintiff can establish that the age was the determining factor in the employment outcome, they may be entitled to compensatory damages or other relief relating to the end result of the employment decision.

Conclusion: In an 8-1 opinion, the court reversed and remanded the judgment of the 11th U.S. Circuit Court of Appeals, holding the plain meaning of §633a(a) of the Age Discrimination in Employment Act of 1967 "indicates that the statute does not require proof that an employment decision would have turned out differently if age had not been taken into account."

Justice Samuel Alito wrote the opinion of the court. Justice Sonia Sotomayor filed a concurring opinion, joined by Justice Ruth Bader Ginsburg. Justice Clarence Thomas filed a dissenting opinion.

LATEST LEGISLATION/AMENDMENTS

1. Government of the Punjab Law and Parliamentary Affairs Department (Implementation & Coordination Wing) vide notification No. SO(Cab-I)2-4/2020(S.P), dated 14-09-2021 has amended following Rules and Schedules of **The Punjab Government Rules of Business 2011:**
    - Rule 2
    - Rule 3
    - Rule 9-A
    - In the First Schedule
        - Sr. No. 1A
        - Sr. No. 13
        - Sr. No. 13A
        - Sr. No. 16A
        - Sr. No. 18
        - Sr. No. 18A
        - Sr. No. 26
        - Sr. No. 26A
        - Sr. No. 27A
        - Sr. No. 31B
        - Sr. No. 35
        - Sr. No. 36A
        - Sr. No.38A
    - In the Second Schedule, amendments are made under the following headings;
        - Agriculture Department
        - Board of Revenue
        - Communication and Works Department
        - Forestry, Wildlife and Fisheries Department
        - Higher Education Department
        - Housing, Urban Development and Public Health Engineering Department
        - Irrigation Department
        - Livestock and Dairy Development Department
        - Local Government and Community development Department

- Primary and Secondary Healthcare Department
- School Education Department
- Specialized Healthcare and Medical Education Department

LIST OF ARTICLES:-

1. **MANUPATRA**
   file:///C:/Users/LHC/Desktop/04f2c209-5742-4cf0-baa6-31d616b6564f.pdf
   UNDERSTANDING THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021 by Abhishek Choudhary & Ritika Ritu

   The new IT Rules aim at strengthening government oversight of social and digital media. The objective sought to be achieved by the government, so far as it relates to tackling the issue of fake news, hate speech, child pornography etc., is laudable and necessary. However, a major chunk of the stakeholders, including many SSMIs have voiced their concerns against the IT Rules, on the grounds, inter alia, of being intrusion upon the fundamental right to speech and expression and the right to privacy. Quite clearly, there are conflicting opinions, howsoever; taking into consideration that the matter is subjudice before the various High Courts, we must be hopeful for the dust to settle down soon.

2. **COURTING THE LAW**
   https://courtingthelaw.com/2021/09/13/commentary/law-and-ai-should-artificial-intelligence-be-conceived-as-a-legal-inventor/
   LAW AND AI: SHOULD ARTIFICIAL INTELLIGENCE BE CONCEIVED AS A LEGAL INVENTOR? by Muhammad Qasim Dogar

   Patent laws in the UK, the US and Pakistan are only applicable to humans as these laws have been enacted several years ago and become outdated with the recent advancements in technology. By providing inventorship rights to AI, people will be incentivized to invest further in AI and come up with novel inventions to novel problems, which will in turn benefit the society. Apart from people, AI itself can be motivated once its algorithms are commingled with models of motivation. It is easier to grant the rights of an inventor to AI instead of tracing multiple individuals who contributed towards the creation of the AI. Moreover, it is necessary to protect the moral rights of AI and its owners, considering the possibility of awareness in AI. People should not be granted the rights to an invention which they did not actually create. Instead, AI should be afforded such rights if it has come up with the inventions through its own capabilities and without any human input. Consequently, it is understandable that inventorship rights underpin certain responsibilities at which only a human being may be adept. However, the solution to this resides in the articulation of modern legislature whereby new laws, similar to patent laws, could be ordained which award the status of inventor to AI and transfer any human-based responsibilities to the owner of the AI. Such laws will not only safeguard the moral rights of the

AI and its owner, but also incentivize people to invest further in AI, thereupon advantaging the society.

3. **BANGLADESH JOURNAL OF LAW**
http://www.biliabd.org/article%20law/Vol 08/Md.%20Jahid%20Hossain%20Bhuiyan.pdf
PREVENTIVE DETENTION AND VIOLATION OF HUMAN RIGHTS: BANGLADESH, INDIA AND PAKISTAN PERSPECTIVE by Md. Jahid Hossain Bhuiyan

Personal liberty is a basic human right of every individual. 110 Preventive detention laws added fuel to the fire against personal liberty. It is an anathema to all those who love personal liberty. Preventive detention makes an inroad on the personal liberty of a citizen without the safeguards inherent in a formal trial before a judicial tribunal and …it must be jealously kept within the bounds fixed for it by the Constitution and the relevant law. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue. The study reveals that preventive detention is serious violation of personal liberty of a citizen. The detaining authority, at its will, may detain anybody and this law provides the authority all immunities from liability. Consequently the detaining authorities misuse their power….

4. **QUEENS LAW JOURNAL**
https://journal.queenslaw.ca/sites/journal/files/Issues/Vol%2044%20i2/5.%20Penney.pdf
ENTRAPMENT MINIMALISM: SHEDDING THE "NO REASONABLE SUSPICION OR BONA FIDE INQUIRY" TEST by Steven Penney

In Canada, the entrapment defence can be established in one of two ways. In the first way, "Entrapment 1", the defence must prove that police provided the accused with an opportunity to commit an offence without: (i) reasonably suspecting him or her of committing that offence; or (ii) engaging in a bona fide inquiry. "Entrapment 2" arises when police go beyond providing an opportunity and "induce" the commission of the offence. The author argues that courts should cease recognizing Entrapment 1 as a discrete defence generating an automatic stay of proceedings. Entrapment 1 coheres poorly with the defence's rationale (deterring police from manufacturing crime), has generated a convoluted and inconsistent jurisprudence, and fails to draw a sensible line between abusive and non-abusive police methods. Instead, Entrapment 1 should be folded into the Charter's general abuse of process doctrine, allowing courts to consider all relevant circumstances in deciding whether alleged state misconduct is grave enough to warrant a stay of proceedings. This would leave Entrapment 2 as the only true entrapment defence automatically requiring a stay.