

IN THE HIGH COURT OF SINDH, AT KARACHI

(Civil Original Jurisdiction)

Suit No. 0000 of 2016

ABC Pakistan Limited

Plaintiff

Versus

Pakistan & Others

Defendants

CASE LAW

➤ **FOREIGN Case Law:**

- A. "... where the exercise of executive power depends upon the precedent establishment of an objective fact, the courts will decide whether the requirement has been satisfied."
- Lord Scarman of House of Lords in **R v Secretary of State for the Home Department, Ex p Khawaja** [1984] AC 74] [Vol.1]
- B. "... the courts will respect all acts of the executive within its lawful province, and ... the executive will respect all decisions of the courts as to what its lawful province is."
- [per Nolan LJ in **M v Home Office** [1992] QB 270, 314H-315A] [Vol.1]
- C. "It is a well-established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly - meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court."
- [per Lord Reid in **R v Governor of Brixton Prison, Ex p Armah** [1968] AC 192, 234] [Vol.1]

D. An administrative body will normally either have or not have the power to decide questions of law. As stated above, administrative bodies that do have that power may presumptively go beyond the bounds of their enabling statute and decide issues of common law or statutory interpretation that arise in the course of a case properly before them, subject to judicial review on the appropriate standard:

- [see: *McLeod v. Egan*, 1974 CanLII 12 (SCC), [1975] 1 S.C.R. 517; *David Taylor & Son, Ltd. v. Barnett*, [1953] 1 All E.R. 843 (C.A.); *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)*, 1995 CanLII 148 (SCC), [1995] 1 S.C.R. 157.

➤ **LOCAL Case Law:**

E. Civil Court has jurisdiction to adjudicate upon an illegal act/order passed in violation of law irrespective of ouster of jurisdiction.

1. *Abdul Rauf v. Abdul Hamid Khan* PLD 1965 SC 671 at 674A [Vol.1]
2. *M. Jamil Asghar v. The Improvement Trust* PLD 1965 SC 698 at 704A [Vol.1]
3. *Mian Muhammad Latif v Province of West Pakistan through Deputy Commissioner, Khairpur* - PLD 1970 SC 180 at 184 A [Vol.1]
4. *Hamid Hussain v. Government of West Pakistan* 1974 SCMR 356 at 359B [Vol.1]
5. *Hyderabad Municipal Corp. v. Fateh Jeans* 1991 MLD 284 at 288E [Vol.1]
6. *Syed Raunaq Raza v. Province of Sindh* 1994 CLC 317 at 320A [Vol.1]
7. *Rafiuddin v Karachi Metropolitan Corporation* - 1994 MLD 874 at 881 A [Vol.1]

8. Mujeeb-Ur-Rehman Shami v Principal, Aitchison College, Lahore-3 - 1994 CLC 342 at 347 A [Vol.1]
9. Usman Panjwani v. Government of Sindh 1996 CLC 311 at 313A [Vol.1]
10. Muhammad Ghaus v Province of Punjab - 1996 CLC 1382 at 1386 A [Vol.1]
11. Samiullah v. Fazle Malik PLD 1996 SC 827 at 830A [Vol.1]
12. K.G. Traders v. DC of Customs PLD 1997 Karachi 541 at 547A/549 B,C [Vol.1]
13. Rais Dil Murad Khan v. Ali Nawaz 1997 MLD 1309 at 1321G [Vol.1]
14. Abbasia Coop. Bank v Muhammad Ghauss - PLD 1997 SC 3 at 8 B [Vol.1]
15. Rehmatullah v Sher Muhammad - 1997 MLD 2905 at 2910 A [Vol.1]
16. Tri-Star Industries v. The Commissioner of Income Tax 1998 PTD 3923 at 3932A [Vol.1]
17. Asia Petroleum Limited v. Federation of Pakistan 1999 PTD 1313 at 1319B/1328K [Vol.1]
18. Kanwar Qutubuddin Khan v Karachi Development Authority - 2002 CLC 634 at 637 B [Vol.1]
19. Federation of Pakistan v Saman Diplomatic Bonded Warehouse - 2004 PTD 1189 at 1207 A/B [Vol.1]
20. Hazara Improvement Trust v. Qaisra Elahi 2005 SCMR 678 at 690G [Vol.1]
21. Quetta Textiles Mills v. Province of Sindh PLD 2005 Karachi 55 [Vol.1]

22. Malik M. Saeed v. Federation of Pakistan 2006 PTD 2167 at 2175D [Vol.1]
23. Ahsan Ali through L.Rs v Province of Sindh - 2007 MLD 884 at 889 D [Vol.1]
24. Province of Punjab v. Haji Yaqoob Khan 2007 SCMR 554 at 560F [Vol.1]
25. Islamic Republic of Pakistan v General Traders and Ammunition Manufacturers Ltd. - 2008 CLC 1462 at 1465 C [Vol.1]
26. University of Punjab v Miss Wajiha Urooj - 2008 SCMR 1577 at 1581 A/B [Vol.1]
27. Sanofi Aventis v. Province of Sindh PLD 2009 Karachi 69 at 111X [Vol.1]
28. Karachi Electric Supply Corporation v. FBR 2013 PTD 851 [Vol.1]
29. Kali Khan v Bodlo - 2013 CLC 507 at 512 F [Vol.1]
30. M. Hussain v. Federation of Pakistan 2016 PTD 622 [Vol. 2]

F. Meaning of 'without jurisdiction' or 'without lawful authority.'

31. Jamal Shah v. The Member Election Commission, PLD 1966 SC 1 at 39K [Vol. 2]
32. Utility Stores Corporation v. Labor Appellate Trib. PLD 1987 SC 447 at 452G [Vol. 2]

G. Civil suit can be filed where fundamental/civil rights violated.

33. Mirpurkhas Sugar Mills v. Consolidated Sugar Mills PLD 1987 Karachi 225 at 230A/B [Vol. 2]
34. Arif Builders and Developers v Govt. of Pakistan - PLD 1997 Kar 627 at 636 F [Vol. 2]
35. Marriage Hall Association v Government of Sindh - 1999 YLR 1247 at 1250 B [Vol. 2]

H. Section 42 of the Specific Relief Act, 1877 is not exhaustive.

36. Salim Ullah Beg v. Motia Begum PLD 1959 (W.P) Lahore 429 at 435G [Vol. 2]
37. Veeramachanani v. Soma Pitchayya AIR 1920 Mad. 665 at 665 C2 [Vol. 2]
38. Sri Krishna Chandra v. Mahabir Prasad AIR 1933 All 488 at 490 C1 [Vol. 2]
39. Vangipuram v. Sri Rajah AIR 1935 Mad. 964 at 966 C2 [Vol. 2]
40. Desu Reddiar v. Srinivasa Reddi AIR 1936 Mad. 605 at 607 C1 [Vol. 2]

I. General cases on Section 42 of Specific Relief Act, 1877:

41. H.A. Rahim & Sons (Pvt.) Ltd. v Province of Sindh - 2003 CLC 649 at 657 D/E [Vol. 2] (also under Heading “BB”)
42. Arif Majeed Malik v Board of Governors Karachi Grammar School - 2004 CLC 1029 [Vol. 2] (also under Heading “BB”)
43. Pakistan Defence Housing Authority v. Federation of Pakistan PLD 2014 Sindh 511 at 531E [Vol. 2]
44. Naseem-Ul-Haq v Raes Aftab Ali Lashari - 2015 YLR 550 at 559 A/B [Vol. 2]

45. Supreme General Films v. Sir Brijnath Singhji AIR 1975 SC 1810 at 1813 para 15/16 [Vol. 2]

J. Cases on cause of action:

46. Muhammad Khalil Khan v Mahbub Ali Mian - PLD 1948 PC 131 at 147A [Vol. 2]

47. Said and others v Fazal Hussain and others - PLD 1959 SC 356 at 361B [Vol. 2]

48. Mian Niaz Hussain v Imdad Hussain - PLD 1965 Lah. 172 at 175C [Vol. 2]

49. Abdul Hakim and others v Saadullah Khan and others - PLD 1970 SC 63 at 66B [Vol. 2]

50. Mitha Khan v Muhammad Younus - 1991 SCMR 2030 at 2032 B [Vol. 2]

51. Chiragh v Abdul - PLD 1999 Lah. 340 at 344/345 [Vol. 2]

52. Sharifan Begum v Muhammad Shahbaz 2000 CLC 63 at 65B [Vol. 2]

53. Allied Bank of Pakistan v. M. Aamer Raza 2006 PLC 48 at 55B [Vol. 2]

54. Badal v. Mansoor Ahmad Khan 2010 CLC 1968 at 1971B [Vol. 2]

55. Normeen Shafi v. Amjad Shafi PLD 2011 Karachi 416 at 422 A-E [Vol. 2]

56. Maulvi Shahzado Dreho v. Khursheed Ahmed Shah PLD 2012 Sindh 158 at 164E/F [Vol. 2]

57. Gulistan Textile Mills Ltd. v Askari Bank Ltd. 2013 CLD 2005 at 219F/G [Vol. 2]

K. Cause of Action in relation to territorial jurisdiction.

58. Syed Anwer Iqbal v. Bangladesh Shipping Corporation 1991 CLC 473 [Vol. 3]
59. Valuegold Limited v. United Bank Limited PLD 1999 Kar. 1 [Vol. 3]
60. Sunshine Corporation v. E.D. Du Pont De Numours 1999 YLR 2162 [Vol. 3]
61. Itehad Cargo Services v. Rifaqat Ali PLD 2002 Kar. 420 [Vol. 3]
62. Munawer Ali Khan v. Marfani & Co. PLD 2003 Kar. 382 [Vol. 3]
63. Federation of Pakistan v. Mushtaq Ali PLD 2003 SC 930 [Vol. 3]
64. Gulfam v. Bibi Qudsia Begum 2003 CLC 1183 [Vol. 3]
65. LPG Association v. Federation 2009 CLD 1498 [Vol. 3]
66. Digital World Pakistan v. Samsung Gulf Electronics PLD 2010 Kar. 274 [Vol. 3]
67. Haji Riaz Ahmed v. Habib Bank Limited 2012 CLC 507 [Vol. 3]
68. Al-Iblagh Limited v. The Copyright Board 1985 SCMR 758 [Vol. 3]
69. Sethi & Sethi v. Federation 2012 PTD 1869 [Vol. 3]

L. Averments in the plaint to be looked into for determining jurisdiction.

70. Mst. Zainab and others v Fazal Dad and others - PLD 1966 Lahore 1050 at 1052 A [Vol. 3]
71. Shah Muhammad v Khushal Muhammad - 1981 CLC 1191 at 1193 A [Vol. 3]
72. Murad Ali v. Ahmad Khan 1984 CLC 683 at 684A [Vol. 3]

M. Civil Courts should consider case on merits and not on technicalities.

73. Anwar Khan v Fazal Manan - 2010 SCMR 973 at 976 B [Vol. 3]

N. Local law should be interpreted in consonance with the International law:

74. Hanover Fire Insurance Co. v. Muralidhar Banechand PLD 1958 SC 138 at 142H [Vol. 3]
75. Imperial Tobacco Co. v. Commissioner of Income Tax, Karachi PLD 1958 SC 125 at 129A [Vol. 3]
76. Marine Engineers' Association of Pakistan v. Shipping Master, Karachi 1989 CLC 588 at 593C [Vol. 3]
77. Sadia Jabbar v. Federation of Pakistan PTCL 2014 CL 537 at 566 para 10H [Vol. 3]
78. Sadia Jabbar v. Federation of Pakistan PTCL 2014 CL 586 [Vol. 3]
79. Vishaka and Others v. State of Rajasthan (1997) 6 SCC 241 at 251 para 14 [Vol. 3]
80. People's Union for Civil Liberties v. Union of India AIR 1997 SC 568 at 575 para 21-25 [Vol. 3]
81. People's Union for Civil Liberties v. Union of India (2005) 2 SCC 436 at 453 para 41 [Vol. 3]

O. Where alternate remedy was only illusory in nature, existence of such remedy was no bar to maintainability of Constitutional Petition/Civil Suit and such principle does not apply to Civil Suit.

82. Gulistan Textile Mills Ltd. v Pakistan - 1983 CLC 1474 at 1476 A [Vol. 3]

83. Baluchistan Textile Mills v. CBR 1984 CLC 2192 at 2194A [Vol. 3]
84. Haroon Brothers v Drugs Registration Board and another - 1992 CLC 1017 at 1020 A [Vol. 3]
85. Collector of Customs and others v S.M. Ahmad & Company (Pvt.) Limited 1999 SCMR 138 at 142 B [Vol. 4]
86. ALM (Pvt.) Ltd. v. D.G. Excise & Taxation, Lahore 2000 CLC 1485 at 1489A [Vol. 4]
87. Pak Land Cement Limited v Central Board of Revenue 2007 PTD 1524 at 1526 A [Vol. 4]
88. Iqbal Hussain through Authorized Attorney v. Federation of Pakistan 2010 PTD 2338 at 2344H (also under Heading "L") [Vol. 4]
89. GETZ Pharma (Pvt.) Ltd. v Province of Sindh - PLD 2016 Sindh 479 at 501 D [Vol. 4]

P. Jurisdiction of Court when Appellate Authority is not functional:

90. All Pakistan Textile Mills Association v. Federation of Pakistan PLD 2009 Lahore 494 [Vol. 4]
91. Sarfaraz Saleem v. Federation of Pakistan PLD 2014 SC 232 at 240E/F [Vol. 4]
92. Augere Pakistan Ltd. v. Province of Sindh 2015 PTD 1340 at para 13 [Vol. 4]

Q. Alternate remedy of appeal having not been availed by the affected person, constitutional jurisdiction could not be resorted to:

93. Harmone Laboratories v Government of Pakistan - 1986 CLC 1610 at 1612 and 1613 B & C [Vol. 4]

R. In cases of absence or excess of jurisdiction or where the impugned order suffers from illegality on the face of the record, a writ of certiorari may be granted even though the right of statutory appeal had not been availed of:

94. M. Amir Khan v. Controller of Estate Duty PLD 1961 SC 119 at 127E [Vol. 4]

95. Pakistan v. Qazi Ziauddin PLD 1962 SC 440 at 449H [Vol. 4]
96. Nagina Silk Mills v. Income Tax Officer PLD 1963 SC 322 at 327C [Vol. 4]
97. Murree Brewery v. Pakistan PLD 1972 SC 279 at 287A [Vol. 4]

S. Redundancy should not be attributed to the legislature. Rather, every word used by the legislature should be given its true meaning and the provisions of a statute construed in a harmonious manner:

98. Collector of Sales Tax v. Mega Tech 2005 SCMR 1166 [Vol. 4]
99. Saifuddin v. Federation of Pakistan - 2011 PTD 2760 at 2768 G [Vol. 4]
100. Royal PVC (Pvt.) Ltd. v. Registrar of Trade Marks - 2011 CLD 833 at 841 E [Vol. 4]
101. Wazir Ali Industries v. Appellate Tribunal Inland Revenue - 2012 PTD 405 at 415 C [Vol. 4]
102. Collector, Sales Tax & Federal Excise, Peshawar v. Cherat Paper Sacks Ltd. - 2013 PTD 372 at 377 C [Vol. 4]
103. Habib Rafiq Pvt. Ltd. v. Government of Punjab - PLD 2015 Lahore 34 at 42 B [Vol. 4]
104. Zaver Petroleum Corporation Limited v. Federal Board of Revenue - 2016 PTD 2332 [Vol. 4]

T. No objection taken in written statement, such objection raised subsequently would be devoid of any force:

105. Dana Meah Choudhury and another v Gagan Chandra De and others PLD 1955 Dacca 39 at 41 C [Vol. 4]
106. Ghulam Mustafa v Haji Mian Muhammad and another - PLD 1969 Peshawar 241 at 251 A (the court cannot decide a suit on a matter on which no issue has been raised). [Vol. 4]

107. Industrial Development Bank of Pakistan v Johar Ali Shariff and another - 1985 CLC 2176 at 2178 A [Vol. 4]
108. Ameer v Shahadat - 2005 SCMR 1147 at 1150 G [Vol. 4]

U. General interpretation of the word “include” and “means”:

109. M. Amin Khan v. Government of West Pakistan PLD 1966 (W.P) Lah. 111 at 117A/B [Vol. 4]
110. Usmania Glass Sheet Factory v. Sales Tax Officer, Chittagong PLD 1971 SC 205 at 212G (when words used in a business sense) [Vol. 4]
111. Commissioner of Sales Tax v. Raja Abdul Razzaq PLD 1972 Lah 773 at 778 A/B [Vol. 4]
112. Shah Mardan Shah v. Chief Land Commissioner, Sindh PLD 1974 Karachi 375 at 386D [Vol. 4]
113. Don Basco High School v. Assistant Director, E.O.B.I PLD 1989 SC 128 at 134G [Vol. 4]
114. Mushtaq Ahmed v. The State 1991 SCMR 543 at 549C [Vol. 4]
115. UCC Private Limited v. Deputy Commissioner, Lahore 1999 MLD 1186 at 1190G [Vol. 4]
116. Fehmida Begum v. Federation of Pakistan PLD 2000 Lahore 602 [Vol. 4]
117. M. Hussain v. Adamjee Sheikh Jeevanjee 2001 MLD 1183 at 1185A [Vol. 4]
118. Mayzone Pak. International v. Additional Secretary, Government 2002 CLC 388 at 401G [Vol. 5]
119. Punjab Land Development & Reclamation Corporation Ltd. v. Presiding Officer, Labour Court (1990) 3 SCC 682 at 717 para 72 [Vol. 5]

V. In case of conflict between an Act and a Schedule, the former will prevail over the latter.

120. Excise & Taxation Officer, Karachi v. Burmah Shell Storage and Distribution Company 1993 SCMR 338 at 342B [Vol. 5]
121. Habib Bank Ltd. v. Commissioner of Income Tax 2009 PTD 443 at 454C [Vol. 5]

W. When there is a conflict between two statutes:

122. Ahmad Saeed Kirmani v. Fazal Elahi PLD 1956 Lah. 807 at 814 I [Vol. 5]
123. Malik Mir Hassan v. The State PLD 1969 Lah. 786 at 821 I [Vol. 5]
124. M. Ghias v. Market Committee, Kamalia PLD 1982 Lah. 710 at 715 E/F [Vol. 5]

X. Effect of admission by the Defendant in his Written Statement

125. M. Amin M. Bashir v. Pakistan 2000 CLC 1559 at 1569A [Vol. 5]
126. M. Rafiq v. M. Ali 2004 SCMR 704 at 706 para 5 [Vol. 5]
127. Fateh v. Fida Hussain Shah 2007 CLC 1885 at 1891 E [Vol. 5]

Y. Meaning of word “constituted”.

128. Commissioner Inland Revenue v. Multan Educational Trust 2014 PTD 420 [Vol. 5]

Z. It is a settled law that a subsection cannot be read or interpreted in isolation. A statute is to be read as a whole, harmoniously and each provision interpreted within the context of the statute.

129. Dr. Ayaz Hussain v. Province of Sindh PLD 2005 Kar. 384 at 391B [Vol. 5]

130. Humayoon M. Khan v. Province of Sindh 2009 CLC 909 at 917 A
131. Nishat Dairy (Pvt.) Ltd. v. Commissioner Inland Revenue 2013 PTD 1883 [Vol. 5]
132. Shifa International Hospital Ltd. v Nadeem Akhtar 2014 MLD 1515 at 1518A [Vol. 5]
133. Hassan v. The State PLD 2015 Kar. 250 at 255B [Vol. 5]

AA. Board resolution not a requirement at the time of filing:

134. Muhammad Siddiq Muhammad Umar v. The Australasia Bank Ltd - PLD 1966 SC 684 at 695 E [Vol. 5]
135. Emirates Bank International Ltd. v Super Drive-in Ltd. and 8 others - 1990 MLD 538 at 543 A [Vol. 5]
136. Duncan Stratton & Co. vs Messrs N.S. Construction Co. - 1992 CLC 1128 at 1131 A & B [Vol. 5]
137. Al-Ahram Builders (Pvt) Ltd v. Pakistan Defence Officers Housing Authority - 2003 CLD 1497 at 1503 A [Vol. 5]
138. Trading Corporation of Pakistan (Pvt.) Ltd. v Merchant Agency - 2007 CLC 1811 at 1813 A [Vol. 5]
139. Pak Turk Enterprises (Pvt) Ltd v. Turk Hava Yollari (Turkish Airlines Inc.) 2015 CLC 1 at 22 E & F [Vol. 5]

BB. Board resolution, power of attorney and authority letter can be filed after initiation of a suit:

140. Pakistan National Shipping Corporation v M.V. Le Cong through Agents and 2 others 2009 CLD 234 at 236 A (also under Heading "W") [Vol. 5]

CC. No ratification by subsequent filing of board resolution, after institution of the legal proceedings:

141. Abubakar Saley Mayet v Abbot Laboratories and another - 1987 CLC 367 at 370 D [Vol. 5]
142. Razo (Pvt.) Ltd. v Director, Karachi Region Employees Old Age Benefit Institution - 2005 CLD 1208 at 1219 C [Vol. 5]

DD. Board resolution must be attached at the time of filing:

143. Iftikhar Hussain Khan of Mamdot v Ghulam Nabi Corporation Ltd. - PLD 1971 SC 550 at 560 B [Vol. 5]

EE. Authority of the person giving the authority needs to be examined:

144. Dr. S.M. Rab v National Refinery Ltd. - PLD 2005 Karachi 478 at 489 & 490 B, C & D [Vol. 5]
145. National Insurance Corporation and others v Pakistan National Shipping Corporation and others - 2006 CLD 85 at 90 I [Vol. 5]

FF. Even if the Plaintiff cannot be granted a declaration as to his legal character, relief by way of permanent injunction to prevent the breach of an obligation can always be granted.

146. M. Ilyas Hussain v. Cantonment Board, Rawalpindi PLD 1976 SC 785 at 790D [Vol. 5]
147. Investment Corporation of Pakistan v. S. Ahmed Sarwana 1987 MLD 2442 at 2444A [Vol. 5]
148. Shahid Mahmood v. Karachi Electric Supply Corporation 1997 CLC 1936 at 1945E [Vol. 5]

GG. Determining the true meaning and interpretation of a written text or document such as the Rules is a question of law, which ultimately falls within the

jurisdiction of the Courts. Such jurisdiction cannot be denied, since the courts are the ultimate arbiters of all questions of law.

149. Jahangir Moghal v. Karachi Gymkhana 2012 CLC 1829 at 1836A/B

HH. Denial of relief to a party simply on the ground that consequential relief was not claimed, in no circumstances, would advance cause of justice. Natural result of declaration would be that consequential relief has to be given by the Court even if it is not claimed.

150. Mst. Arshan Bi v. Maula Baksh 2003 SCMR 318 at 322 G/H

EXTRAS:

II. No estoppel could operate against the law.

151. 2017 YLR 74 para 3

152. 2014 SCMR 1557 at para 5

153. PLD 2015 Pesh. 94 at para 21

154. 2015 PLC(CS) 283 at para 9

155. 2014 PTD 2063 at para 8

156. 2013 SCMR 642 at para 39

157. 2012 MLD 737 at para 17

158. PLD 2011 SC 250 at para 10

159. PLD 2009 Kar. 408 at para 65

JJ. Mala fide is difficult to prove but easy to allege. It should be specific.

160. PLD 1974 SC 151 at 170 G,H,I

161. 2009 SCMR 659 at 661 A