

MONTHLY CASE LAW UPDATE



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Contact

042-99212951 (Ext.267)

Email address: research.lhc@gmail.com

CRIMINAL LAWS

(1) P L D 2016 Supreme Court 951

Present: Anwar Zaheer Jamali, C.J., Mian Saqib Nisar, Amir Hani Muslim, Ejaz Afzal Khan and Mushir Alam, JJ

KASHIF ALI---Petitioner

Versus

The JUDGE, ANTI-TERRORISM, COURT NO.II, LAHORE and others---Respondents

Where the action of an accused results in striking terror, or creating fear, panic sensation, helplessness and sense of insecurity among the people in a particular vicinity, it amounts to terror and such an action squarely falls within the ambit of Section 6 of the Act.

Control of Narcotic Substances Act (XXV of 1997)

KHUDA BAKHSH vs. The STATE

(2) 2015 S C M R 735

Ijaz Ahmed Chaudhry, Dost Muhammad Khan and Qazi Faez Isa, JJ

Ss. 9(b) & (c) Quantum of Sentence

The period of imprisonment in respect of narcotics weighing more than one kilogram, but less than ten kilograms, should be for a period greater than seven years to anything less than fourteen years.

(3) 2016 S C M R 2035

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa, Umar Ata Bandial and Ijaz ul Ahsan, JJ

MUHAMMAD ASIF---Appellant

Versus

**MUHAMMAD AKHTAR and others---
Respondents**

The court while encapsulating the applicability of provisions of exception 4 to sec 300, P.P.C in a case of sudden occurrence resulting in murder opined that in order to attract the provisions it not only had to be established that the case was one of a sudden fight taking place without any premeditation in the heat of passion upon a sudden quarrel but it was also required as a necessary ingredient that the offender must not have taken undue advantage or must not have acted in a cruel or unusual manner.

LAW OF TORT

(4) Fiduciary Duty

MONTGOMERY VS. LANARKSHIRE HEALTH BOARD

2015 S C M R 663

[Supreme Court of UK]*

Lord Neuberger, President, Lady Hale, Deputy President, Lord Kerr, Lord Clarke, Lord Wilson, Lord Reed and Lord Hodge

Negligence: Duty of care owed by a doctor to disclose 'material' risks involved in treatment of a patient. Patients were now widely regarded as persons holding rights, rather than as the passive recipients of the care of the medical profession. Such changes point towards an approach to the law which, treated patients so far as possible as adults who were capable of understanding that medical treatment was uncertain of success and may involve risks, accepting responsibility for the taking of risks affecting their own lives, and living

with the consequences of their choices. Adult person of sound mind was entitled to decide which, if any, of the available forms of treatment to undergo, and his/her consent must be obtained before treatment interfering with his/her bodily integrity was undertaken. Doctor was therefore under a duty to take reasonable care to ensure that the patient was aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. Medical profession must respect the patient's choice, unless she lacked the legal capacity to decide.

QANUN-E-SHAHADAT ORDER

SAEED AHMED VS THE STATE

(5) 2015 S C M R 710

Ijaz Ahmed Chaudhry, Dost Muhammad Khan and Qazi Faez Isa, JJ

Those vulnerable members of society, such as children, women and the infirm, who were living with the accused or were last in his company the accused ought to offer some explanation of what happened to them. If instead he remains silent or offers a false explanation he casts a shadow upon himself. This does not mean that the burden of proof has shifted onto the accused as it is for the prosecution to prove its case, however, in respect of the helpless or the weak that require protection or care it would not be sufficient for the accused to stay silent in circumstances which tend to incriminate him, and if he elects to do so he lightens the burden of the prosecution. Article 122 of the Qanun-e-Shahadat Order too stipulates that if a particular fact is especially within the knowledge of any person the burden of proving that fact is upon him.

SERVICE LAWS

(6) P L D 2016 Supreme Court 961
Present: Amir Hani Muslim, Mushir Alam and Dost Muhammad Khan, JJ

**Ch. MUHAMMAD AKRAM---
Petitioner**
Versus
**REGISTRAR, ISLAMABAD HIGH
COURT and others---Respondents**

Administrative order of High Court (passed by virtue of powers conferred upon by subordinate legislation) may be subjected to judicial review.

MUHAMMAD IQBAL and others Versus
LAHORE HIGH COURT through Registrar
and others (2010 SCMR 632)
Overruled.

RENT LAWS

(7) 2016 S C M R 2186

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar and
Manzoor Ahmad Malik, JJ**

**Mian UMAR IKRAM-UL-HAQUE---
Appellant**

Versus

**Dr. SHAHIDA HASNAIN and another--
Respondents**

It was observed inter alia that the relationship of landlord and tenant is an essential question which has a direct effect upon the assumption and exercise of the jurisdiction of the Rent Tribunal, which question must necessarily be positively ascertained before passing an order for payment of rent due. The judgment of the High Court reported as Farrukh Nadeem v. Muhammad Ahmad Khan and another (2009 MLD 955) to the effect that where there is a contumacious denial an order under section 13(6) of the Ordinance can be

passed was declared as bad law. Further observing that where default in the payment of rent is set out as a ground in the eviction application, the relationship of tenancy is denied by the respondent, leave is granted, an issue in this context is framed, evidence is led by the parties, and the Rent Tribunal comes to the conclusion that such relationship exists, the Tribunal by applying the principles of estoppel and the rule of forfeiture of tenancy shall straightaway pass an order of eviction against the respondent/tenant and shall also pass the final order regarding the amount of rent due.

CIVIL PROCEDURE CODE

(8) 2016 S C M R 2067

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar and Iqbal
Hameedur Rahman, JJ**

**Rana ABDUL ALEEM KHAN---
Petitioner**

Versus

**IDARA NATIONAL INDUSTRIAL CO-
OPERATIVE FINANCE
CORPORATION DEFUNCT through
Chairman Punjab Cooperative Board
for Liquidation, Lahore and another--
Respondents**

The August court while dilating on the power of appellate court to require any additional document or examination of witnesses enabling it to pronounce its judgment observed that the same did not mean that the Court shall provide a delinquent with a chance to make up for his omission and fill up the lacuna of his case and allow additional evidence particularly in the circumstances when neither in the grounds of appeal a case for additional evidence had been set out nor any independent formal application had been moved for the purposes of producing additional evidence.

(9) 2016 P L C (C.S.) 1318

[Islamabad High Court]

Before Athar Minallah, J

**OIL AND GAS DEVELOPMENT CO.
LTD.**

Versus

**The SACKED EMPLOYEES REVIEW
BOARD and others**

In this judgment, the principles for construction of Ouster Clause have been enumerated.

FAMILY LAWS

(10) 2016 S C M R 2069

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar and Iqbal
Hameedur Rahman, JJ**

**SHAHZAD YOUSAF and others---
Petitioners**

Versus

**FARZANA SHAHZAD and others---
Respondents**

The Court restored the annual increase in maintenance for minor at 10% by virtue of S. 17-A of the Family Courts Act, 1964 [as substituted by the Family Courts (Amendment) Act (XI of 2015)] as the maintenance was to be increased at the rate of ten percent each year. The conclusion arrived at by the High Court to the extent of reduction of the award of annual increase from ten to five percent was modified.

LAW OF EVIDENCE

(11) 2016 S C M R 2084

[Supreme Court of Pakistan]

**Present: Dost Muhammad Khan and
Sardar Tariq Masood, JJ**

**ASFANDYAR and another---
Petitioners**

Versus

KAMRAN and another---Respondents

The court discussed inter alia the evidentiary value of closed circuit television footage by observing that mere producing of CCTV footage as a piece of evidence in court was not sufficient to rely upon the same unless and until it was proved to be genuine. In order to prove the genuineness of such footage it was incumbent upon the defence or prosecution to examine the person who prepared such footage from the CCTV system.

CONSTITUTIONAL LAW

(12) 2016 P L C (C.S.) 1267

[Balochistan]

**Before Muhammad Noor Meskanzai,
C.J. and Muhammad Hashim Khan
Kakar, JJ**

**MUJEEBULLAH GHARSHEEN and
another**

Versus

**GOVERNMENT OF BALOCHISTAN
through Chief Secretary and 3 others**

While deciding the constitutional petition on the touchstone of the fundamental rights, it was observed that Strikes in educational institutions and health-care centers and holding demonstrations on public thoroughfare by sit-in (dharna) was infringement of fundamental rights of every citizen---Civil servants and employees of statutory bodies were at liberty to form association or to be a member of such association but strictly in accordance with law. High Court observed that if government/civil servants and/or employees of statutory bodies in future were found indulged in observance of strike or holding demonstrations/sit-in (dharna) at or by public thoroughfares then they should not only be guilty of "misconduct" but also contempt of court.