

# **LAND MARK CASE LAW**

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Sr. No.	Term	Class	Relevant laws	Section	Citation
1	<b>Effect of non mentioning of date, time and place of Talab-i- Muwathibat</b>	<b>Civil</b>	<b>Punjab Pre-emption Act 1991.</b>	<b>13</b>	<p>Non Mentioning the date time and place is fatal to suit for pre-emption. '<b>PLD 2007 S.C. 302</b>' view taken in 'PLD 2003 S.C. 315 and PLD 2005 S.C. 277'reiterated. Similar view was taken in '2007 S.C.M.R. 1, 401, 515, 1191 and 1491.</p> <p><b>PLD 2009 Lahore 119</b> Exact date, time, place of Talb-i-Muwathibat had been mentioned in the plaint and through the pre-emptor's testimony, corroborated by the statement of informer its particulars had been proved. Other two witnesses of Talb-i-Muwathibat, had not given the exact date, but had mentioned it to be 3-1/2 years from the date of their statements, thus while calculating the period, the time so mentioned almost corresponded quite close to the date of Talb-i-Muwathibat and hardly a few days difference existed which could possibly be the result of lapse of human memory. Talb-i-Muwathibat thus stood proved</p>
2	<b>Minor Contradictions in pre-emption case</b>	<b>Civil</b>	<b>Punjab Pre-emption Act1991</b>	<b>13</b>	<b>1996 SCMR 1410. 2005 SCMR 1201 and 2004 SCMR 1580.</b> Minor contradictions in pre-emption case are to be ignored if statements are recorded after lapse of considerable time
3	<b>Production of postman for Talab-i-Ishhad</b>	<b>Civil</b>	<b>Punjab Pre-emption Act 1991</b>	<b>13</b>	<p><b>Registered Post/AD is must</b> <b>2007 SCMR 1105</b> <b>2011 S.C.M.R. 762</b> <b>2009 MLD 433 and 549</b> According to <b>2012 MLD 23</b> only sending notice through registered post is enough. <b>Hon'ble Lahore High Court has relied on 2008 SCMR 1366. The date of decision of this case is 24<sup>th</sup> December, 2003.</b></p>

4	<b>Two witnesses must for Talab-i-Ishad.</b>	Civil	<b>Punjab Pre-emption Act 1991</b>	13	<p><b><u>2007 S C M R 1233</u></b>  The notice regarding Talbs should be attested by two truthful witnesses, therefore, it was a document which was required by law to be attested under Art.79 of Qanun-e-Shahadat, 1984 and two attesting witnesses should have been called in Trial Court to prove the same, whereas only one witness was examined and on account of non-production of other witness finding of Trial Court that mandatory requirement as to fulfillment of Talbs was not complied with was correct and suit was liable to be dismissed and was rightly dismissed by Trial Court.</p>
5	<b>Zar-e-soim (1/3rd)</b>	Civil	<b>Punjab Pre-emption Act 1991</b>	24(2)	<p><b><u>PLJ 2008 Lahore 243</u></b>  Petitioner had failed to deposit Zar-e-Ssoim within a period of thirty days from the date of institution of the suit--Held: Suit was liable to be dismissed having become barred by time.</p> <p><b><u>PLD 2006 Lahore 318</u></b>  Day on which the order was passed by Trial Court directing the pre-emptor to make deposit should be excluded thus by exclusion thereof, the deposit made by pre-emptor would be within 30 days time---No delinquency and default could be attributed to pre-emptor.;<b>2001 SCMR 1001 and 2004 CLC 538 ref.</b></p>
6	<b>Benefit of Doubt</b>	Criminal	P.P.C	302	<p><b><u>(PLD 2002 Supreme Court 1048),</u></b>  While quoting a saying of the Holy Prophet (PBUH) that mistake of Qazi(Judge) in releasing a criminal is better than his mistake in punishing an innocent and making reference to the maxim, that <u>"it is better that ten guilty persons be acquitted rather than one innocent person be convicted"</u></p>

					<p><b><u>PLJ 2002 Cr.C (Lahore) 1134</u></b>  wherein the following Hadiths were reproduced:  <i>i. Whenever possible save a MUSLIM from punishment. Do it whenever you find any loophole, because it is better for the judge to err in acquittal than in conviction. (Tirmizi Sharif)</i>  <i>ii. Ward off punishment with doubts (MasnadAbiHanifa)</i>  <i>iii If there is any possible way to do it, save God's creatures from conviction and punishment ( Ibne-e-Maaja)</i></p>
7	<b>Circumstantial Evidence</b>	<b>Criminal</b>	<b>PPC</b>	<b>302</b>	<p><b><u>PLJ 2009 SC 100</u></b>  Death sentence can be awarded on circumstantial evidence, provided that circumstances constitute a chain and its no link is missing and their combined effect is that the guilt is established beyond any shadow of doubt.</p>
8	<b>Statement of Accused under section 342 Cr.P.C</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>342</b>	<p><b><u>2011 SCMR 34</u></b>  Statement of accused recorded under S.342, Cr. P. C. has to be accepted or rejected as a whole, when entire prosecution evidence stands disbelieved.</p>
9	<b>Specific Performance-Time as Essence</b>	<b>Civil</b>	<b>Specific Relief Act 1877</b>		<p><b><u>PLJ 2004 Lahore 1686,</u></b>  <b><u>PLD 1983 SC 344, 1996 MLD 60, PLD 1962 SC 1</u></b>  Agreement relating to sale of immovable property, time is not essence of the contract even if target date is mentioned in the agreement</p> <p><b><u>NLR 2002 Lahore 442 -</u></b>  <b><u>1988 CLC 1600</u></b>  The presence of clause in the agreement that in the event of non performance by seller, the buyer can seek enforcement through court of law itself suggest that time is not the essence of the contract.</p>

10	<b>Exclusion of Oral by Documentary Evidence</b>	<b>Civil</b>	<b>Qanoon-i-Shadat Order 1984</b>	<b>Art.102,103</b>	<b><u>1997 SCMR 1570</u></b> <b><u>2004 MLD 1221</u></b> when the terms of the agreement are reduced into writing no oral evidence can be lead in variance of the written agreement.
11	<b>Pecuniary Compensation-not adequate</b>	<b>Civil</b>	<b>Specific Relief Act 1877</b>		<b><u>PLJ 1989 Lahore 490</u></b> It is established law that in land cases a decree for specific performance should be passed because pecuniary compensation may not afford a complete remedy because to a purchaser land may have a special value
12	<b>Damages for Malicious Prosecution</b>	<b>Civil</b>			<b><u>PLD 1990 Supreme Court 28,</u></b> Ingredients for malicious prosecution:- 1. That the plaintiff was prosecuted by the defendant. 2. That prosecution ended in favour of the plaintiff. 3. That defendant acted without reasonable and probable cause. 4. That the defendant was actuated by malice. 5. That the proceedings had interfered with the plaintiff's liberty and Eeffected his reputation 6. That the plaintiff had suffered damages.
13	<b>Grounds for Pre- Arrest Bail</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>497/498</b>	<b><u>P L D 1983 SC 82</u></b> <b><u>P L D 1984 SC 192</u></b> <b><u>1983 S C M R 645,</u></b> <b><u>1983 S C M R 1130</u></b>  An accused person is not only required to make out a prima facie case but also that his intended arrest was tainted with malafide on the part of the police or an outcome of ulterior motive of causing harassment or humiliation to him

					<p><b><u>PLD 2009 Supreme Court 427</u></b>  Frame-work within which and the guidelines according to which, the jurisdiction vesting in the High Courts and the Courts of Session with regard to pre arrest bail is to be exercised.</p>
14	<b>Pre-Arrest bail can be decided in absence of petitioner</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>497/498</b>	<p><b><u>1981 PCrLJ 61</u></b>  Bail, application once admitted to regular hearing to be decided on merits even in absence of petitioner.</p> <p><b><u>1974 P Cr. L J 482</u></b>  Insistence on presence of accused at time of confirmation of anticipatory bail is discretionary with Court.</p>
15	<b>Successive Bail Applications</b>	<b>Criminal</b>	<b>Cr.PC</b>	<b>Sec.497,498</b>	<p><b><u>2001 SCMR 1047</u></b>  Filing of successive bail applications in the same case by the same person or his co-accused---<b><u>Clarification of Zubair's case (PLD 1986 SC 173)</u></b>---Zubair's case reported as PLD 1986 SC 173 had laid emphasis on vital issue that subsequent bail applications must be placed before the same Judge who had dealt with the first bail application and that the counsel was duty bound to mention in the bail application filed by him the fact of having filed the previous application with the result thereof---Said judgment had been delivered to avoid the conflicting decisions in bail applications--Practice of withdrawing the bail petition from one Judge and then making a fresh application soon thereafter so that the same may be dealt with by another Judge was also disapproved---Principle initiated in Zubair's case was based upon salutary principle, inasmuch as, the practice of filing the successive bail applications in the same case by the same accused or his co-accused and getting it fixed before a different Judge, is not only likely to result in conflicting judgments but also tends to encourage</p>



					malpractice by accused persons and to bring the judicial system into disrepute because in the event of a conflicting order being given by another Judge in a subsequent application an impression, though false, may be created that the second order was based on extraneous considerations.
<b>16</b>	<b>Protective Bail</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>Sec.497,498</b>	<b><u>PLD 2009 Lahore 531</u></b> Sessions Court has got no jurisdiction to grant interim pre-arrest bail or protective bail to an accused of offence which is registered through FIR outside the District where a Sessions Court is so situated
<b>17</b>	<b>Private Complaint</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>200</b>	<b><u>P L D 1999 Lahore 400</u></b> Examination of complainant on oath is mandatory Sessions Judge can not send the complaint for inquiry, as the provision is of mandatory nature Where private complaint was filed for prosecution of accused for cognizable or non-compoundable offences, the same could not be dismissed in default due to non-appearance of the complainant
<b>18</b>	<b>Procedure vis-à-vis State and private complaint.</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>200</b>	<b>Noor Elahi v. The State and 2 others PLD 1966 SC 708, Zulfiqar Ali Bhutto v. The State PLD 1979 SC 53, Syed Muhammad Hussain Shah v. Abdul Hamid and 5 others 1981 SCMR 361.</b> If the same party lodges an F.I.R. and, after having remained dissatisfied with the investigation carried out by the police, files a private complaint in respect of the same allegations then in such a situation the complaint case is to be tried first and, if needed to, the, challan case is to be tried later. If the challan case and the complaint case have been filed by different parties containing different versions and are directed against different sets of accused persons and in such a situation the trial of the complaint case and

					the challan case are to be held simultaneously and side by side and not one after the other.
<b>19</b>	<b>Complaint filed with delay</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>204</b>	<p><b><u>2003 S C M R 1466</u></b> The question of delay in making the F.I.R. lost significance on account of its cancellation and if the complainant hibernates after cancellation of the F.I.R. and makes a delayed private complaint the prosecution evidence must be sifted and weighed with great care and caution.</p> <p><b><u>2006Y L R 2934</u></b> In view of delay of about 3-1/2 years in filing complaint and that too just before the conclusion of the prosecution evidence, was just an attempt to protract the trial---No illegality existed in impugned order warranting interference of High Court in exercise of revisional jurisdiction.</p>
<b>20</b>	<b>Dismissal of Private Complaint without Preliminary Inquiry</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>Sec. 203</b>	<p><b><u>2000 SCMR 1904</u></b> Complaint can be dismissed without having preliminary inquiry as no such embargo has been placed on the Court concerned-However, such discretion must be exercised judiciously with diligent application of mind and not in an arbitrary or capricious manner. Court concerned must scrutinize the contents of the complaint, nature of allegations made therein, material in support of accusations, the object intended to be achieved, possibility of victimization and harassment, if any, to ensure itself that no innocent person against whom allegations are levelled should suffer the ordeal of protracted, time consuming and cumbersome process of law.</p>
<b>21</b>	<b>Refund of Court Fee</b>	<b>Civil</b>	<b>Court Fees Act</b>	<b>13</b>	<p><b><u>1995 C L C 1931</u></b></p> <p><b><u>P L D 1993 Supreme Court 76</u></b></p>

					State, under Art.2-A of the Constitution was obliged to further the ends of social justice, which, inter alia obliged it to ensure inexpensive and expeditious justice in terms of Art37(d) of the Constitution. High Court erred in refusing certificate to plaintiff to receive back amount of court-fee spent by him on the plaint and memo. of appeal; It was incumbent upon High Court to adopt the interpretation of S.13 of the Court Fees Act which furthered the objectives of the Constitution rather than negated them.
<b>22</b>	<b>Guidelines for all courts in the matter of Illegal Dispossession Act</b>	<b>Criminal</b>	<b>Illegal Dispossession Act (XI of 2005)-</b>	<b>3 &amp; 4</b>	<p><b><u>P L D 2007 Lahore 231 (FB)</u></b>          Provided guidance to all the Courts of Session in the Province of the Lahore High Court.</p> <p><b><u>2009 S C M R 1066</u></b>          Essentials for complainant to allege and show before the court and the defence line of the accused enumerated.</p> <p><b><u>P L D 2010 Supreme Court 661</u></b>          No material was available with petitioner to establish that respondents belonged to a Qabza group or land mafia or they had credentials or antecedents of being property grabbers. Acquittal order was not interfered.</p> <p><b><u>2012 S C M R 229</u></b>          Illegal Dispossession Act, 2005, is a special enactment promulgated to discourage land grabbers and to protect right of owners and lawful occupants of property as against unauthorized and illegal occupants--- All cases of illegal occupants without any distinction are covered by Illegal Dispossession Act, 2005.</p> <p><b><u>2012 PCrLJ 581</u></b>          IllegalDispossessionAct 2005 had been inducted into criminal law for the intruders called "property grabbers ", also commonly known in local style of speaking as "Qabza</p>

					<p>Groups" or "Land Mafia", whose primary chore or errand was to illegally or forcibly take possession of immovable property belonging to other persons by way of utilizing force. Contents and objectives of Illegal Dispossession Act, 2005, attracted only to the said persons and same did not apply on the persons who had no credentials or antecedents of being properly grabbers or being members of 'Qabza Group' or 'Land Mafia'</p> <p><b><u>2012 P Cr. L J 52</u></b> Any individual who has been illegally dispossessed from his property has a right to have a recourse to the provisions of Illegal Dispossession Act, 2005, without prejudice to such other remedies that may be simultaneously available to him under the other laws. Shahabuddin v. The State PLD 2010 SC 725 ref.</p>
<b>23</b>	<b>Medic-o- legal Re-examination</b>	<b>Criminal</b>	<b>High Court Rules and Orders Vol. III</b>	<b>Ch. 1-G Rule 2.</b>	<p><b><u>High Court Rules and Orders Vol III, Rule 2, Chapter 1-G Part G.</u></b></p> <p>Neither complainant nor witness or an accused person can be compelled to submit to a medical examination for the purpose of evidence without his consent. A criminal court by law has no power to order any person whether male or female to be subjected to medical examination where the consent of person to be examined has not been obtained. Such examination may be authorized if the person is minor, his lawful guardian may give consent. The practice of ordering medical examination of women who has complained of an offence against her virtue is illegal without her consent.</p> <p><b><u>1999 P Cr. L J 2055</u></b> re-examination can only be conducted by the Medical Board if constituted within 21 days of the first examination. This being the factual and legal position.</p>

					<p><b><u>2009 PCrLJ 1281</u></b>  <b><u>Notification of the Government of Punjab, Health Department No.SO(H&amp;D)6-1/90, dated 12-2-1990</u></b> had ordained that the order for constitution of Medical Board to re-examine the injuries must be passed within three weeks--Another <b><u>notification No.SO(H&amp;D)6-1-/90, dated 8-2-1992</u></b> had clarified that if re-examination order was passed by the District, Magistrate in judicial capacity even after three weeks of the first examination, the same would supersede the Notification, dated 12-2-1990-</p>
24	<b>Approach of the court in CNSA cases</b>	<b>Criminal</b>	<b>Control of Narcotic Substance s Act (XXV of 1997)</b>		<p><b><u>2010 SCMR 27</u></b>  In the case of transportation or possession of narcotics, technicalities of procedural nature or otherwise should be overlooked in the larger interest of the country, if the case stands otherwise proved the approach of the Court should be dynamic and pragmatic, in approaching true facts of the case and drawing correct and rational inferences and conclusions while deciding such type of the cases.</p>
25	<b>ASI conducted investigation</b>	<b>Criminal</b>	<b>Control of Narcotic Substance s Act (XXV of 1997)</b>		<p><b><u>2003 S C M R 1237 MUHAMMAD HANIF Versus THE STATE</u></b>  When prosecution had established the factum of recovery beyond shadow of doubt and proved the accusation to the hilt, and no other officer of higher rank than A.S.I., who was incharge of the Police Station, was available, raid conducted and investigation made by the police officer in violation of the provisions as contained in Ss.21 &amp; 22 of the Control of Narcotic Substances Ordinance, 1997, would not vitiate the trial and at the most such an irregularity could be cured under S.537, Cr.P.C. as it had caused no prejudice to the accused. <b>State v. Bashir PLD 1997 SC 408.</b></p>

26	<b>Culpability of accused is confined to narcotics from where sample was obtained</b>	<b>Criminal</b>	<b>Control of Narcotic Substances Act (XXV of 1997)</b>		<b><u>2010 SCMR 1162</u></b> Seventeen packets of one kilogram narcotic each had been recovered by the police from secret boxes of the kitchen of accused---Only six grams of the narcotic was sent for chemical analysis without indicating that a sample was taken from each packet---Admittedly, no sample was taken from any other packet except one which weighed only one kilogram---Case of accused, thus, falls under S.9(b) of the Control of Narcotic Substances, 1997---Conviction of accused was consequently, converted from S.9(c) of Control of Narcotic Substances Act, 1997 to S.9(b) thereof and her sentence was reduced including that of fine to the one already undergone by her.
27	<b>Effect of percentage of substance is relevant</b>	<b>Criminal</b>	<b>Control of Narcotic Substances Act (XXV of 1997)</b>	<b>Sec.29</b>	<b><u>2006 SCMR 1539</u></b> Sentence is to be proportionate to the heroin powder in the form in which it is marketable, regardless of its composition.
28	<b>Initial burden on the prosecution and then the onus shifts upon the accused</b>	<b>Criminal</b>	<b>Control of Narcotic Substances Act (XXV of 1997)</b>	<b>Sec.29</b>	<b><u>2010 S C M R 27</u></b> <b><u>2010 M L D 481</u></b> Prosecution discharged its initial onus while proving that substance was recovered from him whereas accused failed to discharge his burden in terms of S.29 (d) of Control of Narcotic Substances. Act, 1997. Supreme Court declined to interfere in conviction and sentence awarded to accused by Trial Court-Leave to appeal was refused.
29	<b>Evidentially value of child witness</b>	<b>Criminal</b>	<b>Qanun-e-Shahadat Order 1984</b>	<b><u>Art.3</u></b>	<b><u>AmjadJaved v. The State 2002 SCMR 1247,</u></b> that consistent credible, confidence-inspiring and straightforward ring of truth and innocence statement of a

					<p>child witness could safely become basis of conviction provided the same had been corroborated by other evidence i.e. circumstantial, medical, recovery and reports of Serologist etc.</p> <p><b><u>Muhammad Jamal v. State 1997 SCMR 1595</u></b> Confidence-inspiring testimony of a child supported by medical evidence, last-seen evidence was relied upon to maintain the conviction.</p> <p><b><u>State through A.-G. Sindh Karachi v. Farman Hussain and others PLD 1995 SC 1</u></b> evidence of a child witness was a delicate matter and normally it was not safe to rely upon it unless as a rule of prudence, it is corroborated and great care be taken that element of coaching was not involved in the evidence of child.</p>
30	<b>Effect of default in cross examination by defence</b>	<b>Criminal</b>	<b>Qanun-e-Shahadat Order 1984</b>	<b><u>133</u></b>	<p><b><u>2011 PLJ SC 177</u></b> Where the cross examination was not conducted on the part of fault of defense then examination in chief can be used, admissible and legal evidence but weight is to be touched on its attending circumstances. I.O was not cross examined because of the fault of the defense. The examination in chief of I.O is legal piece of evidence and admissible in nature and it is being used against the accused.</p>
31	<b>Effect of absconsion of accused in murder case</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b><u>512</u></b>	<p><b><u>1980 SCMR 474</u></b> Sudden disappearance for a short while could possibly be explained as an impulsive act of "sheer timidity", aimed at avoiding "risk of disgrace", torture of police, or the "ordeal of a criminal trial". Such a long absence, in this case of over a year, could not possibly be explained by reference to an ephemeral emotional reaction when the parties were already accustomed to serious criminal litigation.</p>

				<p><b><u>1976 SCMR 185</u></b> It is corroborated by the fact that the appellant absconded from the village for nearly seventeen months. The explanation given by him has been rightly rejected by the Courts below, as it was not supported by any evidence on the record.</p> <p><b><u>1992 SCMR 1036</u></b> No doubt, ascendance by itself is not sufficient to convict an accused person but is a strong piece of corroborative evidence of the other direct and circumstantial evidence in the case.</p>
<b>32</b>	<b>Motive</b>	<b>Criminal</b>		<p><b><u>2010 SCMR 97</u></b> <b><u>1979 SCMR 214</u></b> that when motive is alleged but not proved then the ocular evidence required to be scrutinized with great caution.</p> <p><b><u>1971 SCMR 432</u></b> that the prosecution though not called upon to establish motive in every case, yet once it has set up a motive and failed to establish it, the prosecution must suffer consequence and not the defence.</p> <p><b><u>PLD 1976 SC 629</u></b> where motive is an important constituent and is found by the Court to be untrue, the Court, should be on guard to accept prosecution story.</p> <p><b><u>2008 Y L R 997</u></b> If the motive is alleged then it becomes the duty of the prosecution to prove the same. <b>1999 SCMR 869 and AnarGul v. The State 1999 SCMR 2303.</b></p>



					<p><b><u>Allah Dad &amp; others vs. Mohammad Nawaz &amp; others 2001 SCMR-1111</u></b></p> <p>Motive is a state of mind of the accused and is not always established. Motive and ocular testimony are distinct and the former does not necessarily control the later. It is true that where motive is attributed, it requires to be examined that whether it could be a reason for commission of crime, but at the same time its absence or weakness would not by itself be sufficient to discard an un-impeachable evidence rendered by the prosecution. In other words, ocular testimony is to be looked into on its own intrinsic value and it could not always be regarded as subservient to motive. Motive in many cases remains shrouded in mystery and never comes to surface.</p>
33	Relationship of witness-relevancy	Criminal	PPC	302	<p><b><u>2010 S C M R 1791 SherazTufail v. The State 2007 SCMR 518, Khair Muhammad and another v. State 2007 SCMR 158, AmalSherin and another v. State through A.-G. N.-W.F.P. PLD 2004 SC 371, Dosa and others v. The State 2002 SCMR 1578, MullaRiaz Ahmad v. The State 2002 SCMR 626, Feroze Khan v. The State 2002 SCMR 99, and Farmanullah v. Qadeem Khan and another 2001 SCMR 1473</u></b></p> <p>Mere relationship of a witness with the deceased is no ground for discarding his evidence if he, otherwise appears to be truthful and his presence at the place of occurrence is probable and would not dub him as an interested witness because interested witness is one who has, of his own, a motive to falsely implicate the accused, is biased, partisan, or inimical towards the accused, hence any witness who deposed against by no stretch of imagination can be regarded as an "interested witness" and merely because the witnesses are kith and kin, their evidence cannot be rejected, if otherwise it is trustworthy. Related witnesses some time, particularly in murder cases, may be more reliable, because they, on account of their relationship with</p>

					the deceased, would not let go the real culprit or substitute an innocent person for him.
34	"falsus in unofalsus in omnibus"	Criminal	Maxim	302	<p><b><u>(PLD 1962 SC 502), PLD 1970 SC 13), (1977 SCMR 150), 1981 SCMR 1136; (1993 SCMR. 155), (PLD 1985 SC 11), (1992 SCMR 1647), (PLD 1996 SC 138), (1990 SCMR 803). PLD 2002 SC 52.2010 S C M R 1090</u></b></p> <p>The principal enshrined in the maxim falsus in unofalsus in omnibus is not applicable and testimony of a witness will be acceptable against one set of accused though same has been rejected against another set of accused facing same trial. However, for safe administration of justice a condition has been laid that the evidence which is going to be believed to be true must get independent corroboration on material particulars meaning thereby that to find out credible evidence principle of appreciation of evidence i.e. sifting chaff out of grain was introduced</p>
35	Mitigating Circumstances -Not certain whose fire shot killed the deceased	Criminal	PPC	302	<p><b><u>1995 SCMR 142 ALLAH DAD and another versus THE STATE</u></b></p> <p>It is not certain from the evidence on record that whose shot killed the deceased and the sentence of death awarded was substituted by the alternate sentence of imprisonment for life</p>
36	Amendment in pleadings	Civil	CPC	Order 6, Rule 17	<p><b><u>P L D 1985 Supreme Court 345</u></b></p> <p>Once Court decides that amendment is necessary for said purpose of determining real question, Court is required by law to not only to allow application made by a party in that behalf but is also bound to direct amendment for said purpose subject to condition that nature of suit in so far as its cause of action is concerned is not changed by amendment whether it falls under first part of r. 17 or in second part-Amendment, however, has to be allowed "in such manner and on such terms as may be just.</p>

37	<b>Deeming Clause</b>	<b>Civil</b>	<b>Interpretation</b>	--	<p><b><u>2006 SCMR 1670</u></b>  The Legislature may in a statute provide the existence of a certain fact or the happening of an event or meaning of a word, which actually does not exist or happen or which ordinarily is not assigned to it. It is made to exist or happen or mean by deeming provisions/creating a legal fiction. The Legislature sometimes uses the deeming provisions in a statute to impose for the purpose of the statute an artificial construction of a word or a phrase that would not otherwise prevail. Where in defining anything, the Legislature uses the word "included" or "includes", the rule of interpretation is that it is used as a word of enlargement and it ordinarily implies that something else has been included, which falls outside the general meaning of the word.</p>
38	<b>Stay of Criminal Proceedings pending civil litigation</b>	<b>Criminal</b>	<b>CrPC</b>	<b>561-A</b>	<p><b><u>PLD 1968 Supreme Court 281</u></b>  Stay of criminal proceedings initiated upon police challan. No invariable rule that proceedings should be stayed Matter one of discretion-Guiding principle in exercising discretion-Stay order of High Court under S. 561-A distinguishable from ,stay ordered by civil Court-Criminal Court itself has the "right and duty" to stay in proper cases.</p>
39	<b>Criminal and departmental proceedings</b>	<b>Civil</b>			<p><b><u>PLD 85 Supreme Court 134</u></b>  Judgment in criminal case could be relevant only for ascertaining whether it was a judgment of conviction or acquittal and whether it was an honourable acquittal-Other opinion and findings apart from such two findings, recorded or expressed in judgment, held, could not be utilised by Service Tribunal for unsettling other proceedings.</p>

					<p><b><u>1993 SCMR 2177</u></b></p> <p>Criminal proceedings and departmental action can go on side by side and may even end in varying results. In departmental proceedings the desirability of a civil servant to continue in service is under examination whereas the object of the criminal proceedings is to determine and enforce the criminal liability of any accused. The nature of evidence and the standards of proof are different in the two proceedings.</p> <p><b><u>2006 SCMR 1192</u></b>Criminal proceedings were not barred in presence of civil proceedings and civil and criminal proceedings could be proceeded simultaneously.</p> <p><b><u>1996 SCMR 186; 1993 SCMR 2177</u></b></p>
<b>40</b>	<b>Limitation against Void order</b>				<p><b><u>1986 SCMR 962</u></b></p> <p>If an impugned order has been passed without hearing and notice to a party whose presence is otherwise necessary before authorities concerned, such order will be a nullity in eye of law, and no question of limitation would arise. P L D 1969 S C 582 rel.</p> <p><b><u>1987 SCMR 1543</u></b></p> <p>Decree in the suit having been passed in utter contravention of the mandatory provisions of law, such order was a nullity against which no limitation could run. In this connection, reliance was placed on a judgment of this Court in the case of (1986 SCMRI 962).</p>

41	<b>Effect of continuation of tenancy after the expiry of term</b>	<b>Civil</b>	<b>Rent Restriction Ordinance</b>	<p><b>PLD 1988 Supreme Court 190</b> The terms of agreement of tenancy, after its termination, leaving aside the theoretical possibilities all of them can be interpreted consistently on the following lines: -</p> <p>ONE: notwithstanding the enactment of the rent laws the relationship of landlord and tenant would continue to be determined and regulated in accordance with-</p> <p>(a) the general law; and</p> <p>(b) the terms of tenancy between the parties--But, subject to a very important condition that in case of repugnancy of either of these two elements to any of the provisions of the rent law the latter shall prevail; meaning thereby that the provisions of the general law and/or the covenants in the agreement to the contrary, shall have no effect:</p> <p>TWO: during the continuance and subsistence of the agreement of tenancy, the question of relationship of landlord and tenant, the regulation of that relationship particularly vis-a-vis the determination and payment of rent; as also the eviction, shall be governed by the covenants contained in the agreement; provided that those covenants do not come in conflict with the provisions of the rent law and in case of conflict the provisions of that law will prevail notwithstanding any term of agreement to the contrary;</p> <p>THREE: after the expiry of the agreement of tenancy the general law of- holding over by the tenant has not been repealed or modified by the rent laws except to the extent that it comes in conflict with the provisions of the Rent Restriction Law. On the contrary, it was specifically provided in the definition of a 'tenant' in section 2 of the West Pakistan Urban Rent Restriction Ordinance, 1959 that</p>
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					a tenant would include 'a tenant continuing in possession after the termination of the tenancy in his favour'. Thus, it can safely be said that the rent laws permit all covenants in agreements, alive or expired; which, are permissible under the general law and not inconsistent with or repugnant to that special law; and enforces the same accordingly whenever it is so required under that law. In addition, they also remain operative for other purposes permitted by the general law.
<b>42</b>	<b>Statement of account</b>	<b>Mercantile Law</b>	<b>Bankers' Books Evidence Act (XVIII of 1891)</b>	<b>2(8) and 4</b>	<b><u>2004 CLD 587</u></b> Document which was merely the Banking Company's Certificate of Balances could not be termed or defined as statement of account, as it should have shown each and every entry as pertaining in the ledger or account book of a Banking Company--Banking Company had claimed the document showing entries of the debit balances to be a statement of account-Said document was merely the Banking Company's Certificate of Balances-In the absence of Statement of Account showing all debits, credits and dates thereof as entered by the Banking Company in the ledgers and books of accounts from the disbursement of loan amount till the date of the suit, no presumption of truth or correctness could be attached to the such mentioned.
<b>43</b>	<b>Double taxation</b>	<b>Mercantile Law</b>			<b><u>2001 SCMR 1208</u></b> - Taxation, one by the Parliament and the other by the Provincial Government on fixed assets is not prohibited. Haji Muhammad Shafi and others v. Wealth Tax Officer and others 1992 PTD 726 rel.

					<p><b><u>1992 SCMR 891</u></b>          Unless there is any prohibition or restriction imposed on the power of Legislature to impose a tax twice on the same subject-matter, double taxation though a heavy burden and seemingly oppressive and inequitable, cannot be declared to be void or beyond the powers of the Legislature. It may, however, be noted that double taxation can be imposed by clear and specific language to that effect. Where the language is not clear or specific by implication such levy cannot be permitted.</p>
44	<b>Suit against dead person</b>	<b>Civil</b>	<b>CPC</b>		<p><b><u>2001 SCMR 1.</u></b>          Suit of the plaintiff against a dead person was incompetent and, therefore, nullity in law.</p>
45	<b>Suo Moto power of High Court to issue writ</b>				<p>PLD 1960 Supreme Court 295          The case for initiation of a writ was started suomoto without any petition made before the High Court. This was an entirely improper exercise of judicial power. The proceedings in writ petition were quashed as being void and without jurisdiction.          1982 SCMR 549          Relief, held, must be confined to prayer made in writ petition and High Court cannot issue a writ suomotu.</p>
46	<b>Bar of laches</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>		<p><b><u>PLD 2003 SC 90</u></b>          No hard and fast rule can be laid down for application of the principle of laches. The Bar of laches cannot be equated with statutory bar of limitation. Laches operate in equity and in case of laches, the dictates of justice and equity are to be weighed as the legitimate rights cannot be denied on the ground of laches unless it is found that same will cause injustice to the opposite-party but a person can be non-suited on the basis of laches if due to his negligence, rights were created in favour of opposite-party The discretion</p>

					should not be exercised by the in-justice in aid of injustice and it should examine the dictates of justice in case of each party in addition to the examination of law and the question of jurisdiction as an obligation.
<b>47</b>	<b>Stay in money decree</b>	<b>Civil</b>	<b>C.P.C</b>	<b>Order XXI Order 39 Rules 1&amp;2</b>	<p><b><u>1975 SCMR 203</u></b> High Court refusing to stay execution of money decree but directing decretal amount, if deposited in Court, not to be paid to decree holders unless sufficient security for reimbursement furnished High Court, held, exercised its discretion on sound principles governing execution of money decrees pending their challenge on appeal.</p> <p><b><u>1995 SCMR 708</u></b> The execution of the order of Trial Court was not suspended, but if respondents deposited the amount incorporated into decree within three months, appellants would be entitled to withdraw the amount on furnishing of security for refund if respondent's appeal ultimately succeed, to the satisfaction of the Trial Court. MessrsBundial Bus Service v. Mst. SanjeedaAfzal and others 1975 SCMR 203 and SadiqSayeed Khan and another v. Central Government through Secretary, Defence and Military Estate Officer, Abbottabad and others 1986 SCMR 1147 (1) ref.</p>
<b>48</b>	<b>Effect of continuation of stay order</b>	<b>Civil</b>	<b>C.P.C</b>	<b>Order XXXIX Rule 2-A</b>	<p><b><u>1999 SCMR 2215</u></b> Where neither any reply was filed nor any request was made for discharge of the interim injunction/status quo order, the legal position would be that the interim order would continue despite no specific order having been passed extending the order granting status quo. Provision of O.XXXIX, R.2-A, C.P.C. did not require a specific order for extension of the interim injunction after expiry of 15 days in case defendant sought time for defence of application for injunction. Interim injunction stands expired after six months under O.XXXIX, R.2-B, C.P.C.</p>



49	<b>Acquisition of land-mala fide use of power</b>	Civil	<b>Constitution of Pakistan 1973</b>  <b>Land Acquisition Act 1894</b>	<b>Article 4, 5, 23, 24</b>	<b><u>2003 CLC 1510</u></b> Authorities having failed in the litigation had initiated proceedings under the provisions of Land Acquisition Act, 1894, Authorities could acquire the land/property of any citizen subject to the condition that acquisition proceedings must be in accordance with law in view of Arts. 23 & 24 read with Arts. 4 & 5 of the Constitution- Authorities had no lawful right to initiate proceedings under the provisions of Land Acquisition Act, 1894 in the garb of public interest and purpose, as once the action of the public functionaries was based on malice the same was not sustainable in the eyes of law.
50	<b>Appeal against conviction in contempt cases</b>	Criminal	<b>Contempt of Court Act, 1976</b>		<b><u>PLD 1979 SC 912</u></b> Intra court appeal is available in cases of conviction only.
51	<b>Special Oath</b>	Civil	<b>Oaths Act (X of 1873)</b>	<b>Sec. 9, 10 &amp; 11</b>	<b><u>PLD 2002 Supreme Court 655</u></b> Supreme Court restrained the Courts from accepting offer of anyone of the parties for decision of the case on oath so promptly because there was every possibility, that may be for the time being, the offer for the decision of the case of special oath was accepted without knowing its consequences but after some time the party may resile from such offer for any cogent reason. Muhammad Ali v. Maj. Muhammad Aslam and others PLD 1990 SC 841 rel.
52	<b>Limitation of Civil Revision</b>	Civil	<b>CPC</b>	<b>115</b>	<b><u>PLD 2010 Supreme Court 1186.</u></b> Revisional jurisdiction being a supervisory power was meant to correct jurisdictional errors, illegalities and irregularities creeping into decision of subordinate courts---Revisional court could suomotu discharge such obligation, for which law had not prescribed any time limit---

53	<b>Guardianship Subsequent application</b>	<b>Civil</b>	<b>Guardian and Wards Act 1890</b>	<b>Section 25</b>	<p><b><u>PLD 1967 Supreme Court 402</u></b>          First application under S. 25, Guardians and Wards Act dismissed in default Second application not barred Subsequent applications can be made until such right has been adjudicated upon, especially <b><u>PLD 1967 Lahore 977</u></b>          Cause of action for making a second application for custody of minor Continues to exist so long as custody of minor with anyone is not in conformity with minor's welfare-Second application not barred by O. IX, r. 9, Civil Procedure Code (V of 1908).</p>
54	<b>Refund of tax</b>	<b>Mercantile Law</b>	<b>Limitation Act, 1908</b>	<b>Article 96 of First Schedule</b>	<p><b><u>PLD 1998 Supreme Court 64</u></b>          The latest judicial trend was to deprecate and to discourage withholding of a citizen's money by a public functionary on the plea of limitation or on any other technical plea if it was not legally payable by him.. Such payments are held to be not covered by Rule 11 of the Central Excise Rules, 1944, or section 33 of the Customs Act etc. The refund of such amounts were allowed inter alia on the basis of section 72 of the Contract Act which provides that "a person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it". Such refunds could be claimed 'either by filing a suit for the recovery of the amount for which the period of limitation applicable would be three years under Article 96 of the First Schedule to the Limitation Act () or the same could be recovered through a Constitutional petition if no disputed fact was involved.</p>
55	<b>Tax/fee distinction</b>	<b>Civil / Tax / custom</b>	<b>Customs Act (IV of 1969)</b>	<b>section 18-B</b>	<p><b><u>1999 SCMR 1402</u></b>          Tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered-Fee may be generally defined to be a charge for a special service rendered to individuals by some governmental agency.</p>

56	<b>Alternative remedy</b>	<b>Mercantile Law</b>	<b>Constitution of Pakistan (1973) Customs Act (IV of 1969) Sales Tax Act (VII of 1990),</b>	<b>185(3)  Section 19  Section 13</b>	<b><u>1999 SCMR 1072</u></b> Rule that invoking the Constitutional jurisdiction was possible only after exhausting all other remedies, is a rule of convenience and discretion by which the Court regulates its proceedings. Said rule is not a rule of law Effecting the jurisdiction.
57	<b>Locus poenitentiae</b>	<b>Constitution</b>	<b>Legal Maxim</b>		<b><u>PLD 1969 SC 407 ,2004 SCMR 497 rel.</u></b> Doctrine of locus poenitentiae, Applicability, Seniority is not a vested right of civil servant, Placement of any civil servant in seniority list over and above other civil servants does not confer any vested right on him to invoke doctrine of locus poenitentiae <b><u>PLD 2002 Lahore 290</u></b> Rules of locus poenitentiae would help the persons equipped with the "legal right" whose hands were not smeared with malice.  <b><u>2000 SCMR 907</u></b> Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order.
58	<b>Trust--not a juristic person</b>				<b><u>2002 CLD 188</u></b> Both "Trust" and "Trustee" are two distinct and separate identities. Trust has no juristic personality, whereas, the Trustee has the position of corporate sole.

59	Interlocutory order by Special Court	Mercantile Law	Banking Companies (Recovery of Loans) Ordinance (XIX of 1979)	3, 7, 8 11 & 12	<p><b><u>1998 SCMR 1961</u></b> No appeal, review or revision shall lie against any interlocutory order of the Banking Court other than an order passed under S.18(6) of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997.</p> <p><b><u>PLD 1981 Supreme Court 359</u></b> Banking Companies (Recovery of Loans) Ordinance (XIX of 1979) Ss. 3, 7, 8, 11 &amp; 12 read with Civil Procedure Code (V of 1908), S. 115-Interlocutory orders-Revisional jurisdiction of High Court Provisions of Ss. 11 &amp; 12 of Ordinance effectively bar appeals etc. against- interlocutory orders of Court of Special Judge constituted under Ordinance. Provisions of Civil Procedure Code, 1908 continue to apply to such cases only to extent as not ousted by provisions of Ss. 11 &amp; 12. Interlocutory order of Special Judge, even without specific ouster of provision of S. 115, Civil Procedure Code, held, cannot be challenged. Framers of Ordinance, held further, purposely saved interlocutory orders of Special Judge from attack before High Court in revision or appeal with a view to securing expeditious disposal of cases by a Special Court and desired only final decisions of Special Court to be open to appeal before High Court.</p>
60	Abetment	Criminal	PPC	109	<p><b><u>2009 SCMR 493</u></b> It was observed that It does not appeal to reason that in these days when numerous sources of communication are available, the PWs. were incapacitated to do the needful i-e to convey the information to the complainant party. Thus, the only logical inference possible to be drawn from the "omission" so made is that the plea of conspiracy was introduced as an afterthought.</p>

61	<b>Effect of arbitration in criminal matter</b>	<b>Criminal</b>	--	--	<b><u>PLJ 1999 Lahore 1022</u></b> Arbitration cannot be held in criminal matter.
62	<b>Disinterment of dead body</b>	<b>Criminal</b>	<b>CrPC</b>	<b>Section 176(2)</b>	<b><u>2005 PCr.LJ 736</u></b> It should only be exercised in case complainant succeeded in making a persuasive accusation after explaining delay and then moved for disinterment of the body through police who had then to collect evidence---Being Muslims, one had to respect a dead body and only against serious accusation should allow disinterment.
63	<b>Effect of TalaqSlasa</b>	<b>Civil</b>	<b>Mustlim Family Laws Ordinance, 1961</b>	<b>Section 7(3)</b>	<b><u>1990 CLC 1683 ,1992 SCMR 1273</u></b> S. 7(3)-Talaq pronounced thrice in one sitting becomes effective immediately and in such eventuality, the question of its revocation does not arise.  <b><u>1997 Pcr.L.J 1655</u></b> In case of clash between an existing law and the Injunctions of Islam with regard to the validity of marriage, Injunctions of Islam shall prevail for the purpose of Muslim Family Laws Ordinance, 1961. ref.  <b><u>1987 CLC 1496</u></b> Talaq by mutual agreement, held, was in nature of Mubarat and had become irrevocable from date of-its execution and provision of revocation in S. 7 of Family Laws Ordinance was inapplicable in circumstances. GhulamNabi v. FarrukhLatif and 2 others <b><u>1986 S C M R 1350; P L D 1963 S C 52; 1970 S C M R 841984 S C M R 583</u></b>
64	<b>Theory of diminished responsibility</b>	<b>Criminal</b>			M'Naghten's case (1843) 10 CI & F 200; Byrne's case (1960) 2 QB 396; Vinagre's case (1979) 69 Cr. App. R 104; Reynolds' case (1988) Grim. LR 679 and Muhammad Shafi v. The State PLD 1962 SC 472 ref.

					Diminished responsibility. Concept of the degree of criminal responsibility of a person has undergone progressive and far-reaching changes because of the advancement of medical and psychiatrist sciences. Law of the country which is based on the M'Naghten Rules, however, has remained static and not dynamic. Life is becoming more and more complicated, difficult and stressful with the result that more and more people are suffering from mental diseases of various degrees. Acceptance of the doctrine of "diminishes' responsibility" and giving same the shape of law is, therefore, certainly a requirement which has been overlooked. English law had taken help from the Scottish Doctrine of Diminished Responsibility and introduced same into law now known as Homicide Act, 1957, whereby the principle of M'Naghten Rules had been expanded which is certainly more progressive and gives wider meaning of "defective reasoning" If laws in Pakistan remain stagnant are not developed, Pakistanis can always look towards more progressive views of other countries for keeping themselves afloat in the comity of civilized world and can use these views of the welfare of our people.
65	<b>Publication of notification in official gazette</b>	<b>Civil</b>	<b>Punjab Acquisition of Land (Housing) Act, 1973</b>	<b>Section 3</b>	<b><u>PLD 2004 Supreme Court 261</u></b> After a housing scheme has been approved and notified by the Government, there is no specific stipulation of publication of such an approval in the official Gazette---Word "notified" used in S.3 of Punjab Acquisition of Land (Housing) Act, 1973, does not always mean publication of a notification in the official Gazette as a mandatory condition.
66	<b>Presumption</b>	<b>Civil</b>	<b>Qanun-e-Shahadat 1984</b>	<b>Article 129</b>	<b><u>PLD 1964 Supreme Court 598</u></b> Plaintiff not calling for accounts which were otherwise available Presumption drawn that if such accounts had been called for they would not have supported plaintiff's case

					<p><b><u>PLJ 2006 Supreme Court 737</u></b> Non production of summoned record it will be presumed that if produce it would have gone against the party.</p>
67	<b>Stay order when to start operating</b>	<b>Civil</b>	<b>CPC</b>	<b>Order 41 Rule 5</b>	<p><b><u>PLD 2000 Supreme Court 52 ,1992 SCMR 127</u></b> Stay order operates from the time when such order is made and not from the time same is communicated. Ignorance of such order would not permit lower Court to render order of superior Court ineffective or nullity, and such action would not be clothed with legality when legal order to proceed had been stopped or stayed.</p>
68	<b>Condonation of delay -Non Issuance of Notice--</b>	<b>Civil</b>	<b>Pre-emption Act 1991 Limitation Act (IX of 1908)</b>	<b>4 &amp; 21 5</b>	<p><b><u>2002 SCMR 37 ,2002 SCMR 1903</u></b> Petition delayed by one day. Notice not issued by copying agency for obtaining certified copy. Where the delay was of one day, Supreme Court in the interest of justice in order to decide the case on merits, condoned the delay</p> <p><b><u>PLD 1991 Supreme Court 400</u></b> High Court (Lahore) Rules and Orders Vol.1, Chap. XIV-D, para. 2(ii). "Time requisite". Where the Rules of the Court or Copying Branch provide that a date shall be communicated to the applicant when the certified copy will be ready, the "time requisite" for obtaining the certified copy, which can be excluded under S. 12, would be, the time which is taken between the date of application and the last date which is communicated to the applicant by the official of the copying branch for taking delivery of the certified copy Where a number of dates were given to the applicant for taking delivery of the certified copy by the Copying Branch, "time requisite" could be calculated up to the last date, if this be later than that on which the certified copy was ready for delivery PLD 1973 SC 222; 1975 SCMR 157.</p>

69	<b>Decree in Excess of Jurisdiction</b>	Civil	CPC	12 (2)	<b><u>PLD 1998 Karachi 279</u></b> Civil Procedure Code (V of 1908), S.12(2) Decree of loan .amount against guarantor-Decree against guarantor was beyond the guaranteed amount. Such decree was, thus, in excess of jurisdiction, whereupon guarantor was entitled to seek relief in terms of S.12(2), C.P.C.; such provision effectively safeguarded against decree which was in excess of jurisdiction.
70	<b>Dismissal from Servic-Forum to Approach</b>	Constitution	<b>Constitution of Pakistan 1973</b>	<b>Article 212</b>	<b><u>2002 P L C (C.S.) 647</u></b> Civil servant was dismissed from service after issuing. Show cause notice Civil servant could have availed the remedy by filing an appeal against his dismissal order before the Competent Authority or before the Service Tribunal. - Constitutional petition directly filed by the civil servant was not maintainable on account of bar under Art.212 of the Constitution of Pakistan (1973). Abdul Wahab's case PLD 1989 SC 508; I.A. Sherwani's case 1991 SCMR 1041; 1998 SCMR 1948; Dr. Ahmad Suleman Waris's case PLD 1997 SC 382; 1994 SCMR 2213; Zahid Akhtar's case PLD 1995 SC 530; Syed Mazhar Hussain Bukhari's case 1998 SCMR 1984 and Khalid Mahmood Wattoo's case 1998 SCMR 2280 ref.
71	<b>Violation of Non-Statutory Rules</b>	Civil	<b>Federal Service Tribunals Act, 1973</b>	<b>Section 4</b>	<b><u>PLD 2002 Supreme Court 1079</u></b> An aggrieved person can avail the remedy of civil suit or invoke the Constitutional jurisdiction of High Court. Person being aggrieved of an action of the Housing Foundation either in relation to his right and entitlement of allotment of a plot or in any other matter of public importance, can maintain a Constitutional petition. non-statutory rules framed by such official bodies become enforceable in law without any prohibition in case of breach of non-statutory rules/instructions being continuously and consistently acted upon by such' an official agency---Constitutional petition is maintainable in circumstances.



72	<b>Order with reason</b>	<b>Interpretation</b>	<b>General Clause Act</b>	<b>24-A</b>	<p><b><u>1998 SCMR 2268</u></b>  Section 24-A in the General Clauses Act, 1897, declares that where a statute confers a power to make any order or to give any direction to any Authority, office or person, such would be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. What is more, the order or direction, so far as necessary or appropriate would reflect reasons for its making or issuance and, where the same is lacking, an effectee may demand the necessary reasons, which, in response,, would, be furnished.</p>
73	<b>Rejection of plaint</b>	<b>Civil</b>	<b>CPC</b>	<b>Order 7 Rule 11</b>	<p><b><u>2006 SCMR 489</u></b>  Court had to presume that every averment made in the plaint was true, therefore, power to reject the plaint under O.VII, R.11 C.P.C. must be exercised only if the Court had come to the conclusion that even if all the allegations were proved, the plaintiff would not be entitled to any relief. PLD 1964 SC 337; PLD 1985 SC 345; Abdul PLD 1967 SC 411; 1993 SCMR 2039 ref.</p> <p><b><u>2002 SCMR 338</u></b>  It is settled law that this court while examining the case in the light of u/o 7 rule 11 CPC can look into the intrinsic value of the document appended with the plaint.</p>
74	<b>exdebitojustitiae -- Power of Appellate Court</b>	<b>Civil</b>	<b>CPC</b>	<b>Order 41 Rule 33</b>	<p><b><u>PLD 1993 Supreme Court 418</u></b>  Sections 107(2), 151 and Order XL 'Rule 33 contained in C.P.C are all enabling provisions; the powers there under can be exercised by the Court to cover ostensibly impossible situations, for complete dispensation of justice, for which C.P.C. has been designed, but despite the best efforts of the draftsman, to cater for all possible situations, if it is found lacking in meeting some eventualities, the Court can act supply the omission in the procedure, adopt methodology for effectually carrying out the purpose in view. Reading of</p>

					these provisions together would amply demonstrate that the Appellate Court enjoys plenary powers to proceed in the matter.
75	<b>Civil Miscilinous to be decided first</b>	<b>Civil</b>			<b><u>1991 SCMR 1232</u></b> Application for additional evidence remained un-disposed of before the Appellate Court---Held: where application for production of additional evidence was filed before the Appellate Court, it ought to have been adjudicated upon before disposing of appeal. Amina Begum v. GhulamDastgir PLD 1978 SC 220 ref.
76	<b>Expertevidenc e—only confirmatory or explanatory</b>	<b>civil</b>	<b>Qanoon-e-Shahadat Order</b>	<b>Art. 59</b>	<b><u>2007 SCMR 1692</u></b> Expert's evidence was only confirmatory or explanatory of direct or circumstantial evidence. Confirmatory evidence could not be given preference where confidence inspiring and worthy of credence evidence was available. 1994 SCMR 2189  <b><u>PLD 1997 Supreme Court 53</u></b> Ballistic Expert's report-Expert evidence, whether medical or of Ballistic Expert-Entirely in nature of confirmatory or explanatory of direct or other circumstantial evidence Confirmatory evidence. Not of much significance in presence of direct definite forthright and creditworthy evidence. Expert evidence Cannot outweigh direct evidence not deficient in quality
77	<b>Grant of pardon by president</b>	<b>Constitu tion</b>	<b>Constitutio n of Pakistan 1973</b>	<b>Art.45</b>	<b><u>PLD 2006 Supreme Court 365</u></b> President enjoys unfettered powers to grant remissions in respect of offences and no clog stipulated in a piece of subordinate legislation could abridge such powers of the President. Such powers of the President were not violative of the spirit of Art.2-A of the Constitution. Power of the President to grant pardon, reprieve, respite, remit or

					suspend, or commute any sentence was not subject to S.402, Cr.P.C
<b>78</b>	<b>Partial quashment of FIR</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>561-A</b>	<p><b><u>1976 PCrLJ 555</u></b> Partial quashment cannot be allowed</p> <p><b><u>PLD 1973 Karachi 478</u></b> Co-accused not parties to application for quashment of proceedings. Cases of all accused inseparable. Prosecution, in circumstances, cannot be allowed to continue against co-accused while being dropped against other accused petitioning under S.561-A-Power under S.561-A not dependent upon application by any particular person.</p>
<b>79</b>	<b>Police investigation</b>	<b>Criminal</b>	<b>Police Order 2002</b>	<b>18 (6)</b>	<p><b><u>PLD 2006 Lahore 95</u></b> Verification of investigation conducted by an Investigating Officer by some other officer is confined to verification of the record of investigation and in the guise of verification the verification officer cannot re-investigate the case and cannot substitute opinion of the previous officer with his own opinion. Khizar Hayat v. I.G.P. PLD 2005 Lah. 470 rel.</p>
<b>80</b>	<b>Murder committed for Ghariat -no compensation</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>544-A</b>	<p><b><u>PLD 2008 Lahore 32</u></b> In a case of grave and sudden provocation, no compensation can be awarded while relying on judgment of the august Supreme Court of Pakistan in Meraj Begums case PLJ 1982 SC 435, the amount of compensation awarded to the appellant by the learned trial Court, was set aside.</p>
<b>81</b>	<b>Acquittal on compromise whether carry any stigma</b>	<b>Criminal</b>	<b>CrPC</b>		<p>2008 PLD Lahore 200 .<b><u>1998SCMR 1993</u></b> After getting clean acquittal, though on the basis of a compromise, the petitioner did not carry any stigma, which might disqualify him from contesting</p>

<b>82</b>	<b>Cause of action</b>	<b>Civil</b>	<b>CPC</b>	<b>20</b>	<p><b><u>1981 SCMR 494</u></b>  No part of cause of action arising at place of branch office, Corporation, held, cannot be said to transact business at such place.[P L D 1960 S C 202 ref.</p>
<b>83</b>	<b>Summoning of accused in column No. 2 of challan</b>	<b>Criminal</b>	<b>CrPC</b>	<b>Section 173</b>	<p><b><u>1998 SCMR 1428</u></b>  petitioners could not be mechanically summoned by Sessions Court unless first evidence was recorded and in the light of such evidence trial Court deemed it proper to summon them it was held that challan against petitioners had not been cancelled by placing them in column No.2, it only meant that according to police investigation they were found innocent, and therefore, they were discharged under S.63, Cr.P.C. which did not mean that they could not be summoned to stand trial-- P L D 1987 S C 103 and Raja 1985 S C M R 1314 ref.</p>
<b>84</b>	<b>Accused summoned from column No. 2 of report u/s 173 Cr.P.C--Bail</b>	<b>Criminal</b>	<b>CrPC</b>	<b>Section 497/498</b>	<p><b><u>2010 SCMR 611</u></b>  Accused appears in pursuance of process under section 204, Cr.P.C. either through summons or warrants or bailable warrants or on his own and if the offence is non-bailable then the provisions of section 497, Cr.P.C. would be attracted and accused could only be released after moving such application and grant of the same.</p> <p><b><u>2011 SCMR 1513</u></b>  The petitioner was declared innocent during investigation and initially the learned trial Court had merely issued summons. In this view of the matter, we are inclined to convert this petition into appeal and allow the same and subject to petitioner's furnishing bail bonds in the suns of Rs. 50,000 with two sureties in the like amount to the satisfaction of learned trial Court, he is admitted to pre-arrest bail. It is however, made clear that in case he misuses the concession of bail, it would be open for the trial Court to cancel the same after hearing him.</p>

<b>85</b>	<b>Lispendens</b>	<b>Civil</b>	<b>Transfer of Property Act 1882</b>	<b>52</b>	<b><u>PLD 2001 SC 449</u></b> Effect of S.52 of Transfer of Property Act, 1882, is not to wipe out a sale pendente lite altogether, but to subordinate it to the rights based on the decree in the suit purpose of the provisions is to maintain the status quo unaffected by the act to the parties to the litigation pending its determination---No. lawful jurisdiction exists to put a restrictive construction on S.52 of Transfer of Property Act, 1882, and stretch it too far by inferring that even agreement to sell which is subject to limitations as enumerated in the provisions of law cannot be executed.
<b>86</b>	<b>Highest Bid</b>				<b><u>1996 SCMR 1433</u></b> The Authority can reject the highest bid on ground of inadequacy of consideration or for any other good and sufficient reason which would satisfy test of reasonableness and public interest. Where, however, highest bid was accepted at the auction but was subsequently rejected by the Government or the Authority who had final say in the matter, accepted any other bid surreptitiously without giving any opportunity to highest bidder to raise his bid to match other higher bid offered privately and received by such Authority, then such an auction would be violative of principles of natural justice and fair play.
<b>87</b>	<b>Stay of criminal proceedings pending civil suit</b>	<b>Criminal</b>	<b>CrPC</b>	<b>561A</b>	<b><u>P L D 1968 Supreme Court 281</u></b> Normally criminal proceedings should not be postponed pending the disposal of civil litigation connected with the same subject-matter. But where it is clear that the criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in the case if there be a conflict of decision between the civil Court and the criminal Court then in such event it is equally clear that the criminal Court has not only the right to but should also stay its hands until the civil litigation is disposed of. In exercising this

					discretion the guiding principle should be to see as to whether the accused is likely to be prejudiced if the criminal proceeding is not stayed. In cases of disputed title where it is difficult to draw a line between a bona fide claim and the criminal action alleged, a stay can be made in the proper exercise of that discretion.
<b>88</b>	<b>Identification Parade</b>	<b>Criminal</b>	<b>Qanoon-e-Shahadat Order 1984</b>	<b>22</b>	<b><u>1995 SCMR 127</u></b> Identification of accused in the identification parade without attributing to them their role in the crime is of no evidentiary value. 1985 SCMR 721 , 1988 SCMR 557 rel.
<b>89</b>	<b>Admission of accused to bail on oral request</b>	<b>Criminal</b>	<b>CrPC</b>	<b>s.497</b>	<b><u>PLD 1994 Lahore 93</u></b> Accused being in custody for 17 months and the offence alleged against him being punishable with 3 years, was admitted to bail on oral request of his counsel.
<b>90</b>	<b>Recovery of money. W.P. Maintainable</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>		<b><u>1999CLC 1937</u></b> Generally civil suit was the proper remedy for recovery of money but where the amount was admitted and even the amount was paid through the cheques, which were bounced by the Bank and there was no factual controversy involved, Constitutional petition was maintainable. Petition was allowed.
<b>91</b>	<b>Juvenile-Determination of Age</b>	<b>Criminal</b>	<b>Juvenile Justice System Ordinance (XXII of 2000)</b>	<b>7</b>	<b><u>2012 Y L R 590</u></b> Object is to safeguard the human rights of a section of society who deserve concession because of their tender age. Juvenile Justice System Ordinance, 2000, therefore, is to be construed liberally in order to achieve the said object.  <b><u>PLD 2004 Supreme Court 758</u></b> It is the obligation of the court to suspend all further proceedings in the trial and to hold an inquiry to determine the age of the accused. Courts should always feel free to

					<p>requisition the original record, examine the authors and custodian of such record</p> <p><b><u>2002 P Cr. L J 633</u></b>  Ossification test could only give a clue as to the age but could not be a conclusive proof. Such exercise had to be resorted only when there was no other proof available like School Leaving Certificate or the Birth Certificate and the Court was in a quandary about the age of the accused. When the matter was referred for ossification test, a margin had to be given to doctor's opinion as the same was not absolute.</p>
<b>92</b>	<b>Audi alterampartem</b> "	<b>Maxim</b>	<b>Legal Maxim</b>		<p><b><u>1994 SCMR 2232</u></b>  In absence of any statutory service rules, relationship between statutory Corporation and its employees was that of master and servant.  Maxim "audialterampartem" would be applicable to judicial as well as to non judicial proceedings and it would be read into every statute as its part if right of hearing has not been expressly provided therein---Violation of the Maxim could be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction.</p>
<b>93</b>	<b>Supply of copies to an accused</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>241-A/242/243</b>	<p><b><u>1986 PCrLJ 1674</u></b>  Provisions of 241-A Cr.P.C though mandatory yet do not restrain accused from forgoing his right of getting copies of statements to void delay in the trial, available to him under the provision.</p>

94	<b>Effect of compromise at bail stage</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>345 &amp; 561</b>	<p><b><u>1998 SCMR 466</u></b>  Complainant at the time of disposal of pre-arrest bail application of accused had made a statement before the Sessions Court that he had received a sum of Rs.4,000 from the accused as compensation for settlement of the case, in consequence whereof interim pre-arrest bail already granted to accused was confirmed. Sessions Judge, however, on taking cognizance of the case refused to acquit the accused on the basis of said statement of the complainant and High Court in revision directed Sessions Court to acquit the accused in the case as and when hearing took place. Order of High Court was found to be just and proper in circumstances. Leave to appeal was refused accordingly.</p> <p><b><u>PLD 2003 Lahore 739</u></b>  Compromise in a criminal case could not be allowed to be resiled from if it held already been acted upon. Compromise arrived at between the parties at the stage of bail still endured to the benefit of the accused persons and the complainant and injured person could not be allowed to resiled from the same. High Court in exercise of jurisdiction under section 561-A Cr.P.Cquash the case and acquitted the accused on the basis of compromise.</p> <p>Cross reference</p> <p><b><u>2005 SCMR 1342</u></b>  under S.345 (2) Cr.P.C., offences mentioned in first two columns given in the section might, with the permission of the Court before whom any prosecution for such offence was pending, be compounded by the persons mentioned in the third column given there under. Compromise was effected during pendency of petition for bail before arrest, when prosecution of the offence was not pending before the Trial Court. Such compromise could not be made basis for acquittal of the accused as under S.345(2) Cr.P.C.,</p>
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95	<b>Compromise in non compoundable offences- Principle of Merger</b>	<b>Criminal</b>	<b>Cr.P.C</b>	<b>345</b>	<p><b><u>PLD 2008 Lahore 450, PLD 2008 Karachi 420</u></b>  The principle of merger would be applicable which was to the effect that in case of a compromise between the parties in a criminal case, the minor offence even if not compoundable merges into the compoundable major offence..</p> <p><b><u>2008 MLD 1079</u></b>  If the parties had themselves voluntarily forgotten and forgiven the alleged crime and had entered into an outside court settlement. Said settlement could be considered as a ground for the grant of bail in the interest of justice and equity. Judicial notice of a compromise having taken place could be taken even in offences which were not compoundable</p>
96	<b>Acquisition Appeal against award</b>	<b>Civil</b>	<b>Land Acquisition Act 1894</b>	<b>4,5,17</b>	<p><b><u>PLD 2010 SC 745</u></b>  <i>Beneficiary department can appeal against award under Ss. 18(3)(4), 22-A, 50(2), proviso &amp; S.54. Constitution of Pakistan 1973, Art.203-D(3)(b) Provisions of Ss.18(3)(4), 22-A 50(2) and 54 of Land Acquisition Act, 1894 barring right of appeal to such Government/beneficiary had been declared as repugnant to Injunctions of Islam by Shariat Appellate Bench of Supreme Court vide judgment dated 18-2-1991 after fixing a cut-off date till 30-9-1991 for making therein necessary amendments by competent bodies. According to Art.203-D(3)(b) of the Constitution, any law or its provision declared by Shariat Court as repugnant to Injunctions of Islam would cease to have effect on date on which its decision would take effect. Such Government/beneficiaries after expiry of such cut-off date would have right to an appeal.</i></p>
97	<b>Act of Court</b>	<b>interpretation</b>	<b>maxim</b>		<p><i>PLD 1990 SC 859, 97 SCMR 209, <b><u>PLD 1991 SC 782</u></b> act of Court prejudices no one</i></p>

98	<b><i>Additional lease Rental/ Penalties</i></b>	<b>Civil</b>	<b>Contract Act (IX., of 1872)</b>	<b>10,23,74</b>	<b><u>2004 CLD 121. 3</u></b> Recovery of additional lease, rentals and liquidated damages. Question as to what constituted a public policy as envisaged by S.23 of Contract Act, 1872, and what constituted penalty under S.74 of Contract Act, 1872, were mixed questions of law and fact. <i>2005 CLC 915</i>
99	<b><u>Nullus commodum capere potest de injuriis propria</u></b>  <b><u>No man shall take advantage of his own wrong</u></b>	<b>interpretation</b>	<b>Transfer of Property Act (IV of 1882),</b>  maxim	<b>53-A</b>	<b><u>Prescribed mode for thing to be followed and none other circumstances of PLD 1969 SC 14</u></b> Document both unregistered and unstamped-Ordinarily not admissible in evidence-Such document, however, in nature of family arrangement and acted upon by all interested parties, as by taking possession of their respective shares can be treated as, and admitted in, evidence and raises estoppel against parties concerned and prevents them from making claim to share allotted to another. Such document admissible in evidence to consider if question of estoppel arises. Objection as to admissibility of document not raised in trial Court cannot allowed to be raised in second appeal. Person admitting power-of-attorney before trial Court and making statement under authority conferred by such power-of-attorney. Objection as to admissibility of power-of-attorney in evidence not permitted to be raised during second appeal. <b><u>Nullus commodum capere potest de injuriis propria</u></b> " (no man shall take advantage of his own wrong) Person previously making statement on oath that certain property belonged to certain person-Cannot subsequently claim to be joint owner of that property along with that another-No one can be given benefit and advantage of his own fraud. Mian Muhammad Saeed v. Province of West Pakistan <b>P L D, 1964 S C 572</b> rel.

100	<b>Advance Tax</b>	<b>Mercantile</b>	<b>Income Tax Act (XI of 1922)</b>	<b>18-A</b>	<i>Advance Tax remains the property of the assessee in the hands of the central Govt until regular assessment (where recovery is not) <b>1993 PTD 343 (SC)</b></i>
101	<b>Expressiounius exclusioalterius</b>	<b>interpretation</b>	<b>maxim</b>		<b><u>PLD 1975 SC 32</u></b> <i>Court has power to grant interim relief as part of its ancillary jurisdiction</i> <b>Maxim</b> Expressiouniusexclusioalterius (the mention of one is exclusion of another rule not absolute in-its application. Two interpretations possible, Court should lean against construction which renders legislation futile. Maxwell on Interpretation of Statutes, 1969 Edn., Chapter 10 ref. Interim relief, grant of, pending appeal, incidental or ancillary to main appellate jurisdiction. Power to grant relief in such case, however not inherent but ancillary or incidental.
102	<b>Proceedings in second suit</b>	<b>Civil</b>	<b>Specific Relief Act (I of 1877),</b>	<b>S. 56(b)</b>	<b><u>PLD 1972 SC 34,</u></b> <i>Two counter cases filed in two different Courts. Provision of S. 56(b) was not a bar to restrain a party from prosecuting a suit in another Court not subordinate to Court issuing injunction-Common issue arising in both suits-Trial of suit filed later in date to be stayed.</i>
103	<b>Appeal-Entire matter subjudice</b>	<b>Civil</b>	<b>C.P.C</b>		<b><u>PLD 1965 SC 1</u></b> <i>Entire matter re-opens and becomes sub judice on filing of appeal.</i>

104	<b><i>Appeal Pecuniary Jurisdiction</i></b>	<b>Civil</b>	<b>West Pakistan Civil Courts Ordinance (II of 1962)</b>	<b>18</b>	<b><u>1999 SCMR 394</u></b> <b><i>Determined on basis of value of suit fixed in the plaint.</i></b>
105	<b><i>Appointment/ Interview</i></b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art.184(3)(4)</b>	<b><u>2006 PLC (CS) 964</u></b> Hallmark of the Punjab Public Service Commission selection process lie in its objectivity to assess the competition for a post, from material that was duly reflected on record, assuring verifiability of such evaluation. Written examination was a necessary means of fair assessment of the merit of candidates for public posts. Mushtaq Ahmad Mohal and others v. The Honourable Lahore High Court, Lahore and others <b>1997 SCMR 1043 rel.</b>
106	<b><i>Freedom of Religion</i></b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art-20</b>	<b><u>1993 SCMR 1718</u></b> Provisions of S. 298-C (c) & (d), P.P.C. as standing by themselves, individually or the two together are violative of the Fundamental Rights of religion's freedom and of equality and of the speech in so far as they prohibit and penalise only the Ahmadis and Quadianis from preaching or propagating their faith by words written or spoken or by visible representation.
107	<b><i>Affairs of Federation</i></b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art-----</b>	<b><u>PLD 2010 SC 676</u></b> Expression "performing functions in connection with the affairs of the Federation". Expression clearly connotes governmental or State functions involving element of exercise of public power. Functions may be traditional police functions of the State involving maintenance of law and order or those may be functions concerning economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature.

108	<b><i>Jurisdiction bar in Service matters</i></b>	<b>Constitu tion</b>	<b>Constituti on of Pakistan</b>	<b>Art 212</b>	<b><u>1991 SCMR 1041</u></b> Matters relating to terms and conditions of service. Jurisdiction of High Court under Art.199 of the Constitution cannot be exercised as no other Court had jurisdiction in service matters covered by Service Tribunal. Jurisdiction of High Court was also ousted with regard to all such matters which fell within the jurisdictional domain of Service Tribunal. Pakistan International Airlines v. F.M. Shamsi PLD 1990 SC 943 and The Chairman, PIAC v. Nasim Malik PLD 1990 SC 951 ref.
109	<b><i>Equality of Citizens</i></b>	<b>Constitu tion</b>	<b>Constituti on of Pakistan</b>	<b>Art.25</b>	<b><u>PLD 2011 SC 44</u></b> Article 25 of the Constitution enjoins that all citizens are equal before law and are entitled to equal protection of law, i.e., all persons subjected to a law should be treated alike under all circumstances and Conditions both in privileges conferred and in the liabilities imposed. The equality should not be in terms of mathematical calculation and exactness. It must be amongst the equals. The equality has to be between persons who are placed in the same set of circumstances. The dominant ideal common to both the expressions is that of equal justice. The guarantee contained in this right is only that no person or class of persons shall be denied the same protection of law which is enjoyed by other persons or other classes in like circumstances.  <b><u>2002 SCMR 71</u></b> Two groups of persons similarly placed could not be treated differently. Dictates of law, justice and equity required exercise of power by all concerned to advance the cause of justice and not to thwart it.

110	<b>Administration of justice-</b>	---	---	---	<p><b><u>2005 CLC 11</u></b>  Rules of procedure are intended to foster justice and technicalities, unless these offer insurmountable hurdles, cannot be permitted to operate as a tyrant master. To avoid failure of justice and multiplicity of litigation, one type of proceedings can be converted into another type of proceedings.</p>
111	<b><i>Jurisdiction-Obligation between Customer and Bank</i></b>	<b>Civil</b>	<b>Banking Companies (Recovery of Loans, Advances Credits and Finances) Act (XV of 1997)</b>	--	<p><b><u>2003 CLD 1843</u></b>  Distinction between a contract and tort. Damages means pecuniary compensation determined by the Court according to circumstances of each case, payable by the 'wrongdoer' to the 'wronged' for the injury, loss, or damage caused by one to the other by breach of legal duty, normally by breach of contract or commission of tort. There is a marked distinction between the damages arising out of a contract and a tort.  Credit card issued by the Bank falls within the term of "finance", Banking Court, in terms of S.73 of the Contract Act, 1872, has no jurisdiction over the matters arising out of fulfillment of the obligation with regard to the finance between the Customer and the Banker (financial), excluding the suit for damages based on tort.</p>
112	<b><i>Jurisdiction Suit for damages on the basis of tort</i></b>	<b>Civil</b>	Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997		<p><b><u>2006 CLD 167</u></b>  Suit filed by plaintiff for recovery of damages on the basis of torts, for return of cheque despite blance in account, was excluded from the jurisdiction of Banking Court. Plaint was rightly returned to plaintiff for filing before appropriate forum.</p>

113	<b>Alternative remedy</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art199</b>	<p><i>Writ Not competent without exhausting alternative remedy</i>  <b><u>2007 SCMR 38</u></b>  <i>Writ Competent if remedy inadequate</i> <b><u>2004 SCMR 400</u></b>If remedy of appeal is available to a party under statute, the Constitutional jurisdiction of High Court under Art. 199 of the Constitution cannot be invoked without availing such statutory remedy.</p> <p><b>Laches:-</b> No exception to the rule that delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if remedy of Constitutional petition is not availed within reasonable time, the interface can be refused on the ground of laches</p>
114	<b>No one should be judge of his own cause.</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art.4</b>	<p><b><u>PLD 1999 SC 1126</u></b>  One cannot be a Judge in his own cause. Breach of said principle would, in fact, be violative of the right of access to justice to all, enshrined in Art.4 of the Constitution which right is equally founded in the doctrine of due process of law. Term "due process of law" summarized as follows</p> <ol style="list-style-type: none"> <li>1. A person shall have notice of proceedings which affect his rights.</li> <li>2. He shall be given reasonable opportunity to defend.</li> <li>3. That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of its honesty and impartiality, and</li> <li>4. That it is a Court of competent jurisdiction.</li> </ol>
115	<b>Bona fide Purchaser</b>	<b>Civil</b>	<b>Transfer of Property Act (IV of 1882</b>	<b>Sec.41</b>	<p><b><u>PLD 2002 SC 303</u></b>  <b><u>2005 CLD 610</u></b>  Legal protection of a bona fide purchaser can not be claimed under an invalid transaction.Plea of bona fide purchase was not placed on a sound footing as the inquiry made by the objectors about the title of the suit property should not have been confined merely to the examination of the revenue papers.</p>

					Mst. NasibanBibi v. The Australasia Bank, Lahore and 2 others 1970 SCMR 657 <b>fol.</b>
116	<b>Condonation of delay</b>	Civil	Limitatio n Act 1908	Sec.5	<b><u>PLD 2008 SC 591</u></b> Similar questions of law arising out of common judgment were involved in another appeal and Court had proposed to decide both the appeals through single judgment. Delay was condoned in filing the other appeal. 2004 SCMR 630 ref.
117	<b>Allotment in border area</b>	---	West Pakistan Border Area Regulation 1959	---	<b><u>1986 SCMR 529</u></b> Incase of any illegality or impropriety in making allotment, procedure prescribed in Regulation or under Regulation, has to be followed and none outside it.
118	<b>Partition of property</b>	Civil	West Pakistan Land Revenue Act (XVII of 1967	Sec.3	<b><u>PLD 1999 Lah 31,</u></b> Section 3, West Pakistan Land Revenue Act, 1967, provided that except for certain fiscal purposes nothing in the said Act would apply to land which was occupied as a building site or such land on which permanent structures had been raised because such land after raising structure thereon, would lose all characteristics of agricultural land and dispute as regard partition of such land had to be resolved through Civil Court and not by Revenue Court.
119	<b>Cause of action</b>	Civil	Civil Procedure Code of 1908	OVII, R.11	<b><u>1991 SCMR 2030,</u></b> Test of cause of action was that if what plaintiff had stated was taken to be correct, was he entitled to relief or not. In case of defect in the frame of suit, opportunity had to be allowed to the party to correct that defect and to remove the deficiency, if any, in court-fee. The vagueness of the plaint, of the relief claimed, the deficiency in the court-fee,



					defective form of suit, the repugnancy of the compromise to the Islamic principles and the question of limitation were all questions which would arise only when there was a cause of action. If there was no cause of action, all these subsequent questions would not arise.
120	<b><i>Inquiry Officer Examination</i></b>	----	----	-----	<b><u>1996 SCMR 201</u></b> It cannot be held that in every case in which Enquiry Officer is not examined in support of the enquiry report, the same would be fatal to the maintainability of the order passed pursuant to such an enquiry report. It will depend on the facts of each case. If there are serious allegations against the Enquiry Officer as to his impartiality and in support of such allegations, the accused employee has brought some reliable material before the first Court, it becomes incumbent on the employer to produce the Enquiry Officer in order to rebut the evidence brought on record as to the partiality of the Enquiry Officer.
121	<b>Freedom of trade, business and Profession</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Arts. 4, 18, 25 &amp; 199-</b>	<b><u>2006 CLD 1191</u></b> Action of State Bank of Pakistan regarding placement of petitioners on Credit Information Bureau List without notice and without ascertaining genuineness of the information was violative of Arts. 4, 18 and 25 of the Constitution.-Such placement of petitioners' names on Credit Information Bureau List was without lawful authority and with no legal effect.
122	<b><i>Withdrawal of suit</i></b>	<b>Civil</b>	<b>Civil Procedure Code 1908</b>	<b>O. XXIII, R.1</b>	<b><u>PLD 2003 SC 979</u></b> Granting of permission to withdraw suit entirely within discretion of Court. Before allowing withdrawal, satisfaction of Court as to formal defect in pleadings necessary. 1972 SCMR 205 rel.
123	<b><i>Publication in news paper</i></b>	<b>Civil</b>	<b>Civil Procedure Code</b>	<b>O-v</b>	<b><u>2009 CLD 849 (SC)</u></b> <i>Affidavit necessary that newspaper has circulated in village of defendant</i> Defendant could not be presumed to have been

					duly served with summons in case of non-delivery of newspapers at his village or non-receipt thereof by him at his residence in village. Parties should be given due opportunity to defend his and put up their case before court and decree be passed on merits.
124	<b>Tendering of Resignation</b>	---	--	--	<b><u>PLD 2007 SC 52.</u></b> On mere tendering/submitted of resignation, services of government/civil servant would not come to an end and the same has to be accepted for its effectiveness by competent authority. Till such time as the resignation is accepted by competent authority, the civil/government servant would continue to be in government service and would be under obligation to perform his duties. If he fails or omits to perform his duties without prior authorization or leave, he would be deemed to be an absentee rendering himself liable for disciplinary proceedings under appropriate law and rules.
125	<b>Common intention</b>	<b>Criminal</b>	<b>PPC</b>	<b>34</b>	<b><u>PLD 2007 SC 93</u></b> Section 34, P.P.C. is not a punitive section and it does not enact a rule of evidence but enacts a common law principle of substantive law Similar intention is not to be confused with common intention and partition which divided "their bounds" was often very thin;
126	<b>Condonation of Delay</b>	<b>Civil</b>	<b>Limitation Act (IX of 1908</b>	<b>5</b>	<b><u>Principles PLD 1980 SC 198, each day to be explained 1998 SCMR 785</u></b>
127	<b>Jurisdiction-Through Consent</b>	-	-	-	<b><u>2006 SCMR 1630</u></b> Jurisdiction is conferred either by Constitution or by law. Consent or acquiescence has never been considered as a factor conferring jurisdiction. Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2004 SCMR 1622; Ali

					Muhammad and others v. Muhammad Shafi and others PLD 1996 SC 292; Shagufta Begum v. The Income Tax Officer, Circle XI, Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690 rel.
128	"Ratio decidendi" and "Obiterdicta" Distinction.	Contituti ion	Constituti on of Pakistan 1 973		<b><u>PLD2004 SC 600 (To be Dis.)</u></b> <b>Ratio decidendi</b> "Connotation.Fundamental Law of Pakistan by A.K. Brohi, p.609 and Modern English Legal System from Smith and Bailey ref. <b>"Obiter dicta"</b> Connotation. Judicial Dictionary of Words and Phrases 5 <sup>th</sup> Edn. p.1721; Law Lexicon Vol. II, p.243; Words and Phrases Vol. 29, p.16 and Shorter Constitution of India 12 <sup>th</sup> Edn. p.141 ref.
129	<b>Consolidated Appeal</b>	Civil	CPC	<b>Sec.109</b>	<b><u>1993 CLC 1367</u></b> Even if formality of filing another copy of the decree in another suit was not appended with the grounds of appeal it made no difference.
130	<b>Object of consolidation of holding Ordinance 1960</b>	Civil	<b>West Pakistan Consolidation of Holdings Ordinance (VI of 1960</b>	<b>S. 2(f)</b>	<b><u>PLD1992 SC 333</u></b> Idea behind consolidation of holdings was redistribution of or any of the lands in an estate or a division of estate so as to reduce the number of plots. Land bearing Khasra numbers and forming part of the estate was being used for commercial purposes since more than twenty years prior to the initiation of consolidation proceedings could not be included in the consolidation proceedings primarily meant for agricultural property.Board of Revenue is empowered to exclude any land from scheme of consolidation in the public interest only and that too, before the confirmation of the scheme:
131	<b>Precedents</b>	Constitu	Constituti on of	<b>Arts. 198</b>	<b><u>1994 MR 2213</u></b> In order that a decision on a question of law is binding

		<b>tion</b>	<b>Pakistan 1973</b>	<b>&amp;201</b>	within the meaning of Arts. 198 & 201 of the Constitution, it is not enough that a legal proposition follows logically from it; that question must have been actually decided. Precedent cases fall in two distinct categories. In the first category fall the decisions which decide a question of law or are based upon or enunciate a principle of law within the meaning of Articles 198 and 201 of the Constitution and are, therefore, binding, if the decision be by the Supreme Court, on all Courts in Pakistan, and if the decision be by a High Court, on all Courts subordinate to it. In the second category fall the cases which are not so binding but are merely illustrations of the application of the principles of law enunciated in the first category of precedent cases.
<b>132</b>	<b><i>Action during Pendency of Lis</i></b>	<b>Civil</b>	<b>Specific Relief Act</b>	<b>Sec.54</b>	<b><u>PLD2002 SC 303</u></b> No legal sanctity could be attached to any action done during pendency of lis and against the Court orders. An act entailing punishment under law would be an unlawful act and the same could not said to be valid. Court could exercise its powers under S.151 to prevent abuse of its process and corrective measures could be taken against wrong-doers to uphold and maintain the majesty of law. Bakhtawar v. Amin 1980 SCMR 89 rel.
<b>133</b>	<b><i>Termination of Contract employee</i></b>	--	--	--	<b><u>1997 SCMR 1552</u></b> If a person is employed on contract basis and terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. Where, however, a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity to clear his position which means that there should be a regular enquiry in terms of Efficiency and Discipline Rules before condemning him for the alleged misconduct. Muhammad

					SiddiqJavaidChaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Pakistan (Punjab Province) v. Riaz Ali Khan 1982 SCMR 770 ref.
134	<b>Conversion of Relief</b>	--	--	--	<b>Revision to WP &amp; vice versa allowed <u>1999 SCMR 394</u></b>
135	<b>Lis-pendens</b>	<b>Civil</b>	<b>Transfer of Property Act (IV of 1882)</b>	<b>S.52</b>	<b><u>PLD2001 SC 449</u></b> Provisions of S.52 of Transfer of Property Act, 1882, do not prevent vesting of such title but only make it subject to the rights of other parties as decided in the suit. Effect of S.52 of Transfer of Property Act, 1882, is not to wipe out a sale pendentelite altogether, but to subordinate it to the rights based on the decree in the suit. As between the parties to the transaction, however, it is perfectly valid and operates to vest the title of the transferor in the transferee. Broad purpose of the provisions is to maintain the status quo unaffected by the Act to the parties to the litigation pending its determination. No lawful jurisdiction exists to put a restrictive construction on S.52 of Transfer of Property Act, 1882, and stretch it too far by inferring that even agreement to sell which is subject to limitations as enumerated in the provisions of law cannot be executed. Rule of lispendens is based not on the doctrine of the notice but on expediency, that is "necessity for final. adjudication"
136	<b>Limitation for partition by Co-owner-</b>	<b>Civil</b>	<b>Specific Relief Act (I of 1877)</b>	S.42-	<b><u>2004 SCMR 1036,</u></b> Suit for mere declaration without seeking possession or partition of property as consequential relief would be maintainable on the allegation that he was also owner in property, which right was being denied to him and it is not necessary for any such joint owner to claim partition of joint property also. Partition could be claimed by any of the joint owners during currency of joint ownership <b>without limitation of any period in that behalf</b> , so long as his right was not denied.

137	<b>Prevention of Corruption</b>	<b>Criminal</b>	<b>Penal Code (XLV of 1860)</b>	<b>21</b>	<b><u>1991 SCMR 994</u></b> Object of defining expression 'public servant' in an enactment stated.
138	<b>Detention in Execution-Pre-requisites</b>	<b>Civil</b>	<b>CPC</b>	<b>51</b>	<b><u>2005 CLD 1728</u></b> Powers of Court to enforce execution.Prerequisites.Proviso to section 51, C.P.C. envisages that execution by detention in prison shall not be ordered unless Execution Court is satisfied that the judgment-debtor had means to pay the decretal amount and he has refused to pay the amount or that he is leaving the territorial limits of the Court or would defeat decree by transferring the property during the pendency of the lis. The detention of a judgment-debtor, in execution of the decree, cannot be ordered unless and until the said prerequisites of section 51, C.P.C. are proved.
139	<b>Cross. objection</b>	<b>Civil</b>	<b>CPC</b>	<b>O XLI, R.22</b>	<b><u>PLD1998 SC 1512</u></b> Where respondent had not filed appeal against any part of decree he could, nevertheless, support the same on any one of the grounds decided against him by Court below. Where, however, respondent wanted to attack any part of decree against which he could have filed appeal, he could only do so through filing cross-objections within prescribed time. Even in absence of cross-objections, Appellate Court was always vested with powers to pass any decree and make any order which ought to have been passed.
140	<b>without Search warrants</b>	<b>Mercantile Law</b>	<b>Customs Act (IV of 1969)</b>	<b>Ss. 162 &amp; 163</b>	<b><u>2005 SCMR 37</u></b> Search if conducted without having the search warrants for the reason that it could have been done in view of the circumstances prevalent at the relevant moment which could only be adjudged by the concerned officer under whose supervision the raid was being conducted. As such the same could not be done in a routine practice and every possible effort should be made to comply with the provisions as enumerated in Ss.162 and 163 of Customs

					Act, 1969.
141	<b>Review against Valuation</b>	<b>Mercantile Law</b>	<b>Customs Act, 1969</b>	<b>Sec.25-D,25-A(3),25-A(1)</b>	<b><u>2008 PTD 1594</u></b> Law required that when a valuation was determined by the Collector of Customs or Director of Customs valuation etc. a review petition lay before the Director General under S.25-D of Customs Act, 1969 and an application lay to the Director General under S.25-A(3) of Customs Act, 1969, in case of conflict in the customs valuation determined under subsection (1) of S.25-A of Customs Act, 1969.
142	<b>Suit against Dead Person</b>	<b>Civil</b>	<b>CPC</b>		<b><u>Suit against - nullity 2001 SCMR 1</u></b>
143	<b>Statement before Court-Defamation</b>	<b>Civil</b>	<b>CPC</b>		<b><u>2006 YLR 1623</u></b> Suit for defamation. Damages. Any statement or assertion made before any Court, could not give rise to an action for libel or slander. Appellate decree, in circumstances being a result of illegal exercise of jurisdiction, was not maintainable.
144	<b>Defence version</b>	<b>Criminal</b>	<b>Cr.P.C</b>		<b><u>2007 SCMR 605</u></b> <b><u>Two explanations Plausible benefit goes to defence</u></b> Tariq Pervez's case 1995 SCMR 1345 and Ghulam Ali's case PLD 1986 SC 741 rel.
145	<b>Deferred Dower And Dowery Articles</b>	<b>Civil</b>	<b>West Pakistan Family Courts Act (XXXV of 1964)</b>	<b>5</b>	<b><u>2009 SCMR1458</u></b> <i>Claim available on death or divorce.</i> Dower is gift given by bridegroom to bride and the Holy Qur'an is silent on two types of dower i.e. prompt and deferred dower. Dower, Mehr-e-Mu'wajjal and where part of dower is described as Mu'wajjal i.e. deferred but no time limit is fixed for its payment, the time of such payment is either death or divorce.  <b><u>2000 CLC 1384</u></b>

					<p>Mandatory for a husband to pay entire amount of dower, whether prompt or deferred in case of entering into contract of second marriage in presence of first wife without her permission. Principles illustrated.</p> <p><b><u>2004 SCMR 1739.</u></b> List of articles appended with plaint. Judgment of Appellate Court decreeing suit on basis of such list was set aside by High Court in Constitutional petition for being based on no evidence. Validity Evidence produced by plaintiff consisted of her own statement. Plaintiff had not stated that such list had been prepared at the time of Rukhsati. Plaintiff had stated that she did not know as to what had been mentioned in such list. No evidence had been produced to corroborate her statement that she had been given articles of dowry--'Impugned judgment was legally correct.</p>
146	<b>Demarcation</b>	Civil	<b>High Court Rules and Orders and Vol. V.</b>	<b>R.1,2,3 Chp.1-M(i)</b>	<p><i>With refrence to Shajrakistwar and AksMasavi (08 MR 1075) or CBLM, V. 5, rl-3 LHCR 2005 SCMR 935</i> HaddShikni case. Issue involved was, whether defendant had or had not encroached upon land owned by plaintiff. Such question was still un-resolved. Only way to settle such issue was to proceed in terms of Rr.1, 2 and 3 of Chap.1-M(i) of Vol.V of High Court (Lahore) Rules and Orders---High Court set aside judgments of Courts below and remanded case back for its decision accordingly.</p>
147	<b>Detection bill- Jurisdiction</b>	Civil	<b>Electricity Act (IX of 1910) Regulation of</b>	<b>Ss. 26(6), 26-A &amp; 36(3)</b>	<p><b><u>PLD2006 SC 328</u></b> Right of appeal being a creation of statute, unless specifically conferred, would not be available. Jurisdiction to decide validity of detection bill neither vested in Provincial Government nor its direction could confer same on Advisory Board. Offices to be established under S. 38 of</p>



			<b>Generation, Transmission and Distribution of Electric Power Act (XL of 1997)</b>		Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 could be empowered to enforce decision of theft cases and not to decide theft cases. Neither Provincial Government nor Advisory Board had original or appellate jurisdiction to examine validity of disputed detection bill. Electric Inspector had no jurisdiction to adjudicate such dispute, rather only Civil Court could resolve same.
<b>148</b>	<b>Limited Liability</b>	<b>Mercantile Law</b>	<b>Companies Ordinance (XLVII of 1984)</b>	S.2(8)	<b><u>2006 CLD 191</u></b> Suit for recovery of money on account of purchases made by the company. Word "limited" used in S.2(8), Companies Ordinance, 1984 means that the liability of shareholders for the debts or any other obligation of the Company is limited to the extent contributed by them in the share capital. Shareholder cannot be made liable beyond the extent of his contribution towards the share capital. For any unsettled liability, it is only the assets of the Company which can be proceeded against by an unpaid creditor or claimant
<b>149</b>	<b>Discretion</b>	--	---	---	<b><u>2005 SCMR 25</u></b> Seven instruments that are the most useful in structuring of discretionary power are open plans, open policy statement, open rules, open findings, open reasons, open precedents and fair informal procedure. Amanullah Khan and others v. Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others PLD 1990 SC 1092 and Government of N.-W.F.P. v. Mejee Flour and General Mills (Pvt.) Ltd. 1997 SCMR 1804 rel. Functionaries of any organization or establishment cannot be allowed to exercise discretion at their whims, sweet will or in an arbitrary manner; rather they are bound to act fairly, evenly and justly.

150	<b><i>Production of Documents</i></b>	<b>Civil</b>	<b>CPC</b>	<b>O. XIII, Rr.2 &amp; 3</b>	<b><u>2005 CLC 780</u></b> Documents sought to be produced by the plaintiff would have been of relevance and importance for the decision of the matter. Rejection of application that if permission was allowed, it would run counter to the direction of High Court, was based on extraneous reasons, unsustainable in law. By producing the documents, the defendant should have an equal opportunity to rebut/disprove the assertion of plaintiff. Plaintiff should have filed the application for production of such documents, soon after the written statement had been filed by the defendant, therefore, High Court allowed the application for production of documents and burdened the plaintiff with a cost, for such lapse. .
151	<b><i>Due process</i></b>	<b>Constitution</b>	<b>Constitution of Pakistan (1973)</b>	<b>Art.9</b>	<b><u>PLD1994 SC 693</u></b> Word "life" in Art. 9 of the Constitution covers all facets of human existence. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word "life" is very significant as it covers all facets of human existence. The word "life" has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity legally and constitutionally. The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it.
152	<b><i>Duty of court</i></b>	<b>Civil</b>	<b>C.P.C</b>	--	<b><u>1994 SCMR 107</u></b> Court is under a duty to show awareness of the law of the land and to apply it irrespective of whether parties or their counsel invoked it or not. Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690 and Muhammad Sarwar v. State PLD 1969 SC 278 rel.

153	<b><i>Jurisdiction of Electric inspector</i></b>	Civil	<b>Electricity Act (IX of 1910</b>	<b>Ss. 26(6) &amp; 26-A</b>	<b><u>PLD1995 Lah 56</u></b> Provision of S.26(6), Electricity Act, 1910, provides for seeking determination of dispute as to whether measuring apparatus (meter) was or was not correct. Provision of S.26(6), Electricity Act, 1910, thus, could not be read as conferring jurisdiction or power on Electricity Inspector to scrutinize the amount demanded under S.26-A of the Act for dishonest abstraction or consumption of energy.- GadagBetrigi v. Electric Inspector AIR 1962 Mys. 209 mi.
154	<b><i>Election laws whether mandatory or Directory</i></b>	--	--	--	<b><u>PLD 1986SC178</u></b> Election Laws concerning officers conducting elections. Directory-Election Law concerning voters-Mandatory. When the law prescribes that the intention (of the voter) should be expressed in a particular manner, it can be taken into account only if it is so expressed. An intention not duly expressed is in a Court of law, in the same position as an intention not expressed at all.
155	<b><i>Election Tribunal power</i></b>	Constitution	<b>Representation of the People Act (LXXXV of 1976)</b>	<b>Ss. 46(1)(2), proviso(3) &amp; 78-</b>	<b><u>2010 SCMR 1271</u></b> Election Tribunal can appoint a Commission and direct opening of packets of counterfoils and certificates or the inspection of any counted ballot papers with a rider that in carrying into effect an order for inspection of counted ballot papers, care shall be taken that no vote shall be disclosed until it has been held by the Election Tribunal to be invalid. Production of a document by the Commission appointed by the Election Tribunal in terms of S.46(1), Representation of the People Act, 1976 shall be conclusive evidence that the document relates to the election specified in the order and any endorsement on any ballot paper or packet of ballot paper or documents so produced shall be prima facie, that the ballot papers or documents are what the endorsement states them to be. Commission so appointed thus has the

					power not only to carry out the exercise as specified in S.46 of the Act but further the endorsement made on the ballot papers or the connected documents by the said Commission shall have, prima facie, evidentiary value. Commission appointed by the Election Tribunal can carry out the inspection of counted ballot papers and it shall report the same to the Election Tribunal, but shall not disclose the invalidity of the counted votes till the Election Tribunal having examined the report of the Commission and other material, if any, brought in evidence so holds.
156	<b><i>Jurisdiction of Electric Inspector</i></b>	Civil	<b>Electricity Act (IX of 1910)</b>	<b>Sec.26</b>	<b><u>2006 MLD 636</u></b> Detection bill issued to the consumer on the basis that electric meter of the consumer was slow. Suit for declaration and injunction by consumer. Maintainability. Held, controversies and disputes concerning the slowness of meter or other faults with the equipments fell within the exclusive jurisdiction of the Electric Inspector under S.26, Electricity Act, 1910. Matter therefore, fell within the exclusive domain of Electric Inspector and suit for declaration and injunction before the Civil Court was not maintainable.
157	<b><i>Summoning of Original Record</i></b>	Civil	<b>Civil Procedure Code (V of 1908)</b>	<b>O. XIII, R.4</b>	<b><u>PLD1992 SC 822</u></b> Courts are not only to sit and watch as to who commits a mistake and who does not commit a mistake, from amongst the litigants, and one who commits a mistake in procedural matters should be deprived of the right claimed, even if he is entitled to it. Muhammad Azam v. Muhammad Iqbal <b>PLD 1984 SC 95 ref.</b> Mere failure to exhibit a document formally would not make any difference and if it was necessary for just decision of the case, to summon the material relied upon by the party it should be summoned and treated as evidence in the matter without any formalities. Where the Trial Court had committed the error in not summoning the original record and other material evidence for just decision of the case,

					Supreme Court remanded the case to Trial Court for fresh decision.
158	<b><i>Evidence Beyond pleadings</i></b>	<b>Civil</b>	<b>Civil Procedure Code (V of 1908)--</b>	<b>O.VI, R.1</b>	<b><u>1996 SCMR 336,</u></b> No evidence can be led or looked in support of a plea which had not been taken in pleadings. Variation in pleadings was not permissible in law.
159	<b><i>Withholding of Evidence</i></b>	<b>Criminal</b>	<b>Qanoon-i-Shadat Order 1984</b>	<b>Art.129(g)</b>	<b><u>2006 SCMR 1846</u></b> Prosecution is certainly not required to produce number of witnesses as quality and not the quantity of evidence is the rule. Withholding a material witness and non-production of most natural and material witness of occurrence, would strongly lead to an inference of prosecutorial misconduct, which would not only be considered a source of undue advantage for prosecution but also an act of suppression of material facts causing prejudice to accused. <b>Art. 129(g) of the QSO</b> provides that act of withholding of most natural and a material witness of occurrence would create an impression that had such witness been brought into witness-box, he might not have supported the prosecution. Prosecution, in such eventuality must not be in a position to avoid the consequence.
160	<b>Limitation in filing of Execution Petition</b>	<b>Civil</b>	<b>Civil Procedure Code (V of 1908)Limitation Act 1908</b>	<b>S. 48CPC Art 181 Lim.),</b>	<b><u>P L D 1990 Supreme Court 778</u></b> First application for execution of the decree of a Civil Court would be governed by the residuary Article 181, Limitation Act, 1908 prescribing a period of three years and since any subsequent or fresh application for execution would be governed by S.48, C.P.C., it would be out of the purview of Art. 181 on its express terms-"Fresh application" means application for execution after the disposal of the first execution application.

161	<b>Warrants of Arrest in Execution.</b>	<b>Mercantile Law</b>	<b>Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act (XV of 1997)</b>	<b>Ss.18 &amp; 21</b>	<b><u>2004 CLD 1637</u></b> Judgment-debtors had a right to ask the decree-holder about the position of pledged goods and the decree-holder was obliged to explain about the title of the same. Order of issuance of warrant of arrest by the Banking Court was passed in ignorance of record of the case and such findings were not only against the record of the case but also in violation of law on the subject.
162	<b>Exparte decree setting aside</b>	<b>Civil</b>	<b>Civil Procedure Code (V of 1908)</b>	<b>O. IX, R.13</b>	<b><u>PLD 2009 SC 437</u></b> Question was whether in the law, as in the present case, the ex parte decree shall be set aside as a whole or partially to the extent of one defendant, Held, in such circumstances, the relief could only be extended to a party who had approached the court for setting aside the ex parte decree on available grounds under the law, including the one that applicant seeking setting aside ex parte decree was not heard or allowed to represent himself/herself before the Court.
163	<b>Charge, Fee, toll without Legal Authority</b>	<b>Constitution</b>	--	--	<b><u>1994 SCMR 1393</u></b> Powers to charge tax, fee, rate or toll etc.No pecuniary burden, by whatever name it may be called, can be imposed except under clear and distinct legal authority. Obligation to pay charge cannot be made legal by agreement. Local Government cannot charge for a service unless it is required by statute to provide such service and is also authorized by law to charge for such service. Charge without legal authority is ultra vires. <b>Statutory corporation.</b> Powers of a statutory corporation. What the statute creating the corporation does not expressly or impliedly authorize is to be taken to be prohibited.

164	<b>Fee Tax</b>	<b>Interpretation</b>	--	--	<p><b><u>2006 CLD 1523</u></b>          Fee is charged for services rendered by statutory functionaries and for conferment of a benefit or a privilege as well. RasheedMehmood v. Muhammad RiazAkhtar 1997 SCMR 1406;</p>
165	<b>Enforce a right or personal interest</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Article 26, 184(3),</b>	<p><b><u>PLD 2006 SC 394</u></b>          Person not living at the place in question, who approaches the Supreme Court for exercising the jurisdiction under Art.184(3) of the Constitution was not disqualified and petition under Art.184(3) of the Constitution by such person was maintainable.</p> <p><b><u>PLD 1969 SC 223</u></b>          Right considered sufficient for maintaining proceeding in writ jurisdiction-Need not necessarily be a right in strict juristic sense-Enough if petitioner can show that he had a personal interest in performance of a legal duty which had not been performed in manner required by law.</p> <p><b><u>PLD 2006 SC 514</u></b>          Suomotu action by Supreme Court in the matter of cutting down of trees in a public park.</p>
166	<b>Medical Evidence-Corroboation</b>	<b>Criminal</b>	<b>Cr.P.C</b>		<p><b><u>2007 SCMR 525</u></b>          Medical evidence alone cannot be corroborative evidence, as injuries cannot speak of their inflector.</p> <p><b><u>PLD 1976 SC 695.</u></b>          Medical evidence by itself and without more cannot throw any light on the identity of the assailants, but in the case of inimical evidence, it is this aspect of the ocular evidence which requires corroboration, because the danger to relying on the ocular evidence in such cases is that the witnesses may falsely implicate their enemies. At the highest, therefore, the fact that the medical evidence is consistent with the ocular evidence may furnish some limited</p>

					corroboration of the ocular evidence if it can lead to the inference that the eye-witnesses have spoken the truth. This however, would be in special circumstances.
167	<b>Recovery of Dower</b>	<b>Civil</b>	<b>West Pakistan Family Court, Act, 1964</b>		<p><b><u>PLD 2011 SC 221</u></b></p> <p>Dispute was with regard to immovable property claimed by wife as dower, description of the same was not mentioned in Nikahnama. If property/ house mentioned in Nikahnama on account of lack of sufficient description leading to its identification then its price, if mentioned in Nikkahnama, could be awarded then in the same way value of other property (agriculture), the price of which had not been mentioned in documentation/Nikkahnama, could also be granted if evolvement of a mechanism for determination of value was possible, as the same was not in conflict with any provision of law rather in consonance with established principles for determining the value of property, then the same could be resorted to.</p>
168	<b>Doctrine of Merger</b>	<b>interpretation</b>	<b>CPC</b>		<p><b><u>PLD 1992 SC 549</u></b></p> <p>"The verb `to merge' has been defined as meaning to sink or disappear in something else, to be lost to view or absorbed into something else, to become absorbed or extinguished, to be combined or be swallowed up.`Merger' is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased, an absorption or swallowing up so as to involve a loss of identity and individuality."It is well-settled principle that on appeal the original order merges in the appellate order.</p>



169	<b>Regular Inquiry in allegation of misconduct</b>	<b>Civil</b>	<b>Civil Servant Act,</b>	--	<p><b><u>1997 SCMR 1552</u></b>          If an accused civil servant/employee is charged with misconduct of the nature which cannot be proved without holding of regular enquiry, the removal or dismissal from service of a civil servant on the basis of summary enquiry is not sustainable in law. Charges of defiance of orders of superiors; being rude to his colleagues and having concealed the factum of having a job in another department, which the civil servant had denied involved factual controversy which could not be resolved without holding regular enquiry and services in such a situation could not be terminated without such enquiry.</p>
170	<b>Winding Up of the company</b>	<b>Mercantile Law</b>	<b>Companies Ordinance, 1984</b>	<b>Sec 305</b>	<p><b><u>2005 SCMR 1237</u></b>          Auction of assets of company by official liquidators. Confirmation of sale and transfer of bid right in favour of an other party. Objection petition by the company alleging that property was sold at a price entirely disproportionate to the actual value and bid could not be transferred without registration of sale in favour of original bidder. Sanctity to judicial sale of property is to be maintained as far as possible, however, the Courts have also a duty to ensure that such sales should be seen to have been made in the most fair, transparent, judicious manner and above any suspicion so that the interests of all the stake holders are properly safeguarded.</p>
171	<b>Inherent Power to mould Relief</b>	<b>Civil</b>	<b>CPC</b>	<b>151</b>	<p><b><u>PLD 1978 SC 220</u></b>          Civil Court-Inherent powers to avoid multiplicity of proceedings, to shorten litigation, and to do complete justice between parties and mould relief according to altered circumstances in larger interest of justice-Discretion in this regard vested in Courts to be judicially exercised in proper cases.</p> <p><b><u>2000 CLC 135</u></b></p>

					<p>Courts were competent and had inherent powers to pass proper order to avoid multiplicity of proceedings, to shorten litigation and to do complete -justice between parties and to mould the relief according to altered circumstances to the larger interest of justice.</p> <p><b><u>PLD 1986 SC 46</u></b></p> <p>Every Court however, has an inherent power to adopt methods with a view to avoid multiplicity of proceedings, to shorten litigation, to do complete justice between parties and would relief according to altered circumstances in larger interest of justice.</p>
172	<b>Stay in Money Decree</b>				<p><b><u>1975 SCMR 203</u></b></p> <p>High Court refusing to stay execution of money decree but directing decretal amount, if deposited in Court, not to be paid to decree holders unless sufficient security for reimbursement furnished High Court, held, exercised its discretion on sound principles governing execution of money decrees pending their challenge on appeal.</p> <p><b><u>1995 SCMR 708</u></b></p> <p>Appellate Court as an interim relief, suspending execution of the decree of Trial Court during pendency of appeal. Supreme Court converting petition for leave to appeal into appeal and allowing the same with direction that the execution of the order of Trial Court was not suspended, but if respondents deposited the amount incorporated into decree within three months, appellants would be entitled to withdraw the amount on furnishing of security for refund if respondent's appeal ultimately succeed, to the satisfaction of the Trial Court.</p>
173	<b>Mutation Evidentiary Value</b>	<b>Civil</b>	<b>Land Revenue Act, 1967</b>	<b>Sec-42</b>	<p><b><u>2007 SCMR 729</u></b></p> <p>Mutation Registers, entries, such entries not conclusive evidence of facts that they purport to record.</p>

					<p><b><u>1993 MLD 1078</u></b> Mutation is neither a document of title nor does it create or extinguish title. Mutation is intended primarily for fiscal purposes for the collection of land revenue and is not a judicial proceeding in which the right or title in the property is determined.</p> <p><b><u>PLD 1994 SC 245</u></b> Entries in Revenue Record could neither create nor extinguish title to property. Entries in Revenue Record were maintained mainly for fiscal purposes.</p> <p><b><u>PLD 2001 SC 401</u></b> Jamabandi cannot be considered as exclusive proof of ownership. Presumption of truth is attached to Jamabandi which is always subject to rebuttal.</p>
<b>174</b>	<b>Proportionate punishment in narcotics cases</b>	<b>Criminal</b>	<b>Control of Narcotics Substance Act,1997</b>	<b>S-9</b>	<p><b><u>2006 SCMR 1539</u></b> Sentence is to be proportionate to the heroin powder in the form in which it is marketable, regardless of its composition.</p>
<b>175</b>	<b>audialterampar tem</b>	<b>interpre tation</b>	<b>=</b>	<b>Legal Maxim</b>	<p><b><u>2000 SCMR 907</u></b> The principle of natural justice always deemed to be embedded in the statute and even if there is no such specific or express provisions, it would be deemed to be one of the parts of the Statute because no adverse action can be taken against a person without providing right of hearing to him. But at the same time this principle cannot be deemed to be of universal nature because before invoking/applying this principle one has to specify that the person against whom action is contemplated to be taken prima facie has a vested right to defend the action and in those cases where the claimant has no basis or entitlement in his favour, he would not be entitled for protection of the principles of natural justice.</p>

				<p><b><u>PLD 1967 SC 62</u></b></p> <p>In the matter of dismissal of a Government employee from service the requirement of the Constitution is that there should be a reasonable opportunity given to show cause. Where the procedure laid down in relevant rules prescribe a charge and a reply at the outset and the official concerned has had, at the inquiry stage, the choice of being heard in person. It seems an excessive requirement that a personal hearing should also in every case be given in relation to show-cause notice. It is conceivable, no doubt, that in a departmental case, where there is more than one official involved in the transaction, the particular official who is brought under enquiry and who hopes as a result to be restored to his former position, may not wish to put down in writing matters calculated to implicate other officials and particularly those senior to himself. His further service in the department could be seriously affected if such a matter stood on the record against his own superiors, as coming from his mouth. For such and other reasons, there can be occasions where an official might find it necessary to reserve the statement of certain matters relevant to the appropriate punishment in the case, for oral presentation before the dismissing authority. But where such is not the case and when no personal hearing has been asked for and where nothing appears in the entire facts which could provide any reason why the dismissing authority should of its own volition adopt such a course, personal hearing, before passing order of dismissal is not necessary.</p> <p><b><u>2000 MLD 145</u></b></p> <p>Right of hearing, when claimed on the principles of natural justice, was not an absolute right, but it would be the facts and circumstances of each case which would enable a Court to draw a proper conclusion in that regard. Clear distinction existed between two situations of hearing. One where right</p>
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				<p>of hearing was statutory and other where said right was claimed on principles of natural justice. Statutory right was almost absolute while right claimed on principles of natural justice was not so and exclusion of said right could be express or implied.</p> <p><b><u>1991 SCMR 681</u></b> The Courts in Pakistan have taken the view that where the giving of a notice is provided for by the statute itself, then the failure to give such a notice is fatal and cannot be cured. But where there is no specific statutory provision and reliance is only placed on the principles of natural justice and <i>audi alteram partem</i>, there if at some stage or other the person aggrieved has been given a fair opportunity of representing his point of view, then the defect, if any, in the initial order may be deemed to have been cured. Each case will have to be determined on its own facts. The principle, so far as this country is concerned, is accordingly well-settled that where notice required to be given by the statute is a mandatory notice, then the failure to comply with such a mandatory requirement of the statute would render the act void ab initio as being an act performed in disregard of the provisions of the statute. Furthermore any further action taken on the basis of such a void order would also be vitiated and the defect at the initial stage would be incurable by a hearing at a subsequent stage.</p> <p><b><u>PLD 1992 SC 531</u></b> Opportunity of hearing before taking action against a person</p>
176	<b>New ground of attack and defence</b>	<b>Civil</b>	<b>C.P.C</b>	<p><b><u>PLD 1974 SC 322</u></b> Party not permitted to raise new ground of attack or defence by departing from its previous pleadings. It is well settled that a party cannot be permitted to raise an altogether new ground of attack or defence, by departing from its previous</p>

					pleadings, especially when the opposite-party had no opportunity to adduce evidence in this behalf or to otherwise have an opportunity of meeting the plea during the course of the trial.
<b>177</b>	<b>Limitation against Fraud</b>	<b>Civil</b>	--	--	<b><u>2001 SCMR 1591</u></b> Fraud vitiates even the most solemn transaction as such any transaction based on fraud would be void and notwithstanding the bar of limitation the matter can be considered on merits so as not to allow fraud to perpetuate.
<b>178</b>	<b>Estoppel Against Statute</b>	<b>Civil</b>			<b><u>PLD 1995 SC 66</u></b> Doctrine of estoppel cannot be applied to defeat the provisions of statute or enactment affecting jurisdiction of the Court.  <b><u>2004 SCMR 1947</u></b> When a Court suffers from want of inherent jurisdiction then no amount of consent or acquiescence in the proceedings can invest such Court with such jurisdiction. Question of waiver or estoppel in such case would not arise. Where a Court does not lack in its inherent jurisdiction but the procedure or mode of hearing, it adopts, is defective or irregular and in such a position a party joins issues and participates in the proceedings without raising any objection of such defect or irregularity touching upon jurisdiction; later on it cannot be allowed to challenge the jurisdiction when the result of the proceedings goes against it. In first case order of the Court is nullity in the eye of law but not so in the second case
<b>179</b>	<b>Contingent Contract_NoObjection Certificate</b>	<b>Civil</b>	<b>Contract Act872</b>	<b>Sec.32</b>	<b><u>1994 CLC 733</u></b> Where a contract is to be performed on fulfillment of a mandatory provision of getting "No Objection Certificate" and permission to transfer is to be granted by a third party (not a party to contract) and such certificate and permission

					<p>is not granted, the contract in question, is guillotined and stood frustrated on account of refusal of such "No-Objection Certificate/permission" and same was, thus, not enforceable through Court of law.</p> <p><b><u>1992 SCMR 1629</u></b> Contingent contract. Condition precedent and condition subsequent. Condition in agreement for sale that vendor would secure No-objection Certificate from authorities was not a condition precedent to said agreement but rather a condition subsequent. Such condition did not go to root of agreement to nullify it; but it had effect of releasing vendees from their obligation to accept sale-deed if No-objection Certificate was not obtained by vendor, thus, annulling agreement for sale.</p>
<b>180</b>	<b>Date of hearing</b>	<b>Civil</b>	<b>CPC</b>	<b>O. IX, R.8</b>	<p><b><u>2006 SCMR 789</u></b> "date of appearance" and "date of hearing" Distinction stated. The "date of hearing" is something more than that of the "date of appearance" simplicitor, and object whereof is to apprise the parties regarding pendency of lis cognizance whereof has been taken and for further steps to be taken and the date fixed for such further steps would be the "date of hearing".</p>
<b>181</b>	<b>Non holding of regular inquiry</b>	<b>Civil</b>	<b>Punjab Civil Servants (Efficiency and Discipline) Rules, 1975-</b>	<b>Rr.4 &amp; 6 (3)</b>	<p><b><u>2005 SCMR 605</u></b> Allegations levelled against appellant had been controverted by him through detailed explanation which he had submitted. Accusations emanated from complicated, disputed and controversial facts. Appellant had been denied opportunity to face the evidence available against him and to adduce evidence in disproof of the charges levelled against him. Irrespective of the fact whether the rules in question had or had not the status of statutory rules, it was an admitted fact that it was the Board itself which had</p>

					<p>elected to deal its employees through process and procedure envisaged by Punjab Civil Servants (Efficiency and Discipline) Rules, 1975. Board could not be permitted to go back on the commitment thus made by it to its employees to treat them, in disciplinary matters, in the manner prescribed by Punjab Civil Servants (Efficiency and Discipline) Rules, 1975</p> <p><b><u>2003 PLC (C.S) 1508</u></b> Even if services of an employee of a Statutory Corporation were not governed by statutory rules; the employer amenable to Constitutional jurisdiction was under a duty to act justly 'and fairly in accordance with mandate of Art.4 of the Constitution.</p> <p><b><u>1994 SCMR 2232</u></b> Remedy of such employee for wrongful dismissal would be to claim damages</p>
182	<b>Non Statutory Rules</b>	<b>Civil</b>	<b>Punjab Civil Servants (Efficiency and Discipline ) Rules 1975</b>	<b>Rule 4 &amp; 6</b>	<p><b><u>2005 SCMR 605</u></b> Irrespective of the fact whether the rules in question had or had not the status of statutory rules, it was an admitted fact that it was the Board itself which had elected to deal its employees through process and procedure envisaged by Punjab Civil Servants (Efficiency and Discipline) Rules, 1975-</p> <p><b><u>2003 PLC (C.S) 1508</u></b> In case of breach of rule of natural justice, corrective judicial process could be applied. A Statutory Corporation could not be heard to say that it would be at liberty to violate its own rules and then to fall back on the plea that rules being non-statutory, Courts should shut their eyes even if their action was arbitrary, contrary to their own regulations, unjust and unfair.</p>



					<p><b><u>1994 SCMR 2232</u></b> Effect of the application of master and servant rule is that employee of a Corporation in the absence of violation of law or any statutory rule cannot press into service Constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service.</p>
<b>183</b>	<b>Notification When Prospective or Retrospective</b>	<b>Interpretation</b>	--	--	<p><b><u>PLD 2001 SC 340</u></b> Where the notification has been used for the benefit of the subject then the same can be made operative retrospectively but if its operation is to the disadvantage of party who is the subject of the notification then the same would operate prospectively.</p>
<b>184</b>	<b>Non-Production of Evidence</b>	<b>Civil</b>	<b>CPC</b>	<b>O. XVII Rule 3</b>	<p><b><u>2006 MLD 1577</u></b> Provisions of Order XVII, Rule 3, C.P.C. are penal in nature and had to be applied with due care and caution. If a litigant was to be visited with a penalty such as closure of his evidence, he was entitled to put to notice.</p> <p><b><u>1985 SCMR 585</u></b> Adjournment sought by defendant through counsel. No objection by plaintiff would not amount to granting time to defendant at his request-Court not justified to invoke provision of O. XVII, r.3, C.P.C. for closing defendant's evidence.</p> <p><b><u>PLD 1981 SC 474</u></b> Party failing to produce its evidence, or to do any other act necessary for purpose of case, for which time allowed, Court to proceed to decide, suit forthwith-Order dismissing suit under O. XVII, r. 3 accordingly deemed to be a judgment on merits unlike an order under r. 2 of O. XII and operates as <i>res judicata</i> between parties-Remedy against such order, <i>held</i>, an appeal against decree.</p>

<b>185</b>	<b>Sale in Execution of Decree</b>	<b>Civil</b>	<b>CPC</b>	<b>OXXIRule64, 66</b>	<b><u>2003 CLD 1693</u></b> Where a decree is to be executed and satisfied through sale of immovable property belonging to judgment debtor, there are three mandatory steps, which the Court in terms of Order 21, Rules 64 to 66 is required to take. Firstly, to pass a specific order for sale of property sought to be sold. Secondly, to appoint the officer who shall conduct sale. Thirdly, to effect the conduct of sale in the manner prescribed, in Order XXI, rule 66, C.P.C.
<b>186</b>	<b>Rejection of Plaintiff</b>	<b>Civil</b>	<b>CPC</b>	<b>O VII R 11</b>	<b><u>2007 SCMR 945</u></b> Rejection of plaintiff was not an adjudication on merits and it was a decree only by fiction, therefore, there was no bar to file fresh suit.  <b><u>2006 SCMR 489</u></b> Plaint could only be rejected when the averments made therein, if accepted, did not entitle plaintiff to a relief.
<b>187</b>	<b>Suit Dismissed in default</b>	<b>Civil</b>	<b>CPC</b>	<b>O IX R 9</b>	<b><u>1989 SCMR 883</u></b> "sufficient cause" for restoration of a suit dismissed for default were not susceptible of any exact definition and no hard and fast rules could be laid down and if non-appearance was not intentional that should not be viewed very strictly
<b>188</b>	<b>RIGHT OF APPEAL</b>	--	<b>Armed force laws</b>	--	<b><u>PLD 1989 SC 6</u></b> Provisions of S.133, Pakistan Army Act, S.162 of Pakistan Air Force Act and S.140 of the Pakistan Navy Ordinance, denying right of appeal to an aggrieved person were repugnant to injunctions of Islam.
<b>189</b>	<b>Evaluation of Evidence</b>	<b>Civil</b>	<b>Interpretation of documents</b>		<b><u>2004 SCMR 1426</u></b> In order to resolve ambiguity and to ascertain the real intention of parties, resort has to be made to the corresponding preceding and/ or subsequent to the

					execution of the contract document, conduct of the parties and attending circumstances.
190	<b>Duty of Court</b>	<b>Civil</b>	<b>CPC</b>	<b>O. XXXVII</b>	<b><u>PLD 1995 SC 362</u></b> Court has to apply its mind before passing any order or judgment notwithstanding the factum that no person has appeared before it to oppose such an order or that the person who wanted to oppose was not allowed to oppose because he failed to fulfil the requirements of law.
191	<b>Pardanashin Lady-Burden of Proof</b>	<b>Civil</b>	<b>QanonShahadat Order</b>	<b>Art. 118</b>	<b><u>2001 SCMR 1591</u></b> Where pleas of fraud, deception and misrepresentation had been taken by the illiterate Pardahnashin ladies in alleged disposal of their properties, the onus in such cases lay on the person who had taken advantage of the transaction to prove the genuineness and bona fides of the document through which transaction had been executed and the contents of such document were fully concerned and understood by the executant independently and freely.
192	<b>Pardanashin lady property rights</b>	<b>Civil</b>	<b>QanonShahadat Order</b>		<b><u>2001 SCMR 609</u></b> Burden to prove genuineness of a transaction with Pardahnashin lady and a document allegedly executed by such lady lay on the person who claimed benefit from the transaction or under the document.
193	<b>Partition of Property</b>	<b>Civil</b>	<b>Land Revenue Act</b>	--	<b><u>1997 SCMR 1282</u></b> Possession as "Hissadar" through family arrangement is always subject to regular partition.
194	<b>Purchase by Tenant, Status</b>	<b>Civil</b>	<b>Rent Law</b>	-	<b><u>PLD 2009 SC 71</u></b> Purchaser of a share out of a joint property having become a co-owner, his status as a 'tenant' ceased and his possession became that of a co-owner who fell within the definition of 'landlord'.

195	<b>Construction by Co-Owner</b>	<b>Civil</b>		--	<b><u>2003 SCMR 999</u></b> Co owner instead of raising construction on the property which was admittedly owned by the plaintiffs, should have first of all got the same partitioned and then might have constructed the portion of land falling in their share.
196	<b>Status of Co-owners</b>	<b>Civil</b>	--	--	<b><u>1989 SCMR 130</u></b> In case of joint immovable property, each co-sharer deemed to be interested in every inch of subject-matter irrespective of quantity of his interest.
197	<b>Past and closed transaction</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art. 189</b>	<b><u>PLD 1987 SC 145</u></b> Where grievance is individual and related to satisfaction of claim in full or in part, proceedings were actions in personam against definite persons arrayed as respondents and determination a judgment in personam-Where such determination was not set aside in appeal, judgment remained in field irrespective of the quality of determination as to whether it was incorrect on question of fact or law-Rights of parties thereunder assumed finality and took the colour of a "past and closed transaction.
198	<b>Civil Miscilinous petition should be disposed firstly</b>	<b>Civil</b>	<b>CPC</b>	--	<b><u>1991 SCMR 1232</u></b> Where application for production of additional evidence was filed before the Appellate Court, it ought to have been adjudicated upon before disposing of appeal.
199	<b>Dominative control-Defined</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art. 199</b>	<b><u>PLD 2000 Lah 489</u></b> College being governed by the Board of Governors and dominative control of said Board, being that of the Provincial Government, fell within the definition of word "person" used in Art.199(5) of the. Constitution and thus, amenable to the Constitutional jurisdiction of High Court.

<b>200</b>	<b>Default of Pawnor</b>	<b>Civil</b>	<b>Contract Act 1872</b>	<b>S.176</b>	<b><u>PLD 1966 Lah 1</u></b> S. 176-Right of pawnee (pledgee) either to bring suit upon debt or to sell pledged property upon reasonable notice-Both rights, held, are concurrent-Pawnee must return pledged property on payment of debt by pawnor.
<b>201</b>	<b>Quashment of FIR</b>	<b>Constitution</b>	<b>Cr.P.C</b>	<b>Sec 561</b>	<b><u>2006 CLD 625</u></b> High Court, in exercise of constitutional jurisdiction, quashed F.I.R. on the ground that it was registered in violation of the provisions of S.7(4) of Financial Institutions (Recovery of Finances) Ordinance, 2001. No order for quashing of F.I.R. could be passed nor the same could be approved in absence of any finding that the offences mentioned in F.I.R. were false and malicious and in absence of a finding that if a particular forum or mode had been prescribed with respect to taking of cognizance of an offence then the same also implied prohibition regarding the registration of F.I.R.
<b>202</b>	<b>Attorney for Sale-Irrevocable</b>	<b>Civil</b>	<b>Contract Act1872</b>	<b>S.202</b>	<b><u>2001 SCMR 1488</u></b> Where the principal had received certain payment and executed the Power of Attorney, such Power of Attorney was irrevocable.
<b>203</b>	<b>Investigation after after commencement of trial</b>	<b>Criminal</b>	<b>CrPC</b>	<b>S.173</b>	<b><u>PLD 2007 SC 31</u></b> As investigation report (challan) had already reached Trial Court, where trial had already commenced, changing of investigation or ordering further investigation in the matter thereafter was an exercise unsustainable in law.

204	<b>Locus pointentiatie</b>		<b>General Clauses Act</b>	<b>S.20</b>	<b><u>PLD 1991 SC 973</u></b> Principle is available to the Government or relevant Authorities and further Authority which is competent to make order has power to undo it. Such order, however, cannot be withdrawn or rescinded once it has taken legal effect and created certain rights in favour of any individual
205	<b>Pre emption in urban areas</b>	<b>Civil</b>	<b>Pre-emption Act</b>	<b>S.2</b>	<b><u>PLD 1994 SC 1</u></b> The exemption of all the immovable properties situated in urban areas does not fulfil the requirement of Zaroorat on the basis of which a particular property can be exempted in the Shari ah from the application of the law of pre-emption.
206	<b>Judicial Precedent-Binding Effect</b>	<b>Consti-tution</b>	<b>Consti-tution of Pakistan 1 973</b>	<b>Art. 198,201</b>	<b><u>1994 SCMR 2213</u></b> Case is only an authority for what it actually decides and cannot be quoted for a proposition that may seem to follow logically from it. Arts. 198 & 201.
207	<b>Determination of Probable value of property</b>	<b>Civil</b>	<b>Punjab Pre-emption Act 1991</b>	<b>S.24</b>	<b><u>PLD 2005 Lah 1</u></b> If sale price mentioned in the sale deed or mutation appeared to be inflated, the Trial Court before requiring the deposit of 1/3rd, would determine the probable value of the property, under second proviso to S.24 of Punjab Pre-emption Act, 1991.
208	<b>Judge at principal seat can exercise jurisdiction on entire territorial limits/principa l seat</b>	<b>Constitu-tion</b>	<b>Constituti on Of Pakistan 1 973</b>	<b>Art. 198</b>	<b><u>PLD 2005 SC 500</u></b> Despite the territorial limits of the Benches having been administratively fixed by R.3 of the Lahore High Court (Establishment of Benches) Rules, 1981, a Judge sitting at the Principal seat of the High Court having Benches can, exercise jurisdiction within the entire territorial limits of the High Court.
209	<b>Question of defect in</b>	<b>Civil</b>	<b>CPC</b>	<b>S.99</b>	<b><u>PLD 1964 SC 865</u></b> A question of defect of procedure is always a question of

	<b>procedure</b>				prejudice. When there is no point made of any defect of procedure by the party there is no prejudice to the party. There is no ground for raising this question suomotuby the Supreme Court.
<b>210</b>	<b>Special procedure</b>	<b>Criminal</b>			<b><u>1971 SCMR 686</u></b> Statute creating a special offence and laying down a special procedure for trial of such offence-Such procedure must be followed and not ordinary procedure.
<b>211</b>	<b>Jurisdictionon question of Fitness</b>	<b>Civil</b>	<b>Civil Servant Act</b>	<b>S.4</b>	<b><u>PLD 1994 SC 539</u></b> Question of eligibility relates primarily to the terms and conditions of the service and their applicability to the civil servant concerned and, therefore, Service Tribunal has jurisdiction in the matter. Question of fitness is a subjective evaluation on the basis of objective criteria when substitution for an opinion of the competent authority is not possible by that of Service Tribunal or of a Court, and therefore, Service Tribunal has no jurisdiction on the question of fitness.
<b>212</b>	<b>Promotion is not a vested right</b>	<b>Civil</b>	<b>Civil Servant Act</b>	<b>S.4</b>	<b><u>2005 SCMR 980</u></b> Promotion was not vested right of an employee and Government was always competent to enhance educational qualification for the purposes of promotion.
<b>213</b>	<b>Promotion/ fitness for</b>	<b>Civil</b>	<b>Civil Servant Act</b>	<b>S.4</b>	<b><u>PLD 1997 SC 382</u></b> If it is contended that a person could not be appointed because he did not possess the required qualifications, the case is not one of his fitness to hold the post but it is essentially a question relating to his eligibility for appointment to the post.
<b>214</b>	<b>Promotion Service</b>		<b>Punjab Service Tribunal</b>	<b>S.4</b>	<b><u>2007 SCMR 682</u></b> What is barred from jurisdiction of Service Tribunal is question of fitness of civil servant for promotion.

			<b>Act</b>		Determination of eligibility of civil servant is the question on which jurisdiction of Service Tribunal has not been barred.
<b>215</b>	<b>Proportionality</b>	<b>Consti- tution</b>	-	-	<b><u>PLD 1999 SC 57</u></b> A distinction to be made between an Emergency which is imposed when a country is engaged in an actual war or is subjected to actual external aggression and when the same is imposed on account of imminent danger thereof for the purpose of suspension of Fundamental Rights and continuation of the Emergency. In the former case, the Latin maxim "inter arma leges silent" (i.e. when there is an armed conflict, the law remains silent) or that the national success in the war is to be ensured in order to escape from national plunder or enslavement even if the personal liberty and other rights of the citizens are sacrificed, would be applicable. But in the latter case the rule of proportionality is to be followed as adopted under Article 4 of the International Covenant of Civil and Political Rights. Article 15 of the European Convention of Human Rights, 1967 i.e. a public emergency permits a State to take derogatory measures in derogation of the covenants subject to the condition that the rule of proportionality is observed meaning thereby, that the derogatory steps/actions should be to the extent required by the exigencies of the situation provided such measures are not inconsistent with their other obligations under the international law. Such view is reinforced by the report of International Law Association, 1986, para.36 (xix), that while imposing Emergency following factors should be considered
<b>216</b>	<b>Duty to act justly and fairly</b>	--	--	--	<b><u>2004 SCMR 1274</u></b> A contract carrying element of the public interest is open for judicial review.
<b>217</b>	<b>Malifide in</b>	<b>Consti-</b>	<b>Consti-</b>	<b>Art. 199</b>	<b><u>PLD 2001 SC 116</u></b>



	<b>Public Contract</b>	<b>tution</b>	<b>tution of Pakistan 1973</b>		High Court in exercise of its Constitutional jurisdiction was possessed of power to examine the validity of order in regard to grant of a concluded contract and strike down the same on the grounds of mala fide, arbitrary exercise of discretionary power, lack of. transparency, discrimination and unfairness etc provided the challenge was made promptly and contentious questions of facts were not involved.
<b>218</b>	<b>Public Document</b>	<b>Civil</b>	<b>QanonShahadat Order</b>	<b>Art.85</b>	<b>PLD 2002 SC 446</b> Intrinsic value of a public document was to be examined on its contents.
<b>219</b>	<b>Public property auction.</b>	-	-	-	<b>1996 SCMR1433</b> Merely by participating in auction and giving highest bid, appellant did not acquire any vested right to get his bid accepted.
<b>220</b>	<b>Public Notification</b>	<b>Interpretation</b>	-	-	<b>PLD 2004 SC 261</b> Provisions of a statute for the publication of a notification in official Gazette are generally regarded as directory where their strict non-compliance does not provide any consequences.
<b>221</b>	<b>Service Tribunal Order</b>	<b>Civil</b>	<b>Service Tribunal Act</b>	<b>S.4</b>	<b>2002 SCMR 1034</b> Employer had an obligation to honour the judgment of Service Tribunal and reinstate the employees or if employer had any reservation in not implementing the judgment, then a stay order should have been obtained from the Supreme Court. Employer had not obtained any stay order, thus, judgment of Service Tribunal remained operative. - Supreme Court directed that employees be reinstated with effect from the date of passing of judgment of Service Tribunal with all back benefits.

222	<b>Purchase in good faith and without notice</b>	<b>Civil</b>	<b>Specific Relief Act</b>	<b>S. 12 &amp; 27 (b)</b>	<b><u>2003 SCMR 1720</u></b> As the plaintiff had failed to discharge the onus to prove the knowledge of defendant of the prior agreement to sell, the protection of S.27(b) of Specific Relief Act, 1877, was available to the defendant who was transferee of the suit-land for value in good faith and without notice of any, prior agreement to sell.
223	<b>Quota-Appointment</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art. 18 &amp; 199</b>	<b><u>1989 SCMR 551</u></b> Respondents appointment in violation of relevant rules and procedure and in derogation of method of recruitment.- Respondent's appointment to specified post from amongst the quota reserved for promotees was declared to be illegal.
224	<b>Reasons must be given</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art. 199</b>	<b><u>1998 SCMR 2268</u></b> where a statute confers a power to make any order or to give any direction to any Authority, office or person, such would be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. What is more, the order or direction, so far as necessary or appropriate would reflect reasons for its making or issuance and, where the same is lacking, an affectee may demand the necessary reasons, which, in response,, would, be furnished.
225	<b>Reconciliation under family law through attorney</b>	<b>Civil</b>	<b>Family Court Act 1964</b>	<b>S.18</b>	<b><u>1998 CLC 1011</u></b> Appearance through agent was legally permissible under S.18 of West Pakistan Family Courts Act, 1964.
226	<b>Election Recount</b>	<b>Civil</b>	<b>Representative of People Act</b>	<b>S 46(2)</b>	<b><u>PLD 1995 SC 43</u></b> Election Tribunal, however, can invalidate such votes after calling for the sealed bags containing those invalidated votes in order to satisfy itself whether such exercise was properly done or not and, if satisfied, then declare those votes to be invalid.

227	Reference/Arbitrator	Civil	Arbitration Act	S. 11 & 20	<b>PLD 1988 Lah 250</b> The distinction between an Arbitrator and a referee, therefore, is that the arbitrator is authorised to decide after making an enquiry, but a referee is not so authorised.
228	Refund of Tax	Mercantile Law	Central Excise and Salt Rules 1944	S. 32,33,34	<b>PLD 1998 SC 64</b> Withholding of a citizen's money by public functionaries on the plea of limitation or any other technical plea if it was not legally payable by him was deprecated.
229	Rejection of plaint	Civil	CPC	O VII R 11	<b>1981 SCMR 878</b> Plaint, rejection off Order VII, r. 11, held; not exhaustive of all situations in which a plaint can be rejected or a suit can be dismissed summarily.
230	Relationship between tenant and land lord	Civil	Rent Restriction Ordinance	S. 13 (6)	<b>1991 CLC 773</b> Finding as to relationship is necessary in order to make a decision u/s 13 (6)  <b>PLD 1963 Lah 390</b> Deposit of arrears of rent etc., by tenant may not be ordered where tenant objects to jurisdiction of Rent Controller, such objection being based on non-existence of relationship of landlord and tenant.
231	Bringing tenancy into conformity	Civil	Punjab Rented Premises Act 2009	S 8 & 9	<b>PLD 2010 Lah 389</b> Conjunctive reading of Ss. 8 and 9 of the Punjab Rented Premises Act, 2009 made it clear that the initial two years of the promulgation of the Punjab Rented Premises Ordinance, 2007 and the Punjab Rented Premises Act, 2009, penal provisions of section 9 of the Punjab Rented Premises Act, 2009 could not be applied on existing tenancies.

<b>232</b>	<b>Rent personnel need</b>	<b>Civil</b>	<b>Rent Restriction Ordinance</b>	<b>S.15</b>	<b><u>1996 SCMR 1178</u></b> Statement of landlord on oath, if consistent with the application for ejection and not shaken in cross-examination or disproved in rebuttal is sufficient to prove that requirement of landlord is bona fide.
<b>233</b>	<b>Repeal of Remedy</b>	<b>Civil</b>	<b>General Clauses Act</b>	<b>S.6</b>	<b><u>PLD 1985 SC 376</u></b> Right of appeal, given under repealed enactment is such a right which survives the repeal unless repealing enactment, either expressly or by necessary implication, curtails such right in any manner.
<b>234</b>	<b>Reservation of seats in competitive examination</b>	<b>Constitution</b>		--	<b><u>1993 SCMR 1124</u></b> Where posts were vacated by non-joinder of selected candidates or subsequent requisitions were received, the ordinary course for the Public Service Commission and the Government should be to readvertise those posts. Advisable practice in exceptional situation.
<b>235</b>	<b>Respondent in appeal</b>	<b>Civil</b>	<b>CPC</b>	<b>O XLI R 22</b>	<b><u>PLD 1973 SC 295</u></b> Respondent in appeal can support a decree even on points against him but cannot attack decree and ask for its variation without filing cross objection.
<b>236</b>	<b>Retrospective</b>	—	<b>Taxation</b>	—	<b><u>1993 SCMR 1905</u></b> Retrospective legislation to bind even past transactions. Ways that can be adopted by legislature to neutralise the effect of the earlier decision of the Court.
<b>237</b>	<b>Retrospective Procedural Law interpretation</b>	<b>Civil</b>	<b>Punjab Civil Courts Ordinance</b>	<b>S. 18</b>	<b><u>1987 SCMR 978</u></b> Amending Act V of 1986, held, had merely changed the forum in which appeal was to be heard and did not affect any vested right of appeal. Said amendments being merely

					procedural in nature, were operative retrospectively.
<b>238</b>	<b>Revenue authorities jurisdiction</b>	<b>Civil</b>	<b>Specific Relief Act 1887</b>	<b>Sec42</b>	<b><u>1972 SCMR 322</u></b>  Revenue authorities under obligation to sanction mutation on basis of decree passed by civil Court-Cannot refuse mutation on ground that decree had not been put into execution within prescribed period of limitation and therefore had become ineffective.
<b>239</b>	<b>Revenue Record is not an evidence of title</b>	<b>Civil</b>	<b>Land Revenue Act</b>	<b>S.42</b>	<b><u>PLD 1994 SC 245</u></b>  Entries in Revenue Record could neither create nor extinguish title to property.
<b>240</b>	<b>Review by BOR</b>	<b>Civil</b>	<b>CPC</b>	<b>S.114, O XLVII R.1</b>	<b><u>PLD 2005 SC 311</u></b> Misconstruction of law, misreading of evidence on record and non-consideration of pleas raised before a Court, would amount to an error floating on the surface of record. Principles illustrated.
<b>241</b>	<b>RemandLimitation</b>	<b>Civil</b>	<b>CPC</b>	<b>S.107 O.XLI R.23 &amp;24</b>	<b><u>PLD 1965 SC 434</u></b>  Evidence on record sufficient for appellate Court to decide question itself. Remand not to be lightly ordered.
<b>242</b>	<b>Right to Life include employment lively hood</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art.9</b>	<b><u>2003 SCMR 291</u></b>  Employment for a common person is source of I livelihood and right of livelihood is an undeniable right to a person. If work is sole source of livelihood of a person, then right to work is not less than a fundamental right which has to be given protection accordingly.
<b>243</b>	<b>Removal from Services -</b>	<b>Civil</b>	<b>Service Tribunal</b>	<b>S.4</b>	<b><u>2010 SCMR 1484</u></b>

	<b>Jurisdiction of Tribunal</b>		<b>Act</b>		Employees of non-statutory corporations, who approached Service Tribunal for redressal of their grievance were not enjoying the protection of statutory rules, therefore, Service Tribunal had no jurisdiction to adjudicate upon such matters and they would be governed by the principle of Master and Servant
<b>244</b>	<b>Right for writ petition</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art.</b>	<b><u>2005 SCMR 445</u></b> The right which is the foundation of an application under Article 199 of the Constitution is a personal and individual right.
<b>245</b>	<b>Right to Marriage</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art. 203 B(c)</b>	<b><u>PLD 2004 SC 219</u></b> Question of consent of “wali” in the case of marriage of sui juris Muslim girl was examined.
<b>246</b>	<b>Final judgment for the purpose of application u/s 12 (2)</b>	<b>Civil</b>	<b>CPC</b>	<b>S. 12 (2)</b>	<b><u>2000 SCMR 900</u></b> Application under S.12(2), C.P.C. subject to all just exceptions, would be competent before the Court which had finally decided the appeal
<b>247</b>	<b>Sale of mortgaged property</b>	<b>Mercantile Law</b>	<b>Recovery of Financial Institutions (Recovery of Finances) Ordinance 2001</b>	<b>S.15</b>	<b><u>2010 CLD 1765</u></b> Bank in order to recover over-dues, without obtaining a decree of the court, had sold two charged properties of the appellants in exercise of power under S.15 of Financial Institutions (Recovery of Finances) Ordinance, 2001, which was declared unconstitutional under exercise of constitutional jurisdiction by the Honourable High Court.

248	<b>Winding up of company on ground of admitted liability</b>	<b>Mercantile Law</b>	<b>Companies Ordinance 1984</b>	<b>S.305</b>	<b><u>1998 SCMR 1533</u></b>  Company's failure to discharge its liability within statutory period of notice.
249	<b>Tax Demand</b>	<b>Mercantile Law</b>	<b>Companies Ordinance 1984</b>	<b>S.405</b>	<b><u>2002 SCMR 1747</u></b>  Language used in S.405(1)(a) of the Companies Ordinance, 1984 is free from any ambiguity, absurdity or confusion, which cannot be twisted whatever principle of interpretation may be pressed into service.
250	<b>Computation of Period of Limitation</b>	<b>Civil</b>	<b>General Clauses Act 1897</b>	<b>S.9</b>	<b><u>2002 SCMR 1903</u></b>  Applicability of S.9 of General Clauses Act, 1897, is not limited to statutes and notifications, but is applied for computing the period of limitation as fixed by any judgment, decree or order.
251	<b>Decree obtained through Fraud</b>	<b>Civil</b>	<b>CPC</b>	<b>S.12 (2)</b>	<b><u>2004 SCMR 843</u></b>  Not necessary that fraud in obtaining decree should have been played on the Court which passed the decree but if a decree had been obtained through fraud between the parties inter se by concealment of true facts, the same could also be set aside.
252	<b>Framing of issue u/s 12 (2)</b>	<b>Civil</b>	<b>CPC</b>	<b>S.12 (2)</b>	<b><u>1990 SCMR 1628</u></b>  Controversial facts, the case was remanded to Civil Court for decision on merits after framing issues on pleadings of parties.
253	<b>Retirement simpliciter &amp; compulsory retirement</b>	<b>Civil</b>	<b>Civil servant Act</b>	<b>S.13</b>	<b><u>2008 SCMR 415</u></b>  Difference between the two is discussed.

254	<b>Filing of appeal at wrong forum</b>	<b>Civil</b>	<b>Limitation Act1908</b>	<b>S. 5&amp;14</b>	<b><u>1995 SCMR 584</u></b> Filing of appeal in a wrong Court on account of mistaken advice tendered by the counsel canvassed on behalf of the appellants for condonation of delay by itself would not attract section 5 but when the litigant and the counsel have acted with due care and caution and their conduct does not smack of negligence, the institution of the appeal in the wrong forum may constitute a "sufficient cause "within the meaning of section 5 for condonation of the delay.
255	<b>Section 22-A/22-B no room to check veracity</b>	<b>Criminal</b>	<b>CrPC</b>	<b>22-A (6)</b>	<b><u>PLD 2007 SC 539</u></b> Only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under S.22-A(6), Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question, and no more.
256	<b>Civil Servant Definition</b>	<b>Civil</b>	<b>Civil Servant Act1973</b>	<b>S. 2(1)(b),2-A</b>	<b><u>PLD 2006 SC 602</u></b> Leave to appeal was granted by the Supreme Court, inter alia, to examine the questions that whether or not the teachers/employees of PAF Educational Institutions managed by the Managing Committees or bodies were Civil Servants under S.2(1)(b) of the Civil Servants Act, 1973 or for the purpose of S.2-A of the Service Tribunals Act, 1973.
257	<b>Bonafide purchaser sails with vendors</b>	<b>Civil</b>	<b>Transfer of Property Act1882</b>	<b>S.10 &amp; 11</b>	<b><u>2003 SCMR 549</u></b> Entitlement of vendees was based upon entitlement of vendor. Vendees were to survive or sink with vendor depending upon determination of legal status of the property transferred to vendor. Vendor having failed to keep his entitlement alive, vendees claim was bound to be



					rejected.
<b>258</b>	<b>Condonation of delay not applicable to revision petitions</b>	<b>Civil</b>	<b>Limitation Act 1908</b>	<b>S.5 &amp; 29(2)</b>	<b><u>2001 SCMR 286</u></b>  Where the law under which proceedings had been launched had itself prescribed a period of limitation as under S. 115, C.P.C. then the benefits of S. 5 of the Limitation Act, 1908, could not be availed unless the same had been made applicable as per S. 29(2) of Limitation Act, 1908.
<b>259</b>	<b>Inflation in value-price increased by the Court</b>	<b>Civil</b>	<b>Specific Relief Act 1877</b>	<b>S.12</b>	<b><u>2000 SCMR 533</u></b>  Grant of decree for specific performance of agreement, being a discretionary and equitable relief, under the law, Supreme Court while exercising the discretion in the interest of justice in favour of the plaintiff raised the amount of remaining consideration from Rs.2,000 to Rs.1,00,000.
<b>260</b>	<b>Salary for particular post</b>	--	<b>Civil Servant Act 1973</b>	--	<b><u>PLD 1994 SC 233</u></b>  Civil servant having discharged full duties and responsibilities of the higher post; in absence of plausible reason, he could not be deprived of the salary and other benefits connected with that post.
<b>261</b>	<b>Withholding of salary</b>	<b>Civil</b>	<b>Civil Servants Act</b>		<b><u>2001 SCMR 1320</u></b>  Contention by the Authorities was that the appointment of employees was illegal and made in violation of relevant recruitment rules. Salaries can not be withheld on such ground.
<b>262</b>	<b>Sale defined</b>	<b>Civil</b>	<b>Transfer of Property Act 1882</b>	<b>S.54</b>	<b><u>2002 SCMR 1821</u></b>  Sale of immovable property means transfer of ownership with delivery of possession on a price to be paid or promised

					to be paid.
<b>263</b>	<b>SBP Circulars having binding effect</b>	<b>Mercantile Law</b>	<b>Banking Companies Ordinance</b>	<b>S.25</b>	<b><u>PLD 1997 SC 315</u></b>  State Bank of Pakistan has the requisite powers to issue directions to the Banks as to the rate of interest which should be charged by them and such a direction is binding on the Banks.
<b>264</b>	<b>Supreme Court interference in interim orders</b>	<b>Civil</b>	<b>CPC</b>	<b>O. XXXIX Rule 1 &amp; 2</b>	<b><u>1997 SCMR 1508</u></b>  Supreme Court was bound to interfere with the same in order to obviate miscarriage of justice, where such orders were arbitrary, capricious and against well settled principles of law.
<b>265</b>	<b>Supreme Court's judgment is prospective</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>	<b>Art. 63</b>	<b><u>PLD 1968 SC 101</u></b>  Binding nature of decision of Supreme Court. Prospective and not retrospective.
<b>266</b>	<b>Order without jurisdiction- May be challenged in writ petition</b>	<b>Constitution</b>	<b>Constitution of Pakistan 1973</b>		<b><u>1993 SCMR 29</u></b>  Invoking of Constitutional jurisdiction of High Court instead of availing of remedy provided for under the relevant statute would be justified when the impugned order/action was palpably without jurisdiction and/or mala fide as to force an aggrieved person in such a case to approach the forum provided under the relevant statute may not be just and proper.

<b>267</b>	<b>Inquiry from Revenue Record not sufficient</b>	<b>Civil</b>	<b>Transfer of Property Act</b>	<b>S.41</b>	<b><u>1970 SCMR 657</u></b> Property being urban immovable property inquiry should not have been confined to examination of revenue papers but should have extended to demand for title deed - Purchaser not entitled to protection sought.
<b>268</b>	<b>rectification of register</b>	<b>Mercantile Law</b>	<b>Companies Ordinance 1913</b>	<b>S.38</b>	<b><u>1986 CLC 2560</u></b> Question of fact requiring detailed inquiry by appropriate civil proceedings, held, could not be determined under summary procedure available under Companies Act, 1913
<b>269</b>	<b>Secured Creditor</b>	<b>Mercantile Law</b>	<b>Companies Ordinance</b>	<b>S.5</b>	<b><u>1992 SCMR 1731</u></b> a 'secured loan or advance' is that loan which has 'been made against such security of assets the value of which does not at any time fall less than the loan.
<b>270</b>	<b>Right of hearing</b>	<b>Civil</b>	<b>Civil Servant Act 1973</b>		<b><u>2004 SCMR 468</u></b> It is incumbent upon Authorities that before passing order of termination/removal of employee, he should have been issued show-cause notice and an opportunity of hearing granted and thereafter well-considered order should have been passed
<b>271</b>	<b>Appeal before Tribunal-Limitation</b>	<b>Civil</b>	<b>Service Tribunal Act</b>	<b>S.4</b>	<b><u>2002 PLC (CS) 1641</u></b> When appeal before department was time-barred, the appeal before the Service Tribunal was also incompetent on that account.
<b>272</b>	<b>Benefits available to the civil servant who</b>	<b>Civil</b>	<b>Civil Servant Act 1973</b>		<b><u>1996 SCMR 1185</u></b> If the Tribunal or Apex Court decides a point of law relating to the terms of service of a civil servant which covers not

	<b>have not come to court</b>				only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings.
<b>273</b>	<b>Deputation-Not Vested Right</b>	<b>Civil</b>	<b>Civil Servant Act 1973</b>	<b>S.9</b>	<b><u>1998 PLC (CS) 839</u></b>  Civil servant was recalled to his parent department before expiry of deputation period. Civil servant had no vested right to continue on deputation.
<b>274</b>	<b>Registration of FIR not bar departmental proceedings</b>	<b>Civil</b>	<b>Efficiency and Discipline Rules</b>	-	<b><u>2004 PLC (CS) 809</u></b>  No bar to proceed departmentally against any civil servant even after his acquittal, as departmental disciplinary proceedings are entirely different from those of the criminal proceedings on criminal charge.
<b>275</b>	<b>Transfer on political intervention</b>	<b>Civil</b>	<b>Civil Servant Act 1973</b>	<b>S.9</b>	<b><u>1998 PLC (CS) 832</u></b>  Question of transfer/posting being matter pertaining to terms and conditions of service, even in cases where transfer had taken place under the influence/dictation of M.N.As./M.P.As., bar contained under Art. 212(2) of the Constitution, would remain intact. High Court, thus, would have no jurisdiction in matter pertaining to transfer/posting of civil servants.
<b>276</b>	<b>Regular inquiry</b>	<b>Civil</b>	<b>Civil Servant Act</b>	-	<b><u>1997 SCMR 1552</u></b>  Misconduct is a stigma, regular inquiry necessary before proceeding against the civil servant.
<b>277</b>	<b>Access to Justice- Due Process-Fair Trial</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 4, 9	<b><u>PLD 2001 SC 607: PLD 1993 SC 341</u></b>  The right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal.

278	<b>Access to Justice- Independence of Judiciary</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 9	<b><i>Al - Jehad Trust v. Federation of Pakistan, PLD 1996 SC 324, at 423.</i></b> without having an independent judiciary, the Fundamental Rights enshrined in our Constitution will be meaningless and will have no efficacy or beneficial value to the public at large.
279	<b>Access to Justice-Effect of expensive remedy</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 4, 9	<b><i>Muhammad Asar Khan v. Sixth Senior Civil Judge, 1997 CLC 1139.</i></b> The Sindh High Court aptly remarked: "Access to justice is to all is command of the Constitution and recognized as inviolable right in terms of Article 9....If access to justice is made expensive...it may cause undue hindrance in relation to access to justice."
280	<b>Access to Justice-Denial of Due Process-Effect</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 4	<b><i>AftabShabanMirani v. President of Pakistan, 1998 SCMR 1863</i></b> Due process right inter alia includes the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. A person cannot be said to have been given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegation made against him.
281	<b>Access to Justice- Judge in his own cause-Effect</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 4	<b><i>New Jubilee Insurance Company v. National Bank of Pakistan, PLD 1999 SC 1126.</i></b> one cannot be a judge in his own cause. The breach of principle of jurisprudence will in fact be violative of the right of "access to justice to all" which is a well-recognized inviolable right enshrined in Article 4 of the Constitution. This right is equally founded in the doctrine of 'due process of law'. The right to access to justice includes the right to be treated according to law, the right to have a fair and proper trial and the right to have an impartial Court or Tribunal.
282	<b>Access to Justice- vague law- denial of</b>	<b>Constitution</b>	Constitution of Pakistan	Articles 4, 9	<b><i>Reference No. 2 of 2005 by the President of Pakistan, PLD 2005 SC 873,</i></b> that the proposed legislation—Hasba Bill—has certain provisions that violate the Fundamental

	<b>access to justice</b>		1973		Rights, if enacted as these being: “vague, overbroad, unreasonable, based on excessive delegation of jurisdiction, denying the right of access to justice to the citizens and attempting to set up a parallel judicial system.”
<b>283</b>	<b>Access to Justice- access to Counsel- right to be heard</b>	<b>Constitutional</b>	Constitution of Pakistan 1973.	Article 9	<b>PLD 2007 Karachi 544 (DB)</b> , it has again been asserted that to deny the accused the right of access to counsel at state expense will be violation of Article 9 Fundamental Right.
<b>284</b>	<b>Access to justice-Effect of Delay</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 4	<b>PLD 2008 Karachi 177 (DB)</b> , Inordinate and scandalous delay in trial, which in the present case is 14 years, is not only abuse of the process of law and of court, but violation of fundamental right of access to justice <sup>1</sup> as well.
<b>285</b>	<b>Access to Justice- Presence of bias-Effect</b>	<b>Constitution</b>	Constitution of Pakistan 1973	Articles 4	<b>PLD 2009 Lahore 268<sup>2</sup> (Full Bench)</b> The tribunals of limited jurisdiction are required to follow due process of law. It has been enunciated that the phrase “due process of law” means that individuals are not required to be only dealt with in accordance with law but it qualifies further that the process adopted in this context is open, fair and transparent, therefore, due determination of the default by an unbiased Tribunal or a Court is sine qua non and anything to the contrary is offensive to the legal parameters settled by the apex Court.”
<b>286</b>	<b>Domestic Tribunals- Inadequate</b>	<b>Civil</b>	Service Laws		<b>2004 YLR 659 (FB)</b> Ex parte inquiry and conclusion drawn by domestic Tribunal like University, cannot be pressed to the detriment

	<b>disclosure- Effect</b>				of concerned person---For arriving at a finding- adverse to some person, not only cogent evidence' is required, but also affected person has to be confronted with material sought to be used against him to fulfil the duty of "adequate disclosure"---Such person is entitled to opportunity of defence to rebut such material to satisfy requirement of principles of natural justice and fairness to obey the command of Art.4 of the Constitution.
<b>287</b>	<b>Adoption in Islam- Inheritance- Scope and Extent</b>	<b>Civil</b>	Islamic Law on Adoption		<p><b>1989 SCMR 836</b> -Mst. NawabBibi. now dead, was transferred a plot on 15-7-1971. The petitioner who had been adopted by her as her son claimed that the transfer document should be issued in his favour as under an agreement of association she had transferred the plot to him and that he had paid the purchase price from his own sources.... The petitioner preferred an appeal before the Additional District Judge but it was dismissed. He then filed a revision petition in the High Court which also met the same fate. He now seeks leave to appeal from this Court... The trial Court was right in non-suiting him. The petition [leave to appeal] is dismissed</p> <p><b>PLD1988Lahore588(DB)</b> Muslim Law does not recognise adoption and does not treat adoptee as heir--Plea of adoption as son by deceased Muslim female put forth by defendant would be of no avail as property left by such female would have to be regulated by personal law.</p>
<b>288</b>	<b>Affidavit- not duly verified- Effect</b>	<b>Civil</b>	Sind Rented Premises Ordinance 1979	Sec.15	<p><b>2001 SCMR 762</b> affidavit-in-evidence,Failure to swear the affidavit before oath commissioner-Effect-Where the deponent had appeared before the Rent Controller and was subjected to cross-examination, the defect of administration of oath by the commissioner was mere an irregularity---</p>

					Such irregularity stood cured when the deponent was examined before the Rent Controller who was competent to record evidence on oath.
289	<b>Suo-motu powers-against acquittal-Scope</b>	<b>Criminal</b>	Criminal Procedure Code 1898	Sec 439	<b>2009 SCMR 569</b> Division bench of high court was not empowered to exercise suomoto power of revision in such manner as to convert judgment of acquittal into a judgment of conviction. <b>1990 PCrLJ 1109</b> Co-accused had erroneously been given benefit of doubt and acquitted, but there was neither any State appeal nor any criminal revision as against his acquittal-Suomoto notice, even if given to him in this regard, would mean his retrial which, held. would not serve any useful purpose in circumstances.
290	<b>Bail-Statutory Ground</b>	<b>Criminal</b>	Criminal Procedure Code 1898	Sec 497	<b>1997 PCRLJ 1742</b> Broken period of detention of accused in jail was not helpful. to him because Legislature had clearly intended to take into consideration an uninterrupted and unbroken period of two years for deciding the bail matter on the ground of statutory delay-Third proviso to S.497(1), Cr.P.C. had, no doubt, been interpreted strictly as well as liberally, but correct interpretation that fosters justice had to be made while keeping in view the peculiar circumstances of each case.
291	<b>Power of Civil Courts to interpret Constitution</b>	<b>Civil</b>	Civil procedure code, 1908	Order XXVII	<b>PLD 1992 SC 723</b> Provision of OXXVIIA, R.1, C.P.C. prohibits a Court to proceed to determine any substantial question as to interpretation of Constitutional law until after a notice has been given to the Attorney-General for Pakistan if the question of law concerns the Federal Government.
292	<b>Civil revision-</b>	<b>Civil</b>	Code of	Section	<b>PLD 2012 SC 400</b>



	<b>limitation period-time to obtain certified copies</b>		Civil Procedure, 1908 Limitation Act, 1908	115 CPC Sec 4 9 to 18 and 22 Limitation Act	Provision of Ss.4, 9 to 18 & 22 of Limitation Act, 1908 would, thus, apply even to revision petition filed under S.115, C.P.C. however, S.5 of Limitation Act, 1908, for not finding mention in S.29 thereof shall, not be applicable to revision under S.115, C.P.C. Any time consumed for obtaining certified copies of pleadings, documents order required in support of such petition would thus be excluded.
<b>293</b>	<b>Ouster of jurisdiction; service matters; jurisdiction of civil court</b>	<b>Civil</b>	Punjab Boards of Intermediate and Secondary Education Act 1976	Section 31	<b>2008 SCMR 116,</b> Section 31 of the Punjab Boards of Intermediate and Secondary Educations Act, 1976 is not a complete ouster of jurisdiction clause.
<b>294</b>	<b>Civil suits in Service matters</b>	<b>Civil</b>			<b>Chairman, Syndicate University of Peshawar and another v. Dil Nawaz Khan, 2007 SCMR 703,</b> the civil suit filed by the University employee against his dismissal from service was found lawfully decreed by the first appellate court.
<b>295</b>	<b>Refusal of Bail on commencement of Trial</b>	<b>Criminal</b>	Cr PC	Section 497	<b>P L D 2004 Supreme Court 477</b> after trial commenced, petitioner in custody with effect from the date of his arrest and no more required for the purpose of investigation of the case, no useful purpose will be served by keeping him in custody.
<b>296</b>	<b>Right to Life Scope</b>	<b>Constitution</b>	Constitution	Articles 4, 9,	<b>PLD 2010 SC 759,</b> establishment/construction of restaurant in the Park, contrary to Article 18 of the Constitution read with Capital Development Authority Ordinance, 1960,

					<b>PLD 2005 Supreme Court 361</b> residential building constructed on plot meant for construction of religious institution was violation of law.
<b>297</b>	<b>Compounding of offences in Terrorism Cases</b>	<b>Criminal</b>	Cr PC, Anti-Terrorism Act, 1997	Sec. 345 CrPC Sec. 7 of ATA	<b>P L D 2007 Supreme Court 447</b> Findings of the Courts below by not granting permission to compound the offence under S.7 of the Anti-terrorism Act, 1997, were in accordance with law particularly in view of the bar as contained in subsection (7) of section 345, Cr.P.C.
<b>298</b>	<b>Intra Court Appeal against order-maintain ability</b>	<b>Civil Constitution</b>	Law Reforms Ordinance, 1972	Sec. 3	<b>P L D 1985 Supreme Court 107</b> Relevant law providing right of appeal against original order, intra-Court appeal, was not competent in such case.
<b>299</b>	<b>Appeal non-filing of certified copies of decree-Effect</b>	<b>Civil</b>	CPC	Sec.115 Order 41	<b>PLD 1979 SC 380.</b> appeal filed without complying with such mandatory requirement cannot be said to be properly instituted.
<b>300</b>	<b>Family Court; defence struck off- right of cross examination</b>	<b>Civil</b>	Family Courts Act, 1964	S.10	<b>P L D 2009 Islamabad 4</b> Defendant may cross examine, even after his defence struck of.
<b>301</b>	<b>Maintenance of minors- responsibility of father and grandfather</b>	<b>Civil</b>	Family Courts Act 1964	Sec. 5, 13 and Schedule of FCA 1964	<b>2005 SCMR 1293</b> Suit for past and future maintenance by minor daughter against her father and paternal-grandfather. Supreme Court directed Executing Court to proceed to execute decree and ensure recovery of arrears of maintenance from the judgment-debtors within six months.

302	<b>Fresh Bail on previous ground-maintainability</b>	<b>Criminal</b>	Cr PC	s.497	<b>Zubair's case, PLD 1986 SC 173</b> The notion that each contention raised before the court in a bail application must be dealt with separately or repelled by recording elaborate reasoning is totally misconceived.
303	<b>Identification parade</b>	<b>Criminal</b>	Qanun-i-Shahadat 1984;  Cr PC  High Court Rules and Orders vol. III.	Article 22	<b>2011 SCMR 527</b> Identification of accused in identification parade by the eye-witnesses without describing their role in the occurrence was of no value---identification parade having been conducted after 24 days of the arrest of accused, possibility of the witnesses having seen them could not be excluded  <b>2012 SCMR 522</b> Identification had been made without any reference to the role allegedly played by accused during the incident---Evidentiary value of such identification test or identification parade was next to nothing.
304	<b>Mitigating Circumstance-Murder cases-Character of Deceased</b>	<b>Criminal</b>	Criminal Procedure Code 1898		<b>P L D 2004 Supreme Court 150</b> if deceased a man of questionable character, sufficient circumstance to reduce the sentence of the appellant from death to imprisonment for life.
305	<b>Principles of Interpretation of Documents</b>	<b>interpretation</b>			<b>1995 SCMR 1505</b> Interpretation of documents In construing a document one has to read same as a whole and not by picking and choosing a particular paragraph or portion thereof.  <b>1995 SCMR 1431</b> Interpretation of documents Ambiguity in a contract

				<p>document. Court, in order to resolve such ambiguity and to ascertain the real intention of the parties, can have resort to the correspondence preceding and/or subsequent to the execution of the contract document, conduct of the parties and the attending circumstances.</p> <p><b>1995 SCMR 1489</b> Courts, in order to determine the true nature of a document has to read the document as a whole and to look at the substance and not the form of its title.</p> <p><b>1999 SCMR 971</b> Will, Executants of the deed had mentioned in the deed that he was making "Wasiat" and in the last lines of the deeds it was mentioned that "Wasiathaza per badazwafatamaldaramadhuga"Held, there could not be any other construction of the deed but a will in view of the word "Wasiat" used by the executants.</p> <p><b>1992 SCMR 19</b> Interpretation of documents. Deed of contract has to be construed strictly and literally without deviating or implying anything which was not supported by the intention of the parties and the language of the document. Nothing can be implied in a contract which was inconsistent with its expressed terms.</p>
306	<b>Appeal against acquittal-Limitation</b>	<b>Criminal</b>	Limitation Act, 1908 Cr PC	<p><b>1999 SCMR 795</b> Lapse of time in a criminal matter is sufficient to provide protection to the accused who had been acquitted, against further judicial process through the petition for leave to appeal.</p>
307	<b>Enhancement of Maintenance</b>	<b>Civil</b>	Family Courts Act, 1964	<p><b>1999 CLC 1668 (DB) [Peshawar]</b> <b>2009 M L D 1427 [Lahore]</b> <b>2010 Y L R 540 [Lahore]</b></p>

					<p><b>2010 Y L R 347 [Lahore]</b>  <b>2011 Y L R 435</b>  <b>2005 C L C 1913 [Lahore]</b>  enhancement of maintenance allowance is well within the jurisdiction of the family courts.</p> <p>An application for enhancement can be filed before executing court;  A fresh suit can be filed for seeking enhancement; and  Learned appellate and constitutional courts have used their inherent power to grant enhancement at the stage of appeal/writ to the benefit of the minors.</p>
308	<b>Reserved Price</b>	<b>Civil</b>	Civil Procedure Code, 1908	Order XXI Rule 66	<p><b>2008.CLD.313.(Division.Bench)</b>  <b>Per Mr. Justice Umar Ata Bandial:</b> It is a settled law that the reserve price of a property under auction must be fixed by approval of the Court.</p>
309	<b>Offer for job, no vested right</b>	<b>Service matter</b>			<p>Mere offer letter does not create any vested right in favour of a candidate. Rights which are not available with the petitioner are not enforceable. <b>(2005 P L C (C.S.) 771)</b> It has further been held that the appointment made on further fulfillment of conditions also does not create any vested right in the incumbents <b>(2011 SCMR 1030)</b>. Even appointment of acting charge basis does not create any such vested right <b>(2011 PLC 1130)</b>. In a Lahore High Court Judgment, it has been held that a person appointed on a specific period of two years also has no vested right to remain on the post after said period or if he has removed in accordance with law before end of said period <b>(2011 PLC 1487)</b>.</p>
310	<b>Quo Warranto</b>	<b>Constitutional</b>	Constitution of Pakistan	Article 199(1)(b)(ii)	<p><b>PLD 2011 SC 516</b>  writ of quo warranto is not issued as a matter of course. The</p>

			1973		<p>court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the court in granting or refusing the same and each aspect of the case is to be considered. In such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the court with ulterior motive, mala fide intention etc. relief can be declined.</p> <p>See also <b>PLD 2008 SC 77</b></p>
<b>311</b>	<b>Second FIR</b>	<b>Criminal</b>	Cr PC	Section 154 Cr PC	<p><b>SUPREME COURT</b> 2011 SCMR 45 <b>HIGH COURTS:</b> Mrs. Ghanwa Bhutto and another v. Government of Sindh, PLD 1997 Karachi 119 Haji Ahmad v. Senior Superintendent of Police, 1997 PCrLJ 2069 Muhammad Aslam v. SHO Police Station City Pattoki, PLJ 1997 Lahore 1453 MstRazia Sultana v. DIG Police, 1999 SD 308 2010 MLD 128 1995 PCrLJ 1239 NLR 1995 Cr1 290</p>