LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-10-2021 to 31-10-2021)

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

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LATE$T LEGI$LATION/AMENDMENT$

$ELECTED ARTICLE$

1. **Supreme Court of Pakistan**
Waqas ur Rehman alias Moon v. The State etc
Criminal Petition No. 796-L of 2021
Mr. Justice Umar Ata Bandial, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._796_l_2021.pdf

Facts: Definite finding of guilt has been given by the Investigating Officer against the petitioner who is seeking pre-arrest bail.

Issue: Whether the ipsi dixit of police is binding on the courts?

Analysis: The accusation against the petitioner was otherwise found correct during the course of investigation and as such a definite finding of guilt has been given by the investigating officer against the petitioner. We are conversant with the fact that ipsi dixit of the police is not binding on the Courts but it has persuasive value.

Conclusion: The ipsi dixit of the police is not binding on the Courts but it has persuasive value.

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2. **Supreme Court of Pakistan**
Zafar Iqbal, Mazhar Hussain & Muhammad Saleh v. The State, etc.
Criminal Petition No. 1145-L of 2020
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1145_l_2020.pdf

Facts: Pre-arrest bail granted to petitioners by learned Additional Sessions Judge was cancelled by the High Court.

Issue: Whether the benefit of reasonable doubt can be extended even at bail stage?

Analysis: Our judicial system has evolved beside others the concept of "benefit of reasonable doubt" for the sake of safe administration of criminal justice which can not only be extended at the time of adjudication before the trial court or court of appeal rather if it is satisfying all legal contours, then it must be extended even at bail stage which is a sine qua non of a judicial pronouncement.

Conclusion: Benefit of doubt must also be extended at bail stage, if it satisfies all legal contours.

3. **Supreme Court of Pakistan**
Asfandiyar v. The State, etc.
Criminal Petition No.1001 of 2016
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1001_2016.pdf

Facts: In a murder case, petitioner was convicted and sentenced to life imprisonment on the basis of solitary statement of a witness.

Issue: i) Whether law requires a particular number of witnesses to prove a criminal charge?
ii) What is the legal nature of rule of corroboration?

Analysis: i) Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge.
ii) Corroboration is a rule of prudence and not law and cannot be invariably insisted in every case.

Conclusion: i) Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge.
ii) Corroboration is a rule of prudence and not law and cannot be invariably insisted in every case.

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4. **Supreme Court of Pakistan**
Muhammad Khan v. Iqbal Khan & another
Criminal Petition No.687 of 2020
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._687_2020.pdf

Facts: The High Court, ignoring respondent's absconsion, granted him bail in a murder case.

Issue: Whether the absconsion may be taken into consideration at bail stage?

Analysis: Though the absconsion by itself is not proof of guilt nor insurmountably stands in impediment to release of an offender if otherwise a case for grant of bail is made out, nonetheless, it is a circumstance which cannot be invariably ignored without having regard to peculiarity of circumstances in each case as there are situations that possibly entail consequences.

Conclusion: It is a circumstance which cannot be invariably ignored without having regard to peculiarity of circumstances in each case as there are situations that possibly entail consequences.

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5. **Supreme Court of Pakistan**
Haji Shah Behram v. The State and others
Criminal Petition No.893 of 2020
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._893_2020.pdf

Facts: Order of release on post arrest bail by High Court was assailed in the august Supreme Court with the contention that there was no occasion for the High Court to release the respondents on bail as the statements of the witnesses supported by medical evidence and investigative conclusions, squarely constituted "reasonable grounds" within the contemplation of section 497 of the Code of Criminal Procedure, 1898, standing in impediment to their release on bail in the absence of any space admitting consideration for "further inquiry", a sine qua non, for favourable exercise of discretion.

Issue: What is "further inquiry"?

Analysis: Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial subsequently after evaluation of evidence1". Similarly, "mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection 2 of section 497 Cr.P.C. Expression "further inquiry" is a concept far from being confounded in subjectivity or to be founded upon denials or parallel stories by the defence; it requires a clear finding deducible from the record so as to be structured upon a visible/verifiable void, necessitating a future probe on the basis of material hitherto unavailable.

Conclusion: See above.

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6. **Supreme Court of Pakistan**
Resham Khan etc v. The State
Criminal Petition No.950 of 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._950_2021.pdf

Facts: Petitioners were denied post arrest bail despite of this fact that they were declared innocent by police and there were contradictions in ocular account and medical evidence. Moreover, complainant had also filed complaint with different allegations.

Issue: How tentative assessment of material available on the record should be made at bail stage?

Analysis: At the bail stage the court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything in the nature of a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un-rebutted, may lead to the inference of the guilt of the accused.

Conclusion: The concept of further inquiry is elaborated above.

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7. **Lahore High Court**
Dr. Imran Fareed Khan etc. v. University of the Punjab, Lahore etc
Writ Petition No. 31629 of 2014
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5707.pdf

Facts: The Higher Education Commission of Pakistan (HEC) introduced Overseas Ph.D Scholarship under the Faculty Development Programme in the year 2005. Respondents No.5 & 6, who were working as Deputy Registrar (Network) and Deputy Registrar (System) in the University of the Punjab (the University) respectively, were also given benefit of the Scholarship Programme. On completion of their Ph.D Degrees, respondents No.5 & 6 rejoined the University in the year 2011/2012 where-after they were appointed as Assistant Professors in the department of Electrical Engineering on ad-hoc basis. Further, the appointment of respondents No.5 & 6 was actuated w.e.f. 30.12.2006. As a result, they became senior to the petitioners. Being aggrieved of grant of benefit of the Scholarship Programme to respondents No.5 & 6 the petitioners filed this petition.

Issue: Whether writ of quo-warranto is maintainable in collateral proceedings?

Analysis: The Hon'ble Court while relying on (PLD 2002 SC 853) (PLD 2018 SC 114) held that it is well settled by now that writ of quo-warranto is not maintainable in collateral proceedings and to settle their personal vendetta.

Conclusion: It is well settled by now that writ of quo-warranto is not maintainable in collateral proceedings.

8. **Lahore High Court**
Naveed Masood Malik.v. Bank Alfallah Limited and others
RFA No.338 of 2015.
Mrs Justice Ayesha A. Malik and Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2021LHC5307.pdf

Facts: The bank instituted a recovery suit. Application for leave to defend of the appellant and others was dismissed and the judgment and decree was in favour of the bank. Regular first appeal has been filed under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 by the appellant for calling into question the judgment and decree passed by the banking court.

Issue: What are the standards which guide the banking court for grant of leave under the Financial Institutions (Recovery of Finances) Ordinance, 2001?

Analysis: The standard that guides the banking court for grant of leave under the Ordinance is much more stringent than the one provided under Order XXXVII CPC. Under section 10(8) of the Ordinance, the opinion formed by the banking court for grant of leave is dependent on the contents of the plaint, the application for leave to defend and the reply thereto. Correspondingly, section 10 (3) (4) & (5) stipulate that the application for leave to defend shall contain a summary of the substantial questions of law as well as fact on which evidence needs to be recorded in the opinion of the defendant. It furthermore requires the application for leave to defend to state (a) the amount of finance availed by the defendant from the financial institution; the amounts paid by the defendant to the financial institution and the dates of payments; (b) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution; and (c) the amount if any which the defendant disputes and facts in support thereof. The defendant is required to append all the documents which in his opinion support the substantial questions of law or fact raised by him. Sub-section (6) of section 10 imposes penal consequence of dismissal of the application for leave to defend in case of failure by the defendant to show compliance to the conditions attached by sections 10 (3) (4) & (5) of the Ordinance. The banking court at the leave stage is not obliged to only look at the defence of the defendant for making up its mind rather it is required to consider the entire pleadings of the parties including the replication to the application for leave to defend and by extension the finance documents and the statement of account. The quality of defence must be of such a nature as to carry some plausible degree of conviction. In other words, the defence raised by the defendant must be more than an arguable case. Obviously, the facts of each case would vastly differ, and the banking court is required to evaluate the same in its decision to grant or refuse leave to the defendant. It is not the function of the banking court at the leave stage to be concerned about the evidence for determining the truth of the defence, but its task is to decide whether there is a genuine issue for trial. There can of course be instances where the banking court while refusing leave to the defendant for its failure to present a

genuine, bona fide and substantial defence may still require the plaintiff to establish its case by evidence, oral as well as documentary.

Conclusion: The banking court is bound to consider in totality the case set up by the plaintiff and the defence of the defendant in making a determination that a substantial and genuine question of fact has been raised on the basis of the available record requiring trial for its decision thereby denying a summary judgment in favour of the plaintiff.

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9. **Lahore High Court**
Khan Construction Company v. Punjab Province through Secretary HUD and PHED Government of the Punjab, Lahore etc
WP No.61452/2021
Mrs. Justice Ayesha A. Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC5320.pdf

Facts: The petitioner has impugned the act of the disqualifying his pre-qualification technical bid without specifying any reasons and without giving the petitioner an opportunity to improve upon its technical bid. The basic dispute between the parties is with regard to the procedure followed by the respondents for the single stage two envelope tender notice with respect to the bid.

Issue: i) Whether the procuring agent is duty bound to inform the reasons of disqualification of technical bid?
ii) What is difference between the single stage two envelope bidding and the two stage bidding process?
iii) Whether remedy under Procurement Rule 67 is available in case of disqualification of technical bid?

Analysis: i) Rule 17(3) merely requires that the contractor is informed as to whether it has been prequalified or not and therefore the procuring agent is not required under Rule 17 to provide for reasons of disqualification. In the event that a bidder wants to know the reasons, it can apply to the procuring agent for the reasons which the procuring agent shall then communicate to the said bidder.
ii) The single stage two envelope bidding process is designed, such that the bidders submit two envelopes simultaneously, one showing the technical proposal and the second containing the financial proposal. The procuring agent first evaluates the technical proposal without reference to the financial proposal or the price and bidders who do not conform to the technical requirements as specified are rejected being deficient. The basic difference between the single stage two envelope bidding and the two stage bidding is that in the single stage bidding procuring agent is clear about its technical requirements and needs to evaluate price proposal of those bidders who are technically sound and meet the requirements. However, where it is two stage bidding process, in that case the bidders can be given an opportunity to meet the technical requirements which are

prescribed under the Rules in terms of Rule 38(2)(b) and (c). In the two stage process, there is room to improve and discuss technical requirements whereas in the single stage, the technical requirements are specific and need to be met with.

iii) As per Rule 67, any bidder feeling aggrieved by any act of the procuring agent after submission of its bid may lodge a written complaint not later than 10 days after the announcement of the bid evaluation report. This means that where a bidder participates in a single stage two envelopes bidding procedure and is technically disqualified, remedy under Rule 67 is available to such bidder to file its complaint not later than 10 days after it has asked for the reasons for rejection of his technical bid from the procuring agent.

Conclusion: i) The procuring agent is not duty bound to inform the reasons of disqualification of technical bid.

ii) In the single stage bidding procuring agent is clear about its technical requirements while in two stages bidding process the bidders can be given an opportunity to meet the technical requirements.

iii) The remedy under Procurement Rule 67 is available in case of disqualification of technical bid.

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10. **Lahore High Court**
Pepsi Cola International (Private) Limited v. Federation of Pakistan through Secretary Revenue Division, Islamabad etc.
WP No.21602/2021
Mrs. Justice Ayesha A. Malik
https://sys.lhc.gov.pk/appjudgments/2021LHC5626.pdf

Facts: A show cause notice is issued under section 161 of Income Tax Ordinance with respect to the tax year 2014. As per the notices, the petitioner has been asked to provide documentary evidence of certain transactions and details of payments called for in the show cause notices. According to petitioner, in terms of Section 174(3) of the Ordinance, the taxpayer is to maintain accounts and documents for six years after the end of the tax year. Therefore six year period expired on 31.12.2019 and the petitioner is not required to maintain any accounts or documents which are now being asked for by the respondents.

Issue: i) Whether the taxpayer can be compelled to produce documents beyond six years in terms of Section 174(3) of the Ordinance?

ii) Whether the tax payer can be rendered liable for want of documentary evidence and account on delayed action taken by Tax Authorities?

Analysis: i) The taxpayer cannot be compelled to produce documents which the statute does not require it to maintain beyond six years in terms of Section 174(3) of the Ordinance. The purpose of setting a time limit and maintaining accounts and documents is to ensure that proceedings under the Ordinance are held within time and where there is a delay, the obligation then rests on the department being the relevant Commissioner to justify the cause delay and the reasons for seeking

documents beyond the six year period. There lies a burden on the department to justify delayed proceedings, especially in view of Section 174(3) of the Ordinance.

ii) The Commissioner is not barred from taking action under Section 161 beyond the six year period, they will have to justify the late action taken and determine the liability on the basis of the information provided if at all possible but cannot penalize the taxpayer for not producing any documentary evidence. In this regard, it is clarified that the department has to discharge their burden before declaring any liability and cannot simply conclude that for want of documentary evidence and accounts, the taxpayer is rendered liable. Essentially the action under Section 161 of the Ordinance should have been taken at the right time and any delayed action means that the burden is on the Commissioner to justify the demand raised and the imposition of any liability.

Conclusion: i) The taxpayer cannot be compelled to produce documents which the statute does not require it to maintain beyond six years in terms of Section 174(3) of the Ordinance.

ii) The tax payer cannot be rendered liable for want of documentary evidence and account on delayed action taken by Tax Authorities.

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11. **Lahore High Court**
Bank Alfalah Limited v. Punjab Small Industries Corporation
R.F.A No.29881/2017.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC5648.pdf

Facts: The regular first appeal is directed against the judgment and decree dated passed by learned Civil Court, Lahore whereby suit filed by respondent against the appellant for recovery of Rs.8,01,78,996/- alongwith profit at the market rate from the date of maturity of Anmol Deposit Certificates purchased on 04.7.2002 till its realization was decreed in favour of the respondent.

Issue: i) What is difference between an "offer" and "an invitation to treat"?

ii) What is difference between alteration and novation of contract?

Analysis: i) The test deduced is that if the statement or act contemplates that further negotiations will take place, then the statement or act is not binding but merely a preliminary communication before a definite offer is made. Such communication is not an "offer" but an "invitation to treat". The party making invitation to treat does not make an offer but invites the other party to do so. However, proposal made by a person in response to the invitation to treat when accepted constitutes a promise within the meaning of section 2(b) of the Contract Act.

ii) There is difference between alteration and novation of contract in section 62 of the Contract Act. The Novation is the complete substitution of the original contract with a new contract. The original contract remains no more in existence

and the parties are not required to perform that. Contrarily an alteration of a contract is variation, modification or change in one or more respects which introduces new elements into the details of the contract, cancels some of them but leaves the general purpose and effect undisturbed. Generally, the modifications are read into and become part of the original contract. The original terms also continue to be part of the contract and are not rescinded and/or superseded except in so far as they are inconsistent with the modifications. However, those of the original terms which cannot make sense when read with the alterations must be rejected.

Conclusion: i) If statement or act contemplates further negotiations such communication is not an offer rather invitation to treat. Whereas proposal made by a person when accepted constitute a promise.

ii) Novation is complete substitution of original contract whereas alteration of contract is variation, modification or change of some terms.

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12. **Lahore High Court**
Chief Officer, TMA, Vehari v. Abdul Jabbar etc.
Review Application No.24/2019
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC5343.pdf

Facts: The petitioner sought review of order through which the writ petition has been disposed of, on the conceding statement made by Legal Advisor of the Tehsil Municipal Administration (the applicant).

Issues: i) Whether legal advisor of a government department is legally competent to make conceding statement? If no, can a decision given on the basis of same be reviewed?

ii) Whether delay can be overlooked and condoned to rectify a wrong or void order?

Analysis: i) Vide notification No.F.5(2)/2003–AGP dated 27.05.2003, a Law Officer is not only debarred from making a conceding statement before the Court, unless written instructions are available with him, but it is also mandatory to produce an officer not below the rank of Grade-17 to appear before the Court and verify and reiterate the same. The sensitivity of the matter can be further gauged from the fact that it is also obligatory on part of the Court to record presence of such officer in the order and to make the written instructions part of the record of the Court. These recommendations got judicial approval from the Hon'ble Supreme Court in case of Faisalabad Development Authority supra and hence, becomes binding upon this Court in terms of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973… It is now settled position of law that all state organs including the courts are bound to protect state exchequer under the doctrine of trust and if consent is given in defiance of any legal principle settled by the Hon'ble Supreme Court, resulting in the loss to exchequer, such an error can always be rectified by

this Court.

ii) It is worth mentioning that no limitation runs in cases where the order is void. Where important facts have escaped the notice of the Court and state exchequer is likely to suffer loss, this Court in its inherent jurisdiction can overlook and condone the delay to rectify the wrong. Therefore, even if there is delay in the instant matter, the same is condoned in view of the fact that the Court has not looked into the lawful authority of the Legal Advisor to make a conceding statement.

Conclusion: i) Legal advisor of a government department is not competent to make conceding statement, unless written instructions are available with him, as well as an officer not below the rank of Grade-17 also appears before the Court and verifies and reiterates the same. Therefore, a decision given on the basis of such statement can be reviewed.
ii) Delay can be overlooked and condoned to rectify a wrong.

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13. **Lahore High Court**
State Life Insurance Corporation v. Mst. Bibi Reema
Insurance Appeal No.178/2021
Mr. Justice Ch. Muhammad Masood Jahangir, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC5373.pdf

Facts: This appeal impugns judgment and decree of the Insurance Tribunal, whereby the suit of the respondent for recovery of insurance claim under Section 118 of the Ordinance was allowed.

Issues: i) Whether production of documents and their admissibility as well as the proof and probative value carried by such documents are same things?
ii) How the documents, which are not copies of the judicial record, should be received in evidence?
iii) When the provision of Section 79 of the Insurance Ordinance, 2000 can be invoked?

Analysis: i) It is well-coalesced and deeply-embedded position of law that production of documents and their admissibility as well as the proof and probative value carried by such documents are entirely two different things and should never be used or construed interchangeably. For proving veracity of a document, the person who authored it must depose before the court in support of the contents, otherwise such document can merely be taken into consideration for the purpose of showing that such a document was issued but whether the contents of the same are correct or not, such facts cannot go into the evidence unless the author of the document deposes before the court and faces cross-examination. Once a document is produced as a piece of evidence, it has to undergo the crucible of objective scrutiny in terms of Article 78 of the Qanoon-e-Shahadat Order, 1984. Mere production of a document neither lends any credence nor confers any probative

value to it.

ii) In Muhammad Zakria and 3 others v. Bashir Ahmad (2001 CLC 595 Lahore), this Court has held that the documents, which are not copies of the judicial record, should not be received in evidence, without the proof of the signatures and handwriting of the person alleged to have signed or written the instrument, even if, such documents are brought on record, are accepted without objection.

iii) It is correct that non-disclosure or wrong declaration of any material information can entitle the appellant to invoke Section 79 of the Ordinance to repudiate the contract of insurance, however, the said provision has to be interpreted in a reasonable manner… In Indian Jurisdiction, Section 45 of the Insurance Act, 1956 is in pari materia with Section 79 of the Ordinance, and in Life Insurance Corporation of India and Ors. v. Asha Goel and Ors.. (2001) 2 SCC 160), the held that on a fair reading of Section 45 it is clear that it is restrictive in nature and the burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so, there is no question of the policy being avoided on ground of misstatement of facts and repudiation of a policy should be done with extreme care and caution and not in a mechanical and routine manner.

Conclusion: i) Production of documents and their admissibility as well as the proof and probative value carried by such documents are entirely two different things and should never be used or construed interchangeably.

ii) The documents, which are not copies of the judicial record, should not be received in evidence, without the proof of the signatures and handwriting of the person alleged to have signed or written the instrument.

iii) Non-disclosure or wrong declaration of any material information can entitle the appellant to invoke Section 79 of the Ordinance to repudiate the contract of insurance; however, the said provision has to be interpreted in a reasonable manner.

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14. **Lahore High Court**
Irfan Rasheed v. Muhammad Muazim, etc.
R.F.A. No.9641 of 2020
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5187.pdf

Facts: The instant appeal calls into question order of the learned Civil Judge, whereby the suit of the appellant was dismissed for non-deposit of balance sale consideration.

Issue: Whether the warning that in case of failure to deposit balance consideration as ordered earlier the order shall be passed in accordance with law includes order dismissing the suit or specific warning regarding dismissal of suit must be administered?

Analysis: The appellant was ordered to deposit remaining sale consideration by the learned Civil Judge as a condition for grant of status quo order. The repeated caution and

last opportunities given by the learned Civil Judge to the appellant for non-deposit of the balance sale consideration were couched in general terms of reiterating that in case of failure to deposit, "an order would be passed in accordance with law". In the context that the order of deposit was made as an attendant condition to the stay order, prospective passage of such an order under caution and in accordance with law, it appears, could be interpreted to entail the vacation of the status quo order qua alienation granted in favour of appellant. No explicit and unequivocal warning of dismissal of suit as specific penal consequence of non-deposit of balance sale consideration was recorded by putting appellant on notice nor could anything to this effect be shown to us by the learned counsel for the respondents. In the circumstances the measure of dismissing the suit itself on non-deposit of the balance sale consideration does not appear to be readily covered by the phase "order shall be passed in accordance with law" repeatedly used by the learned Civil Judge… Suit cannot be dismissed for non-deposit unless the Trial Court specifically directs deposit of remaining sale consideration and puts the plaintiff on explicit notice to this effect bearing clear warning that non-deposit of balance sale price shall be deemed to be his inability of performing his part of contract as envisaged under section 24(b) of the Specific Relief Act, 1877.

No such clear, unambiguous and pointed warning was ever issued to the appellant in this case as to explicitly notify the appellant of the penal effect of dismissal of suit. In the circumstances we find that the order of dismissal passed by the learned Civil Judge in the peculiar circumstances is not sustainable.

Conclusion: The order that an order would be passed in accordance with law due to non-deposit of balance consideration does not include dismissal of suit. Clear, unambiguous and pointed warning must be issued to the appellant as to explicitly notify the appellant of the penal effect of dismissal of suit.

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15. **Lahore High Court**
Commissioner Inland Revenue (Zone-I), RTO, Rawalpindi v. Mr. Tariq Mahmood, Proprietor Standard Medical Store
ITR No. 25 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC5698.pdf

Facts: Respondent filed his Returns for the tax years 2011, 2012 and 2013 declaring his net profits, which were treated as Assessment Orders under section 120(1) of the "Ordinance". The petitioner found assessments erroneous and prejudicial to the interest of revenue on the ground that the taxpayer had allegedly failed to pay the minimum tax under section 113 of the "Ordinance" properly while unlawfully claiming rebate under Clause 8 of Part III of Second Schedule to the "Ordinance", therefore, the same were amended accordingly in exercise of jurisdiction under section 122(5A) of the Ordinance.

Issues: i) Whether definition of a word given in one statute can be invoked for interpreting the same term used in other statute?

ii) Whether taxpayer, who is not a distributor of pharmaceutical products, is entitled to rebate at the rate of 80% of the minimum tax payable u/s 113 of the Income Tax Ordinance, 2001?

Analysis: The answer lies in negative in view of the law enunciated by the august Supreme Court in the case of Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz (PLD 2011 SC 260) in the following terms: It is settled law that the definition clause or section in a statute is generally meant to declare what certain words or expressions used in that statute shall mean, the obvious object of such clause is to the necessity of frequent repetition in describing all the subject matter to which the word or expression so defined is intended to apply. It is a rule of interpretation of laws that when a word is given a meaning in another statute of the Parliament (statute) it does not mean that it shall ipso facto have the same meaning in another Act of the Parliament, except in cases where on the rule /principle of legislation by reference, a definition of an earlier law may be borrowed or adopted as definition construing the operative provisions of the later law. A definition appearing in one Act cannot be used to interpret the same word appearing in another Act, until it is specifically so referred and borrowed with clear command of law. Because, the context, the purpose, the object and the requirements of every statute may vary from other; the definition of a word from one statute cannot be safely imported to another, which if so resorted to without ascertaining the clear intention of the legislation by following the rules of interpretation, just as a matter of routine and course, it shall not only be hazardous, rather may distort and frustrate the object of the law and violate legislative intent which is absolutely impermissible in law.

ii) The eighty percent reduction in the minimum tax rate under Clause 8 in Part III of Second Schedule to the "Ordinance" has been allowed only to a distributor of (i) pharmaceutical products (ii) fertilizers and (iii) consumers goods including fast moving consumers goods. The specific classes of products mentioned in Clause 8 ibid are not of the same genus or family but are different and independent from each other. It is well settled that where specific words enumerating subjects and classes of products which greatly differ from each other, the words will have a different and independent meaning without taking any colour from the spec of words preceding or following it… Accordingly, the second question proposed in these ITRs is answered in negative, in favour of the Applicant and against the respondent. It is held that while allowing appeal of the respondent through the impugned order, learned ATIR has erroneously found the pharmaceutical products to fall within the fast moving consumer goods, therefore, the respondent was not entitled to any rebate on that basis.

Conclusion: i) Definition of a word given in one statute cannot be invoked for interpreting the same term used in other statute.

ii) A taxpayer, who is not a distributor of pharmaceutical products, is not entitled to rebate at the rate of 80% of the minimum tax payable u/s 113 of the Income Tax Ordinance, 2001.

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16. **Lahore High Court**
Wasi Haider v. The State
Criminal Appeal No.281 of 2019
Murder Reference No.29 of 2019
The State v. Wasi Haider
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2021LHC5635.pdf

Facts: Appellant filed criminal appeal against the judgment wherein he was awarded death sentence in a murder case whereas learned trial court sent reference under section 374, Cr.P.C. for the confirmation or otherwise of death sentence awarded to him.

Issue: i) What are legal requirements and purpose of preparation of inquest report by I.O and what will be the effect of not mentioning the brief facts of occurrence in inquest report?
ii) Whether omission to prove source of light at place of occurrence can damage the case of prosecution?
iii) What is the effect of conflict between medical and ocular evidence?

Analysis: i) Investigating Officer is to draw a report in duplicate and in prescribed format mentioning therein the apparent cause of death, marks of violence observed on the corpse, the weapon with which these appear to have been inflicted and the brief facts of the case gathered from the witnesses. The corpse is to be forwarded to Medical Officer for autopsy along with a report prescribed to be prepared in the format mentioned in 25.39 of Police Rules, 1934. The purpose of providing inquest report to doctor before the postmortem examination is designed at countering the possibility of tampering with police record. Even otherwise, it is well entrenched principle of law that if statute or rule framed therein provides a thing to be done in a particular manner it should be done in that manner alone. Such rule emanates from maxim "a communi observantia non est recedendum." It goes without saying that impartial, defective and dishonest investigation paves way to false implication of an innocent person and gives vent to injustice. On the relevant page of inquest report, neither the name of any perpetrator is mentioned nor the manner in which the crime occurred is stated even tentatively. This omission gives a strong clue that the FIR was not registered till the holding of postmortem examination.
ii) The absence of light at the crime scene gives rise to the possibilities of false implication through mistaken identification and incorrect attribution of role to an accused. For this reason, emphasis is laid by the courts that in cases of night occurrences, the prosecution must prove the source of light. We are not oblivious

of the fact that this is not a statutory requirement to prove the source of light, rather is a rule of caution with object to administer justice beyond shred of all uncertainties. Prosecution badly failed to satisfactorily explain the source from which light was emanating so as to provide an opportunity to the witnesses to see all the necessary details of the occurrence. Such omission inexorably damaged the case of prosecution to great extent.

iii) As a necessary consequence, it can unambiguously be held that glaring anomaly is discernable from the ocular account and medical evidence. It goes without saying that purpose of collecting medical evidence in a case against human body, primarily, is aimed at providing assistance to the court in arriving at just conclusion by using it for scrutinizing the ocular account. Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

Conclusion: i) The legal requirements and purpose preparation of inquest report by I.O and effect of not mentioning the brief facts of occurrence in inquest report are discussed in para (i) of analysis.

ii) Omission to prove source of light at place of occurrence can damage the case of prosecution.

iii) Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

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17. **Lahore High Court**
Mian Furqan Idrees etc. v. JS Bank Limited etc
R.F.A No.208787of 2018
Mr Justice Muhammad Sajid Mehmod Sethi, Mr. Justice Muhammad Raza Qureshi,
https://sys.lhc.gov.pk/appjudgments/2021LHC5476.pdf

Facts: The banking suit for recovery was decreed along with cost of funds and costs of the suit against the Principal Debtor as well as against guarantors. The guarantors have assailed the decree.

Issue: i) Whether the "New Management of borrower/company falls in definition of customer and thus it is necessary to implead new management of borrower/company in banking suit for recovery?

ii) Whether guarantors are discharged of their liability if new management took over Borrower Company?

Analysis: i) The members of the New Management did not fall within the definition of 'customer' as defined under Section 2(c) of FIO, 2001, as neither the finance was extended by the Bank in their favor nor any of them stood guarantors or surety for the repayment of finance or defaulted in performance of their obligation towards the Bank. As they are not customers who would have committed any default nor any finance was extended by the Respondent Bank to the members of the New

Management nor they ever defaulted in the fulfillment of any obligation Therefore, their impleadment was neither necessary nor proper, rather as per mandate contained in Section 9 of FIO, 2001 the suit filed by the Bank was not maintainable against the said members of the New Management.

ii) In terms of Section 128 of the Contract Act, 1872, guarantor and principal debtor are jointly and severally liable to pay the outstanding amount to the creditor. If there is no restructuring or rescheduling between the Bank and the New Management, then the liability of guarantors never stood discharged.

Conclusion: i) The new management of the borrower Company does not fall in the definition of customer. Thus, it is neither necessary nor proper to implead new management of borrower/company in banking suit for recovery.

ii) The guarantors are not discharged of their liability if new management took over Borrower Company.

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18. **Lahore High Court**
M/S Travel International Limited etc. Versus Habib Bank Limited, etc.
Case No. EFA No.83 of 2016
Mr Justice Muhammad Sajid Mehmod Sethi, Mr. Justice Muhammad Raza Qureshi,
Microsoft Word - Final-EFA No.83 of 2016 and connected Apeals.docx (lhc.gov.pk)

Facts: The suit for recovery was filed by Bank against the appellants. The suit was ex-parte decreed. The Bank filed the execution proceedings, and property of appellant was auctioned. Upon knowing about auction, the appellants approached the court and succeeded to set aside exparte decree on the ground that Bank has not provided their known address in court. Thereafter the appellants approached the Bank for settlement of their liability which was ultimately done. The property of appellant was redeemed and suit was dismissed being infructuous. The auction purchaser challenged the order of dismissal of suit but his application was dismissed by Banking Court. But his appeal before Sindh High Court was allowed. The appellants challenged the order before August Supreme Court from where obtained direction for executing court to decide the objection. Their execution petitions were dismissed. Hence this execution first appeal.

Issue: i) What is applicability of legal proposition that "debtor seeks the creditor"?

ii) Whether the article 166 of limitation apply in matters of fraud or willful concealment?

iii) Whether auction proceedings are liable to be set aside if it the court fixed the throwaway reserved price?

Analysis:

i) There is no cudgel to the legal position that 'debtor seeks the creditor' but this cannot be stretched to the detriment of those who had not lost their whereabouts. The principle could be applied where the Appellants had lost their whereabouts. In the instant case the Bank was in liaison with the Appellants. The moment the Appellants prima facie established that the Bank was aware of their foreign address, the Appellants stood absolved of their obligation. In such a case the debtors shall rather be deemed to have chased the creditor Bank.

ii) This obviously cannot be even conceived that someone may seek remand of order emanating from the proceedings to which he had no knowledge. It, thus, leads to a conclusion that when the Judgment Debtor is kept away from the proceedings against him such an ex parte decree, subsequent auction proceedings and confirmation of sale, the limitation would commence from the date of knowledge of the fraud or proceedings… In our tentative opinion it appears that Article 166 will be inapplicable in the facts and circumstances of the case and consequently period for filing of Objection Petition within 30 days is inapplicable on the Appellants and their plea and allegation of fraud in conducting and holding the subject matter auction proceedings and challenge in respect thereof fall under the residuary provision of Article 181 of the Limitation Act, 1908 for which the period of limitation has been prescribed as three (03) years.
iii) If the judgment debtor is not present before the Executing Court it was still an obligation of the Executing Court to determine the reserve price according to criteria of applicable provisions of law and dicta laid down by the Hon'ble Superior Courts of the Country… When the land in question was indeed sold at a throwaway price and ex facie causing substantial injury and loss to the Judgment Debtors. This seems to be a classic case of Order XXI rule 90 CPC. The learned Executing Court should have considered this aspect of the matter even in absence of the Appellants.

Conclusion: i) The principle could be applied where the creditor had lost the whereabouts of debtor.
ii) The Article 166 of limitation Act is inapplicable on the plea and allegation of fraud and thereof falls under the residuary provision of Article 181 of Limitation Act,
iii) The auction proceedings are liable to be set aside if it the court fixed the throwaway reserved price.

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19. **Lahore High Court**
Sultan Ahmad v. District Police Officer etc
Crl. Misc. No.54755/H/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5616.pdf

Facts: Habeas petition under 491 Cr.P.C was moved for recovery of a minor girl who was abducted and apparently forcibly married to the Respondent.

Issue: i) Scope of Section 491 Cr.P.C
ii) Whether age of puberty is considered to mean the same thing as sui juris?

Analysis: i) The Hon'ble Court by referring to august Supreme Court case reported as PLD 1972 SC 6 observed that section 491 Cr.P.C mandates two things: (a) the High Court shall deal with a person within its appellate criminal jurisdiction according to law; and (b) it shall set him at liberty if he is illegally or improperly detained. Further the court while referring to PLD 2002 Karachi 152, a Full Bench of the Sindh High Court drew a distinction between the terms "illegal" and "unlawful" and observed that the principal distinction between terms 'lawful' and 'legal' is that the former contemplates the substance of law, the latter the form of law. To

say of an act that it is 'lawful' implies that it is authorized, sanctioned, or at any rate, not forbidden by law. To say that it is 'legal' implies that it is done or performed in accordance with the forms and usages of law, or in a technical manner. Hence 'an unlawful act' generally includes an illegal act but in contradistinction it, inter alia, implies an act not authorized or sanctioned by law but forbidden by law, while an illegal act is one which is done or performed not in accordance with the forms and usages of law or in a particular manner directed by law in technical sense. The court discussed the nature of orders which could be passed under section 491 Cr.P.C which could either be (i) if the person is a minor, the court may make over his custody to the guardian and (ii) If the person is a major, whether the custody is public or private, the court must set him at liberty forthwith. Even in such cases the High Court may only regulate interim custody of the minors and leave the determination of final custody for the Guardian Judge as proceedings under section 491 Cr.P.C. are summary in nature and the court cannot determine legal status of the relationship between the parties.

ii) The phrase sui juris indicates inter alia, the capacity to manage one's own affairs. It also indicates an entity that is capable of suing and or being sued in legal proceeding in its own name. Correspondingly, the term 'majority' means the particular age at which a person has the legal capability to undertake certain acts for which he could be held responsible. According to the majority of jurists, this capacity is only attained at puberty. Moving forward there is a distinction between the two concepts. Puberty enables a person to exercise rights regarding marriage, dower, divorce and adoption provided under the Islamic law as per the rider clause contained in section 2 of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962. However he only acquires full legal competence when he reaches the age of majority stipulated by the Majority Act i.e. 18 years. Therefore, the term "sui juris" may be loosely applied when talking of one's capacity in respect of the aforesaid matters but it has its real application when one becomes a "full person" and the law permits him to manage his affairs in entirety.

Conclusion: The Hon'ble Court as discussed above spelt out the scope of section 491 Cr.PC viz a viz the orders which could be passed under this provision. Moreover it also emphasized the thin line of distinction between the terms sui generis and age of puberty in terms of the Muslim Personal Law.

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20. **Lahore High Court**
Muhammad Faizan Saleh Vs. The State etc.
Writ Petition No. 11984 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2020LHC4277.pdf

Facts: Through this petition under Article 199 of the Constitution of Pakistan, 1973, the Petitioner assailed his conviction and sentence passed by the Special Judicial Magistrate. The Petitioner and his co accused were produced before the Special

Judicial Magistrate where the Police requested that they might be remanded to judicial custody. During the proceedings they pleaded guilty whereupon the Special Magistrate taking "a lenient view" convicted them under section 5 of the Punjab Prevention of Gambling Ordinance, 1978 and imposed fine in the sum of Rs.5000/- each through a common order.

Issue: i) When a person accused of is produced for remand then whether the Magistrate in addition to recording his confessional statement under section 164 Cr.P.C. could also convict him at that stage even if he had confessed his guilt?
ii) Spirit of the procedure stipulated in sections 164, 342, 340(2) and 364 Cr.P.C
iii) Significance of Section 243 CrPC
iv) Whether a co accused who has not even challenged his conviction the Court would still be competent to quash his conviction and sentence in exercise of its revisional powers under sections 435 and 439 Cr.P.C?

Analysis: i) The police had produced the Petitioner before the Special Magistrate for judicial remand when he made the so-called confession. The Special Magistrate had no jurisdiction to convict him at that stage. Moreover, the Hon'ble Court observed that the Special Magistrate did not record the Petitioner's statement at all what to talk of following the prescribed procedure and proceeded to convict him which was out-and-out unlawful.
ii) Sections 164, 340(2), 342 and 364 Cr.P.C. contain provisions for recording confessions and statements of accused persons. Section 164 may be invoked any time before the commencement of the inquiry or trial. On the other hand, sections 340(2) and 342 deal with the examination of the accused during the inquiry or trial. Section 364 prescribes the manner in which the examination is to be recorded. Sections 164, 340(2) and 342 Cr.P.C. all have distinct objects. Section 164 seeks to provide a method of securing a reliable record of statements of confessions made during police investigation which could be used during the inquiry or trial, if necessary. The object of section 342 is to afford an opportunity to the accused to explain his position in respect of the evidence brought against him during the inquiry or trial while section 340(2) enjoins that an accused, if he does not plead guilty, may give evidence on oath in disproof of the charges or allegations leveled against him or his co-accused. It was emphasized that recording of confession is a very solemn act and the magistrate must see that the requirements of section 164 are fully satisfied as the procedure adopted in determining the rights of the parties must at every step pass the test of fairness and procedural propriety and at all times must honour the law and the settled legal principles. Further the Hon'ble Court eloquently discussed the erstwhile salient featured of Section 164 as contained in Rule 4 of Chapter 13 Volume III of the Lahore High Court Rules and Orders. Further with regard to section 164 it was opined that it is not restricted only to confessions. The section says 'any confession or statement'. It does not specifically mention any person whose confession or statement is to be recorded; it may be an accused or one who may

ultimately be an accused, or a witness capable of giving useful information relating to the offence. Again, the 'statement' may be a confession or it may not amount to a confession, or it may be partly confessional and partly exculpatory.
iii) There is divergence of opinion regarding the true import of section 243. Some authorities hold that section 243 does not impose any condition and an accused may confess his guilt at any stage of the trial. The second view is that when the charge is framed and the accused denies it the magistrate has to proceed with the trial. If he subsequently makes a voluntary confession, it shall be recorded in accordance with section 364 and put to him for his explanation under section 342 Cr.P.C. Such a confession does not amount to a plea of guilt within the meaning of sections 243 and the court cannot convict him on its basis alone. The third opinion is that if the accused denies the charge when he is indicted but pleads guilty when the trial progresses, the magistrate should require independent evidence to convict him. The last view is more widely accepted and even the Division Benches of this Court have approved it.
iv) There is a cornucopia of cases in which the courts exercised suo moto revisional jurisdiction and extended the benefit of its findings recorded in an appeal preferred by a convict to those co-accused who had not approached it.

Conclusion: The Hon'ble Court while discussing the scope and significance of sections 164, 342, 340(2), 364 and 243 CrPC observed that when a person accused of is produced for remand then the Magistrate in addition to recording his confessional statement under section 164 Cr.P.C. could not convict him at that stage even if he had confessed his guilt. Moreover the court while exercising its revisional powers under sections 435 and 439 Cr.P.C would be competent to quash conviction and sentence of a co accused who has not even challenged it.

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21. **Lahore High Court**
Rida Fatima v. Pakistan Medical Commission etc.
W.P No. 56763 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC5524.pdf

Facts: The petitioner challenged the procedure of National Medical & Dental Colleges Admission Test (MDCAT) 2021, on the ground that these were held throughout the country on different dates and not on a single date as provided under Section 18(1) of the Pakistan Medical Commission Act, 2020, so it must be declared ultra vires of the Act and be conducted afresh.

Issue: i) Whether not conducting of MDCAT examination on a single date throughout the country is illegal and ultra vires to Section 18 of the PMC Act?
ii) What are the grounds on which a subordinate legislation can be declared illegal and ultra vires?

Analysis: i) Perusal of Section 18(1) of the Act makes it abundantly clear that the expression "single admission test" refers to the fact that every student would only be allowed to appear in and sit for one MDCAT and the context and object of the Act shed light on the purpose underlying behind the condition laid down under the Act, which clearly suggests that the emphasis is on substance and not on form, which means that all the students must be adjudged on a single standard of testing and on a similar pattern of scoring with equal number of opportunity to participate in the exam in a single year and no preferential discrimination will be done in this regard. Perusal of Section 18(1) shows that the words **"on a date"** and the expression **"a single admission test"** contained therein do not implythat the same must be read conjunctively. The words "a single admission test" clearly denote a single attempt by every applicant; and, the words "on a date" undoubtedly mean the date approved by the Council. In this context, the submission made on behalf of learned counsel for PMC that single admission test means a centralized test across Pakistan has no force.

ii) Delegated legislation forms an important part of the statutory law, which expounds and explain the skeleton principles of the parent statute in order to achieve the purposes of the said legislation….. It is well established principle of interpretation that if delegated legislation is directly repugnant to the general purpose and object of the very Act, under which such powers were created and passed on, or if it is repugnant to any settled and well established principle of statute or result of excessive delegation then it can be declared *ultra vires*. However, delegated legislation cannot be questioned on the ground of mala fide or unreasonableness because there is a strong general presumption attached to its legality and the onus to prove otherwise will be on the person who asserts it to be against the statute.

Conclusion: i) The expression "single admission test" as used in Section 18 does not mean that such examination is to be conducted on a single day throughout the country rather the context of the provision clearly spell out the object of such condition as to enable an eligible candidate to participate in such an annually conducted examination only "single time in a year" and not specifically "on a single day throughout the country", so conducting the same on different dates but with single chance is not illegal or contrary to Section 18 of the Act.

ii) A subordinate legislation can be strike down if it is violative of fundamental rights guaranteed under the Constitution, if it is contravening with Constitutional provisions, if it is beyond the scope of delegate or if it is being contrary and beyond the scope of parent statute.

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22. **Lahore High Court**
Dilsons (Pvt.) Limited and others V. Security & Exchange Commission of Pakistan and another
C.O.No.62794 of 2020
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC5599.pdf

Facts: This petition has been filed by authorized representatives of the Petitioners for

obtaining sanction of this Court to a Scheme of Arrangement and for merger between the Petitioners by seeking approval from Securities and Exchange Commission of Pakistan and Competition Commission of Pakistan.

Issues: i) What is the Philosophy of Mergers Control?
ii) What is the scheme of merger in Pakistan?
ii) What is the duty of the court regarding Sanction of the Scheme of merger?

Analysis: i) Mergers and acquisitions are generally important for the economy as they can herald in efficiency, synergy and investment. They may help the companies to improve management, resources, research, development and technology. Similarly, they may also assist the companies to work quickly and smoothly, minimize disruptions, increase market share, innovate and adapt to emergent trends. However, some transactions can potentially lead to substantial lessoning of competition in the market thereby leading to uncompetitive pricing, fewer choices, drop in quality, or more barriers to entry in the market etc. This is particularly true in relatively uncontested markets (with less numbers of competitors) or where one or more merging parties hold dominance in the market. This underscores the importance of merger control as "the analysis of competition issues invariably requires an assessment of market power, and such an assessment cannot be conducted without an understanding of the economic concepts involved. The same is true of the types of behavior – for example cartelization, predatory pricing, discrimination, mergers – with which competition law is concerned."

ii) The mergers and acquisitions in Pakistan are primarily governed by the Companies Act 2017 (the "Act"), the Competition Act 2010 and the Competition (Merger Control) Regulations 2016. Sections 279 to 283 and 285 of the Act govern the procedure for merger in Pakistan. Section 279 of the Act empowers SECP to order a meeting of the creditors or members of the company where a "compromise" or "arrangement" is proposed between a company and its creditors or between the company and its members. If three-fourth creditors or members agree to such compromise or arrangement and if it is sanctioned by SECP, such compromise or arrangement becomes binding on the company, its creditors, its members and the contributories.

iii) By examining Sections 279 to 284 of the Act, it is clear where the Scheme is found to be reasonable and fair, at that moment in time it is not the sense of duty or province of the Court to supplement or substitute its judgment against the collective wisdom and intellect of the shareholders of the companies involved. Nevertheless, it is the duty of the Court to find out and perceive whether all provisions of law and directions of the Court have been complied with and when the Scheme seems like in the interest of the company as well as in that of its creditors, it should be given effect to. However the Court has to satisfy and reassure the accomplishment of some foremost and rudimentary stipulations that is to say, the meeting was appropriately called together and conducted… The

Court has the power to give effect to all the incidental and ancillary questions in the effort to satisfy itself whether the scheme has the approval of the requisite majority. It is not the function of the Court to examine whether there is a scope for better scheme. However, where the Court finds that scheme is patently fraudulent, it may not respond or function as mere rubber stamp or post office but reject the scheme of arrangement.

Conclusion: i) The philosophy of merger is to help the companies to improve management, resources, research, development and technology. Similarly, it also assists the companies to work quickly and smoothly, minimize disruptions, increase market share, innovate and adapt to emergent trends.
ii) See above;
iii) The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits.

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23. **Lahore High Court**
Muhammad Shahid v. The State
Criminal Appeal No.234 of 2020
Mr. Justice Ch. Abdul Aziz, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5543.pdf

Facts: The appellant sitting on the driving seat of Suzuki pick-up parked near a shop was apprehended. Ten cans were secured from the rear portion of Suzuki Pick-up, whereas 130 more were recovered from a shop upon the disclosure and pointing out of the appellant. All these cans were containing sulfuric acid, total weight of which was 6300-kilograms. The appellant was convicted and sentenced for commission of offence punishable u/s 9(c) of CNSA, 1997.

Issue: i) Whether a nexus between the accused and the vehicle as well as shop (place of recovery of narcotics) is required to be proved by prosecution?
ii) When the burden shifts upon accused to prove otherwise under section 29 of CNSA, 1997?
iii) Whether Section 9 of CNSA, 1997 is applicable regarding the recovery of sulfuric acid?

Analysis: i) Prosecution has to prove every bit of its case and as a necessary corollary, a nexus between the accused/appellant and the vehicle was incumbently required to be proved during trial by none other than the prosecution. For providing credibility to the recovery effected from shop, it was obligatory for prosecution to prove that appellant was in exclusive and absolute possession of the shop and success in this respect would have established a strong connection between the appellant and recovered substance. We are mindful of the fact that the expression "possession" denotes the power of a person to control the premises to the exclusion of all others and for this reason it is a factor to be proved in cases of CNS Act, 1997.

ii) In cases arising out of CNS Act, 1997, the primary onus is on prosecution to prove its case and such burden includes the obligation to establish a strong and undeniable nexus between the recovered substance and the accused facing trial. Only the success of prosecution in establishing a tie between the recovered substance and accused will bring in action Section 29 of CNS Act, 1997.
iii) When seen in the context of United Nations' Conventions of 1988, the sulfuric acid since is used for the manufacture of narcotic drugs or psychotropic substance, thus comes within the purview of controlled substance as defined in Section 2 (k) of CNS Act, 1997. Sulfuric acid is mentioned as controlled chemical in Schedule-V division II of Control of Narcotic Substances (Regulations of Drugs of Abuse, Controlled Chemicals, Equipment and Materials) Rules, 2001. Since sulfuric acid is used in preparing narcotic drugs, thus its unlawful possession comes within the purview of Section 6 of CNS Act, 1997.

Conclusion: i) A nexus between the accused and the vehicle as well as shop (place of recovery of narcotics) is required to be proved by prosecution.
ii) Only the success of prosecution in establishing a tie between the recovered substance and accused will bring in action Section 29 of CNS Act, 1997.
iii) Since sulfuric acid is used in preparing narcotic drugs, thus its unlawful possession comes within the purview of Section 6 of CNS Act, 1997.

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24. **Lahore High Court**
M/s Shifa Health Care Pvt. Ltd v. Special Judge (Rent), etc.
W.P. No.48322 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5679.pdf

Facts: The learned Special Judge (Rent) disposed of an ejectment application on the basis of compromise. He also ordered for eviction in execution proceedings. The petitioner filed this constitutional petition being aggrieved of the order passed in execution proceedings.

Issue: Whether an eviction order can be passed in execution proceedings when the eviction application had earlier been disposed of on the basis of compromise?

Analysis: There was no conditional ejectment order that was passed nor could it be assumed or inferred from bare reading of the order that the Rent Tribunal had any intentions to direct eviction of the tenant in case of breach of terms and conditions of the fresh rent agreement. In fact, the parties were satisfied by the new terms and conditions of lease and had agreed to abide by the same and in case of any violation of the fresh lease agreement, legally admissible remedy could not involve filing of execution proceedings directly but rather required filing of fresh ejectment application under section 19 of the Act. The learned Rent Tribunal without considering this aspect of the matter and without attending to the maintainability of the execution proceedings, mechanically issued warrants for

possession and, thereafter, enforced the same through police assistance which order were patently without lawful authority, jurisdiction and were legally untenable.

Conclusion: In absence of any ejectment order, an eviction order cannot be passed in execution proceedings when the eviction application had earlier been disposed of on the basis of compromise.

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25. **Lahore High Court**
Mst. Kamalan Bibi v. Province of Punjab, etc.
C.R. No.2682 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5348.pdf

Facts: Petitioner and her sister instituted a suit for declaration to challenge mutations, got sanctioned on the basis of oral gift, on grounds of fraud and collusion and being inoperative on their right of inheritance to the extent of their share in the property.

Issues: i) What are the necessary ingredients to establish oral gift?

ii) Whether a single plaintiff/ defendant can challenge a decree or order, in absence of other plaintiffs/ defendants?

Analysis: i) In cases where oral gift is claimed it is imperative for the beneficiary to allege foundational ingredients of the gift including time, date and place of the alleged gift in the pleadings and, thereafter, to prove the same. It is also necessary to disclose the names of witnesses in whose presence the alleged declaration and acceptance of oral gift was enacted. In the absence of such disclosure no evidence could be led and even if any evidence comes on record the same is liable to be ignored.

ii) Order XLI, Rule 4, C.P.C. envisaged that where there are multiple plaintiffs or defendants and decree appealed from proceeded on any ground common to all the plaintiffs or defendants, any one of the plaintiffs or defendants, as the case may be, could appeal from the whole decree and, thereupon, the appellate court could reverse or vary the decree in favour of all the plaintiffs or defendants. Order XLI, Rule 33, C.P.C also invests the court with the authority to make any order or pass any decree that ought to have been passed or made and to pass or make such further order or decree as the case may require and such authority could be exercised notwithstanding that the appeal was as to only part of the decree and may be exercised in favour of all or any of the parties, including respondents, though such respondents may not have preferred an appeal or file cross-objections.

Conclusion: i) It is essential requirement of law that the beneficiary should provide full particulars of oral gift in the written statement along with the names of the persons who were allegedly present at the time of making of oral gift.

ii) Where there are multiple plaintiffs or defendants and decree appealed from proceeded on any ground common to all the plaintiffs or defendants, any one of the plaintiffs or defendants, as the case may be, could appeal from the whole decree.

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26. **Lahore High Court**
Muhammad Abbas v. Raja Muhammad Ishaq
C.R. No.2069 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5363.pdf

Facts: The respondent filed a suit for pre-emption, which was dismissed by learned civil judge but was partially decreed by learned Addl. District Judge. The respondent and petitioner being co-sharers were ordered to hold suit property in equal shares.

Issues: How Talb-i-ishhad can be proved where receipt of notice of Talb-e-Ishhad is denied?

Analysis: It is a settled rule that where Talb-e-Ishhad is disputed and receipt of notice of Talbe-e-Ishhad is denied, it is for the preemptor to prove through credible evidence that the Talb was made in the presence of two truthful witnesses; notice of Talb-e-Ishhad duly attested by two truthful witnesses was sent through registered-post "Acknowledgement Due" and that a notice was received by the addressee, which undoubtedly requires the production and examination of postman.

Conclusion: Where Talb-e-Ishhad is disputed and receipt of notice of Talb-e-Ishhad is denied, the mode of proving the same is given in the preceding para.

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27. **Lahore High Court**
Meer Nawaz alias Meero v. The State
Criminal Appeal No.722/2017.
Mr. Justice Muhammad Amjad Rafiq, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC5278.pdf

Facts: In a case registered under section 365-B, 376, 302, 109 PPC, the trial court convicted an accused/appellant and awarded the sentence of death, while acquitting the co-accused. Against capital punishment, the appellant knocked at the door of Hon'ble Lahore High Court and preferred an appeal on the grounds, *inter alia*; the wrecked chain of custody protocols and confused PFSA reports cannot be made the basis for conviction. Besides, the trial court sent a murder reference for confirmation or otherwise of the death sentence.

Issues: i) What safety protocols are required for collecting, packaging, preserving, and dispatching samples for undertaking DNA forensic analysis and to make a forensic report to fulfill the criteria of a standard of proof in a criminal case?

ii) Whether a positive DNA forensic report prepared in disregard of safety protocols could be relied upon?
iii) What recourse is available to the prosecution if a forensic report prepared by the PFSA is either unclear or doubtful?

Analysis: i) In order to fulfill the criteria of a standard of proof in a criminal case, a forensic report must be prepared by following the safety protocols developed for the purpose of collecting, packaging, preserving, and dispatching samples. These include the Rules provided therein Chapter 18, Rule B, Volume III of High Court Rules & Orders, and Rule 25.41 of the Police Rules 1934.
ii) The failure of handing over articles to the Moharir and the Investigating Officer and their direct submission by a police official at the PFSA makes the safe custody of parcels highly doubtful. Moreover, when there is a doubt regarding the integrity of a parcel containing the vaginal swabs, detection of DNA was not sufficient. Therefore, a report prepared in disregard of the safety protocols provided by the law, though positive, cannot be relied upon.
iii)The prosecution may seek clarification of a forensic report from the PFSA under section 11 of the Punjab Forensic Science Agency Act 2007 (the Act) if a report is not clear. Moreover, the prosecution may apply to the PFSA for the re-examination of forensic material under section 12 of the Act if the report is doubtful. Nevertheless, in the absence of any of such actions, the court may call upon the expert witness and clarify the doubts as mandated under Article 65 of the Qanun-e-Shahadat Order 1984.

Conclusion: i) The Rules given in the High Court Rules and Orders Vol. III and in the Police Rules 1934 are to be followed in packaging, preserving, and dispatching samples for undertaking DNA forensic analysis and to make a forensic report to fulfill the criteria of a standard of proof in a criminal case.
ii) A positive forensic report prepared without observing the safety protocols cannot be relied upon.
iii) The prosecution may seek clarification as well as request for re-examination where a forensic report is either unclear or doubtful.

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28. **Lahore High Court**
Noor Muhammad & others. v. Mst. Sukhan (deceased) through L.Rs., etc.through L.Rs.
Civil Revision No. 1266 of 2002.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5449.pdf

Facts: The plaintiffs challenged the validity of the impugned mutations by seeking declaration as legal heirs. Some of the defendants filed contesting written statement by raising certain legal as well as factual objections. The learned trial court decided the suit vide judgment and decree. Feeling aggrieved, the plaintiffs preferred an appeal and the defendants also filed cross-objection. The learned

appellate Court passed consolidated judgment and decree which has been assailed vide separate civil revisions.

Issue: Whether successors of propositus are entitled to inherit if on the termination of limited owner of a female, the inheritance is opened at the time of death of last male owner?

Analysis: The West Punjab Muslim Personal Law (Shariat) Application Act, 1948 as amended in 1951 by Punjab Muslim Personal Law (Shariat) Application (Amendment) Act, 1951 provide for the application of the Muslim Personal Law (Shariat) to Muslims in Punjab. Property which came to a person under the customary law at once became subject to Muslim Law on passing of the Act ibid and that statute introducing distribution of property on the Muslim heirs in accordance with Muslim Law. In accordance with Section 3 of Act ibid, on the termination of limited owner of a female the inheritance is opened at the time of death of last male owner and successors of propositus are entitled to inherit. Under that section it was provided that the property given to the females as limited owner would devolve on heirs of last full owner. On the promulgation of West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, under section 3 limited estate created under the customary law stood terminated. Section 5 of the Act ibid provides the rule of succession.

Conclusion: Successors of propositus are entitled to inherit if on the termination of limited owner of a female, the inheritance is opened at the time of death of last male owner.

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29. **Lahore High Court**
Saima v. Additional District Judge & others.
Writ Petition No.17355 of 2019.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5436.pdf

Facts: The petitioner instituted a suit for recovery of dowry articles (which is not subject matter of this writ petition) and filed an application for "Judicial Separation" on the grounds of adultery and cruelty. The learned trial court dismissed the application vide consolidated judgment and decree. Feeling aggrieved, she preferred an appeal, which met the same fate and was dismissed by the learned appellate Court. The petitioner, through this constitutional petition called in question the validity, legality, and propriety of judgments and decrees whereby, the petitioner's application for judicial separation under Christian Divorce Act, 1869, was concurrently dismissed.

Issue: Whether judicial separation of Christian spouses is permissible under the Divorce Act, 1869 on the grounds other than adultery?

Analysis: Section 10 of the Divorce Act, 1869 provides the grounds of dissolution of marriage. The grounds of the decree are provided in Section 19 of the Divorce Act, 1869. Undeniably, under Section 10 of the Act ibid, it is clear from bare reading that unless and until anyone of the grounds as mentioned above is not proved marriage cannot be dissolved meaning thereby to get the dissolution of marriage, the party is required to allege and prove the allegation of adultery. The grounds of judicial separation are provided in section 22 of the Divorce Act, 1869. Before the promulgation of Federal Laws (Revision and Declaration) Ordinance, 1981, section 7 of the Divorce Act, 1869 was available and grounds of divorce under U.K. Matrimonial Causes Act, 1973 (UK Act) including the ground that the marriage has broken down irretrievably were also available in the Courts of Pakistan. The Ordinance ibid (item 7(2) of the Second Schedule) simply provides that section 7 of the Act shall be omitted. On behalf of Section 7 by the Ordinance, the grounds left for divorce or dissolution of marriage are provided under Section 10 of the Act. Section 7 of the Act, ibid provides that the Courts in Pakistan, shall, in all suits and proceedings hereunder, act and give relief on principles and rules to Christian which, in the opinion of the Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. The UK law referred to in Section 7 is the "UK Matrimonial Causes Act,1973". In UK Matrimonial Causes Act,1973, part 1, Chapter 18 Section 1(2) (b) provides as - "that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent." Section 1(4) empowered to Court to grant a decree of divorce. As no religion allows a hateful union that is not based on true consent of the parties especially in Christen Marriage Act, where marriage is a sacrament and at the time of marriage both the parties vow to stand together in sorrow and happiness etc. till death departs them. Although divorce is not encouraged in any society, where the relations between husband and wife are such that the legitimate objects of matrimony have been utterly destroyed and in perpetuating a marriage after all possibilities of accomplishing a desirable purpose of such relationship is gone, or out of which no good can come and from which harm may result, then it is better to terminate dead marriages and does not discourage divorce. UK law and other international law, on the subject, show that "no-fault divorce" or "irretrievable breakdown of marriage" is an established ground of divorce in Christian majority countries of the world. Section 7 of the Act ibid was restored. The term subject to the provision of the Act in Section 7 is read down to make sections 7 & 10 work together and to make them constitutionally compliant.

Conclusion: Judicial separation of Christian spouses is permissible under the Divorce Act, 1869 on the grounds other than adultery.

30. **Lahore High Court**

Mst. Sharifan Mai (deceased) through L.Rs., etc. v. Khuda Bakhsh and others.
Civil Revision No.337-D of 2004.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5423.pdf

Facts: The predecessor of the petitioners instituted a suit for declaration on the basis of dower deed and being legal heir of her husband. The learned trial Court decreed the suit. Feeling aggrieved, the respondents preferred an appeal which was allowed by the learned appellate Court. Through this civil revision, the petitioners called in question the legality and validity of judgment and decree passed by learned appellate Court.

Issue: i) Whether the transfer of property by a Muslim to Muslim in lieu of dower (Hiba-bil-ewaz) requires registration under the Registration Act, 1908?
ii) What are the principles governing the applicability of doctrine of Marz-ul-Mout?

Analysis: i) The transfer of property by a Muslim to Muslim in lieu of dower, is a gift (Hiba-bil-ewaz), it does not require registration under the Registration Act, 1908. Neither any writing would be required nor any such document acknowledging transfer of property in lieu of dower would require registration. Ordinarily in a transfer of immovable property by a Muslim husband to his wife in lieu of dower, there are two distinct gifts, one by each party to the other. The husband transfers by gift the property, while the wife makes the gifts of her. The transaction is essentially hiba-bil-ewaz. This being the ordinary role, it needs to be observed that there might, be some exceptions, as visualized in some cases, depending upon peculiar circumstances thereof. A transfer by a Muslim husband in favour of his wife in lieu of her dower being essentially a gift, was not required, to be affected through a registered instrument. The provisions contained in Chapter VII of the Transfer of Property Act, 1882 which Inter alia require making of a gift of immovable property only by registered instrument, do not apply to the present case which is of hiba-bilewaz by a Muslim such gifts are excluded by virtue of section 129 of the Act ibid, which provides that nothing in Chapter VII shall be deemed to affect any rule of Muslim Law. The dower deed was a document, which not creating or extinguishing right in immovable property and execution of such document thereto only acknowledged the factum of transfer of immovable property in favour of his wife in lieu of dower.
ii) With regard to the principles governing the applicability of doctrine of Marz-ul-Mout, the Court should consider the following factors to sustain the conclusion that the impugned transaction was made under such pressure (Marz-ul-Mout). (i) Was the donor suffering at the time of gift from a disease which was the immediate cause of his death? (ii) Was the disease of such a nature or character as

to induce in the person suffering the belief that death would be caused thereby, or to engender in him the apprehension of death? (iii) Was the illness such as to incapacitate him from the pursuit of his ordinary avocations- - a circumstance which might create in the mind of the sufferer an apprehension of death? (iv) Had the illness continued for such a length of time as to remove or lessen the apprehension of immediate fatality or to accustom the, sufferer to the malady?"

Conclusion: i) The transfer of property by a Muslim to Muslim in lieu of dower (Hiba-bil-ewaz) does not require registration under the Registration Act, 1908.
ii) The principles (a) a disease which was the immediate cause of his death, (b) the disease to induce belief of death or apprehension of death, (c) the illness to incapacitate from the pursuit of ordinary avocations and (d) the illness continued for a length of time as to remove or lessen the apprehension of immediate fatality or to accustom to the malady govern the applicability of doctrine of Marz-ul-Mout

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31. **Lahore High Court**
Sadiq Rasheed and another. v. Mst. Uzma Rizwan & 10 others.
Civil Revision No.1242 of 2019.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5405.pdf

Facts: Respondent No.1/plaintiff instituted three suits for declaration to the effect that defendants are only Benami owners, while actual owner was her predecessor. The learned trial court rejected the plaints under Order VII Rule 11 C.P.C as barred by law. Feeling aggrieved, she filed three separate appeals, which were allowed by the learned appellate court. The petitioners have assailed the impugned judgments and decrees of the learned appellate court through these civil revisions.

Issue: Whether the civil court has jurisdiction to entertain suit or proceedings when there is title and ownership dispute regarding the properties of Benami Transactions despite the Benami Transactions (Prohibition) Act, 2017?

Analysis: From the reading of section 43 of the Benami Transactions (Prohibition) Act, 2017, it is manifestly clear that Civil Courts shall have no jurisdiction to entertain any suit or proceedings in respect of any matter to which any of the authorities or the tribunal is empowered by or under the Act to determine. Intent and object of Benami Transactions (Prohibition) Act, 2017 is very much clear. According to which, if a property was purchased in the name of a person who according to his social status unable to have purchased any property by his own means, if found such property in his name then the Act ibid will come into play and will act upon the procedure as laid down in Section 22 of the Act ibid and such property shall be considered as "Benami property" and would be subject to confiscation in favour of the State. Section 22 provides that when the Initiating Officer has reason to believe on the basis of material in his possession that any person is a

Benamidar in respect of a property, he may issue a notice of show cause that why such property should not be treated as a Benami property and after making inquiry and calling for evidence draw up a statement of case and refer it to the Adjudicating Authority. After receipt of the reference proceedings for adjudication of Benami property shall start by the adjudicating authority under Section 24 of the Act, ibid. It is manifest from the reading of above mentioned provision of law that Civil Court shall have no jurisdiction to entertain any suit or proceedings in respect of any matter to which any of the authorities or the tribunal is empowered by or under the Act to determine. Unit (ii) of Clause 8(B) of the Act ibid, excludes those properties from the purview of Sub Section 8 Clause-B (ii) of Section 2 of the Act, which suggests that the properties of the individuals are exempted from the meaning of Benami properties upon which the Act is exclusively inapplicable when such controversy arises between the parties regarding the ownership of the house, exclusive jurisdiction vests in the Civil Courts to decide the title and ownership of such property after recording of evidence of the parties. The Civil Courts have the exclusive and ultimate jurisdiction to declare the rights, title and status of a person or property.

Conclusion: The civil court has jurisdiction to entertain suit or proceedings when there is title and ownership dispute regarding the properties of Benami Transactions.

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32. **Lahore High Court**
Mst. Zohran Bibi, etc. v. Ghulam Qadir, etc.
Civil Revision No.14 of 2016.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5411.pdf

Facts: The predecessors of the respondents challenged the validity of inheritance mutation by instituting a suit for declaration against the predecessors of the petitioners. The learned trial Court proceeded ex-parte and then suit was ex-parte decreed without recording any evidence. The learned trial Court dismissed the application of the petitioners for setting aside ex-parte decree. Feeling aggrieved, they preferred an appeal which was dismissed by the learned appellate Court. The petitioners challenged both the judgment/order of the learned lower Courts by filing instant revision petition.

Issue: i) Whether non observing of the procedure given in Order V Rule 16, 18, 19 of the Code of Civil Procedure, 1908 relating to service of summons will result in setting aside ex-parte decree?
ii) Whether the Court has powers to proceed with the case ex-parte against the defendant and pass a decree under Order IX, Rule 6(1), C.P.C. without calling for an affidavit or recording of ex-parte evidence?
iii) Whether application for setting aside ex-parte decree was governed with Article 164 of the Limitation Act, 1908?
iv) Whether the principle of natural justice must be read in each and every

Statute?

Analysis: i) The bare reading of the mandatory provisions i.e. Order V Rule 16, 18, 19 of the Code of Civil Procedure, 1908 provides complete guidelines for the Courts and Process-Serving Agencies. It says that in all cases in which summons have been served under Rule 16 C.P.C. mentioned above, the Process Server shall require the signature of the person to whom the copy is so delivered or endorsed on the original summons his report thereon. Rule 18 ibid further directs the manner of service in which the same is served, to mention the name and address of the person (if any) and identify the person served and witnesses of the delivery or tender of the summons. Similarly, rule 19 C.P.C. lays down the procedure for the Court that where a summon is returned under rule 17 aforesaid duly verified, the Serving Officer shall be examined on oath and may make such inquiry in the matter as it thinks fit and shall either declare that the summons is duly served or as it thinks fit and after his satisfaction to proceed further. The ex-parte decree would be set aside if the summons was not duly served and the meaning of "duly served" would mean the service as required by law. Consensus of the courts are that for defending an exparte proceedings and decree the plaintiff has to produce the process server to prove due service when the service was denied by the defendant. It is also settled principle of law that where service of summons is denied and Process Server has nowhere stated in his report that copy of the summons is delivered to the defendant, the presumption would be that defendant is not properly served.

ii) The Law Reforms Ordinance (XII of 1972) read with section 6 of the Oath Act, 1873, introduced the verification of pleadings on oath by adding the words "on oath or solemn affirmation" after the word verified in Rule 15(1) of Order VI, C.P.C. After such amendment, in presence of verified pleadings on oath, the Court has powers to proceed with the case ex-parte against the defendant and pass a decree under Order IX, Rule 6(1), C.P.C. without calling for an affidavit or recording of ex-parte evidence.

iii) The application for setting aside ex-parte decree was governed by Article 164 of the Limitation Act, 1908 which provides period of 30-days from the date of decree or where summon was not duly served when the applicant has knowledge of the decree. Residuary Article 181 of the Act ibid, provides period of three years when the right to apply accrues.

iv) It is settled principle of law that principle of natural justice must be read in each and every Statute unless and until it is prohibited by the wording of the statute itself. The principle of "Audi alterm parterm" is also one of the basic principle of natural justice that nobody should be condemned unheard. Law favours adjudication of lis on merit and not on mere technicalities. No one should be knocked out merely on technicalities.

Conclusion: i) Non observing the procedure given in Order V Rule 16, 18, 19 of the Code of Civil Procedure, 1908 relating to service of summons will result in setting aside ex-parte decree.

ii) The Court has power to proceed with the case ex-parte against the defendant and pass a decree under Order IX, Rule 6(1), C.P.C. without calling for an affidavit or recording of ex-parte evidence.
iii) The application is governed by Article 164 of the Limitation Act, 1908 which provides period of 30-days from the date of decree or where summon was not duly served when the applicant has knowledge of the decree.
iv) The principle of natural justice must be read in each and every Statute.

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33. **Lahore High Court**
Abdul Ghafoor v. Province of the Punjab, etc
Civil Revision No. 219-D of 2005.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5463.pdf

Facts: Contention was that the writ petition was dismissed in limine without discussing the facts in controversy and without giving any findings on those facts, however, learned lower courts dismissed the suit of the petitioner on the principle of res judicata.

Issue: Whether an order passed in writ petition would operate as res judicata on civil suit?

Analysis: It is a rule of law that a man shall not be vexed twice by one and the same cause. For this rule, two reasons have always been assigned; the one, public policy and the other, hardship on the individual that he should be twice vexed for the same cause and when a party to litigation seeks improperly to raise again the identical question, which has been decided by a competent court. The Court has always-inherent power to prevent/check abuse of its process. Even if section 11 of C.P.C. may not, in terms, apply in support of the plea of res-judicata, the general principles of res-judicata are clearly attracted to debar a party from re-agitating the matter afresh by a civil suit which had been put at rest by a judgment of the High Court passed in writ jurisdiction. The Courts have always power to prevent an abuse of their process which has been recognized to inhere in courts vested with the administration of justice and is expressly saved by section 151 of the Code of Civil Procedure. Even if section 11 of C.P.C. does not apply in terms, in such like cases, the general principles of res judicata would apply whatever the forum whether the special or general jurisdiction it will operate as a bar on the re-opening of the case. The general principles of res-judicata are clearly attracted to debar a party from re-agitating the matter afresh by a civil suit, which had been put at rest by a judgment of the High Court passed in writ jurisdiction.

Conclusion: An order passed in writ petition would operate as res judicata on civil suit.

34. **Lahore High Court**
Muhammad Iqbal v. Mst. Kalsoom Bibi and Three others
C.R. No. 112 of 2019 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5389.pdf

Facts: The respondents, real sisters of the petitioner filed a suit for declaration on the ground that their predecessor had died leaving behind the suit property as well as other property. That respondents being legal heirs of the deceased were entitled to get their due share, but the petitioner fraudulently got mutated suit property in his favour through oral gift.

Issues: i) When right of inheritance can be enforced regarding property of deceased?

ii) Whether a mutation can be challenged on the basis of procedural irregularities, after a long period of the death of its executant?

Analysis: i) Right of inheritance is the most valuable, cherished and elementary right granted by Islam and law but equally indispensable is the right to create, hold and dispose of property which is recognized and protected with the same zeal and command of Islam and law. The right of inheritance can only be enforced against the estate of the deceased left behind at the time of death. By no stretch of imagination, the right of inheritance extends to question the legitimate and lawful transactions of transfer of property undertaken by the deceased in his life time by himself through the instrumentality of the State after following the due process of law merely on the basis of bald, general and evasive assertion of fraud unsubstantiated by cogent and irrefutable evidence. Such transactions can at best be treated at par with any other transaction challenged on the basis of fraud. Once that threshold is crossed and the transaction is cancelled, it is only then that the question of inheritance will arise.

ii) Unless fraud is conclusively established by the party alleging it, going behind the transaction executed by the deceased not questioned for years in his life time on the touchstone of procedural irregularities would tantamount to trial of his grave. The obvious reason is that it is the duty of the State officials to ensure the fulfillment of procedural requirements before sanctioning or passing of a transaction. In case, there are any procedural lapses, the parties to a transaction have a right to know and the state functionaries are under a duty to point out before sanctioning the transaction so that the persons involved in the transaction get a fair and reasonable opportunity to rectify the same and enforce their will and decision thereafter. Cancellation of such a transaction after the death of the deceased on the basis of procedural lapses would invariably mean that the deceased would never get an opportunity to enforce his desire and intention regarding the disposal of his property which would stand substituted by the decision of the Court.

Conclusion: i) The right of inheritance can only be enforced against the estate of the deceased left behind at the time of death. The right of inheritance cannot be extended to question the lawful transactions undertaken by the deceased himself in his life time.

ii) A mutation executed by the deceased, not questioned for years in his life time, cannot be challenged on the basis of mere procedural irregularities unless fraud is conclusively established by the party alleging it.

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35. **Lahore High Court**
Province of Punjab v. Sajjad Naseem etc.
W.P.No.11438/2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5180.pdf

Facts: Respondent was appointed on daily wages basis as Security Guard against a regular post by Punjab Irrigation Department. He was then appointed as Baildar and again appointed as Boatman. After completion of probationary period he sought regularization since his first appointment with all back benefits. The Labour Court accepted his grievance petition while Appellate Tribunal dismissed the appeal of petitioner.

Issues: Whether an employee of Government Department can invoke the jurisdiction of Labour Court seeking regularization of his post?

Analysis: In case titled Province of Punjab and 3 others v. Gul Hassan and 33 others (1992 PLC 924) the Honourable Supreme Court observed that regularization of an employee is governed under the Punjab Regulations of Service Act, 2018 which importantly exclude persons applying under special pay packages. A government employee must advance his claim of regularization under the said law and if the claim of the employee is prior to the coming into force of the said law (as in the titled case) then on the strength of a policy or notification that addresses the issue of regularization in contrast to merely seeking regularization with the passage of time through the PIRA or the Standing Order… The Standing Order and PIRA did not apply to the case of the respondent. Hence, the entertainment of the Grievance Petition, its adjudication and direction to regularize the respondent from the date of his appointment as Boatman and holding that he is entitled to get back benefits under the law including all emoluments is held to be without jurisdiction.

Conclusion: The Standing Order and PIRA do not apply on Government Department. Therefore, an employee of Government Department cannot invoke the jurisdiction of Labour Court seeking regularization of his post.

36. **Lahore High Court**
Mst. Anwar Mai v. Ghulam Sarwar etc.
Civil Revision No.1213-D/2003
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC5330.pdf

Facts: The petitioner filed two suits, one for declaration or in alternate the specific performance and the other suit for declaration along with consequential relief and cancellation of impugned mutation, alleging that her father sold 1/5th share of his said property to her through oral sale. But respondents/her real brothers got mutated the whole land in their favour.

Issues: i) Whether every transfer in favour of a legal heir depriving female legal heirs of the deceased, is void?

ii) What does contradiction mean and what is its effect regarding credibility and veracity of testimony of a witness?

Analysis: i) Admittedly in our society there is a wide spread social practice to deprive the females from their legal inherited share, which superior courts have always deprecated. Such deprivation is generally effected through instrument such as gift/tamleek and mutations sanctioned in pursuance thereof. Honourable Supreme Court of Pakistan has held such agreements to be against the public policy. The agreements and/or contracts which the honourable Supreme Court has held to be against the public policy are those which are purportedly entered into or executed between the male legal heirs and the female legal heirs to deprive the latter from their right to inherit property by surrendering their rights. Such agreements are generally result of exploitation, emotional or otherwise of females which takes away element of free consent from such contracts. Another category of such agreements and/or contracts is one where male legal heirs claim to be donees of the inherited property from the predecessor-in-interest to the exclusion of the female legal heirs and such transactions come to surface either before or after the demise of the predecessor-in-interest of the parties and is mostly result of exercise of undue influence, fraud or misrepresentation committed by the donees/beneficiaries. However, every case has its own peculiar facts and circumstances, and the same requires proper analysis and adjudication.

ii) Contradiction is the act of saying something that is opposite or very different in meaning to something else that is said earlier and the same come in the way of inspiring confidence about credibility and veracity of testimony of a witness. Usually, contradictions are not minor discrepancies on trivial issues but go to the root of the matter and shake the basic stance of the claimant. When the entire evidence of claimant is read as a whole, it appears that the ring of truth is conspicuously missing on account of glaring contradictions and the case of claimant squarely falls under the maxim Allegans Contraria Non Est Audiendus (A person who alleges things contradictory to each other is not to be heard) disentitling him/ her from any relief.

Conclusion: i) **Every transfer in favour of a legal heir, which deprives female legal heirs of the deceased, is not void.** Every case has its own peculiar facts and circumstances, and the same requires proper analysis and adjudication.

ii) Contradiction is the act of saying something that is opposite or very different in meaning to something else that is said earlier and the same come in the way of inspiring confidence about credibility and veracity of testimony of a witness.

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37. **Lahore High Court**
Mst. Farkhanda Jabeen v. Province of Punjab, etc.
Review Application No.13 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5691.pdf

Facts: The petitioner filed writ petition to restrain the respondents from deducting allowance from the applicant's pay and salary. Writ petition was dismissed being not maintainable. Hence this review

Issue: Whether the matters relating to payment or withdrawal of allowances can be challenged in writ jurisdiction of High Court?

Analysis: In terms of reported precedent cases, approach by a civil servant to this Court under Article 199 of the Constitution in matters which are germane to his terms and conditions of service including grant, refusal, return or deduction of allowances has been looked down upon as being legal anathema. Not only this High Court but all other Provincial High Courts have also followed this trite position of law…. Therefore, withdrawal of allowance of a civil servant was clearly held to be a matter connected with the terms and conditions of a civil servant and outside the jurisdiction of a High Court.

Conclusion: The payment or withdrawal of allowances cannot be considered in writ jurisdiction of High Court.

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38. **Lahore High Court**
Muhammad Iqbal, etc. v. Jalal Din, etc.
C.R. No.1253 of 2015
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5573.pdf

Facts: The suit filed by petitioner was dismissed. Against the order of dismissal he filed appeal and the matter was remanded for recording additional evidence. The suit was again dismissed and he again preferred appeal. When the appeal was riped, the petitioner filed under Order XXIII, Rule 1 CPC for withdrawal of appeal and the suit with permission to file the suit afresh. The said application was dismissed hence this revision.

Issue: What are consideration for allowing the application for withdrawal of appeal and the suit with permission to file the suit afresh?

Analysis: On the basis of earlier precedents,

a. permission under order XXIII, Rule 1 CPC can only be granted in respect of a formal defect and where the defect is latent and touches merits of the case then permission to withdraw the suit on this score cannot be granted

b. Order XXIII, Rule 1 CPC based on sufficient cause must be filed at the earliest opportunity and the grounds taken therein must be cogent and not fanciful."

c. Where evidence to meet the issues framed has been adduced by both parties and on these issues a decision has been arrived at and a decree has been passed, and that decree has been upheld-on appeal, this Court on second appeal has no power to allow withdrawal of the suit to deprive the defendant of the advantage he has gained from the decision of the issues in his favour, Order XXIII, rule 1, will not give such power where once the suit has been decided and a decree has been passed.

d. An application under Order XXIII, Rule 1 CPC can only be allowed upon showing sufficient cause that satisfies judicial conscience and that there was an objective satisfaction in respect of sufficient cause that had to be met as also that the application was not tainted with oblique or malafide motives and was not aimed at abusing the process of law.

Conclusion: The application for withdrawal of appeal and the suit should be allowed with permission to file the suit afresh in respect of formal defect and upon showing sufficient cause keeping in view situations described above.

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39. **Lahore High Court**
Dr. Muhammad Eshfaq Gujjar and another v. Additional District Judge Multan
Writ Petition No. 7136 of 2016
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5486.pdf

Facts: The order passed by a learned Additional District Judge is challenged whereby he allowed the Punjab Healthcare Commission to become a party and to be arrayed as a respondent. The petitioners have also laid a challenge to the hearing of their appeal by a learned Additional District Judge instead of the District Judge himself.

Issue: i) Whether the term judge and court are interchangeable?

ii) Which law deals with functioning of court under Punjab Healthcare Commission Act 2010?
iii) Whether in the presence of Sections 30 and 31 of the Punjab Healthcare Commission Act 2010, is it possible for a District Judge to delegate and assign the hearing of appeals to Additional District Judges in the District?
iv) Whether an application under Order 1 Rule 10 CPC could be filed and was maintainable in an appeal emanating out of imposition of penalty in terms of Punjab Healthcare Commission Act 2010?

Analysis: i) The terms 'Court' and 'Judge' are synonymous and are to be treated as such when mentioned individually or collectively. While the term 'Court' denotes the Judicial Public Office created by a statute, the judge is the public official occupying the said judicial office. The powers and functions conferred upon Courts are exercised by the Judges and but for semantics there is no operational difference leading to a clash in meanings of both terms. The power reserved for the Courts are validly exercised by Judges even if the terms are individually used in a statute without reference to the other. The power of the Court is the power of the Judge.
ii) Since the Punjab Healthcare Commission Act 2010 does not create any court nor prescribes any specific rules for the purpose of carrying out the functions and duties by the Court or by the Judge thereunder but merely adds another judicial function to be performed by already established courts, in such cases, the Courts and Judges upon whom the added duties or functions are conferred may well be governed in such matters by the laws which create such courts/judges and prescribe the process of enforcement of duties and exercise of functions by them…. It will be implied that the ordinary procedure, power and jurisdiction of that Court is to attach to it, and in such a case the Presiding Officer of that Court performs his functions under that special law in the exercise of his ordinary powers and procedure and not as a persona designata.
iii) Sections 30 and 31 of the 2010 Act though mention the 'Court of the District and Sessions Judge' as the forum of a suit and an appeal in respect of the matters specified therein, but do not state as to how that Court or the Presiding Judge of that Court is to regulate its or his functioning in the matter of hearing the suit or appeal. This matter being not dealt with in the 2010 Act is to be regulated by the ordinary powers of the Presiding Officer of the Court of the District and Sessions Judge under the Civil Courts Ordinance 1962, the Code of Civil Procedure 1908 and the Code of Criminal Procedure 1898. Therefore, a District & Sessions Judge can, in exercise of his ordinary powers under the said enactments, entrust a suit or an appeal filed in his Court under Section 30 or Section 31 respectively of the Punjab Healthcare Commission Act 2010 for decision to an Additional District & Sessions Judge…. However this will not amount to bestowing an Additional District Judge with the status of a District Judge but shall only mean that an Additional District Judge may, in terms of the Civil Courts Ordinance 1962, be

assigned functions of the District Judge so as to be exercised by an Additional District Judge

iv) Since the order under challenge in appeal has been passed by the Punjab Healthcare Commission, it is axiomatic that it must be afforded an opportunity to defend its order. The Court can only gain from the technical knowhow, experience and expertise of the Punjab Healthcare Commission in the matter… Like all living citizens and persons, the government and its agencies are also entitled to due process of law and to equal protection of laws and therefore, the right of the Punjab Healthcare Commission guaranteed in terms of Articles 4 and 10-A of the Constitution will be compromised if the Commission is not allowed to present its stance in the matter..Furthermore, on the strength of Article 4(2) of the Constitution it may be stated that what is not prohibited is permitted.

Conclusion: i) The terms judge and court are interchangeable as there is no operational difference.

ii) The laws which create such courts/judges and prescribe the process of enforcement of duties and exercise of functions by them is applicable.

iii) Additional District and Sessions Judges can hear appeals in terms of Section 31 of the Punjab Healthcare Commission Act 2010 if the same have been so assigned to them by the court of District and Sessions Judge.

iv) An application under Order 1 Rule 10 CPC could be filed and was maintainable in an appeal emanating out of imposition of penalty in terms of Punjab Healthcare Commission Act 2010.

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40. **Lahore High Court**
M/s Sheikh Goods Transport Company, etc. v National Fertilizer Marketing Ltd.
Civil Revision No.2994/2013.
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC5590.pdf

Facts: Through this civil revision, the petitioners have challenged the order passed by the learned Civil Judge whereby application of the respondent under rule 1 Order XVI read with Section 151 C.P.C. for summoning of witness in the suit for damages instituted by the respondent was allowed.

Issue: What qualifies to be valid reasons for the grant of permission for summoning of witnesses under rule 1(2) of Order XVI C.P.C?

Analysis: Rule 1(2) of Order XVI C.P.C. requires the court to record reasons for the exercise of its discretion. Such requirement has been imposed apparently to keep a judicial check on unbridled and absolute discretion of the court. What qualifies to be valid reasons for the grant of permission under rule 1(2) ibid has been a subject matter of judicial discourse. One view in such discourse is that reasons to be recorded by the trial court for the permission granted under the said rule must be confined to the "good cause" shown (i.e. the explanation advanced) by the

party for the omission to include name of witness sought to be called or produced. The other end of the spectrum of this discourse takes a broader view by liberating the reasons to be recorded by the trial court from the confines of explanation furnished by the litigant for the omission of the name of a witness in the list and includes elements such as importance of the witness in the trial; prejudice, if any, to the opposite party; and inconvenience of the trial court. The primary focus of such a view appears to be on how the permission sought, if not granted, may curtail access to justice of the applicant, how much administration of justice is likely to be burdened in the proceedings before the court if the permission sought is granted, and how the fair trial right as enshrined in Article 10A of the Constitution, shall be curtailed by the grant or refusal of such an application. The focus surely shifts away from technical knockout of the litigants for their omissions and inefficiencies. Application of the law reiterated herein above to the facts of this case requires perusal of the record, in particular application of the respondent seeking permission, reply to the application and the order passed therein... It is apparent from the application under rule 1 of Order XVI C.P.C. filed by the respondent that no cause whatsoever, let alone any "good cause", was shown by the respondent for its omission to include name of Muhammad Ramzan, its Deputy Manager Finance in the list of witnesses. It is manifest from the order impugned that application of the respondent was allowed by the trial court "in the interest of justice" apparently for the reason that the respondent itself was producing the said witness voluntarily, implying therein that no summoning powers of the court were being invoked, which is an irrelevant consideration since the Lahore High Court amendment introduced in the rule 1(2) of Order XVI, as fully explained above. No findings are recorded on the importance of the witness in the trial, prejudice, if any, caused to the petitioners and inconvenience, if any, caused to the court. It is obvious that the permission to produce witness has been granted as a matter of routine without recording reasons showing judicious application of mind.

Conclusion: The valid reasons for the grant of the permission for summoning of the witnesses under rule 1(2) of Order XVI CPC are discussed in detail in analysis part.

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41. **Supreme Court of Azad Jammu & Kashmir**
Azad Govt. & others v. Muhammad Ishaq & others
Civil Appeal No.205 of 2021
Mr. Justice Raja Saeed Akram Khan, CJ, Mr. Justice Kh. Muhammad Naseem, Mr. Justice Raza Ali Khan
https://ajksupremecourt.gok.pk/azad-govt-others-vs-muhammad-ishaq-others/

Facts: This appeal is directed against the order of learned High Court wherein the writ petition of respondents No 1 to 8 against the proposed amendments in the Azad Jammu and Kashmir Advocate General Office Service Rules, 1995 was partially accepted being contrary to the Rules.

Issue: i) Whether appointment of Advocate General can be made without consultation of Chief Justice of Supreme Court and High Court?

ii) Whether Advocate General is subordinate to the Secretary Law, Justice, Parliamentary Affairs and Human Rights?

iii) Whether in presence of the Law Officers, Government can engage any private counsel to defend the cases?

Analysis: i) The office of the Advocate General finds place almost in all the countries and Constitutions of the world irrespective of the Presidential or Parliamentary System of the Government. In Azad Jammu and Kashmir, the office of the Advocate General is established under Article 20 of the Constitution. President appoints a person, being a person qualified to be appointed a Judge of the High Court to be the Advocate General for Azad Jammu and Kashmir. The learned High Court in the impugned judgment has held that no person shall be appointed as Advocate General without consultation with the Chief Justices of Azad Jammu and Kashmir and High Court and that all other Law Officers and Legal Advisors shall be appointed by the Government in consultation with the Advocate General. The wisdom behind such observations as assigned by the High Court is that the qualification for the post of the Advocate General is same as that of the Judge of the High Court and for appointment of the Judge of the High Court consultation with the Chief Justice of Azad Jammu and Kashmir and that of High Court is mandatory. The learned High Court has relied upon Article 43(2-A) of the Constitution wherein it is provided that the eligibility criterion for the Advocate-General and that of Judge of the High Court is same. Such observations of the High Court are offending the clear constitutional provisions. A Court of law has to observe the law as it is and not as it should be. The correct position is that the Advocate General is appointed under Article 20 of the Constitution, whereas, Judge of the High Court is appointed under Article 43. Both the statutory provisions are independent. Since Article 20 of the Constitution itself does not envisage consultation by the President with the Chief Justice of Azad Jammu and Kashmir and Chief Justice of High Court in the matter of appointment of Advocate-General, hence, the learned High Court wrongly read the same into the said Article.

ii) It has been noticed by us time and again that in a number of cases, the Advocate-General has shown his inability to argue the case on the ground that he has not been directed so by the Secretary Law, Justice, Parliamentary Affairs and Human Rights. Such a practice is highly deprecated. The Advocate-General is holding the constitutional post, hence, he is not supposed to be subordinate to Secretary Law. Even otherwise, it is the Advocate-General who is a fit person to decide the matter of distribution of the cases amongst the Law Officers and not the Secretary Law.

iii) Advocate-General, a large number of Law Officers are appointed by the Government. Despite the fact that they are being paid from the public exchequer, the private counsels are also engaged by the Government in several cases. In our

estimation, if the government contends that none amongst its law officers is capable of handling the cases then the question would arise why incompetent persons have been appointed. In such a scenario the public suffers twice, firstly, they have to pay for incompetent law officers, and secondly, they have to pay again for the services of competent counsel the government engages. The public exchequer is not there to be squandered in this manner. The State must protect the belongings and assets of the State and its citizens from waste and malversation.

Conclusion: i) The findings recorded by the High Court that no person shall be appointed as Advocate General without consultation with the Chief Justice of Supreme Court and High Court are set-aside being not in consonance with the relevant Constitutional provisions as well as the principle of law laid down in the case reported as Secretary Ministry of Law & others vs. Muhammad Ashraf Khan & others [PLD 2011 SC 7]

ii) The Advocate-General, being holding the constitutional post is not supposed to be subordinate to the Secretary Law, Justice, Parliamentary Affairs and Human Rights.

iii) In presence of the Law Officers, being paid from the Government exchequer, there is no occasion for the Government to engage the private counsel to defend the cases in the Supreme Court and High Court, however, in exceptional cases, after consultation with the Advocate General and prior permission of the Court, the private counsel can be engaged for assistance of the Advocate-General but it cannot be allowed to make a practice.

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42. **Supreme Court of the United States**
Rotkiske v. Klemm, 589 U.S. ___ (2019)
https://www.supremecourt.gov/opinions/19pdf/18-328_pm02.pdf
https://ballotpedia.org

Facts: It was a decision involving the statute of limitations under the Fair Debt Collection Act of 1977. Rotkiske accumulated credit card debt between 2003 and 2005. Someone accepted service for a debt collection lawsuit on Rotkiske's behalf without his knowledge. Klemm & Associates obtained a default judgment of approximately $1,500. Rotkiske sued Klemm for violating the Fair Debt Collection Practices Act (FDCPA), arguing the statute of limitations to file a suit begins when the plaintiff knows of his injury.

Issue: Whether the "discovery rule" applies to toll (tolling is a legal doctrine that allows for the delay or pausing of a statute of limitations) the one (1) year statute of limitations under the Fair Debt Collection Practices Act, 15 U.S.C?

Analysis: In an 8-1 opinion, the court affirmed the 3rd Circuit's ruling, holding that the FDCPA's statute of limitations begins to run when the alleged FDCPA violation occurs, not when the violation is discovered. Justice Thomas wrote that the text of

§1692k(d) of the FDCPA was clear: "*The FDCPA limitations period begins to run on the date the alleged FDCPA violation actually happened*." Thomas also wrote it was not the court's role to "*second-guess Congress' decision*" not to include language setting limitations periods to run at the discovery of a violation.

Conclusion: The Court ruled that the statute of limitations begins one year after the alleged FDCPA violation took place, not one year after the violation was discovered by the plaintiff. This ruling upheld the 3rd Circuit's ruling against Rotkiske, and resolved a circuit split between the 3rd Circuit and the 4th and 9th Circuit Courts of Appeal.

LATEST LEGISLATION/AMENDMENTS

1. On Wednesday, October 6, 2O2I, vide notification No. F. 9(10)/202l-Legis, an Act No. XVI of 2021 **'PAF Air War College Institute Act, 2021'** has been enacted to provide for re-organization of the Pakistan Air Force Air War College as a degree awarding institute. This Act consists of a preamble, 7 chapters and 44 sections.
2. On Wednesday, October 13, 2O2I, vide notification No. S. R. O. 1343(1)2021, rules titled the **Removing and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguard) Rules, 2021** have been made. It has 6 chapters, 15 Rules and a Schedule.
3. On Thursday, October 14, 2O2I, vide notification no. No. F. 2(1)/202f –Pub, an Ordinance no. IXlV of 2021 the **Diplomatic and Consular Officers (Oath and Fees) (Amendment) Ordinance, 2021** has been promulgated further to amend the Diplomatic and Consular Officers (Oath and Fees) Act, 1948. This Ordinance consists of a preamble and 9 Articles.
4. On Thursday, October 14, 2O2I, vide notification No. F. 2(1)/2021-Pub, an Ordinance No. XXV of 2O2I the **National Rahmaut-lil-Aalameen Authotity Ordinance, 2021** has been promulgated to provide for the establishment of National Rahmatul-lil-Aalameen Authority. This Ordinance has a preamble and 23 Articles.
5. On 27th October, 2021 the **Punjab Civil Servants (Amendment) Act, 2021** has been enacted for the purpose of modifying provisions relating to retirement of civil servants. Through this Act amendments have been made in section 12 of the Punjab Civil Servants Act, 1974 and the Punjab Civil Servants (Amendment) Ordinance, 2021 has been repealed.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   CORPORATE RESTRUCTURING: BRIEF UNDERSTANDING MERGER AND ACQUISITION WITHIN INDIAN MARKET by Abhishek Narsing & Priyanshu Gupta
   The term corporate restructuring comprises of relevant techniques which developed through the ideas behind the financial market growth though distinct

but related groups of activities, expansions including mergers and acquisitions, tender offers, joint ventures, and acquisitions. contraction including sell offs, spin offs, equity carve outs, abandonment of assets, and liquidation, and ownership and control, focusing the interest of the shareholders managing the atmosphere of the market including the market for corporate control, stock repurchases program, exchange offers and going private. Mergers and acquisitions (M&A) and corporate restructuring are a big part of the corporate finance world focusing on the listed companies under the stock market. The key principle doing the restructuring of the company is to create shareholder value and to provide better platform over and above that of the sum of the two companies. The idea of the corporate restructuring is to bring that two companies together are more valuable than two separate companies at least, that's the reasoning behind M&A.

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/09/04/commentary/disability-and-reform-under-modern-islamic-thought/
DISABILITY AND REFORM UNDER MODERN ISLAMIC THOUGHT
by Khansa Maria

The disability rights discourse in Modern Islamic Thought has seen a considerable amount of evolution. This may not be the same as the political movement of the West but is nevertheless an important stepping stone for the conversation in the Islamic world. Perhaps this conversation has stagnated because of what are perceived to be more pressing issues faced by the community (such as Islamophobia, terrorism, etc.). Disability rights were overlooked during the period of reform because the reformers had been focused on other political and social issues. However, the fact remains that the retraction of focus leads to further stigmatization of disabled individuals in the Islamic world. The theological understanding of disability has also not been focused upon. The disability rights discourse today is predominantly a result of the movement in the West. The rise of individual-focused disability rights organizations such as Mohsin and the Yakeen Institute perhaps do reflect the larger trend in Islamic movements i.e. which is focused more towards individuals and their personal/spiritual growth. But in order to guarantee the rights of disabled individuals and explore their true position in Islam, Islamic reform must be broadened to address all questions and scholars must make them a part of the mainstream discourse.

3. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/sites/default/files/Wednesbury%2C%20Proportionality%20and%20Judicial%20Review.pdf
WEDNESBURY, PROPORTIONALITY AND JUDICIAL REVIEW by Shayan Manzar

This article argues in favour of the proportionality test as the standard for the judicial review of executive actions in Pakistan. It begins by tracing out the origins of the prevailing Wednesbury unreasonableness test as well as the proportionality test, both in Pakistan and in common law jurisprudence generally. It then juxtaposes the two tests, and argues that both attempt a review of the calculus undertaken by the primary decision-maker tempered with the appropriate amount of deference given to him. However, the analytically clearer

framework provided by the proportionality test means that it is able to channel this inquiry in a more transparent and accurate manner, and as such, provides a more reliable test for the review of executive actions.

4. **HARVARD LAW REVIEW**

https://harvardlawreview.org/wp-content/uploads/2018/06/2117-2186_Online.pdf

HARMLESS ERRORS AND SUBSTANTIAL RIGHTS by Daniel Epps

The harmless constitutional error doctrine is as baffling as it is ubiquitous. Although appellate courts rely on it to deny relief for claimed constitutional violations every day, virtually every aspect of the doctrine is subject to fundamental disagreement and confusion. Judges and commentators sharply disagree about which (and even whether) constitutional errors can be harmless, how to conduct harmless error analysis when it applies, and, most fundamentally, what harmless constitutional error even is — what source of law generates it and enables the Supreme Court to require its use by state courts. This Article offers a new theory of harmless constitutional error, one that promises to solve many of the doctrine's longstanding mysteries. There is widespread consensus that harmless constitutional error is a remedial doctrine, in which the relevant question is the appropriate remedy for an acknowledged violation of rights. But harmless error is in fact better understood as an inquiry into the substance of constitutional rights: a purported error can be harmless only if the defendant's conviction was not actually obtained in violation of the defendant's rights. That approach can help solve the doctrine's longstanding riddles. It explains why harmless error is binding on state courts; it clears up confusion about the relationship between the doctrine and statutory harmless error requirements; it shows which errors can never be treated as harmless without effectively being eliminated; and it provides useful guidance for how courts should conduct harmless error analysis where it applies. Most importantly, it reflects a more realistic understanding of the right-remedy relationship that makes it harder for courts to surreptitiously undermine constitutional values.

5. **MODERN LAW REVIEW**

https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12696

IS INTERFERENCE WITH A CORPSE FOR PROCREATIVE PURPOSES A CRIMINAL OFFENCE? by Lisa Cherkassky

An increasing number of court orders from grieving women seek the retrieval of sperm from their deceased husbands, fiancés or boyfriends for the purposes of procreation. The legality of the retrieval of gametes from a dead body is unclear in the United Kingdom, and other jurisdictions have similarly confusing jurisprudence on the matter. The Human Fertilisation and Embryology Act 1990 requires the informed consent of both gamete providers before fertility treatment can commence, rendering the act of electro-ejaculation upon a dead body a pointless (and potentially sexual) violation. This article takes a unique look at the legality of posthumous gamete retrieval and its contradiction to our shared respect for the dead. It suggests that when carried out upon a dead body without a lawful excuse, electro-ejaculation may offend public morality and could constitute

a criminal offence of 'sexual penetration of a corpse' under section 70 of the Sexual Offences Act 2003.