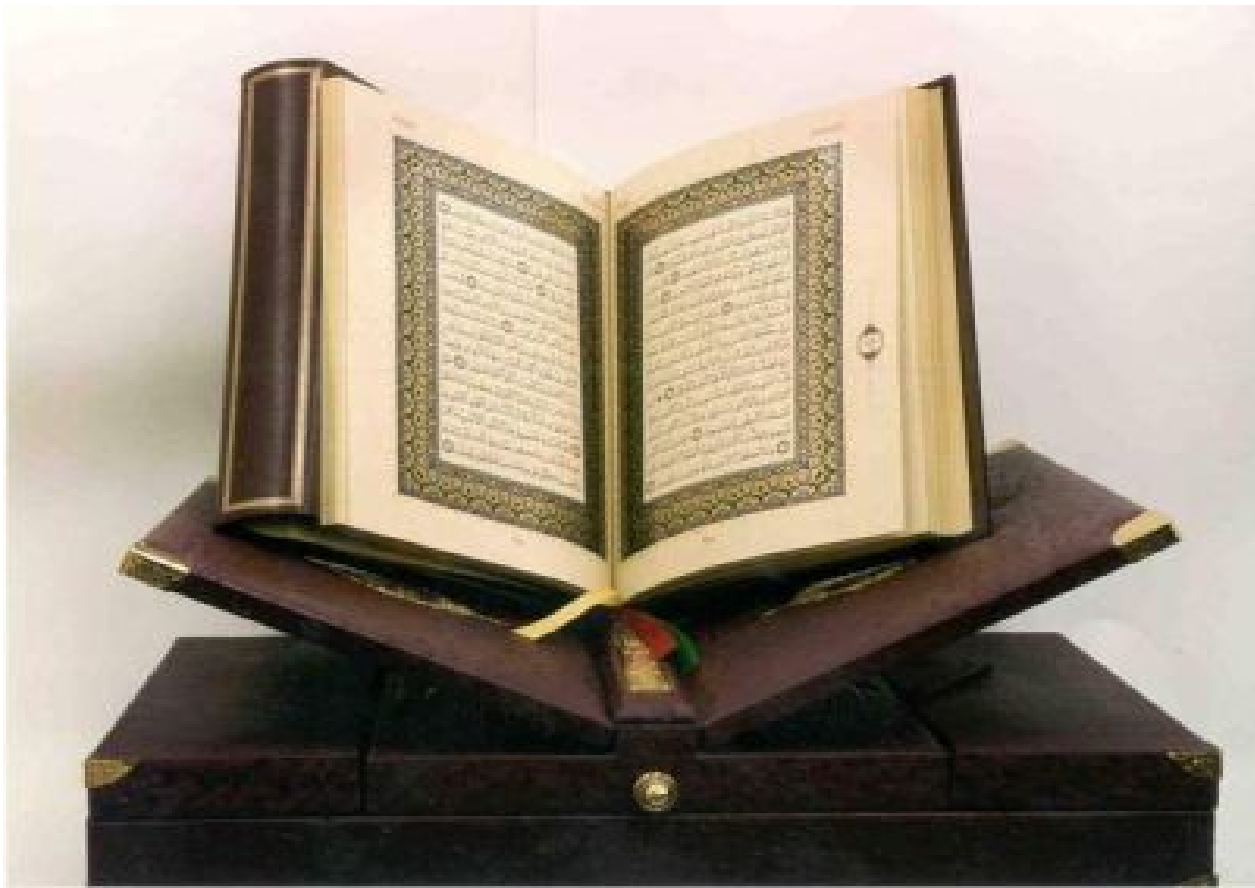




Procedural and Substantive Law Upgraded Training Manual (Judges)



AND WE SENT DOWN THE BOOK AND THE
BALANCE WITH THEM (MESSENGERS) SO
THAT MANKIND MIGHT ESTABLISH JUSTICE
(Al-Quran: 57:25)



Last update: 27-01-2016

Abbreviations

CPC	The Civil Procedure Code, 1908.
FIR	First Information Report.
PPC	The Pakistan Penal Code, 1860.
MFLO	Muslim Family Law Ordinance, 1961.
CrPC	Criminal Procedure Code 1898.
HRO	High Court Rules & Orders.

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TRAINERS GUIDELINES

Teaching adult learners is a tricky business. It needs creativity on the part of the trainer as how to deal with adult learners. Creativity is not possible without critical thinking. Critical thinking is a conscious activity to evaluate a situation and proceed accordingly. The trainer is advised to read the following points for effective delivery :

1. The Manual should be studied one week earlier than the actual event .
2. The Manual provides topic for discussion and debate; the trainer should think over the details and may note them on a paper/computer .
3. The suggested readings will provide the trainer enough material for making his/her input more beneficial .
4. In-text tips have been provided for making the delivery more adult-learner-friendly .
5. The trainer should remain alert to the response of the participants; if they become un-attentive, the teaching style should be changed in the following ways:
 - a) Turn the topic into a discussion
 - b) Ask for practical situations in courts
 - c) Ask for some input on their own
 - d) Change the tone
 - e) As a last resort, give them a short break
6. Examples are more important than verbal explanations .
7. The participants should be asked for their examples as well.
8. Keeping them engaged in activities is the best strategy for “learning by doing” .
9. Certain videos have been suggested on the subject. There are other videos available on the YouTube, which will cause a change in the learning environment .
10. Mini-research on a given topic relating to a situation confronted in courts
11. Participants should be encouraged and motivated for debating and discussing a point .
12. Pre-training test and post-training is a must both for the trainer and the trainees .
13. In each session, get their feedback on how to improve the teaching style and material .

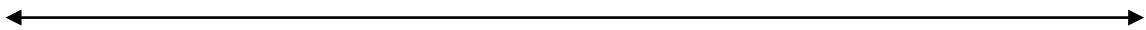
14. Besides a list of resources at the end, relevant websites have been provided through footnotes. The trainer should make the participants work or conduct some research through these resources as well .
15. Final presentations should be individual on “What I De-learned, Learned, and Re-learned ”.

Definitions :

De-learning: The process of consciously “deleting” a wrongly learned concept or idea .

Learning: The conscious process of adding something new to our inventory of knowledge, skills, and abilities .

Re-learning: The process of refreshing our knowledge, skills, and abilities



INTRODUCTION

Procedural law is underpinned by the principle of natural justice. Natural justice guarantees the right to fair hearing of parties (*audi alteram partem*: (No one should be condemned unheard). The right to fair hearing encapsulates the due process of law, which includes a range of rights. Such rights are:--

- 1) The right to legal assistance through a lawyer;
- 2) The right to know the charge;
- 3) The right to produce evidence for and against a claim; and
- 4) The right to be heard by an impartial tribunal and the right to be considered innocent unless proved guilty.

These rights are also known as the due process rights, as they are meant to ensure that the process of law is applied without any fear or favour. The due process law is enshrined in procedural law. Procedural law is also an integral component of the rule of law. It should be clear, specific, publically known, guarantee independence of the judiciary, ensure access to courts, including the right to appeal and minimize discretion to prevent abuse and misuse of authority.

Thus the importance of the procedural law in the administration of justice hardly needs any emphasis. The courts are to apply the due process of law and ensure uniformity, fairness, transparency and predictability, in dispensation of justice. To ensure that every individual is treated according to law, courts are obliged to ensure that justice is not only done, but seen to have been done in, a prescribed manner. Courts are also obliged to apply procedural rules consistently for efficient enforcement of rights, duties and obligations.

Substantive law creates and defines rights, duties, obligation, crimes and punishments and remedies, involving both public and private laws. Some of these are law of contract, torts, wills, property and criminal liability, involving both public and private law. These laws are enforced through procedural law, which provides a machinery of rules of procedure. Understanding of each substantive law listed below, requires separate modules exclusively as well as in relation to relevant procedural laws. These laws should be studied simultaneously with procedural laws.

The Manual is divided into 4 Modules:

Module -1: Procedural and Substantive Laws

Module -2: Civil Procedure

Module-3: Criminal Procedure

Module 4: Substantive Law

MANUAL'S OBJECTIVES:

- To introduce, strengthen, and refresh the professional knowledge, skills, and abilities of judicial officers .
- To enhance the capacity of judicial officers for an effective and efficient performance .
- To clarify their concepts on substantive and procedural law .
- To sensitize them to public trust and confidence .
- To strengthen their intellectual base for a broader and deeper approach to judicial issues and their solutions .
- To pave the way for achieving the organizational objective of establishing justice in society through Rule of Law .
- To observe a measurable positive change in the quality of adjudication .

OUTCOMES:

On successful completion of the sessions, the participants will be professionally competent in terms of Legal knowledge, Skills, and Abilities to the extent that they will:
--

- Know and understand Substantive law in a more comprehensive way (Knowledge).
- Apply Procedural law for enhancing efficiency and effectiveness (Skills).
- Maximize their performance for achieving the organizational objectives (Abilities) .

MODULE 1

1. Procedural Laws

1.1 Procedural law

Procedural law refers to the methodology through which law is processed. In other words, procedural law is the practical dimension of law. This Module has been designed to enable the participants:-

- To know and understand Procedural law.
- To refresh their knowledge of Procedural law.
- To enhance their skills for its application.
- To strengthen their professional abilities for effective performance.

1.2 Outcomes:

On successful completion of the session, the participants would be:-

- Familiar with the spirit of Procedural law.
- Proficient in terms of their duties and skills for their application with greater accuracy.
- Able to perform more effectively and efficiently.

1.3 Points for Explanation

- As a set of rules describing the steps leading to the judicial enforcement of a right or a duty. ¹
- From the above definition one can deduce that it refers to a body of rules applied by court to ensure the following:-
 - Fairness.
 - Certainty .
 - Transparency, and
 - Predictability (in judicial proceedings).
- We can also explain it as a tool for promoting justice through rule of law.
- It also refers to the legal norms that are:-
 - Clear.
 - Determinate.

¹ Brian Garner and Campbell Black, *Black's Law Dictionary*, 9th Edition (New York: West, 2011)

- Prospective.
- General and.
- Stable.
- Procedural law is essential for ensuring fair trial, which is a fundamental right.
- The 18th Amendment in the Constitution of Pakistan acknowledges the right to fair trial as a fundamental right. The relevant Article reads:
 - “For determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.”
- Article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides:
 - “In determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent court, independent and impartial tribunal established by law.”

These rights will be further explained, in part 3, particularly with reference to international human rights law. Article 10-A of the Constitution and Article 14 (1) of the ICCPR extends the right to fair trial to civil cases. The Civil Procedure Code, 1908 (CPC) is a procedural law, aiming at ensuring fair trial in civil cases.

What we infer from the above authorities is:-

- A judge is legally and professionally obligated for his/her knowledge of procedural law and all its technicalities and way these technicalities operate.
- The use of procedural law as a delaying tactic goes against the very idea of establishing justice as delay defeats equity.
- Here we refer to the Supreme Court of Pakistan:-
 - [...] the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy...Any system which by giving effect to the form and not the substance defeats substantive rights (and) is defective to that extent” (PLD 1963 Supreme Court 382).

A debate: Is procedural law the main cause of delay?

Points for discussion:

- ✓ One of the major reasons for delay in justice is that procedural laws are intricate, tedious and bulky, especially major laws, such as, the Civil Procedure Code, 1908, and the Criminal Procedure Code, 1898. They are over 100 years old. They can't address the demands of the contemporary times. **Discuss further...**
- ✓ There have been efforts to address delay. Various Law Reform Commissions and

Committees were constituted with a view to explore and examine the causes of delay and suggest appropriate measures for reform. Despite those reforms, delay still persists. **Discuss further...**

- ✓ Does delay reduction need an attitudinal change of the personnel of all justice sector institutions? **Discuss further...**

The above discussion should be held in groups in such a way as to come up with their views and comments in a written form. The write-ups should be presented in a Question/Answers session.

MODULE 2

2.1 Civil Procedure

This Module focuses on the mechanics of Civil Procedure. In a judicial context, the phrase refers to the procedure through which a case is processed for adjudication. The learning objectives of the Module are:-

- To familiarize the participants with the mechanics of Civil Procedure.
- To enhance their professional skills for its application with greater focus.
- To strengthen their abilities for a productive performance.

2.2 Outcomes:

On successful completion of the session, the participants:--

- Will know and understand Civil Procedure.
- Develop professional skills for its effective application and
- Use their abilities for a better performance.

2.3 Points for explanation

In judicial business, “procedure is [a] judicial rule or manner for trying a civil lawsuit or conducting criminal prosecution”.²

Steps in the conduct of a civil suit (procedure).

The Civil Procedure Code, 1908 (CPC), is a general law of procedure governing civil trials. According to the CPC, the following steps are, inter alia, followed in a civil trial, which require specific attention of a Judge: -

- Filing of a plaint/application (O VII, CPC).
- On admission, be registered (**O 4 read with O. 6&7, CPC/Vol. 1, Ch. 1, Part-C, HRO**; form of Register I)
- Service of summons, notices, warrants, etc. (O V, S 27, and 29 CPC).
- Submission of a written statement/set off, better statement and rejoinder, if needed (O VI, VIII).
- Framing of issues (O XIV, CPC).
- Recording of evidence (O XVI, XVIII, XIX CPC, r/w Article 3 to 164 of Qanoon-e-Shahadadat).
- Arguments (O XVIII, Rule 2, OXX, R 1 CPC).

Brian Garner and Campbell, *Black's Law Dictionary*, 9th Edition (New York, West, 2011)

- Pronouncement of judgment (O XX, CPC).
- Drawing up of a decree sheet (O XX: O XXXIV Rule 2 to 8 CPC, Appendix D, CPC).
- Execution of decree (O XXI CPC).

The Resource Person will be required to arrange practical exercises and inform the participants of the landmark CASE LAW, including latest trends and best practices from other jurisdictions.

2.4 **Plaint**

- Plaint should be in accordance with (O VI, VII, CPC).
- Pleadings O VI, Rule 1 CPC.
- Contents of pleadings O VI, Rule 6 CPC.
- Appendix A CPC. (Forms, O VI Rule 3 CPC).
- Particulars in pleadings (O VI Rule 4 CPC).
- Better statement (O VI Rule 5 CPC).
- Condition precedents (O VI Rule 6 CPC).
- Departure in pleadings (O VI Rule 7 CPC).
- Denial of contract (O VI Rule 8 CPC).
- Documents (O VI Rule 9 CPC)
- Malice (O VI Rule 9 CPC).
- Implied contract (O VI Rule 12 CPC).
- Presumptions (O VI Rule 13 CPC).
- Signature (O VI Rule 14 CPC).
- Verification of pleadings (O VI Rule 15 CPC).
- Striking out pleading (O VI Rule 16 CPC).
- Amendment of pleading (O VI Rule 17 CPC).
- Particulars required in a plaint (O VII Rule 1 CPC).
- Procedure of admitting plaint (O VII Rule 9 CPC).
- Return of plaint (O VII Rule 10 CPC).
- Rejection of plaint (O VII Rule 11 CPC).
- Documents sued on (O VII Rule 14, 15, 16 CPC).
- Address with the plaint and consequences of failure to file address, change of address (O VII Rule 19, 20, 21, 22 CPC).
- List of legal representatives (O VII Rule 26 CPC).
- Grounds for return of plaint are laid down in (O VII, R 10 CPC).

Group Activity 1:

Group 01: Draft a plaint. Present it to the mock court.

Group 02: Scrutinize the plaint.

Group 03: Decide an application for amendment of plaint.

Group 04: Return a plain for want of jurisdiction.

Group activity no 2

The participants will be divided into four groups; each group to conduct one of the following activities

Activity Group A: Score out the requirements of a proper plaint given in O. VI & VII CPC;

Activity Group B: Read and Understand form of register of civil suits. (O. IV R. 2, appendix H, form-14, CPC)

Activity Group C Practical demonstration of scrutiny and filling of register.

Activity Group D How to write first order of the court.

Participants should be advised to write a scrutiny.

Apply the following:

Read the relevant provisions of Law as mentioned above and ensure that:-

- Names of the parties and their addresses are mentioned in the heading of the plaint.
- The claim is precisely stated.
- The cause of action is clearly stated.
- The court has jurisdiction.
- The suit is properly valued for the purpose of court fee and jurisdiction
- Amendment in plaint is necessary for effective adjudication.

CASE LAWS

- Travelling beyond pleadings
 - PLD 1995 LAH, 1113

2.5 Issuance of process

- Process is to be served according to O V, CPC.
- Audi alterum partum (O V, R 1).
- Summons to be either to settle issues or for final disposal (O V, R 5 CPC).
- Service by Post (O V, R 10-A CPC).
- Personal Service (O V, R 11 CPC).
- Service on Family Members (O V, R 15 CPC).
- Service by affixation (O V, R 17 CPC).
- Substituted Service (O V, R 20-1 CPC).

- Service of summons where defendant resides within jurisdiction of another Court (O V, R 21 CPC).
- Service on defendant in prison (O V, R 24 CPC).
- Service in Foreign territory through Political agent or court (O V, R 26 CPC).
- Service on civil public officer or on servant of railway company or local authority (O V5, R 26-A CPC).
- Service on Soldiers, sailors or airmen (O V, R 28 CPC).
- Substitution of letter for summons (O V, R 30 CPC).
- Consequence of non appearance after service. (O IX, R 6, 12, CPC).
- Summons / processes
 - Zia UR Rehman V. state, 1986 PLD Lah. 639
 - Syed Muhammad Anwar advocate V. sheikh Abdul Haq, 1985 SCMR 1228
 - Purvaiz Akhter V. Mst.Salma Mumtaz, 1991 MLD 2102
 - Syed mazhar Ali shah V. Shah Muhammad, 1990 MLD 1070
 - 2001 MLD 381
 - Syed Ashfaq Ali Shah V. Syed akhter Ali Shah And others. 1993 MLD Lah. 889

Prepare different processes according to appendix-H, CPC.

2.6 Written Statement

- Written statement should be ensured to be according to O 8, CPC.
- When parties are not at variance, procedure laid down in O. 12 & 15 CPC may be followed.
- For better statement, procedure contained in O 6, R 5 may be followed.
- Permission for amendment in written statement may be given per O 6, R 17, CPC.
- Timely procurement of written statement (O. 8 CPC/Vol. 01, Ch. 01, Part-E, HRO),
 - Set-off
 - Consenting Written Statement
 - Replication
 - Bold Denials
 - Better Statement
 - Evasive Denials
 - Cognovit
 - Affidavit of Facts

Group Activity:

Group 01: Draft a written statement. Present it to the mock court.

Group 02: Scrutinize the written statement.

Group 03: Decide an application for amendment of written statement.

Group 04: A defendant admits a claim in his written statement. Decide the case after ensuring that admission.

Read the relevant provisions of Law as mentioned above and ensure that:-

- The court has jurisdiction.
- All the facts are specifically pleaded.
- All the points raised in the plaint are properly answered.
- There is no evasive denial.
- In case of set off, proper court fee is affixed.
- Amendment in written statement is necessary for effective adjudication.

2.7 Jurisdiction of court and Res-Judicata

- Court to determine its jurisdiction (pecuniary, territorial and subject-matter) (S 6, 9 & 15 to 21, CPC read with relevant provisions of the CCO like S 7 to 18).
- Guidelines for stay of suit is mentioned in S. 10 CPC.
- Procedure for *res judicata* is reflected in S. 11/O 2 R 2, CPC.
- Bar to further Suit is laid down in S. 12 CPC.

2.8 Issues

When the pleadings (including better statement) are proper and it is clear that parties are at variance, issues of fact as well as law shall be framed (O XIV, R 1 CPC).

- Issues of law and fact (O XIV, R 2 CPC).
- Material from which issues to be framed (O XIV, R 3 CPC).
- Power to examine witnesses or documents before framing issues (O XIV, R 4 CPC).
- Power to amend and strike out issues (O XIV, R 5 CPC).
- Question of fact or law by agreement in form of issue (O XIV R 6 CPC).
- Initial burden of proof, onus of proof: (O XIV, R 6)
- Additional Issues.

Activity: A is dealing in Rice business. B, a shopkeeper, purchases 500 Kg rice from A. The rice was delivered. It was agreed between the parties that 30% of the sale consideration will be paid in advance and the remaining will be paid within two months of the delivery. B failed to make payment on time. A sued him. In his written statement B set up a plea that the rice was not of the quality agreed upon in the sale agreement. B pleaded that A was not entitled to the remaining sale consideration. Frame proper issues in the given circumstances.

Apply the following:

- Read the relevant law as mentioned above.
- Frame issues in respect to jurisdiction and court fee.

2.9 Summoning & attendance of witnesses & recording of evidence.

Procurement of list of witnesses → Summon the witnesses if required → Record of evidence (O. XVI & XVIII CPC read with relevant provisions of Qanun-e-Shahadat, like Article 61, 105, 130, 132, and 164.)

- Summons to give evidence or produce document (OXIV R 1 CPC).
- Expenses to be paid into court (O XVI, R 2 CPC).
- Tender of expenses to witnesses (O XVI, R 3 CPC).
- Time, place, and purpose in summons (O XIV R 5 CPC).
- Summons to produce documents (XIV, R 6 CPC).
- Service of summons by parties (O XVI, R 7A CPC).
- Service of summons by court (O XVI, R 8 CPC).
- Compelling attendance (O XVI, R 10 CPC).
- Court witness (O XVI R 14 CPC).
- Party as witness (O OXVI, R 21 CPC).
- Right to begin (O XVIII R 1 CPC).
- Statement and production of evidence (O XVIII, R 2 CPC).
- Several Issues (O XVIII, R 3 CPC).

- Examination of witnesses (O XVIII, R 4 CPC).
- Evidence in appealable cases (O XVIII, R 5 CPC).
- Evidence under S 138 CPC (O XVIII, R 7 CPC).
- Questions objected to (O XVIII, R 11 CPC).
- Demeanor of witness (O XVIII, R 12 CPC).
- Evidence taken before another judge (O XVIII, R 15 CPC).
- Power to examine witness immediately (O XVIII, R 16 CPC).
- Recall and examine witness (O XVIII, R 17 CPC).
- Affidavits (O XIX, R 1 to 3 CPC).
- Of witnesses (Article 3 to 17 of Qanoon-e-Shahadat).
- Relevancy of facts (Article 1 to 29 Q S).
- Statement under special circumstances (Article 48 to 52 of Q S).
- How much of a statement is to be proved (Article 53 of Q S).
- Opinion of experts (Article 59 to 65 of Q S).
- Character when relevant in civil cases (Article 66 of Q S).
- Oral evidence (Article 70, 71 of Q S).
- Documentary evidence (Article 72 to 1001 of Q S).
- Exclusion of oral by documentary evidence (Article 102 to 110 of Q S)
- Facts which need not be proved (Article 111, 112, 113 of Q S).
- Burden of proof (Article 117 to 129 Q S).
- Examination of witnesses (Article 130 to 161 Q S).
- Evidence due to modern devices (Article 164 Q S).

CASE LAWS

- **Plaintiff to win on the strength of his own case**

- PLD 1958 Privy Council 161
- PLD 1957 Dacca 233 at 241
- PLD 1962 Peshawar 186
- State V. Iftikhar Hussain Gilani, PLD 1991 Peshawar 161

➤ **Party bound by statement of his own witness**

- Mukhtar Ahmad V. Mailk Muhammad Shafi, 1991 MLD 668

➤ **When no cross on a specific point**

- Muhammad Sharif V. Noor Ellahi And others , PLD 1994 Peshawar 255
- Mst. Sahib bibi And others V. LAL, 1992 CLC 807

2.10 Arguments

1. Hear the arguments of the parties. (O XX, R 1 CPC).
2. Judgment and decree (O XX, R 1 CPC).

Activity: The participants may discuss key tips for hearing of arguments: explore problems and search solutions.

2.11 Judgment and Decree

- Judgment to be signed (O XX, R 3 CPC).
- Contents of judgment (O XX, R 4 CPC).
- Court to state its decision on each issue (O XX, R 5 CPC).
- Contents of decree (O XX, R 6 CPC).
- Decree for immovable property (O XX, R 9 CPC).
- Decree for movable party (O XX, R 10 CPC).
- Decree for possession (O XX, R 12 CPC).
- Decree administration suit [O V, R 13 (1) CPC].
- Decree in pre-emption suit (O XX, R 14 CPC).
- Dissolution of partnership (O XX, R 15 CPC).
- Decree in suit for account between principal and agent (O XX, R 16 CPC).
- Decree in suit for partition of property or separate possession of a share (O V, R 18 CPC).
- Decree when set-off is allowed (O V, R 19 CPC).
- Draw a decree sheet.(O XX, CPC).

➤ **Announcement of judgment**

- Mollah Ejahar Ali V. Government Of East Pakistan And others, 1970 PLD SC 173
- 1958 PLD SC 221
- 1959 PLD SC 272
- 1986 SCMR 1996

A **Activity:** How to prepare a decree sheet? (O XX, R 6 & 7, Appendix D, CPC.), which sets out the contents of the decree sheet.

2.12 Miscellaneous

- Appearance of parties and consequences of non-appearance and setting aside ex-parte decree (O IX, R 1 CPC).
- Both the parties absent (O I, R 3 CPC).
- Fresh suit or restoration (O IX, R 4 CPC).
- Dismissal of suit where plaintiff, after summons returned un-served, fails for three months to apply for fresh summons (O IX, R 5 CPC).
- When only Plaintiff appears (O IX, R 6 CPC).
- Procedure where only defendant appears (O IX, R 8 CPC).
- Setting aside dismissal in default (O IX, R 9 CPC).
- Non-attendance of one or more plaintiffs or defendants (O IX, R 10 & 11).
- Setting aside ex parte decree (O IX, R 13 CPC).
- No decree set aside without notice (O IX, R 14 CPC).

➤ **Suit dismissed in default**

- PLJ 1987 Lahore, 532.
- Bashir Ahmad and 13 Others V. Maula Bakhsh and 24 Others, 1990 CLC, 1241.
- **Order 9, Rule 6 CPC.**

- Shamroz Khan And others V. Muhammad Amin And others, 1978 PLD SC 89
- Mst. Afzal Begum And others V. Y.M.C.A. Through Its General Secretary, PLD 1979 SC 18
- Talib Hussain V. Karam Elahi Through Legal Heirs, 1999 MLD 553
- Province of the Punjab through Member board of Revenue (Residual Properties) Lahore and others V. Muhammad Hussain Through legal heirs and others, 1993 PLD SC 147
- Province of Punjab V. Lt. Gen (Retd) Wajid Ali Burki PLD, 1990 PLD SC 813
- Muhammad Akbar V. Iftikhar Jillani, 1991 PLD SC 81

Activity 01: A pending suit was dismissed in default. An application was submitted for its restoration. It is alleged in the application that the absence was not willful but due to heavy rainfall the plaintiff could not make it to the court. Write an order for restoration of the suit.

Apply the following:

- Whether application is within time.
- Whether the factum of rainfall is established on record.

Activity 02: An ex parte decree was passed in favour of Aslam against Ahmad. On getting knowledge, Ahmad appeared and submitted an application for setting aside ex-parte decree. It is alleged in the application that Ahmad was not properly served. Write an order setting aside ex-parte decree.

Apply the following:

- See whether the application is within time.
- Check whether proper service is effected.

2.13 Conclusion

Compilation, completion and consignment

Activity: Compile, Complete and Consign the Judicial Record as per procedure laid down in Vol. IV, Ch. 16, HRO.

2.14 Injunctions

- Procedure for issuance of interim injunction is laid down (O XXXIX, R 1-5 CPC).
- Cases in which temporary injunctions may be granted (O XXXIX, R 1 CPC and S 53 of Specific Relief Act).
- Refusal of Injunction (S 56 of the Special Relief Act).
- Injunction to perform negative agreement (S 57, Special Relief Act).
- Injunction to restrain repetition (O XXXIX, R 2).
- Discharge, set aside, or variation of injunctions (O XXXIX, R 4).
- Time limit of injunction [O XXXIX, R 4 (A)].
- Interim Sale (O XXXIX, R 6).
- Detention, Preservation, inspection of the subject matter (O XXXIX, R 7).
- Immediate possession of subject land (O XXXIX, R 9).
- Deposit in court (O XXXIX, R 10).

Activity: A has brought a suit against the government through Deputy Commissioner, alleging that the construction in a local children park will render the park useless, and that the government has no power to make such construction. The plaintiff has requested for an interim status quo order. Write an interim order for issuance of temporary injunction.

Apply the following:

- Read the above mentioned provisions of law carefully.
- See the prima facie case of the plaintiff.
- Check whether balance of inconvenience is in favor of plaintiff.
- Check the irreparable loss in favor of plaintiff.

2.15 Arrest and Attachment before judgment and issuance of commission

- The procedure for attachment before judgment is prescribed in (O XXXVIII R 5-12 CPC).
- Arrest before judgment (O XXXVIII, R 1-4 CPC).

- Receivers are appointed under (O XL, R 1 CPC).
- Remuneration, duties and enforcement (O XL, R 2-4 CPC).
- Commissions are issued under (O XXVI).
 - To examine witness (O XXVI, R 1 CPC).
 - Deposition in evidence (O XXVI, R 8 CPC).
 - Commission for local investigation (O XXVI, R9 CPC).
 - Procedure (O XXVI, R 10 CPC).
 - Commission to examine accounts and make partitions (O XXVI, R 11 – 12 CPC).
 - Commission to make partitions (O XXVI, R 13 and 14 CPC)
 - General provisions, High Court to issue commission (O XXVI, R 19).

CASE LAW

- *Chaudhry Shah Muhammad and 6 others v. Muhammad Ishaq and 5 others, 2001 MLD 1518.*
- *Col. Mahboob Khan v. Abdur Rasheed and another, 1993 MLD 1599.*
- *Mahmood Shah and others v. Tamash Khan, PLD 2011 Pesh 53.*
- *Province of Punjab through collector Bahawalpur and others v. Sh. Hassan Ali and others, PLD 2009 SC 16.*
- *Nazar din and others v. Munafud din, PLD 1965 (W.P.) Pesh 74.*
- *Malik Tila Muhammad and others v. Sadiq Hussain and others, 1990 CLC 1698.*
- *Nazir Ahmad and others v. Muhammad Qasim and others, 2004 SCMR 1292.*
- *Ghulam Rasoon and another v. Mst. Naziran bibi, 2000 YLR 2855.*

2.16 Review

- Orders are reviewed under (O XLVII, read with S 114 CPC).
- Who can review and its procedure (O XLVII, R 1-3 CPC).
- Application where rejected or granted (O XLVII, R 4 & 6 CPC).

2.17 Execution of decree

- The procedure for execution of different kinds of decree is laid down (O XXI CPC).
- Modes of paying money under decree (O XXI, R 1 CPC).
- Payment outside court (O XXI, R 2 CPC).
- Mode of transfer (O XXI, R 5-9 CPC).
- Application for execution (O XXI, R 10-15 CPC).
- Execution by transfer of decree and procedure (O XXI, R 16-17 CPC).
- Execution of cross decrees (O XXI, R 18-20 CPC).
- Notice to show cause against execution (O XXI, R 22-23 CPC).
- Process of execution (O XXI, R 24 CPC).

- Stay of Execution (O XXI, R 26 CPC).
- Decree for payment of money (O XXI, R 30 CPC).
- Decree for a specific movable property (O XXI, R 31 CPC).
- Decree for specific performance and restitution of conjugal rights or injunctions (O XXI, R 32-33 CPC).
- Decree for execution of document, or endorsement of negotiable instrument [O XXI, R 34].
- Decree for immovable property (O XXI, R 35 CPC).
- Attachment of agriculture produces (O XXI, R 44-45 CPC).
- Attachment (O XXI, R 47- 49 CPC).
- Investigation of claims and objections (O XXI, R 58-63 CPC).
- Sales generally (O XXI, R 64-73 CPC).
- Sale of movable and immovable property (O XXI, R 74-103 CPC).

CASE LAW

- *Bashir Ahmad and 13 others v. Maula Bakhsh and 24 others*, 1990 CLC 1241.
- *Amjad Rashid Khan Malik v. Mrs. Zubeda Rashid Khan Malik and 8 others*, 1991 CLC 1986.
- *Lahore Development Authority v. M/S Own Homes Service Ltd*, PLD 1983 Lhr 475.
- *Manzoor & Company v. Malik Muhammad Hanif*, PLD 1995 Lah 95.
- *Habib Bank Limited v. M/S Dost Muhammad Cotton Mills*, PLD 2000 Kar 186.
- *Syed Ashraf Agha v. Muhammad Sarwar Ejaz*, 2008 CLC 852.
- *M/S Sind Tanneries Ltd. v. Abdul Waris Khan*, 1986 CLC 1657.
- *Habib Bank Limited v. M/S Hohinoor Cotton Mills Ltd.* 1988 CLC 1604.
- *Kamal Hussain and others v. District Officer (Revenue) Bhakkar and others*, PLD 2011 Lah 561.
- *United Bank Ltd. v. M/S Al-Noor Enterprises and another*, 2006 CLC 822.
- *Mahboob Khan v. Hassan Khan Durrani*, PLD 1990 SC 778.
- *National Bank of Pakistan v. Mian Aziz-ud-din and 7 others*, 1996 SCMR 759.
- *Muhammad Khalid and others v. A.T.M Corporation Ltd.*, 1996 CLC 1331.
- *Republic of India through Deputy High Commissioner, Lahore v. M/S Chiragh Din & Co.* PLD 1975 Lah 1047.
- *National Bank of Pakistan Karachi v. M/S Bachani Sugar Mills Ltd. and 6 others*, PLD 2010 Kar 193.

2.18 Objection Petition

Locus standi for filing objection petition. (S. 47, 48, O. XXI, R. 23-A, CPC).

Procedure identical to a civil suit.

Activity: Mr. A filed suit for declaration of title in respect of a plot in his possession. The decree was granted and upheld till the High Court. During execution petition the Judgement debtor dispossessed him. What remedy can the

2.19 Special Suits

- Suits by or against the government (Ss 79-82, O XXVII, R 1-8 CPC).
- Suits involving a substantial question to the interpretation of constitutional law (O XXVII-A CPC).
- Suits by or against military or naval or airmen (O XXVIII CPC).
- Suits by or against corporations (O XXIX CPC).
- Suits by or against firm (O XXX CPC).
- Suits by minors (O XXXII CPC).
- Suits by lunatics, (O XXXII CPC).
- Pauper Suits (O XXXIII CPC).
- Suits relating to mortgages (O XXXIV, CPC).
- Inter pleader suits (O XXXV CPC).

2.20 Alternate Dispute Resolution (ADR)

- ADR (S 89A CPC, r/w O X Rule 1A CPC).

CASE LAW

- *M/S U.I.G (Pvt) Limited. through Director and 3 others v. Muhammad Imran Qureshi, 2011 CLC 758.*
- *Sardar Talib Hussain Nakai v. Rana Muhammad Hayat and 2 others, PLD 2011 Lah 207.*

2.21 Suits relating to public matters

- *Moulvi Muhammad Ishaq and another v. The P.O.F. Cooperative House Building Society Wah Cantt, 1989 SCMR 1052.*
- *Fakir Shah and others v. Mehtab Shah Pir Bukhari Masjid Committee and others, PLD 1989 SC 283.*
- *Muhammad Hussain v. District Council Muzaffargarh through its chairman and another, 1987 CLS 1089.*
- *Mst. Seema and others v. M/s Millennium Developers and others, 2003 CLS 632.*
- *Muhammad Issa Abbasi through legal representative and others v. Abdul Qadir through legal heirs and others, PLD 2013 Sindh 60.*
- *Anjuman-i-Mutasreen Khshatkaran Ravi River through general secretary Anjuman v. Province of Punjab through Secretary Irrigation and Power Department Lahore through Director General and another, 2012 CLC 1145.*

- *Malik Khizar Hayat Awan v. DCO Hafizabad and 5 others, 2005 YLR 1541.*
- Public nuisance (S 91 CPC).
- Public charities (S 92 CPC).

2.22 Supplemental proceedings, power of civil courts (S 94 CPC).

- a) O XVII, Rule 3 CPC.
- b) O XXXVIII, Rule 1-4 and S. 136.
- c) O XXXVIII, Rule 5, O, XXXIX, R. 7 and S.136.
- d) O XXXIX, Rules 1-5.
- e) O XXXIX, Rules 6-10 and S.151.
- f) O XXXIX, Rule 10, CPC.
- g) O XL, Rules 1-5 and S. 151.

CASE LAW

- *Ch. Zafarullah Khan and 6 others v. Pakistan through Secretary, Ministry of Defence, Government of Pakistan, Islamabad and 5 others, PLD 1975 SC 15.*
- *Nazir Ahmad v. Mst. Jainnan through Legal Heirs, 2000 MLD 720.*
- *Mirza Zahid Baig v. Ghaffar Ahmed, PLD 1982 Kar 293.*
- *M/S. Sports World and others v. Latees Fabrics and others, 1995 MLD 1701.*
- *Jamal Shah v. Azad Government of State of Jammu & Kashmir through Chief Secretary and 7 others, 1991 MLD 1243.*
- *Muhammad Ather Hafeez Khan v. Messrs SSANGYONG & USMANI JV, PLD 2011 Kar 605.*
- *Muhammad Amin v. Muhammad Moosa and 5 others, 1987 CLC 1784.*
- *Shahid Husain V. Lahore Municipal corporation, PLD 1981 Supreme Court 474.*
- *Nasim javed V. National Bank of Pakistan, PLD 1985 Pesh. 91.*

2.23 Parties to the suit (O. I, Rules 1-13 CPC).

CASE LAW

- *Mir Abdus Samad Badini v. Political Agent and Returning Officer District Chaghi and 9 others, 1984 CLC 564.*
- *Fozia Hussain Abbasi v. Nomination Board through chairman and 4 others, 1995 CLC 1761.*
- *Sh. Shajar Hussain v. Haji Abdul Majeed and others, 2006 SCMR 913.*

- Abdul Maroof Khan Afridi v. Karachi Development Authority through Director General, Civic Center Gulshan Iqbal Karachi, 1990 MLD 2252.
- Bore Muhammad v. Mst. Aziza begum and others, 2001 CLC 701.

2.24 Frame of suit (O II Rules 1-7 CPC).

CASE LAW

- *Noushad Shamsuddin Fancy and another v. New Jubilee Insurance Company Ltd and others, 2007 CLC 1448.*
- *Syed Imtiaz H. Rizvi v. Abdul Wahab and another, 2007 CLS 483.*
- *Fayyaz Hussain v. Tahir Naseem, PLD 1992 Kar 423.*
- *Begum Shaheen Hassan v. M/S Grindlays Bank, PIC, 1992 MLD 1972.*

2.25 Discovery and inspection (O. XI CPC).

CASE LAW

- *Mutali v. Manzoora and another, PLD 1994 Lah 298.*
- *Mrs. Naila Masood and 2 others v. The Secretary Food & Cooperation, Government of Sindh and others, 1998 CLC 1532.*
- *Abdul Latif v. Muhammad Yousaf and 2 others, PLD 1996 Kar 365.*
- *Mst. Zar Jan v. Mst. Najmun Nisa and others, PLD 1969 Pesh 118.*
- *Hussain Ali v. Sh. Muhammad Shahid and 11 others, 2011 CLC 1239.*

2.26 Production and impounding and return of document (O. XIII CPC).

CASE LAW

- *Chief Engineer / Project Director and another v. Anwar Begum and 9 others, 2009 CLC 1320.*
- *Mst. Marium Haji and others v. Mrs. Yasmeen R. Minhas and others, PLD 2003 Kar 148.*
- *Shaukat Ali Butt v. Islamul Haq, 2003 YLR 1814.*
- *Ghulam Rasool and another v. Mulazim Hussain and others, 2007 YLR 2602.*
- *Rashid Hussain v. Soofi Abdul Hameed, 2008 MLD 1531.*

MODULE 3

3. Criminal Procedure

3.1 Significance

In the criminal law, a range of due process rights are available to the individual charged for an offence. In module 1, it was stated that the right to a fair trial is recognized by Pakistan's Constitution (Article 10-A) of the Constitution of Islamic Republic of Pakistan, 1973 as well as international human rights (ICCPR, Article 14). Further elaboration of the right to fair trial is necessary. The reason is that the right is now universally recognized. It has prompted increasing concern at national and international level. In order to ensure fairness of criminal proceedings at all stages, the right to fair trial could be divided into three sets: pre-trial rights, rights at the hearing and post-trial rights. Each set is reproduced below:-

The learning objectives of the session are:-

- To familiarize the participants with the mechanics of Criminal Procedure
- To boost their skills for their effective application
- To fortify their abilities for a prolific performance.

3.2 Outcomes:

On successful completion of the session, the participants will:-

- Become familiar with the mechanics of Criminal Procedure.
- Develop skills for their effective application.
- Use their abilities for a more productive performance.

3.3 Pre-Trial Rights

1. Safeguards as to arbitrary arrest and detention.
2. The right to know the reasons for arrest.
3. The right to legal assistance of choice.

4. The right to prompt appearance before a court to challenge the legality of the arrest and detention.
5. The protection against torture, inhuman and degrading treatment in arrest and detention.
6. The prohibition of incommunicado detention.

3.4 Rights at the Hearing

- Equal access to and equality before courts.
- The right to fair and public hearing.
- The right to competent, independent and impartial tribunal.
- The right to presumption of innocence.
- The right to prompt and understandable notice of the criminal charge.
- The right to adequate time and facilities for preparation of defence.
- The right to a trial without undue delay.
- The right to defend oneself in person or through legal assistance.
- The right to cross examine witnesses against oneself.
- The right to have free assistance of an interpreter if needed.
- Protection against self-incrimination.
- Protection against retrospective application of criminal laws.
- Protection against double jeopardy.

3.5 Post-Trial Rights

- The right to appeal.
- The right to compensation for miscarriage of justice .

While these rights are to be understood in the context of the Constitution of Pakistan, they are applied through statutory law(s) of criminal procedure. The main principle law is the Code of Criminal Procedure (CrPC), 1898. It aims at protecting most of the above mentioned and many other rights of an individual. The scheme of the CrPC is to facilitate the administration of criminal justice. Its understanding by the Judicial Officers is thus of vital importance.

Debate: In criminal justice system powers of adjudication are mostly discretionary.

3.6 Steps in the conduct of a criminal case

To begin with, the following key concepts should be understood, particularly with reference to CASE LAW on interpretation of the CrPC:

Administration of criminal justice	Accused—a favourite child of law
Benefit of doubt	Motive, malice and mens rea
Justice seen to have been done	Justice delayed, justice denied
Appreciation of evidence	Islamic concept of criminal justice
Police role in enforcement of the CrPC	Departure from procedure

- Hierarchy of criminal courts.
- Classes of Courts and their Powers(Chap. II & III, CrPC).
- Processes of courts (Chap. VI & XVII CrPC).
- Summons and warrants and their forms (S 68 to 105, Schedule V CrPC).
- Procedure for removal in custody to Tribal Areas (S 86-A, Ch VI, CrPC).
- Proclamation and Attachment (S 87 to 93 CrPC).

Activity: Aslam, an accused in a murder case has absconded. Adopt the proper procedure declaring him as a proclaimed offender and issue proclamation. Also conduct mock proceedings for restoration of the attached property.

Apply the following:

- Go through Sec 87, 89, Chap VI, CrPC.
- Make sure that a warrant of arrest has been issued.
- Satisfy yourself by taking evidence that the accused has absconded himself.
- Satisfy yourself that the abscondance was intended to defeat the warrant.
- Ensure publication of written proclamation.
- Publication must be in accordance with Sec 87(2) CrPC.
- Make an order for the attachment of the property of the absconder u/s 88, CrPC.
- Follow the procedure laid down in section 89, CrPC for the restoration of the attached property.

Magistrates should have basic knowledge of a range of key areas for efficient management of criminal cases. They are:

- Knowledge of cognizable and non-cognizable; bailable and non-bailable; compoundable and non-compoundable offences (Schedule II, CrPC).
- Kinds of jurisdiction of Magistrates:
 - Supervisory (Ch. XIV, CrPC).
 - Preventive (Ch. VIII, CrPC).
 - Discovery of person wrongfully confined (Ch. VII-C).
 - Public nuisance (Ch. X, CrPC).
 - Dispute as to immovable property (Ch. XII).
 - Disposal of property (Ch. XLIII, CrPC).
 - Bonds (XLII, CrPC).
 - Bar of jurisdiction in certain offences.

- **Knowledge of procedure about**
 - Information to the police and investigation in cognizable offences with focus on supervisory role (Ch. XIV, CrPC and best practices).
 - Pre-trial proceedings.
 - Trial of offences.
 - Complaint cases.
 - Of processes, for example, summons, warrants, etc (appendixes to the CrPC)
 - Of procedure related to Complaints
 - Of the procedure of summary trials.
 - Of the disposal of different applications

- **Cognizance and its stages**

Meaning and definition of cognizance:

- Import of cognizance.
- Scope of the phrase cognizance prior to the Law Reforms Ordinance, 1972.
- Role of Magistrate .

3.7 Summons for service outside Pakistan, execution of warrants received from outside in Pakistan (Ss 93A-93C.).

3.8 Production of documents (S. 94-99-G, Chap VII, CrPC).

- Summons to produce documents or any other relevant material (S 94 CrPC).
- Procedure as to letter and telegram (S 95, CrPC).
- Search Warrant (S 96 CrPC).
- Search of house suspected (S 98 CrPC).
- Forfeiture and search warrant (S 99A CrPC).
- Nature and tendency of newspapers (S 99-E CrPC).
- Procedure in High Court (S 99-F, CrPC).

3.9 Discovery of persons wrongfully confined (S. 100, Chap VII CrPC).

3.10 FIR and Investigation (S 154 to 176, Chapter XIV, CrPC).

FIR sets the criminal law in motion. It is the basic arsenal of a criminal trial. The participants shall understand the key elements and their importance on the decision of a case.

Activity: Akram hit Aslam on his head and hurt him. Under what section(s) of law FIR is to be registered? Also study and understand an FIR according to the CrPC and the Police Rules.

Apply the following:

- Go through the definitions of hurt in section 337 PPC.
- Study the Medico legal report to determine the nature of offence.
- For the contents of FIR go through section 154, CrPC.
- What kind of offence is committed? Cognizable or non cognizable?
- Determine the cognizability & non cognizability under schedule II CrPC.
- Police remand (167, Chap. VII CrPC) .

Activity: A women was found in possession of 5 kg opium and booked. The police has requested for remand. Decide the application, recording reasons.

Apply the following:

- Follow section 167,CrPC.
- Ensure that investigation has not been completed.
- Ensure that police custody of the accused is indispensable for investigation.
- Record reasons for giving remand.
- Ensure that the police officer requesting remand is competent to make such request.
- If you are giving the accused in police custody, ensure that your order contain the following;
- Weather under the law, remand can be granted of the female accused in such like cases? [S 167(5) CrPC].
- Specify the place of investigation in the order.
- Specify the exact timing of the interrogation .
- Specify that the accused be interrogated in the presence of lady police officer.
- Specify that if the accused is required to be taken out of the prison, she must be accompanied by a lady police.

3.11 Conditions requisite for initiation of proceedings (S. 190-199B, Chap XV, CrPC).

- Cognizance of offences magistrate (S 190 CrPC).
- Transfer or application of accused (S 191 CrPC).
- Cognizance of offences by court of Sessions (S 193 CrPC).
- Cognizance of offence by HC (S 194 CrPC).
- Prosecution of for contempt (S195 CrPC).
- Prosecution for offences against the state (S 196 CrPC).
- Prosecution for criminal conspiracy (S 196A CrPC).
- Prosecution for breach of contract or defamation (S 198 CrPC).
- Prosecution for defamation against public servant (S 198-A CrPC).
- Prosecution for adultery or enticing a married woman (S 199 CrPC).

3.12 Complaints to Magistrates (Chapter XVI, CrPC).

- Examination of complainant (S 200 CrPC).
- When magistrate not competent (S 201 CrPC).
- Inquiry by police (S 202 CrPC).
- Dismissal of complaint (S203 CrPC).
- Complaint in Zina cases (S 203-A CrPC).
- Complaint in Qazaf (S 203-B CrPC).
- Complaint in case of fornication (S 203-C CrPC).

Activity: Nazia has complained that Ahmad introduces water into her ice-house, causing the ice to melt. What offence has been committed and how will you proceed?

Apply the following:

- Examine the complainant under section 200, CrPC.
- The offence appears to come under the definition of Mischief contained under section 425, PPC.
- Study the section carefully.
- Ensure that court have jurisdiction to proceed.
- Inquire the complaint, or send it, for investigation to the police under section 202, CrPC.
- Issue process, when you are satisfied that the complaint is worth trial.
- Take complainant evidence.
- Take respondent evidence.
- Pronounce judgement.

3.13 Trial by magistrate (Chap. XX & XXIV CrPC).

- Procedure (S 241 CrPC).
- Copies be given (241-A CrPC).
- Charge to be framed (S 242 CrPC).
- Conviction on admission (S 243 CrPC).
- When no admission is made (S 244 CrPC).
- Statement made under S 164 (S 244-A CrPC).
- Acquittal/ sentence (S 245 CrPC).
- Withdrawal of complaint (S 248 CrPC).
- Power to stop proceeding (S 249 CrPC).
- Acquit at any stage (S 249-A CrPC).

3.14 General Provisions of trial

- Pardon / accomplice (S 337 CrPC).
- Right of accused (S 340 CrPC).
- Statement of accused (S 342 CrPC).
- Power to postpone or adjourn proceeding (S 344 CrPC).

- compounding of offenses (S 345 CrPC).
- Magistrate unable to dispose of case (S 346 CrPC).
- De novo trial (S 350 CrPC).

Copies of allegations → Charge → evidence → Decision (including sentencing on conviction) → judgment

3.15 Charge (Chap. XIX CrPC).

- Concept and kinds / framing of charge
- Contents, particulars, and language of charge (S 221-225 CrPC).
- Court may alter charge (S 227 CrPC).
- Effect of material error (S 232 CrPC).
- Separate charge for distinct offences (S 233 CrPC).
- Different conditionality (S 234-240 CrPC).

Activity: A is accused of theft of certain articles from a residential house at night. During the course of theft A also injured the inmate of the house. Frame charge against A.

Apply the following:

- Study section 378,302,PPC and chapter XIX, CrPC
- While framing charge, state the name of the offence
- The charge must specify the dishonest intention in the commission of theft
- Specify the place of offence
- Specify the time of the offence
- Specify the section of law against which offence is committed
- Frame charge under separate heads for theft and murder

3.16 Recording of Evidence (Chap. XXV CrPC)

- Evidence in presence of the accused (S 353 CrPC).

- Manner of recording evidence (S 354 CrPC).
- Language of recording evidence (S 357 CrPC).
- Interpretation of evidence to the accused (S 361 CrPC).
- Demeanour of witness (S 363 CrPC).
- Examination of Accused (S 364 CrPC).
- Evidence in High Court (S 365 CrPC).
- Qanoon-e-Shahadat (Article 3 to 164 (CrPC).

CASE LAWS

- Chance witness
 - 1985 CLC 2327
- No cross means admission
 - PLD 1969 Pesh. 118

3.17 Judgment (Chap. XXVI CrPC)

- Mode of delivering judgment (S 366 CrPC).
- Language and content of judgment (S 367 CrPC).
- Court not to alter judgment (S 369 CrPC).
- Copy to accused (S 371 CrPC).
- Judgment when to be translated (S 372 CrPC).
- Sessions court to send findings to prosecution (S 373 CrPC).

CASE LAWS

- Principle of consistency
 - 1995 PLD Karachi 459
 - 1999 MLD 453
 - 1995 PLD SC 59
 - 2000 MLD 117

- Benefit of doubt
 - 1998 SCMR 1993
- Malafide
 - PLD 1958 Dacca 574
 - PLD 1958 Dacca 586
 - PLD 1961 Lah 843
 - PLD 1961 SC 585
 - PLD 1962 Lah 878
 - PLD 1966 Lah 309

Activity: A after offering Nimaz-e- Magrib, was on his way to home. He was stopped by B in the way. Some altercation took place between them on the issue of cutting of grass by A from B's grassland. On provocation, A stabbed B, injuring him on different parts of his body. The villagers rushed to the spot, took B to the hospital. FIR under section 337 PPC was registered against A, and was arrested. He was produced before a Magistrate for police custody. Conduct pre-trial proceedings and full dress mock trial.

3.18 Summary Trial (Chap. XXII CrPC)

- Power to try summarily (S 260 CrPC).
- Procedure (S 262 CrPC).

Activity: A, a shopkeeper, was found in possession of weighing instruments, which was found to be false. A knew that these instruments are false and was using the same with fraudulent intention. He was booked and brought before the Magistrate. Conduct his mock trial.

Apply the follow:

- Read section 266, PPC and ensure that all the ingredients for the commission of offence are available
- Study chapter XXII, CrPc for the proper procedure of the summary trial

3.19 Bail, Bonds, Forfeiture (Chap. XXXIX, S. 514 CrPC)

- Bail in bailable cases (S 496 CrPC).
- Bail in non-bailable case 9S 497 CrPC).
- Bail before arrest (S 498 CrPC).
- Condition precedent for bail (S 489A CrPC).
- Bond accused and sureties (S 499 CrPC).
- Discharge from custody (S 500 CrPC).
- Discharge of surety (S 502 CrPC).
- Procedure of forfeiture of bond (S 514 CrPC).
- Bond/Recognizance

CASE LAWS

- a. 1997 PLD SC 267
- b. 2002 PLJ LAH 252
- c. PLJ 2000 LAH 569
- d. 1998 PLD SC 50

3.20 Bail in bailable and non-bailable offences, attestation of bail bonds, forfeiture of bonds

Activity 01: Aslam was charged for the murder of Akram. An FIR # 01 under section was registered against Aslam at Police Station, Hayatabad, Peshawar. The prosecution case is that on 01/01/2012, Akram took his car to Aslam's workshop, for painting. On completion of work, a dispute arose between them over the payment of fee for the service. Aslam armed with a pistol, took out the pistol and fired at Akram, which caused his death. After arrest, Aslam moved a bail application. Write a bail order.

Activity 02: A, a driver is booked in a case under section 279/320, PPC. He allegedly hit and killed B by negligent and rash driving. He is produced before you, being the concerned Magistrate. Writ the appropriate order.

Activity 03: A, an accused on bail, has absconded. Forfeit his bail bonds and write a proper order.

CASE LAWS

- Bail and compromise
 - 1998 SCMR 466
- Further inquiry

- PLD 1990 SC 83

3.21 Disputes as to immovable property (Chap. XII, CrPC)

- When dispute regarding land etc. is likely to cause breach of peace (S 145 CrPC).
- Attachment of subject matter of dispute (S 146 CrPC).
- Right of use of immovable property (S 147 CrPC).
- Local enquiry (S 148 CrPC).

Activity: Decide an application under s. 145 CrPC in mock proceedings.

3.22 Public nuisance (Chap. X & XI CrPC).

- Conditional order for removal (S 133 CrPC).
- Service or notification (S 134 CrPC).
- When public right is denied (S 139A CrPC).
- Injunctions, pending inquiry (S142 CrPC).
- Power to prohibit repetition (S143 CrPC).
- Temporary order at once in urgent cases (S144 CrPC)

Activity: Aslam is constructing his house near a road side. The window panes are obstructing the eye sight of the drivers while the sheds are obstructing the smooth flow of the traffic. Conduct mock proceedings of public nuisance, applying all steps.

3.23 Disposal of property (Chap. XLIII CrPC)

Certain case properties are needed to be disposed of by the judicial officers. The proper procedure for such disposal is thus, a must.

- Custody and disposal of property pending trial (S 516-A CrPC).
- Disposal of case property (S 517 CrPC).
- Innocent purchaser (S 519 CrPC).
- Destruction of libeious and other matters (S 521 CrPC).
- Restoration of possession of immovable property (S 522 CrPC).
- Restoration of possession of movable property (S522A CrPC).
- Procedure by police upon seizure of property (S 523 CrPC).

- When no claimant (S 524 CrPC).
- Perishable Property (S 525).

Activity: Decide an application for disposal of property. Apply precedent law.

3.24 Habeas corpus (491 CrPC)

3.24.1 Preliminary

- Meaning and Significance
- History and Evolution
- History in Pakistani legal system
- Relevance of S.491 CrPC to the Fundamental Rights

3.24.2 Scope & Application

- Nature and Scope
- Application
- Relevance of S.491 CrPC to Ss.340-342 PPC

3.24.3 Procedure

- Power to issue
- Procedure of issuing of directions
- Rule Nisi

CASE LAW

- PLD 2009 SC 507
- PLD 2008 LAH 479
- PLD 1999 KAR 134
- 2011 PCrLJ 1835
- 1971 SCMR 225

3.25 Session Trial

- Public prosecutor (265A CrPC).
- Procedure (265A CrPC)
- Statement and documents to accused (265C CrPC)

- Framing of charge (265D CrPC)
- Plea of guilt (265E CrPC)
- Evidence for prosecution (265F CrPC)
- Defense and summing up by the prosecutor (265G CrPC)
- Acquittal or conviction (265-H CrPC)
- Previous conviction (265-I CrPC)
- Admissibility of statement under section 164 (265-J CrPC)
- Acquittal at any stage (265-K CrPC)

3.26 Miscellaneous

The participants shall know

- The procedures to be followed at the time of first production of the accused in custody. (Sec 61, 167, 344, 496 CrPC)
- The procedure of recording statements during enquiries or investigation of a criminal case. (Sec 164, 265J CrPC)
- The procedure of recording confessions. (Sec 164, 364 CrPC)
- The preliminary orders of attachment of immovable property and removal of public nuisance. (S. 133 Chp X CrPC)
- The procedure to acquit the accused if accusation appears to be groundless. (S. 249-A, 245 CRPC)
- About different registers used in criminal courts like registers of cases, fine, conviction, etc.

Activity: Prepare different notices, summons, and warrants given in the schedules of CrPC including Acquittal and conviction warrants.

MODULE 4

4. Substantive Laws

4.1 Introduction

Substantive law creates and defines rights, duties, obligation, crimes and punishments and remedies, involving both public and private laws. Some of these are law of contract, torts, wills, property and criminal liability, involving both public and private law. These laws are enforced through procedural law, which provides a machinery of rules of procedure. Understanding of each substantive law listed below, requires separate modules exclusively as well as in relation to relevant procedural laws. These laws should be studied simultaneously with procedural laws.

4.2 Session Objectives: the Module has been designed

- To familiarize the participants with Substantive laws .
- To develop their skills for using Substantive laws with greater focus, and
- To upgrade their abilities for more productivity.

4.3 Outcomes:

On successful completion of the session, the participants will be able

- To know and understand Substantive laws.
- To use their skills for their application and relevance.
- To use their abilities with more productivity.

4.4 Civil/Criminal laws

4.4.1 LOCAL AND SPECIAL LAWS

Introduction

The module focuses on explaining the meaning and scope of General Law and Local & Special Laws. The topic shall also cover the concordance and discordance amongst these different kinds of laws. It will also discuss their respective schemes qua

interpretation, procedures and applicability of allied laws. The module also addresses the need of local and special laws in relation to ordinary laws (such as the Code Civil Procedure, 1908).

OBJECTIVES

- To understand the meanings and scope of General, Local and Special Laws
- To explore the difference between General, Local and Special Laws
- To understand the procedural schemes employed in different local & special laws
- To discover the effect of general, local and special laws through comparative study

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Have juristic understanding of the terms local, special and general laws
- Understand the overall scheme of local and special laws
- Differentiate between general, local and special laws
- Apply the local and special laws effectively and efficiently
- Know the jurisdictional overlapping
- Wriggle out of competing imbroglios between different forms of laws

CONTENTS

General law

- Meanings
- Scope
- Elements
- Scheme
- Jurisdiction

Special Law

- Meaning
- Scope
- Elements
- Scheme
- Jurisdiction

Local law

- Meaning
- Scope

- Elements
- Scheme
- Jurisdiction

GROUP ACTIVITY

1. The need and significance of local and special laws
2. The role of the departments concerned

PRACTICAL EXERCISE:

- Mr. A serves in Pakistan army. He is posted in forward area where the Army is actively engaged in a military operation. He was informed that his landed property falling in your jurisdiction was illegally possessed by Mr. B. Mr. A applied for leave and on getting the leave, he returned to his home town. He consulted his lawyer and then brought a suit under Section 9 of the Specific Relief Act. What is your assessment of the prescribed limitation for such suit keeping in view the Soldiers Litigation Act, Specific Relief Act and the Limitation Act.

SYNDICATE RESEARCH

- Non-inclination of trial courts towards custodial punishments and its adverse effects

CASE LAW

1. *State v. Nasim Amin Butt*, 2001 SCMR 1083
2. *Qamar Hussain Shah v. State*, PLD 2006 Karachi 331
3. *Gunepally Thammayya & others v. Sri Rajah Tyadapusapatia Khandendu Doru & and other*, AIR 1930 Mad 963

REFERENCE MATERIAL

- 1- Minor Acts.
- 2- Civil Major Acts.
- 3- Criminal Major Acts.
- 4- S.M. Zafar, *Understanding Statutes: Cannons of Construction*, Lahore: PLD Publishers, 3rd Edition, 2008.

4.4.2 PENAL LAWS-1

INTRODUCTION

This module covers the exhaustive substantial law defining offences and prescribing punishments. As the trainees in their professional career would frequently come across the Pakistan Penal Code (PPC), therefore quite a number of topics have been formulated. The definitions and general exceptions have been illustratively explained. Emphasis has been placed on the offences relating to public servants, false evidence, human body and religion.

OBJECTIVES

- To comprehend the correct definitions provided by the PPC
- To understand the necessary ingredients that constitute an offence(s)
- To be proficient in citing the correct sections of the PPC
- To understand when, where and under what circumstances the general exceptions are attracted
- To know the nature, kinds and quantum of punishments

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to:

- Know the scheme of the PPC
- Properly apply different provision of the PPC
- Apply the law correctly while conducting trials

CONTENTS

Scheme of Pakistan Penal Code, 1860

- Historical background
- Definitions
- Scheme of law
- General Exceptions
- Punishments

Offences: Public Servants

- Illegal gratifications
- Violating law
- Forging documents
- Impersonating
- Avoiding service
- Non attendance
- Obstructing

Offences against Public Justice & State

- Violating oath
- Fabricating false evidence
- Resisting arrest
- Making false declarations
- Harboring offenders

- Offences relating to Oil & Gas
- Waging War
- Defiling National Flag

Religious freedom & Safeguards

- Sanctity of places of worships
- Blasphemy
- Desecration of places of worship

Offences relating to Human body

- Kinds of hurt
- Punishments
- Requirements of punishment as regard to fasād fī al-ardh
- Qatl & kinds
- When qisas cannot be inflicted
- Waiver & Compounding Qisas
- Rape & punishment
- Unnatural Offences

Ensuring Public Tranquillity

- Unlawful assembly
- Rioting
- Assaulting or obstructing public servants
- Wantonly provoking for rioting
- Affray

Abduction & Kidnapping

- Wrongful restraint & confinement
- Force & Criminal force
- Assault
- Outraging modesty
- Kidnapping
- Kidnapping for extortion & ransom
- Selling minors for prostitution

Offences against Property

- Theft
- Extortion
- Robbery & Dacoity
- Criminal misappropriation of property
- Breach of trust
- Cheating
- Receiving stolen property
- Mischief
- Criminal Trespass

Intimidation, Insult & Defamation

- Criminal intimidation
- Word, gesture or act to insult modesty of woman
- Defamation
- Sale of printed or engraved defamatory matter

GROUP ACTIVITY

- The incorporation of Sections 299 to 338 PPC: History and Purpose

PRACTICAL EXERCISES

1. There was a brawl. Several persons were hurt. Some of them claimed that they were bystanders while the others plead that they had exercised their right of self defense and therefore had committed no wrong. There were few who claimed that they were minors and thus could not be implicated. Please assess the liability in view of the claims so raised?
2. There was a gang of 05 criminals. They were armed with lethal firearm weapons. They had aimed to block the road through show of force. What sections of Pakistan Penal Code shall be attracted to this situation?

SYNDICATE RESEARCH

1. Evidence required for a Taziri punishment
2. Right of self defence: Scope and extent

CASE LAW

1. *Muhammad Raheel alias Shafique v. The State*, 2015 PLD SC 145
2. *Muhammad Yar v. The State*, 2012 SCMR 1014
3. *Shamshad Iqbal and another v. Shehzad Khan and another*, 2008 PLD 57 Peshawar
4. *Javaid Ali v. The State*, 2009 PCr.LJ 1003 F.S.C

REFERENCE MATERIAL

- The Pakistan Penal Code, 1860.
- The Qanun-e-Shahadat Order, 1984.
- The Code of Criminal Procedure, 1898.

4.4.3 PENAL LAWS-2 (*Hudūd*)

INTRODUCTION

This module covers the *Hudood* laws promulgated in 1979 as a part of the "Islamization" process. It has introduced new offences such as *Zina*, *Qazf*, theft, *harabah*, drinking and the like. Separate lessons have, therefore, been allocated to each of them.

The module mainly focuses on *Hudood* punishments. Nonetheless, *Ta'azir* being an alternative punishment, has also been dealt with.

OBJECTIVES

- To sensitize the trainees about the fragile nature of *Hudood*
- To appraise the trainees of the history of islamization of Pakistan criminal justice system
- To enable the trainees to comprehend the relevant legal provisions of *Quran*, *Sunnah* and *Ijma*
- To enlighten the trainee of the philosophy for the required quantum of proof in *Hudood*

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Apply the rules and principles to the facts of a case properly
- Interpret the relevant legal provisions accurately
- weigh the value of *shubha*/doubt courageously and meticulously
- Conduct research on emerging issues

CONTENTS

Preliminaries

- Administration of criminal justice in Islam
- Hadd, Qisas, and Ta'azir; distinction of.
- Touchstone for criminal liability.

(a) Theft

- Meaning and definition
- Kinds
- Mode of proof
- Sentence; kinds & enforcement

(b) Harabah

- Meaning and definition
- Mode of proof
- Punishment; variety of.

(a) Zina

- Meaning and definition
- Constituting elements
- Kinds as regard to sentence
- Kinds as regard to offender

- Modes of proof
- Sentence; kinds and execution

(b) Lia'an

- Accusation of Zina by husband
- Lia'an proceedings as prescribed by the holy Quran.
- Completion of lia'an; its effects on spouses, previous children and the disputed offspring.

Qazf

- Meaning and definition
- Protection of honor as one of the five objectives of Sharia
- Constituents of the offence
- Mode of proof
- Qazf and defamation; compatibility of Punishment
- Post punishment effects

Intoxicants

- Meaning and definitions
- Khamr / Liquor and other intoxicants; difference of
- Mode of proof
- Punishments

GROUP ACTIVITY

- A group of participants may be assigned the task to trace the judgments of Federal Shariat Court in appeal arising out of conviction and sentenced made as "*Hadd*"

PRACTICAL EXERCISES

- Before your Court, Mr. A is charged with the possession of 95g of heroin. This is the second time he is found with narcotic substances. While framing of charge what sections of law would be attracted, in particular can the sections of Prohibition (enforcement of *Hadd*) Order, 1979 and the Control of Narcotics substances Act, 1997 lie parallel in the charge sheet, if so why?

SYNDICATE RESEARCH

- a) The effect of effective-cause / *illah* in intoxicants other than *khamr* / liquor
- b) Scope and legality of intoxicants for medicinal purposes under *sharia*

CASE LAW

1. *Sana ullah v. The State*, 1997 PCrLJ FSC 1666
2. *Mst. Zahida Parveen v. Muhammad Afzal ASI and another*, 2014 PCrLJ 819

3. *Jamshed alias Javed v. The State*, 2001 PCrLJ 1493 Peshawar
4. *Lal Bux v. The State*, PLD 1981 FSC 132.
5. *Mst. Shash Begum and others v. Bashir ullah and others*, 2013 PCrLJ 1737 FSC
6. *Muhammad Islamail Qeshy and others v. Federal Government of Pakistan through Secretary, Law and Parliamentary Affairs, Islamabad and others*, PLD 1992 FSc 445
7. *Dr. Muhammad Aslam Khahki v. Federation of Pakistan through Ministry of Justice and Parliamentary Affairs Islamabad*, PLD 2010 FSC 191
8. *Muhammad Ayoob Thebo and another v. The State*, PLD 2015 Sindh 173

REFERENCE MATERIAL

- Offences Against Property (Enforcement of *Hudood*) Order, 1979.
- Offences of *Zina* (Enforcement of *Hudood*) Order, 1979.
- Offence of *Qazf* (Enforcement of *Hudood*) Order, 1979.
- Prohibition (Enforcement of *Hudood*) Order, 1979.

4.4.4 INHERITANCE

INTRODUCTION

This module contains the rules governing devolution of heritable. These rules require pre-comprehension of some basics. Lesson no 1 covers it under 'Preliminaries'. To make the course more practical, an item of 'Exercises' has been added to the relevant lessons. The course description focuses on main topics of the subject. The ancillary topics such as issues pertaining to missing persons, execution of will, share of fetus, share of eunuch, entitlement of the public exchequer/*bait-ul mal* and the like have been dealt with in 'group activity'.

OBJECTIVES

- To understand the principles of 'Science of heritable
- To interpret the relevant legal provisions properly
- To learn the philosophy of divine devolution of wealth
- To know the significance of private ownership as recognized by *Shari'ah*
- To sensitize the trainees about the fragile nature of the subject

LEARNING OUTCOMES

On completion of the course, the trainees shall be able to-

- Apply the rules and principles to the facts of a case properly
- Interpret the relevant legal provisions accurately
- Determine the shares easily
- Conduct research on emerging issues³

³ Issue of pension, benevolent fund, insurance policies, certificates, and any other benefit, profit or right gained or accrued after the death of the deceased.

CONTENTS

Preliminaries

- Introduction as 'Discipline'.
- Definition & ingredients.
- History [Arab and non Arab societies].

Phraseology.

Inheritance mandating provisions

- Quranic Provisions.
- *Sunnah*.
- *Ijma 'a* /consensus of opinion.

Factor entitling to heritable.

- *Sabab*/causation.
- *Nasab*/lineage.
- *Al-wila'a*/legacy of freed slave.

Factor disentitling to heritable

- *Riqq* /Slavery.
- *Qat'l*/Murdering.
- Religion.
- *Dar*/State.

Sharers (*Zavil Furudh*)

- Persons with pre-stated shares.
- *Nasabi*
- *Sababi*
- List of *Nasabi* sharers:
 - Father
 - Grandfather
 - Uterine brother
 - Daughter & two or more daughters
 - son's daughter sometime
 - full sister
 - consanguine sister
 - uterine sister
 - mother
 - Grandmother
- List of *sababi* sharers
 - husband
 - wife

Residuary/ *Asabah*

- Definition
- Kinds

- *Asabah binnafs*/Original & paternal male relatives.
- *Asabah bil-ghair*/ residuary (female) due to external factor (male).
- *Asabah Ma Alghair*/ residuary (female) due to external factor (female).

Gender - based- division of heirs

- All male heirs & shares.
- All female heirs & shares.
- Exercises.

Concept of *Aw'l* (increase)

- Meaning.
- Original denominators.
- Procedures of determining of a denominator.
- Kinds of fixed shares.
- Exercises.

Concept of *Radd* (Return)

- Meaning.
- Conditions.
- Exercises

Concept of *Haj'b*/Exclusion

- Meaning.
- Kinds.
- Depriver and the deprived.
- Exercises.

Zawel Arham/Distant Kindred

- Meaning.
- Kinds.
- Distribution methodology.
- Exercises.

GROUP ACTIVITY

Find share of each of the legal heirs listed below:

❖ Total legacy=600 Dinars

No.	Heirs	Share	quantity
1	Wife		
2	Grandmother		
3	02 daughters		
4	12 consanguine brothers		
5	Consanguine sister		

SYNDICATE RESEARCH

- 1- Missing persons
- 2- Prisoners
- 3- Collective death [air crash, explosions, road accidents.....]
- 4- Fetus
- 5- Eunuch
- 6- The cases of offspring after *Lia'an*, offspring as result of Zina, the thrown-lifted child/*laqit*
- 7- Entitlement of a *shia* widow
- 8- The effect of divorce in *maraz-ul-mouth* on devolution
- 9- Execution of will, funeral expenses and payment of loans

CASE LAW

1. *Saadullah and others v. Mst. Gulbanda and others*, 2014 SCMR 1205
2. *Dawlat Khatoon v. Amina Bibi*, PLD 1958 W.P.(Rev) 67
3. *Mst. Aqsa Sabir v. Dr. Sajjad Hussain*, 2015 MLD 652 PHC
4. *Ghulam Shabbir v. Mst. Bakhat Khatoon*, 2009 SCMR 644
5. *Javed Ishaque v. Muhammad Ishaque*, 2006 CLC 1093 Karachi
6. *Riaz Hussain Shah v. Chief Land Commissioner, Punjab Lahore*, 2000 YLR 633 LHC

REFERENCE MATERIAL

- 1- *Mufid-ul-Warisin* (Urdu) by Moulana sayyed Mian Asghar hussain, Maktabat-ul-Ilm, Lahore, n.d.
- 2- *Al-Kulasatu fi Ilm Al-faraidh* (Arabic) by Nasir bin Muhammad, Maktabah Rashidiah Peshawar, n.d.
- 3- *Majmuah Qawanin-e-Islam* (Urdu) vol: 5, by justice Tanzil-ur-Rahman, IRI, Islamabad, 2010.
- 4- Mulla Dinshah Fardunji, *Principles of Muhammadan Law*, Popular Law Book House, Lahore, 2013

4.4.5 ISLAMIC JURISPRUDENCE

INTRODUCTION

Since the *Quran* and the *Sunnah* is the supreme law of the land, it is not enough for a judge to know Islamic Law on an issue only. A judge is rather required to be skillful enough in deriving these laws from its sources. He is supposed to understand the rules governing interpretation, construction, presumptions, inferences and much more. This module aims at the enhancing of inferential capabilities of judges and enriching their approach juristically. The module covers main topics of Islamic Jurisprudence such as sources, *Hukm-e-Shar'i*, repeal and modes of interpretation.

OBJECTIVES

- Know the need, history and evolution of Islamic Jurisprudence
- To discuss the main theories of Islamic Law
- To know how the various schools of thought of Islamic jurisprudence employ theories in interpretation
- To understand the Islamic law theories of legislation, adjudication and interpretation

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Differentiate between Islamic Law and Islamic Jurisprudence
- Apply the rules of interpretation properly
- Realize the role of Arabic language in untying of equivocal and inter-clashing legal provisions.
- Realize the significance of *Ijtihad* and need of an institution to prepare *mujtahidin*.

CONTENTS

Preliminaries

- Meaning, history and evolution of *Usul-ul-Fiqh/Ij*
- Schools of *Usul-ul-Fiqh/Ij*

Sources (a)

- Meaning of the sources of Islamic law
- Classification of the sources

Sources (b)

Group (A)

- Al-Kitab
- Al-Sunnah

- Ijma
- Qias

Group (B)

- Istehsan
- Istidlal
- Maslaha
- Previous Divine Legislation
- Custom
- Custum of Madinites
- Opinion of the companion
- Blockage of means

Divine Communication/*Al-hukum Al-shari*

- Definition
- Classification
- Kinds

Maqasid/objective

- Meaning, significance
- Classification

Dalalat/modes of interpretation

- Meaning of *dilalah*
- Classification
- Kinds

Clarity and ambiguity in words

- The meaning of *lafz/word*
- Kinds of words in respect of clarity and ambiguity

Repeal

- Meaning
- Kinds
- Effects

Taqlid

- Schools of thoughts
- Significance of *Taqlid*

GROUP ACTIVITY

- Significance of Collective *ijtihad* and its role in contemporary issues

PRACTICAL EXERCISE

- A, a husband dies leaving a pregnant widow B. After a month, B gave birth to a posthumous C. B wishes remarrying.
 - a) Whether she can?
 - b) Whether she would wait to the expiry of duration of *Iddat*?

c) Whether she would wait 90 days or 130 days?

SYNDICATE RESEARCH

1. Schools of thought: evolution and role
2. *Urf* (custom): Recognition and extent
3. Modes of interpretation: A comparative study between Shari'ah & Pakistani Law

CASE LAW

4. *Nusrat v. The State*, 1996 SCMR 973
5. *Faqir Ali v. Standard Bank Ltd.*, PLD 1979 SC(AJ&K) 62
6. *Muhammad Saddiq and another v. Mst. Ruqaya Khanum and others*, 2001 PLD 60 Karachi
7. *Habib Bank v. Qayyum Spinning Ltd*, 2001 MLD 1351 Karachi
2. *Fida Hussain v. Najma*, 2000 PLD 46 Quetta

REFERENCE MATERIAL

1. Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, Islamabad, IRI Press 2010.
2. Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, Islamabad, IRI Press, 1994.
3. Dr Ahmad Hassan, *Principles of Islamic Jurisprudence*, Islamabad, IRI Press, 2007.
4. Muhammad Tahir Mansoori, *Ijtimaee Ijtihad*, Islamabad, IRI Press 2007.

4.4.6 RENT LAWS

INTRODUCTION

The module mainly covers all matters pertaining to tenancy. It discusses the meaning, concept and need of rent laws. It focuses on landlord and tenant relationship, tentative rent order, ejection and the concept of Persona designata.

OBJECTIVES

- To know the basic concepts, need and significance of rent laws
- To understand peculiar trial procedures under the rent laws
- To comprehend fair rent and the procedure of its determination

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Have clarity about basic concepts of the Rent Laws
- Adopt properly the trial procedure in rent cases
- Apply correctly the relevant provisions of the Rent Laws

- Properly determine fair rent

CONTENTS

Historical development & conceptual bases of Rent Laws in Pakistan

- Development of Rents Laws of Pakistan
- Rent Controller as Persona Designata
- Scope

Urban Rent Restriction Ordinance, 1959

- Scope & Jurisdiction
- Landlord & Tenant's relationship
- Fair Rent
- Ejection petition
- Tentative Rent Order
- Execution

GROUP ACTIVITY

- Tenant and landlord relationship

PRACTICAL EXERCISE

- On Bank Road Mardan, there is a market. Mr. A is the owner of the market. He intends to demolish it and build a plaza there. He issues notices to his tenants and thereafter has brought the ejection partitions. Mr. B, C and D are his tenants. Mr. B claims that as he is the tenant therefore but on reconstruction he may be given the same area on the ground floor on rent. Mr. C denies the relationship of the landlord and the tenant while Mr. D claims that Mr. A has no right to construct plaza there. The rent controller finds the claim of Mr. A genuine. What order would he pass in respect of each individual tenants B, C & D?

SYNDICATE RESEARCH

1. Tentative orders: when and how can be made
2. The compatibility of rent laws with the concept of lease contract under Islamic Jurisprudence

CASE LAW

1. *Malik Sami Ullah Azeemi v. Khayam and 2 others*, 2014 CLC 1595 Peshawar
2. *Muhammad Farooq v. Abdul Waheed Siddiqui and others*, 2014 SCMR 630
3. *Ittehad Chemicals Limited v. VII Additional District Judge, Karachi (South) and 2 others*, 2010 SCMR 1582

4. *Syed Maqsood Shah Bukhari v. Federal Government through Secretary M/O Law and Justice, Islamabad*, 2013 MLD 1808 F.S.C
5. PLD 1965 SC 459
6. *Muhammad Ashraf Khan v. Fahmid Khanum*, PLD 1982 SC 398
7. *Rehmatullah v. Ali Muhammad*, 1983 SCMR 1064
8. *Razia Begum v. Senior Civil Judge (Rent Controller) Charsadda*, PLD 1996 Pesh 8
9. *Hanif V Ahmed Shah*, 2001 SCMR 577
10. *Muhammad Azeem Qureshi v. Hakim Syed Akhtar Irshad*, 1990 CLC 122
11. *Pakistan Institute of International Affairs v. Naveed Merchant*, 2012 SCMR 1498

REFERENCE MATERIAL

- The Urban Rent Restriction Ordinance, 1959.
- The Qanun-e-Shahadat Order, 1984.
- The Civil Procedure Code, 1908.

4.4.7 REVENUE LAW

INTRODUCTION

The module focuses on the theoretical and practical understanding of the land record. It involves classroom learning through lectures for proper understanding of land record, land settlement, the nature and kinds of land record, the land revenue law and administration. It also contains classroom and field-based practical work.⁴ Of great significance is the imparting of skills for determination of evidentiary value of land record and its judicial interpretation according to statutes and CASE LAW.

OBJECTIVES

- To have a proper understanding of the significance of land revenue law in relation to civil justice system
- To learn the vast range of land record documents and their importance in civil cases
- To learn how to weigh the evidentiary value and interpretation of the land record
- To know and understand the importance of CASE LAW regarding the land record in civil cases
- To equip the participants about the field work in the preparation of land record

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Properly apply the law relating to land revenue record

⁴ Field work means measurement, partition and ascertainment of boundaries.

- Realize importance of land record
- Efficiently apply the relevant provisions properly
- Weigh accurately the evidentiary value of land record
- Skilfully interpret the land record

CONTENTS

Preliminaries

- An introduction to the Land Revenue Act, 1967
- Other relevant laws, rules and regulations

The Revenue Courts and their link to Civil Courts

- The composition, power and importance of Revenue Courts
- Revenue Courts vis-à-vis Civil Courts

Key concepts used in the revenue administration

Understanding concepts such as:

Settlement, Measurement (Paimaish), Consolidation (Ishtemal), Pedigree table (Shajra-e-Nasb), Field map (Aks Shajara-e-kishtwar), mutation, Patwari record, Periodical Record (Register Haqdaran-e-Zameen), Crop Inspection (Girdawari), Partition, Acaquisition, Agriculture Income Return (Jahar Pedawar), Administration, Inheritance, Demarcation (Hadbararee), Computerization of land record

The application of land revenue law

- Application of the above noted concepts

The land record officials and their duties

- How the land record official (Patwari, Qanungo and Tehsildar) perform their duties
- Problems of Revenue Officials in relation to civil courts and how to resolve them.

CASE LAW

- Study of landmark judgments pertaining to land record

GROUP ACTIVITY

- Physical inspection of various registers and discussion thereon

PRACTICAL EXERCISE

- In District Torghar the process of settlement has initiated. A settlement commission has been appointed. Devise the scheme of settlement

SYNDICATE RESEARCH

- Evidentiary value of various documents of revenue record

CASE LAW

1. *Sajawal Shah and another v. Syed Rahim Shah and others*, 1975 PLD SC 325
2. *Ahmad Khan v. Rasul Shah and others*, 1975 PLD SC 311
3. *Mst. Baswara v. Hafizullah Khan and others*, 2015 PLD 30 Peshawar
4. *Habib Khan and another v. Mst. Bibi Zohra and 2 others*, 2012 PLD 80 Peshawar
5. *Atta Muhammad v. Manzoor Ahmad*, 1992 SCMR 138
6. *Shah Hussain v. Abdul Qayum*, 1984 SCMR 427
7. *Feroz v. Sher*, PLD 1985 SC 254
8. *Muhammad Sabir Khan v. Rahim Baksh*, PLD 2002 SC 303
9. *Mst. Amro v. Mst. Atlas*, PLD 1987 Peshawar 6
10. *Muhammad Younus v. Shahid Naveed*, 1989 CLC 837
11. *Shad Muhammad v. Khan Poor*, PLD 1986 SC 91

REFERENCE MATERIAL

- The West Pakistan Land Revenue Act, 1967.
- Douie Settlement Manual.
- The Lane Record Manual.
- The Land Administration Manual.

4.4.8 MUSLIM PERSONAL LAW-1: MARRIAGE & DIVORCE

INTRODUCTION

The module helps the trainees understand the norms governing family matters. Almost all the topics would reflect that the spouses should themselves abide by these rules to avoid publicity of private life. The module also conveys, though impliedly, that the State shall refrain from interference in private lives unless there is breach of public policy. It also apprises the trainees of the views of the schools of jurisprudence other than the four Sunni schools. To avoid lengthiness and monotony, the module has been divided into two parts, which cover almost all topics of the subject. Part 1 covers connubium⁵ and Part 2 covers separations. The module specifically focuses on such family disputes which necessarily require a decree of court.

OBJECTIVES

⁵ Means state of being legally married. See Tanzil-ur-Rahman, *Qanuni Lughat*, Lahore, WP Urdu Academy, 198, p 149.

- To understand the salient features of family life under Islamic Law
- To learn basic rules regulating family Law
- To know the fragile nature and sensitivity of family disputes
- To realize the significance of Alternative Dispute Resolution (ADR) in resolution of family disputes
- To enhance the knowledge of the trainees regarding rights and liabilities of the spouses
- To explore that *mahr* is the sole peculiarity of *Shari'ah*⁶

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to;

- Decide family disputes in accordance with *Shari'ah*
- Utilize ADR techniques in resolution of family disputes
- Be sensitive to the significance of difference between the trial of a family suit and other suits of civil nature
- Consult mother references and to prioritize there from the opinion most agreeable to justice
- Conduct research on any newly born issue on the subject

PART 1 [Connubium]

CONTENTS

Preliminaries

- Nikah; literal and technical meaning.
- Philosophy and legality.
- Khitbah/expression of intention to marry; Meaning.
- Lawful and unlawful kithbah.
- Meeting before nikah; extent of legality.
- Nikah and Shariah's Rolling.

Kinds of Nikah

- Nikah Sahih[valid] , meaning, examples, effects.
- Nikah Fasid [irregular]; meaning, examples, effects.
- Nikah Batil [void]; meaning, examples, effects.

Conditions

- Conditions as to establishment/inaiqad of nikah.
- Conditions as to validity/sihhat of nikah.

⁶ See the details of dower and the non-recognition of “dowry” as a word by Oxford dictionaries and other reliable thesauri. To them, dower means property that a woman gives to a man as a requirement of marriage.

- Conditions as to enforceability/nifaz of nikah.
- Conditions as to option of repudiation/ conclusion/
- luzum of nikah.

Dower/mah'r

- Definition, Shariah's ruling.
- Quantum, subject matter, mentioning during Aq'd.
- Kinds of meh'r, occasions for each kind.
- persons liable for payment/dhaman and effects of non-payment.
- Issues relating to consumption/destruction of mah'r.
- Mata'a/Fair Provision and cases of no payment at all.
- Issues related to goods, households and jahaiz.

Maintenance/Nafaqa

- Meaning, contents, quantum.
- On whom and for whom?[factors obligating nafaqa].
- Causes and conditions for entitlement of nafaqa.
- Effects of non-payment and cases of non-entitlement.

Retirement/Khilwat

- Meaning and kinds.
- Khilwat sahiha/valid retirement and its effects.
- Khilwat Fasidah/invalid retirement and its effects.

Rights of Spouses, inter se

- Rights and duties of husband.
- Rights and duties of wife.
- Inter-Common rights.

Guardianship/ wilayat and Agency/ wakalat

- Meaning, philosophy, kinds.
- Causes of wilayat.
- Compulsory guardianship and its effects.
- Post puberty options.
- Recommended guardianship.
- Conditions for guardian.
- Order of walis.
- Absence of wali and cases where a person ceases to be wali.
- Laws; fixing age of marriage and view of Shariah
- Wakalah and its details.

PART II: SEPARATIONS [Divorce & Dissolution]

Divorce

- Meaning, number, kinds.
- Divorce and Dissolution: distinction of.
- Conditions [by whom? On whom? Through what].
- Talaq Rajae and related rulings.
- Talaq Baain, kinds and related rulings.
- Comparison between various kinds of Talaq.
- Circumstances warranting separation/tafreeq by court/qazi.
- Circumstances warranting divorce through order of court/tatliq-ul-qazi.
- Talaq-i-tafweez and its details
- Effectiveness of talaq? as to persons and circumstances.
- Conditional and contingent talaq.
- talaq in writing.

Khula

- Meaning and definition, legality, essentials and significance.
- Consideration of kula, effects/aathar of khula.
- talaq ala almal and khula: distinction of.
- Mubaraat and its effects.

Iddat/waiting period

- Meaning, legality and philosophy.
- Kinds and conversion of one kind in to other.
- Iddat; who will observe and who will not.
- Rights and duties during iddat.
- Iddat; when commences, when ends?

GROUP ACTIVITY

- The impact of modern bio-research [Surrogacy, birth control in its different modes, determination of non fertility of one of the spouses and the like] on family laws
- The arbitrarability of family disputes
- Study of family legislations in Muslim/Islamic states

PRACTICAL EXERCISE

- Jamila, a resident of Interior Sindh, has obtained Khula through a judgment of Family Court chaired by Lalu Pershad CJ, on March 30, 2014. On June 1, 2014, she entered in to contract of marriage with Saleem. No witness attended the

ceremony. On June 10, she brought a suit against Saleem, in FC chaired by Sriram CJ, for dissolution of marriage on the basis of cruelty which was proved.

- 1- Whether the court will dismiss the suit for concluding a marriage contract during Idat?
- 2- Whether the court will reject the plaint?
- 3- Whether the court will return the plaint?
- 4- Whether the court will decree the suit on the basis of proved cruelty?

SYNDICATE RESEARCH

1. The right to obtain *khula*: The outcome of the judgments of the apex courts
2. *Wali*: Extent of his powers
3. A fair say about triple Talaq
4. A critical review of S.7 of the MFLO, 1961 in light of Islamic jurisprudence

CASE LAW

1. *Shahzad Begum v. Abdul Hameed*, PLD 1950, Lahore 54.
2. *Muhammad Yusuf v. Ahmad Nawaz Gardizi*, PLD1961 SC 465.
3. *Zarina Tasadduq Hussain v. Tasadduq Hussain*, PLD 1953 Lahore 112.
4. *Saeeda Khanum v. Muhammad Sami*, PLD 1952 Lahore 113.
5. *Bilqees Fathima v. Najm-ul-Akram*, PLD 1959 Lahore 566.
6. *Raishman v. Shair*, PLD 1953, AJK 10.
7. *Fazal Bibi v. Muhammad Azam*, PLD 1952 Lahore 227.
8. *Farzana Rasool v. Dr Muhammad Bashir*, PLJ 2012 SC 1.

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6. Maudoodi Abul Aala, *The Laws of Marriage And Divorce in Islam*, Kuwait, Islamic Publisher, 1983.

4.4.9 MUSLIM PERSONAL LAW-II: HIBBA, WASIYYAH & WAQF

INTRODUCTION

This module is three in one. The reason is obvious. All topics refer to wealth/property that one disposes of or one acquires it. The absence of consideration

distinguishes the subjects of this module from other kinds of contract. The module covers main topics of *Hibba*, *Wasiyyah* and *Waqf*.

OBJECTIVES

- To understand that some contracts are unilateral; neither needs second party nor any consideration
- To know that *Shari'ah*, as a matter of respect and mercy, gives effect to the acts/*tasarrufat* of persons, no more alive provided they are not detrimental to the rights of others
- To learn that *Shari'ah* accommodates moral values in legislation and encourages its followers to do acts amounting to harmony, sympathy and tranquillity in the society
- To enhance the knowledge of the trainees on legal aspects of *Hibba*, *Wasiyyah* and *Waqf*

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Have full knowledge of minute details on the subject
- Be familiar with the Arabic terminologies related to the subject of the module
- Explore the philosophies of *Shari'ah* rulings on the subject
- Properly make recourse to references, differentiating the primary from the secondary
- Conduct research on any newly born issue relating to the topics of the module
- Consult *Fatawas*⁷

PART-I

CONTENTS

Hibbah

- Meaning, legality and *Shariah*'s ruling.
- Essentials; Details of offer in acceptance.
- Conditions.
 - *Wahib* .
 - *Mauhub*.
- Kinds.
 - *Hibbah bil Iwaz*.
 - *Hibbah bil shart-el-Iwaz*.
 - *Hibbah umra*/ Life estate.
 - *Hibbah raqba* .
 - *Hibbah minha*/ Gift of usufruct
 - *Hibbah mashrut*/ Conditional gift.

⁷ The name given to the category of the books that contain *shariah*'s rulings, discovered by learned/*muftis* mostly in actual cases. They may be termed as books of Case Law.

- Hibbah mauquf/ Contingent gift.
- Hibbah during death bed/*Maraz-ul-maut*.
- Hibbah musha/Undivided property.
- Hibbah for two persons.
- Various modes of possession.
- Revocation/Ruju.
- Effects of revocation.
- Obstacles to revocation.
- Hibbah to kith and kin

Part-II

Will/*Wasiyyah*

- Meaning, history, legality, philosophy and kind as to the sentence used.
- *Sharai wasiyyat* and its kinds as to *Shariah's* ruling.
- *Shariah's* rulings;
- Effects of Will.
- Revocation.
- Rulings pertaining to testator.
- Rulings pertaining to legatee.
- Rulings pertaining to the subject matter of the Will.
- How to make a Will?
- Execution of Will.
- Will during death bed/*Maraz-ul-maut*.
- Charity-based acts during *Maraz-ul-maut*.
- Will for heir.
- Factors rendering Will void.
- Execution of Will when the number of legatees is in excess of quantum of the subject matter.
- Will between spouses.

Part-III

Waq'f/Bequest

- Definition, legality, *Shariah's* ruling.
- Essentials.
- Kinds.
 - What could be the subject matter of *Waq'f*.
 - *Waq'f* of immovable property.
 - *Waq'f* of movable property.
 - *Waq'f* of undivided property.

- *Waq'f* of easements.
- *Waq'f* of States property.
- *Waq'f* of mortgaged property.
- *Waq'f* of leased property.
- Effects of *Waq'f*.
- Conditions
- For and of Bequest maker and situations
- where conditions of bequest maker can be ignored.
- For subject matter of *Waq'f*.
- For beneficiary/ *mauqoof alih*
- Can a Non-Muslim makes *Waq'f*.
- Words and phrases through which a *Waq'f* can be made and conditions thereof.
- How *Waq'f* can be proved?
- Factors rendering *Waq'f* void.
- Expenses of *Waq'f*.
- Replacement and sale of *Waq'f* property, when they become expedient.
- *Waq'f* during death bed/*Maraz-ul-maut*.
- *Nazir Waq'f/Mutawalli*
- Appoinment of *Mutawalli*.
- Conditions for *Mutawalli*.
Duties of *Mutawalli*.
- Dismissal of *Mutawalli*.
- Honoraria of *Mutawalli*.
- Study of Waqf statutory laws

GROUP ACTIVITY

1. Need for revisiting of definition of *Maraz-ul-maut* in the light of modern medical achievements
2. *Hibbah* in respect of human organs for transplantation

PRACTICAL EXERCISE

- Badam Gul, 60, had three sons from Ghutai Bibi. She died of cholera. Badam married Sapna, 45. She had a son Dilawar and a daughter Qajira from her late husband Jamalai. No issue after second marriage. In circumstances, Badam gifted his rental property to Ghutai on condition that she will be entitled to its ownership and benefits till her life, and on her death, the property would go back to his three sons. After the death of Badam, she wished to sell the property but one of the referred three sons brought a suit against her. She died during the trial.
 - What should be the next proceedings?
 - How do you see the expected fate of the case?

SYNDICATE RESEARCH

1. Will in respect of bodily organs for the purpose of transplantation
2. The status of possession of *Waqf* property by State
3. The status of *masajids*, *madaris*, schools, hospitals, parks and other government buildings on the land of graveyards
4. The status of permanent handing over of an infant to other spouses, particularly when they are issueless

CASE LAW

1. *Awrang Zeb v. Dawood Khan*, PLD 1957 Peshawar 85
2. *Shafiullah v. Jabbar*, PLD 1955 Lahore 191
3. *Sardar Ahmad v. Shuhrat Khan*, PLD 1950 Peshawar 45
4. *Shamshad Ali Shah v. Hassan Shah*, PLD 1964 SC 143
5. *Mahboob Alam v. Razia Begum*, PLD 1949 Lahore 263
6. *Amjad Iqbal v. Mst. Nida Sohail and others*, 2015 SCMR 128
7. *Mst. Gohar Khanum v. Mst. Jamila Jan*, 2014 SCMR 801
8. *Abdul Jabbar v. Haq Nawaz*, 2010 SCMR 1756
9. *Mst. Rasheeda Bibi v. Mukhtar Ahmad*, 2008 SCMR 1384
10. *Mst. Majeedan Bibi v. Mst. Zainab Bibi*, 2006 YLR 2705 LHC
11. *Chief Administrator Auqaf, Punjab, Lahore v Baqir Ali Shah*, 2004 YLR 302 LHC
12. *Alamgir Khan v Mst. Zeb Jehan*, 2015 CLC 298 PHC
13. *Muhammad Ibrahim v. Akhtar Ali*, 2001 CLC 1323 LHC
14. *Zardad v. Ali Akbar*, 1989 CLC 2028 PHC
15. *Muhammad Naqi alias Naqi Muhammad Khan v. Mst. Begum Jan*, 1965 PLD 337 LHC

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4. Maulana Dr. Khalil Ahmad, *Islam ka Nizam Awqaf*, Lahore, Idarah Islamiyat, 2010

4.4.10 Qanun-e-Shahadat Order, 1984 and Islamic Law of Evidence

INTRODUCTION

This module focuses on the rules governing the law of evidence in Pakistan. It also discusses minute details on the subject. It seeks to provide an opportunity for comprehending *Shariah's* view and a comparative study of various laws on evidence.

Key topics covered are modes of proof, admissibility, relevancy, and number and competency of witnesses.

OBJECTIVES

- To understand the various modes of proof/*wasail-ul-ithbat*
- To know the rules regulating the number/*nisab* and competency/*ahliyyah* of witnesses
- To know the importance modern equipments/devices and their bearings on law of evidence
- To impart skills of proper appreciation of evidence

LEARNING OUTCOMES

On completion of this course, the trainees shall be able to-

- Determine the party on whom the burden of proof lies
- Ascertain the cases where Oath (including special oath)/*Yameen* proceedings could be conducted and where it couldn't be
- determine the number and competency of witnesses for various kinds of criminal and civil cases
- Distinguish between direct and circumstantial evidence (*Qaraine*)
- Decide whose evidence shall not be received

CONTENTS

Preliminaries

- Shahadah; literal and technical meaning
- The inclusion of meaning of yameen therein,
- significance

Processes of Shahadah

- Bearing of evidence/Tahamm-ul-Shahadah
- Depositing of evidence/Aada-ul-Shahadah
- Qualifications for Tahamm-ul-Shahadah
- Qualifications for Aada-ul-Shahadah

Privileges, Competency and number of witnesses

- Who can be a witness?
- Four males
- Two males
- One man and two women
- One female
- One male
- One male with the oath of the plaintiff.

- Privileges and its kinds

Modes of proof

- Admission and confession/Iqrar
- Deposition by witnesses
- One witness with oath of claimant.
- Refusal from oath by defendant/accused i-e nukul anilyameen
- Proof through Qaraine

Administration of oath to both parties

- Dispute between seller and buyer.
- Dispute between lesser and lessee before the use of lease property
- Dispute between lesser and lessee after the termination of lease period.
- Dispute between lesser and lessee during the lease period.

Tazkiyatu al-Shuhud/Probe to the character of witnesses

- Meaning and definition
- When tazkiyah becomes necessary.
- Tazkiyah in civil and criminal cases.
- Tazkiyah, how conducted.
- Qualifications of Muzakki/probe conductor.

Tatabuq/ Relevancy

- Concurrence between claim and evidence.
- Effects of non-concurrence.
- Cases where non-concurrence is fatal.
- Cases where non-concurrence is mere
- technicality.

Ruju/Retraction

- Implication of false evidence.
- Retraction before judgment.
- Retraction after judgment.
- Retraction when there are more than two witnesses.
- Punishment for false evidence.

Hearsay evidence and its exceptions/ Shahadah ala al-shahadah

- Meaning and legality.

- When allowed?
- When not allowed?
- How it is made?
- Nisab for making such evidence.

Documentary Evidence

- Meaning.
- As a mode of proof.
- Contents if proved would amount to admission.
- Documents bearing official record.
- Documents bearing judgments of courts.

Admissibility/ Qubul

- Factors; rendering evidence inadmissible.
- Statements of parties, their attorneys and counsel are not evidence.
- Conditions for evidence of children.
- Cases where no evidence is admissible.
- Significance of last seen evidence and chance witness

Legal Presumptions

- Rebuttable and irrebuttable presumptions
- Inference drawing from presumptions

Burden of Proof and Examination of Witness

- Examination in chief
- Cross examination
- Re-examination
- Hostile witness
- Provisions governing the fixation of burden of proof

Estoppel

- Meaning
- Kinds of Estoppel: conduct and record
- Estoppel and Res-judicata

GROUP ACTIVITY

1. Ascertainment of presumptions attached to certain documents
2. When a statement made before police is admissible?
3. Determining whether and how special oath may be administered with possible consequences
4. The status of chance witness

5. The importance of last seen evidence

PRACTICAL EXERCISE

- Aneesah, the wife of Anees, due to strained relations, went to her parent's home on the third day of Ramazan-ul-mubarak, just after a month of her marriage. The relations strained after the judgment of Session Judge/Zillah Qazi where he convicted Anees u/s 18 ZO, on the accusation of his mother-in-law, the step one. Aneesah gave birth to a male child after six months in a rural hospital where only a single female nurse attended her. Later on, Anees denied the legitimacy of the child claiming that on the day of departure, Aneesah had told him at the breakfast that she was in menstrual course.

What is your opinion about the legitimacy? Support it with arguments

SYNDICATE RESEARCH

1. Data received through modern scientific devices and its evidentiary value
2. *Tazkiyyat Al Shuhood*: Need & Significance
3. Oath as a mode of proof

CASE LAW

- 1) *Manzoor Ahmad Wattoo v. Federation of Pakistan*, PLD 1978, Pesh. 38
- 2) *Guloo v. The State*. PLD, 1998, Kar. 637
- 3) *Zahir Shah v. The State*, 1986 PCrLJ 1503
- 4) *Najib Raza Rehmani v. the State*, PLD 1978 SC 200
- 5) *Haider Hussain v. Govt of Pakistan*, PLD 1991 FSC 139
- 6) *Sanaullah v. The State*, PLD 1991, Pesh 186
- 7) *Muhammad Dawood v. The State*, PLD 1985, Karachi
- 8) *State Bank of Pakistan through Deputy Director v. Muhammad Saleem*, PLD 1992, 860
- 9) *Muhammad Afsar v. Muhammad Sharif*, 1989 CLC 1850
- 10) *Khan Sher v. Mst. Kabla*, PLD 1988, Pesh. 65
- 11) *Akbar Ali v. Ghulam Nabi*, MLD 1989, 4125

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