



# MONTHLY CASE LAW UPDATE

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## Pakistani Judgments

<b>Contents</b>	<b>Page</b>
<b>Pakistani Judgments</b>	
<i>Banking Laws</i>	1
<i>Constitution</i>	2
<i>Civil Procedure Code</i>	2
<i>Criminal Procedure Code</i>	2
<i>Election Laws</i>	3
<i>Limitation Act</i>	3
<i>Land Acquisition Act</i>	3
<i>Pre-Emption Act</i>	4
<i>Rent Laws</i>	4
<i>Rules of Interpretation</i>	4
<i>Service Laws</i>	5
<b>Foreign Judgments</b>	
<i>Indian Supreme Court</i>	5
<i>U.S. Supreme Court</i>	6
<i>Australian Federal Court</i>	6

### BANKING LAWS

- 1) Messrs Khan Tractors vs. Habib Bank Limited.  
(2013 CLD 177)

*Mehmood Maqbool Bajwa and Shahid Waheed, JJ*

Section 5 of the Limitation Act, 1908 by virtue of ouster clause was not applicable to the proceedings of the appeal under S.22 of the Ordinance; as the same prescribed a period of 30 days for filing of the appeal--- No enabling and permissive provisions of the law existed in the said ordinance in order to apply S.5 of the Limitation Act, 1908---Provisions of S.5 of the Limitation Act, 1908 were not attracted to the appeal preferred under S.22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 Application for condonation of delay was not maintainable---Appeals, being barred by time, was dismissed.

- 2) Habib Metropolitan Bank Ltd. vs. Mian Abdul Jabbar Gihllin etc.  
(2013 CLD 88)

*Irfan Saadat Khan, J*

Electronically generated documents would not require any signature by virtue of electronic transaction ordinance, 2002---Such statement of accounts containing complete picture of loan facility obtained by defendant would not be considered to be a document having no legal authenticity.

## CONSTITUTION

3) Air Marshal (Retd.) Muhammad Asghar Khan vs. General (Retd.) Mirza Aslam Baig.

(PLD 2013 SC 1)

*Iftikhar Muhammad Chaudhry, C.J., Jawad S. Khawaja and Khilji Arif Hussain, JJ.*

The Apex Court while deciding the human rights case has observed that

the President, under Article 41(1) of the Constitution, being the head of the State represents the unity of the Republic, whereas by virtue of Article 243(2) of the Constitution, he is the Supreme Commander of the Armed Forces of Pakistan, Therefore, the President was not supposed to be undertaking any activities in pursuance whereof a particular group of the political parties might be allegedly supported in the name of national interest.

On the principle of "Bias" of the Superior Court's judges, it has been observed that

It is thus well settled that in the case of superior Courts it is entirely a matter for the concerned Judges to decide as to whether they will or will not sit in any particular case. In the instant case, the objection raised by the learned Attorney General is based purely on conjectures and is unwarranted, particularly when the learned Attorney General himself has been appearing in the instant case and participating in the proceedings ever since its hearing was taken up by the present Bench in April this year. During this period, the case was heard on more than 30 dates. Be that that as it may, the Members of the present bench are fully conscious of their responsibilities and are capable of dispensing justice without fear or favour, ill-will or affection. The objection of the learned Attorney General is untenable and is overruled.

4) Dr. Muhammad Aslam Khaki vs. Senior Superintendent of Police.  
(2013 SCMR 187)

*Iftikhar Muhammad Chaudhry, C.J. and Ghulam Rabbani, J.*

"The eunuchs and their fundamental rights. Fundamental rights of eunuchs are to be fully protected in terms of Art.184(3) of the constitution as they are citizens of Pakistan and subject to the constitution and their rights, Obligations, including right to life and dignity are equally protected. No discrimination for any reason is possible against eunuchs as far as their rights and obligations are concerned.

## CIVIL PROCEDURE CODE

5) Muhammad Shaukat vs. Ghulam Muhammad

(2013 CLC 135)

*Shujaat Ali Khan, J.*

In the above judgment, the difference between 'necessary' and 'proper' party has been elaborated on the authority of **2011 SCMR 1591**. It has been observed (at p. 138):

...a party whose presence before Court is necessary to effectually and completely adjudicate upon and settle all questions can be termed as 'necessary party' whereas a party whose presence before the Court is essential for the adjudication of all issues involved in the suit is called 'proper' party.

## CRIMINAL PROCEDURE CODE

6) Mst. Maria Khan vs. The State

(2013 SCMR 49)

*Jawwad S. Khawaja and Khilji Arif Hussain, JJ.*

Sec. 497--- Bail. Complainant contended that testimony of three prosecution witnesses had

been recorded in Trial Court, therefore, bail should be declined to accused. The Court held that such consideration was not valid nor was it an absolute rule that where evidence had been recorded, accused could not be enlarged on bail.

7) Mian Allah Ditta vs. The State  
(2013 SCMR 51)

*Tassaduq Hussain Jillani and Asif Saeed Khan Khosa, JJ.*

Sec. 498--- Pre-arrest bail---Foundational elements to constitute an offence under Sec.489-F, PPC were that cheque should be issued with dishonest intent; that cheque should be issued towards repayment of a loan or fulfillment of an obligation, and that cheque in question should be dishonoured.

## ELECTION LAWS

8) Imran Khan etc. vs. Election Commission of Pakistan  
(PLD 2013 SC 120)

*Iftikhar Muhammad Chaudhry, C.J., Gulzar Ahmed and Sh. Azmat Saeed, JJ.*

Under Art. 218(3) of the Constitution, it was the duty of the Election Commission to organize and conduct the elections and to make such arrangements as were necessary to ensure that the election was conducted honestly, justly, fairly and in accordance with law, be it a general election or a bye-election---For achieving such purpose Election Commission could seek assistance, if necessary from the Executive authorities in the Federation, which were obliged to render such assistance by virtue of Art. 220 of the Constitution.

Accurate electoral rolls was a sine qua non for the holding of a free, fair and transparent election, which was not only the command of the Constitution but also a Fundamental Right of the citizens.

## LIMITATION ACT

9) Bakhtiar Ahmad vs. Shamim Akhtar  
(2013 SCMR 5)

*Nasir-ul-Mulk and Ijaz Ahmad Chaudhry, JJ.*

Mere pendency of Civil Petition before Supreme Court is not a ground for enlarging the period of filing of execution petition.

## LAND ACQUISITION ACT

10) Muhammad Saqib Abbasi vs. Province of Punjab  
(2013 CLC 158)

*Ch. Shahid Saeed, J.*

The notification under section 4 of the Land Acquisition Act 1894 in favour of Army Welfare Housing Society was declared as null and void on the ground that the AWHs is not meant for 'public purpose'. The learned Single Bench of Lahore High Court has held (at p. 163):

...housing schemes being launched under the banner of Defence Housing Authority are on commercial basis earning a lot of profit therefrom, therefore, these cannot be said a 'public purpose'.

It has further been held (at p. 164)

...neither the Federation made request to the Province for acquisition of land nor Army Welfare Housing Scheme has status of company nor the land was required for any public purpose. As a result...notifications...as well as all subsequent proceedings are set aside.

## PRE-EMPTION ACT

11) Ghulam Yasin etc. vs. Ajab Gul

(2013 SCMR 23)

*Ejaz Afzal Khan and Ijaz Ahmed Chaudhry, JJ*

Necessity of mentioning particulars (date, time and place of making Talbs) had emanated from the statute itself---Supreme Court observed that a plaint in a pre-emption case under the latest dispensation was more like an F.I.R. of a criminal case, therefore, no omission howsoever fatal could be allowed to be supplied by means of an amendment; that if amendments were allowed, it would open room for additions, after-thoughts and improvements which would go ad infinitum, and that neither a pre-emption case nor a criminal case with such modus operandi would admit of an end in the mundane existence of the parties.

## RENT LAWS

12) Sharafat Kaleem vs. ADJ Bahawalnagar

(2013 CLC 185)

*Abdul Sattar Asghar, J.*

In a rent petition where the notice u/s 21(1) of the Punjab Rented Premises Act 2009 was not served by the Tribunal on the respondent, the learned single bench of the Lahore High Court has held that the petitioner / tenant has been denied the fundamental right of fair trial as enshrined under Article 10-A of the Constitution. The learned Court has aptly remarked (at p. 190):

Right of fair trial and due process is protected under Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. Certainly a question of fact or liability conclusively presumed without having recourse to the procedural due process cannot be said to have been determined under due process of law. It is pertinent to mention that the word 'shall' used in

subsection (1) of section 21 of the Act [ibid] makes it obligatory upon the Rent Tribunal to serve the tenant with a notice in the form prescribed in the Schedule and to be accompanied by the copies of the application and the documents annexed with the application. Non-compliance of the directory provision of subsection (1) of section 21 of the Act, therefore, amounts to deny a statutory right of the tenant. In the event of such denial of statutory right imposition of penal provision under subsection (6) of section 22 of the Act cannot be said a fair trial in due process of law. The impugned orders, therefore, are also violative to the fundamental rights protected under Article 10-A of the Constitution.

## RULES OF INTERPRETATION

13) Muhammad Mohsin Ghuman vs. Government of Punjab

(2013 SCMR 85)

*Tassaduq Hussain Jillani, Mian Saqib Nisar and Sarmad Jalal Osmany, JJ.*

The question of applicability of 'non obstante clause' of general law over rules framed under special law has been answered by the Hon'ble Supreme Court. His Lordship Mr. Justice Tassaduq Hussain Jillani, speaking for the learned Bench aptly remarked (at pp. 91-92):

One of the foundational principles governing the interpretation of non-obstante clause is that it has to be read in the context of what the legislature intended in the enacting part of the provision.

The Supreme Court thus held that the non-obstante clause of Rule 3(v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules 1976 will not be read to defeat the rules framed under the special law, i.e., the Police Order 2002. The judgment also affirmed the Courts earlier view in IGP v Mushtaq Ahmad Warraich (PLD 1985 SC 159).

14) *Indus Rags vs. Government of Pakistan*

(2013 CLC 24)

*Noor-ul-Haq N. Qureshi and Shaukat Aziz Siddique, JJ.*

A learned Division Bench of the Islamabad High Court has held that where an agreement between two governments has not been incorporated into the law of the land, any conflict will be resolved in light of the law of the land. The Court held (p. 31):

...agreement in between two countries, unless made the law of land, cannot be called in question by invoking writ jurisdiction....It is well settled law as a basic principle of jurisprudence that in case of any conflict between treaty and settlement, law of the land has to prevail.

### SERVICE LAWS

15). *Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan*

(2013 SCMR 1)

*Iftikhar Muhammad Chaudhry, C.J., Jawad S. Khawaja and Khilji Arif Hussain, JJ.*

Political and administrative influence over civil servants---Effect---Supreme Court observed that civil servants were required to implement/carry out lawful orders but they were invariably hindered not to follow the rules and regulations by the high-ups on account of their administrative or political influence; that such actions on part of high-ups resulted in arbitrary and frequent transfers of civil servants from one place to another or at times they were posted as Officer on Special Duty (OSD) or without caring about their merit-cum-seniority, they were not awarded due posting over junior officers or junior officers were given assignments of high responsibility, because of which many civil servants instead of performing independently started looking for favours in the administration as well as in the political arena as a result whereof good governance badly suffered; that fundamental rights of civil servants had to be recognized vis-à-vis their talent considering that they were responsible

for running the affairs of the Government according to the Constitution and law; that Government officials were required to be promoted or transferred on merit, and that no one could be placed as Officer on Special Duty (OSD) as a punishment.

## Foreign Judgments

### Indian Supreme Court

16) *Sahara India Real Estate vs. Securities & Exch. Board Of India & Others*

The Apex Court delivered its much-awaited judgment in the “Media Guidelines” case. Constitutional Bench headed by the Chief Justice, while declining to lay down broad guidelines for the media, did provide certain specific directions with respect to the reporting of matters in the mass media. The most pertinent aspect of the judgment relates to the **doctrine of postponement** whereby the concerned High Court or the Supreme Court can direct that the publication of judicial proceedings be delayed for a certain period of time.

The 56-page long judgment, penned by the Chief Justice of India, is built on the presumption that under the Indian Constitution, “probably, no values are absolute” and that “It also follows that in appropriate case one right [say freedom of expression] may have to yield to the other right like the right to a fair trial.” Drawing from the above statement, the Court went on to add that even the concept of “open justice” is not absolute and hence Courts may place a restriction on the same in “the interest of administration of justice”. Paras 17 to 24 and 34 dilate upon the Constitutionalization of free speech, **the US approach, English approach, the Canadian Approach, the Australian Approach and the New Zealand Approach** have also been considered. Further paras 34, 42 and 43 are also worth reading.

<http://www.indiankanoon.org/doc/182016928/>

<http://barandbench.com/brief/2/2773/sc-delivers-judgment-in-media-guidelines-case-constitutional-bench-lays-down-doctrine-of-postponement-with-regard-to-judicial-reporting-download-judgment>

## **U.S Supreme Court**

### 17) ACLU vs Myriad

**The U.S. Supreme Court granted certiorari in the “ACLU vs Myriad” gene patenting case (Association for Molecular Pathology v. Genetics, Inc.)**, taking on the debate over the patent-eligibility of human genes. The Court will review the August 16, 2012 Federal Circuit decision that held for the second time that Myriad’s claims directed to isolated DNA sequences satisfy 35 USC § 101. The Court’s order granting certiorari is limited to the following question: Are human genes patentable? US Supreme Court has decided to hear the arguments and counter-arguments for controversial issue of patenting human genes.

<http://www.aclu.org/blog/womens-rights-free-speech/are-human-genes-patentable-supreme-court-will-decide>  
<http://www.reuters.com/article/2012/11/30/us-usa-court-genes-idUSBRE8AT19620121130>  
<http://www.reuters.com/article/2012/11/30/usa-court-genes-idUSWEN890120121130>

## **Australian Federal Court**

### 18) Australian Securities and Investments Commission vs. Accounts Control Management Services Pty Ltd [2012] FCA 1164

This important recent ruling by the Federal Court considers the way that debt collection agencies use the threat of litigation to intimidate debtors and recover debts. Perram J found that collection officers threatening litigation against debtors constituted misleading and deceptive conduct. Even though ACM did have a legal department, it was not a common part of its business to refer debtors to. Furthermore, when matters were referred to the legal department, this was done on the recommendation of the section manager and not by individual collection officers. In no way were collection officers in a position to threaten litigation. Therefore, the manual was suggesting to collection officers that they should make statements which were misleading or deceptive. According to the evidence, the percentage of debtor accounts which were sent

to the legal department was less than 0.5% and the number of accounts which incurred legal fees was less than 0.1%. It is hoped and expected that this case will encourage better adherence to key consumer protection laws by debt collectors - including provisions which protect consumers from misleading and deceptive conduct and from harassment and coercion. The case also clarifies that ASIC has the power to regulate and enforce consumer protection provisions, at least as they relate to credit debts.

<http://www.janepetrolo.com/wp-content/uploads/2011/07/Australian-Securities-and-Investments-Commission-v-Accounts-Control-Management-Services-Pty-Ltd-No-2-2012-FCA-1317.pdf>

### 19) Re B (A Solicitor) [2012] FMCAfam 997

A Federal Magistrate in Townsville has made an example of a fibbing lawyer (Mr B) who said the reason for non-appearance of his client (Ms R) in Court was that she was sick and he could not reach her by telephone, when the truth was, the lawyer had seen the client outside the Court that day and told her to go home. The Federal Magistrate said at [8 - 9]:

"All courts in the land must be able to rely upon the complete integrity and frankness of the legal representatives that appear for parties before them on a daily basis... Reliance upon the integrity and the honesty of the legal representatives representing such parties is a cornerstone of the administration of justice...

In this particular matter, particularly in light of the statements that were made in relation to the proceedings and the indication given by Ms R that she had seen Mr B outside of the precincts of the court and had been advised to go home, I cannot find other than that one of the ultimate obligations of a legal representative, to be full and frank, to be truthful and to be honest with the courts and with the statements they make to the courts has not been met by Mr B in relation to this matter."

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FMCAfam/2012/997.html?stem=0&syonyms=0&query=title>