



MONTHLY CASE LAW UPDATE

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CUSTOM LAWS

2017 S C M R 152
[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar, Maqbool Baqar
and Khilji Arif Hussain, JJ**

**COLLECTOR OF CUSTOMS, CUSTOMS
HOUSE, KARACHI---Appellant**
Versus
Syed REHAN AHMED---Respondent

The august court while deciding the question as to whether a technical member of the Customs Appellate Tribunal (Tribunal), sitting singly, has the jurisdiction to decide involving questions of law, while reaffirming **Director, Intelligence and Investigation (Customs and Excise), Faisalabad and another v. Bagh Ali 2010 PTD 1024** observed that Chairman or Member of Tribunal could decide a case sitting singly provided that such Member or Chairman was already a member of a Bench constituted by the Chairman under S. 194-C(2) of the Customs Act, 1969 and the case must have been allotted to such Bench. Decision by the Chairman to allow himself or any other member of a Bench to sit singly to dispose cases falling within the ambit of S. 194-C(4) should not be as a matter of course or right, rather should be done upon proper application of mind by the Chairman who shall himself make such decision, and not delegate it to any other officer to undertake as an administrative action.

CIVIL SERVICE LAW

2017 S C M R 21

[Supreme Court of Pakistan]

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

KHALID AZIZ and another---

Petitioners

Versus

**GOVERNMENT OF PUNJAB through
Chief Secretary, Services and General
Administration and others---
Respondents**

Disciplinary proceedings under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 and criminal proceedings by the Anti-Corruption Establishment could simultaneously proceed independently. The conclusion arrived at by the Anti-Corruption Establishment does not, in any way, override the disciplinary proceedings.

CONSTITUTIONAL LAW

(1) 2017 SCMR 56

[Supreme Court of Pakistan]

**Present: Mushir Alam and Umar Ata
Bandial, JJ**

MUHAMMAD AKRAM---Petitioner

Versus

**DCO, RAHIM YAR KHAN and
others---Respondents**

Superior Courts, in exercise of Constitutional jurisdiction can convert one type of proceedings into another. No fetters or bar could be placed on the High Court or the Supreme Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself, provided it had jurisdiction over the lis before it in exercise of another jurisdiction vested in the very court, or it may remit the lis to the competent authority/forum or court for decision on merits. Courts do follow the practice of treating and or converting appeal into revisions and vice versa and constitutional petition into appeal or revision and vice versa.

(2) PLD 2017 Lahore 68

Before Ayesha A. Malik, J

**JDW SUGAR MILLS LTD. and others-
--Petitioners**

Versus

**PROVINCE OF PUNJAB and others---
Respondents**

Doctrine of Judicial Estoppel

When a party puts forth a position, as a matter of fact in one case and is successful in that assertion, that party is estopped from asserting a different position on the same facts in the second case.

First, a party's later position must be clearly inconsistent with its earlier position. Second, courts should inquire whether the party has succeeded in persuading a court to accept its earlier position. And the third consideration is whether the party seeking to assert the inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Conflict of Interest

Where there is conflict of interest between private interest and public duty it must be clearly identified, appropriately managed and effectively resolved. This ensures public

confidence in public institutions. A conflict of interest will arise where an official decision will impact a personal interest, financially or otherwise such that a public official is seen to have gained from that decision or is perceived to have gained from that decision. Where there is a conflict between a public official's interest as a private citizen and his duty as a public official, there is potential for a conflict of interest to arise. The jurisprudence on conflict of interest aims to ensure that private interest will not prosper from decisions taken in public office, while carrying out official duties and responsibilities. The mandate of any elected government is based on trust and public confidence. Both elements find its tools in transparency, good governance and fairness in the decision making process. Any conflict of interest, in fact or perceived will destroy public trust and malign the decisions making process.

TRANSFER OF PROPERTY ACT

2017 S C M R 81
[Supreme Court of Pakistan]

Present: Mian Saqib Nisar and
Manzoor Ahmad Malik, JJ

GHULAM RASOOL and others---
Appellants

Versus

NOOR MUHAMMAD and others---
Respondents

The august court while explicating the scope of section 41 of the Transfer of Property Act 1882 held that if due to an error in revenue record the name of first joint owner of the property is excluded and the property was shown to be only in the name of the second joint owner then this would not by itself deprive and denude the first joint owner from the title of the property. Sale of property made by the second joint owner, in such circumstances, to an alleged bona fide purchaser claiming protection under S. 41 of the Transfer of Property Act, 1882, could

not be construed to be made with the express or implied consent of the first joint owner. Unauthorized sale to the extent of first joint owner's share in the suit property would be void and the purchaser would not qualify the bona fide purchaser test under S. 41 of Transfer of Property Act, 1882 and, therefore, he could not take up the plea of bona fide purchaser to protect the sale in his favour.

DEFAMATION ORDINANCE

2017 C L C 45 [Lahore]

Before Ch. Muhammad Masood
Jahangir, J

ZAFAR ALI----Petitioner

Versus

ADDITIONAL DISTRICT JUDGE,
PAKPATTAN and another----
Respondents

In this case the question before the High Court was whether a suit for damages on account of defamation resulting from alleged malicious prosecution was maintainable before the court of ultimate jurisdiction under S.9 of the C.P.C. or the same could only be adjudicated under S.13 of the Defamation Ordinance, 2002. It was observed that S.13 of the Defamation Ordinance, 2002 prescribed the remedy to enforce a right before the District Court, however, the same did not contain any repealing or ouster clause regarding jurisdiction of civil court to entertain a suit under the general law that was S.9 of the C.P.C. The apex Court has already clinched the said proposition authoritatively in the judgment reported as Ch. Zulfiqar Ali Cheema v. Farhan Arshad Mir **PLD 2015 SC 134** and observed that the reading of the Ordinance as a whole did not preclude a person from initiating an action for damages under the law of Torts by filing a suit for damages under Civil Procedure Code, 1908.

CIVIL PROCEDURE CODE

P L D 2017 Supreme Court 1

Present: Mian Saqib Nisar, Manzoor Ahmad Malik and Ijaz ul Ahsan, JJ

AL-MEEZAN INVESTMENT MANAGEMENT COMPANY LTD. and 2 others---Appellants

Versus

WAPDA FIRST SUKUK COMPANY LIMITED, LAHORE and others---Respondents

Interpleader suits its maintainability and pre-requisites. Certain conditions must be satisfied before an interpleader suit could be competently filed; firstly, there must be rival claimants; secondly, the same debt, sum of money or other property, moveable or immovable, must be claimed by two or more claimants, and thirdly, the person from whom such debt, sum of money etc. was being claimed must claim no interest in the same.

RENT LAWS

2017 C L C 158 [Lahore]

Before Shahid Karim, J

SHAUKAT ALI---Petitioner

Versus

Sheikh MUHAMMAD BASHIR through L.Rs. and another---Respondents

There is a positive obligation on the tenant to spell out clearly the contours of his defence, the basis for it and the circumstances underlying it. A mere denial will not do. There is a corresponding duty on the rent tribunals to see to it that the denial is not based on frivolity and is not a contraption. The underlying principle of estoppel in that a tenant who might not have got possession but for the tenancy

admitting the right of landlord, must not be permitted to put his landlord in an inequitable situation by taking undue advantage of the possession that he got and the probable defect in the title of his landlord". (Halsbury's Laws of India, Vol. 3, at 200.023.).

LABOUR LAW

P L D 2017 Supreme Court 28

Present: Mian Saqib Nisar, Mushir Alam and Tariq Parvez, JJ

WORKERS' WELFARE FUNDS, M/O HUMAN RESOURCES DEVELOPMENT, ISLAMABAD through Secretary and others---Appellants/Petitioners

Versus

EAST PAKISTAN CHROME TANNERY (PVT) LTD. through G.M. (Finance), Lahore and others---Respondents

Contributions made to the Workers' Welfare Fund are not in the nature of a "tax". Sec. 60- A of the Income Tax Ordinance, 2001 provided that any contributions made by a person under the Workers' Welfare Fund Ordinance, 1971 would be deducted from the total income of that person, which suggested that the contributions were not a tax, as they were being deducted from the total income, as opposed to being considered as a "tax credit."

"As a social good, I think privacy is greatly overrated because privacy basically means concealment. People conceal things in order to fool other people about them. They want to appear healthier than they are, smarter, more honest and so forth."
Richard A. Posner