



# MONTHLY CASE LAW UPDATE

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### **1. 2012 CLD 1465 (Trade Mark)**

*Mr. Justice Sarmad Jalal Osmany and Gulzar Ahmed JJ*

SHAN FOOD IND. VS. ESTERN PRODUCT ETC.

*(‘deception and confusion’ in trade mark relevant considerations)*

Some relevant consideration regarding ‘deception and confusion’ in trade mark matter have been discussed by August court. Those factors are

- (a) The process of manufacturing of the two commodities;
- (b) Their outlets or sales points.
- (c) The nature of goods;
- (d) The trade channel; and
- (e) Potential customers/consumers.

Finally a visual comparison of wrappers /packing be made if they are substantially the same.

### **2. 2012 PLC (C.S) 1300 (Service Law)**

*Mr. Justice Sarmad Jalal Osmany and Gulzar Ahmed JJ*

MUHAMMAD ZAHID RAJA V/S FEDERATION OF PAKISTAN

*(Subjective Evaluation on the basis of objective criteria)*

The August Court while drawing the distinction between eligibility and fitness in service matter observed that eligibility relates to terms and condition of service whereas fitness is a subjective evaluation on the basis of objective criteria. The Court observed that there is no vested right of civil servant to be promoted.

### **3. 2012 SCMR 1860 (Custom Act)**

*Mr. Justice Iftikhar Muhammad Chaudhry, C.J and Sarmad Jalal Osmany, J*

M/S PARAMOUNTS SPINNING MILL VS. C.S.CE APPELLATE TRIBUNAL

*(duties of revenue collecting authorities where there is no stay order)*

The Hon'ble Court has highlighted the duties of revenue collecting authorities in cases where there is no stay order. The court further observed that in cases of contingent exemption from tax in view of SRO, limitation given under section 32(2) of Custom Act will not run particularly when fraud has been committed. The court in this case directed regarding a recovery of revenue at the rate of US \$ prevailing when the payment was made.

### **4. 2012 CLD 1659 (Contract Act)**

*Mr. Justice Ghulam Mustafa Mengal, J,*

COMMISSIONER MEKRAN ETC. VS. HAJI ABDUL WAHID ETC.

When letter in question had not been executed by the competent person--- Mere signing of a letter could not be termed as a "valid agreement" within the meaning of S.2 of the Contract Act, 1872, therefore, the plaintiffs were not entitled to any decree of enforcement of the letter in question.

### **5. 2012 CLD 1641 (Sales of Goods Act)**

*Mr. Justice Shahid Anwar Bajwa*

PROVINCE OF SINDH ETC. VS. JAKHARNI ROLLER FLOUR MILL.

Date, place and time of the delivery is to be decided by express contract between the parties, but where there is no express contract, delivery will be governed by Ss.35 and 36 of the Sales of Good Act, 1930, and in such a case it is the duty of the buyer to apply for delivery, however it is available to the seller to deliver the Goods with any application in that behalf by the buyer, but the seller is also entitled to wait until buyer applies for the delivery.

### **6. 2012 CLD 1696**

#### **(Environmental Case law)**

*Mrs. Ashraf Jahan (Chairperson) and Abdul Karim Memon (Member Legal)*

DG, EPA GOVT. OF SINDH VS. RASEE-UL-HASSAN, CEO HABIB SUGHAR MILLS

Violation of procedural Rules, committed by the prosecution witnesses, right from the beginning of initiating process against the mill, till submission of the complaint before the Tribunal--- Inordinance delay occurred in the sending the wastewater sample to the Laboratory ---- Neither chain of custody of sample was established nor samples were sent to Laboratory in time --- any notice of said violation had been issued; nor the mill had been given any opportunity of hearing as required under S.16(1) of said Act--- No Environmental Protection order was issued.

### **7. 2012 CLD 1582 (Banking Laws)**

*Before Ch. Shahid Saeed and Ijaz Ahmad, JJ*

ALLAH DITTA VS. ZARAI TARAQIATI BANK LIMITED ETC.

- Appellant deposited amount as per offer of the bank but afterward account was not closed by the bank

holding that incentive scheme was defaulter of graver category and appellant had only one short installment, therefore, he was not entitled to avail the scheme.

- Court held that stance of bank is astonishing which encourage the people not to return the loan.
- Bank should encourage the clients of clean dealing and should be softer to regular payees instead of hardened defaulters.
- It was held that person equally placed must be treated alike in the matter of privilege on the principle of equal protection of law as per Article 25 of the Constitution.

### **2012 S C M R 1688 (Banking Laws)**

*Mr. Justice Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ*

SYED PHOOL BADSHAH ETC. VS. ADBP

- Banking court cannot grant decree beyond subject matter of the suit. Plaint as whole is to be considered for grant of relief
- Under order vii Rule 7 CPC court is empowered to grant effective and ancillary relief even if not prayed.

### **2012 CLD 1663 (Banking Laws)**

*Before Muhammad Khalid Mehmood Khan and Muhammad Ameer Bhatti, JJ*

MIAN AFTAB A. SHEIKH ETC VS. M/S TRUST MODARBA ETC.

- Appellant had questioned the jurisdiction of tribunal, established under Modaraba Companies and

Modarabas (Floatation and Control) Ordinance, 1980 being executing court.

- It was held that tribunal has sole authority to execute its decree. That tribunal is a civil court under Code of Civil Procedure 1908 and can either execute its decree as a arrear of land revenue or under CPC.
- That procedure of execution will be according to the option availed by the tribunal.
- Where CPC is made applicable by special statute, it will be applicable as a whole unless restricted by special statute itself.

### **2012 CLD 1681 (Banking Laws)**

*Before Muhammad Khalid Mehmood Khan, J*

ASKARI BANK LIMITED VS. WALEED JUNAID INDUSTRIES ETC.

- *Meaning of Leave to Defend:* Unconditional leave to defend the suit does not mean that plaintiff's claim stand rejected, the permission to defend the suit will provide opportunity to both the parties to prove their respective claims.

### **2012 CLD 1654 (Banking Laws)**

*Before Ijaz Ahmad and Ibad ur Rehman Lodhi, JJ*

MRS. QAMAR KHALID RASOOL VS. FAYSAL BANK LIMITED ETC.

- Appeal was filed against rejection of petition under Order 21 Rule 90 CPC. Petitioner/Appellant questioned the auction proceeding being mala fide and collusive.

- It was held that inadequacy of price by reason of fraud would be a ground for setting aside a decree and also sale in execution of such decree.
- That application under Order 21 Rule 90 CPC should be decided by recording evidence and summary dismissal was not justified.

### **8. 2012 SCMR 1725 (Land Reforms Ord)**

*Mr. Justice Tassaduq Hussain Jillani, Tariq Parvez, Mian Saqib Nisar and Ejaz Afzal Khan, JJ*

MUHAMMAD SAFDAR Vs PUNJAB LAND COMMISSION

Land Reforms Ordinance, 1977 was made into an Act of Parliament [Land Reforms Act, 1977] in view of such process/procedure, therefore, gift deeds in question were executed/registered during the period when Land Reforms Ordinance, 1977 was in force and it was under S.6 of the said Ordinance that gift transactions in question were void--Transactions which were void under Land Reforms Ordinance, 1977, which culminated into Land Reforms Act, 1977, could not be held to be outside the purview of S.6 of the said Ordinance or Act, which had absolutely similar/identical provisions---Gifts claimed by the claimants in their favour ipso jure were void.

### **9. 2012 SCMR 1688 (C.P.C)**

*Mr. Justice Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ*

SYED PHOOL BADSHAH VS ADBP

The provisions of Order VII, Rule 7 of the Civil Procedure Code empowers the

Court to grant an effective or ancillary relief even if not prayed, as the plaint as whole is to be looked into in order to determine relief for which plaintiff is entitled, however, no relief can be granted upon the facts and documents not disclosed in the pleading.

### **2012 S C M R 1719 (C.P.C)**

*Mr. Justice Amir Hani Muslim and Sh. Azmat Saeed, JJ*

MUHAMMAD SALEEM VS PROVINCE OF PUNJAB

First Appellate Court decreed suit of plaintiff in its entirety---Revision applications filed by defendant before High Court were accepted and suit of plaintiff was dismissed in its entirety on the ground that suit was barred under Order IX, Rule 9, C.P.C. as an earlier suit was dismissed in default and never restored, where after the present suit had been filed---Validity--Predecessors-in-interest of the plaintiff were impleaded as defendants in the said earlier suit---Ex facie present plaintiff was not the successor-in-interest of the plaintiff of the said earlier suit, therefore, dismissal of said earlier suit in default could not have any consequences for the present plaintiff, who did not claim any title through the plaintiff of the earlier suit.

### **10. PLJ 2012 Lahore 95 (Cr.P.C)**

*Mr. Justice Abdus Sattar Asghar, J*

(BAKHT BEDAR ALI SHAH Vs. THE STATE)

An order passed by executive magistrate before taking cognizance u/s 190 Cr.P.C was considered an administrative and not a judicial order not revisable u/s 435 & 439 Cr.P.C in changed state of affairs, an order passed by a judicial magistrate is to be considered a judicial act and thus revisable u/s 435 & 439 Cr.P.C. Agreeing or disagreeing with cancellation report of police by a judicial magistrate is judicial function.

## 2012 P Cr. L J 1595 (Cr.P.C)

Mr. Justice Mian Fasih-ul-Mulk, J  
HAKEEM FAZAL ELLAHI V/s MUHAMMAD  
DIN ETC.

Dismissal of private complaint for non-prosecution---Principles---Once the Trial Court summons the accused after having formed an opinion that sufficient grounds were available for proceeding against them, private complaint cannot be dismissed for non-prosecution as it becomes a State case.

## 11. P L D 2012 S C 774 (Constitution)

Hon'ble Chief Justice Iftikhar Muhammad Chaudhry, Jawwad S. Khawaja and Khilji Arif Hussain, JJ

MUHAMMAD AZHAR SIDDIQUI ETC. VS  
FEDERATION OF PAKISTAN ETC.

- Where a judgment was pronounced by the Supreme Court in exercise of its original jurisdiction under Art.184 (3), although an aggrieved person had the right to seek review thereof under Art.188 of the Constitution, but the framers of the Constitution in their wisdom had not provided a right of appeal against it---
- Legislature was presumed to know the state of law as it existed, and as such, no premium could be allowed to be made on account of any provision of the Constitution or the law....
- Speaker did not enjoy an appellate authority or a review jurisdiction to look into the merits of the judgment, nor did she have the power to set such a conviction aside.

Election Commission could not sit in appeal over a concluded judgment of a superior court, and had to decide the question in the affirmative that the convicted person had become disqualified, therefore, his/her seat should become vacant.

## PLJ 2012 SC 715 (Constitution)

Mr. Justice Nasir-Ul- Mulk , Asif Saeed Khan Khosa, Sarmad Jalal Osmany, Ejaz Afzal KhanJjaz Ahmad Ch, Gulzar Ahmad and Muhammad Athar Saeed

CONTEMPT PROCEEDINGS AGAINST SYED YOUSAF RAZA GILANI; SUO MOTU CASE NO. 4 OF 2010

While incorporating Art 10 A in the Constitution and making the right to a “Fair Trial” a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly universally recognized and embedded in jurisprudence in Pakistan.

## 12. FOREIGN JUDGMENTS

### UK

Sugar (Deceased) (Represented by Fiona Paveley) (Appellant) v British Broadcasting Corporation (Respondent) [2012] UKSC 4

The Supreme Court has ruled unanimously that an internal BBC report into its coverage of the Israeli Palestinian conflict was “information held for the purposes of journalism, art or literature” and therefore need not be released to the public under the Freedom of Information Act (FOIA).

Four of the justices were of the view that even if information is held only partly for the purposes of journalism, art or literature, it is outside the scope of the FOIA. Lord Wilson however, was of the opinion that if information is held *predominantly* for the purposes of journalism, art or literature, it is outside the scope of FOIA and that the Balen Report was held predominantly for those purposes. The BBC will be relieved that the “partly” view prevailed, as the “predominately” test might in practice have brought a lot of internal documents within the scope of the FOIA.

VTB Capital Plc v Nutritek International Corp & Ors [2012] EWCA Civ 808 - 20th June 2012

The appeal determined whether it is possible to pierce the corporate veil in order to hold the controller of a company liable as a party to a company's contracts. The Commercial Court previously had developed authority stating it would be possible to pierce the corporate veil for such an individual to be so liable, provided certain conditions were met (*Gramsci v Stepanovs* [2011] EWHC 333 (Comm)). However, Arnold J in *VTB Capital Plc v Nutritek* came to the opposite view in the Chancery Division and was therefore appealed to settle the contradictory nature of these two authorities.

A fundamental principle of company law is that the rights and liabilities of an incorporated company are distinct from that of individuals with control of that company. However the principle of "piercing the veil of incorporation" involves the blurring of that distinction such that those same individuals become potentially liable for the acts of that company. The appeal judges decided to err on the side of caution, to hold that it was contrary to principle and authority that in circumstances where the corporate veil was pierced, a court could find that those who misused the company were then parties to that company's contracts. Accordingly the appeal was refused and the original determination of Arnold J in *Nutritek* affirmed.

### **USA Judgment (Supreme Court)**

*FCC v. AT&T, Inc.*, 562 U.S. (2011), is a United States Supreme Court case on aspects of corporate personhood. It held that the exemption from Freedom of Information Act disclosure requirements for law enforcement records which

"could reasonably be expected to constitute an unwarranted invasion of personal privacy" does not protect information related to corporate privacy.

### **Australian Federal Court**

#### **(Full Court)**

*Steggles Limited v Yarrabee Chicken Company Pty Ltd* [2012] FCAFC 91

The proper approach to construction of written term of the contract is to construe it by reference to the principle of objectivity stated. That approach requires the Court to ascertain the intention of the parties by reference to what a reasonable person would understand the language of the contract to mean. It normally, requires consideration not only of the text, but also of the surrounding circumstances known to the parties, and the purpose and object of the transaction.

It is well accepted that a commercial contract such as the present is to be construed fairly and broadly but the Court has no power to remake a contract for the purpose of avoiding a result which may be considered unjust.

That said, in approaching the construction of the contract, if a detailed, semantic and syntactical analysis of words in a commercial contract will lead to a conclusion that flouts business common sense, it must be made to yield to business common sense. Nevertheless, orthodoxy requires that evidence of prior negotiations is ordinarily to be excised from the process of construction.