LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(16-12-2022 to 31-12-2022)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
ICC (Pvt) Ltd, Lahore v. Ministry of Energy (Power Division) through its Secretary Islamabad and others
Civil Petition No. 3136 of 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin Ud Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p.31362022.pdf

Facts: The petitioner challenged the act of encashment of the bank guarantee through a constitution petition before the High Court of Balochistan at Quetta, which was dismissed, hence, this petition for leave to appeal.

Issues: i) Whether procuring agency can extend bid validity period?
ii) What is the procedure in case a bidder does not agree with the request of the procuring agency for an extension of the bid validity period?
iii) What will be the responsibility of bidder, if he agrees to an extension of the bid validity period?
iv) What will be the effect in case the bidder fails to furnish the required performance guarantee?
v) Whether procuring agency can accept the request of the bidder to increase prices of the items mentioned in the bid at the stage of NOA?
vi) At which stage bidder can claim an increase in the prices?

Analysis: i) According to the Rules, the procuring agency is under an obligation to process and evaluate the bids within the stipulated bid validity period. However, under exceptional circumstances if an extension of the bid validity period is considered necessary, the procuring agency by exercising powers under Rule 26(3) of the Rules shall for reasons to be recorded in writing, request all bidders for an extension of the bid validity period, provided that such extended period shall not be more than the original or the extended bid validity period.
ii) According to sub rule (4) of the said Rule, it is the prerogative of the bidders to either agree with or to oppose the extension(s) of the bid validity period. In case a bidder does not agree with the request of the procuring agency for an extension of the bid validity period, it shall be allowed to withdraw its bid, without forfeiture of the bid bonds or securities furnished along with bid document.
iii) If a bidder agrees to an extension of the bid validity period, it expresses its willingness to undertake the specified task within such extended bid validity period. The bidder under such circumstances is bound by the commitment and offer already made by it through its bid. Once the bids are finalized by the procuring agency and the bidding evaluation is completed, albeit within the original or extended bid validity period, the procurement contract shall be awarded to the most advantageous bidder in terms of Rule 38 of the Rules; provided that it shall not conflict with any other law, rules, regulations, or government policy.

vi) The procuring agency by exercising power under Rule 39 of the Rules shall issue a NOA, requiring the successful bidder to furnish a performance guarantee which shall not exceed 10% of the contract amount. In case the bidder fails to furnish the required performance guarantee, the procuring agency shall proceed as per the Rules.

v) the Rules do not permit the procuring agency to accept the request of the bidder to increase prices of the items mentioned in the bid at the stage of NOA. This is because Rule 26(4) of the Rules provides that in case of an extension of the bid validity period by consent of the parties, the substance of the bid and the prices of the items mentioned therein, shall remain unchanged.

vi) As per the Rules, if any bidder is declared successful, it is bound to perform its obligations in terms of its commitment made in the already submitted bid. However, after execution of the contract and during performance of the work, if the bidder claims an increase in the prices it has a remedy under Rule 16B of the Rules.

Conclusion: i) The procuring agency may extend the bid validity period by exercising powers under Rule 26(3) of the Rules.

ii) In case a bidder does not agree with the request of the procuring agency for an extension of the bid validity period, it shall be allowed to withdraw its bid, without forfeiture of the bid bonds or securities furnished along with bid document.

iii) If a bidder agrees to an extension of the bid validity period, it expresses its willingness to undertake the specified task within such extended bid validity period.

iv) In case the bidder fails to furnish the required performance guarantee, the procuring agency shall proceed as per the Rules.

v) The Rules do not permit the procuring agency to accept the request of the bidder to increase prices of the items mentioned in the bid at the stage of NOA.

vi) After execution of the contract and during performance of the work, if the bidder claims an increase in the prices it has a remedy under Rule 16B of the Rules.

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2. **Supreme Court of Pakistan**
District Education Officer (Female), Charsadda
& others v. Sonia Begam, etc.
Civil Petitions No. 448-P/17, 651-P, 655-P, 658-P AND 666-P OF 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._448_p_2017.pdf

Facts: The above-titled five Civil Petitions for leave to appeal are directed against the Judgments passed by the learned Peshawar High Court whereby the Writ Petitions filed by the respondents were allowed with certain directions.

Issue: i) Whether there is any distinction between 'Domicile' and 'Residence'?

ii) If there is difference of address mentioned in 'Domicile' and 'CNIC', to whom the weightage and preference should be given?

Analysis: i) To establish or get hold of a domicile, a person should have an abode at a particular place with the intent to be there for an unlimited period. In order to thrash out this particular aspect, the concept of animus manendi is a crucial component and a benchmark to resolve the question of dwelling and whether a person has elected any particular place for his abode rests on the facts of each case separately. The term 'residence' envisions a constituent of permanency in residence and does not connote occasional or intermittent dwelling for any particular period at any particular place. By and large, the domicile of a person can be the residence but the residence may or may not be the domicile or mere residence is not domicile. There is also no concept under the Citizenship Act for two simultaneous domiciles of the same person who may inhabit at many places but he can have one domicile only which indicates his permanent place of dwelling, whereas residence is a more flexible notion than domicile. … It is also a well-established proposition that a person may have no home but he cannot be without a domicile.

ii) Under the Citizenship Act, a person can neither obtain multiple domiciles, nor the law approves or allows any such act or practice. If the jobs are given merely considering the CNIC without considering the address on the domicile then it would create various complications and complexities and even in the case of temporarily shifting or in case of a rented house, the person will be forced every time to apply for fresh domicile with the address of changed abode and in such eventuality, he will be neither here nor there but unfortunately a rolling stone, who would never be able to secure a job due to the alleged discrepancy and his candidature will be rejected every time, meaning thereby that if he will apply on CNIC address, he will be rejected due to difference in domicile address and if he will apply on domicile, again he will be rejected due to different address on CNIC which will somehow or the other lead him out of arena, sometimes due to address on CNIC and sometimes on the basis of address on certificate of domicile which cannot be the same in each and every case as a rule due to different circumstances which include temporary dwelling despite having permanent address at the place of domicile. So for all intents and purposes, the weightage and preference should be given firstly to the certificate of domicile which cannot be ignored without due consideration.

Conclusion: i) The term 'residence' envisions a constituent of permanency in residence and does not connote occasional or intermittent dwelling for any particular period at any particular place. By and large, the domicile of a person can be the residence but the residence may or may not be the domicile or mere residence is not domicile.

ii) If there is difference of address mentioned in 'Domicile' and 'CNIC', , the weightage and preference should be given firstly to the certificate of domicile which cannot be ignored without due consideration.

3. **Supreme Court of Pakistan**
Abdul Qudoos v. Commandant Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and another
Civil Petition No.2021 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin Ud Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2021_2019.pdf

Facts: This petition for leave to appeal is directed against the order passed by the Federal Service Tribunal which was moved for resurrection of appeal but the request was denied and the application was dismissed.

Issues: i) Whether the Frontier Constabulary Employees are civil servants and they have right to appeal?
ii) What is the difference between eligibility and fitness, whether the tribunal has jurisdiction on the question of fitness?
iii) Whether the law declared by the Supreme Court within the meaning of Article 189 is binding on all the Courts of Pakistan?
iv) What is the obligation of the court if the mistake is done by the court itself?

Analysis: i) It is settled in the judgment in the case of Commandant Frontier Constabulary Khyber Pakhtunkhwa Peshawar & others Vs. Gul Raqib Khan, (2018 SCMR 903), that the controversy with regard to the employment status of the Frontier Constabulary force has been expounded and settled without any ambiguity in clear terms, i.e. that Frontier Constabulary Employees are civil servants and, in a matter relating to the terms and conditions of service, they can approach the Tribunal and file an appeal in accordance with law.
ii) In the case of Muhammad Anis and others Vs Abdul Haseeb and others (PLD 1994 SC 539), it is elaborately discussed the fine distinction between eligibility and fitness and went on to hold that eligibility relates primarily to the terms and conditions of service and their applicability to the civil servant concerned and, therefore, the Tribunal has jurisdiction; whereas the question of fitness is a subjective evaluation on the basis of objective criteria where substitution for an opinion of the competent authority is not possible by that of a Tribunal or of a Court and therefore, the Tribunal has no jurisdiction on the question of fitness.
iii) In Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483) it was concluded that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. It was further held that even obiter dictum enjoy a highly respected position as if "it contains a definite expression of the court's view on a legal principle, or the meaning of law."
iv) A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim "actus curiae

neminem gravabit", which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the Court or an act of the Court shall prejudice no one and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court. It should be remedied by making necessary correction forthwith. If the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not happen.

Conclusion: i) Frontier Constabulary Employees are civil servants and, in a matter relating to the terms and conditions of service, they can approach the Tribunal and file an appeal in accordance with law.

ii) Eligibility relates primarily to the terms and conditions of service whereas the question of fitness is a subjective evaluation on the basis of objective criteria therefore, the Tribunal has no jurisdiction on the question of fitness.

iii) The law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan.

iv) The Court is under an obligation to reverse the wrong done to a party by the act of court.

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4. **Supreme Court of Pakistan**
Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala v. Khalid Mehmood and others
Civil Appeals No.1685 to 1687 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1685_2021.pdf

Facts: The Appellant filed civil appeal against the judgment of the Lahore High Court whereby the writ petitions of the appellant challenging the judgment of Labour Appellate Tribunal, Punjab regarding re-instatement of respondent No.1 in service was dismissed.

Issues: i) Whether an employee can be compulsorily retired on the allegation of misconduct without holding regular inquiry?

ii) Whether the concept that no limitation runs against a void order is an inflexible rule?

iii) Whether an employee who accepted his dues on being compulsory retired can no more be considered as an aggrieved person to assail the order of his compulsory retirement?

Analysis: i) The astuteness of triggering of disciplinary proceedings by the employer is to find out whether the charges of misconduct levelled against the delinquent are proved or not and, in case his guilt is established, what action should be taken against him under the applicable Service laws which may include the imposition of minor or major penalties. There is no rigid or definitive rule that in each and every case after issuing show cause notice a regular inquiry should be conducted, but if the department aspires to dispense with the regular inquiry due to some compelling circumstances or exigency, then justifiable reasons should be assigned in writing before dispensing with the regular inquiry. No doubt if a charge is set up or stems from admitted documents, no full-fledged regular inquiry is obligatory, but if the allegations are based on disputed questions of facts, then obviously the employee cannot be denied a right of regular inquiry, specifically where the allegations cannot be resolved without leading evidence and providing a fair opportunity to the parties to cross-examine the witnesses.

ii) The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labelling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party.

iii) In case order of termination is held to be mala fide or the charge of misconduct has not been proved, the payment of entire dues will not disentitle an employee to seek further relief of re–instatement from the Court. It cannot be accepted as a rule in each and every case that receipt of dues would debar an employee from approaching the Labour Court for the redress of his grievance. The law has provided a forum to settle the dispute between an employer and employee including the question of misconduct. The jurisdiction of the Courts could not be taken away on the plea that after the payment had been received by a worker he is no more an aggrieved person. It is always a question of fact to be

determined on the basis of record whether an employee has accepted his termination and severed his relationship with the employer. After termination of his service, out of free will, he accepted all his dues as full and final settlement of the dispute.

Conclusion: i) An employee cannot be compulsorily retired on the allegation of misconduct without holding regular inquiry if the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining thewitnesses in support of the charge or charges.
ii) The concept that no limitation runs against a void order is not an inflexible rule.
iii) An employee can be considered as an aggrieved person to assail the order of his compulsory retirement despite the fact that he accepted his dues on being compulsory retired.

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5. **Supreme Court of Pakistan**
Sana Jamali v. Mujeeb Qamar and another
Civil Petition No.32-Q of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._32_q_2019.pdf

Facts: That ex-parte decree was passed by learned Family Court against the respondent No.1. The respondent No.1 filed application for setting aside ex-parte judgment and decree which was dismissed by learned Family court and he filed writ petition under 199 of the Constitution which was accepted. This civil petition for leave to appeal is directed against the Judgment passed by the Learned High Court, whereby the judgment and decree of the Learned Family Court were set aside and the matter was remanded to the Trial Court to decide the lis afresh.

Issues: i) When Court may order substituted service under Order V, Rule 20, CPC?
ii) When Family Court may proceed ex-parte?
iii) What is limitation period for setting aside ex-parte judgment and decree of family court and how it can be set aside?
iv) What kind of rights, the principle of law Ubi jus ubi remedium acknowledges?
v) When jurisdiction of High Court can be invoked under article 199 of the Constitution?
vi) What is object of proceeding under article 199 of the Constitution?
vii) Whether doctrine of exhaustion of remedies prevents a litigant from chasing a remedy in a new court or jurisdiction?

Analysis: i) It is a well settled exposition of law that the Court may order substituted service under Order V, Rule 20, CPC where it is satisfied that there is reason to believe that the other side is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. In such a case the Court shall order for service of summons by (a) affixing a copy of

the summons at some conspicuous part of house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain; or (b) any electronic device of communication which may include telegram, telephone, phonogram, telex, fax, radio and television; or (c) urgent mail service or public courier services; or (d) beat of drum in the locality where the defendant resides; or (e) publication in press; or (f) any other manner or mode as it may think fit; Provided that the Court may order the use of all or any of the aforesaid manners and modes of service. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant/other side personally. The legislature in its judiciousness and astuteness has conferred a wide ranging freedom of choice and options under Order V, Rule 20, CPC as to how the substituted service is to be effected to ensure service quickly and efficiently if the notice/summons could not be served personally at the given address or at the address which is given or known, but the remedy of substituted service can be resorted to only if the Court is satisfied that there is reason to believe that the other side is keeping out of the way only to avoid service.

ii) This Section has put in plain words that if the defendant failed to appear on the date fixed by the Family Court for his appearance, then if it is proved that the summons or notice was duly served, the Family Court may proceed ex parte; and if it is not proved that the defendant was duly served, the Family Court shall issue fresh summons and notices to the defendant and cause the same to be served in the manner provided in clauses (b) and (c) of sub section (1) of Section 8.

iii) However, subsection (6) of Section 9 has much significance which provides that in case of an ex-parte decree against a defendant, he may apply within thirty days of the service of notice of the passing of the decree, under sub-section (7), to the Family Court by which the decree was passed for an order to set it aside, and if he satisfies the Family Court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for setting aside the decree as against him, and shall appoint a day for proceeding with the suit; provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also. Whereas under sub-section (7) of Section 9, the notice of passing of the ex-parte decree referred to in sub-section (6) shall be sent to the defendant by the Family Court together with a certified copy of the decree within three days of the passing of the decree, through process server or by registered post, acknowledgement due, or through courier service or any other mode or manner as it may deem fit.

iv) The maxim Ubi jus ubi remedium (wherever there is a right, there is a remedy), is an elementary principle of law and any person having a right has a corresponding remedy to institute suits in a Court unless the jurisdiction of the Court is barred. The aforesaid principle acknowledges the subsistence of a legal right and can also be invoked when the law seemingly does not provide a remedy

for the enforcement of such right.

v) The 1964 Act is a special law which provides various legal remedies and the intention of the legislature for creating such remedies is that disputes falling within the ambit of such forum be taken only before it for resolution and bypass or circumvention of the forums is not permissible under the command of Article 199 (1) of the Constitution which confers jurisdiction on the High Court only when there is no adequate remedy available under any law. Where an adequate forum is fully functional, the High Court must not interfere and must relegate the parties to seek remedy before the special forum created under the special law.

vi) The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right. The writ jurisdiction of the High Court cannot be expended as the solitary resolution or treatment for undoing the wrongdoings, anguishes and sufferings of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction.

vii) The doctrine of exhaustion of remedies prevents a litigant from chasing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted, with the sole underlying principle that the litigant should not be persuaded to sidestep or disdain the provisions integrated in the relevant statute leading towards the remedies with a precise procedure to challenge the impugned action.

Conclusion: i) The Court may order substituted service where it is satisfied that there is reason to believe that the other side is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way.

ii) If it is proved that the summons or notice was duly served, the Family Court may proceed ex parte.

iii) Limitation period for setting aside ex-parte judgment and decree is thirty days from the service of notice of the passing of the decree and when the Family Court is satisfied that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, set aside the decree as against him.

iv) Ubi jus ubi remedium acknowledges the subsistence of a legal right and can also be invoked when the law seemingly does not provide a remedy for the enforcement of such right.

v) Jurisdiction of High Court under Article 199 can be invoked only when there is no adequate remedy available under any law.

vi) The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right.

vii) The doctrine of exhaustion of remedies prevents a litigant from chasing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted.

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6. **Supreme Court of Pakistan**
State Bank of Pakistan v. Mohammad Naeem & others
Civil Review Petition No.35-K of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._35_k_2020.pdf

Facts: This Civil Review Petition has been moved by the petitioner in CPLA No.146-K of 2019 for reviewing the consolidated Order rendered by the learned two Member Bench of this Court in CPLAs No.146-K and 411-K/2019.

Issue: i) How the Benches of the Supreme Court are constituted and what is their scope?
ii) Whether the two Member Bench of the Supreme Court can modify, alter or amend the judgment of Divisional Bench of High Court?

Analysis: i) The command and dominance of Order XI of the Supreme Court Rules, 1980, is germane to the constitution of Benches which unequivocally expounds and enlightens that every cause, appeal or matter shall be heard and disposed of by a Bench consisting of not less than three Judges to be nominated by the honourable Chief Justice but all petitions for leave to appeal, appeals from appellate and revisional judgments, and orders made by a Single Judge in the High Court, and appeals from judgments/orders of the Service Tribunals or Administrative Courts, and appeals involving grant of bail/cancellation of bail may be heard and disposed of by a bench of two Judges, but the Chief Justice may, in a fit case, refer any cause or appeal as aforesaid to a larger Bench.
ii) With all humility to our command, we agree that the two Member Bench, taking into consideration the assiduousness and exactitudes of Order XI of the Supreme Court Rules, 1980, could grant leave or dismiss the civil petition for leave to appeal, but could not modify, alter or amend the judgment of Divisional Bench of High Court for which the matter should have been fixed before a three Member Bench as per the aforesaid Rules.

Conclusion: i) The Benches of the Supreme Court are constituted under Order XI of the Supreme Court Rules, 1980.
ii) The two Member Bench of the Supreme Court cannot modify, alter or amend the judgment of Divisional Bench of High Court for which the matter should have been fixed before a three Member Bench as per the aforesaid Rules.

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7. **Supreme Court of Pakistan**
Mst. Tayyeba Ambareen & another v. Shafqat Ali Kiyani & another Civil Petition No.3209 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin Ud Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3209_2019.pdf

Facts: This civil petition for leave to appeal is directed against the judgment, passed by the learned Peshawar High Court, whereby the writ petition of the petitioners was dismissed.

Issues: i) What is the purpose and scope of appellate jurisdiction of courts?
ii) What is the meaning of "onus probandi?
iii) What is the scope of constitutional jurisdiction of High Court?
iv) What is cruelty?
v) What is the requirement for deciding any lis for dissolution of marriage on the ground of cruelty?
vi) What is mental cruelty, particularly with reference to matrimonial relationship?
vii) What is the responsibility of the Court in suit for conjugal rights by a husband in response to the suit for dissolution of marriage, dower, dowry and maintenance?

Analysis: i) The purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and /or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise.
ii) The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.
iii) In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, mis-reading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.
iv) The cruelty alleged may be mental or physical, premeditated or

unpremeditated, but lack of intent does not make any distinction. Obviously, if it is a physical act then it would be a question of fact, and in the event of mental cruelty, an enquiry is required to be made as to the nature of the cruel treatment to find out the impact or repercussions thereof on the mind of the spouse. Mental cruelty can be largely delineated as a course of conduct which perpetrates mental pain with such a severity and harshness which would render it impossible for that party to continue the matrimonial tie or to live together.

v) The matrimonial relationship is based on a mutual trust between wife and husband with emotions and it obliges reciprocal respect, love and affection for evenhanded adjustments with the spouse without causing a sense of anguish and disappointment, therefore, while deciding any lis for dissolution of marriage on the ground of cruelty, the Court must adjudge the intensity and ruthlessness of the acts and examine whether the conduct complained of is not merely a trivial issue which may happen in day-to-day married life, but is of such a nature which no reasonable person can endure.

vi) Mental cruelty is a conduct and behavior which inflicts upon the wife such mental pain and anguish making it impossible for her to continue the matrimonial relationship which is also a state of mind caused due to the behavioral pattern of the husband, but this is required to be determined by the Court according to the facts and circumstances of each case and must be more serious than the ordinary, petty or trivial issues or disputes of married life which usually occur in day-to-day married life.

vii) While claiming conjugal rights by a husband in response to the suit for dissolution of marriage, dower, dowry and maintenance, it is also an onerous responsibility of the Court to see whether he is sincerely fulfilling his obligations towards his wife, rather than gratifying the urges of male chauvinism. (…) The lodging of this claim should not be used as weapon to defend or obstruct the claim of dower or maintenance allowance, but must be lodged in good faith and with a bona fide intention to reconcile and rectify the issues between the spouses in order to save the matrimonial tie with magnanimity, kindness and through the fulfillment of the husband's obligations and not as a tool to fight out or frustrate the claim of maintenance allowance or dower amount.

Conclusion: i) The purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and /or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict.

ii) The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.

iii) In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure.

iv) The cruelty may be mental or physical, premeditated or unpremeditated. If it is a physical act then it would be a question of fact, and in the event of mental cruelty, an enquiry is required to be made as to the nature of the cruel treatment to find out the impact or repercussions thereof.

v) While deciding any lis for dissolution of marriage on the ground of cruelty, the Court must adjudge the intensity and ruthlessness of the acts and examine whether the conduct complained of is not merely a trivial issue which may happen in day-to-day married life, but is of such a nature which no reasonable person can endure.

vi) Mental cruelty is a conduct and behavior which inflicts upon the wife such mental pain and anguish making it impossible for her to continue the matrimonial relationship.

vii) In suit for conjugal rights by husband, it is an onerous responsibility of the Court to see whether he is sincerely fulfilling his obligations towards his wife.

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8. **Supreme Court of Pakistan**

Summit Bank Limited, Lahore v. M/s M.M. Brothers, Proprietorship Concern, through its proprietor Mehboob Elahi Qadri Ansari and others

Civil Petition No. 2056 OF 2022

Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Muhammad Ali Mazhar

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2056_2022.pdf

Facts: This Civil Petition for leave to appeal is directed against the Judgment passed by the Lahore High Court, Lahore, whereby the appeal of the respondents was allowed and the matter was remanded to the Executing Court.

Issue: i) What is the procedure for the publication of proclamation of sale prescribed under the law?

ii) Whether publicity of sale is mandatory and what is the rationale behind this publicity?

iii) What are the requirements of valid auction?

iv) What is the comprehensive and exhaustive procedure for proclamation of sale by public auction Rule 66 of Order XXI of CPC?

v) Whether decree holder has been given a right to request the Banking Court for execution of decree in such a manner as it considers appropriate?

Analysis i) The proclamation is required to be published, as nearly as may be, in the manner prescribed by Rule 54, sub-rule (2), and if the Court so directs, such proclamation shall also be published in the official Gazette or in a local newspaper or in both. So far as the Rule 54 of Order XXI is concerned, it is related to "Attachment of immoveable property" but adoption of sub-rule (2) of Rule 54, Order XXI, C.P.C in Rule 67 by reference is somewhat related to the mannerism that the order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall

be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate. .

ii) While attempting the sale of property of a judgment debtor for execution and satisfaction of decree, wide publicity should be given to the proclamation of sale in order to fetch the highest and most handsome price for the property and another purpose is to invite the maximum numbers of persons for participation in the auction proceedings through wide publications and the best course is the publication of auction notice in the vernacular newspapers to attract maximum participants. In this advanced era of information technology and print and electronic media diversity and polarization, it seems to be totally illogical to avoid publication of proclamation in the newspapers and solely depend upon the beat of drum or other customary methods. Besides complying with other formalities, the publication of auction notice with the reserve price and other salient features must be published in the newspapers to attract the attention and participation of public at large, the more the merrier, so that all interested persons may take part in the auction proceedings for submission of their bids before fall of the hammer which will maintain balance and will also protect the rights and liabilities of the parties. The fetching of fair market price through auction is not only in favour of decree holder to realize its debts but also in favour of judgment debtor for discharging his debts, so while conducting an auction efforts should be made by the Executing Court that the provisions contained for proclamation and its publication should not be disregarded or unheeded to render such provisions redundant which have been incorporated by the legislature with logical purpose.

iii) It is well-known that an auction is a form of sale of property to the highest bidder, usually as a result of competition between bidders who compete among themselves by offering competitive prices and the highest bid is normally approved, but according to the established norms and standards, the presence of at least two potential bidders is indispensable to carry out an auction in which competitive bidding is a key factor for free and transparent public auction. .

vi) An exhaustive procedure for the proclamation of sales by public auction is provided, how the proclamation of the intended sale shall be caused to be made; how shall it be drawn up after notice to the decree holders and the judgment debtors and how would it state the time and place of sale and specify as fairly and accurately as possible (a) the property to be sold, (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government, (c) any encumbrance to which the property is liable, (d) the amount for the recovery of which the sale is ordered, and (e) every other thing which the Court considers material for a purchaser to know in order to Judge the nature and value of the property..

v) The execution proceedings before the Banking Court in general commenced under the provisions of C.P.C. but, in unison, the decree holder has been given a

right to request the Banking Court for execution of decree in such a manner as it considers appropriate, but while exercising its civil jurisdiction the Banking Court has to follow the procedure laid down in regard to the suits in the C.P.C. except to the extent of any contrary provision made in the special enactment.

Conclusion: i) The proclamation is required to be published, as nearly as may be, in the manner prescribed by Rule 54, sub-rule (2), and if the Court so directs, such proclamation shall also be published in the official Gazette or in a local newspaper or in both.
ii) Wide publicity should be given to the proclamation of sale in order to fetch the highest and most handsome price for the property and another purpose is to invite the maximum numbers of persons for participation in the auction proceedings through wide publications.
iii) The presence of at least two potential bidders is indispensable to carry out an auction in which competitive bidding is a key factor for free and transparent public auction.
iv) An exhaustive procedure for the proclamation of sales by public auction is provided, how the proclamation of the intended sale shall be caused to be made; how shall it be drawn up after notice to the decree holders and the judgment debtors and how would it state the time and place of sale and specify as fairly and accurately as possible.
v) The decree holder has been given a right to request the Banking Court for execution of decree in such a manner as it considers appropriate.

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9. **Supreme Court of Pakistan**
Arif Fareed. v. Bibi Sara & others
Civil Appeals No. 5601 OF 2021
Mr. Justice Sardar Tariq Maqsood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5601_2021.pdf

Facts: Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave has been sought against the judgment passed by the High Court whereby Constitution Petition filed by the petitioner was dismissed and family suit stands decreed in favor of a minor who has not been arrayed as a plaintiff in the suit and said defect has not been attended to by any of the courts below.

Issues: i) Whether suit for maintenance of minor shall fail on the basis of mis-joinder or non-joinder of the party?
ii) What is purpose of legislature for not providing the right of second appeal to any party to the proceedings in The Family Courts Act, 1964?

Analysis: i) A suit for maintenance of minor shall not fail in case a minor has not been mentioned in the array of plaintiffs independently if in the body of the plaint case for grant of maintenance for minor has been clearly pleaded and further in the

prayer clause specific maintenance allowance for the said minor has been sought by the plaintiff who is the real mother. In family court proceedings, the Code of Civil Procedure, 1908 except sections 10 & 11 shall not apply to proceedings before the family court in accordance with section 17 of the West Pakistan Family Courts Act, 1964. Even under the relevant provisions of the regular procedure provided for the civil matters i.e. CPC on the basis of mis-joinder or non-joinder of the parties the suit cannot fail.

ii) The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. Therefore, High Court must not exercise extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision.

Conclusion: i) A suit for maintenance of minor shall not fail on the basis of mis- joinder or non-joinder of the minor.

ii) The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings in order to place a full stop on the family litigation after it was decided by the appellate court.

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10. **Supreme Court of Pakistan**
Criminal Petition No. 614 & 618 OF 2017
Muhammad Iqbal and others v. The State thr. P.G, Punjab and another
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi , Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._614_2017.pdf

Facts: Petitioners along with two co accused were tried by the learned Sessions Judge, pursuant to a case registered vide FIR under Sections 302/324/148/149 PPC for committing murder and for causing injuries.

Issues: Whether the trial Court has to evaluate as to whether the act is committed in furtherance of common intention/object or on the basis of individual liability to press in the provision of Section 302(a)(b) or 302(c) PPC and it has to give a definite finding qua the same?

Analysis Any judgment which concludes that the offence of qatl-i-amd under Section 302(b) PPC was committed in furtherance of common intention or common object but the sentence is inflicted on the basis of individual liability, the same would be squarely in defiance of the intent and spirit of law on the subject. However, if the Court comes to the conclusion that the elements of common intention and common object have not been established, then each accused would be dealt with according to their individual role and severity of allegations and would be sentenced accordingly by the Court exercising its discretionary powers.

Conclusion: It is compulsory for trial court to evaluate the act if the same is committed in furtherance of common object/intention and then each accused would be dealt with according to their individual role and severity of allegations and would be

sentenced accordingly by the Court exercising its discretionary powers

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11. **Supreme Court of Pakistan**
Criminal Petition No. 190 of 2020
All Asghar @ Aksar v. The State
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi , Mr. Justice Muhammad Ali Mazhar , Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._190_2020.pdf

Facts: Appellant was tried by the learned Additional Sessions Judge, pursuant to a case registered vide FIR under Section 302 PPC at Police Station for committing murder of brother of the deceased. The learned Trial Court vide its judgment convicted the appellant under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased or in default whereof to further undergo six months SI. In appeal the learned High Court maintained the conviction and sentence of death under Section 302(b) PPC. The amount of compensation and the sentence in default whereof was also maintained. Being aggrieved by the impugned judgment, the appellant filed Jail Petition before this Court wherein leave was granted by this Court and the present appeal has arisen thereafter.

Issues: i) Where ocular evidence is found trustworthy and confidence inspiring, whether the same should be given preference over medical evidence.?
ii) Whether the relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witness?
iii) Whether importance can be given to minor discrepancies in prosecution case?
iv) Whether prosecution is under obligation to prove the motive through cogent evidence?

Analysis i) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence.
ii) It is now settled that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.
iii) It is settled law that even if there are some minor discrepancies, the same should be ignored if they do not hamper the salient features of the prosecution case. As long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored.
iv) It is now well established that if a specific motive has been alleged by the

prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence. Otherwise, the said motive might be considered a mitigating circumstance in favour of an accused.

Conclusion: i) Where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence.
ii) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.
iii) If there are some minor discrepancies, the same should be ignored if they do not hamper the salient features of the prosecution case.
iv) it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence.

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12. **Lahore High Court**
Asif Hussain v. Election Commission of Pakistan etc.
W.P. No. 32915 of 2022
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC8269.pdf

Facts: Through this petition and other petitions having commonality of law and facts, the petitioners have put a challenge to jurisdiction of the Election Commission of Pakistan ("the Commission") to initiate disciplinary proceedings against them.

Issues: i) When the order or action of the executive is arbitrary, unreasonable or violative of any law or the Constitution, whether the same can be assailed in constitutional jurisdiction before High Court?
ii) Whether after declaration of fate of the election held in the Constituency, the deputationist remains the subject to superintendence and control of the Election Commission?
iii) Whether in the light of provisions of Section 55 of the Act, 2017, the Election Commission can initiate disciplinary proceedings against a deputationist after the fate of the election in a particular constituency has been declared?
iv) When a "phrase", "term" or "word" has been defined in a Statute, whether cross reference can be made to any other statute/enactment to borrow some contrary meanings?
v) Whether section 15 of PEEDA Act, 2006 requires that before initiation of any proceedings against a deputationist, the prior approval of his/her parent department is sine-qua-non?

Analysis: i) When the order or action of the executive is arbitrary, unreasonable or violative of any law or the Constitution, the same can only be assailed in constitutional jurisdiction before the High Court. Undeniably an inconclusive action on the part of the executive cannot be challenged in constitutional petition before this Court but at the same time when the proceedings or actions of the administrative authorities have been challenged on the point of maintainability, the jurisdiction

of superior courts to adjudicate upon said issue cannot be abridged.

ii) As per sub section (1) of the section 55 of the Act, 2017 a person remains election official for the period starting from the date of his appointment/deputation for election till the date the fate of the election in the constituency is declared. In this backdrop, the interpretation by the Commission that even after declaration of fate of the election held in the Constituency, the petitioners remained subject to its superintendence and control is not acceptable at all as the same goes against golden principle of interpretation of statute.

iii) A person, who has been assigned any election duty, does not remain under the control and superintendence of the Commission upon declaration of fate of an election in a Constituency simply for the reason that once fate of an election is declared the hiring staff loose their status as election official and the Commission does not enjoy jurisdiction to proceed against them. A bare reading of section 55 of the Act, 2017 brings it to limelight that the said provision to the extent of initiation of disciplinary proceedings revolves around election official. Further, in my humble understanding the term 'at any time' used in subsection 3 of Section 55 of the Act, 2017 does not mean that it empowers the Commission to take action against anybody at the time of its choice rather it means that the Commission can proceed against a person at any time for which he/she remains as an election official. Once the result of an election is announced the Commission becomes functus officio to take up any matter relating to the election against clear cut provisions of the Act, 2017 and the rules made thereunder. There is no second thought that the Commission has the duty to ensure conduct of fair and transparent elections under the constitutional provisions, referred by learned counsel representing the Commission and Federal as well as Provincial Government are bound to support the Commission but the said fact cannot be used to permit the Commission to perform an act for which it has not been specifically empowered under the Act, 2017 or the rules made thereunder.

iv) When a "phrase", "term" or "word" has been defined in a Statute no cross reference can be made to any other statute/enactment to borrow some contrary meanings to the disinterest of a party. This Court is cognizant of the fact that when definition of a word, term or phrase renders a substantial provision redundant, the preference should be given to the interpretation which favours the purpose of the enactment but at the same time it is equally true that when a substantial provision renders the matter crystal clear no contrary view can be adopted.

v) Any action against the petitioners by the Commission was to be routed through their parent departments. The said fact also lends support to the point canvassed by Hafiz Tariq Nasim Advocate that the Commission was bound to solicit prior approval from the parent departments of the petitioners in terms of section 15 of PEEDA Act, 2006. Learned counsel representing the Commission has frankly conceded that the impugned departmental proceedings have been initiated against the petitioners without seeking permission from their parent department rather his stance is that as the Commission is competent authority in respect of the

petitioners, in the light of provisions of Section 55 of the Act, 2017, but this Court does not find itself in agreement with the explanation provided by the learned counsel for the Commission for the reason that section 15 of PEEDA Act, 2006 requires that before initiation of any proceedings against a deputationist, the prior approval of his/her parent department is sine-qua-non.

Conclusion: i) When the order or action of the executive is arbitrary, unreasonable or violative of any law or the Constitution, the same can be assailed in constitutional jurisdiction before High Court.
ii) After declaration of fate of the election held in the Constituency, the deputationist does not remain the subject to superintendence and control of the Election Commission.
iii) In the light of provisions of Section 55 of the Act, 2017, the Election Commission cannot initiate disciplinary proceedings against a deputationist after the fate of the election in a particular constituency has been declared.
iv) When a "phrase", "term" or "word" has been defined in a Statute, whether cross reference cannot be made to any other statute/enactment to borrow some contrary meaning.
v) Section 15 of PEEDA Act, 2006 requires that before initiation of any proceedings against a deputationist, the prior approval of his/her parent department is sine-qua-non.

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13. Lahore High Court
Mian Javed Akhtar and another v.
Rana Muhammad Ismail and others
R.S.A. No.37 of 2017
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC8374.pdf

Facts: A civil suit of respondent no.1 regarding declaration and possession with perpetual injunction was decreed by trial court. The appellant filed appeal against the said judgment and decree on the ground that he was not made party to the suit however the said appeal was dismissed. Consequently, the appellant filed regular second appeal.

Issues: Where a suit was instituted and decided without impleading an aggrieved person as party then whether such an aggrieved person can alternatively avail the remedies as provided under section 12(2) CPC or section 100 CPC?

Analysis: …it is observed that the appellants had remedies: to file application under section 12(2), Code of Civil Procedure, 1908 or to assail the judgment and decree by preferring an appeal. The appellants, having been adversely affected, opted to challenge the decree by filing an appeal, which was maintainable…the impugned judgments and decrees being contrary to law are open to examination in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908; therefore,

the same cannot be allowed to hold field further, because it is trite law that one should not be condemned unheard and every litigant should be provided with fair opportunity to present and defend his/her case.

Conclusion: Where a suit was instituted and decided without impleading an aggrieved person as party then such an aggrieved person can alternatively avail the remedies as provided under section 12(2) CPC or section 100 CPC.

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14. **Lahore High Court**
The State v. Riaz etc.
Murder Reference No.74 of 2019, Crl. Appeal No.43590-J of 2019, P.S.L.A No.26329 of 2019
Mrs. Justice Aalia Neelum, Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2022LHC8343.pdf

Facts: The appellant has assailed his conviction and sentence by filing the jail appeal vide judgment in a private complaint filed under sections 302, 109, 114, 148, 149 PPC. The learned trial court also referred for confirmation of the death sentence awarded to the appellant. Whereas the complainant also filed Crl. P.S.L.A against the acquittal of respondents No.2 to 6. All the matters arising out of the same judgment of the learned trial court are being disposed of through a single judgment.

Issues: i) Whether the F.I.R becomes doubtful on the ground when the delay in lodging the FIR is not such, which would manipulate the prosecution evidence?
ii) Whether an accused is bound to prove a specific plea which is raised by him?
iii) Whether the testimony of eye-witnesses, who are close relatives of the deceased, can be discarded on the plea of relationship?
iv) Whether the recovery of crime empty and weapon of offence can be considered as the mainstay of the prosecution for conviction or acquittal of any person in isolation?
v) Whether a conviction can be passed only on the ocular account of the witnesses?
vi) Whether an accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence?
vii) What is the principle of the double presumption of innocence of the accused?

Analysis: i) When the delay in lodging the FIR is not such, which would show that there has been scope for manipulating the prosecution evidence. Thus, it is considered that there is no delay in reporting the incident and lodging the FIR, which is prompt in the facts and circumstances of the case.
ii) The well-settled proposition of law is that when a specific plea is raised by the accused, he has to prove the same.
iii) The testimony of eye-witnesses, who are close relatives of the deceased, cannot be discarded on the plea of relationship.
iv) As far as non-recovery of crime empty from the place of occurrence and

weapon of crime is concerned, it is the consistent view of the country's superior courts that the recovery of crime empty and weapon of offence are always corroborative pieces of evidence. It is never considered the mainstay of the prosecution for conviction or acquittal of any person in isolation.

v) A conviction can be passed that the ocular account leaves no room for doubt about the involvement of the culprits in the commission of the offence and that medical evidence fully corroborates the same.

vi) The well-recognized principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

vii) Even otherwise, when a court of competent jurisdiction acquits the accused persons, the double presumption of innocence is attached to their case.

Conclusion: i) F.I.R does not become doubtful on the ground when the delay in lodging the FIR is not such, which would manipulate the prosecution evidence.

ii) Yes, an accused is bound to prove a specific plea which is raised by him.

iii) No, the testimony of eye-witnesses, who are close relatives of the deceased, cannot be discarded on the plea of relationship.

iv) The recovery of crime empty and weapon of offence are always considered as corroborative pieces of evidence, therefore they are never considered as the mainstay of the prosecution for conviction or acquittal of any person in isolation.

v) Yes, a conviction can be passed only on the ocular account of the witnesses.

vi) Yes, an accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

vii) When a court of competent jurisdiction acquits the accused persons, the double presumption of innocence is attached to their case.

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15. **Lahore High Court**
Nadeem Ahmad v. Shafqat Pervaiz etc.
Crl. Rev. No.78903 of 2022
Mrs. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC8214.pdf

Facts: Through instant criminal revision, the petitioner, has prayed for setting aside the order passed by the learned Addl. Sessions Judge, whereby the application filed by the petitioner for proceeding against respondent No.1 under sections 193, 420, 419 PPC read with other penal provisions of section 476 PPC read with section 195(1)(b) of Cr.P.C. was dismissed.

Issues: i) Whether the pendency of a suit is a bar to the initiation of proceedings under Section 195(1)(b) of Cr.P.C. about giving false information to the Court?

ii) Whether the document which is not produced in the evidence and marked as required under the Qanoon-e-Shahadat Order 1984 can be relied upon by the Court?

Analysis: i) The Civil Court is competent to decide the point about the nature of the documents only at the time of the disposal of the suit. So long as the main suit is

pending, merely having documents will not create any right for the petitioner to file a complaint against respondent No.1. The learned Court is competent to take note of whether to initiate the proceedings or not at the time of the final disposal of the suit. Therefore, the pendency of a suit is a bar to the initiation of proceedings.

ii) Document which is not produced in evidence and marked as required under the Qanoon-e-Shahadat Order 1984 cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court.

Conclusion: i) Yes**,** the pendency of a suit is a bar to the initiation of proceedings under Section 195(1)(b) of Cr.P.C. about giving false information to the Court.

ii) The document which is not produced in the evidence and marked as required under the Qanoon-e-Shahadat Order 1984 cannot be relied upon by the Court.

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16. **Lahore High Court**
Mirza Shahzeb v. City Police Officer, etc.
W.P.No.1891 of 2020
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC8404.pdf

Facts: The petitioners applied for posts of constable but their candidature was rejected on sole ground that they have concealed their previous involvement in criminal cases at the time of submission of applications form. Due to disparity in judgments of court with regard to matter in issue, larger bench was constituted.

Issues: i) When larger bench has to be constituted?

ii) Whether non-disclosure of previous involvement in criminal case by candidate of police job is material and can be made basis for rejection of his candidature?

Analysis: i) It is trite law that earlier if a view is formed by a Bench of the Court, it shall be binding for the Bench comprising of same number of Judge/Judges and if some Bench of similar nomenclature is desirous to form another view then latter has to send the matter to the Hon'ble Chief Justice for constitution of larger Bench.

ii) Disclosure of involvement in some offence is a material fact and it is not expected from a candidate who has to join the police department to hide such material fact. A police official should always be honest and law abiding. It is not expected from a police man to get himself recruited in the department through misrepresentation, misstatement or false statement. Where, at the inception of his career, a candidate makes a false statement for the purpose of recruitment into the force, he cannot be expected to perform his duties honestly and diligently. Such disclosure is material and can be made basis for rejection of candidature…

Conclusion: i) If some bench of same strength tends to take a different view than view of previous bench of same strength, it has to request for the constitution of larger bench.

ii) Non-disclosure of previous involvement in criminal case by candidate of police job is material and can be made basis for rejection of his candidature.

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17. **Lahore High Court**
Multan Electric Power Company and another v.
M/s Grit (Pvt) Limited and another
Intra Court Appeal No.281 of 2022
Mr. Justice Shahid Jamil Khan, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC8395.pdf

Facts: The appellants have assailed the order passed by the learned Single Judge of High Court whereby Writ Petition filed by respondent No.1 was allowed while setting aside the order of the appellants and the appellants were directed to forthwith release the pay orders to the said respondent which were submitted by it in relation to Tenders.

Issues: i) Whether the procurement made by MEPCO is amenable to the provisions of the Public Procurement Regulatory Ordinance, 2002 and its Rules?
ii) Whether it mandatory for a procuring agency to subject the bid to a bid validity period?
iii) Whether the bidders can be asked to extend their bid validity period?
iv) Whether the extension of bid validity period is a unilateral act of the procuring agency or is contingent upon agreement of the bidders to extend their bid validity period?

Analysis: i) Generally, the procurements made by all procuring agencies of the Federal Government are governed by the Rules, 2004 framed under Section 26 of the Public Procurement Regulatory Ordinance, 2002 (XXII of 2002) ("Ordinance 2002") as manifest from Rule 3 of the said Rules. MEPCO being a corporation owned or controlled by the Federal Government, falls within the definition of procuring agency as defined in Section 2(j) of the aforementioned Ordinance, therefore, the procurement made by it is also amenable to the provisions of the aforementioned Ordinance and the Rules.
ii) Sub-rule (1) of Rule 26 of the Procurement Rules makes it mandatory for a procuring agency to subject the bid to a bid validity period. Although the procuring agency enjoys a discretion regarding the period to be specified, however, length of the bid validity period to be stipulated must keep in view the nature of procurement in question. Sub-rule (2) of Rule 26 of the Procurement Rules unequivocally provides that bids shall be valid for the period of time specified in the bidding document.
iii) Sub-rule (3) of Rule 26 of the Procurement Rules places an obligation upon the procuring agency to ordinarily process and evaluate the bid within the stipulated bid validity period, however, under "exceptional circumstances" the bidders can be asked to extend their bid validity period and such request can only be made for reason to be recorded in writing, if an extension is considered necessary. The request for extension of bid validity period, when considered

necessary by the procuring agency, has to be made to all those who have submitted their bids otherwise the same constitutes a violation of Rule 26(3) of the Procurement Rules. The period of such extension has been capped equal to the period of original validity. Be that as it may, the extension of bid validity period must be made before expiry of the original bid validity period otherwise bids become invalid under sub rule (2) of Rule 26 of the Procurement Rules.

iv) The extension of bid validity period is not a unilateral act of the procuring agency but the same is contingent upon agreement of the bidders to extend their bid validity period, as manifest from sub-rule (4) of Rule 26 of the Procurement Rules and while agreeing to the procuring agency's request for extension of bid validity period, the bidders are not permitted to change the substance of their bids and in case the bidders do not agree to an extension of the bid validity period, they are allowed to withdraw their bids without forfeiture of their bid bonds or securities.

Conclusion: i) Yes, the procurement made by MEPCO is amenable to the provisions of the Public Procurement Regulatory Ordinance, 2002 and its Rules.

ii) Yes, it mandatory for a procuring agency to subject the bid to a bid validity period.

iii) Only in exceptional circumstances, the bidders can be asked to extend their bid validity period before expiry of the original bid validity period otherwise bids become invalid under sub rule (2) of Rule 26 of the Procurement Rules.

iv) The extension of bid validity period is not a unilateral act of the procuring agency but is contingent upon agreement of the bidders to extend their bid validity period.

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18. **Lahore High Court**
Sajjad Hussain (deceased) through legal heirs etc. v. Mst. Mumtaz Mai etc.
C. M. Nos. 310 & 311 of 2016 in Civil Revision No. 540 of 2004
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC8228.pdf

Facts: The appellants filed two suits for declaration which were dismissed. In appeal, on the basis of consenting statements of respondents no. 2 & 3, consent decree was passed which was challenged by respondent no. 1 through applications u/s 12(2) CPC and same were dismissed by appellate court. Revision petition against dismissal was allowed and case was remanded for decision after recording of evidence. The applications were again dismissed which were challenged through civil revisions which were again allowed. Through instant applications, the appellant raised legal question that after accepting applications u/s 12(2) CPC, the suits could not be dismissed.

Issues: Whether Court can dismiss the suit while allowing application u/s 12(2) CPC?

Analysis: The question of jurisdictional extent, under Section 12(2) C.P.C. was discussed, extensively, in *Haji Farman Ullah v. Latif-urRehman* (2015 SCMR 1708) by

August Supreme Court. It is held that on allowing an application under Section 12(2) C.P.C., normally, court set aside the judgment assailed and restore the suit or appeal, for determination of the rights of the parties including the applicant who claimed misrepresentation or fraud. In exceptional, special and extra ordinary circumstances, the court can reject the plaint, where no cause of action is available or dismiss the suit if trial would be a futile exercise, on determination of the rights, through evidence on issues, framed while deciding the application under Section 12(2) C.P.C. But where there is a controversy of facts or of law between the parties in the main lis, while accepting the application (under section 12(2), C.P.C.), the suit cannot and should not be dismissed.

Conclusion: Where there is a controversy of facts or of law between the parties in the main lis, while accepting the application (under section 12(2) C.P.C.), the suit cannot and should not be dismissed.

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19. **Lahore High Court, Lahore**
Lt. Col. (R) Muhammad Zubair v. Mst. Sughran Begum and another
Regular Second Appeal No.03 of 2012
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC8218.pdf

Facts: This regular second appeal arises out of judgments at variance of the courts below, whereby learned trial court decreed buyer's suit seeking specific performance of sale agreement holding her entitled to amount double to that of received as mentioned in said agreement, whereas learned appellate court later accepted her appeal extending relief of specific performance.

Issues: i) Whether a buyer would be entitled to decree for specific performance of sale agreement even if subject agreement has a penalty clause that seller, in case of his failure to abide the terms of the agreement, would pay the buyer amount double to that of received consideration amount?
ii) If judgments of learned trial court & learned appellate court are at variance, when judgment of first appellate court may be interfered in regular second appeal?

Analysis: i) There is no cavil that relief of specific performance is a discretionary relief in terms of Section 22 of the Specific Relief Act, 1877, but such discretion cannot be exercised arbitrarily and the court while exercising the discretion is bound to follow the well settled principles that a discretion shall always be structured on reasoning and fairness. Section 20 of the Specific Relief Act, 1877 makes clear that even if there is a stipulation in agreement that in case of its breach a penalty would be the outcome, this by itself would not impede the specific performance of the agreement.
ii) A regular second appeal under Section 100 of The Civil Procedure Code,1908 has a very limited scope. If there is divergence of views in both the courts below,

ordinarily preference should be given to the judgment of first appellate court unless it offends any law. The judgment of learned first appellate court cannot be interfered with unless some procedural defect materially affecting such findings is pointed out.

Conclusion: i) The buyer is entitled to decree of specific performance of sale agreement.
ii) Interference with Judgment of the learned first appellate court in exercise of jurisdiction contemplated in Section 100 of The Civil Procedure Code, 1908 would be justified only when it is perverse or arbitrary.

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20. **Lahore High Court**
Province of Punjab through Secretary, Government of the Punjab, Revenue Department v. Federal Land Commission through its Chairman etc.
W.P.No.26860/2021 etc
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022lhc8424.pdf

Facts: Through the instant writ petition along with other connected petitions, the petitioners have challenged the main controversy which revolves around the issue of resumption of land from its declarant and its further allotment to others by the land revenue authorities as well as the order of the Chairman, Federal Land Commission, Islamabad, who accepted the Revision Petition of respondent side.

Issues: i) Whether a final verdict decision by the Hon'ble Supreme Court of Pakistan is actively binding upon all the organs of the state?
ii) Whether a matter finalized up to the Hon'ble Apex Court can be re-opened for adjudication?
iii) Whether any order passed by an authority without having jurisdiction sustainable in the eye of law and limitation runs against the same?
iv) Whether denial of compromise by any party held the withdrawal of list on such basis as unauthorized?
v) Whether court can restore the previous position of suit property when status quo order issued by it has been violated?

Analysis: i) Verdict decision by the Hon'ble Supreme Court of Pakistan is actively binding upon for all the organs of the state as enshrined in Article 189 of the Constitution of the Islamic Republic of Pakistan.
ii) When the matter has already been finalized up to the Hon'ble Apex Court, then it could not be re-opened for adjudication by any lower fora and same is not maintainable under the principle of res-judicata.
iii) It is settled law that any order passed by an authority without having jurisdiction that order would be illegal and void ab-initio. Once the order declared as void ab-initio, then no limitation runs against such void order.

iv) When an applicant/petitioner has denied the factum of entering into any compromise with the respondent side, as such in these circumstances the withdrawal of lis will be held unauthorized and illegal.
v) It is settled law that if a status quo order issued by the court of competent jurisdiction has been violated, the same Court has the jurisdiction to restore the possession of the said property to its original position as it was at the time of passing of such status quo order.

Conclusion: i) Yes, a final verdict decision by the Hon'ble Supreme Court of Pakistan is actively binding upon all the organs of the state.
ii) A matter finalized up to the Hon'ble Apex Court cannot be re-opened for adjudication and hit by principle of res-judicata.
iii) Any order passed by an authority without having jurisdiction shall be void ab-initio, not sustainable in the eye of law and no limitation runs against the same.
iv) Yes, denial of compromise by any party held the withdrawal of lis on such basis as unauthorized.
v) Yes, court can restore the previous position of suit property when status quo order issued by it has been violated.

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21. **Lahore High Court**
Najib Aslam (deceased) through his legal heirs etc. v.
The State through District Collector, Faisalabad etc.
I.C.A. No.27129/2021
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC8570.pdf

Facts: This Intra Court Appeal under Section 3 of the Law Reforms Ordinance, 1972 is directed against the order passed by the learned Single Judge whereby Writ Petition filed by the appellants was dismissed.

Issues: i) Whether there is any restriction or embargo upon Muslim regarding the ancestral property for its utilization or disposal?
ii) Whether a Muslim owner is debarred to alienate his ancestral property to a non-Muslim or vice versa?
ii) Whether the Civil Court has jurisdiction to decide any lis regarding evacuee property?

Analysis: i) With regard to the transaction of ancestral land, the absolute owner is competent to use and hold the land or alienate the same. Reliance in this regard is placed on a case titled as "Haider Shah and 5 others versus Mst. Roshanaee and 9 others" (1996 SCMR 901). … In view of above, any assets, estate, property which comes to the ownership of Muslim as ascendant or descendent, sharer or distant kindred or inheritor according to principles of Islam, that land is vested to a Muslim without any restriction or embargo for its utilization or on disposal of such land and any regional usages or custom and tradition if any that would be inconsequential and ineffective qua his such right and authority.

ii) As far as sale of land by a Muslim to a non-Muslim or vice versa is concerned, suffice it to say that a substantial definition of sale has been provided under Section 54 of Transfer of Property Act, 1882. Invariably, a sale transaction contains the following constituents: - i. Identity of seller and purchaser ii. The amount of sale consideration. iii. Identity and accurate description of the property agreed to be sold iv. Parties to the agreement to sell immovable property are at consensus ad idem. Thus, it could conveniently be observed that the sale of the land by Muslim to Non-Muslim does not suffer from any infirmity or illegality.
iii) As per the law mentioned above, dispute regarding the evacuee property/land could only be adjudicated or settled by the forum of Custodian or its successor Department whereas under Section 14 of the Ordinance 1948 ibid as well as Section 34 of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, the Civil Court has no jurisdiction to intrude into the vested jurisdictional realm of the Custodian / Settlement Department and even if any decree passed by the Civil Court, that would be without jurisdiction and nullity in the eyes of law or void ab-initio and same is inexecutable.

Conclusion: i) There is no restriction or embargo upon Muslim regarding the ancestral property for its utilization or on disposal of such land and any regional usages or custom and tradition if any that would be inconsequential and ineffective qua his such right and authority.
ii) The sale of the land by Muslim to Non-Muslim does not suffer from any infirmity or illegality.
iii) The Civil Court has no jurisdiction to decide any lis regarding evacuee property.

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22. **Lahore High Court, Lahore**
Imran Ahmad Khan Niazi v. Mian Muhammad Shahbaz Sharif
C.R.No.76628/2022
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC8204.pdf

Facts: Civil Revision is filed by petitioner assailing order passed in a suit for recovery of damages for defamation under Sections 4 & 9 of the Defamation Ordinance, 2002, whereby his right of defense was struck out on score that he, instead to filing answers to the interrogatories as per direction, filed objection on interrogatories which were dismissed either having been filed after lapse of stipulated time.

Issues: Whether the court has authority to strike out the right of defence in case of non-compliance of order to submit the answers to the interrogatories?

Analysis: From plain reading of Rule 8 & 9 of Order XI CPC, it evinces that if a party does not answer the interrogatories despite being aware of the Court's order, the adjudicating Court has the jurisdiction to strike out the right of defence of such defaulting party for non-compliance of provision of law as well as order of the

Court. The provisions of the rules 8 and 9 of Order XI CPC are mandatory in nature as penal action is provided in rule 21 of Order XI CPC which speak about the striking out of the defence.

Conclusion: Order XI Rule 21 C.P.C dictates that in case of non-compliance of order to answer interrogatories by a defendant, his right of the defence would be struck out.

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23. **Lahore High Court**
M/s Instaclear (Pvt.) Ltd. through its Head, Karachi & another v. Malik Jumma Tariq & others
Writ Petition No.10143 of 2018
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC8248.pdf

Facts: Through instant petition, petitioners have assailed vires of consolidated orders passed by learned Member, National Industrial Relations Commission ("NIRC"), Islamabad and Full Bench of NIRC at Lahore, respectively, whereby grievance petitions filed by respondents for regularization of their services, were concurrently allowed.

Issues: i) In what situation refusal to regularization is not permissible under the law?
ii) What is determining factor to declare a workman as permanent?
iii) What type of legislation can operate retrospectively?

Analysis: i) Even a work charge, casual and daily-wages worker, on account of long continuation in service earns a presumption of regular need of his services. Thus, denial to regularize their services is not permissible under the law.
ii) Period of employment is not sole factor to declare as to whether a workman is permanent or not, but the nature of the work is the determining factor in this regard, such as the posts held by workmen are permanent in nature and not held as casual or temporary from any angle…
iii) It is well-settled principle of interpretation that statutes being remedial in nature can operate with retrospective effect and are applicable to the proceedings pending at the time when the Act came into force. However, remedial legislation would not apply to cases which had been finally determined or proceedings which had attained finality.

Conclusion: i) Even a work charge, casual and daily-wages worker, on account of long continuation in service earns a presumption of regular need of his services. Thus, denial to regularize their services is not permissible under the law.
ii) Nature of the work is the determining factor to declare as to whether a workman is permanent or not.
iii) The legislation, which is remedial in nature, can operate retrospectively.

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24. **Lahore High Court**
Naeem Shehzad v. Mst. Sarran Bibi & others
Civil Revision No.358 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC8242.pdf

Facts: The petitioner challenged the orders of trial court and first appellate court whereby petitioner's application for setting aside *ex parte* judgment & decree was concurrently dismissed.

Issues: i) Whether summoning of a party to a suit through substituted service by way of publication in local newspaper can be considered a proper service when the party to be summoned is residing abroad?
ii) Whether substituted mode of service can be resorted to without properly exhausting the ordinary modes of service?

Analysis: i) When the factum of petitioner being residing abroad was in the knowledge of learned Trial Court, then press publication in the local newspaper does not appeal to reason.
ii) Rule 25 Order V CPC enjoins on the Court that wherever defendants reside out of Pakistan and have no agent in Pakistan empowered to accept service on their behalf the summons be addressed to the defendants at the place where they are residing and be sent to them by post…. Substituted service by way of publication is only presumed to be personal service by virtue of Rule 20(2) of Order V CPC, which presumption is of course rebuttable, therefore, where service by publication is challenged, the first test is to see whether the conditions of Order V, Rule 20 CPC had been met *viz.* that the publication was resorted to after the Court was satisfied that the defendant was avoiding service, or there was some other reason to believe that summons could not be served in the ordinary manner. In other words, whether the ordinary modes of service available had been exhausted as unless all efforts to effect service in the ordinary manner are verified tohave failed, substituted service cannot be resorted to.

Conclusion: i) Summoning of a party to a suit through substituted service by way of publication in local newspaper cannot be considered a proper service when the party to be summoned is residing abroad.
ii) Substituted mode of service cannot be resorted to without properly exhausting the ordinary modes of service.

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25. **Lahore High Court**
Uzma Adil Khan FIA, etc. v. FIA, etc.
W.P. No. 72202 of 2021
Fossil Energy Pvt. Ltd, etc. v. FIA, etc.
W.P. No. 70346 of 2021
Basit Habib v. FIA, etc.
W.P. No. 73456 of 2021
Shahzad Mohsin v. FIA, etc.
W.P. No. 73458 of 2021
Askar Oil Service Pvt. Ltd. v. Federation of Pakistan, etc.
W.P. No. 9531 of 2022
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC8535.pdf

Facts: The petitioners called in question the validity and legality of a notice/order passed by Director Coordination, FIA, whereby, multiple directions were issued to the respondents/banks including the direction qua the seizure of bank accounts of the petitioners immediately.

Issues: (i) Whether the powers blessed upon the members of FIA under section 5(5) of the FIA Act 1974 are unfettered or the same required to be used frugally in exceptional cases with certain restrictions and limitations?
(ii) Whether an order of seizure under 5(5) of the FIA Act 1974 can be passed by a member of FIA who is not conducting investigation of a case?
(iii) Whether mere possession of local money attracts the criminal conduct of money laundering?
(vi) Whether there is any embargo on undertaking marketing of petroleum products or refined oil products on a new license under the Pakistan Oil (Refining Blending, Transportation, Storage and Marketing) Rules, 2016?

Analysis: (i) The perusals section 5(5) of the FIA Act 1974 makes it clear that members of Federal Investigation Agency have powers to issue an order in writing for placing an embargo upon the removal, transfer or otherwise disposing of a property which is subject matter of an ongoing investigation and of course the order under the above quoted provision can only be passed by the member of FIA, if he is of the opinion that process of investigation is likely to be thwarted by removing, transferring or disposing of subject matter property and only in cases of utmost urgency wherein time required for having recourse to the court will provide an opportunity to the possessor of the property to remove or dispose of it. It can inexorably be concluded that primarily the order of seizure is to be obtained from appropriate authority. In the latter part of section 5(5), it is mentioned that such seizure order is subject to confirmation by the court…. At the same time, an FIA official cannot be absolved from his obligation of mentioning the grounds which persuaded him to draw an opinion in terms of section 5(5) of the Act of 1974.

(ii) Under section 5(5) of the Act, 1974 only the member conducting investigation can direct the owner or person in possession of a property not to transfer, remove or dispose of the property.
(iii) Mere possession of local money was not a crime until and unless the same was proved to be derived from any illegal means. Reading of sections 2 & 3 of the AMLA, 2010 provides that necessary element of the offence of money laundering was the commission of a predicate offence. The execution of this offence gave birth to the proceeds of crime, the movement of which attracted the criminal conduct of money laundering. Therefore, without the commission of a predicate offence there could be no offence of money laundering.
(iv) Joint reading of section 2(xi), 2(xv), 23(3)(f), 23(4) and 23(6) of the OGRA Ordinance, 2022 and rule 34(1) and 35(2) of Oil Rules, 2016 make it very clear that there is no embargo on undertaking marketing of petroleum products or refined oil products on a new license under rule 35(2).

Conclusion: (i) The powers blessed upon members of FIA under section 5(5) of the FIA Act 1974 are not unfettered, rather are subject to certain restrictions and limitations, required to be used sparingly and in cases of exceptional nature.
(ii) An order of seizure under 5(5) of the FIA Act 1974 cannot be passed by a member of FIA who is not conducting investigation of a case.
(iii) Mere possession of local money does not attract the criminal conduct of money laundering.
(iv) There is no embargo on undertaking marketing of petroleum products or refined oil products on a new license under the Pakistan Oil (Refining Blending, Transportation, Storage and Marketing) Rules, 2016.

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26. **Lahore High Court, Lahore**
Abid Hameed v Additional Sessions Judge etc.
Writ Petition No. 66114 of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC8550.pdf

Facts: The orders allowing meeting of Respondent No. 3 with her minor step brother/petitioner's son, fixing schedule of meeting and producing the minor in the court are assailed by the Petitioner through petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) Whether a Habeas Corpus writ petition can be instituted only by a person whose rights have been infringed or a stranger can also apply for Habeas Corpus?
ii) Whether section 491 Cr.P.C. authorizes the Additional Sessions Judge to schedule meetings between minor and his step sister in a writ of habeas corpus or determination thereof visitation rights falls in the exclusive domain of the Guardian Court?

Analysis: i) Habeas corpus is a Latin term which means "you have the body." Habeas corpus has its roots in the most valuable and sacred human rights, i.e., personal liberty and human dignity. All civilized societies have worked to protect a citizen's liberty, and if the restriction on him is illegal, the courts should step in to free him. Habeas corpus is available against anyone suspected of unlawfully detaining another person, not just jailors, police officers, or other public officials whose duties normally include arrest and detention. It may also be filed in respect of minors. Habeas corpus is an exception to the general rule that a writ petition can be instituted only by a person whose rights have been infringed.

ii) The Code of Criminal Procedure, 1898 codified the writ of habeas corpus by introducing section 491. Ordinance VIII of 2002 in Pakistan has added sub-section (1A) in section 491 Cr.P.C and now the Sessions and the Additional Sessions Judges can issue directions of the nature of a habeas corpus subject to the conditions specified by the High Court in a general or special order published in the official Gazette. The habeas corpus jurisdiction under section 491 Cr.P.C. is extraordinary. Under section 491 Cr.P.C., the court must consider whether the person required to be produced was in illegal or improper detention. The custody of minor children can be brought before a High Court under section 491 Cr.P.C. subject to the conditions only that the children are of very tender ages and they have been snatched from lawful custody recently as well as there is a genuine urgency in the matter. In Pakistan, the Guardian and Wards Act of 1890 is the principal legislation that deals with guardianship matters, Section 7 whereof addresses the appointment of a guardian, while it's section 25 empowers the court to order that a ward be returned to the guardian when removed from custody if the ward's welfare requires it as well as Section 12 authorizes the court to make interlocutory orders for the protection of minors and the interim protection of their person and property. The Guardian and Wards Act requires that the guardian of a minor should be appointed or declared when it is in the minor's best interests and that custody be given to him. The Guardian Court will decide what is best for the child.

Conclusion: i) A stranger may also apply for habeas corpus.

ii) The determination of visitation rights falls in the exclusive domain of the Guardian Court. The provisions of section 491 Cr.P.C. are not available to appoint or declare anyone as a guardian or to determine the custody dispute permanently.

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27. **Lahore High Court, Lahore**
Zafar Javed etc. v Punjab Small Industries etc.
F.A.O. NO.77 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC8336.pdf

Facts: This appeal in terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 seeks setting aside of order, whereby learned Judge Banking Court proceeded to dismiss the objection petition filed by the Appellants.

Issues: i) Whether under Section 15(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 a notice shall be published in one reputable English daily newspaper and one Urdu daily newspaper?
ii) Whether all requisites of Section 15 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 are to be followed and accomplished in course of conducting auction proceedings?
(iii) Whether mere conducting of auction without taking further steps makes it a past & closed transaction?

Analysis: i) Plain reading of Section 15(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 makes it clear that the financial institution, before exercise of its powers under this subsection, shall cause to be published a notice in one reputable English daily newspaper and one Urdu daily newspaper with wide circulation in the Province in which the mortgaged property is situated, specifying particulars of the mortgaged property, including name and address of the mortgagor, details of the mortgaged property amount of outstanding mortgage money, and indicating the intention of the financial institution to sell the mortgaged property, moreover; the financial institution shall also send such notices to all persons who, to the knowledge of the financial institution, have an interest in the mortgaged property as mortgagees.
ii) Moreover, the auction report was to be filed by the Respondents before the Banking Court within thirty days of auction in terms of Section 15(11) of the "Ordinance", but the same was filed on 27.06.2008 as observed in the impugned order. It is noted that when auction report under Section 15(10) of the "Ordinance" was submitted on 27.06.2008, the Banking Court in its order dated 15.06.2008 observed that documents with regard to proceedings of auction were not appended and notices were issued to the Appellants for 28.10.2008. On the said date, none was present on behalf of the Respondents and notice pervi was issued to them for 18.12.2008 as they did not deposit process fee for service of the Appellants. On 18.12.2008, again process fee was not deposited by the Respondents and notices were issued to the Appellants for 07.05.2009, when Appellants put their appearance first time on 07.05.2009 and filed objection petition on very next date on 01.06.2009 against the auction report submitted in terms of Section 15(10) of the "Ordinance". No service or attendance of appellants is pointed out in alleged auction proceedings nor they stand established having been served with process after submission of report of said auction. Thus, we are not convinced by the observation of Banking Court that the objections filed by the Appellants are time barred rather the respondents have been noticed suffering with fault in discharge of duty of submitting auction report within thirty days of the auction proceedings otherwise casting serious doubts regarding genuine conduct of subject auction proceedings. Respondents were bound to follow & accomplish all requisites of Section 15 of the "Ordinance" in course of conducting auction proceedings.

(iii) As per record, only auction of mortgaged property is alleged to have been conducted and no further step sounds having been taken ahead. Thus, impugned auction by no means had attained finality for being rendered as a past & closed transaction as is observed in impugned order by learned Banking Court.

Conclusion: i) Under Section 15(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 a notice shall be published in one reputable English daily newspaper and one Urdu daily newspaper.
ii) All requisites of Section of the Financial Institutions (Recovery of Finances) Ordinance, 2001 are to be followed and accomplished in course of conducting auction proceedings.
(iii) Mere conducting of auction without taking further steps does not make it a past & closed transaction.

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28. **Lahore High Court**
M/s IT COMM Private Limited v. Collector,
Collectorate of Customs (Appraisement) etc.
W.P No.82461/2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC8476.pdf

Facts: Petitioner through instant petition challenged the assessment order, passed in exercise of powers under section 80 of the Customs Act 1969 and inter alia sought declaration for reinforcing decisions of the Customs Appellate Tribunal, in terms whereof allegedly the imported goods were classified. Additionally, he sought release of consignment / goods.

Issues: i) Whether assessment order, passed under section 80 of Act, 1969 is appealable order?
ii) Whether officer of Customs has jurisdiction to reassess duties, taxes and charges, while checking the goods declarations?
iii) Whether section 80 and 81 of Act, 1969 can be invoked at the same time?
iv) Whether assessment order passed under section 80 of Act, 1969 can be challenged under writ jurisdiction?

Analysis: i) Assessment order, passed under section 80 of Act, 1969, on its merits, could be challenged by invoking remedy of appeal under section 193 of the Act, 1969.
ii) In the context of remedy of judicial review sought, it is evident that sub-section (3) of section 80 of Act, 1969 confers jurisdiction on the officer of Customs to reassess duties, taxes and charges, while checking the goods declarations, without prejudice to any other action to be taken under the Act.
iii) Sections 80 and 81 are mutually exclusive, which caters for different situations / scenarios – which cannot be applied or invoked at the same time. Section 81 of Act, 1969 could be invoked, in case assessment could not be made by the officer of Customs under section 80 of Act, 1969, in which circumstances section 81 comes into play and importer could claim that goods be released

against provisional assessment.

iv) To question the merits of assessment order, remedy of appeal is available, which is otherwise an adequate, efficacious and appropriate remedy in wake of the facts of the case. Guidance is solicited from the ratio settled in the case of Khalid Mehmood vs. Collector of Customs, Customs House, Lahore (1999 SCMR 1881), wherein non-interference through exercise of constitutional jurisdiction was endorsed when alternate remedies are available and constitutional courts are declared as repositories of ultimate appellate, revisional or referral dispensation – in the context of fiscal statutes.

Conclusion: i) Assessment order, passed under section 80 of Act, 1969, on its merits, can be challenged by invoking remedy of appeal under section 193 of the Act, 1969.

ii) Officer of Customs has jurisdiction to reassess duties, taxes and charges, while checking the goods declarations.

iii) Section 80 and 81 of Act, 1969 cannot be invoked at the same time.

iv) Assessment order passed under section 80 of Act, 1969 is appealable order which cannot be challenged under writ jurisdiction.

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29. **Lahore High Court**
Outfitters Stores (Private) Limited v. Federation of Pakistan, etc.
W.P. No.68823/2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC8442.pdf

Facts: Through this petition, the petitioner sought declarations against the conduct of continuing audit proceedings in exercise of powers under section 175 of the Income Tax Ordinance, 2001, attributing illegality to those proceedings in the wake of claim of illegal search and sought declarations against show cause notice issued under section 11 of the Sales Tax Act 1990.

Issues: i) Whether the commissioner, or any officer is empowered to have full and free access, at all times to any premises for the purposes of enforcing any provision of this Ordinance?

ii) What does mean the expression “search” in the heading of section 175 of the Ordinance, 2001?

iii) Whether Circulars / directions issued in exercise of powers under section 214 of the Ordinance, 2001, can claim any superiority in the context of explicit statutory provision of law?

iv) Whether provisions of laws referred from different fiscal statutes can be read as part of section 175 of the Ordinance, 2001?

Analysis: i) Section 175 of the Ordinance, 2001 empowers the Commissioner, or any officer, authorized in writing by the Commissioner, to have full and free access, at all times and without prior notice, to any premises, place, accounts, documents or computers, for the purposes of enforcing any provision of this Ordinance, inter alia for the purpose of carrying audit of taxpayer.

ii) The expression employed in clause (a) of sub-section (1) of section 175 of the Ordinance, 2001, is full and free access, which has to be given full effect. The expression "search" in the heading of section 175 of the Ordinance, 2001 has to be construed in the company of expressions "full and free access". The effect and significance of subsection (7) of section 175 of the Ordinance, 2001 cannot be undermined or overlooked. It is evident that legislature consciously avoided reference to the requirements prescribed for search in terms of section 103 of Criminal Procedure Code, 1898.

iii) Circulars / directions issued in exercise of powers under section 214 of the Ordinance, 2001, are administrative in nature, which may be binding on field formations / officers but same could not claim any superiority in the context of explicit statutory provision of law. Circulars / instructions / directions issued would always be subject to the applicability of statutory provisions of law. In nutshell, circulars / instructions referred cannot, by any stretch of imagination, either dilute / obliterate or travel beyond the command contained in the provisions of the statute(s), framed by the Parliament in exercise of legislative powers.

iv) Provisions of laws referred from different fiscal statutes cannot be read as part of section 175 of the Ordinance, 2001, which is per se offensive to the textual meaning of section 175, ibid. Absoluta Sentantia expositore non indigent – Plain words need to exposition. No ambiguity in the text is otherwise found or pointed.

Conclusion: i) The Commissioner, or any officer, authorized in writing by the Commissioner, to have full and free access, at all times and without prior notice, to any premises, place, accounts, documents or computers, for the purposes of enforcing any provision of the Ordinance, 2001.

ii) The expression "search" in the heading of section 175 of the Ordinance, 2001 has to be construed in the company of expressions "full and free access" and requirements of section 103 of Criminal Procedure Code, 1898 are avoided.

iii) Circulars / directions issued in exercise of powers under section 214 of the Ordinance, 2001, cannot claim any superiority in the context of explicit statutory provision of law

iv) Provisions of laws referred from different fiscal statutes cannot be read as part of section 175 of the Ordinance, 2001.

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30. **Lahore High Court, Lahore**
Khuda Bakhsh v. The State
Murder Reference No.6/2019,
Criminal Appeal No. 1164 of 2018
Mr. Justice Shakil Ahmad, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC8195.pdf

Facts: Conviction and sentence to death with compensation has been assailed by the appellant, whereas Murder Reference has been sent by the learned trial court.

Issues: i) Whether appeal against conviction and sentence to death with compensation would stand abated due to death of appellant?

ii) If deceased appellant had been a civil servant having not been proceeded against so far by department, whether he would lose his service benefits due to abatement of his appeal after his death?

Analysis: i) As per Section 431 of The Criminal Procedure Code, 1898, an appeal against sentence of death or imprisonment is abated on the death of convict, however, it stays and is decided on merit to the extent of sentence of fine. If appellant is sentenced to death with compensation u/s 544-A Cr.P.C, such compensation in no case can be considered as fine**.**

ii) If no adverse final action at the departmental level has been taken so far against the deceased appellant, abatement of criminal appeal cannot provide a ground to initiate it now because death even stops the pending department inquiry. Though Section 8 of PEEDA Act, 2006 authorizes imposition of penalty for different situations based on conviction of a civil servant in a criminal case, yet the penalty referred therein for initiation of proceedings requires notice and reply of accused, which situation cannot be met if the civil servant is dead.

Conclusion: i) Appeal against conviction and sentence to death with compensation shall stand abated as per section 431 of Code of Criminal Procedure, 1898.

ii) Any benefit which otherwise is admissible under the law would be available to deceased appellant even after his death.

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31. **Lahore High Court**
Mst. Ilyas Akhtar. v. Province of Punjab, etc.
Civil Revision No.251 of 2017
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC8362.pdf

Facts: The petitioner challenged the judgment/order passed by the lower appellate Court whereby her application under order XLI Rule 27 C.P.C. for production of additional evidence was dismissed.

Issues: What should be the criterion for grant of permission to adduce additional evidence in terms of Order XLI Rule 27 CPC?

Analysis: The Legislature in its wisdom enacted Order XLI Rule 27 C.P.C., with a view to enable the appellate Court to record additional evidence which in its view is necessary "to enable it to pronounce judgment or any other substantial cause". The Court has to pronounce a judgment in accordance with law with a view to achieve justice and the afore-referred enabling provision has a nexus with the ultimate purpose *i.e.* a just decision. The additional evidence which is sought to be adduced should have a direct bearing on the point in issue and the test whether permission should be granted or not is as to whether a just decision could be arrived at without the additional evidence which is sought to be produced.

Conclusion: The additional evidence which is sought to be adduced should have a direct bearing on the point in issue and it should be such evidence that without which a just decision may not be possible.

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32. **Lahore High Court**
Mst. Iqbal Bibi, etc. v. Additional District Judge, etc.
Civil Revision No.1620 of 2016
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC8234.pdf

Facts: Through this Civil Revision, petitioners assailed the vires of judgment, whereby the learned appellate Court, while accepting the appeal of respondent No.3 set-aside the order of learned Executing Court with regard to dismissal of petitioner's objection petition and restored the execution petition filed by legal heirs of respondent No.3.

Issues: i) Whether for filing first application for execution, 03 years limitation will apply and subsequent petition can be filed within 06 years, prescribed under Section 48 C.P.C?
ii) Whether each and every case is to be decided on its own peculiar circumstances and facts?
iii) Whether in suit for specific performance where the possession is already with decree holder, the decree holder does require to file an execution petition for possession of the decretal land?
iv) Whether the decree holder can file execution petition on the refusal of judgment debtor for the execution of the remaining part of the decree?

Analysis: i) There is no cavil with the proposition that limitation for filing of an execution petition is not provided in limitation law and after enforcement of Law Reforms Ordinance, 1972 (XII of 1972) first application for execution of a decree would be governed by residuary Article 181 of Limitation Act, 1908, which provides period of 03 years. From perusal of Article 181 of the Limitation Act, 1908 read with Section 48 of the C.P.C., it becomes clear that for filing first application for execution, 03 years limitation will apply and any subsequent application will be run by the limitation provided in Section 48, C.P.C. which prescribes period of six years. No other law is relevant or applicable.
ii) Peculiar facts of this case have to be looked into before applying the law. It is settled law that each and every case is to be decided on its own peculiar circumstances and facts.
iii) Suit for specific performance is always suit for possession and as discussed earlier possession has already been with the decree-holder, therefore, decree holder does not require to file an execution petition for possession of the decretal land.
iv) Performance of the second part was upon the judgment-debtor and the decree holder can file execution petition on her refusal for the execution of the remaining

part of the decree. There is no cavil with the proposition that one, who succeeds in a litigation, unjustly must not retain the benefit. It is the birth right of every citizen in an Islamic state to seek and obtain justice. The principles in our jurisprudence, governing just dispensation to do justice in accordance with the law shall have to be kept in view.

Conclusion: i) For filing first application for execution, 03 years limitation will apply and subsequent petition can be filed within 06 years, prescribed under Section 48 C.P.C.
ii) Each and every case is to be decided on its own peculiar circumstances and facts.
iii) In suit for specific performance where the possession is already with decree holder, the decree holder does not require to file an execution petition for possession of the decretal land.
iv) The decree holder can file execution petition on the refusal of judgment debtor for the execution of the remaining part of the decree.

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33. **Lahore High Court**
Rana Abdul Basit Khan v. Province of Punjab and 3 others
W. P. No. 81071 / 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC8416.pdf

Facts: Through this titled Writ Petition and connected Writ Petitions, the petitioners have assailed the vires of clause VII of notification No. SO (F-1) 3-46/2020(W.E) issued by the Secretary Food, Government of the Punjab, Lahore. The Notification regulates the supply of wheat stock to flour mills to ensure uninterrupted supply of wheat flour and to stabilize its price in the market.

Issues: i) Whether the Food Department has the constitutional right to regulate the release of wheat from public stock under Article 18 of the Constitution and the provisions of the Punjab Foodstuffs (Control) Act, 1958?
ii) Whether the regulatory framework envisioned in the Punjab Foodstuffs (Control) Act, 1958 is based on the underlying principle of equity which in turn requires that trade and commerce for foodstuff must be regulated in a manner that not only it achieves the purpose of the Act but is also fair and just with respect to eligible stakeholders?
iii) Whether the impugned restriction contained in clause VII of the Notification No. SO (F-1) 3-46/2020(W.E) issued by the Secretary Food, Government of the Punjab, Lahore prohibiting the supply of wheat to newly functional mills having valid licenses granted by the Food Department is unreasonable, arbitrary and capricious and is not based on any intelligible criteria?

Analysis: i) There is no doubt that the Food Department has the constitutional right to regulate the release of wheat from public stock under Article 18 of the

Constitution and the provisions of the Punjab Foodstuffs (Control) Act, 1958 but at the same time, the power to regulate is subject to law and structured discretion which in turn must be just, equitable and transparent.

ii) The Punjab Foodstuffs (Control) Act, 1958 provides vast, broad and wide ranging powers of regulating the distribution of foodstuffs to achieve the basic purpose of equitable distribution and availability of foodstuffs at fair prices. There is no cavil to the proposition that the regulatory framework envisioned in the Act is based on the underlying principle of equity which in turn requires that trade and commerce for foodstuff must be regulated in a manner that not only it achieves the purpose of the Act but is also fair and just with respect to eligible stakeholders.

iii) The Notification was primarily issued to ensure uninterrupted supply of wheat stock to the flour mills in order to stabilize the prices of flour in the market. The mandatory condition prescribed in this behalf is that wheat can be supplied to the approved functional flour mills having valid Foodgrains License. This mandatory condition is fulfilled by the Petitioners. The grinding capacity has been duly determined by the Department as per prescribed Standard Operating Procedures. Clause 4 of the Policy contained in the Notification unequivocally stipulates that the Policy is subject to review after a period of one month. This indicates the need for periodic adjustment to cater the ever-changing market conditions. In this context, the only justification of imposing the impugned restriction appears to be the convenience of the Department so that it may not have to frequently redistribute wheat quotas amongst the eligible flour mills. By doing so, the Department has created two distinct classes of flour mills in terms of existing flour mills and newly established flour mills although both types of flour mills are otherwise eligible to receive the wheat quotas from public stock from the Department in terms of their functionality and licenses. Thus, it is manifestly clear that newly established flour mills as a class have been discriminated vis-a-vis the existing flour mills without any rational or intelligible criteria that can withstand the test of permissible classifications in terms of Article 25 of the Constitution.

Conclusion: i) The Food Department has the constitutional right to regulate the release of wheat from public stock under Article 18 of the Constitution and the provisions of the Punjab Foodstuffs (Control) Act, 1958 but at the same time, the power to regulate is subject to law and structured discretion which in turn must be just, equitable and transparent.

ii) The regulatory framework envisioned in the Punjab Foodstuffs (Control) Act, 1958 is based on the underlying principle of equity which in turn requires that trade and commerce for foodstuff must be regulated in a manner that not only it achieves the purpose of the Act but is also fair and just with respect to eligible stakeholders.

iii) The impugned restriction contained in clause VII of the Notification No. SO (F-1) 3-46/2020(W.E) issued by the Secretary Food, Government of the Punjab, Lahore prohibiting the supply of wheat to newly functional mills having valid

licenses granted by the Food Department is unreasonable, arbitrary and capricious and is not based on any intelligible criteria.

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34. **Lahore High Court**
Mubashir Ali Awan v. Commissioner Rawalpindi Division, Rawalpindi etc.
W.P No.2803/2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC8488.pdf

Facts: Through this constitutional petition, actions and in-actions on part of the respondents regarding non-issuance of Stamp Vending License to the petitioner has been challenged.

Issues: i) Who is vested with the power to issue the license to vend stamp?
ii) Whether the Stamp Act, 1899 and the Rules provide any mechanism for the grant of the license to a stamp vendor?
iii) How the license for stamp-vending is being issued?
iv) Who is responsible for the administration of the Act, under the Rules of Business?

Analysis: i) Thus, the Collector is vested with the power to issue the license to vend stamp up to numbers fixed for a District or Tehsil, as the case may be, and in case the Collector intends to issue any license in excess of such numbers, he shall seek concurrence of the Commissioner concerned.
ii) On the other hand perusal of the above provisions of the Act and the Rules brings forth that no mechanism in the Rules have been provided for the grant of the license to a stamp vendor and unfettered and unstructured discretion has been vested with the Collector concerned.
iii) The instant case highlights an important aspect pertaining to how the license for stamp-vending is being issued, across the Province of Punjab, by exercise of unfettered and unstructured discretion and without any guiding principles and policy framework in place. The learned Law Officer has been fair in assisting this Court in acknowledging that there are no SOPs or criteria carved out by the Provincial Government in this regard on the strength of which seats are created and more importantly filled while granting the license except requirement of police verification and a vague reference to marks assigned for possessing minimum education (matric as per the fresh report) and this inaction is a cause of unnecessary litigation as well as hardship for the individuals such as the petitioner, who aspire to seek issuance of the license. It is also noted that besides lack of policy guidelines for issuance of the license, the process is also bereft of transparency and fair play as the license is dished out to aspirants of liking on mere filing of an application without any formal advertisement in a newspaper inviting applications thereof so that the largest pool of the aspirants can come to know about creation/existence or vacancy of such a seat for grant of license in a District as the same carries with it an opportunity for any citizen interested to apply for the same and, if qualified, gives an opportunity to earn his bread and

butter, which is fundamental right of every citizen. The above discussion propels to the conclusion that grant of the license has to be in consonance with some settled criterion to structure the discretion which is currently unfettered and unguided.

iv) In Province of Punjab, so far, this aspect has been eluded the attention of the competent authority under Rules of Business which is the Board of Revenue, Punjab in terms of entries recorded under the Second Schedule made thereunder pertaining to the distribution of business among the departments. Board of Revenue is also responsible for the administration of the Act, under the Rules of Business. Lack of instructions have perpetuated the unstructured exercise of discretion while granting the license, which cannot be countenanced under the jurisprudence developed by the Hon'ble Supreme Court of Pakistan regarding the exercise of discretion by the public functionaries

Conclusion: i) The Collector is vested with the power to issue the license to vend stamp up to numbers fixed for a District or Tehsil.

ii) The Stamp Act, 1899 and the Rules provide any mechanism for the grant of the license to a stamp vendor and unfettered and unstructured discretion has been vested with the Collector concerned.

iii) The license should be issued in consonance with some settled criterion to structure the discretion which is currently unfettered and unguided.

iv) Board of Revenue is responsible for the administration of the Act, under the Rules of Business.

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35. **Lahore High Court**
Brig (R) Ghulam Hafeez through his legal heirs, etc.
v. Brig (R) Abdul Hadi, etc.
Writ Petition No.491 of 2019
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC8499.pdf

Facts: The respondent/plaintiff filed a suit for specific performance of contract against petitioner/defendant wherein plaintiff filed an application for production of private witness along with production of documents. The application was dismissed by Trial Court while it was partially allowed by Revisional Court. The defendant challenged judgment of Revisional Court while plaintiff challenged judgments of trial as well as Revisional Court.

Issues: (i) Whether there is a complete embargo on receiving the evidence of a witness not mentioned in the list of witnesses?

(ii) Whether a reference to a document made in the pleadings should be takenas a sufficient ground for allowing its production in terms of Order XIII, Rule 2 CPC?

Analysis: (i) Needless to mention that the purpose of submission of the list of witnesses is that the opposite party should not be taken by surprise as to who and what

evidence is to be adduced in support of the claim of the plaintiff or defence of a defendant so that the other side may make necessary preparations for cross examinations etc., and to prevent any concoction and fabrication of the evidence…there is no complete embargo on receiving the evidence of a witness not mentioned in the list of witnesses so long as a good cause can be shown for which the Court has to satisfy its judicial conscience…
(ii) The manner in which the documents are to be presented on the first date of hearing or on any other future date including the time of recording of evidence is, *inter-alia*, regulated by submitting Forms under Order XIII as well as Order VII, CPC… provisions of Order XIII, Rule 2 CPC should be liberally construed and as long as reference to the document is made in the pleadings that should be taken as a sufficient ground for allowing its production.

Conclusion: (i) There is no complete embargo on receiving the evidence of a witness not mentioned in the list of witnesses so long as a good cause can be shown for which the Court has to satisfy its judicial conscience.
(ii) A reference to a document made in the pleadings should be taken as a sufficient ground for allowing its production in terms of Order XIII, Rule 2 CPC.

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36. **Lahore High Court**
Muhammad Umair Pasha, etc. v. District Collector, etc.
Civil Revision No.103/D/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC8509.pdf

Facts: One of the respondents/plaintiff filed two separate civil suits i.e. a suit for declaration and a suit for recovery. The declaratory suit was decreed by trial court and upheld by appellate court while the suit for recovery was dismissed by trial court but the judgment was reversed by appellate court. The petitioners filed civil revisions against the findings of the appellate court.

Issues: (i) Whether the consequences of a fraud can be shifted to a purchaser who purchased a property on the basis of a GPA, the execution whereof is admitted by the owner of the property?
(ii) Whether minor contradictions in the statements of a defendant or any other weakness thereof alone can be made basis to deprive him from his lawful rights accrued in his favour?

Analysis: (i) …the consequences of the fraud cannot be shifted to the defendants/ purchasers who purchased the suit property on the basis of the GPA, the execution whereof is admitted by the plaintiff/respondent herself. If the consequences of a fraud are ever to be faced by someone, it ought to be the one who made the commission of such fraud possible and not the one who has no role to play with the commission of such a fraud.

(ii) …the evidence has to be read as a whole to determine its preponderance and the minor contradictions in the statements of the defendants/purchasers or any other weakness thereof cannot be made basis to deprive them from their lawful rights accrued in their favour and it was the plaintiff/respondent who was required to stand on her own legs and prove her case.

Conclusion: (i) The consequences of a fraud cannot be shifted to a purchaser who purchased a property on the basis of a GPA, the execution whereof is admitted by the owner of the property.

(ii) Minor contradictions in the statements of a defendant or any other weakness thereof alone cannot be made basis to deprive him from his lawful rights accrued in his favour.

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37. **Lahore High Court, Lahore**
Sultan Mehmood v. Province of Punjab through its Chief Secretary, Lahore etc.
Writ Petition No. 3821 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC8562.pdf

Facts: Through the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed order passed in inquiry conducted against him under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 resulting in his compulsory retirement.

Issues: Whether bar under article 212 of The Constitution of Islamic Republic of Pakistan, 1973 is applicable in matter of departmental inquiry into irregularity/illegality committed at pre-induction/pre-appointment stage of service followed by order of compulsory retirement?

Analysis: Chapter II of the Punjab Civil Servants Act, 1974 deals with the terms and conditions of a civil servant and Section 4 thereof pertains to the 'appointment' of a person to a civil service or a civil post in connection with the affairs of the province contemplating that such appointment is to be in accordance with the prescribed rules, whereas Section 15 of Act ibid pertains to efficiency and discipline and it contemplates that a civil servant shall be liable to such disciplinary action and penalties in accordance with prescribed procedure. Appointment to the post is part of the larger ambit of the terms and conditions of service under the Act ibid and such appointment triggers applicability of remaining terms and conditions pertaining to the service of a civil servant, inter alia, probation, confirmation, seniority, promotion, posting, transfer, termination, removal and the disciplinary proceedings under the law including the Act ibid or the rules made thereunder. If such an appointment is obtained as a result of any irregularity or illegality, defeating the criteria envisaged under the applicable rules, the same can always be looked into by the department. Joint perusal of the Act ibid and the Punjab Employees Efficiency, Discipline and Accountability Act,

2006 clearly reveals that there is no distinction under the law between the probe against a civil servant for any wrong done at the time of his induction/initial appointment or after such appointment of a civil servant. Once appointed, a civil servant for all practical purposes is to be treated as civil servant and his service is to be dealt with accordingly, which includes any disciplinary proceedings on account of wrongful induction. Any charge of seeking appointment on the basis of any irregularity as well as illegality, if and when probed under the law, resulting into any punishment by way of compulsory retirement, is to be dealt with under the provisions of the Act ibid and the rules made thereunder. The remedy in such an eventuality lies with the next departmental hierarchy, higher in rank, in accordance with law and an appeal finally lies before the Service Tribunal. It is during such departmental or appellate proceedings before the Service Tribunal where the question of discrimination or malafide, if any, and the merits of the case can be examined. The orders within the departmental hierarchy, in relation to civil service, even if passed with malafide intention and/or discriminatory or otherwise corum non judice, fall within the ambit of the Service Tribunal established under the law and jurisdiction of the Courts including High Court is ipso facto ousted as result of bar envisaged in terms of Article 212 of the Constitution.

Conclusion: Bar contained under Article 212 of the Constitution is fully applicable in matter of departmental inquiry into irregularity/illegality committed at pre-induction/pre-appointment stage of service followed by order of compulsory retirement.

LATEST LEGISLATION/AMENDMENTS

1. The Smart Institute of Science & Technology Act, 2022 is enacted to provide for the establishment of the Smart Institute of Science & Technology.
2. Section 39-A in inserted, Form I of First Schedule is amended and Fifth Schedule is added in "The Provincial Motor Vehicles Ordinance, 1965" through " The Provincial Motor Vehicles (Amendment) Act 2022".
3. Sections 2,11,12,13,14,25,27,28 and 29 of "The Punjab Protection of Women Against Violence Act, 2016" are amended through "The Punjab Protection of Women Against Violence (Amendment) Act, 2022".
4. Sections 4, 5 and 6 of "The Children (Pledging of Labour) Act, 1933" are substituted through "The Children (Pledging of Labour) (Amendment) Act, 2022".
5. Section 510 of "The Code of Criminal Procedure, 1898" is amended through "The Code of Criminal Procedure (Amendment) Act, 2022".
6. Rule 2 of "The Punjab Procurement Rules 2014" is amended
7. Rule 3 of "The Punjab Wildlife (Protection, Preservation, Conservation and Management) Rules, 1974" is amended.
8. Rule 2 of "The Punjab Motor Vehicles Rules, 1969" is amended.
9. Rule 3-C is inserted in "The Punjab Specialized Healthcare and Medical Education Department (Medical and Dental Teaching Posts) Service Rules, 1979".

10. Rule 20 of "The Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974" is substituted.
11. The Schedule of "The Directorate of Pest Warning and Quality Control of Pesticides in Punjab Service Rules, 1987" is amended.
12. The Schedule of "The Punjab Buildings Department (Government Houses and Governor's Annexies, Rawalpindi, Islamabad , Karachi and Murree) Service Rules, 2017" is amended.
13. The Schedule of "The Punjab Civil and Sessions Court Establishment (Miscellaneous Posts) Service Rules, 2005" is amended.
14. The Schedule of "The Punjab Planning & Development Board Recruitment Rules, 1985" is amended.
15. First and Second Schedule of "The Punjab Government Rules of Business, 2011" are amended.
16. The Schedule of "The Punjab Services & General Administration Department (Archives Wing) Employees Service Rules, 2011" is amended.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Depreciation-of-Computer-Accessories-and-Peripherals-the-Taxation-Dilemma-Resolved

Depreciation of Computer Accessories and Peripherals: the Taxation Dilemma Resolved by Tejaswini Kaushal

Calculating deprecation becomes a critical aspect of determining the payment of corporate tax since depreciation-related deductions are included in the computation of total taxable income, helping the business save up on the total tax amount. Section 32 of the Income Tax Act of 1961 contains the clause for 'depreciation.' Rule 5 of the Income Tax Rules of 19622 applies to this provision. When the value of the physical or intangible asset used by the assessee lowers, an appropriate amount of deduction is granted under the Income Tax Act. Instead of using the asset's overall cost, the income-tax department calculates the depreciation at the time of the deduction using the asset's life cycle cost. To calculate the decrease in asset value caused by depreciation, an assessee may utilize either the straight-line technique or the written line method, the latter being the primary preference of the Income Tax Department. Section 32(1)(i) and 32(2)(ii) of the Income Tax Act, 1961 provide for depreciation to be charged on tangible (real estate, plant and machinery, and the like) and intangible (technical know-how, licenses, patents, copyrights, and the like) assets respectively. In the present times of globalization and digitization, computer hardware and software have become an important asset of every corporation, and calculating depreciation on it becomes essential.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Legislation-as-a-Source-of-Law

Legislation as a Source of Law by Ishita Chandra

The term 'legislation' is derived from Latin words, "Legis" meaning law and "Latum" which means "to make" or "set". Thus the word 'legislation' means 'making of law'. Legislation is that source of law which consists in the declaration of legal rules by a competent authority. The most powerful and independent method of enacting laws is through legislation. It is the only source with the authority to pass new laws, repeal old ones, and amend existing laws. However, the term "legislation" is only used to refer to a specific type of law-making, i.e., when a competent authority declares legal principles in statutory form. It means that the State's legislature has passed/promulgated a law. The law that has its source in legislation is called the enacted law or statute law. Gray pointed out that legislation includes "formal utterances of the legislative organs of the society". According to Salmond: "Legislation is that source of law which consists in the declaration of legal rules by a competent authority"4. Salmond noted that legislation is the type of source of law that entails the proclamation of legal rules by an appropriate and competent body5. He claims that there are three different meanings associated with the term "legislation" as a source of law. In its strict sense, it is that source from where the rules of law declared by competent authority are framed. In its widest sense, legislation includes all methods of law-making. In this sense, legislation may either be (i) direct, or (ii) indirect. The law declared by legislature is called direct legislation whereas all other actions through which law is made are species of indirect legislation. In this third sense, legislation encompasses every expression of the will of the legislature whether making law or not. According to Austin: "There can be no law without a legislative act"

3. **MANUPATRA**
https://articles.manupatra.com/article-details/scientific-evidence-in-criminal-trials-narcoanalysis

Scientific Evidence In Criminal Trials: Narcoanalysis by Vaishali Jeswani

Narco- Analysis signifies psycho analysis, by the administration of drugs. In this process, the suspect passes through certain chemical tests and is put into a state of hypnotism, though sub- consciously awake to bring out facts in his sub- conscious mind. To obtain the sub- conscious state sodium pentothal/sodium Amytal is injected into the body and questions are directed to the person. The drugs are also known as 'truth serum' but the extent of truthfulness is a debatable issue. The person goes into a stage of sub consciousness and his reasoning abilities turn ineffective, so he cannot decide what has to be revealed and what not. In other words, his thought filtration process is put to rest, so he can no longer think and answer truthfully. The test is based on the principle that a person can lie by using his imagination and making facts, by using drugs his capacity to lie is restricted and the answers remain limited to what he knows. It is conducted on criminals to obtain information when they are not cooperative. With the development of science and technology, there is hardly any sphere left out of its reach, same goes for criminal Investigation. The Indian Evidence Act is silent on the employment of such scientific tests. Such processes are criticized by some as being against the idea of Fundamental rights to life and personal liberty,

freedom of speech and expression, Right against self- incrimination among other tenets of the Constitution. Some support it as being a necessity of the day. There exist several issues regarding its validity and admissibility in the court of law.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Right-to-Privacy-in-Digital-Age

Right to Privacy in Digital Age by Dhriti Bole

The mankind has benefited greatly from technological advancement. Even so, as technology develops, many of our liberties are now under jeopardy. The right to privacy is a growing concern as the technological era progresses and includes data that is constantly gathered and processed in the marketplace. Several illicit behaviours, such as data fraud, hoax contacting, cyber harassment, etc., have emerged as a result of the digitalisation. User 's private data can frequently be mishandled when it is supplied to websites for digital networking, business, interaction intelligence firms, state agencies, and others. There is no explicit legislation throughout the nation that governs the acquiring, archiving, surveillance, recording, accessing, processing, distribution, maintenance, etc. of data. This paper is an attempt to study the issues involving right to privacy and data analysis in the digital age. The paper explores the issues of privacy by analysing it through 2 different perspectives. First chapter gives regard to state's power of surveillance, and the second chapter acknowledges the concerns of customers with regards to their right to privacy being recognised under the Competition Act, 2002 and concludes with inspirations that can be drawn from the international regulations and precedents in the sphere.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1186/s41018-022-00131-0

Empathy in frontline humanitarian negotiations: a relational approach to engagement by Rebecca Sutton & Emily Paddon Rhoads

Humanitarian access—people's ability to reach aid and aid's ability to reach people—is widely understood to be a central challenge in humanitarian action. One of the most important ways in which humanitarian access is practically secured in conflict settings is through frontline humanitarian negotiations. In this type of negotiation, humanitarians engage in face-to-face interactions with conflict parties to secure safe access to, and protection of, civilian populations in situations of armed conflict. An underdeveloped aspect of such negotiations that is ripe for further exploration is the role of empathy. The purpose of this article is thus to draw on the insights of the empathy literature to explore how empathy shapes humanitarian protection work in the specific domain of frontline humanitarian negotiations. Part one conceptualizes empathy, drawing on the interdisciplinary field of scientific research. Part two introduces the practice of frontline humanitarian negotiation and explains why empathy is critical, particularly in the increasingly fragmented

environments that negotiators must operate. Adopting a relational approach, Part three advances a framework for analyzing empathy in frontline humanitarian negotiations. We theorize empathy's salience across four different axes of negotiation, drawing insights gleaned from scholarship and a systematic review of the grey literature on humanitarian negotiation, including field manuals, training materials, and operational guidance. We do not ultimately argue for 'more empathy' in this type of work, but rather a more thoughtful approach to empathy—one that entails the cultivation of core empathy-related skill areas, including: emotion regulation, perspective-taking, social awareness, and strategic conveyance of empathy. We contend that this approach could help to alleviate numerous problems in the humanitarian sector, including aid worker burnout.

6. LATEST LAWS

https://www.latestlaws.com/articles/plea-bargaining-a-gender-perspective-191706/

Plea Bargaining: A Gender Perspective by Preeti Agarwala

Sandra Day O'Connor, The first and most celebrated woman justice of the American Supreme Court has famously stated that for a woman getting power, the first step is to become visible to others, and then to put on an impressive show... and thus, the barriers will fall and we shall move towards a more progressive and egalitarian society. This article is a humble attempt in understanding as well as underlining the problem area that has struck the undersigned in every reading as well as interpretation of the text pertaining to plea–bargaining in our Indian Law as enumerated in chapter XXIA, Sections 265-A to Section 265-L. It is already coded and recorded in various deliberations of the Law Commission's 142nd, 154th, and 177th reports, the importance and the urgency of the requirement of this chapter in the context of the Indian Justice System and finally after the recommendation of Dr. Justice Malimath Committee, the Criminal Procedure Code, 1973 was amended and the above chapter was incorporated and successfully so, despite all the pros and cons and a lot of debates on both sides.

7. LATEST LAWS

https://www.latestlaws.com/articles/order-vi-rule-17-cpc-the-nuances-of-amendment-of-pleadings-191441/

Order VI Rule 17,CPC: The nuances of Amendment of Pleadings by Sujith Nair

It is a well-established rule of civil procedure that no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. The court can neither make out a case which has not been pleaded nor grant relief which is not claimed by the parties and which does not flow from the facts and the cause of action alleged in the plaint. Hence, amending the pleadings may become very crucial for the parties to a dispute. Order VI Rule 17 of the Code of Civil Procedure, 1908 governs the amendment of pleadings.