STUDIES IN OTHER ACTS / LAWS

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INTRODUCTION

Taxation works at the interface of economics and law. Decisions taken in the field of political economy are implemented through laws and the legal process. The assessing officers, a crucial element in the realization of the legitimate tax revenues of the government, have perforce to be well informed and educated about both economics and law.

General laws and special laws, substantive laws and procedural laws are woven into the warp and weft of the legal system. Income Tax and Wealth Tax are special laws with their own substantive and procedural provisions; yet they are not completely independent laws. These special fiscal laws are based on and use concepts which are an integral part of the general law.

While implementing these special laws, the assessing officers are expected, rather assumed, to have a background knowledge of some fundamental concepts of general law. They are also assumed to be familiar with the processes of juristic reasoning and interpretation of laws.

In this handbook an effort has been made to put together such portions only of other acts/laws as appear to be relevant and essential for comprehensive and error free administration of Income Tax and Wealth Tax. This, however, should not be regarded as doing away with the need for the study of the complete statutes.

It is hoped that this effort would help to raise the level of efficiency and professional expertise of the assessing officers and thereby augment revenues. The Directorate would welcome suggestions for the improvement of the handbook.

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COURSE OUTLINE FOR OTHER (CIVIL) ACTS/LAWS

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THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

The Constitution is the fundamental law of a country. No law can be made in violation of the provisions of the Constitution. In a federal structure, as in Pakistan, the Constitution regulates federal and provincial powers and places limitations on the exercise of legislative, executive and judicial authority. It guarantees protection of law to citizens and confers powers on the superior judiciary to correct transgressions of legislative and executive authority. Assessing officers must be conscious of this constitutional regulation of authority.

Income Tax and Wealth Tax are levied in pursuance of items 47, 48 & 50 of Part-I of the Federal Legislative List given in the Fourth Schedule to the Constitution. Assessing officers are required to have a working knowledge of the Constitution in general and of the provisions relating to their area of responsibilities in particular.

In this handbook constitutional provisions relating to taxation and allied matters have been put together in a convenient format. Detailed study of other provisions of the Constitution and judgments of the superior courts on points of constitutional law relating to taxation would enhance understanding and appreciation of the finer points.

4. Right of Individuals to be dealt with in accordance with law, etc:

(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do.

8. Law inconsistent with or in derogation of Fundamental Rights to be void:

(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this Article shall not apply to,-

(a) any law relating to members of the Armed forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or

[1][(b) any of the

(i) Laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule;

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[1] Paragraph (b) originally read as follows:

"(b) any of the laws specified in the First Schedule as in force immediately before the commencing day;"

Section 3 of the Constitution (First Amendment) Act, 1974 (33 of 1974), added in paragraph (b) after the word "day" the words "or as amended by any of the laws specified in that Schedule", with effect from May 4, 1974. This amended paragraph (b) was then substituted by the present one through the Constitution (Fourth Amendment) Act, 1975 (71) of 1975), section 2; (with effect from November 21, 1975).

(ii) Other laws specified in Part I of the First Schedule;]

and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to any provision of this Chapter.

(4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate Legislature shall bring the laws specified in [2][Part II of the First Schedule] into conformity with the rights conferred by this Chapter:

Provided that the appropriate legislature may by resolution extend the said period of two years by a period not exceeding six months.

Explanation:

If in respect of any law [3][Majlis-e-Shoora (Parliament)] is the appropriate Legislature, such resolution shall be a resolution of the National assembly.

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.

15. Freedom of movement, etc:

Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.

16. Freedom of assembly:

Every citizen shall have the right to assemble peacefully and without arms, subject to any reason-able restrictions imposed by law in the interest of public order.

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2 Substituted by the Constitution (Fourth Amendment) Act, 1975 (71) of 1975), section 2; for the words "the First Schedule, not being a law which relates to, or is connected with, economic reforms," (with effect from November 21, 1975).

3 On March 2, 1985 the words "Majlis-e-Shoora (Parliament)" were substituted by the Revival of the Constitution of 1973 Order, 1985: P.O. No. 14 of 1985 (hereafter referred to as P.O. No. 14 of 1985) Art 2 and Sch. Item 1, for the word (Parliament). In this article, and in the succeeding provisions f the Constitution, for the word "Parliament" wherever occurring, the words and brackets "Majlis-e-Shoora (Parliament)" shall be substituted.

17. Freedom of association:

(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of [4][sovereignty or integrity of Pakistan, public order or morality].

[5][(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law].

18. Freedom of trade, business or profession:

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent-

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

(c) the carrying on, by the Federal Government or Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

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4 Substituted by the Constitution (Fourth Amendment) Act, 1975 (71 of 1975), section 3, for the words "morality or public order" (with effect from November 21, 1975).

5 Substituted by the Constitution (First Amendment) Act, 1974 (33 of 1974), section 4, (with effect from May 4, 1974), for clause (2) which read as under:

"(2) Every citizen not being in the service of Pakistan shall have the right to form or be a member of a political party. Every political party shall account for the source of its funds in accordance with law".

20. Freedom to profess religion and to manage religious institutions:

Subject to law, public order and morality-

(a) every citizen shall have the right to profess, practice and propagate his religion; and

(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

21. Safeguard against taxation for purposes of any particular religion:

No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

22. Safeguards as to educational institutions in respect of religion, etc:

(1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religious other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject o law,

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, cast or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

23. Provision as to property:

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

24. Protection of property rights:

(1) No person shall be compulsorily deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of-

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or'

(e) any law providing for the acquisition of any class of property of the purpose of-

(i) providing education and medical aid to all or any specified class of citizens; or'

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

25. Equality of citizens:

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the bases of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

70. Legislative Lists:

(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List" and "Concurrent Legislative List" mean respectively the Federal Legislative List and the Concurrent Legislative List in the Fourth Schedule.

77. Tax to be levied by law only:

No tax shall be levied for the purposes of the Federation except by or under the authority of Act of [6][Majlis-e-Shoora (Parliament)]

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[6] See Footnote No. 3.

163. Provincial taxes in respect of professions, etc:

A Provincial Assembly may by Act impose taxes, not exceeding such limits as may from time to time be fixed by Act of [7][Majlis-e-Shoora (Parliament)], on persons engaged in professions, trades, callings or employments, and no such Act of the Assembly shall be regarded as imposing a tax on income.

165. Exemption of certain public property from taxation:

(1) The Federal Government shall not, in respect of its property or income, be liable to taxation under any Act of Provincial Assembly and, subject to clause (2), a Provincial Government shall not, in respect of its property or income, be liable to taxation under Act of [8][Majlis-e-Shoora (Parliament)] or under Act of the Provincial Assembly of any other Province.

(2) If a trade or business of any kind is carried on by or on behalf of the Government of a Province outside that Province, that Government may, in respect of any property used in connection with that trade or business or any income arising from that trade or business, be taxed under Act of [9][Majlis-e-Shoora (Parliament)] or under Act of the Provincial Assembly of the Province in which that trade or business is carried on.

(3) Nothing in this Article shall prevent the imposition of fees for services rendered.

165-A. Power of [10][Majlis-e-Shoora (Parliament)] to impose tax on the income of certain corporations, etc:

[11][(1) For the removal of doubt, it is hereby declared that [12][Majlis-e-Shoora (Parliament)] has, and shall be deemed always to have had, the power to make a law to provide for the levy and recovery of a tax on the income of a corporation, company or other body or institution established by or under a Federal law or a Provincial law or an existing law or a

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7 See Footnote No. 3.
8 See Footnote No. 3.
9 See Footnote No. 3.
10 See Footnote No. 3.
11 Added by the Constitution (Amendment) Order, 1985 (P.O. No. 11 of 1985), Art. 2, (w.e.f. February 24, 1985).
12 See Footnote No. 3.

corporation, company or other body or institution owned or controlled, either directly or indirectly, by the Federal Government or a Provincial government, regardless of the ultimate destination of such income.

(2) All orders made, proceedings taken and acts done by any authority or person, which were made, taken or done, or purported to have been made, taken or done, before the commencement of the Constitution (Amendment) Order 1985, in exercise of the powers derived from any law referred to in clause (1), or in execution of any orders made by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court or tribunal, including the Supreme Court and a High Court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court, including the Supreme Court and a High Court, on any ground whatsoever.

(3) Every judgment or order of any court or tribunal, including the Supreme Court and a High Court, which is repugnant to the provisions of clause (1) or clause (2) shall be, and shall be deemed always to have been, void and of no effect whatsoever.]

184. Original jurisdiction of Supreme Court:

(1) The Supreme Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments.

Explanation:

In this clause, "Governments" means the Federal Government and the Provincial Government.

(2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only.

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article.

185. Appellate jurisdiction of Supreme Court:

(1) Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of a High Court.

(2) An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence of a High Court-

(a) if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to transportation for life or imprisonment for life; or, on revision,, has enhanced a sentence to a sentence as aforesaid; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or

(c) if the High Court has imposed any punishment on any person for contempt of the High Court; or

(d) if the amount or value of the subject matter of the dispute in the court of first instance was, and also in dispute in appeal is not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of [13][Majlis-e-Shoora (Parliament)] and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(e) if the judgment, decree of final order involves directly or indirectly some claim or question respecting property of the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgement, decree or final order of the court immediately below; or

(f) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

(3) An appeal to the Supreme Court from a judgment, decree, order

[13] See Footnote No. 3.

or sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal.

199. Jurisdiction of High Court:

(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(a) on the application of any aggrieved party, make an order-

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order-

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

(2) Subject to the Constitution, the right to move a High Court for

the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.

(4) Where-

(a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest [or State property] or of impeding the assessment or collection of public revenues,

the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorized by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorder in writing, is satisfied that the interim order-

(i) would not have such effect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

[14][(4-A)] An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in part I of the First Schedule or relates to, or is connected with, [State Property or] assessment or collection of public

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[14] Inserted by the Constitution (Fourth Amendment) Act, 1975 (71 or 1975), section 8 (with effect from November 21, 1975).

revenues shall cease to have effect on the expiration of a period of [six months] following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier.]

(4-B) Every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded.]

(5) In this Article, unless the context otherwise requires,-

"person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and

"prescribed law officer" means

(a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and

(b) in any other case, the Advocate-General for the Province in which the application is made.

246. Tribal Areas:

In the Constitution,-

(a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day, were Tribal areas, and includes-

(i) the Tribal Areas of Baluchistan and the North-West Frontier Province; and

(ii) the former States of Amb, Chitral, Dir and Swat;

(b) "Provincially Administered Tribal Areas" means-

(i) the districts of Chitral, Dir and Swat (which includes

Kalam) [the Tribal Area in Kohistan district,] Malakand Protected Area, the Tribal Area adjoining [Mansehra] district and the former State of Amb; and

(ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and Bugti tribal territories of Sibi district; and

(c) "Federally Administered Tribal Areas" includes

(i) Tribal Areas adjoining Peshawar district;

(ii) Tribal Areas adjoining Khot district;

(iii) Tribal Areas adjoining Bannu district;

(iv) Tribal Areas adjoining Dera Ismail Khan district;

(v) Bajaur Agency;

(va) Orakzai Agency;

(vi) Mohmand Agency;

(vii) Khyber Agency;

(viii) Kurram Agency;

(ix) North Waziristan Agency; and

(x) South Waziristan Agency;

247. Administration of Tribal Areas:

(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his function under this Article, comply with such directions.

(3) No act of [15][Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [16][Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [17][Majlis-e-Shoora (Parliament)], and the Governor of a Province, with the prior approval of the President, may, with respect of any matter within the legislative competence of the Provincial Assemble make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good government of a Federally Administered Tribal Area or any part thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless

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[15] See Footnote No. 3.
[16] See Footnote No. 3.
[17] See Footnote No. 3.

[18][Majlis-e-Shoora (Parliament)] by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.

253. Maximum limits as to property, etc:

(1) [19][Majlis-e-Shoora (Parliament)] may by law-

(a) prescribe the maximum limits as to property or any class thereof which may be owned, held, possessed or controlled by any person; and

(b) declare that any trade, business, industry or service specified in such law shall be carried on or owned, to the exclusion complete or partial, or other persons, by the Federal Government or a Provincial Government, or by corporation controlled by any such Government.

(2) Any law which permits a person to own beneficially or possess beneficially an area of land greater than that which, immediately before the commencing day, he could have lawfully owned beneficially or possessed beneficially shall be in valid.

260. Definitions:

(1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say,-

"Act of [20][Majlis-e-Shoora (Parliament)]" means an Act passed by [21][Majlis-e-Shoora (Parliament)] or the National Assembly and assented to, or deemed to have been assented to, by the President;

"agricultural income" means agricultural income as defined

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18 See Footnote No. 3.
19 See Footnote No. 3.
20 See Footnote No. 3.
21 See Footnote No. 3.

for the purpose of [22][the law relating to income-tax];

"corporation tax" means any tax or income that is payable by companies and in respect of which the following conditions apply:-

(a) the tax is not chargeable in respect of agricultural income;

(b) no deduction in respect of the tax paid by companies is, by any law which may apply to the tax, authorized to be made from dividends payable by the companies to individuals;

(c) no provision exists for taking the tax so paid into account in computing for the purposes of income-tax the total income of individual receiving such dividends, or in computing the income-tax payable by, or refundable to, such individuals;

279. Continuance of Taxes:

Notwithstanding anything contained in the Constitution, all taxes and fees levied under any law in force immediately before the commencing day shall continue to be levied until they are varied or abolished by Act of the appropriate Legislature.

Fourth Schedule
Article 70(4)
Federal Legislative List
Part I

47. Taxes on income other than agricultural income[23].

48. Taxes on corporations.

50. Taxes on the capital value of the assets, not including taxes on capital gains on immovable property[24].

52. Taxes and duties on the production capacity of any plant,

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[22] Income Tax Ordinance, 1979.
[23] The authority of the Government to levy Income Tax.
[24] The authority of the Government to levy Wealth Tax and CVT.

machinery, undertaking, establishment or installation in lieu of the taxes and duties specified in entries 44, 47, 48 and 49 or in lieu of any one or more of them.

54. Fees in respect of any of the matters in this Part, but not including fees taken in any court.

56. Offences against laws with respect to any of the matters in this Part.

57. Inquiries and statistics for the purposes of any of the matters in this Part.

59. Matters incidental or ancillary to any matter enumerated in this Part.

Concurrent Legislative List

3. Recovery of taxes.

40. Zakat.

THE GENERAL CLAUSES ACT, 1897
[Act IX of 1872]

Preliminary

The General Clauses Act is a key to the interpretation of statutes. Its main objective is to indicate the meaning of an expression in a generic and not in a rigid or exhaustive sense. It also seeks to shorten the language of statutory enactments and to provide for uniformity of expression in cases where the subject matter is identical. The meanings stated in the General Clauses Act, of words or legal principles, are to be taken as such in every statute provided the statute does not contain anything repugnant to them in its subject or context or does not intend a different meaning. The General Clauses Act applies to all federal statutes and its provisions have been directed to be read into every statute'

Knowledge of the General Clauses Act is necessary. It is specially helpful when there is any ambiguity in understanding any term of law: this statute can then be resorted to as a first step towards interpretation and construction of meaning.

2. Definitions:

In this Act, and in all (Central Acts) and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context:-

(1) "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Pakistan Penal Code:

(1a) "Acceding State", shall mean any territory in the Indo-Pakistan sub-continent which the Central Government recognizes as a State, whether described as a State or otherwise, and which has acceded to Pakistan: and "non-Acceding State" shall mean any State so recognized which has not so acceded:

(2) "act", used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

(3) "affidavit", shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

(4) "good faith", a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not:

(6) "Government securities", shall mean securities of the Central or any Provincial Government and shall include sterling securities of the Secretary of State for India in Council or the Secretary of State:

(7) "immovable property", shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:

(8) "imprisonment" shall mean imprisonment of either description as defined in the Pakistan Penal Code;

(9) "local authority", shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(10) "month", shall mean a month reckoned according to the British calendar:

(11) "movable property", shall mean property of every description, except immovable property:

(12) "oath", shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

(13) "offence", shall mean any act or omission made punishable by any law for the time being in force:

(14) "official Gazette" or "Gazette", shall mean the Gazette of [Pakistan], or, as the case may be, the official gazette of a province:

(16) "Part", shall mean a Part of the Act or Regulation in which the word occurs:

(17) "the Punjab", shall mean the territories comprised in the Province of the Punjab immediately before the fourteenth day of October, 1955:

(18) "registered", used with reference to a document, shall mean registered in [a province] under the law for the time being in force for the registration of documents:

(19) "Regulation", shall mean a Regulation made by the [Central Government] under the Government of India Act, 1870, [or the Government of India Act, 1915] [or the Government of India Act,] [or under section 95 or section 96 of the Government of India Act, 1935] [or by the Governor under Article 103 or article 104 of the Constitution of 1956, or by the president or by the Governor under Article 223 of the Constitution of 1962]:

(20) "rule", shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment:

(21) "schedule", shall mean a schedule to the Act or Regulation in which the word occurs:

(24) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions:

(26) "son", in the case of any one whose personal law permits adoption, shall include an adopted son:

(28) "swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

(30) "will", shall include a codicil and every writing making a voluntary phothumous disposition of property:

(31) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing of reproducing words in a visible form; and

5. Coming into operation of enactments:

(1) Where any Central Act is not expressed to come into operation on any particular day, then it shall come into operation on the day on which it receives the assent,-.

a) in the case of a Central Act made before the twenty third day of March, 1956, of the Governor-General and;

b) in the case of a Central Act made after that date, of the President].

(2) Unless the contrary is expressed, a [Central Act] or Regularation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

6. Effect of repeal:

Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:-

a) revive anything not in force or existing at the time at which the repeal takes effect; or

b) affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or

c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be

instituted, continued or enforced any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6A. Repeal of Act making textual amendment in Act or Regulation:

Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

7. Revival of repealed enactment:

(1) In any [Central Act] or Regulation made after commencement of this Act, it shall be necessary for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

8. Construction of the references to repealed enactments:

(1) Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) [Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then references in any [Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted].

10. Computation of time:

(1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a detrain day or within a prescribed period, then, if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1887 (XV of 1877) applies.

(2) This section applies also to all [Central Acts], and Regulations made on or after the fourteenth day of January, 1887.

11. Measurement of distances:

In the measurement of any distance, for the purposes of any [Central Act] or Regulation made after the commencement of this Act, that distance shall, unless different intention appears, be measured in a straight line on a horizontal plane.

12. Duty to be taken pro rata in enactments:

Where, by any enactment now in force or hereafter to be in force, any duty of customs or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

13. Gender and number:

In all [Central Acts] and Regulations unless there is anything repugnant in the subject or context:-

1) words importing the masculine gender, shall be taken to include females; and

2) words in the singular shall include the plural, and vice versa.

15. Power to appoint to include power to appoint *ex officio*:

Where, by any central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, the, unless it is otherwise expressly provided, any such appoint, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

16. Power to appoint to include power to suspend or dismiss:

Where, by any Central Act or Regulation, a power to make any appointment is conferred, the, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

17. Substitution of functionaries:

In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January 1968, and to all Regulations made on or after the fourteenth day of January, 1887.

18. Successors:

(1) In any Central Act or Regulation ad after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporation.

(2) This Section applies also to all Central Acts made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

19. Official chiefs and Subordinates:

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Central Acts made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

20. Constructions of orders, etc., issued under enactments:

Where, by any [Federal Act], or Regulation, a power to issue any [notification], order, scheme, rule, form or by-law in conferred, then expressions used in the notification, order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21. Power to made, to include power to add to, amend, vary or rescind orders, rules or bye-laws:

Where by any [Central Act] or Regulation, a power to [issue notifications], orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications], orders, rules or bye-laws so [issued].

22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment:

Where, by any [Central Act] or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any court office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after

the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

23. Provisions applicable to making of rules or bye-laws after previous publication:

Where, by any [Central Act] or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely,-

(1) the authority having power to make the rules or bye-laws shall, before making them publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Government concerned] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration.

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority. That authority also, shall consider any objection or suggestion which may be received by the authority having to make the rules or bye-laws form any person with respect to the draft before the date so specified;

(5) the publication in the [official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been July made.

24. Continuation of orders, etc. issued under enactments repealed and re-enacted:

Where any [Central Act] or Regulation is, after the commencement of this Act, repealed and re-enacted without modification, then unless it is otherwise expressly provided, any [appointment, notification], order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment, notification], order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any] [Central Act] or Regulation, which, by a notification under Section 5 or 5A or the Scheduled Districts Act, 1874 (XIV of 1874), or any like law, has been extended to any local area, has, by a subsequent notification been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

25. Recovery of fines:

Sections 63 to 70 of the Pakistan Penal Code (XLV of 1860) and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines, shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

26. Provision as to offences punishable under two or more enactments:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any or those enactments, but shall not be liable to be punished twice for same offence.

27. Meaning of service by post:

Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be

served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

28. Citation of enactments:

(1) In any Central Act or Regulation, and in any rule, bye-law, instrument, or document, made under or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the prosing comprised in the description or citation.

29. Saving previous enactments, rules and bye-laws:

The provisions of this Act respecting the construction of Acts, Regulations, brutes or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

30. Application of Act to Ordinances:

In this Act the expression [Central Act] wherever it occurs, except in section 5, and the word "Act" in clauses (9), (12), (38), (48) and (50) of section 3 and in section 25 shall be deemed to include an [Ordinance] made and promulgated by the [President] under section 23 of

the [Indian Councils Act 1861] [or section 72 of the Government of India Act 1915] or section 42 [of the Government of India Act, 1935] [or on Ordinance made and promulgated by the President on or after the twenty-third day of March, 1956].

31. Application of Act to Orders made by the President:

The provisions of this Act shall apply for the interpretation of any Order made by the President on or after the twenty-third day of March, 1956, as they apply for the interpretation of a Federal Act, as if every such Order were a Federal Act.

THE CONTRACT ACT, 1872
[Act IX of 1872]

Contract is one of the most basic concepts of civil law. The law of contract primarily is that branch of law which determines rights and liabilities of persons, and examines the circumstances in which a promise is legally binding on the person or persons making it. It sets out rules for the offer, acceptance and revocation of proposals, which create, modify and extinguish legal relationships and thus have vital relevance for taxation as well, especially its incidence.

Applications of the principles of contract in the daily assessment work of an officer are many- differences between partnerships, companies and societies being but a few examples. Comprehension of the basic concepts of the law of contract would serve the assessing officers well in dealing with many apparently intricate problems of tax laws.

Definitions:

2. Interpretation clause:

In this Act the following words and expressions are used in the following senses unless, a contrary intention appears from the context-

(a) **"Proposal":** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(b) **"Promise":** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise,

(c) **"Promisor" and "promisee":** The person making the proposal is called the 'promisor', and the person accepting the proposal is called the 'promisee';

(d) **"Consideration":** When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) **"Agreement":** Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) **"Reciprocal promises":** Promises which form the consideration or part of the consideration for each other are called reciprocal promises;

(g) **"Void agreement":** An agreement not enforceable by law is said to be void;

(h) "Contract": An agreement enforceable by law is a contract;

(i) **"Voidable contract":** An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j) **"Void contract":** A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. Communication, acceptance and revocation of proposals:

The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

4. Communication when complete:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,-

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,-

as against the person who makes it, when it is put into a course transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete.-

as against A, when the letter is posted;

as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram, B's revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him.

5. Revocation of proposals and acceptances.-

A proposal may be revoked at any time before the

communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke the proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

6. Revocation how made:

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute:

In order to convert a proposal into promise, the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted,

and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

8. Acceptance by performing, conditions, or receiving consideration:

Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. Promises, express and implied:

In so far as the proposal, or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

OF CONTRACTS VOIDABLE CONTRACTS AND VOID AGREEMENTS

10. What agreements are contracts:

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in Pakistan, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Who are competent to contract:

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. What is a sound mind for the purpose of contracting:

A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or from a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. "Contract" defined:

Two or more persons are said to consent when they agree upon the same thing in the same sense.

14. "Free consent" defined:

Consent is said to be free when it is not caused by-

(1) coercion, as defined in Section 15; or

(2) undue influence, as defined in Section 16; or

(3) fraud, as defined in Section 17; or

(4) misrepresentation, as defined in Section 18; or

(5) mistake, subject to the provisions of Sections 20, 21 and 22

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. "Coercion" defined:

"Coercion" is the committing, or threatening to commit, any act forbidden by the Pakistan Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation:

It is immaterial whether the Pakistan Penal Code is or is not in force in the place where the coercion employed.'

16. "Undue influence" defined:

(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.'

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) Where he holds, a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Evidence Act, 1872

17. "Fraud" defined:

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract-

(1) The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;'

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation:

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence ism in itself, equivalent to speech.

Illustrations

(a) A sells by auction to B, a horse which A knows to be unsound, A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A:- "If you do not deny it I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(d) A and B, being traders enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

18. "Misrepresentation" defined:

"Misrepresentation" means and includes-

(1) The positive assertion in a manner. not warranted by the information of the person making it. of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. Voidability of agreements without free consent:

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in a position in which he would have been if the representations made had been true.

Exception:

If such consent was caused by misrepresentation or by silence fraudulent within the meaning of Section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation:

A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby

induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from encumbrance, B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(d) B having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B' B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

[19-A. Power to set aside contract induced by undue influence:

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it, has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.]

Illustrations

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son obtains a bond from a for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100/- to b, an agriculturist, and by undue influence, induces B to execute a bond for Rs. 200/- with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay Rs. 100/- with such interest as may seem just.

20. Agreement void where both parties are under mistake as to matter of fact:

where both the parties to and agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation:

An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations

(a) A agrees to sell B a specific cargo of goods supposed to be on its way from England to Karachi. If turns out that before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. Effect of mistake as to law:

A contract is not voidable because it was caused by a mistake as to any law in force in Pakistan; but a mistake as to a law not in force in Pakistan has the same effect as a mistake of fact.

Illustration

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Pakistan Law of Limitation: the contract is not voidable.

22. Contract caused by mistake of one party as to matter of fact:

a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

23. What considerations and objects are lawful and what not:

The consideration or object of an agreement is lawful, unless-
it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object of consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees in the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful consideration.

(c) A promises for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void as its object is unlawful.

(f) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's Mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Pakistan Penal Code.

24. Agreement void, if considerations and objects unlawful in part:

If any party of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.

Illustration

A promises to superintend, on behalf of B, a legal manufacture of indigo and 'an illegal traffic in other articles, B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise being in part unlawful.

25. Agreement without consideration void, unless:

An agreement made without consideration is void, unless-

(1) **it is in writing and registered:** It is expressed in writing, and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless,

(2) **or is a promise to compensate for something done:** It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promiser was legally compellable to do, or unless,

(3) **or is a promise to pay a debt, barred by limitation Law:** It is a promise, made in writing and signed by the person to be charged therewith, or by this agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 2:

An agreement to which the consent of the promiser is freely given is not void merely because the consideration is inadequate: but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

(a) A promises, for no consideration, to give to B Rs. 1,000/-. This is a void agreement.

(b) A, for natural love and affection, promises to give his son A, Rs. 1,000/-. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it, to him. B promises to give A Rs. 50/-. This a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000/- but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500/- on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000/- for Rs. 10/-. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000/- for Rs. 10/-. A denies that his consent to the agreement was freely given.

This inadequacy of the consideration is a fact which the Court should take 'into account in considering Whether or not A's consent was freely given.

26. Agreement in restraint of marriage void:

Every agreement in restraint of the marriage of any person other than a minor, is void.

27. Agreement in restraint of trade void:

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1:

Saving of agreement not to carry on business of which goodwill is sold: One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

28. Agreement in restraint of legal proceedings void:

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1:

Saving of contract to refer to arbitration dispute that may rise: This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class or subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2:

Saving of contract to refer questions that have already arisen: Nor shall this section render illegal any contract in

writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

29. Agreements void for uncertainty:

Agreements, the meaning of which is not certain or capable of being made certain, are void

Illustrations

(a) A agrees to sell to B 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in coconut-oil only, agrees to sell to B 'one hundred tons of oil'. The nature of A's trade affords an indication of the meaning of the word, and A has entered into a contract for the sale of one hundred tons of coconut-oil.

(d) A agrees to sell to B 'all the grain in my granary at Rahimyar Khan'. There is no uncertainty here to make the agreement void.

(e) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C'. As the price is capable of being made certain, there is no incertainty here to make the agreement void.

(f) A agree to sell to B 'my white horse for rupees five hundred or rupees one thousand'. There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager void:

Agreements by way of wager are void; and no suit shall be brought for recovery anything alleged to be one any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Agent And Principal

182. "Agent" and "principal" defined:

An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

183. Who may employ agent:

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. Who may be an agent:

As between the principal and third persons any person may become agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. Consideration not necessary:

No consideration is necessary to create an agency.

186. Agent's authority may be expressed or implied:

The authority of an agent may be expressed or implied.

187. Definitions of express and implied authority:

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration

A owns a shop in Quetta, living himself in Karachi and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C 'in the name of A for the purposes of the shop, and of paying of them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. Extent of agent's authority:

An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations

(a) A is employed by B, residing in London, to recover at Karachi a debt due to B., A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of ship builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

THE TRANSFER OF PROPERTY ACT 1882
[1][Act IV of 1882]

[17th February 1882]

Sales Of Immovable Property

Although consequences of transfer of property for tax purposes are specifically dealt with under the Income/Wealth Tax Laws, it is necessary to study the Transfer of Property Act in order to have a clearer picture of the legalities pertaining to transfer of property. Assessing officers must have knowledge of the legalities involved in the transfer of property, the time of operation of transfers, the mode of transfer and the legal consequences/effects of such transactions on the incidence of tax.

An Act to amend the law relating to the Transfer of Property by act of Parties

Preamble: WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; it is hereby enacted as follows:

1. **Short title.**–This Act may be called the Transfer of Property Act, 1882.

Commencement.–It shall come into force on he first day of July, 1882.

[2][**Extent.**–This Act or any part thereof may by notification in the official Gazette be extended to the whole or any part of [3][a Province] by the Provincial Government.

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1 For Statement of objects see Gazette of India, 1877.
2 Words, "it extends in the first instance to East Pakistan" omitted by Order IV of 1975.
3 Subs. by Order IV of 1975

And any Provincial Government may, from time to time, by notification in the official Gazette exempt either retrospectively or proposectively, any part of the territories administered by such Provincial Government from all or any of the following provisions, namely:-

Section 54, paragraphs 2 and 3, 59, 107 and 123.

Notwithstanding anything in the foregoing part of this section, section 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or track of country for the time being excluded from the operation f the Registration Act, 1908 under the power conferred by the first section of that Act or otherwise.

2. Repeal of Acts, saving of certain enactments, incidents, rights, liabilities, etc.—In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect:-

(a) the provisions of any enactment not hereby expressly repealed:

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of a decree or order of a Court of competent jurisdiction:

and nothing in the second Chapter of this Act shall be deemed to affect any rule of Muhammadan Law.

3. Interpretation clause.— In this Act, unless there is something repugnant in the subject or context,--

"immovable property" does not include standing timber, growing crops of grass;

"instrument" means a non-testamentary instrument;

"attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of this signature of mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;

"registered" means registered in a Province under the law for the time being in force regulating the registration of documents;

"attached to the earth" means—

(a) rooted in the earth, a sin the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debts or beneficial interest be existent, accruing conditional or contingent;

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I: Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest, in such property shall be deemed to have notice of such instrument as from the date of registration or where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is property wherein a share or interest is being acquired, is situated:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Registration Act, 1908, and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II: Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III: A person shall be deemed to have had notice of any fact if his agent acquires notice thereof while acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

4. Enactments relating to contracts to be taken as part of Contract Act.— The Chapters and sections of this Act which relate to contracts shall be taken as part of the Contract Act, 1872.

And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Registration Act, 1908.

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound—

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller, is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the

price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and 'shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b)

where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said document safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware; and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumberances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

58. (a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time

being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage.

(c) Where, the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payments of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transfer is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale;

(d) Where, the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest, or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where, the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the

mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Where, a person in the town of Karachi, and in any other town which the Provincial Government concerned may, by notification in the official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

RIGHTS AND LIABILITIES OF MORTGAGOR

60. At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

60A. (1) Where a mortgagor is entitled to redemption, then, on the fulfillment of any conditions on the fulfillment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.

61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgagee-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a

right to obtain from the Court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(a) to authorize any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

105. A lease of immovable property is a transfer of a right to enjoy such property, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

122. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift a immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

THE SALE OF GOODS ACT 1930
[Act III of 1930]

This Act provides further examples of the application of the principles of the law of contract to Income Tax and Wealth Tax. The essence of sale is the transfer of property/goods from the seller to the buyer for consideration.

Assessing officers need to be familiar with specific sections dealing with the transfer of property/goods between sellers and buyers. All sections dealing with the primary contract till the actual delivery and acceptance of goods are relevant for taxation purposes as they deal with issues of fixation of liability for the payment of tax under the Income and Wealth Tax Laws.

4. Sale and agreement to sell:

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price, There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

19. Property passes when intended to pass:

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Section 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state:

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

21. Specific goods to be put into a deliverable state:

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

22. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price:

Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

23. Sale of unascertained goods and appropriation:

(1) Where there is a contract for the sale of unascertained or future goods by description and goods of the description and in a deliverable

state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Delivery to carrier: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

24. Goods sent on approval or "on sale or return":

When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

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THE TRUSTS ACT, 1882
[Act II of 1882]

A trust is a legal obligation annexed to the ownership of property and involving the author of the trust or settlor, the trustee and the beneficiary. This legal relationship has implications for the incidence of income and wealth taxation.

While making assessments of income tax and wealth tax, the income and assets of Trusts are to be dealt with An assessing officer thus has to be familiar with the laws regarding creation of a Trust, the rights and liabilities of the settlors, beneficiaries and trustees and the shifting of the incidence of taxation.

3. Interpretation clause-Expressions defined in Act IX of 1872:

A "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in all accepted by the owner, or declared and accepted by him for the benefit of another, or of another and the owner:

The person who reposes or declares the confidence is called the "author of the trust"; the person who accepts the confidence is called the "beneficiary"; the subject-matter of the trust is called "trust-property" or "trust-money"; the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust";

A breach of any duty imposed on a trustee, as such by any law for the time being in force, is called a "breach of trust";

And in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of a fact either when he actually knows that fact, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1872 (IX of 1872), Section 229; and all expressions used herein and defined in the Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

A trust is in effect, the gift of property or an interest in property to a person or institution by or through the intervention of trustee.

The principles governing the construction of a trust deed are (1) the entirety of document must be read as whole (2) the document must be so read as to give predominant intention of the settlor or the maker of the document and (3) the document must be construed in such a manner so as to make it workable and operative.

Of the Creation of Trusts

4. Lawful purpose:

A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation:

In this section the expression "law" includes, where the trust-property is immovable and situate in a foreign country, the law of such country.

Illustrations

(a) A conveys property to B in trust to apply the profits to the nature of female foundings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out for the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B.A. is declared an insolvent. The trust for A is valid as against his creditor.

5. Trust of immovable property:

No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or the trustee.

Trust of movable property:

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Creation of trust:

Subject to the provisions of Section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is intended to constitute himself or another person a trustee of the property for someone else.

Testatrix creating trust by will and appointing her brother trustee and directing him to sell portion of property for construction of a home for beggars and travelers. Litigation between parties ending in declaration of validity of will and trust. Trust having in fact come into existence and not contingent upon sale of portion of property valid and cannot be said to have not been executed.

A practicing Advocate, instead of receiving his professional fees in lump sum asked his clients to pay the amounts of fees, payable by them, to an Assurance Company for purchase of annuity bonds payable in

installments spread over a guaranteed period of 20 years. The legal relationship between the Assurance Company and the Advocate was that of a trustee and beneficiary.

A Parsi settlor created a trust of his property, giving a life-interest in one-fifth of the estate to each of his five children, and after the death of each of them dividing his or her share among the issue of the child, B, one of the daughters of the settlor, had a daughter, G, who died during B's lifetime making a will by which she made a trust of the property which would come to her share on B's death under given by the trust-deed to G receivable by her on the death of her mother B, and it was not a trust of a mere beneficial interest."

7. Who may create trusts: A trust may be created:

(a) by every person competent to contract, and

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

But subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Proceedings initiated to settle a private dispute between two sets of trustees. Any person having an interest in the trust can apply under section 3 while section 7 only authorizes trustees to seek advice of the Court in certain matters relating to the trust, but none of the said provisions empowers the Court to settle disputes arising inter se among the trustees-Consequently, the proceedings initiated by the applicant before the District Judge were wholly misconceived and without jurisdiction as they sought to settle a private dispute between two osets of trustees.

8. Subject of trust:

The subject matter of trust must be property transferable to the beneficiary:

It may not be merely beneficial interest under a subsisting trust.

Comments

So long as the objects of a trust are lawful any property or interest in property capable of being transferred by deeds inter vinos or testamentary can be saddled with trust.

Subject Matter of Trusts

Liability of surety cannot form subject-matter of a trust. AIR 1939 Bom. 309(311).

Property would take within its ambit business also and managing agency being business can be held on trust.

Property given to person receivable by her on death of mother is valid trust and not merely trust of beneficial interest.

9. Who may be beneficiary:

Every person capable of holding property may be a beneficiary:

Disclaimer by beneficiary:

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

10. Who may be trustee:

Every person capable of holding property may be a trustee; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust:

No one is bound to accept a trust.

Acceptance of trust:

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust:

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustee vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations

(a) A bequeaths certain property to B and C, his executors, as trustees for D, B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts, B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B servers the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

Of certain obligations in the Nature of Trusts

80. Where obligation in nature of trust is created:

An obligation in the nature of a trust is created in the following cases:

Comments

Chapter 9 gives the principles that should govern Courts in ascertaining the rights and obligations of parties in certain cases and does not relieve a party from any obligation to take the necessary steps needed by the substantive or adjective law for creating a valid trust.

Chapter IX and S.80 definitely show that the relationships provided for in Chapter IX are not trust but obligations in the nature of trusts and, therefore, it cannot be said that merely because those obligations were enacted within the provisions of the Act, they were included in the definition or conception of trust which only were the subject-matter of the enactment of the Act.

81. Where it does not appear that transferor intended to dispose of beneficial interest:

Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land, B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the donee if donor proves that his intention was different; but mere statement of husband or father is not enough.

Presumption of advancement as known in English law may arise in case of Anglo-Incians where husband transfers property in name of his wife.

The doctrine of advancement is not applicable in India, so as to raise the question of a resulting trust. A benami transaction does not vest any title in the benamidar but vests it in the real owner. When the benamidar is in possession of the property standing in his name, he is in a cease the trustee for the real owner.

"Attendant Circumstances"

"Attendant circumstances" mean the same thing as surrounding circumstances at time of making the will.

Section 81 refers only to attendant circumstances but not to antecedent circumstances.

Where a resulting trust is sought to be proved, acts and declarations made long after the transaction are not admissible in favour of the person seeking to show such a trust and therefore it is doubtful whether they would be admissible in favour of that person's creditor against the person in whose name the property stands.

82. Transfer to one for consideration paid by another:

Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall effect the provisions of the Code of Civil Procedure, 1908 (Act V of 1908).

THE PARTNERSHIP ACT, 1932
[Act IX of 1932]

The Nature of Partnership

Partnership, another application of the principles of contract, has been defined as he relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all Regulated by the Partnership Act of 1932, this branch of the law has relevance for assessing officers who have to deal with the cases of firms.

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name".

5. The relation of partnership arises from contract and not from status;

and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

6. In determining whether a group of persons is or is not a firm. or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1:

The sharing of profits of or gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2:

The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share of payment-

(a) by a lender of money to persons engaged or about to engage in any business,

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner, as annuity, or

(d) by a previous owner of part owner of the business, as consideration for the sale of the good-will of share thereof, does not of itself make the receiver a partner with the persons carrying on the business.

19. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a bank account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm.

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Not-with-standing any such restriction any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

21. A Partner has authority in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in The firm name. or in any other manner expressing or implying an intention to bind the firm.

Dissolution of A Firm

39. The dissolution of a partnership between all the partners of firm is called the "dissolution of the firm".

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

41. A firm is dissolved.

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

42. Subject to contract between the partners a firm is dissolved.

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent.

43. (1) Where the partnership is at-will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:-

(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) that a partner, other than the partner suing, willfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating

to the business that it is not reasonable practicable for the other partners to carry on the business in partnership with him;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of order XXI of the first Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner;

(f) that the business of the firm cannot be carried on save at a loss; or

(g) on any other ground which renders it just and equitable that the firm should be dissolved.

45. Not-withstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution.

Provided that the estate of a partner who dies. or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under subsection (1) may be given by any partner.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners of their representatives to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue not-withstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

48. In settling the accounts of a firm after dissolution, The following rules shall, subject to agreement by the partners, be observed:-

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:-

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner ratably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

50. Subject to contract between The partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the good-will of the firm, nothing in this section shall affect his right to use the firm name.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless:-

(a) the dissolution is mainly due to his own misconduct, or

(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, with out prejudice to any other right, entitled:-

(a) to a lien on, or a right or retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(c) to be indemnified by the partner of partners guilty of the fraud or misrepresentation against all the debts of the firm.

53. After a firm is dissolved, every partner of his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name of from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound-up:

Provided that where any partner or his representative has bought the good-will of the firm, nothing in this section shall affect his right to use the firm name.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some of all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and not withstanding anything contained in section 27 of The Contract Act, 1872, such a agreement shall be valid if the restrictions imposed are reasonable.

55. (1) In settling the accounts of firm after dissolution, the good-will shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

(2) Where the good-will of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not:-

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before its dissolution.

(3) Any partner may, upon the sale of The good-will of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within in section 27 of the Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

Registration of Firms

56. The provincial Government of any Province may, by notification in the official Gazette, direct that the provisions of this Chapter shall not apply to that Province or to any part thereof specified in the notification.

57. (1) The Provincial Government may appoint Registrar of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating:-

(a) the firm name,

(b) the place or principal place of business of the firm,

(c) the names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the

(f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorized in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:-

"Government", "Jinnah", "Quaid-i-Azam" or words expressing or implying the sanction, approval or patronage of the Federal Government or any Provincial Government or of the Quaid-i-Azam, except when the Provincial Government signifies its consent to the use of such words as part of the firm name by order in writing.

(3-A) A firm name shall not contain the name of the "United Nations" or its abbreviations through the use of its initial letters or of any subsidiary body set up by that body unless it has obtained The previous authorization of the Secretary-General of The United Nations in writing.

(3-B) A firm name shall not contain the name of the "World Health Organization" or its abbreviations through the use of its initial letters unless it has obtained the previous authorization of the Director-General in writing.

(3-C) A firm name shall not contain any word which may be declared by the Provincial Government to be undesirable shall, within one month of such declaration, alter its name and send a statement to this effect to the Registrar.

59. When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of subsection (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal; place of business, any partner of agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner of agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

63. When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner of person specially authorized in this behalf, may give notice to the Registrar of such change or dissolution specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of

Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become pa partner, and the firm is then a registered firm, he, or his agent specially authorized in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in subsection (1).

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation of notice was signed, be conclusive proof on any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

69. (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against The firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and The person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm..

(3) The provisions of subsections (1) and (2) shall apply also to a claim or set-off or other proceeding to enforce a right arising from a contract, but shall not affect-

(a) the enforcement of any right to sue for the dissolution of a firm of for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or

(b) the powers of an official assignee, receiver of Court under the Insolvency (Karachi Division) Act, or the Provincial Insolvency Act, 1920 to realize the Property of an insolvent partner.

(4) This section shall not apply:-

(a) to firms or to partners in firms which have no place of business in Pakistan or whose places of business in Pakistan are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim or set-off not exceeding one hundred rupees in value which is not of a king specified in the Second Schedule to the Provincial Small Causes Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine or with both.

71. (1) The Provincial Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms:

Provided that such fees shall not exceed the maximum fees specified in Schedule I:

Provided further that the fees payable for any service desired on the same day on which an application for the same is made may be double the aforesaid maximum fees.

(2) The Provincial Government may also make rules-

(a) prescribing the form of statement submitted under section 58, and of the verification thereof;

(b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;

(c) prescribing the form of The Register of Firms, and the mode on which entries relating to firms are to be made therein, and the mode on which such entries are to be amended or notes made therein;

(d) regulating the procedure of the Registrar when disputes arise;

(e) regulating the filing of the documents received by the Registrar;

(f) prescribing conditions for the inspection of original documents;

(g) regulating the grant of copies;

(h) regulating the elimination of registers and documents;

(i) providing for the maintenance and form of an index to the Register of Firms; and

(j) generally, to carry out the purposes of this Chapter.

72. A public notice under this Act is given:-

(a) Where it relates to the retirement or explosion of a partner from a registered firm, or to the election to become or not be become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or Principal place of business, and

(b) in any other case, by publication in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

THE COMPANIES ORDINANCE, 1984
[Ordinance XLVII of 1984]

Man started business in his individual capacity but when the work and need for investment increased, partnerships evolved. Over the years, particularly with the development of industry, it did not remain possible for individuals (single person) or firms (i.e. maximum 20 persons) to invests in and manage business on large scale. A new entity consequently emerged and it was given the name of "Company". All this stage the two important concepts of corporate personality and limited liability were introduced.'

Since a major chunk of revenue comes from the corporate sector, it is incumbent upon an assessing officer to have a reasonable knowledge of the Companies Ordinance, 1984 so that he can do justice to his work.

2. Definitions:

(1) "articles", means the articles of association of a company as originally framed or as altered in accordance with the provisions of any previous Companies Act, or of this Ordinance, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule;

(3) "authority", means the Corporate law Authority constituted under Section 11;

(8) "company limited by shares", means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(9) "company limited by guarantee", means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its winding up;

(12) "debenture", includes debenture stock, bonds, [term Finance certificate] and any other securities, other than a share, of a company, whether constituting a charge on the assets of the company or not;

(28) "private company", means a company which, by its articles,-

(i) restricts the right to transfer its shares, if any;

(ii) limits the number of its members to fifty not including persons who are in the employment of the company; and

(iii) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company:

Provided that, where two or more persons hold one or more shares in company jointly, they shall, for the purposes of this definition, be treated as a single member;

(30) "public company", means a company which is not a private company;

[(30-A) "redeemable capital", includes finance obtained on the basis of participation term certificate (PTC), musharika certificate, term finance certificate(TFC), or any other security or obligation not based on interest, other than an ordinary share of a company, representing an instrument or a certificate of specified denomination, called the face value or nominal value, evidencing investment of the holder in the capital of the company on terms and conditions of the agreement for the issue of such instrument or certificate or such other certificate or instrument as the Federal Government may by notification in the official Gazette, specify for the purpose;]

[(34) "security", means any share, scrip, debenture, participation term certificate, modaraba certificate, musharika certificate, term finance certificate, bond, pre-organization certificate or such other instrument as the Federal Government may, by notification in the official Gazette, specify for the purpose;]

(35) "share", means share in the share capital of a company;

3. Meaning of "subsidiary" and "holding company":

(1) For purposes of this Ordinance, a company or body corporate shall be deemed to be a subsidiary of another if-

(a) that other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty per cent of its voting securities or otherwise has power to elect and appoint more than fifty per cent of its directors; or

(b) the first mentioned company or body corporate is a subsidiary of any company or body corporate which is that other's subsidiary.

(2) For the purpose of this Ordinance, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

Corporate Law Authority

11. Constitution of Corporate Law Authority:

(1) The Federal Government shall, by notification in the official Gazette, constitute a Corporate Law Authority.

(2) The Authority shall consist of such number of members not being less than three, as the Federal Government deems fit, to be appointed by that Government by notification in the official Gazette.

(3) One of the members shall be appointed by the Federal Government to be the Chairman of the Authority.

(4) No act or proceeding of the Authority shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution of the Authority.

12. Powers and functions of the Authority:

(1) The Authority shall exercise and perform such powers and functions as are conferred on it by or under this Ordinance or any other law.

(2) Notwithstanding anything contained in any other law, and without prejudice to the generality of the foregoing provisions, the Federal

Government may, by notification in the official Gazette, direct that all or any of the powers and functions conferred on the Federal Government or any officer of the Federal Government under any law shall, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed by the Authority.

(3) The Authority may, by order in writing, direct that any power or function of the Authority referred to in sub-section (1) or sub-section (2) shall, subject to such conditions and limitations, if any, as may be specified in the order, be exercised or performed by the Chairman of the Authority or by such other member or officer of the Authority as may be so specified.

(4) The Authority, and the member or officer referred in sub-section (3) may, for the purposes of a proceeding or enquiry, require anyone-

(a) to produce before, and to allow to be examined and kept by, an officer of the Authority specified in this behalf, any books, accounts or other documents in the custody or under the control of the person so required, being documents relating to any matter the examination of which may be considered necessary by the Authority or such member or officer; and

(b) to furnish to an officer of the Authority specified in this behalf such information and documents in his possession relating to any matter as may be necessary for the purposes of the proceeding or enquiry.

(5) The procedure of the Authority shall be such as may be prescribed.

(6) The Federal Government may appoint such officers as it thinks necessary to assist the Authority in the performance of its duties and functions under this Ordinance and may make regulations with respect to their duties.

(7) All officers and persons employed in the execution of this Ordinance shall observe and follow the orders, instructions and directions of the Authority.

14. Obligation to register certain associations, partnerships, etc., as companies:

(1) No association partnership or company consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association, partnership or company, or by the individual members thereof, unless it is registered as a company under this Ordinance.

(2) Every person who is a member of any association, partnership or company carrying on business in contravention of the provisions of this section shall be punishable with fine which may extend to five thousand rupees and also be personally liable for all the liabilities incurred in such business.

(3) Nothing in this section shall apply to-

(a) any society, body or association, other than a partnership, formed or incorporated under any other Pakistan law; or

(b) a joint family carrying on joint family business; or

(c) a partnership of two or more joint families where the total number of members of such families, excluding the minor members, does not exceed twenty.

Memorandum of Association

15. Mode of forming a company:

(1) Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and complying with the requirements of this Ordinance in respect of registration, form a public company and any two or more persons so associated may, in like manner, form a private company.

(a) a company limited by shares; or

(b) a company limited by guarantee; or

(c) an unlimited company.

17. Memorandum of company limited by guarantee:

In the case of a company limited by guarantee,-

(a) whether or not the company has a share capital, the memorandum shall state-

(i) the name of the company with the parenthesis and words "(Guarantee) Limited" as the last words of its name;

(ii) the Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situate;

(iii) the objects of the company, and, except in the case of a trading corporation, the territories to which they extend;

(iv) that the liability of the members is limited; and

(v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, themselves, such amount as may be required, not exceeding a specified amount; and

(b) if the company has a share capital,-

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) no subscriber of the memorandum shall take less than one share; and'

(iii) such subscriber shall write opposite to his name the number of shares he takes.

18. Memorandum of unlimited company:

In the case of an unlimited company,-

(a) whether or not the company has a share capital, the memorandum shall state-

(i) the name of the company;

(ii) the Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situate; and

(iii) the objects of the company, and, except in the case of a trading corporation, the territories to which they extend; and

(b) if the company has a share capital,-

(i) no subscriber of the memorandum shall take less than one share; and'

(ii) each subscriber shall write opposite to his name the number of shares he takes.

20. Restriction on Alteration of Memorandum:

A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent specified in this Ordinance.

21. Alteration of Memorandum:

(1) Subject to the provisions of this Ordinance, a company may, by special resolution alter the provisions of its memorandum so as to change the place of its registered office from one Province to another, or from one city or town in a Province to another or from a part of Pakistan not forming part of a Province to a Province or from a Province to a part of Pakistan not forming part of a Province, or with respect to the objects of the company, so far as may be required to enable it-

(a) to carry on its business more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

(d) to carry on some business, not being a business specified in its memorandum, which may conveniently or advantageously be combined with the business of the company; or'

(e) to restrict or abandon any of the objects specified in the memorandum; or

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Authority on petition:

Provided that an alteration so as to change the place of registered office of a company from a place in the Province of the Punjab to the Islamabad Capital Territory or from the latter to a place in the Province of the Punjab, on from one city in a Province to another, shall not require confirmation by the Authority.

(3) Before confirming the alteration, the Authority must be satisfied-

(a) that sufficient notice has been given to every holder of debentures of the company, and to any person or class of persons whose interest will, in the opinion of the Authority, be affected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the Authority is entitled to object, and who signifies his objection in manner directed by the Authority, either his consent to the alteration has been obtained or his debt or claim has been discharged or determined, or has been secured to the satisfaction of the Authority:

Provided that the Authority may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a).

22. Power of Authority when conforming alteration:

The Authority may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and make such order as to costs as it thinks proper.

23. Exercise of discretion by Authority:

The Authority shall in exercising its discretion under Section 21 and 22 have regard to the rights and interests of the members of the company or of any class of them, as well as to the right and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Authority for the purchases of the interests of dissident members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

24. Procedure on confirmation of the alteration:

(1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall within ninety days from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one Province to another, or from the Islamabad Capital Territory to a province or from a Province to Islamabad Capital Territory, a certified copy of the order confirming such alteration shall be filed by the company with the registrar in each of such provinces or the Islamabad Capital Territory, as the case may be, and each such registrar shall register the same, and shall certify under his hand the registration thereof, and the registrar for the Province or the Territory from which such office is transferred shall send to the registrar for the other Province or Territory all documents relating to the company registered or filed in his office.

(3) The Authority may by order at any time extend the time for the filing of documents with the registrar under this section for such period as it thinks proper.

25. Effect of failure to register within ninety days:

No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of Section 24, and if such 'registration is not effected within ninety days next after the date of the order of the Authority confirming the alteration, or within such further time, as may be allowed by the Authority, in accordance with the provisions of Section 24, such alteration and order, if any, and all proceedings connected therewith shall, at the expiration of such period of ninety days or such further time, as the case may be, become null and void:

Provided that the Authority may, on sufficient cause shown, revive the order or alteration, as the case may be, on application made within a further period of ninety days.

Articles of Association

26. Registration of Articles:

(1) There may, in the case of company limited by shares, and there shall, in the case of a company limited by guarantee or an unlimited company, be registered with the memorandum articles of association signed by the subscribers to the memorandum and setting out regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(3) In the case of an limited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered.

(5) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulation in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

(6) The articles of every company shall be explicit and without ambiguity and, without prejudice to the generality of the foregoing, shall list and enumerate the voting and other rights attached to the different classes of shares and other securities, if any, issued or to be issued by it.

27. Printing, signature, etc., of articles:

The articles shall be,-

(a) printed;

(b) divided into paragraphs numbered consecutively;

(c) signed by each subscriber who shall add his present name and surname in full, any former name or surname in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name, in full, his nationality and if that nationality is not the nationality of origin, also the nationality of origin, and his usual residential address in full, in the presence of at least one witness 'who shall attest the signature and shall likewise add his father's name or, in the case of a married woman or widow, her husband's or deceased husband's name, in full, as the case may be, address and occupation;

(d) dated.

28. Alteration of articles:

Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution:

Provided that, where such alteration affects the substantive rights or liabilities of members or of a class of members, it shall be carried out only if a majority of at least three-fourths of the members or of the class of members affected by such alteration, as the case may be, personally or through proxy vote for each alteration.

General Provisions

With respect to Registration of Memorandum and Articles.

30. Registration of memorandum and articles, etc:

(1) The memorandum and the articles, if any, shall be filed with the registrar in the Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is stated by the memorandum to be situate.

(2) A declaration by such person as may be prescribed in this behalf, or by a person named in the articles as a director, or other officer of the company, of compliance with all or any of the requirements of this Ordinance and the rules made thereunder, shall be filed with the registrar; and the registrar may accept such a declaration as sufficient evidence of such compliance.

(3) If the registrar is satisfied that the company is being formed for lawful purposes, that none of its objects stated in the memorandum is inappropriate or deceptive or insufficiently expressive and that all the requirements of this Ordinance and the rules made thereunder have been complied with in respect of registration and matters precedent and incidental thereto, he shall retain and register the memorandum and articles, if any.

(4) If registration of the memorandum is refused, the subscribers of the memorandum or any one of them authorised by them in writing may either supply the deficiency and remove the defect pointed out, or within thirty days of the order of refusal prefer an appeal-

(a) where the order of refusal has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar; and

(b) where the order of refusal has been passed, or up-held in appeal, by the registrar, to the Authority.

(5) An order of the Authority under sub-section (4) shall be final and shall not be called in question before any Court or other authority.

31. Effect of memorandum and articles:

(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe and be bound by all the provisions of the memorandum and of the articles, subject to the provisions of this Ordinance.

(2) All money payable by any member to the company under memorandum or articles shall be a debt due from him to the company.

32. Effect of registration:

(1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited by shares or guarantee, as the case may be.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

33. Conclusiveness of certificate of incorporation:

A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the associations is a company authorised to be registered and duly registered under this Ordinance.

34. Effect of alteration in memorandum or articles:

Notwithstanding anything contained in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby.

41. Alteration of names on commencement of Ordinance and change of status of company:

(1) As from the date of commencement of this Ordinance, the name of every existing company shall be deemed to include, before the last word "Limited", the parenthesis and word ' (Private)' in the case of a private company and the parenthesis and word " (Guarantee)" in the case of a company limited by guarantee, and the memorandum of association, the certificate of incorporation and other books and papers shall be deemed to be altered accordingly from that date.

(2) On conversion of a public company into a private company in accordance with the provisions of this Ordinance, the registrar shall add the parenthesis and word "(Private)" before the word "Limited" in the name of the company in the register and shall also issue a certificate to meet the circumstances of the case.

(3) On conversion of a private company into a public company in accordance with the provisions of this Ordinance, the registrar shall omit the parenthesis and word "(Private)" in the name of the company in the resister and shall also issue a certificate to meet the circumstances of the case.

(4) If default is made in complying with a direction issued by the registrar under Section 38, or with the requirements of sub-section (2) of Sec. 40, or in giving effect to the provisions of sub-section (1) of this section, the company, and every director or officer of the company who is knowingly and willfully in default, shall be liable to a fine not exceeding ten thousand rupees and to a further fine not exceeding two hundred rupees for every day after the first during which the default continues.

Share Capital and Debentures

Nature, Numbering and Certificate of Shares

89. Nature of shares and certificate of shares:

(1) The shares or other interest of any member in a company shall be moveable property, transferable in the manner provided by the articles of the company.

(2) Each share in a company shall have a distinctive number.

(3) A certificate under the common seal of the company specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares therein specified.

Classes and Kinds of Shares

90. Classes and kinds of share capital:

(1) A company limited by shares shall have only ordinary share capital, which may be sub-divided into different classes.

Provided that this sub-section shall not apply to preference shares issued before the commencement of this Ordinance or in pursuance of a contract or agreement entered into before such commencement.

(2) The rights as between various classes of ordinary shares, if any, as to profits, votes and other benefits shall be strictly proportionate to the paid up value of shares.

General Provisions as to Share Capital

91. Only fully paid shares to be issued:

No company shall issue partly paid shares:

Provided that where a company has partly paid shares on the commencement of this Ordinance, it-

(i) shall not issue any further share capital until all the shares previously issued have become fully paid up; and

(ii) shall pay dividend only in proportion to the amount paid up on each share.

92. Power of company limited by shares to alter its share capital:

(1) A company limited by shares, if so authorised by its articles, may alter the conditions of it memorandum so as to -

(a) increase its share capital by such amount as it thinks expedient;

(b) consolidate and divide the whole or any part of its share capital into shares of larger amount than its existing shares;

(c) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; or

(d) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled:

Provided that, in the event of consolidation or sub-division of shares, the rights attaching to the new shares shall be strictly proportional to the rights attaching to the previous shares so consolidated or sub-divided:

Provided further that, where any shares issued are of a class which is the same as that of shares previously issued, the rights attaching to the new shares shall be the same as those attaching to the shares previously held.

(2) The new shares issued by a company shall rank pari passu with the existing shares of the class to which the new shares belong in all matters, including the right to such bonus or right issue and dividend as may be declared by the company subsequent to the date of issue of such new shares.

(3) The powers conferred by sub-section (1) shall be exercisable by the company only in a general meeting.

[(3-A) Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorised capital of a company is fully subscribed, or the unsubscribed capital is insufficient, the same shall be deemed to have been increased to the extent necessary for issue of shares to a scheduled bank or financial institution in pursuance of any obligation of the company to issue shares to such scheduled bank or financial institution.]

(4) A cancellation of shares in pursuance of sub-section (1) shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

(5) The company shall file with the registrar notice of the exercise of any power referred to in sub-section (1) within fifteen days from the exercise thereof.

93. Notice to registrar of consolidation of share capital, etc:

(1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, it shall, within fifteen days of the consolidation and division, file notice with the registrar of the same, specifying the shares consolidated and divided.

(2) If a company makes default in complying with the requirements of sub-section (5) of Section 92 or sub-section (1) of this section, it shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.

94. Notice of increase of share capital or of members:

(1) Where a company having a share capital has resolved to increase its share capital beyond the authorized capital [or such capital is increased under sub-section (3-A) of Section 92] and where a company not having a share capital has resolved to increase the number of its members beyond the number previously registered, it shall file with the registrar, within fifteen days after the passing of the resolution, a notice of the increase of capital or members, is the case may be, and the registrar shall record the increase:

[Provided that where default is made by a company in filing a notice of increase in the authorized capital under sub-section (3-A) of Section 92, the scheduled bank or the financial institution to whom shares have been issued may file notice of such increase with the registrar and such notice shall deemed to have been filed by the company itself and the scheduled bank or financial institution shall be entitled to recover from the company the amount of any fee properly paid by it to the registrar in respect of such increase.]

(2) The notice to be given under sub-section (1) shall include particulars of the shares to be affected and the conditions, if any, subject to which the new shares are to be issued.

(3) If a company makes default in complying with the requirements sub-section (1), it shall be liable to a fine with may extend to one hundred rupees for every day during which the default continues, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.

(4) No resolution referred to in sub-section (1) shall take effect unless the notice required by that sub-section to be filed with the registrar is duly sent to him.

Reduction of Share Capital

96. Reduction of share capital:

(1) Subject to confirmation by the Court, a company limited by shares, if so authorized by its articles, may by special resolution reduce its share capital in any way, and in particular and without prejudice to the

generally of the foregoing powers may–

(i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or'

(iii) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the needs of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under sub-section (1) is in this Ordinance referred to as a resolution for reducing share capital.

Management And Administration

Registered Office, Publication Of Name, Etc.

142. Registered office of company:

(1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return or any other document of a company of the statement as to the address of its registered office shall not be taken to meet the requirements of sub-section (2).

(4) If a company fails to comply with the requirements of sub-section (1) or (2), it shall be liable to a fine which may extend to two hundred

rupees for every day during which such non-compliance continues, and every officer of the company who knowingly and willfully authorises or permits the default shall be liable to the like penalty.

143. Publication of name by a limited company:

Every limited company-

(a) shall paint or affix, and keep painted or affixed its name on the outside of every office or place in which its business is carried on, in a conspicuous position in letters easily legible and in English or Urdu characters, and also, if the registered office is situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place:

(b) shall have its name engraven in legible English or Urdu characters on its seal;

(c) shall have its name mentioned in legible English or Urdu characters in all bill-heads and letter papers and in all documents, notices and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

145. Publication of authorised a well as paid-up capital:

(1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of sub-section (1) and every officer of the company who is knowingly a party to the default shall be liable to a fine which may extend to five thousand rupees.

Commencement of Business by A Public Company

146. Restrictions on commencement of business:

(1) A company shall not commence any business or exercise any borrowing powers unless-

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(b) every director of the company has paid to the company full amount on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash;

(c) no money is or may become liable to be repaid to applicants for any shares of debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange;

(d) there has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate referred to in sub-section (2); and

(e) in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub-section (1) and after making such enquiries as he may deem fit to satisfy himself that all the requirements of this Ordinance have been complied with in respect of the commencement of business and matters precedent and incidental thereto, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that, in the case of a company which has not issued a prospectus inviting the public to subscribe for its shares, the registrar shall

not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every officer and other person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company limited by guarantee and not having a share capital.

230. Books of account to be kept by company:

(1) Every company shall keep at its registered office proper books of account with respect to-

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) all assets of the company;

(d) all liabilities of the company; and

(e) in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other inputs or items of cost as may be prescribed, if such class of companies is required by the Authority by a general or special order to include such particulars in the books of accounts:

Provided that all or any of the books of account aforesaid may be kept at such other place in Pakistan as the directors may decide, and when the directors so decide, the company shall, within seven days of the decision, file with the registrar a notice in writing giving the full address of the other place.

(2) Where a company has a branch office, whether in or outside Pakistan, the company shall be deemed to have complied with the provisions of sub-section (1) if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up to date at intervals of not more than three months are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) For the purposes of sub-section (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or the branch office, as the case may be, and to explain its transactions.

(4) The books of account and other books and papers of every company shall be open to inspection by the directors during business hours.

(5) The directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounts and books or papers of the company or any of them shall be open to the inspection of members, not being directors, and no member, not being a director, shall have any right of inspecting any account and books or papers of the company except as conferred by the Ordinance or authorised by the directors or by the company in general meeting.

(6) The books of account of every company relating to a period of not less than ten years immediately preceding the current year shall be preserved in good order:

Provided that, in the case of a company incorporated less than ten years before the current year, the books of account for the entire period preceding the current year shall be so preserved.

(7) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant, of the company who has knowingly by his act or omission been the cause of such default shall,-

(a) in respect of a listed company, be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees nor more than twenty thousand rupees, and with a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

(b) in respect of any other company, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five thousand rupees.

Explanation:

The term "chief accountant" shall include the chief accountant or any other person, by whatever name called, who is charged with the responsibility of maintenance of books of accounts of the company.

(8) The provisions of this section except those of sub-section (6), shall apply mutatis mutandis to the books of account which a liquidator is required to maintain and keep.

231. Inspection of books of account by registrar, etc:

(1) The books of account and books and papers of every company shall be open to inspection by the registrar or by any officer authorized by the Authority in this behalf if, for reasons to be recorded in writing, the registrar or the authority considers it necessary so to do.

(2) It shall be the duty of every director, officer or other employee of the company to produce to the person making inspection under sub-section (1) all such books of account and books and papers of the company in his custody or under his control, and to furnish him with any such statement, information or explanation relating to the affairs of the company, as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, officer or other employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,-

(i) make or cause to be made copies of books of account and other books and papers, or

(ii) place or cause to be placed by marks of identification thereon in token of the inspection having been made.

(5) Where an inspection of the books of account and books and papers of the company has been made under this section by an officer authorized by the Authority, such officer shall make a report to the Authority.

(6) Any officer authorized to make an inspection under this section shall have all the powers that the registrar has under this Ordinance in relation to the making of inquiries.

232. Default in compliance with provisions of Section 231:

(1) If default is made in complying with the provisions of Section 231, every person who is in default shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees.

(2) Where a director or any other officer of a company has been convicted of any offence under this section, he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and, on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years.

233. Annual accounts and balance-sheet:

(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in annual general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account for the period since the incorporation of the company and in any other case since the preceding

account, made up to a date not earlier than the date of the meeting by more than six months:

Provided that, in the case of a listed company the Authority, and in any other case the registrar, may, for any special reason, extend the period for a term not exceeding three months.

(2) The period to which the accounts aforesaid relate shall not exceed twelve months except where special permission has been granted in that behalf by the registrar.

(3) The balance-sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the company, in the manner hereinafter provided, and the auditor's report shall be attached thereto.

(4) Every company shall send a copy of such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditor's report and the director's report to the registered address of every member of the company at least twenty-one days before the meeting at which it is to be laid before the members of the company, and shall keep a copy at the registered office of the company for the inspection of the members of the company during a period of at least twenty-one days before that meeting.

(5) A listed company shall, simultaneously with the despatch of the balance-sheet and profit and loss account together with the reports referred to in sub-section (4), send five copies each of such balance-sheet and profit and loss account and other documents to the Authority, the stock exchange and the registrar.

(6) The provisions of sub-section (7) of Section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

234. Contents of balance-sheet:

(1) Every balance-sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account or income and expenditure account of a company shall give a true and fair view of the profit and loss of the

company for the financial year so, however, that every item of expenditure fairly chargeable against the year's income shall be brought into account 'and, in case where any item of expenditure which may in fairness be distributed over several years has been incurred in any one financial year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the financial year.

(2) The balance-sheet and profit and loss account or the income and expenditure shall,

(i) in the case of a listed company, comply with the requirements of the Fourth Schedule so far as applicable thereto; and'

(ii) in the case of any other company, comply with the requirements of the Fifth Schedule so far as applicable thereto:

Provided that, except to the extent, otherwise notified in the official Gazette by the Authority, this sub-section shall not apply to an insurance or banking company or to any other class of companies for which the requirements of balance-sheet and profit and loss account are specified in the law regulating such class of companies.

(3) Subject to the provisions of this Ordinance, in the case of a listed company-

(i) such International Accounting Standards and other standards shall be followed in regard to the accounts and preparation of the balance-sheet and profit and loss account as are notified for the purpose in the official Gazette by the Authority;

(ii) a statement of changes in financial position or statement of sources and application of funds shall form part of the balance-sheet and profit and loss account; and

(iii) accounting policies shall be stated and, where there is any change in such policies, the auditor shall report whether he agrees with the change.

Explanation:

"International Accounting Standards" shall be understood in the terms in which it is understood in the accounting circles.

(4) The Federal Government may, of its own motion or upon application by a company, modify, in relation to that company, the requirements of the Fourth Schedule or the Fifth Schedule for the purpose of adapting them to the circumstances of the company.

(5) The Federal Government shall have power from time to time to grant exemption to any company or any class of companies if it is in the public interest so to do, from compliance with all or any of the requirements of the Fourth Schedule or the Fifth Schedule.

(6) The provisions of sub-section (7) of Section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

235. Treatment of surplus arising out of revaluation of fixed assets:

(1) Where a company revalues its fixed assets, the increase in, or sums added by writing up of, the value of such assets as appearing in the books of accounts of the company shall be transferred to an account to be called "Surplus on Revaluation of Fixed 'Assets Account" and shown in the balance-sheet of the company after capital and Reserves.

(2) Except and to the extent actually realized on disposal of the assets which are revalued, the surplus on revaluation of fixed assets shall not be applied to set off or reduce any deficit or loss, whether past, current or future, or in any manner applied, adjusted or treated so as to add to the income, profit or surplus of the company, or utilized directly or indirectly by way of dividend or bonus:

Provided that the surplus on revaluation of fixed assets may be applied by the company in setting off or in diminution of any deficit arising from the revaluation of any other fixed assets of the company.

(3) The requirements of sub-sections (1) and (2) shall also apply to any account representing any increase in or addition to the value of any asset as a result of any revaluation of any fixed assets done before the commencement of this Ordinance, however described; to the extent of the amount thereof appearing in the books of account of the company on such commencement.

(4) After revaluation as aforesaid, depreciation on the assets so revalued shall be provided with reference to the value assigned to such assets on revaluation.

(5) If default is made in complying with any requirements of this section, the directors of the company who are knowingly and willfully in default shall be punishable with fine not exceeding twenty. thousand rupees and shall also be jointly and severally liable to the company for any loss sustained by the company on account of such default.

236. Director's report:

(1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically in the balance-sheet or to a Reserve Fund. General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(2) In the case of a public company or a private company which is a subsidiary of a public company, the directors report shall, in addition to the matters specified in sub-section (1),-

(a) disclose any material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report;

(b) so far as is material for the appreciation of the state of the company's affairs by its members, deal with any changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or in the classes of business in which the company aha interest, whether as a member of another company or otherwise, unless the Authority exempts any company from making such disclosure on the ground that disclosures would be prejudicial to the business of the company;

(c) contain the fullest information and explanation in regard to

any reservation, observation, qualification or adverse remarks contained in the auditor's report;

(d) circulate with it information about the pattern of holding of the shares in the form prescribed; and

(e) state the name and country of incorporation of its holding company, if any, where such holding company is established outside Pakistan.

(3) The report referred to in sub-section (1) shall be signed by the chairman of the directors or the chief executive of the company on behalf of the directors if authorised in that behalf by the directors and, when not so authorized, shall be signed by the chief executive and such number of directors as are required to sign the balance-sheet and profit and loss account under Section 241.

(4) If a company fails to comply with any of the requirements of this section, every director, including the chief executive, of the company who has knowingly by this act or omission been the cause of any default by the company in complying with the requirements of this section shall,-

(a) in respect of a listed company, be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees nor more than twenty thousand rupees, and with a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

(b) in respect of any other company, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five thousand rupees.

237. Balance-sheet of holding company to include certain particulars as to its subsidiaries:

(1) There shall be attached to the balance-sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year at which the holding company's balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be,-

(a) a copy of its balance-sheet;

(b) a copy of its profit and loss account or income and expenditure account, as the case may be;'

(c) a copy of the report of its directors;

(d) a copy of the report of its auditors;

(e) a statement of the holding company's interest in the subsidiary as specified in sub-section (6);

(f) the statement referred to in sub-section (8), if any; and

(g) the report referred to in sub-section (9), if any.

(2) The balance-sheet referred to in clause (a) of sub-section (1) shall be prepared in accordance with the requirements of the Fourth Schedule or the Fifth Schedule, as the case may be,-

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company;

(ii) as at the end of the financial year of the subsidiary last before that of the holding company, where the financial year of the subsidiary does not coincide with that of the holding company.

(3) The profit and loss account or the income and expenditure account and the reports of the directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of this Ordinance, for the financial year of the subsidiary referred to in sub-section (2).

(4) Where the financial year of the subsidiary does not coincide with that of the holding company, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the holding company's financial year ends by more than six months.

(5) Where the financial year of a subsidiary is shorter in duration than that of its holding company, references to the financial year of the subsidiary in sub-section (2), (3) and (4) shall be construed as references

to two or more financial years of the subsidiary the duration of which, in the aggregate is not less than the duration of the holding company's financial year.

(6) The statement referred to in clause (e) of sub-section (1) shall specify-

(a) the extent of the holding company's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary's profits after deducting its losses or vice versa-

(i) for the financial year or years of the subsidiary aforesaid; and'

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or vice versa-

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(7) Clauses (b) and (c) of sub-section (6) shall apply only to the profits and losses of the subsidiary which may properly be treated in the holding company's account as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not, for that or any other purpose, be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in

an appropriate case be so treated where,-

(a) the company is itself the subsidiary of another body corporate; and'

(b) the shares were acquired from that body corporate or its subsidiary;

and, for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day-to-day during the year and be apportioned accordingly.

(8) Where the financial year or years of a subsidiary referred to in sub-section (2) does not or do not coincide with the financial year of the holding company, a statement containing information on the following matters shall also be attached to the balance-sheet of the holding company, namely:-

(a) whether there has been any, and, if so, what, change in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year,

(b) details of any material changes which have occurred, between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of-

(i) the subsidiary's fixed assets;

(ii) the investment:

(iii) the moneys lent by it, and

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(9) If, for any reason, the directors of the holding company are unable to obtain information on any of the matters required to be specified

by sub-section (7), a report in writing to that effect shall be attached to the balance-sheet of the holding company.

(10) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the holding company is required to be signed.

(11) The Authority may, on the application or with the consent of the directors of the company, direct that, in relation to any subsidiary, the provisions of this section shall not apply or shall apply only to such extent as may be specified in the direction.

(12) If a company fails to comply with any requirements of this section, every officer of the company shall be punishable with imprisonment for a term which extend to six months and with fine which may extend to five thousand rupees in respect of each offence unless he shows that he took all reasonable steps for securing compliance by the company with such requirements and that the non-compliance or default on his part was not willful and intentional.

240. Balance-sheet of modaraba company to include modaraba accounts, etc:

(1) There shall be attached to the balance-sheet of a modaraba company, the annual accounts and other reports circulated in pursuance of the provisions of Sec. 14 of the Modaraba Companies and the Modaraba (Floatation and Control) Ordinance, 1980(XXXI of 1980), made out-

(a) as at the end of the financial year of the modaraba where such financial year coincides with the financial year of the modaraba company; and

(b) as at the end of the financial year of the modaraba last before that of the modaraba company, where the financial year of the modaraba company does not coincide with that of the modaraba company.

(2) The provisions of sub-section (12) of Section 237 shall apply to any person who is a party to default in complying with any of the provisions of this section.

241. Authentication of balance-sheet:

(1) Save as provided by sub-section (2), the balance-sheet and profit and loss account or income and expenditure account shall be approved by the directors and shall be signed by the chief executive and at least one director.

(2) Where the chief executive is for the time being not in Pakistan, then the balance-sheet and profit and loss account or income and expenditure account of the company shall be signed by not less than two directors for the time being in Pakistan, but in such a case there shall be subjoined to the balance-sheet and profit and loss account or income and expenditure account a statement signed by such directors explaining the reasons for non-compliance with the provisions of sub-section (1).

(3) If a company makes default in complying with the requirement of this section, the company and every officer of the company who is knowingly and willfully in default shall be liable to a fine not exceeding five thousand rupees.

242. Copy of balance-sheet to be forwarded to the registrar:

(1) Without prejudice to the provisions of sub-section (5) of Section 233, after the balance-sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before the company at the annual general meeting, such number of copies thereof alongwith the reports and documents required to be annexed to the same, not being less than five in the case of a listed company or three in the case of any other company, as may be prescribed, signed by the chief executive, directors, chairman or directors or the auditors of the company, as the case may be, in the manner provided by Sections 236, 241 and 257, shall be filed with the registrar within thirty days from the date of such meeting.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet and profit and loss account or the income and expenditure account or defers consideration thereof or is adjourned, a statement of that fact and of the reasons therefor shall be annexed to the said documents and also to the copies thereof required to be filed with the registrar.

(3) Nothing in this section shall apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who is knowingly and willfully in default shall be liable,-

(a) if the default relates to a listed company, to a fine which may extend to ten thousand rupees and to a further fine which may extend to two hundred rupees for every day after the first during which the default continues; and'

(b) if the default relates to any other company, to a fine which may extend to two thousand rupees and to a further fine which may extend to fifty rupees for every day after the first during which the default continues.

243. Right of member of company to copies of the balance-sheet, etc., and the auditor's report:

Save as otherwise provided in this Ordinance, a member of a company shall be entitled to be furnished with copies of the balance-sheet and the profit and loss account or the income and expenditure account, the director's report and the auditor's report on payment of such sum as the company may fix not exceeding the maximum amount prescribed.

244. Penalty for improper issue, circulation or publication of balance-sheet or profit and loss account:

If any copy of balance-sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account or income and expenditure account, (ii) any accounts, reports, notes or statements referred therein, (iii) the auditor's report, and (iv) the directors report, the company, and every officer of the company who is knowingly and willfully in default shall be punishable with fine which may extend to five thousand rupees.

245. Half-yearly accounts of listed companies:

(1) Every listed company shall,-

(a) within two months of the close of the first half of its year of account, prepare and transmit to the members and the stock

exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of that half-year, whether audited or otherwise; and

(b) simultaneously with the transmission of the half-yearly profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the Authority such number of copies thereof, not being less than five, as may be prescribed.

(2) The provisions of sub-section (1) and (2), of Section 241 shall apply to the half-yearly accounts.

(3) The provisions of sub-section (7) of Section 230 shall apply to any person who is a party to the default in complying with any of the provisions of this section.

246. Power of Authority to require submission of additional statements of accounts and reports:

(1) The Authority may, by general or special order, require companies generally, or any class of companies or any particular company, to prepare and send to the members, the registrar, any authority, a stock exchange and any other person such periodical statements of accounts, information or other reports in such form and manner and within such time, as may be specified in the order.

(2) In the event of a default in complying with the order of the Authority issued under sub-section (1), the company, and every officer of the company who knowingly and willfully authorises or permits the default, shall be liable to a fine which may extend to one thousand rupees for every day during which the default continues.

247. Rights of debenture-holders, etc., as to receipt and inspection of report, etc:

The holders of debentures, including the trustees for holders of debentures, of a company shall have the same right to receive and obtain on payment copies of the balance-sheet and profit and loss accounts or the income and expenditure account of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

Dividends and Manner and Time of Payment thereof

248. Certain restrictions on declaration of dividends:

(1) The company in general meeting may declare dividends; but no dividend shall exceed the amount recommended by the directors.

(2) No dividend shall be declared or paid by a company for any financial year out of the profits of the company made from the sale or disposal of any immovable property or assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.

249. Dividend to be paid only out of profits:

No dividend shall be paid by a company otherwise than out of profits of the company.'

250. Dividend not to be paid except to registered shareholders or to their order or to their bankers:

(1) No dividend shall be paid by a company in respect of any share therein expect to the registered holder of such share or to his order or to his bankers or to a financial institution nominated by him for the purpose.

(2) Nothing contained in sub-section (1) shall be deemed to require the bankers of a registered shareholder or the financial institution nominated by him to make a separate application to the company for payment of the dividend.

(3) The dividend warrants shall be sent by a company by registered post unless the shareholder entitled to receive the dividend requires otherwise in writing.

251. Period for payment of dividend:

(1) When a dividend has been declared, it shall not be lawful for the directors of the company to with-hold or defer its payment and the chief executive of the company shall be responsible to make the payment in the

manner provided in section 250 within forty-five days of the declaration in the case of a listed company and within thirty days in the case of any other company.

Explanation:

Dividend shall be deemed to have been declared on the date of the general meeting in case of a dividend declared or approved in the general meeting and on the date of commencement of closing of closing of share transfer for purposes of determination of entitlement of dividend in the 'case of an interim dividend and where register of members is not closed for such purpose, on the date on which such dividend is approved by the directors.

(2) Where a dividend has been declared by a company but is not paid within the period specified in sub-section (1), the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to one million rupees:

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely-

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;

(c) where there is a dispute regarding the right to receive the dividend;'

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company; and

the Authority has, on an application of the company on the prescribed form made within forty-five days from the date of

declaration of the dividend, and after providing an opportunity to the shareholder or person who may seem to be entitled to receive the dividend of making representation against the proposed action, permitted the company to withhold or defer payment as may be ordered by the Authority.

(3) A chief executive convicted under sub-section (2) shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any other company.

THE QANUN-E-SHAHADAT ORDER, 1984
[President's Order No. 10 of 1984]

The Qanun-e-Shahadat Order, 1984 deals with the law of evidence. This Order replaced the Evidence Act, 1872. Since the work of an assessing officer of income tax and wealth tax is of quasi-judicial nature and depends upon evidence, it is imperative that assessing officers are well aware of the principles of evidence. Before the Qanun-e-Shahadat Order, 1984 it was not necessary for the income tax functionaries to study the technicalities of the Evidence Act, as the superior judiciary had held that the Evidence Act, 1872, was not applicable to income tax proceedings. After the promulgation of the Qanun-e-Shahadat Order, 1984, the work of assessing officers has become more difficult as for the purpose of evidence they have to take into account all those technicalities which are applicable under the new law. Sub-section (2) of Section 1 of the Order reads as under:

"It extends to the whole of Pakistan and applies to all judicial proceedings in or before any court, including a court martial, a Tribunal or other authority exercising judicial or quasi-judicial powers or jurisdiction, but does not apply to proceedings before an arbitrator."

In this hand-book relevant provisions of the Qanun-e-Shahadat Order, 1984, have been put together for the facility of the trainers as well as trainees. Further and more extensive study is, however, strongly recommended as evidence deals with the issue of proof, which is an essential element in the process of judicial decision making.

2(1)(c) "evidence" includes–

(i) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and

(ii) all documents produced for the inspection of the Court; such documents are called documentary evidence;

2(1)(d) "fact" includes-

(i) anything, state of things, or relation of things capable of being perceived by the senses; and

(ii) any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact;

(b) that a man heard or saw something, is a fact;

(c) that a man said certain words, is a fact;

(d) that a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;

(e) that a man has a certain reputation, is a fact.

(2) One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Order relating to the relevance of facts.

(3) The expression "fact in issue" includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation:

Whenever, under the provisions of the law for the time being in force relating to civil procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact is issue.

Illustrations

A is accused of the murder of B;

At his trial the following facts may be in issue;

that A caused B's death;

that A had intended to cause B's death;

that A had received grave sudden provocation from B;

that A, at the time of doing the act which caused B's death, was by reason of unsoundness of mind, incapable of knowing its nature.

4. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

5. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

6. A fact is said not to be proved when it is neither proved nor disproved.

70. Proof of facts by oral evidence:

All facts, except the contents of documents, may be proved by oral evidence.

71. Oral evidence must be direct:

Oral evidence must, in all cases whatever be direct; that is to say:

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who say he heard it;

If it refers to fact which could be perceived by any other sensor in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are

held, may be proved by the production of such treaties if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection:

Provided further that, if a witness is dead or cannot be found or has become incapable of giving evidence, or his attendance cannot be procured without an amount of delay or expense which under the circumstances of the case the Court regards as unreasonable, a party shall have the right to produce shahada ala al-shahadah by which a witness can appoint two witnesses to depose on his behalf, except in the case of Hudood.

72. Proof of contents of documents:

The contents of document may be proved either by primary or by secondary evidence.

73. Primary evidence:

"Primary evidence" means the document itself produced for the inspection of the Court.

Explanation 1:

Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in several parts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2:

Where a number of documents are all made by one uniform process as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustrations

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

74. Secondary evidence:

"Secondary evidence" means and includes:

(1) certified copies given under the provisions hereinafter contained:

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies:

(3) copies made from or compared with the original:

(4) counterparts of documents as against the parties who did not execute them:

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy, compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy, transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

75. Proof of documents by primary evidence:

Documents must be proved by primary evidence except in the cases hereinafter mentioned.

76. Cases in which secondary evidence relating to document may be given:

Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court: or of any person legally bound to produce it; and when, after the notice mentioned in Article 77 such person does not produce it:

(b) When the existence condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative-in-interest:

(c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time:

(d) When, due to the volume or bulk of the original, copies thereof have been made by means of microfilming or other modern devices:

(e) When the original is of such a nature as not to be easily movable:

(f) When the original is a public document within the meaning of Article 85:

(g) When the original is a document of which a certified copy is permitted by this Order, or by any other law in force in Pakistan, to be given in evidence:

(h) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court,

and the fact to be proved is the general result of the whole collection:

(i) When an original document forming part of a judicial record is not available and only a certified copy thereof is available, certified copy of that certified copy shall also be admissible as a secondary evidence.

In case (a), (b), (c),(d) and (e) any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (f) or (g), certified copy of the document but no other kind of secondary evidence, is admissible.

In case (h), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

77. Rules as to notice to produce:

Secondary evidence of the contents of the documents referred to in Article 76, paragraph (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such notice to produce it as is pre scribed by law: and if no notice is prescribed by law then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:

(1) When the document to be proved is itself a notice:

(2) When, from the nature of the case, the adverse party must know that he will be required to produce it:

(3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force:

(4) When the adverse party or his agent has the original in Court:

(5) When the adverse party or his agent has admitted the loss of the document:

(6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

78. Proof of signature and handwriting of person alleged to have signed or written document produced:

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

79. Proof of execution of document required by law to be attested:

If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses of least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

80. Proof where no attesting witness found:

If no such attesting witness can be found, it must be proved that the witnesses have either died, or cannot be found and that the document was executed by the person who purports to have done so.

81. Admission of execution by party to attested document:

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be document required by law to be attested.

82. Proof when attesting witness denies the execution:

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

83. Proof of document not required by law to be attested:

An attested document not required by law to be attested may be proved as if it was unattested.

84. Comparison of signature, writing or seal with others admitted or proved:

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present on Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This article applies also, with any necessary modifications, to finger-impressions.

85. Public documents:

The following documents are public documents:

(1) documents forming the acts or records of the acts:

(i) of the sovereign authority;

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country;

(2) public records kept in Pakistan of private documents;

(3) documents forming part of the records of judicial proceedings;

(4) documents required to be maintained by a public servant under any law; and

(5) registered documents to the execution whereof is not disputed.

86. Private documents:

All other documents are private.

87. Certified copies of public documents:

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees thereof, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation:

Any officer, who by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this Article.

89. Proof of other public documents:

The following public documents may be proved as follows:

(1) Acts, orders or notifications of the federal Government in any of its 'departments, or of any Provincial Government or any department of any Provincial Government by the records of their departments, certified by the heads of those departments respectively, or by order of any such Government':

(2) the proceedings of the legislatures, by the journals of those bodies respectively, or by published Acts or abstracts or by copies purporting to be printed by order of the Government concerned:

(3) the Acts of the Executive or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some Federal Act:

(4) the proceedings of a municipal body in Pakistan, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(5) public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a Pakistan Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

On Proof
Facts which need not be Proved

111. Fact judicially noticeable need not be proved:

No fact of which the Court will take judicial notice need be proved.

112. Facts of which Court must take judicial notice:

(1) The Court shall take judicial notice of the following facts:

(a) All-Pakistan laws;

(b) Articles of War for the Armed forces;

(c) The course of proceeding of the Central Legislature and any legislature established under any law for the time being in force in Pakistan;

(d) The seals of all the Courts in Pakistan and of all Courts out of Pakistan established by the authority of the federal Government or the Government representative, the seals of

Court of Admiralty and Maritime jurisdiction and of Notaries Public and all seals which any person is authorized to use by any Act or Regulation having the force of law in Pakistan

(e) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in Pakistan, if the fact of their appointment to such office is notified in the official Gazette;

(f) The existence, title and national flag of every State or Sovereign recognized by the federal Government;

(g) The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the official Gazette;

(h) The territories under the dominion of Pakistan;

(i) The commencement, continuance and termination of hostilities between Pakistan any other State or body of persons;

(j) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or act before it;

(k) The rule of the road on land or at sea.

(2) In all cases referred to in clause (1), and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

(3) if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

113. Facts admitted need not be proved:

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the

hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

117. Burden of Proof:

(1) Whoever desires any Court to give judgement as to any legal right or liability depend on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgement that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgement that the is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

119. Burden of Proof as to particular fact:

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular persons.

122. Burden of Proving fact especially within knowledge:

When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

125. Burden of Proof of as to relationship in the Cases of partners, landlord and tenant, principal and agent:

When the question is whether persons or partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.

129. Court may presume existence of certain facts:

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

164. Production of evidence that has become available because of modern devices, etc:

In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devises or techniques.

THE REGISTRATION ACT, 1908
[Act XVI of 1908]

Of Registerable Documents

The Registration Act, 1908, deals with the registration of documents. For the purposes of revenue, the assessing officers need to know which documents are required to be registered. Knowledge of the place of registration, especially of land, is also important for the purpose of levy and monitoring of Capital Value Tax. The time of registration, the effect of registration and the consequences of non-registration must also be known for the purposes of ascertaining as to in which period (relevant to some particular assessment year) a particular asset or investment is to be assessed in the hands of an assessee for the purposes of wealth tax and income tax.

17. Documents of which registration is compulsory:

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Registration Act, 1866, or the Registration Act, 1871 of the Registration Act, 1877, or this Act came or comes into force, namely:-

(a) Instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in

present or in future, any right, title or interest, whether vested or contingent immovable property;

18. Documents of which registration is optional:

Any document not required to be registered under Sec. 17 may also be registered under this Act.

Of the effects of Registration and Non-registration

47. Time from which registered document operates:

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. Registered documents relating to property when to take effect against oral agreements:

All non-testamentary documents duly registered under this act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or 'declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title-deeds as defined in Section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.

49. Effect of non-Registration of documents required to be registered:

No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall-

(a) operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property, or

(b) confer any power to adopt,

unless it has been registered.

50. Certain registered documents relating to land to take effect against unregistered documents:

(1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of Section 17, sub-section (1) and every document Registerable under Section 18, in so far as such document effects immovable property or acknowledges the receipt or payment of any consideration in respect of any transaction relating to immovable property shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not:

Provided that the person in possession of the property under an unregistered document prior in date, would be entitled to the rights under Section 53-A of the Transfer of Property Act, 1882 (IV of 1882), if the conditions of that section are fulfilled:

Provided further that the person in whose favour an unregistered document is executed shall be entitled to enforce the contract under the unregistered document in a suit for specific performance against a person claiming under a subsequent registered document, subject to the provisions of clause (b) of Section 27 of the Specific Relief Act, 1877 (I of 1877).

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17, or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation:

In cases where Act, XVI of 1866, or the Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, "unregistered"

means not registered according to such Act, and where the document is executed after the first day of July, 1871, not registered under the registration Act, 1871, or the Registration Act, 1877, or this Act.

THE CODE OF CIVIL PROCEDURE
[Act V of 1908]

Order V

Issue and Service of Summons

Issue of Summons

The Code of Civil Procedure is an Act which deals with the procedure of the Courts of Civil Judicature. Although strictly speaking the Deputy Commissioner of Income Tax is not a court, however, as the income tax proceedings are quasi-judicial proceedings and in certain circumstances it may not be possible for the assessing officer to discharge his duties in an effective manner, some of the powers vested in a Civil Court have been delegated to the Income Tax Authorities as well.

In this hand-book relevant provisions of C.P.C. which can help income tax functionaries to discharge their duties while vested with the powers of a court, have been put together.

1. Summons:

(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiffs' claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Copy of statement annexed to summons:

Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

3. Court may order defendant or plaintiff to appear in person:

(1) Where the Court sees reason to require the personal appearance of the 'defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reasons to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless residence within certain limits:

No party shall be ordered to appear in person unless he resides-

(a) within the local limits of the Court's ordinary original jurisdiction, or'

(b) without such limits but at a place less than fifty or (where there is railway or steamer, communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

5. Summons to be either to settle issues or for final disposal:

The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. Fixing day for appearance of defendant:

The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. Summons to order defendant to produce documents relied on by him:

The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses:

Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whom evidence he intends to rely in support of his case.

9. Delivery or transmission of summons for service:

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons, shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Mode of service:

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

10-A. Service by post:

(1) Simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, to the defendant, by registered post, acknowledgement due, another copy of the summons signed and sealed in the manner provided in rule 10.

(2) An acknowledgement purporting to be signed by the defendant of the receipt of the registered communication or an endorsement by a postal employee that the defendant refused to take delivery of the same shall be deemed by the Court issuing the summons to be prima facie proof of service of summons.

11. Service on several defendants:

Save as otherwise prescribed, where there are more defendants than one, service of the summon shall be made on each defendant.

12. Service to be on defendant in person when practicable or on his agent:

Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. Service on agent by whom defendant carries on business:

(1) in a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

19. Examination of serving officer:

Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer and may, if it has been so verified, examine the serving officer, on oath, or cause him to be so examined by another Court,

touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. Substituted service:

(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(2) Effect of substituted service: Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed: Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

21. Service of summons where defendant resides within jurisdiction of another Court:

A summons may be sent by the Court by which it is issued, whether within or without the Province, either by one of its officers or post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

23. Duty of Court to which summons is sent:

The Court to which a summons is sent under rule 21 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison:

Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the office incharge of the prison for service on the defendant.

25. Service where defendant resides out of Pakistan, etc. and has no agent:

Where the defendant resides out of Pakistan and has no agent in Pakistan empowered to accept service, the summons shall except in the cases mentioned in rule 26-A be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Order XIII

Production, Impounding And Return Of Documents

1. Documentary evidence to be produced at first hearing:

(1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. Effect of non-production of documents:

No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule I shall be received at any subsequent stage on the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

3. Rejection of irrelevant or inadmissible documents:

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4. Endorsements on documents admitted in evidence:

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. Endorsements on copies of admitted entires in books, accounts and records:

(1) Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-

(a) where the record, book or account is produced on behalf of a party, then by that party, or'

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Endorsement son documents rejected as inadmissible in evidence:

Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7. Recording of admitted and return of rejected documents:

(1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Court may order any document to be impounded:

Notwithstanding anything contained in rule 5 or rule 7 of this Order or in the rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of any officer of the Court, for such period and subject to such conditions as the Court thinks fit.

9. Return of admitted documents:

(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rue 8, be entitled to receive back the same,-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefore delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

10. Court may send for papers from its own records or from other Courts:

(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, sent for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court other wise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

11. Provisions as to documents applied to material objects:

The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Order XVI
Summoning And Attendance Of Witnesses

1. Summons to attend to give evidence or produce documents:

(1) Not later than seven days after the settlement of issues, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents.

(2) A party shall not be permitted to call witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list; and if the Court grants such permission, it shall record reasons for so doing.

(3) On application to the Court or such Officer as it appoints in this behalf, the parties may obtain summons for persons whose attendance is required in Court::

Provided that no summons shall be issued for service on a person under rule 8 unless an application in that behalf is made not later than fourteen days prior to the date fixed for the hearing of the suit and the necessary expenses for the summoning of such person are deposited.

2. Expenses of witness to be paid into Court on applying for summons:

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts: In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses: Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. Tender of expenses to witness:

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. Procedure where insufficient sum paid in:

(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and in case of default in payment may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned, 'without requiring him to give evidence;; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witnesses detained more than one day: Where it is necessary to detain the person summoned for a longer period than one day, the Court may from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for further period and in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Time, place and purpose of attendance to be specified in summons:

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall described in the summons with reasonable accuracy.

6. Summons to produce document:

Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Power to require persons present in Court to give evidence or produce document:

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

7-A. Service of summons by parties:

(1) Except where it appears to the Court that a summons under this Order should be served by the Court in the same manner as a summons to a defendant, the Court shall make over for service all summons under this Order to the party applying therefore.

(2) The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

(3) Rules 16 and 18 of Order V shall apply to summons personally served under this rule, as though the person effecting service were serving officer.

8. Service of summons by Court:

Every summons under this Order, not being a summons made over to a party for service under rule 7-A of this Order, shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply thereto.

9. Time for serving summons:

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned,

to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure where witness fails to comply with summons:

(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-office on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12.

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

11. If witness appears, attachment may be withdrawn:

Where, at any time after the attachment of his property, such person appears and satisfies the Court,-

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had

no notice of such proclamation in time to attend, the Court shall direct that the property be released from attachment and shall make such order as to the costs of the attachment as it thinks fit.

12. Procedure if witness fails to appear:

The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the cost and fine aforesaid, the Court shall order the property to be released from attachment.

13. Mode of attachment:

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were judgement-debtor.

14. Court may of its own accord summons as witnesses strangers to suit:

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. Duty of persons summoned to give evidence or produce document:

Subject as last aforesaid, whoever is summoned to appear and given evidence in a suit shall attend at the time and place named in the

summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16. When they may depart:

(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment, through the Court of the necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. Application of rules 10 to 13:

The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Procedure where witness apprehended cannot give evidence or produce documents:

Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him and in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No witness to be ordered to attend in person unless resident within certain limits:

A person shall not be asked by a Court to attend in person to give evidence unless he resides at any place in Pakistan.

20. Consequence of refusal of party to give evidence when called on by Court:

Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any

document then and there in his possession or power, the Court may pronounce judgement against him or make such order in relation to the suit as it thinks fit.

21. Rules as to witnesses to apply to parties summoned:

Where any party to a suit is required to give evidence or to produce a document the provisions as to witnesses shall apply to him so far as they are applicable.

Order XVIII
Hearing of the Suit and Examination of Witnesses

1. Right to begin:

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2. Statement and production of evidence:

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

3. Evidence Where Several issues:

Where there are several issues, he burden of proving some of which lies on the other party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

4. Witnesses to be examined in open Court:

The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

5. How evidence shall be taken in appealable cases:

In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

6. When deposition to be interpreted:

Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

7. Evidence under Sec. 138:

Evidence taken down under Sec. 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. Memorandum when evidence not taken down by Judge:

Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

9. When evidence may be taken in English:

Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by

pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

10. Any particular question and answer may be taken down:

The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

11. Question objected to and allowed by Court:

Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

12. Remarks on demeanour of witnesses:

The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

13. Memorandum of evidence in unappealable cases:

In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

14. Judge unable to make such memorandum to record reasons of his inability:

(1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

15. Power to deal with evidence taken before another Judge:

(1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

16. Power to examine witness immediately:

(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

17. Court may recall and examine witness:

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

18. Power of Court to inspect:

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

Order XIX
Affidavits

1. Power to order any point to be proved by affidavit:

(1) Any Court may at any time for sufficient reason order that any particular fact 'or facts may be provide by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bonafide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. Power to order attendance of deponent for cross-examination:

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

3. Matters of which affidavits shall be confined:

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matter of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

Order XXVI
Commissions

Commissions to Examine Witnesses

1. Cases in which Court may issue commission to examine witness:

Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. Order for commission:

An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. Where witness resides within court's jurisdiction:

A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

4. Persons for whose examination commission may issue:

(1) Any Court may in any suit issue a commission for the examination of-

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any person in the service of the State who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or

to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Commission or request to examine witness not within Pakistan, etc.:

Where any Court to which application is made for the issue of commission for the examination of a person residing at any place not within Pakistan is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to commission:

Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with depositions of witness:

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

8. When deposition may be read in evidence:

Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless-

(a) the person who give the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the State who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

15. Expenses of Commissions to be paid into Court:

Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

16. Powers of Commissioners:

Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,-

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonably time enter upon or into any land or building mentioned in the order.

17. Attendance and examination of witnesses before Commissioner:

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of Pakistan and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue such process as it considers reasonable and proper.

18. Parties to appear before Commissioner:

(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do no so appear, the Commissioner may proceed in their absence.

THE LIMITATION ACT, 1908
[Act IX of 1908]

The Limitation Act lays down the principles of limitation for certain legal actions. The objective of the law of limitation is to regulate and fix time limits for moving courts for relief or remedy where substantive rights are sought to be enforced. The restriction of time is an outcome of public policy as the idea is that stale claims should be extinguished.

The Income Tax Ordinance, 1979 and Wealth Tax Act, 1963 are self contained in so far as limitation for various purposes is concerned and normally it is not necessary to refer to the Limitation Act. However, assessing officers must acquire a broader and general legal sense with regard to the principles of limitation as these have significant implications for the revenue and the assessees in terms of extinction of rights and liabilities as also imposition of penalties.

5. Extension of period in certain cases:

Any appeal or appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation:

The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining

or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

6. Legal disability:

(1) Where a person entitled to institute a suit or proceeding or make an application for the execution of a decree is at the time from which the period of limitation is to be reckoned, a minor, or insane or an idiot, he may institute the suit or proceeding or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the First Schedule or in Section 48 of the Code of Civil Procedure, 1908 (Act V of 1908).

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within 'the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules, contained in sub-section (1) and (2) shall apply.

7. Disability of one of several plaintiffs or applicants:

Where on of several persons jointly entitled to institute a suit or proceeding or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, - time will run against them all: but, where no such discharge can be given, - time will not rune as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

8. Special exceptions:

Nothing in Section 6 or in Section 7 applies to suits to enforce

rights of pre-emption, or shall be deemed to extend, for more than three years from the session of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

9. Continuous running of time:

Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where Letters of Administration to the estate of a creditor, have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Suits against express trustees and their representatives:

Notwithstanding anything herein before contained, no suit against a person in whom property has become visited in trust for any specific purpose, or against his legal vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

Computation of Period of Limitation

12. Exclusion of time in legal proceedings:

(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In commuting the period of limitation prescribed for an appeal, and application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced,

and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period to limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. Exclusion of time of defendant's absence from Pakistan and certain other territories:

In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from Pakistan and from the territories beyond Pakistan under the administration of the Federal Government shall be excluded.

14. Exclusion of time of proceeding bona fide in Court without jurisdiction:

(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceedings, whether in a Court of the first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or there cause of like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I:

In excluding the time during which a former suit or application was pending, the day on which that suit or

application was instituted or made, and the day on which the proceedings there in ended, shall both be counted.

Explanation II:

For the purpose of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III:

For the purposes of the section misjoinder of parties or of causes of action shall be deemed to be cause of a like nature with defect of jurisdiction.

15. Exclusion of time during which proceedings are suspended:

(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction of order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall excluded.

16. Exclusion of time during which proceedings to set aside execution sale are pending:

In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

17. Effect of death before right to sue accrues:

Where a person, who would, if he were living have a right to institute a suit or make an application, dies before the right accrues, the period of limitation, shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrued, the period of limitation shall computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office'

18. Effect of fraud:

Where any person having a right to institute a suit or make an application has, by means of fraud been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application'

(a) against the person guilty of the fraud or accessory thereto, or'

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of concealed, when he first had the means of producing it or compelling its production.

19. Effect of acknowledgment in writing:

(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Evidence Act,1872 oral evidence of its contents shall not be received.'

Explanation I:

For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II:

For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation III:

For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. Effect of payment on account of debt or of interest on legacy:

(1) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorized agent, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

(2) Effect of receipt of produce of mortgaged land: Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment or the purpose of sub-section (1).

Explanation:

Debt includes money payable under a decree or order of Court.

21. Agent of person under disability:

(1) The expression " agent duly authorized in his behalf", in Sections 19 and 20, shall, in the case of a person under disability, include his lawful

guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Acknowledgment or payment by one of several joint contractors, etc.: Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections-

(a) an acknowledgment signed, or a payment made, in respect of any liability by, or by the duly authorized agent or, any widow or other limited owner of property who is governed by the Hindu Law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and'

(b) Where a liability has been incurred by, or on behalf of, a Hindu undivided family a such, an acknowledgment or payment made by, or by the duly authorized agent or, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

22. Effect of substituting or adding new plaintiff or defendant:

(1) Where, after the institution of a suit, a new plaintiff of defendant is substituted or added, the suit shall as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or deviation of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

THE LAND REVENUE ACT, 1967
[Act XVII of 1967]

For the purposes of this course records of rights and documents included therein, and related sections, are of importance, for ascertaining ownership and determining valuation of land. It may be interesting to note that the provisions of recovery of tax through Tax Recovery Officer under Section 93 of the Income Tax Ordinance, 1979 are the same as are available in the Land Revenue Act for the recovery of Land Revenue. Moreover, many a time the assessees come with the plea that they have obtained a gift or loan from some land owner and in order to check the veracity of such claims, assessing officers should be able to read and understand the documents relating to ownership of agricultural land and indicating yield therefrom.

39. Records-of-rights and documents included therein:

(1) Save as otherwise provided by this chapter, there shall be a record-of-rights for each estate.

(2) The record-of-rights for an estate shall include the following documents, namely:-

(a) statements showing, so far as may be practicable;

(i) the persons who are land-owners tenants, or who are entitled to receive any of the rents, profits and produce of the estate or to occupy land therein;

(ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto; and'

(iii) the rent, land-revenue, rates, cesses or other payments, due from and to each of those persons and to Government;

(b) a statement of customs respecting rights and liabilities in estate;

(c) a map of the estate; and'

(d) such other documents as the Board of Revenue may, with the previous approval of Government, prescribe.

40. Making of special revision of record-of-rights:

(1) When it appears to the Board of Revenue that a record-of-rights for an estate does not exist, or that the existing record-of-rights for an estate requires special revision, the Board of Revenue may, by notification, direct that a record-of-rights be made, or that record-of-rights be specially revised, as the case may be.

(2) A notification under subsection (1) may direct that record-of-rights shall be made or specially revised fro all or any of the estates in any local area.

(3) A record-of-rights made or specially revised for an estate under this section shall be deemed to be the record-of-rights for that estate, but shall not affect any presumption in favour of Government which has already arisen from any previous record-of-rights.

41. Periodical records:

The Collector shall cause to be prepared by the Patwari of each estate periodically as the Board of Revenue may direct, and edition of any record-of-rights amended in accordance with the provisions of this Chapter.

(2) Such edition of the record-of-rights shall be called the periodical record for the estate, and shall comprise the statements mentioned in clause (a) of subsection (2) of section 39, and such other documents, if any, as may be prescribed.

(3) For the preparation of periodical records, the Collector shall cause to be maintained by the Patwari of each estate a register of mutations in the prescribed form and other prescribed registers, if any.

42. Making of that part of periodical records which relates to land-owners:

(1) Any person acquiring by inheritance, purchase, mortgage, gift or otherwise, any right in an estate as a land-owner, or a tenant for a fixed

term exceeding one year, shall, within three months from the date such acquisition, report his acquisition of rights to the Patwari of the estate, who shall-

(a) record such report in the Roznamcha to be maintained in the prescribed manner;

(b) furnish a copy of the report so recorded, free of scot, to the person making the report; and'

(c) send a copy of report, within a week of its receipt by him, to Union Committee, Town Committee or Union Council within which the estate is situated.

(2) If the person acquiring the right is a minor, or is otherwise unable to report, his guardian or other person having charge of his property shall make the report to the Patwari.

(3) The Patwari shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2), and shall also make an entry in the Roznamcha and in the register of mutations respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which report should have been made to him under either of those sub-sections and has not been so made.

(4) The report made to the Patwari under sub-section (1) or sub-section (2) or recorded by him under sub-section (3) shall be displayed in such manner as may be prescribed.

(5) If the Patwari fails to record or to display a report made to him under sub-section (1) or sub-section (2), the person making the report may make the report in writing, to the Revenue Officer concerned and the Chairman of the Union Committee, Town Committee or Union Council in which the estate is situated, by registered post acknowledgment due and the Revenue Officer shall thereupon cause such report to be entered in the register of mutations.

(6) A Revenue Officer shall, from time to time, inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which under the foregoing sub-sections, report should have been made to the Patwari and entries made in that register, and shall in each case make such order as he thinks fit with respect to any entry in the periodical record of the right acquired.

(7) Except in cases of inheritance or where the acquisition of the right is by a registered deed or by or under an order or decree of a Court, the Revenue Officer shall make the order under sub-section (6) in the presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lambardars or members of the Union Committee, Town Committee or Union Council concerned whose signatures or thumb-impressions shall be obtained by the Revenue Officer, on the register of mutation.

(8) An enquiry or an order under sub-section (6) shall be made in the common assembly in the estate to which the mutation, which is the subject-matter of the enquiry relates.

(9) Where a Revenue Officer makes an order under sub-section (6) in regard to the acquisition of any right, an entry shall be make in the periodical record by the insertion therein of a description of the right acquired and by the omission from such record of any entry in any record previously prepared, which, by reason of the acquisition, has ceased to be correct.

(10) If Within three months of the making of a report of the acquisition of a right under sub-section (1) or sub-section (2), or the recording by the Patwari of an entry in the Roznamcha under sub-section (3) respecting the acquisition of any right, no order is make by the Revenue Officer under sub-section (6), he shall report the cause of delay to the Collector in the prescribed manner.

(11) The Revenue Officer shall in the prescribed manner, send or cause to be sent, the gist of an order made by him under sub-section (6) to the person whose right is acquired, and also to the Union Committee, Town Committee or Union Council in which the estate is situated.

52. Presumption in favour of entries in records-of-rights and periodical record:

An entry made in a record-of-rights in accordance with the law for the time being in force, or in a periodical record in accordance with the provisions of this Chapter and the rules made thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore.

THE PAKISTAN PENAL CODE 1860
[Act XLV of 1860]

Offences Relating the Public Servants

The general criminal law has been codified in the Penal Code and the Criminal Procedure Code. The former code lays down substantive law and the latter code adjective law. The P.P.C. deals specifically with offenses and states what matters will constitute offenses and what excuses or defences thereto. It also specifies what punishment will be awarded for various offenses and the effect of specific circumstances on the award of punishment.

In income tax proceedings the P.P.C. is applicable in a very limited sense; income tax proceedings are treated as judicial proceedings within the meaning of Sections 193, 196 and 228 of the said Code. An effort has been made in this hand-book to familiarize the trainers as well as trainees with regard to offenses relating to public servants and false evidence and offenses against public servants so as to enable the income tax functionaries to perform their official duties in an effective manner.

161. Public servant taking gratification other than legal remuneration in respect to an official act:

Whoever, being or expecting to be a public servant, assets or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the

Federal, or any Provincial Government or Legislature or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Explanation:

"**Expecting to be a public servant**": If a person not expecting to be office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"**Gratification**": The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration": The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the authority by which he is employed, to accept.

"A motive or reward for doing": A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has done, comes within these words.

"Public servant": In this section and in Sections 162, 163, 164, 165, 166, 167, 168, 169, and 409, "public servant" includes an employee of any corporation or other body or organization set up, controlled or administered by, or under the authority of, the Federal Government.

162. Taking gratification, in order by corrupt or illegal means to influence public servant:

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any

service or disservice to any person with the Federal or any Provincial Government of Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163. Taking gratification, for exercise of personal influence with public servant:

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Federal or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

164. Punishment for abetment by public servant of offences defined in Section 162 or 163:

Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

165. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant:

Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

> from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

165-A. Punishment for abetment of offences defined in Sections 161 & 165:

Whoever abets any offence punishable under Section 161 or Section 165 shall, whether the offence abetted is or is not committed in consequence of the abetment, be punished with the punishment provided for the offence.

165-B. Certain abettors excepted:

A person shall be deemed not to abet an offence punishable under Section 161 or Section 165 if he is induced, compelled, coerced, or intimidated to offer or give any such gratification as is referred to in Section 161 for any of the purposes mentioned therein, or any valuable tiling without consideration, or for an inadequate consideration, to any such public servant as is referred to in Section 165.

166. Public servant disobeying law, with intent to cause injury to any parson:

Whoever being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

167. Public servant framing an incorrect document with intent to cause injury:

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be

likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or both.

168. Public servant unlawfully engaging in trade:

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Public servant unlawfully buying or bidding for property:

Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with other, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

170. Personating a public servant:

Whoever, pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

171. Wearing garb or carrying token used by public servant with fraudulent intent:

Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months, or which may extend to two hundred rupees, or with both.

False Evidence and Offences against Public Servants

191. Giving false evidence:

Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1:

A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2:

A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

192. Fabricating false evidence:

Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence.

193. Punishment for false evidence:

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1:

A trial before a Court-martial is a judicial proceeding.

Explanation 2:

An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

[Omitted by the Federal Laws (Revision and Declaration) Ordinance, XXVII of 1981].

Explanation 3:

An investigation directed by a Court of Justice according to law, and conducted under the authority of Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence:

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted on an offence which is capital by any law for the time being in force, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed:

and if an innocent person be convicted and executed in consequence of such false evidence the person who gives such

false evidence shall be punished either with death or the punishment herein before described.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life of for a term of seven years or upwards:

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will hereby cause any person to be convicted of an offence which by any law for the time being in force is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

196. Using evidence known to be false:

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Issuing or signing false certificate:

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false:

Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. False statement made in declaration which is by law receivable as evidence:

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for

which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false:

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gone false evidence.

Explanation:

A declaration which is in admissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 & 200.

228. Intentional Insult or Interruption to public servants sitting in Judicial proceeding:

Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceedings, shall be punished with simple imprisonment for a term which may entered to six months, or with five which may entered to one thousand rupees, or with both.