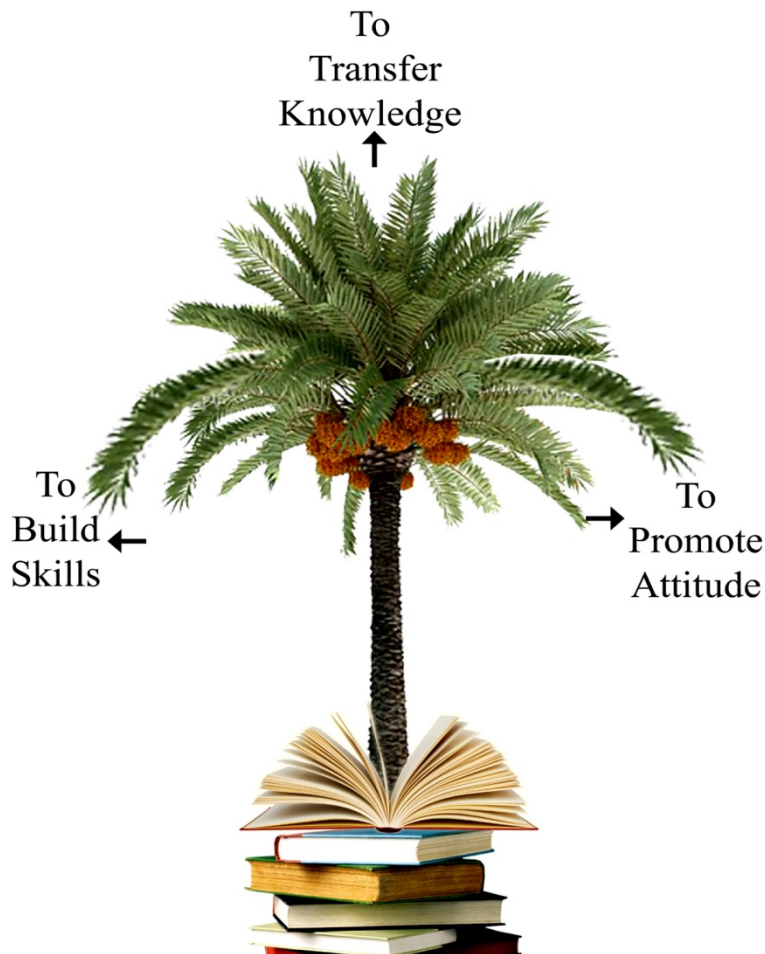




Training Manual for Probationers Civil Judges-cum- Judicial Magistrates/*Illaq*a Qazis



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By the Khyber Pakhtunkhwa Judicial Academy

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INTRODUCTION

Aims and Objectives

The tier of civil judges is nucleus of the District Judiciary and, therefore, they need extensive training more than any one else. Pre-service training for probationers judicial officers has been prescribed under rule 9 (4) of the Khyber pakhtunkhwa Judicial Service Rules, 2001. Under its statute, the KPJA has a mandate to impart:

“Training to the judicial officers and personnel concerned with the system of administration of justice with a view to develop their capacity, professional competence and ethical standard for efficient dispensation of justice”.

The mandate sets out three goals for judicial training: capacity building, professional competence, and ethical standard. Civil judges/ Judicial Magistrates/ Illaqa Qazis appointed on initial recruitment have at least two years of legal practice at the bar. It is presumed that they have a good deal of knowledge of the application of legal concepts, substantive and procedural laws, and strong communication skills. While pursuing the statutory goals aforesaid, the Academy focused on transforming their role from persuaders (*legal practitioners*) to evaluators (*judicial officers*).

Efficient and effective performance of judicial duties requires certain judicial skills in the areas of case and court management, financial management, judicial decision making, and judicial opinion writing.

Following are the specific training objectives:

- To deepen the trainees’ knowledge of jurisprudence and principles of natural justice;
- To help the trainees develop judicial temperament reflecting judicial ethical values;
- To enable the trainees apply substantive and procedural laws properly;
- To inculcate in the trainees judicial decision making and opinion writing skills; and
- To impart skills for efficient and effective communication.

How to use this manual?

This manual may be read as a basic course material for pre-service training of Civil Judges/Judicial Magistrates/*Illaqa Qazis*. Both the trainers and the trainees may use this manual. The relevant modules carry basic and necessary contents. This will not preclude the trainers to include any remaining material in their lectures/presentations if they consider it appropriate. To maintain sequence of the topics and subtopics of a module is directory in

nature, it may be changed during delivery of lectures as per demand of the situation and circumstances.

Approach of the manual

The approach of this manual is academic and practical as well as, exploring, analytical and critical. While newly appointed Civil Judges/Judicial Magistrates/*Illaq Qazis* because of their practice at bar have good theoretical and practical knowledge of substantive and procedural laws, the manual aims at preparing them for efficient and effective performance of their duties. The manual contains research activities, case studies and group discussion in order to inculcate in them a spirit of analytical and critical approach. Of course, the Academy will not teach them the statutes and legal philosophy. It may be done as a secondary requirement; its prime job is, nonetheless, to equip them with the practical knowledge of skills required for judicial performance.

Overview of the manual

The manual presently contains 30 modules, which are to be taught along with other manuals on case & court management, substantive & procedural laws, human rights in the administration of justice. Special Module has been included on English language. To actualize the recent decision of august Supreme Court of Pakistan reported as **PLD 2015 SC 1210** the Academy intends to include a separate comprehensive module on Urdu language. Besides, key modules on research, jurisprudence, evidence, interpretation of statutes, penal laws, revenue laws, personal law and judicial ethics also form part of the manual.

TRAINING METHODOLOGY

The training methodology is comprised of four areas:

1. DELIVERY

- a) **Lectures:** Lectures are the principle mode of a training program. They are designed to be highly informative, communicative, well-calculated and interactive in the sense to ensure greater participation of the trainees.
- b) **Extension Lectures:** In order to broaden the intellectual level of the trainees, the Academy arranges special lectures. These lectures are delivered by persons of high profile, invited from across the country.
- c) **Research Skills:** The trainees are imparted research skills, on which a separate module has been prepared. The research is in the nature of group work (syndicate). Each member of a group is required to conduct research on an assigned topic. Small exercises on comparatively smaller topics are also arranged. Each module contains separate syndicate research topics. The Academy shall arrange a coordinator to help the trainees write research papers and learn how to publish it.
- d) **Language and Linguistic Skills:** Problems are often created due to communication gap. To meet the need, experts on the subject are invited to deliver lectures. Practical exercises are conducted. Modern techniques and gadgets are used. The area of official correspondence is also focused. Keeping in view the needs of *Qazi Courts* in PATA and Kohistan District of Hazara Division, special classes of understanding and communication of Arabic language are arranged. Proficiency in Arabic and English languages would also help the trainees properly interpret and construe the legal provisions of Islamic Law and Jurisprudence.

2. PARTICIPATION

- a) **Presentations:** Trainees are divided into various groups. Each member of the group is required to make an analytical and critical presentation of the lectures delivered or talk shared on each passed day. They are also required to prepare presentations on the assigned topics. To enhance their capability of addressing gatherings and to eliminate the element of hesitancy, all presentations must be on power point and in English language. Presentational performance plays an important role in evaluation of trainees.
- b) **Study Circles and Panel Discussions:** Study circles are arranged to develop the habit of text reading and to make the trainees aware of significance of collective study. In panel discussions, the trainees are provided with an opportunity to academically interact with a group of experts through a Q&A sessions. These activities would help trainees to

understand the causes of diversity in opinions, the significance of concurrence, the valuation of an argument and proper method of drawing an inference.

3. CONDUCT

- a) **Attendance and Punctuality:** Presence in all lectures, classes and participation in each activity is compulsory. Leave is allowed in unavoidable circumstances. Residence in the specified hostel/hotel is necessary. Attendance must be in-time. Biometric devices have been installed for this purpose. Trainees are required to be present in classroom on time, nevertheless, a concession of 05 minutes is granted whereafter they are marked absent despite confirmation of their participation by CCTV footage. In case of non-compliance, penalties will be in shape of negative marking, deduction of leave account, and others as may be deemed fit by a disciplinary committee.
- a) **Code of Conduct:** The Academy, as a compulsory subject of its training, arranges classes for judicial conduct, etiquettes and mannerism. The conduct of trainees is ordinarily regulated by the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987. However, the job requirement of the judicial officers warrants special behaviour in the judges which demand for possession of the highest quality of intellect and character. Therefore, they have to follow the code of conduct for judicial officers of KP District Judiciary as provided by Peshawar High Court vide circular # 10367-10390/admn: dated 25.11.2005. In case of non-adherence, the Academy may refer the matter to the Competent Authority.
- b) **Dress Code:** Both male and female trainees shall follow the relevant instructions of the Peshawar High Court vide circular# U-86-II dated 28.04.2004.

4. CO-CURRICULAR

- a) **Mock Trials:** During the training, mock trials are conducted, for which case-files of various natures are requisitioned from Record Room/ *muhafizkhana*. This exercise would help trainees write order-sheets, short orders, summons, warrants, judgments, evidence, presenting a case, fixing date of proceedings and the like.
- b) **Attachments:** Probationers are to undergo attachments with related sectors such as District Judiciary, Revenue and Police.
- c) **Tours and visits:** Purpose-based inland tours and visits are essential part of the training program. Such tours are arranged, so that trainees should be able to develop an orientation with key public institutions, for example, higher courts, legislative bodies, and judicial and other training academies. Probationers are divided into groups. Each group is required to write a report followed by a presentation.

TRAINING EVALUATION

1. The Academy shall employ quantitative model of training evaluation, designed by it in collaboration with the UNDP. The methodology has been devised to assess the training activity. The model contains 04 levels of evaluation as shown in the table below:

Levels of Evaluation	Variables or Factors that count the concepts quantitatively
<u>I</u> Reaction to Process/Training	VR1: Expectations from the training courses
	VR2: Attributes of training course
	VR3: Training course content
	VR4: Environmental/Technical Conditions
	VR5: Trainer's Response
<u>II</u> Learning (Outcome Based Learning)	VR6: Knowledge
<u>III</u> Job Behaviour (After every 6 months)	VR7: Job Involvement
	VR8: Organizational Commitment
	VR9: Job Satisfaction
<u>IV</u> Results Job Performance (Annually)	VR10: Integrity
	VR11: Knowledge
	VR12: Communication
	VR13: Preparation, attentiveness and control over proceedings
	VR14: Management Skills
	VR15: Service to the profession and public

VR16: Collegiality

A co-relation is drawn between the efficacy of the training and the desired results through Spersman co-relation formula, for which purpose statistical software is employed. Although for weighing VR6 and VR11 the academy has designed a software in C-sharp called activity management system (AMS).

1. Pre-service Probationer Civil Judges cum Judicial Magistrate/*Illaqa Qazis* shall further be assessed objectively in presentations, mannerism & etiquettes, class participation, dress code, mock trial participation, punctuality and judgment writing skills. The breakup of the maximum score (100) is as under

S#	Activity	Max Score
1.	AMS Evaluation of Learning	10
2.	Research Skills	04
3.	Mannerism & Etiquettes	10
4.	Class participation	10
5.	Dress Code	05
6.	Mock trial participation	06
7.	Punctuality	10
8.	Judgment writing, interpretation skills and appreciation of evidence/ <i>Shahadat</i> • Points for determination • Grounds of decision • Language • Appreciation of evidence • Interpretation skills	15 (Total) 03 03 03 03 03
9.	Assignments	30
Total		100

Conclusion:

The Faculty and Research Wings of the Academy have made coordinated efforts to make this manual a high standard training toolkit. Several drafts were attempted and critically discussed in plenary sessions. Needless to mention that with trainings under this manual, room for further improvement shall surface. Delivery of training under the manual should be supported by: first; a monitoring mechanism to see that the modules are relevant and contain updated knowledge in their contents, and secondly; a well designed feedback system for suggestions and comments of the trainers.

Module-1

JUDICIAL CONDUCT & ETHICAL ISSUES

INTRODUCTION

The module focuses on normative as well as practical significance of judicial ethics, as an essential component of the conduct of a judge. It covers diverse perspectives, ranging from the need and significance of judicial ethics and codes of conduct available at the international level, to the Islamic concept of judicial ethics (*adab al-Qadhi*). Discussion on the various codes, particularly the rules and directions of the Peshawar High Court on judicial conduct also form part of this module.

OBJECTIVES

- To have a normative as well practical understanding of judicial ethics, its need and significance
- To know national, international, and Islamic standards of judicial ethics
- To create sensitization to ethical problems and discover solutions to such problems
- To create awareness about best practices in other jurisdictions

LEARNING OUTCOMES

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

- Realize that judicial ethics is a *sine qua none* for judicial office
- Practice canons of judicial ethic while in court
- Abstain from judicial vices
- Abide by Islamic judicial ethics
- Quickly and adequately respond to ethical problems in court

CONTENTS

Topic	Break up	Description
Topic 1: Preliminaries	1.1	1. Ethics in general 2. Ethics, law and morality 3. Definition of judicial ethics; 4. Why judicial ethics necessary? 5. Importance of judicial ethics
Topic 2: The normative basis of judicial ethics	1.2	6. Virtue-Centered theory of judging
Topic 3: The Islamic concept of judicial	1.3	7. The sanctity of the office of judgeship as reflected in the <i>Qur'an</i> , <i>Sunnah</i> ,

ethics		<i>Ijma</i> , and the work of classical and contemporary jurists particularly those who themselves have performed as Qaziz
Topic 4: The International Standards for judicial ethics	1.4	8. Relevant parts of the Universal Declaration of Human Rights, 9. The International Covenant on Civil and Political Rights, 10. The UN Basic Principles on Independence of Judiciary, 1985, 11. The Bangalore Principles of Judicial Conduct, 2000, 12. The Commonwealth (Latimer House) Principles on the Three Branches of Government, 2003.
Topic 5: National Standards: Code of Conduct for District Judiciary	1.5	13. The KP Government Servants (Conduct) Rules, 1987; 14. Code of Conduct for Judicial Officers of the Khyber Pakhtunkhwa District Judiciary and Notifications of the Peshawar High Court issued from time to time.
Topic 6: Cross cultural best practices	1.6	15. Codes of conduct for judges in at least two developed and two developing countries.

PRACTICAL EXERCISE

- ➔ A lawyer appears & uses derogatory language besides questioning your impartiality. How will you handle the situation.
- ➔ A was charged with the murder of his wife W and another person X. Charge could not be proved. A was acquitted. On the application of the complainant, the high court conducted an inquiry against the trial court's judge. Allegations of bribery proved. What should be the fate of his decision of acquittal?
- ➔ A judge decreed the case of the plaintiff on the basis of sufficient evidence. The defendant filed an application to the Chief Justice against the judge for his receiving of valuable gifts from the plaintiff during the pendency of the case. The probe confirmed the allegations. It was also confirmed that the case was decreed on merit. Discuss as to what should be the proper order by the high court?

CASE LAW

1. *Ardeshir Cowasjee and others v. K.B.C.A and others*, 2000 CLC 606 Karachi

2. *Federation of Pakistan v. Muhammad Akram Shaikh*, 1989 PLD SC 689
3. *Islamic Republic Of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs, Islamabad v. Abdul Wali Khan*, M.N.A. 1976 PLD SC 57
4. *M.H Khondkar v. The State*, 1966 PLD SC 140

REFERENCE MATERIAL

- Lawrence B. Solum, 'Virtue Jurisprudence: A Virtue-Centered Theory of Judging', available at http://ssrn.com/abstract_id=369940
- Judicial EstaCode, 2011, Section -356-376
- W. Bradley Wendel, 'Jurisprudence and Judicial Ethics', available at <http://ssrn.com/abstract=1024316>
- Dr. Mehmood Ahmad Ghazi, *Adab-ul-Qazi*, IRI, Islamabad, 1998

Module – 2

ACCOUNTS & FINANCIAL ADMINISTRATION

INTRODUCTION

The module covers accounts and financial matters related to judicial business. It is of great significance for a judicial officer particularly the new entrants. Lack of proper knowledge of accounts and financial matters in courts often results in mal management. The module, therefore, aims at introducing the new entrants to all the necessary financial rules on judicial side. The complementary part will cover public financial management, focusing on budget and accounts, functions and powers of the DDOs and delegation of powers.

OBJECTIVES

- To introduce different financial procedures in courts in general
- To discuss two main deposits in civil court and the difference between them
- To know how and by whom civil court deposits are maintained
- To understand the financial relationship of courts with litigants and the treasury
- To realize the role of ministerial staff in financial management
- To impart basic information of public financial management

LEARNING OUTCOMES

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

- Supervise properly financial management of court
- Differentiate between various modes of financial transactions
- Realize the scope of different deposits maintained in courts
- Safeguard the financial interest of litigants
- Realize the sensitive nature of the financial matters
- To apply financial rules and codal formalities properly

CONTENTS

Topics	Break up	Description
Topic 1: Finance & Accounting Difference		1.
Topic 2: Accounting Organizational Structure		1. Constitutional Reference (Art 78 & 118) 2. Consolidated Fund 3. Public Account
Accounting Officers of		1. Principal Accounting Officer (PAO)

Government		2. District Accounts Officer 3. Drawing & Disbursing Officer 4. The Auditor General 5. Comptroller General 6. Accountant General
Topic 4: Types of Judicial Accounts		1. Sheriff Petty a. Cash system, b. voucher system, c. Personal Ledger Account 2. Civil court Deposit (Voucher & Cash System) 3. Revenue Deposit
Topic 5: Directives of Peshawar High Court		1. EstaCode 2. High Court Rules and Orders
Topic 6: Important Registers		1. Commissions (XIX) 2. Deposits & Refunds of commissions on sale proceeds in executions (XXV) 3. For property of minors (XXVI) 4. Judicial Fines (XIV) 5. Diet Money (XVII) 6. Register of Receipts 7. Register of Disbursement 8. Cash Book 9. Treasury Pass Book
Topic 7: Deposit & Withdrawal Procedure		1.
Topic 8: Audit		1. Handling audit paras
Topic 9: Budget Preparation		1.

GROUP ACTIVITY

- ➔ The trainees have to make entries in the relevant registers of sheriff petty accounts and revenue deposits. They shall also practically reconcile the statement of accounts.

PRACTICAL EXERCISE

1. In a civil suit brought by Mr. A, there are 03 official witnesses.
 - i. District Controller of accounts
 - ii. Patwari Halqa.
 - iii. Postman.

Mr. A then applies for the deposit of diet and travel money for these witnesses. How would you compute the diet and travel road money for these witnesses and where it shall be deposited. Similarly what is the procedure for its withdrawal and what deductions shall be made?

2. In a suit for possession through exercise of the right of preemption, the preemptor seeks to deposit 1/3rd of the sale consideration. Where this amount shall be deposited and what is the procedure for its withdrawal?

REFERENCE MATERIAL

- High Court Rules and Orders.
- Judicial Estacode 2011.
- Treasury Rules.
- GFR and Civil Accounts Code.

Module - 3

RESEARCH SKILLS

INTRODUCTION

This module aims at sensitizing the trainees to the significance of research so that they should be able to sharpen their analytical and critical skills. The trainees shall be required to conduct syndicate research on topics related to law and justice. The module covers introduction to research, research methodology, research proposal and report writing, and research ethics. It also covers Islamic perspective of research.

OBJECTIVES

- To learn the theoretical and practical aspects of research and its significance in intellectual development
- To enhance their critical thinking and analytical writing in such a way as to develop a thesis on their own
- To enable them for effective communication in terms of judicial writings such as judgments, orders, inquiries, probes, and reports
- To enable the trainees to write and publish research papers

LEARNING OUTCOMES

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

- think independently
- develop a thesis supported by primary and secondary sources
- read critically for evaluating arguments
- conduct data-analysis both from quantitative and qualitative perspectives
- know and apply different research techniques and critical paradigms
- conduct syndicate research for learning teamwork and organizational behavior
- know the importance of research ethics

CONTENTS

Topic	Break up	Description
Topic 1: Preliminary	3.1	1. Definition of research 2. Types of research 3. Paradigms of research
Topic 2: Research methodology	3.2	1. Documentation of sources 2. Formats of documentation 3. Documentation in legal research
Topic 3:	3.3	1. Designing research proposal

Proposal writing (Research)		i) Choosing a topic ii) Significance of the topic iii) Thesis statement and formulating of research questions iv) Literature review v) Tentative chapterisation vi) Referencing and biblio-weblio-graphy
Topic 4: Proposal and Report writing	3.4	1. Introduction and explanation 2. Compilation and analysis of data 3. Conclusion 4. Recommendation
Topic 5: Research Ethics	3.5	1. Confidentiality issues in data collection 2. Acknowledgment 3. Avoidance of plagiarism
Topic 6: Research (<i>Bahth</i>); Islamic perspective	3.6	1. Meaning and definition 2. Significance 3. Shariah ruling (<i>Hukm</i>) for research and the concerned evidences (<i>Adilah</i>) 4. Research methodology as developed by the contemporary jurists in contrast with that practiced by classical jurists.

GROUP ACTIVITY

- The role of libraries and other relevant facilities in research.
- Essentials of a good researcher.
- The correct use of the IT: need and significance.

PRACTICAL EXERCISE

- ➔ The Peshawar High Court wishes to dig out the reasons of ‘decreasing public confidence’ on courts. Write the outlines of a research proposal.

SYNDICATE RESEARCH

- Research: Meaning and kinds.
- Research: Its role in development.
- The role of language in conducting a research.
- Needs and implementation of outcomes of a research by state authorities.

REFERENCE MATERIAL

ENGLISH

1. Alan Bryman, *Social Research Methods*, OUP, 4 Edition, 2012

2. Amy E. Sloan, *Basic Legal Research: Tools and Strategies*, Aspen Publishers, 4th edition, 2009
3. Mark Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?*, Hart Publishing, 2011
4. J. Paul Lomio, *Legal Research Methods in a Modern World: A Coursebook*, Djoef Publishing; 3rd Revised edition, 2011
5. Mohammad Hashim Kamali, *Sharīah And Civil Law: Towards A Methodology Of Harmonization*, Islamic Law and Society, Volume 14, Number, 2007 , pp. 391-420(30)

ARABIC

1. Prof. Dr Ali Sami Al-nashshar, *Manahij-ul-bahth*, Published by Darussalam, Egypt 2008
2. Dr. Raja' Waheed Duwaidi, *al-Bahth ul Ilmi, Asasiyat ul Nazariah wa Mumarasah al-Ilmiyyah*, Darul Fikr, Damascus, 2000

Module - 4

CONSTITUTIONAL LAW

INTRODUCTION

Constitutional law is organically connected to the administration of justice. Its proper understanding is, therefore, essential for judges, especially the new entrants. The module would enlighten the trainees on the technicalities of the constitution as well as the statutes and by-laws stemming from it in Pakistan. Topic 1 in the module is introductory, followed by a topic on the constitutional history of Pakistan. Emphasizing on the judiciary in the Constitution of Pakistan, 1973, the module also covers ancillary topics such as the fundamental rights, the principles of policy, the Islamic provision, the amendment procedure and the constitutional bodies.

OBJECTIVES

- To make the trainees internalize the patterns, standards and principles governing constitution making process
- To familiarize the trainees with constitution and its content from a judicial perspective
- To enable the trainees to understand the structures and functions of core constitutional institutions
- To sensitize the trainees to the significance of constitutional amendments

LEARNING OUTCOMES

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

- Read the Constitution from a judicial perspective
- Know the organizational structure and functions of key institutions under constitution
- Learn the differences between structuring constitution and framing ordinary laws
- Understand the constitutional limits and boundaries of each institution with special focus on the role of judiciary.
- Keep their knowledge updated in respect of amendments introduced to the Constitution of Pakistan, 1973.
- Know the significance of independent judiciary in modern nation states for ensuring rule of law in society
- Internalize the principle that adherence to the rule of law is the only key to development, progress and prosperity

CONTENTS

Subject	Break up	Description
Topic 1:	4.1	1. Meaning, definition and types

The Constitution		- History - Significance - Interpretation of Constitution
Topic 2: Pakistan's Constitutional History	4.2	- Government of India Act 1935 and its cursors - Independence Act 1947 - The role of Constituent Assembly - Constitution of Pakistan 1956[salient features] - Constitution of Pakistan 1962[salient features] - Constitution of Pakistan 1973[salient features]
Topic 3: Judicature	4.3	- Judicial hierarchy - Jurisdiction of high courts. - Jurisdiction of the Supreme Court. - Leading Cases
Topic 4: Fundamental Rights	4.4	- Right in general - Human Rights and Fundamental Rights; difference of. - Courts as custodians of fundamental rights
Topic 5: Principles of Policy	4.5	- Opportunities for women - Islamic way of life - Promotion of Local Government Institutions - Policy regarding social justice and social evils - Minorities Protection - Relations with the Muslim World.
Topic 6: Islamic Provisions	4.6	- The role of Islamic Council - The supremacy of <i>Quran</i> and <i>Sunnah</i> - Forums of Shari'ah Courts in Constitution - Leading Shari'ah judgments
Topic 7: Amendments	4.7	- Procedure for amendments - Constitutional amendments
Topic 8: Other institutions	4.8	<i>Majlis-e-Shoora</i>, - Election Commission, - Auditor general's office etc.

GROUP ACTIVITY

➔ Age of retirement: why should not be the same for all judges

PRACTICAL EXERCISE

1. Rana Atique is a candidate for NA seat. He has been acquitted in a triple murder case on the basis of compromise just an year before. His name has also been enlisted in the

4th schedule under Section 11-EE of Anti-Terrorism Act 1997. Discuss his eligibility to contest the forthcoming election.

2. A, an accused was facing trial before ATC judge. On stating of charge, the accused replied, “I don’t believe in the constitution 1973. Now;
 - 1- Whether his statement amounts to denial?
 - 2- Whether his statement amounts to an admission?
 - 3- Whether the ATC will carry on the trial?

Whether the accused is still entitled to the privilege of fair trial as enshrined u/a 10-A of the constitution?

SYNDICATE RESEARCH

1. Eighteenth Amendment: its effect on the procedure of appointment of judges to the apex courts
2. Federal Shariat Court: The issue of its jurisdiction
3. Article 2A: Judicial effect
4. Dar-ul-Qadha or High Court Mingora Bench: the need for clarity
5. Human Rights and Fundamental Rights: conceptual differences and procedure for implementation

CASE LAW

1. *Federation of Pakistan v Maulvi Tamizuddin Khan*, PLD 1955 Federal Court 240
2. *State v. Dosso*, PLD 1958 SC 533
3. *Asma Jilani v. Government of Punjab*, PLD 1972 SC 13
4. *Begum Nusrat Bhutto v. Chief of the Army Staff*, PLD 1977 SC 657
5. *Ansar Burney v. Federation of Pakistan*, PLD 1983FSC 73
6. *Benazir Bhutto and another v. Federation of Pakistan and another*, PLD 1989 SC 66
7. *Shirin Munir v. Government of Punjab*, PLD 1990 SC 295
8. *Muhammad Nawaz Sharif v. President of Pakistan*, PLD 1993 SC 473
9. *Shehla Zia v. WPADA*, PLD 1994 SC 693
10. *Merham Ali v. Federation of Pakistan*, PLD 1998 SC 1445
11. *Al-Jehad Trust*, 1999 SCMR 1379
12. *Syed Zafar Ali Shah and others v. General Pervez Musharraf, Chief Executive of Pakistan*, PLD 2000 SC 869
13. *Watan Party v. Federation of Pakistan*, PLD 2006 SC 697
14. *Tika Iqbal Muhammad Khan v. General Pervez*, PLD 2008 SC 615
15. *Sindh High Court Bar Association v. Federation of Pakistan*, PLD 2010 SC 1151
16. *Supreme Court Bar Association v Federation of Pakistan*, PLD 2011 SC 269

REFERENCE MATERIAL

- 1- The Constitution of Islamic Republic of Pakistan 1973.

- 2- Hamid Khan, *Constitutional and Political History of Pakistan*, Karachi, OUP, 2009 2nd Edition.
- 3- G.W. Choudhry, *Constitutional Development of Pakistan*, London, Longman, 1971.

Module - 5

ISLAMIC JURISPRUDENCE

INTRODUCTION

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

OBJECTIVES

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

LEARNING OUTCOMES

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

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

CONTENTS

Topic	Break up	Description
Topic: 1 Preliminaries	5.1	1. Meaning, history and evolution of <i>Usul-ul-Fiqh/IJ</i> 2. Schools of <i>Usul-ul-Fiqh/IJ</i>
Topic:2 Sources (a)	5.2	1. Meaning of the sources of Islamic law 2. Classification of the sources
Topic :3 Sources (b)	5.3	Group (A) 1. Al-Kitab 2. Al-Sunnah 3. Ijma

		4. Qias Group (B) 1. Istehsan 2. Istidlal 3. Maslaha 4. Previous Divine Legislation 5. Custom 6. Custom of Madinites 7. Opinion of the companion 8. Blockage of means
Topic: 4 Divine Communication/ <i>Al-hukum Al-shari</i>	5.4	1. Definition 2. Classification 3. Kinds
Topic: 5 <i>Maqasid/objective</i>	5.5	1. Meaning, significance 2. Classification
Topic: 6 <i>Dalalat/modes of interpretation</i>	5.6	1. Meaning of <i>dilalah</i> 2. Classification 3. Kinds
Topic 7: Clarity and ambiguity in words	5.7	1. The meaning of <i>lafz/word</i> 2. Kinds of words in respect of clarity and ambiguity
Topic 8: Repeal	5.8	1. Meaning 2. Kinds 3. Effects
Topic 9: <i>Taqlid</i>	5.9	1. Schools of thoughts 2. Significance of <i>Taqlid</i>

GROUP ACTIVITY

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

PRACTICAL EXERCISE

- ➔ A, a husband dies leaving a pregnant widow B. After a month, B gave birth to a posthumous C. B wishes remarrying.
- Whether she can?
 - Whether she would wait to the expiry of duration of *Iddat*?
 - Whether she would wait 90 days or 130 days?

SYNDICATE RESEARCH

- Schools of thought: evolution and role

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

CASE LAW

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

REFERENCE MATERIAL

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

Module – 6

QANUN-E-SHAHADAT ORDER, 1984 AND ISLAMIC LAW OF EVIDENCE

INTRODUCTION

This module focuses on the rules governing the law of evidence in Pakistan. It also discusses minute details on the subject. It seeks to provide an opportunity for comprehending *Shariah's* view and a comparative study of various laws on evidence. Key topics covered are modes of proof, admissibility, relevancy, and number and competency of witnesses.

OBJECTIVES

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

LEARNING OUTCOMES

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

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

CONTENTS

Topic	Break up	Description
Topic:1 Preliminaries	6.1	1. <i>Shahadah</i> ; literal and technical meaning 2. The inclusion of meaning of <i>yameen</i> therein, 3. Significance
Topic:2 Processes of <i>Shahadah</i>	6.2	1. Bearing of evidence/ <i>Tahamm-ul-Shahadah</i> 2. Deposing of evidence/ <i>Aada-ul-Shahadah</i> 3. Qualifications for <i>Tahamm-ul-Shahadah</i> 4. Qualifications for <i>Aada-ul-Shahadah</i> 5. <i>Qualification at the time of judgment</i>

Topic:3 Privileges, Competency and number of witnesses	6.3	1. Who can be a witness? 2. Four males 3. Two males 4. One man and two women 5. One female 6. One male 7. One male with the oath of the plaintiff. 8. Privileges and its kinds
Topic:4 Modes of proof	6.4	1. Admission and confession/<i>Iqrar</i> 2. Deposition by witnesses 3. One witness with oath of claimant. 4. Refusal from oath by defendant/accused i-e <i>nukul anilyameen</i> 5. Proof through <i>Qaraine</i>
Topic: 5 Administration of oath to both parties	6.5	1. Dispute between seller and buyer. 2. Dispute between lesser and lessee before the use of lease property 3. Dispute between lesser and lessee after the termination of lease period. 4. Dispute between lesser and lessee during the lease period.
Topic: 6 <i>Tazkiyatu al-Shuhud</i> /Probe to the character of witnesses	6.6	1. Meaning and definition 2. When <i>tazkiyah</i> becomes necessary. 3. <i>Tazkiyah in civil and criminal cases.</i> 4. <i>Tazkiyah, how conducted.</i> 5. Qualifications of <i>Muzakki</i>/probe conductor.
Topic: 7 <i>Tatabuq</i> / Relevancy	6.7	1. Concurrence between claim and evidence. 2. Effects of non-concurrence. (a) Cases where non-concurrence is fatal. (b) Cases where non-concurrence is mere technicality.
Topic:8 <i>Ruju</i> /Retraction	6.8	1. Implication of false evidence. 2. Retraction before judgment. 3. Retraction after judgment. 4. Retraction when there are more than two witnesses. 5. Punishment for false evidence.
Topic:9 Hearsay evidence and its exceptions/ <i>Shahadah ala al-shahadah</i>	6.9	1. Meaning and legality. 2. When allowed? 3. When not allowed? 4. How it is made? 5. <i>Nisab</i> for making such evidence.

Topic:10 Documentary Evidence	6.10	1. Meaning. 2. As a mode of proof. 3. Contents if proved would amount to admission. 4. Documents bearing official record. 5. Documents bearing judgments of courts.
Topic:11 Admissibility/ <i>Qubul</i>	6.11	1. Factors; rendering evidence inadmissible. 2. Statements of parties, their attorneys and counsel are not evidence. 3. Conditions for evidence of children. 4. Cases where no evidence is admissible. 5. Significance of last seen evidence and chance witness
Topic 12: Legal Presumptions	6.12	1. Rebuttable and irrebuttable presumptions 2. Inference drawing from presumptions
Topic 13: Burden of Proof and Examination of Witness	6.13	1. Examination in chief 2. Cross examination 3. Re-examination 4. Hostile witness 5. Provisions governing the fixation of burden of proof
Topic 14: Estoppel	6.14	1. Meaning 2. Kinds of Estoppel: conduct and record 3. Estoppel and Res-judicata

GROUP ACTIVITY

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

PRACTICAL EXERCISE

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

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

SYNDICATE RESEARCH

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

CASE LAW

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

REFERENCE MATERIAL

- 1- Justice (Rtd) Dr Tanzeel-ur-Rahman, *Islami Qanun-i-shahadat*, Lahore: PLD Publishers, 1988.
- 2- Maulana Abd-ul-Quddus Hashmi, Urdu Trans, *Mujallat-ul-Ahkam Al-adliyyah*, Published by Government of Punjab (Awqaf), 1981.
- 3- Annual Report, Council of Islamic Ideology, 1982, Islamabad.
- 4- Justice (Rtd) Dr Tanzeel-ur-Rahman, *Islami Nizam-i-Adalat*, Hurmat Publications, Rawalpindi, n.d.
- 5- Dr Mustafa Zuhaili, *Wasail-ul-Ithbat* (Arabic text), available at library of Shari'ah & Law Dept., IIU, Islamabad.

Module – 7

EVIDENCE TO SUBSTANTIATE CASE

INTRODUCTION

The topic is aimed at discussing those aspects of law of evidence which are of practical help both for the bench and the bar. It discusses both practical and hypothetical cases, in which the already recorded evidence is placed before the participants for their opinion as to the sufficiency, relevancy and admissibility of evidence to substantiate a case. The emphasis is on what is to be proved and what should be the quantum of proof. The module covers main topics of the subject, such as relevancy admissibility, and burden of proof.

OBJECTIVES

- To understand the difference between standard of proof in civil and criminal cases
- To learn what is to be proved in civil and criminal cases
- To know the quantum of proof in civil and criminal cases
- To understand the difference between probative and provisional burden of proof

LEARNING OUTCOMES

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

- Differentiate between the standard of proof required in civil and criminal cases
- Distinguish persuasive burden of proof from evidential burden of proof
- Fix the burden of proof properly and accurately

CONTENTS

Topics	Break up	Description
Topic 1: Relevancy, admissibility and cogency	7.1	1. Concept 2. Practice 3. Difference between
Topic 2: Burden of proof in civil cases	7.2	1. Scheme of proof in civil cases 2. Appreciation of facts 3. Shifting of burdens
Topic 3: Burden of proof in criminal cases	7.3	1. Scheme of proof in criminal cases 2. Appreciation of facts 3. Shifting of burdens
Topic 4: Legal and tactical burden of proof	7.4	1. What is legal burden? 2. What is tactical burden?

		3. Who is burdened with what? 4. How burden is discharged?
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GROUP ACTIVITY

1. IT: its effect on law of evidence
2. Burden of proof: On whom lies and when shifts

SYNDICATE RESEARCH

1. Shari'ah: A touch stone for competence and number of witnesses under Qanoon-e-Shahadat Order, 1984.
2. The complementary status of S.540 of the CrPC

REFERENCE MATERIAL

- J D Heydon, *Cross on Evidence*, 10th Edition, LexisNexus Australia, 2010.
- The Qanun-e Shahadat Order 1984.
- The Oath Act, 1873.
- The Civil Procedure Code, 1908.
- The Pakistan Penal Code, 1908.
- The Code of Criminal Procedure, 1898.

Module – 8

MUSLIM PERSONAL LAW-1: MARRIAGE & DIVORCE

INTRODUCTION

The module helps the trainees understand the norms governing family matters. Almost all the topics would reflect that the spouses should themselves abide by these rules to avoid publicity of private life. The module also conveys, though impliedly, that the State shall refrain from interference in private lives unless there is breach of public policy. It also apprises the trainees of the views of the schools of jurisprudence other than the four Sunni schools. To avoid lengthiness and monotony, the module has been divided into two parts, which cover almost all topics of the subject. Part 1 covers connubium¹ and Part 2 covers separations. The module specifically focuses on such family disputes which necessarily require a decree of court.

OBJECTIVES

- To understand the salient features of family life under Islamic Law
- To learn basic rules regulating family Law
- To know the fragile nature and sensitivity of family disputes
- To realize the significance of Alternative Dispute Resolution (ADR) in resolution of family disputes
- To enhance the knowledge of the trainees regarding rights and liabilities of the spouses
- To explore that *mah'r* is the sole peculiarity of *Shari'ah*²

LEARNING OUTCOMES

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

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

PART 1 [Connubium]

¹ Means state of being legally married. See Tanzil-ur-Rahman, *Qanuni Lughat*, Lahore, WP Urdu Academy, 198, p 149.

² See the details of dower and the non-recognition of “dowry” as a word by Oxford dictionaries and other reliable thesauri. To them, dower means property that a woman gives to a man as a requirement of marriage.

CONTENTS

Topic	Break up	Description
Topic:1 Preliminaries	8.1	1. <i>Nikah</i>; literal and technical meaning. 2. Philosophy and legality. 3. <i>Khitbah</i>/expression of intention to marry; Meaning. a. Lawful and unlawful <i>khitba</i>. b. Meeting before <i>nikah</i>; extent of legality. 4. <i>Nikah</i> and <i>Shariah</i>'s Ruling.
Topic: 2 Kinds of <i>Nikah</i>	8.2	1. <i>Nikah Sahih</i>[valid] , meaning,examples, effects. 2. <i>Nikah Fasid</i> [irregular]; meaning, examples, effects. 3. <i>Nikah Batil</i> [void]; meaning, examples, effects.
Topic: 3 Conditions	8.3	1. Conditions as to establishment/<i>inaiqad</i> of <i>nikah</i>. 2. Conditions as to validity/<i>sihhat</i> of <i>nikah</i>. 3. Conditions as to enforceability/<i>nifaz</i> of <i>nikah</i>. 4. Conditions as to option of repudiation/ conclusion/ <i>luzum</i> of <i>nikah</i>.
Topic:4 Dower/ <i>mah'r</i>	8.4	1. Definition, <i>Shariah</i>'s ruling. 2. Quantum, subject matter, mentioning during <i>Aq'd</i>. 3. Kinds of <i>meh'r</i>, occasions for each kind. 4. Persons liable for payment/<i>dhaman</i> and effects of non-payment. 5. Issues relating to consumption/destruction of <i>mah'r</i>. 6. <i>Mata'a</i>/Fair provision and cases of no payment at all. 7. Issues related to goods, households and <i>jahaiz</i>.
Topic: 5 Maintenance/ <i>Naf' aqa</i>	8.5	1. Meaning, contents, quantum. 2. On whom and for whom?[factors obligating <i>nafaqa</i>]. 3. Causes and conditions for entitlement of <i>nafaqa</i>. 4. Effects of non-payment and cases of non-entitlement.
Topic: 6 Retirement/ <i>Khilwat</i>	8.6	1. Meaning and kinds. 2. <i>Khilwat sahiha</i>/valid retirement and its effects. 3. <i>Khilwat Fasidah</i>/invalid retirement and its effects.
Topic: 7 Rights of Spouses, inter se	8.7	1. Rights and duties of husband. 2. Rights and duties of wife. 3. Inter-Common rights.
Topic: 8 Guardianship/	8.8	1. Meaning, philosophy, kinds. 2. Causes of <i>wilayat</i>.

<i>wilayat</i> and Agency/ <i>wakalat</i>		3. Compulsory guardianship and its effects. 4. Post puberty options. 5. Recommended guardianship. 6. Conditions for guardian. 7. Order of <i>walis</i>. 8. Absence of <i>wali</i> and cases where a person ceases to be <i>wali</i>. 9. Laws; fixing age of marriage and view of <i>Shariah</i> 10. <i>Wakalah</i> and its details.
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PART II: SEPARATIONS [Divorce & Dissolution]

Topic:9 Divorce	8.9	1. Meaning, number, kinds. 2. Divorce and Dissolution: distinction of. 3. Conditions [by whom? On whom? Through what]. 4. <i>Talaq Rajae</i> and related rulings. 5. <i>Talaq Baain</i>, kinds and related rulings. 6. Comparison between various kinds of <i>Talaq</i>. 7. Circumstances warranting separation/<i>tafreet</i> by court/<i>qazi</i>. 8. Circumstances warranting divorce through order of court/<i>tatlqa-ul-qazi</i>. 9. <i>Talaq-i-tafweez</i> and its details 10. Effectiveness of <i>talaq</i>? as to persons and circumstances. 11. Conditional and contingent <i>talaq</i>. 12. <i>Talaq</i> in writing.
Topic: 10 <i>Khula</i>	8.10	1. Meaning and definition, legality, essentials and significance. 2. Consideration of <i>kula</i>, effects/<i>aathar</i> of <i>khula</i>. 3. <i>Talaq ala almal</i> and <i>khula</i>: distinction of. 4. <i>Mubaraat</i> and its effects.
Topic: 11 <i>Iddat</i> /waiting period	8.11	1. Meaning, legality and philosophy. 2. Kinds and conversion of one kind in to other. 3. <i>Iddat</i>; who will observe and who will not. 4. Rights and duties during <i>iddat</i>. 5. <i>Iddat</i>; when commences, when ends?

GROUP ACTIVITY

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

PRACTICAL EXERCISE

- ➔ Jamila, a resident of Interior Sindh, has obtained *Khula* through a judgment of Family Court chaired by Lalu Pershad CJ, on March 30, 2014. On June 1, 2014, she entered into a contract of marriage with Saleem. No witness attended the ceremony. On June 10, she brought a suit against Saleem, in FC chaired by Sriram CJ, for dissolution of marriage on the basis of cruelty which was proved.

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

SYNDICATE RESEARCH

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

CASE LAW

1. *Shahzad Begum v. Abdul Hameed*, PLD 1950, Lahore 54.
2. *Muhammad Yusuf v. Ahmad Nawaz Gardizi*, PLD 1961 SC 465.
3. *Zarina Tasadduq Hussain v. Tasadduq Hussain*, PLD 1953 Lahore 112.
4. *Saeeda Khanum v. Muhammad Sami*, PLD 1952 Lahore 113.
5. *Bilqees Fathima v. Najm-ul-Akram*, PLD 1959 Lahore 566.
6. *Raishman v. Shair*, PLD 1953, AJK 10.
7. *Fazal Bibi v. Muhammad Azam*, PLD 1952 Lahore 227.
8. *Farzana Rasool v. Dr Muhammad Bashir*, PLJ 2012 SC 1.

REFERENCE MATERIAL

1. J. Tanzeel-ur-Rahman, *Majmua Qawanin-i-Islam* (Islamabad: IRI Press, 2004) vol., 1, 2.
2. Mufti Abdul Jalil Qasmi, *Mukamal Masail-e-Talaq*, Multan, Idarah Talifat Ashrafiya, 1426 A.H.
3. Habib-ur-Rahman, *Ahkam-e-Talaq*, Islamabad, IRI Press, 2004.
4. Tahanvi Ashraf Ali, *Heela Najizah*, Karachi, Darul Ishaat, 1987.
5. Hafiz Abdul Hafeez, *Badaia-al-Sania* [Urdu Translation], Lahore, Diyal Singh Trust Library, 1997, vol. 2 & 3.
6. Maudoodi Abul Aala, *The Laws of Marriage And Divorce in Islam*, Kuwait, Islamic Publisher, 1983.

Module – 9

FAMILY COURT PROCEDURES

INTRODUCTION

The module covers the procedural dimension of the Family Court. While, the Civil Procedure Code, 1908 & the Qanon-e-Shahdat Order, 1984 are largely not applicable to the family courts proceedings, the jurisprudence of the higher courts appear to have carved out a room for the applicability of general principles of these two enactments. There shall be a detailed discussion on the general principles of the CPC and Qanon-e-Shahdat Order. Rules of pleading & decree sheet formulation shall be explained.

OBJECTIVES

- To comprehend the relevant applicable provisions of the CPC & the Qanon-e-Shahdet Order vis-à-vis the family court procedure
- To grasp the necessary procedural requirement of a family case
- To realize the sensitive nature of the trial of a family case

LEARNING OUTCOMES

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

- Interpret accurately different provisions of the family laws
- Apply the law properly while conducting trials

CONTENTS

Topic	Break up	Description
Topic 1: Preliminaries	9.1	1. Family Court and the significance of its establishment 2. Jurisdiction of family court 3. Meaning of a family case
Topic 2: The West Pakistan Family Court Act, 1964 & Rules, 1965	9.2	1. Legal requirements of pleadings 2. Pre- and post-reconciliation 3. Mode of recording evidence 4. Framing of issues & fixation of onus of proof 5. Writing orders & judgments 6. Formulation of decree sheets 7. Arbitration Council

GROUP ACTIVITY

1. Pre & Post-trial reconciliation
2. Khateeb Nikah: His role in a family suit

PRACTICAL EXERCISE

- ➔ Awal Dad killed his father-in law, mother-in law and brother-law. His wife Nagina filed a suit against him for dissolution of marriage on the plea of developed hatred after the tragic incident. The Family Court did not provide opportunity of reconciliation, neither pre-trial nor post trial. After completion of trial, the court decreed the suit on the basis of incapability of spouses to cohabit within the limits of Allah. Discuss the soundness/invalidity of the decree.

SYNDICATE RESEARCH

1. Effect of Talaq decree
2. Custody of child: (a) Requirements, (b) Gradation of relatives

CASE LAW

1. *Dr. Asma Ali v. Masood Sajjad and others*, PLD 2011 SC 221
2. *Tayyaba Yunus v. Muhammad Ehsan and others*, 2010 SCMR 1403
3. *Dr. Fakhr-ud-din v. Mst. Kausar Takreem and others*, PLD 2009 Peshawar 92
4. *Tauqeer Ahmad Qureshi v. Additional District Judge, Lahore and 2 others*, PLD 2009 SC 760
5. *Muhammad Arif v. Uzma Afzal and others*, 2011 SCMR 374
6. *Wing Commander Tipu Sultan Khan v. Rubina Saira Zaffer and another*, 2009 YLR 1021 Lah.
7. *Tayyaba Yunus v. Muhammad Ehsan and others*, 2010 SCMR 1403
8. *Sayed Abbas Taqi Mehdi v. Mst. Sayeda Sabahat Batool and others*, 2010 SCMR 1840

REFERENCE MATERIAL

1. West Pakistan Family Court Act, 1964.
2. West Pakistan Family Court Rules, 1965.
3. Dissolution of Muslim Marriage Act, 1939.
4. The Qanun-e-Shahadat Order, 1984.
5. The Civil Procedure Code, 1908.

Module – 10

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

INTRODUCTION

This module is three in one. The reason is obvious. All topics refer to wealth/property that one disposes of or one acquires it. The absence of consideration distinguishes the subjects of this module from other kinds of contract. The module covers main topics of *Hibba*, *Wasiyyah* and *Waqf*.

OBJECTIVES

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

LEARNING OUTCOMES

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

- Have full knowledge of minute details on the subject
- Be familiar with the Arabic terminologies related to the subject of the module
- Explore the philosophies of *Shari'ah* rulings on the subject
- Properly make recourse to references, differentiating the primary from the secondary
- Conduct research on any newly born issue relating to the topics of the module
- Consult *Fatawas*³

PART-I

CONTENTS

Topic	Break up	Description
Topic:1 <i>Hibbah</i>	10.1	1. Meaning, legality and <i>Shariah</i> 's ruling. 2. Essentials; Details of offer and acceptance.

³ The name given to the category of the books that contain *shariah*'s rulings, discovered by learned/*muftis* mostly in actual cases. They may be termed as books of Case Law.

		3. Conditions. a. <i>Wahib</i> . b. <i>Mauhub</i>. 4. Kinds. a. <i>Hibbah bil Iwaz</i>. b. <i>Hibbah bil shart-el-Iwaz</i>. c. <i>Hibbah umra</i>/ Life estate. d. <i>Hibbah raqba</i> . e. <i>Hibbah minha</i>/ Gift of usufruct f. <i>Hibbah mashrut</i>/ Conditional gift. g. <i>Hibbah mauquf</i>/ Contingent gift. 5. <i>Hibbah</i> during death bed/<i>Maraz-ul-maut</i>. 6. <i>Hibbah musha</i>/Undivided property. 7. <i>Hibbah</i> for two persons. 8. Various modes of possession. 9. Revocation/<i>Ruju</i>. a. Effects of revocation. b. Obstacles to revocation. 10. <i>Hibbah</i> to kith and kin
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Part-II

Topic	Break up	Description
Topic:2 Will/ <i>Wasiyyah</i>	10.2	1. Meaning, history, legality, philosophy and kind as to the sentence used. 2. <i>Sharai wasiyyat</i> and its kinds as to <i>Shariah</i>'s ruling. 3. <i>Shariah</i>'s rulings; a. Effects of Will. b. Revocation. c. Rulings pertaining to testator. d. Rulings pertaining to legatee. e. Rulings pertaining to the subject matter of the Will. 4. How to make a Will? 5. Execution of Will. 6. Will during death bed/<i>Maraz-ul-maut</i>. 7. Charity-based acts during <i>Maraz-ul-maut</i>. 8. Will for heir. 9. Factors rendering Will void. 10. Execution of Will when the number of legatees is in excess of quantum of the subject matter. 11. Will between spouses.

Part-III

Topic	Break up	Description
Topic: 3 <i>Waq'f</i> /Bequest	10.3	1. Definition, legality, <i>Shariah's</i> ruling. 2. Essentials. 3. Kinds. 4. What could be the subject matter of <i>Waq'f</i>. a. <i>Waq'f</i> of immovable property. b. <i>Waq'f</i> of movable property. c. <i>Waq'f</i> of undivided property. d. <i>Waq'f</i> of easements. e. <i>Waq'f</i> of States property. f. <i>Waq'f</i> of mortgaged property. g. <i>Waq'f</i> of leased property. 5. Effects of <i>Waq'f</i>. 6. Conditions a. For and of Bequest maker and situations where conditions of bequest maker can be ignored. b. For subject matter of <i>Waq'f</i>. c. For beneficiary/ <i>mauqoof alih</i> 7. Can a Non-Muslim make <i>Waq'f</i>. 8. Words and phrases through which a <i>Waq'f</i> can be made and conditions thereof. 9. How <i>Waq'f</i> can be proved? 10. Factors rendering <i>Waq'f</i> void. 11. Expenses of <i>Waq'f</i>. 12. Replacement and sale of <i>Waq'f</i> property, when they become expedient. 13. <i>Waq'f</i> during death bed/<i>Maraz-ul-maut</i>. 14. <i>Nazir Waq'f/Mutawalli</i> a. Appointment of <i>Mutawalli</i>. b. Conditions for <i>Mutawalli</i>. c. Duties of <i>Mutawalli</i>. d. Dismissal of <i>Mutawalli</i>. e. Honoraria of <i>Mutawalli</i>. 15. Study of Waqf statutory laws

GROUP ACTIVITY

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

PRACTICAL EXERCISE

- ➔ Badam Gul, 60, had three sons from Ghutai Bibi. She died of cholera. Badam married Sapna, 45. She had a son Dilawar and a daughter Qajira from her late husband Jamalai. No issue after second marriage. In circumstances, Badam gifted his rental property to Ghutai on condition that she will be entitled to its ownership and benefits till her life, and

on her death, the property would go back to his three sons. After the death of Badam, she wished to sell the property but one of the referred three sons brought a suit against her. She died during the trial.

- What should be the next proceedings?
- How do you see the expected fate of the case?

SYNDICATE RESEARCH

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

CASE LAW

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

REFERENCE MATERIAL

1. Justice Dr. Tanzil-ur-Rahman, *Majmua Qawanin-i-Islam*, vol 3&4, Islamabad, IRI Press, 2010.
2. Dr. Mufti Abdul Wahid, *Badaia-al-Sania* [Urdu Translation], vol 6, Lahore, Diyal Singh Trust Library, 2013.
3. Mufti Muhammad Shafi, *Jawahir-ul-Fiqh*, vol 4&6, Karachi, Maktaba Darululoom, 2012.
4. Maulana Dr. Khalil Ahmad, *Islam ka Nizam Awqaf*, Lahore, Idarah Islamiyat, 2010

Module – 11

LOCAL AND SPECIAL LAWS

INTRODUCTION

The module focuses on explaining the meaning and scope of General Law and Local & Special Laws. The topic shall also cover the concordance and discordance amongst these different kinds of laws. It will also discuss their respective schemes qua interpretation, procedures and applicability of allied laws. The module also addresses the need of local and special laws in relation to ordinary laws (such as the Code Civil Procedure, 1908).

OBJECTIVES

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

LEARNING OUTCOMES

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

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

CONTENTS

Topic	Break up	Description
Topic 1: General law	11.1	1. Meanings 2. Scope 3. Elements 4. Scheme 5. Jurisdiction
Topic 2: Special Law	11.2	1. Meaning 2. Scope 3. Elements 4. Scheme 5. Jurisdiction

Topic 3: Local law	11.3	1. Meaning 2. Scope 3. Elements 4. Scheme 5. Jurisdiction
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GROUP ACTIVITY

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

PRACTICAL EXERCISE:

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

SYNDICATE RESEARCH

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

CASE LAW

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

REFERENCE MATERIAL

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

Module – 12

JURISPRUDENCE & LEGAL THEORY

INTRODUCTION

The main purpose of this module is to acquaint trainees with the basic and practical knowledge of jurisprudence and main legal theories. The module covers the importance of jurisprudence, and the contributions of modern legal theorists: Austin, Hart, Dworkin, Kelsen, Raz, Fuller and Marx. It highlights the role of jurisprudence in the legal system, especially adjudication, difficulties in defining law; clarity about the concept of law. It also discusses the background of different legal theories that have shaped various pieces of legislation. Besides, the module also focuses on theories that have been shaping the outcome of hard cases in different legal systems. Discussion on proposition ‘whether judges create law or discover it’ forms part of this module.

OBJECTIVES

- To know the practical knowledge of different legal theories
- To understand the role of jurisprudence in the legal system, including Pakistani legal system
- To learn the role of jurisprudence in adjudication
- To understand whether judges discover law or make it while they decide hard cases
- To know how and why different legal theories shaped legislation or legislation emerged as the outcome of hard cases
- To learn the reasons that led the diversity of opinion while defining law

LEARNING OUTCOMES

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

- Realize the practical significance of jurisprudence in judicial decision making
- Form his/her own juristic opinion in hard cases
- Prioritize a juristic opinion from others
- Explore updated knowledge of contemporary jurisprudence

CONTENTS

Topic	Break up	Description
Topic 1: Preliminary	12.1	1. Why study jurisprudence? 2. What is meant by a theory of law? 3. Natural law and positive law 4. What is the role of jurisprudence in the legal system, including Pakistani legal system? 5. Classical and modern natural law theories

Topic 2: Austin	12.2	1. Austinian definition of law and his command theory 2. Hart's attack on command theory; 3. Defence of command theory
Topic 3: Hart	12.3	1. Hart on the concept of law 2. Hart's existence theory of law and rule of recognition; different features of the rule of recognition 3. Hart's minimum content of natural law 4. Criticism of the rule of recognition (to be discussed in Dworkin below)
Topic 4: Dworkin	12.4	1. Dworkin's theory of adjudication 2. Dworkin's theory of law as 'integrity and interpretation' 3. Dworkin's criticism of Hart's rule of recognition
Topic 5: Kelsen	12.5	1. Kelsen's pure theory of law 2. Kelsen's theory of the validity of legal system 3. Kelsen's <i>Grundnorm</i>, and its features 4. Raz's criticism of Kelsen's theory of law and <i>Grundnorm</i>
Topic 6: Nazi's and Marxian theories of law	12.6	1. A look at Nazi theory of law 2. Nazi Informer Case; Fuller's criticism of Hart's natural law view 3. Fuller's eight conditions of inner morality of law and Hart's response to it 4. A look at Marxian theory of law 5. Society and class struggle 6. Law in the context of economics
Topic 7: Virtue jurisprudence	12.7	1. What is virtue jurisprudence? 2. Law and modern moral philosophy 3. A virtue-centred theory of judging 4. Judicial vices and judicial virtues

GROUP ACTIVITY

- ➔ Jurisprudential approach of judges: How can be obtained, improved and utilized

PRACTICAL EXERCISE

- ➔ In some areas of our country, guests are served with liquor. This tradition is in practice since time immemorial. Whether separate legislation under the head of special and local laws could be made for these areas on the basis of this custom, considering it as a source of law?

- ➔ Since time immemorial, no maintenance is paid to the women/wives in some of the western societies. Despite this, the contract of marriage is concluded with consent of the parties. Whether this custom would bear the force of law? Whether legislation could be based on the basis of this custom?

SYNDICATE RESEARCH

1. Legal theories: origin, evolution and role
2. Theories that shaped legislation and adjudication in Pakistan

CASE LAW

1. *Montage Design Build v.. The Republic of Tajikistan*, 2015 CLD 8 Islamabad
2. *Abdullah v.. CNAN Group SPA through Chief Executive/Managing Director*, 2014 PLD SC 349
3. *Ravi Kapur v.. State of Rajasthan* 2013 SCMR 480
4. *Suo Motu Case # 3 of 2010*, 2012 PLD 553; *Muhammad Saeed v.. Executive District Officer (Agriculture), Khanewal*, 2010 PLC(CS) 261
5. *Muhammad Saleem v.. Regional Commissioner, Income Tax*, 2000 PLC(CS) 696

REFERENCE MATERIAL

- J.W. Harris, *Legal Philosophies*, Oxford, Oxford University Press, 2nd Edition, 1997, (chapter on Command theory).
- H.L.A. Hart, *The Concept of Law*, Clarendon Law Series, 3rd Edition, 2012 (chapter 2 – 6 and 9).
- Ronald Dworkin, *Taking Rights Seriously*, Harvard, Harvard University Press, 1978, (chapter 2).
- Lon F. Fuller, *The Morality of Law*, Yale University Press, 1977, (chapter on the inner morality of law).
- Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of a Legal System*, Oxford, Oxford University Press, 2nd Edition, 1980 (chapter 5).
- M. Munir, ‘Hart’s Rule of Recognition: The Foundations of a Legal System or a Form of Judicial Customary Law?’, 29(1) *Islamabad Law Review*, 2004, pp 16-35.
- M. Munir, ‘How Right is Dworkin’s Right Answer Thesis and his Law as Integrity’, 2 (2006) *Journal of Social Sciences*, pp 1-25.

Module – 13

JUDGMENT WRITING

INTRODUCTION

The module discusses the law relating to judgment writing, elements of court judgment, appreciation of evidence and interpretation of laws in judgment, judgment writing in Islamic law, contemporary trends in judgment writing and the state of mind in the process of judging. The module is not exhaustive as it does not cover communication skills in judgment writing, which has been separately dealt with in the module on English Language.

OBJECTIVES

- To learn provisions of procedure relevant to judgment writing
- To understand the concept and methodology of judgment writing
- To know how to appreciate evidence and how to interpret law in judgment
- To explore and follow judicial opinion writing skills under Islamic law
- To understand the psychology of judging

LEARNING OUTCOMES

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

- Apply the procedural rules of judgment writing properly
- Utilize necessary skills for appreciation of evidence and application of substantive and procedural laws and precedents
- Write judgment in light of relevant principles of Islamic law
- To explore the current global trends in judgment writing
- To properly follow the rules of effective communication

CONTENTS

Topic	Break up	Description
Topic:1 Preliminary	13.1	1. Meaning of judgment 2. Concept, need and significance of judicial decision making 3. Court judgment as a human endeavour 4. Mental process as a necessary tool of judging
Topic 2: Elements of judgment	13.2	1. Procedural and substantive elements of judgment 2. Procedural rules related to judgment 3. The dos and don'ts of judgment writing
Topic 3:	13.3	4. How to appreciate evidence in judgment

Appreciation of evidence		5. Understanding of the rules of evidence: selecting the cogent and avoiding the irrelevant
Topic 4: Interpretation of law	13.4	1. Understanding of the text of law 2. Application of understanding of the law in judgment
Topic 5: Judgment in Islamic law	13.5	1. Significance of judicial decision making in Islamic law 2. Judgment writing in Islamic law: principles and its application
Topic 6: Contemporary trends	13.6	1. A review of judgment writing literature 2. Best practices in judgment writing

GROUP DISCUSSION

- ➔ The essentials of a judicial judgment

PRACTICAL EXERCISE

- ➔ Correct the following portion of a court judgment:
 “My this judgement is directed to dispose off the suit referred above. The claimant prayed in his petition for recovery of his loan from the accused. Another case of the same nature between the parties is also pending appeal in the court of session. For excessively weak evidence, this court is unable to order any compensation. Parties are directed to bring another suit for costs”.

SYNDICATE RESEARCH

1. The role of language and literature in judgment writing
2. Judgment writing skills: How can be obtained and improved

CASE LAW

Criminal

1. *Muhammad Yasin v. State*, PLD 2011 Lahore 583
2. *Mst. Karam Bibi v. Mir Muhammad Hassan*, PLD 1962 SC 67
3. *The State v. Ch. Miruddin*, PLD 1964 Karachi 231
4. *Dilsher v. State*, PLD 2012 Sindh 307
5. *Abdur Rashid v. State*, PLD 1967 SC 498
6. *Ashiq Hussain v. The State*, 2003 SCMR 698
7. *Shahid v. State*, 1996 SCMR 1368
8. *Masho Khan v. The State*, 2002 PCrLJ 1478 FSC
9. *Abdus Sattar Molla and others v. The State*, PLD 1963 Dacca 251
10. *Babar v. State*, 2006 PCrLJ 387
11. *Muhammad Iqbal v. The State*, 1986 PCrLJ 244
12. *Bashir Ahmad v. The State*, 1982 PCrLJ 21
13. *Mst. Bachho v. Abdul Qayyum Khan*, CLC 2015 Peshawar 805

14. *The State v. Khaliq Dad*, PLD 1985 Karachi 4
15. *State v. Anwar Begum*, 1994 PCrLJ 441
16. *Ameer Ali Shah v. Azhar Haider Ali Shah Alias Tonni*, 1984 PCrLJ 1923

Civil

1. *Muhammad Hassan v. Said Muhammad*, 1986 CLC 1241
2. *Muhammad Saddiq v. Syed Ali Shah*, PLD 1976 Lah. 293
3. *Muhammad Amin v. Muhammad Ramzan*, PLD 1988 Lah. 331
4. *Muhammad Akbar v. Nazir Ahmad*, 2007 CLC 762
5. *Ghulam Samdani v. Faqir Khan*, PLD 2007 P 14
6. *Muhammad Hayay v. Ali Muhammad*, 1982 CLC 2380
7. *Mst. Zohra Begum v. Muhammad Ismail*, 2008 SCMR 143
8. *Muhammad Ovais and another v. Federation of Pakistan through Ministry of Works and Housing, Pakistan Islamabad*, 2007 SCMR 1587
9. *Al-Waqar Corporation v. Rice Export Corporation*, 2011 MLD 266

REFERENCE MATERIAL

1. Chief Justice Beverly McLachlin, 'Legal Writing: Some Tools', 2001 *Alberta Law Review*, 695.
2. Justice Michael Kirby, 'On the Writing of Judgment Writing' 64 *Australian Law Journal*, 1990, 691.
3. Sir Henry Gibbs, 'Judgment Writing', 67 *Australian Law Journal*, 1993, 494.
4. Sir Frank Kitto, 'Why Write Judgment?' 66 *Australian Law Journal*, 1993, 787.
5. Judge Gerald Lebovits, Alfiya Vasi, and Lisa Solomon, 'Ethical Judicial Opinion Writing', 21 *Georgia Journal of Legal Ethics*, 2008, 237.
6. Justice Roslyn Atkinson, 'Judgment Writing', speech available at www.archive.sclqld.org.au/judgepub/2002/atkin210302.pdf
7. Justice Linda Dessau and Judge Tom Wodak, 'A Matter of Judgment, Seven Steps to Clearer Judgment Writing', available at www.highcourt.sabah.sarawak.gov.my/apps/highcourt/sabah/modules/highcourt_cap/components/publishing/index_judgment_showfile.php?id=415.
8. Lord Roger of Earlsferry, 'The Form and Language of Judicial Opinion', 118 *Law Quarterly Review*, 2002, 226.
9. Richard A Posner, 'Judges' Writing Style (And do they Matter?)', 62 *Chicago Law Review*, 1992, 1421.

PAKISTAN/INDIA

1. Justice Shafiur Rahman, 'Decision and Judgment', available at www.fja.gov.pk
2. Justice Mohammad Bashir Jehangiri, 'Judgment Writing', available at www.fja.gov.pk/judgment.htm
3. Justice Mohammad Rafiq, 'Judgment Writing and Communicating Effectively Through Judgments', available at www.hcraj.nic.in/rafiq-judgment-effective.pdf.

Module - 14

ENGLISH LANGUAGE (LANGUAGE SKILLS ENHANCEMENT FOR EFFECTIVE LEGAL/JUDICIAL WRITING)

“Law is a profession of words” (Mellincoff).

Introduction: The course has been designed for delivery at two major stages: theoretical and practical. The theoretical part includes orientation to the evolution of English language, vocabulary building, syntactical structures, idiomatic shades of meaning, and intellectual empowerment. The last component comes from reading materials chosen from masters of prose. Therefore, the theoretical part also includes reading materials for analytical evaluation during oral presentations. The practical part includes intensive writing practices for internalizing the theoretical dimension. Participants will be engaged in practicing each part of the structural element of a judgment for sharpening their verbal skills.

In addition to the above, samples from Shakespeare’s plays, *Merchant of Venice*, *A Midsummer Night’s Dream* and *Measure for Measure* (whose contents are legal in nature), have also been included in the course. Their exposure to the above literary texts will play a vibrant role in breaking the monotony they are used to and will open new windows of meaning for critical appreciation.

Teaching Objectives

The teaching objectives of the course are to

- Familiarize the participants with the mechanics of English
- Introduce them to the evolution of Legal English
- Make them internalize the mechanics of professional writing
- Develop their skills for research and effective writing

Learning Outcomes

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

- to know, understand, and apply the mechanics of English as a language
- to learn the mechanics of professional writing
 - to write and make presentations
 - concisely
 - clearly
 - correctly
 - consistently
 - completely

- concretely
- considerably

Course Contents

Topic	Break-up	Description
1. Orientation to English	14.1	1. as a system 2. Sounds 3. Symbols 4. Etymology 5. Syntax 6. Semantics 7. Pragmatics
2. Mechanics of English	14.2	1. Spelling 2. Words Formation 3. Singular and Plural 4. Pronouns 5. Modifiers
3. Mechanics (continued)	14.3	1. Connectors –A 2. Connectors-B
4. Mechanics (continued)	14.4	4.2 Punctuation 4.3 Capitalization 4.4 Period 4.5 Colon 4.6 Semi-colon
5. Mechanics (Continued)	14.5	5.1 Comma
6. Mechanics (continued)	14.6	1. Parenthesis 2. Dash 3. Ellipsis 4. Brackets 5. Slash 6. Quotes 7. Apostrophe
7. History of English- An Overview	14.7	1. Old English 2. Medieval English 3. Modern English
8. History of Legal English Part-I	14.8	1. Sample Contracts
9. History of Legal English – Part II	14.9	1. Magna Carte
10. History of Legal English Part -III	14.10	1. 17 century 2. 18 Century
11. History of Legal English –	14.11	1. 19 Century 2. 20 Century

Part IV		
12. Legal English: Criticism	14.12	1. Redundancy 2. Repetition 3. Sentence Length 4. Latinized Structure 5. Mysterious Vocabulary
13. Effective Communication	14.13	1. Process 2. Flow 3. Principles 4. Barriers
14. Mechanics of Professional Writing	14.14	1. Pre-Planning 2. Planning 3. Outlining 4. Drafting 5. Revising 6. Editing/Proofreading 7. Publishing
15. Drafting a Judgment	14.15	1. Caption 2. Facts 3. Issues 4. Evidence 5. Analysis 6. Decision 7. Consignment
16. Writing a Judgment	14.16	1. Making A Plan 2. Writing The First Draft 3. Revising 4. Check List For Editing
17. Reading Samples-1	14.17	1. Lord Denning's Judgments
18. Reading Samples	14.18	1. Denning's Judgments
19. Reading Literature for learning effective communication	14.19	1. Selections Shakespeare 's <u>Measure for Measure</u>, <u>A Merchant of Venice</u>.
20. Plain Legal English	14.20	1. Definition 2. Explanations 3. Examples
21. Mechanics of Research	14.21	1. Generation of a Thesis Statement 2. Intro 3. Lit review 4. Research Questions (s) 5. Objectives 6. Methodology 7. Limitations 8. Cautionization

22. Application of Research Skills	14.22	1. Group Discussions for selecting a topic 2. Articulating a thesis statement 3. Making the outline
23. Submission of First Drafts	14.23	1. Peer reviewing
24. Submission of Final Draft for Research	14.24	1. Individual Presentations
25. 3 weeks for submission of final draft of the research work	14.25	1. Evaluation

Module – 15

COURT FEE ACT & SUIT VALUATION ACT

INTRODUCTION

The module focuses on understanding the law of court fee and suit valuation. This includes the conceptual understanding of difference between court fee and stamps laws. The topic also covers laws pertaining to remission, abolition and refund of court fee. The most important part of the topic is the techniques to know first, how to evaluate the suits for the purpose of affixing court fee, and secondly, how to evaluate it for the purpose of jurisdiction. The inter-relation of law of court fee and suit evaluation is explained. Those areas where these two laws differ with each other are also highlighted. The rules on refund of court fee are discussed. The situations where insufficient court fee is affixed are dealt with.

OBJECTIVES

- To highlight the difference between stamp law & court fee law
- To discuss that how suits are valued for the purpose of court fee
- To understand the importance of evaluating the suits correctly for the purpose of jurisdiction
- To dilate upon the method of refund of court fee
- To know that when and how documents are impounded during judicial proceedings and how these documents are dealt with

LEARNING OUTCOMES

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

- Have a correct approach to the relevant laws
- Full knowledge as to overlapping and discordant areas of both the laws
- Determine the various fee accurately
- Correctly evaluate suits for the purpose of jurisdiction
- Distinguish between advalorem and fixed fee

CONTENTS

Topic	Break up	Description
Topic 1: Court Fee	15.1	1. Purpose 2. Form 3. Meanings 4. Advalorem Fee 5. Fixed Fee

		6. Method of Evaluation 7. Refund
Topic 2: Pecuniary Jurisdiction	15.2	1. Limits 2. Procedure 3. Hierarchical limit 4. Challenges
Topic 3: Suit Valuation	15.3	1. Importance 2. Linkage with Court Fee Act 3. Areas of dissimilarities with Court Fee. 4. Procedure 5. Rules

GROUP ACTIVITY

- ➔ To practically determine court fee in a suit for rendition of accounts

PRACTICAL EXERCISE

- ➔ Mr. A brought a suit in respect of a five storey plaza situated at Qissa Khawani bazar. He has sought declaration of its title, possession and recovery of mesne profit. The Market value of the shopping plaza is 05 core. The claimed mesne profit is 3.6 million. How would you assess its valuation keeping in view Section 7 of the Court Fee Act. What court fee (if so) is required to be appended with the plaint at the time of institution of the suit?

SYNDICATE RESEARCH

1. The Islamisity of the court fee in the light of the judgment of the FSC
2. The concept of free of cost justice vis-à-vis inexpensive justice
3. Why is court fee alien to criminal justice?

CASE LAW

1. *Raj-Ud-Din v. Muhammad Shoiab and 2 others*, 2012 MLD 1371 Peshawar
2. *Mst. Parveen Akhtar and another v. Syed Wasey Agha and 2 others*, 2011 YLR 1999 Quetta
3. *Khan Muhammad v. Muhammad Bilal and another*, 2010 YLR 3114 Lahore

REFERENCE MATERIAL

- Court Fee Act, 1870
- Abolition of Court Fee Ordinance 1978.
- KPK Finance Act 2011.
- Suit Valuation Act, 1887.

Module – 16

INTERPRETATION OF STATUTES

INTRODUCTION

The module is aimed at making the participants understand the basics of statutory interpretation. It shall cover different approaches, rules and tools of interpretation of statutes, their origin and evolution. The trainees will also be apprised of the role of different maxims in the process of interpretation. The module also discusses the modes of statutory interpretation under Islamic jurisprudence, followed by a comparison with the Anglo-American system.

OBJECTIVES

- To probe the history and development of statutory laws
- To know the role and importance of statutes in legal development
- To understand the evolution of different approaches towards interpretation
- To familiarize the participants about the advantages and disadvantages of different ways of interpretation
- To compare the detail contours of all these systems and rules
- To make participants appreciate the use of appropriate mechanism for interpretation
- To have a holistic view of all competing and complementary rules in vogue in interpretation
- To enhance the knowledge of participants about rules of interpretation prescribed by the jurists of Islamic jurisprudence
- To know the various aids/ tools of interpretation

LEARNING OUTCOMES

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

- Differentiate between different ways of statutory interpretation
- Understand the basis of different approaches to interpretation
- Apply different rules of interpretation, their relevance, import and usage
- Use legal maxims properly while making interpretation
- Appreciate the correct use of competing rules of interpretation
- Select and prioritize the most appropriate tool of interpretation
- Opt the most appropriate opinion from amongst the different opinions advanced by jurists on a particular issue

CONTENTS

Topic	Break up	Description
Topic 1:	16.1	1. Origin

Statute		2. Evolution 3. Importance
Topic 2: Legislation	16.2	1. Types 2. Drafting 3. Purpose 4. Possibilities and probabilities.
Topic 3: Legislature	16.3	1. Types 2. Pith and substance 3. Wisdom 4. Representation 5. Relevancy with interpretation 6. Role in interpretation.
Topic 4: Ways of Interpretation	16.4	1. Types 2. History 3. Importance 4. Relevancy with system
Topic 5: Principles of Interpretation	16.5	1. Kinds 2. Competing principles 3. Complementary principles 4. Relevancy with different approaches
Topic 6: Sources of Interpretation	16.6	1. Types 2. Scope 3. Application 4. Exclusion
Topic 7: Legal Maxims	16.7	1. Relevancy 2. History 3. Equitable maxims
Topic 8: Repeal	16.8	1. Definition 2. Need and significance 3. Kinds 4. Effect of repeal
Topic 9: Islamic Interpretation of Laws	16.9	1. Place 2. Scope 3. Statutes in Islam 4. Usul-ul-Fiqh and Interpretation

GROUP ACTIVITY

➔ The interpretation of S.115 CPC (What is meant by the words ‘decided by any Court’?)

- ➔ Selected readings from S.M. Zafar, *Understanding Statutes: Cannons of Construction*, Lahore: PLD Publishers, 3rd Edition, 2008.

PRACTICAL EXERCISE

- ➔ Mr. Altaf Meman has been charged with impersonation in election on the ground that he has impersonated Yahya Meman, a deceased inhabitant of Maleer. The relevant provision says that impersonation means the casting of vote in place of a person, who is able to cast his own vote. Discuss whether the incident attracts the provision? Give reasons for your opinion, which may be either affirmative or negative.

SYNDICATE RESEARCH

1. Interpretation and Construction: Various approaches.
2. The role of legal maxims in the process of interpretation.

CASE LAW

1. *Dossani Travels Pvt. Ltd v. Messrs Travels Shop Pvt. Ltd & others*. 2014 PLD SC 01
2. *Federation Of Pakistan through secretary M/O Petroleum and Natural Resources and another v. Durrani Ceramics and others*. 2014 SCMR 1630
3. *Commissioner Inland Revenue Zone-II, Regional Tax Office, Multan v. Mrs. Ambreen Fawad C/O Pak Arab Fertilizers Ltd, Multan*. 2014 CLD 272 Lahore
4. *Inspector General of Police, Punjab v. Mushtaq Ahmad Warraich*, PLD 1985 SC 159
5. *Neimat Ali Goraya v. Jaffer Abbas, Inspector/ Sergeant Traffic*, 1996 SCMR 826
6. *Gul Hassan & Co. v. Allied Bank of Pakistan*, 1996 SCMR 237
7. *Mubarik Shah v. State*, 1990 PCrLJ 1796 Peshawar

REFERENCE MATERIAL

1. Maxwell, *On Interpretation of Statutes*, London, Sweet and Maxwell, 12 Edition 1969
2. The General Clauses Act, 1897
3. S.M. Zafar, *Understanding Statutes: Cannons of Construction*, Lahore: PLD Publishers, 3rd Edition, 2008
4. M. Farani, *The Interpretation of Statute*, Lahore, Law Time Publications, 1977.
5. Imran Ahsan Khan Nyazee, *Islamic Legal Maxims*. Islamabad: Federal Law House, 2014
6. Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad*. Islamabad: Islamic Research Institute, 1994
7. Allama Muhammad Khalid Atashi, Trans by Mufti Amjad Ali, *Sharh Majallah*, IRI, Islamabad, 1986

Module – 17

MEDICAL JURISPRUDENCE & FORENSICS

INTRODUCTION

The module is aimed to equip the trainees with sufficient knowledge of Forensic Medicine/Forensic Sciences. It will help the trainees perform judiciously in cases involving modern scientific medical advancement. The module specifically focuses on the role of such advancement in the process of investigation.

OBJECTIVES

- To know the preliminaries of the medico-legal investigations
- To understand the various phrases used in medico-legal practice
- To appreciate the difference between clinical Forensic Medicine, autopsy and exhumations

LEARNING OUTCOMES

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

- Ascertain the mode, manner and cause of death from the autopsy and laboratory reports
- interpret the findings and laboratory reports in sexual assaults
- find out the medical negligence and infamous conduct of doctors

CONTENTS

Topic	Break up	Description
Topic 1: Introduction to Forensic Medicine	17.1	1. Introduction to forensic medicine & Forensic Sciences 2. The medico-legal systems 3. The authorized medical officer
Topic 2: Clinical Forensic Medicine	17.2	1. Assaults – Physical 2. Weapon 3. Time of infliction / age of wound 4. Legal nature of injury as per Qisas & Diyyat Act
Topic 3: Poisoning	17.3	1. Poisoned – Living 2. Diagnosis 3. Manner of poisoning – suicidal / homicidal / accidental / exhibitional interpretation of laboratory reports 4. Poisoned – dead

		5. Legal & Ethical Duties 6. Alcoholic 7. Diagnosis 8. Collection of specimens under direct supervision of MLO
Topic 4: Sexual Assaults	17.4	1. Rape Sodomy / Pedophyllia 2. Indecent assaults 3. Sexual perversions 4. Collection of trace evidence maintaining chain of custody
Topic 5: Age Certification	17.5	1. Age determination 2. Important Medico-legal ages 3. Intra uterine 4. Extra uterine
Topic 6: Interpersonal Matters	17.6	1. Impotence 2. Sterility 3. Consummation of marriage 4. Nullity of marriage 5. Virginity 6. Pregnancy 7. Legitimacy – duration of pregnancy 8. Blood grouping 9. DNA analysis
Topic 7: Toxicology	17.7	1. Diagnosis / collection of samples/ legal duties
Topic 8: Medical Negligence	17.8	2. Definition 3. Civil / Criminal 4. 3rd Party Negligence 5. Contributory negligence 6. Who to hear / punish 7. Courts 8. PM&DC – Disciplinary committee headed by nominee of supreme court 9. Professional Death Sentence 10. Temporary suspension of registration 11. Warning 12. Disposed of if not proved

GROUP ACTIVITY

➔ The nomenclature of wounds in the PPC.

PRACTICAL EXERCISE

➔ Mr. A is accused of inflicting injuries to the person of Mr. B. The nature of wounds shown in the medico legal report is:-

- i. Bruise on the face near the cheek, yellowish black in complexion.
- ii. Canine tooth broken.
- iii. Firearm wound to the left biceps.
- iv. Left shoulder dislocated.
- v. Punctured wound to the abdomen skin deep.
- vi. Incised wound to the right thigh exposing the bone.

Please assess the nature of wound and name them. Similarly cite the laws relevant to these wounds?

SYNDICATE RESEARCH

1. The enforcement of *Qisas* in bodily wounds
2. Evidentiary value of facts generated by forensic sciences
3. Medical opinions based on forensic sciences: need and significance

CASE LAW

1. *Mrs. Alam Ara v. Dr. Shaista Tariq*. 2013 MLD 743 Peshawar
2. *Rozi Khan v. Muhammad Asif and others*. 2015 PCr.LJ 465 Quetta
3. *Shahabuddin v. Muhammad Hashim Khan and another*. 2015 PCr.LJ 81 Peshawar
4. *Muhammad Arshid and another v. The State*. 2014 YLR 1060 Lahore
5. *Nazeer alias Wazeer v. The State*, 2007 PLD SC 202
6. *Abdul Majeed v. Mulazim Hussain and other*. 2007 PLD SC 637

REFERENCE MATERIAL

- ➔ Justice S.A. Bobde, *Medical Jurisprudence & Toxicology*, Allahabad, Premier Publishing Co., 2012.
- ➔ Jaising P Modi, *A Textbook of Medical Jurisprudence and Toxicology*, LexisNexis Butterworths Wadhwa, Nagpur, 2011.
- ➔ Bernard Knight, *Lawyer's Guide To Forensic Medicine*, Lawman (India) Private Limited, 1998.
- ➔ Parekh & Parmar's, *Principle and Practice of Medical Jurisprudence & Toxicology*, Allahabad, Dwivedi & Company, 2001.

Module – 18

PENAL LAWS-1

INTRODUCTION

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

OBJECTIVES

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

LEARNING OUTCOMES

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

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

CONTENTS

Topic	Break up	Description
Topic 1: Scheme of Pakistan Penal Code, 1860	18.1	1. Historical background 2. Definitions 3. Scheme of law 4. General Exceptions 5. Punishments
Topic 2: Offences: Public Servants	18.2	1. Illegal gratifications 2. Violating law 3. Forging documents 4. Impersonating 5. Avoiding service 6. Non attendance 7. Obstructing

Topic 3: Offences against Public Justice & State	18.3	1. Violating oath 2. Fabricating false evidence 3. Resisting arrest 4. Making false declarations 5. Harbouring offenders 6. Offences relating to Oil & Gas 7. Waging War 8. Defiling National Flag
Topic 4: Religious freedom & Safeguards	18.4	1. Sanctity of places of worships 2. Blasphemy 3. Desecration of places of worship
Topic 5: Offences relating to Human body	18.5	1. Kinds of hurt 2. Punishments 3. Requirements of punishment as regard to fasād fī al-ardh 4. <i>Qatl</i> & kinds 5. When <i>qisas</i> cannot be inflicted 6. Waiver & Compounding Qisas 7. Rape & punishment 8. Unnatural Offences
Topic 6: Ensuring Public Tranquillity	18.6	1. Unlawful assembly 2. Rioting 3. Assaulting or obstructing public servants 4. Wantonly provoking for rioting 5. Affray
Topic 7: Abduction & Kidnapping	18.7	1. Wrongful restraint & confinement 2. Force & Criminal force 3. Assault 4. Outraging modesty 5. Kidnapping 6. Kidnapping for extortion & ransom 7. Selling minors for prostitution
Topic 8: Offences against Property	18.8	1. Theft 2. Extortion 3. Robbery & Dacoity 4. Criminal misappropriation of property 5. Breach of trust 6. Cheating 7. Receiving stolen property 8. Mischief 9. Criminal Trespass

Topic 9: Intimidation, Insult & Defamation	18.9	1. Criminal intimidation 2. Word, gesture or act to insult modesty of woman 3. Defamation 4. Sale of printed or engraved defamatory matter
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GROUP ACTIVITY

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

PRACTICAL EXERCISES

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

SYNDICATE RESEARCH

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

CASE LAW

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

REFERENCE MATERIAL

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

Module – 19

PENAL LAWS-2 (*Hudūd*)

INTRODUCTION

This module covers the *Hudood* laws promulgated in 1979 as a part of the "Islamization" process. It has introduced new offences such as *Zina*, *Qazf*, theft, *harabah*, drinking and the like. Separate lessons have, therefore, been allocated to each of them. The module mainly focuses on *Hudood* punishments. Nonetheless, *Ta'azir* being an alternative punishment, has also been dealt with.

OBJECTIVES

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

LEARNING OUTCOMES

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

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

CONTENTS

Topic	Beak UP	Description
Topic 1: Preliminaries	19.1	1. Administration of criminal justice in Islam 2. <i>Hadd</i> , <i>Qisas</i> , and <i>Ta'azir</i> ; distinction of. 3. Touchstone for criminal liability.
Topic 2: (a) Theft	19.2	1. Meaning and definition 2. Kinds 3. Mode of proof 4. Sentence; kinds & enforcement
Topic 3: (b) <i>Harabah</i>	19.3	1. Meaning and definition 2. Mode of proof 3. Punishment; variety of.
Topic 4:	19.4	1. Meaning and definition

(a) <i>Zina</i>		2. Constituting elements 3. Kinds as regard to sentence 4. Kinds as regard to offender 5. Modes of proof 6. Sentence; kinds and execution
Topic 5: (b) <i>Lia'an</i>	19.5	1. Accusation of <i>Zina</i> by husband 2. <i>Lia'an</i> proceedings as prescribed by the holy <i>Quran</i>. 3. Completion of <i>lia'an</i>; its effects on spouses, previous children and the disputed offspring.
Topic 6: <i>Qazf</i>	19.6	1. Meaning and definition 2. Protection of honor as one of the five objectives of <i>Sharia</i> 3. Constituents of the offence 4. Mode of proof 5. <i>Qazf</i> and defamation; compatibility of Punishment 6. Post punishment effects
Topic 7: Intoxicants	19.7	1. Meaning and definitions 2. <i>Khamr</i> / Liquor and other intoxicants; difference of 3. Mode of proof 4. Punishments

GROUP ACTIVITY

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

PRACTICAL EXERCISES

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

SYNDICATE RESEARCH

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

CASE LAW

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

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

REFERENCE MATERIAL

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

Module – 20

PRECEDENTS

INTRODUCTION

Whether judges make or interpret law? Besides answering this question, the module discusses the origin and evolution of precedents in various jurisdictions and legal systems. It, nonetheless, focuses on how to select and apply a precedent to the facts of a particular case. It also discusses the legal force of the precedents of the different ranks of courts.

OBJECTIVES

- To explore the origin and evolution of precedent
- To understand the difference in approach as to precedents of different legal systems
- To know the jurisdictions where precedents are more honoured
- To realize the difference between binding and persuasive precedents
- To comprehend the force of precedent as a tool of interpretation
- To understand *sub-silentio* and *per incurium* judgments

LEARNING OUTCOMES

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

- To realize the importance of the subject
- To follow persuasive and binding precedents in its due places
- To prioritize the required precedent from the bulk
- To apply the techniques for ascertaining the similarity of a precedent to the facts of a case in hand
- To distinguish between *sub-silentio* and *per incurium* judgments

CONTENTS

Topic	Break up	Description
Topic 1: Preliminaries	20.1	1. Meaning of precedent 2. Origin 3. Development 4. Importance
Topic 2: Civil Law System	20.2	1. Origin 2. Development 3. Place of precedents

Topic 3: Common Law system	20.3	1. Origin 2. Development 3. Place of precedents
Topic 4: Plural System of Law	20.4	1. Origin 2. Development 3. Place of precedents 4. Relevancy with system
Topic 5: Pakistani law	20.5	1. Meaning and kinds of precedent 2. Evolution and development 3. Precedent in the Constitution of Pakistan, 1973 4. Precedent in the judgments of Pakistani courts 5. Rules governing the selection of precedent to be followed in case of conflict

PRACTICAL EXERCISE

- ➔ A has brought a pre-emption suit against B. While giving arguments on the case, A's counsel presented a judgment delivered by a six members bench of the Supreme Court, and said that specification of watch time is not necessary for proving of Talab-e-Muathibat. The defendant's counsel presented another judgment of the Division bench of the Supreme Court, later in time, and claimed that such specification is mandatory to prove Talab-e-Muathibat. Which precedent is to be followed?

CASE LAW

1. *Raja Muhammad Niaz Khan, Ex-Chairman, Azad Kashmir Mineral And Industrial Development Corporation v. Azad Government Of The State Of Jammu & Kashmir, Muzaffar Abad*, 1988 PLD 53 AJ&K
2. *Muhammad Sohail and 2 others v. Government of N.W.F.P and others*, 1996 SCMR 218
3. *Irshad Ahmad Shaikh v. The State*, 2000 SCMR 814

REFERENCE MATERIAL

- ➔ Muhammad Munir, *Precedent in Pakistani Law*, Karachi, Oxford University Press, 2014
- ➔ Rupert Cross, Harris, J.W., *Precedent in English Law*, Oxford, Clarendon Press, 1991, reprinted 2004
- ➔ Michael Zander, *The Law – Making Process*, London, Butterworths, 2005
- ➔ A. Lakshminath, *Precedent in Indian Law*, Lucknow, Eastern Book Company, 2005
- ➔ S.M. Zafar, *Understanding Statutes: Cannons of Construction*, Lahore: PLD Publishers, 3rd Edition, 2008

Module – 21

RENT LAWS

INTRODUCTION

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

OBJECTIVES

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

LEARNING OUTCOMES

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

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

CONTENTS

Topic	Break up	Description
Topic 1: Historical development & conceptual bases of Rent Laws in Pakistan	21.1	1. Development of Rents Laws of Pakistan 2. Rent Controller as <i>Persona Designata</i> 3. Scope
Topic 2: Urban Rent Restriction Ordinance, 1959	21.2	1. Scope & Jurisdiction 2. Landlord & Tenant's relationship 3. Fair Rent 4. Ejectment petition 5. Tentative Rent Order 6. Execution

GROUP ACTIVITY

- ➔ Tenant and landlord relationship

PRACTICAL EXERCISE

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

SYNDICATE RESEARCH

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

CASE LAW

1. *Malik Sami Ullah Azeemi v. Khayam and 2 others*, 2014 CLC 1595 Peshawar
2. *Muhammad Farooq v. Abdul Waheed Siddiqui and others*, 2014 SCMR 630
3. *Ittehad Chemicals Limited v. VII Additional District Judge, Karachi (South) and 2 others*, 2010 SCMR 1582
4. *Syed Maqsood Shah Bukhari v. Federal Government through Secretary M/O Law and Justice, Islamabad*, 2013 MLD 1808 F.S.C
5. PLD 1965 SC 459
6. *Muhammad Ashraf Khan v. Fahmid Khanum*, PLD 1982 SC 398
7. *Rehmatullah v. Ali Muhammad*, 1983 SCMR 1064
8. *Razia Begum v. Senior Civil Judge (Rent Controller) Charsadda*, PLD 1996 Pesh 8
9. *Hanif V Ahmed Shah*, 2001 SCMR 577
10. *Muhammad Azeem Qureshi v. Hakim Syed Akhtar Irshad*, 1990 CLC 122
11. *Pakistan Institute of International Affairs v. Naveed Merchant*, 2012 SCMR 1498

REFERENCE MATERIAL

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

Module-22

REVENUE LAW

INTRODUCTION

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

OBJECTIVES

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

LEARNING OUTCOMES

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

- Properly apply the law relating to land revenue record
- Realize importance of land record
- Efficiently apply the relevant provisions properly
- Weigh accurately the evidentiary value of land record
- Skilful interpretation of the land record

CONTENTS

Topic	Break up	Description
Topic 1: Preliminaries	22.1	1. An introduction to the Land Revenue Act, 1967 2. Other relevant laws, rules and regulations
Topic 2: The Revenue Courts and	22.2	1. The composition, power and importance of Revenue Courts

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

their link to Civil Courts		2. Revenue Courts vis-à-vis Civil Courts
Topic 3: Key concepts used in the revenue administration	22.3	1. Understanding concepts such as: Settlement, Measurement (Paimaish), Consolidation (Ishtemal), Pedigree table (Shajra-e-Nasb), Field map (Aks Shajara-e-kishtwar), mutation, Patwari record, Periodical Record (Register Haqdarar-e-Zameen), Crop Inspection (Girdawari), Partition, Acquisition, Agriculture Income Return (Jahar Pedawar), Administration, Inheritance, Demarcation (Hadbararee), Computerization of land record
Topic 4: The application of land revenue law	22.4	1. Application of the above noted concepts
Topic 5: The land record officials and their duties	22.5	1. How the land record official (Patwari, Qanungo and Tehsildar) perform their duties 2. Problems of Revenue Officials in relation to civil courts and how to resolve them.
Topic 5: Case law	22.6	1. Study of landmark judgments pertaining to land record

GROUP ACTIVITY

- ➔ Physical inspection of various registers and discussion thereon

PRACTICAL EXERCISE

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

SYNDICATE RESEARCH

- ➔ Evidentiary value of various documents of revenue record

CASE LAW

1. *Sajawal Shah and another v. Syed Rahim Shah and others*, 1975 PLD SC 325
2. *Ahmad Khan v. Rasul Shah and others*, 1975 PLD SC 311
3. *Mst. Baswara v. Hafizullah Khan and others*, 2015 PLD 30 Peshawar
4. *Habib Khan and another v. Mst. Bibi Zohra and 2 others*, 2012 PLD 80 Peshawar
5. *Atta Muhammad v. Manzoor Ahmad*, 1992 SCMR 138
6. *Shah Hussain v. Abdul Qayum*, 1984 SCMR 427
7. *Feroz v. Sher*, PLD 1985 SC 254
8. *Muhammad Sabir Khan v. Rahim Baksh*, PLD 2002 SC 303

9. *Mst. Amro v. Mst. Atlas*, PLD 1987 Peshawar 6
10. *Muhammad Younus v. Shahid Naveed*, 1989 CLC 837
11. *Shad Muhammad v. Khan Poor*, PLD 1986 SC 91

REFERENCE MATERIAL

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

Module-23

PROBATION & PAROLE

INTRODUCTION

This module shall discuss the significance of Probation and Parole laws as alternatives to incarcerations. It explains the difference between the two laws. The main focus, however, remains on Probation which is more relevant to judicial functions. The module also covers the proper application of procedures under the Probation laws at pre, during and at the conclusion of the trial. The structure and functioning of Pakistani Probation and Parole system is also discussed. The module also appraises the trainees about international framework supporting non-custodial measures.

OBJECTIVES

- To sensitize the trainees to the importance of probation & parole
- To understand the difference between parole & probation
- To know the procedure prescribed for probation

LEARNING OUTCOMES

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

- Confidently implement relevant provisions of probation and parole laws
- Apply the law correctly
- Differentiate between probation & parole
- Study international framework on the subject

CONTENTS

Topic	Break up	Description
Topic 1: Preliminaries	23.1	1. Meaning and definition 2. Origin and evolution 3. Need and significance
Topic 2: Structure & functioning of probation & parole system	23.2	1. Definition 2. Difference 3. Procedures
Topic 3: Probation	23.3	1. Scope of Probation of Offenders Ordinance, 1960 2. Supervision of a Probation Officer 3. Grave offences not entitled to probation

		4. Breach of conditions 5. Juvenile Justice System Ordinance, 2000
Topic 4: Parole	23.4	1. Meaning 2. Scope of parole system 3. Misuse of parole 4. Refusal of parole
Topic 5: International framework	23.5	1. Tokyo Rules 2. Beijing Rules 3. Bangkok Rules 4. ICCPR

GROUP ACTIVITY

- Causes of less application of Probation Law
- Probation law in Pakistan & India—a comparative study

PRACTICAL EXERCISE

- ➔ Police produces a 16 years old accused before a court. He is charged for attempted murder and is in handcuffs. In the application for his custody, police has mentioned that due to his previous criminal record, he has been produced in handcuffs. The defence counsel takes the plea that his client is mentally ill and produces certificate to this effect. The defence further alleges violation of section 10 (1) (b) and 12(b) of JJSO, 2000. Discuss!
- ➔ Write an order of release of an offender on probation u/s 9(a) CNSA

CASE LAW

- Naseeb Ullah v. The State*, 2014 PLD 69 Peshawar
- Mian Khan v. The State*, 2014 PLD 127 Peshawar
- Ghulam Dastagir v. The State*, 2014 PLD 100 Quetta
- Nidoo alias Nizamuddin v. The State*, 2007 PLD 123 Karachi
- Wazir v. The state*, 2007 PLD 113 Karachi

REFERENCE MATERIAL

- 1) Probation of Offenders Ordinance (XLV of 1960)
- 2) West Pakistan Probation of Offenders Rules, 1961
- 3) The Good Conduct Prisoners Probational Release Act, 1926
- 4) The Good Conduct Prisoners Probational Rules, 1927
- 5) Juvenile Justice System Ordinance, 2000
- 6) The International Covenant on Civil and Political Rights, 1966

- 7) United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) Tokyo Rules, 1990 [G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990)]
- 8) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985
- 9) The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), 2010

Module-24

INHERITANCE

INTRODUCTION

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

OBJECTIVES

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

LEARNING OUTCOMES

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

- Apply the rules and principles to the facts of a case properly
- Interpret the relevant legal provisions accurately
- Determine the shares easily
- Conduct research on emerging issues⁵

CONTENTS

Topic	Beak UP	Description
Topic 1: Preliminaries	24.1	1. Introduction as ‘Discipline’. 2. Definition & ingredients. 3. History [Arab and non Arab societies]. 4. Phraseology.
Topic 2: Inheritance mandating provisions	24.2	1. Quranic Provisions. 2. <i>Sunnah</i> . 3. <i>Ijma ‘a</i> /consensus of opinion.

⁵ Issue of pension, benevolent fund, insurance policies, certificates, and any other benefit, profit or right gained or accrued after the death of the deceased.

Topic 3: A. Factor entitling to heritable. B. Factor disentitling to heritable	24.3	(A) 1. <i>Sabab</i>/causation. 2. <i>Nasab</i>/lineage. 3. <i>Al-wila 'a</i>/ heritable of freed slave. (B) 1. <i>Riqq</i> /Slavery. 2. <i>Qat 'l</i>/Murdering. 3. Religion. 4. <i>Dar</i>/State.
Topic 4: Sharers (<i>Zavil Furudh</i>)	24.4	1. Persons with pre-stated shares. (a) <i>Nasabi</i> (b) <i>Sababi</i> 2. List of <i>Nasabi</i> sharers: a) Father b) Grandfather c) Uterine brother d) Daughter & two or more daughters e) son's daughter sometime f) full sister g) consanguine sister h) uterine sister i) mother j) Grandmother 3. List of <i>sababi</i> sharers a) husband b) wife
Topic 5: Residuary/ <i>Asabah</i>	24.5	1. Definition 2. Kinds a. <i>Asabah binnafts</i>/Original & paternal male relatives. b. <i>Asabah bil-ghair</i>/ residuary (female) due to external factor (male). c. <i>Asabah Ma Alghair</i>/ residuary (female) due to external factor (female). 3. Exercises.
Topic 6: Gender - based- division of heirs	24.6	1. All male heirs & shares. 2. All female heirs & shares. 3. Exercises.
Topic 7: Concept of <i>Aw'l</i> (increase)	24.7	1. Meaning. 2. Original denominators. 3. Procedures of determining of a denominator.

		4. Kinds of fixed shares. 5. Exercises.
Topic 8: Concept of <i>Radd</i> (Return)	24.8	1. Meaning. 2. Conditions. 3. Exercises
Topic 9: Concept of <i>Haj' b</i> /Exclusion	24.9	1. Meaning. 2. Kinds. 3. Depriver and the deprived. 4. Exercises.
Topic 10: <i>Zawel Arham</i> /Distant Kindred	24.10	1. Meaning. 2. Kinds. 3. Distribution methodology. 4. Exercises.

GROUP ACTIVITY

Find share of each of the legal heirs listed below:

❖ **Total heritable =600 Dinars**

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

SYNDICATE RESEARCH

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

CASE LAW

1. *Saadullah and others v. Mst. Gulbanda and others*, 2014 SCMR 1205
2. *Dawlat Khatoon v. Amina Bibi*, PLD 1958 W.P.(Rev) 67
3. *Mst. Aqsa Sabir v. Dr. Sajjad Hussain*, 2015 MLD 652 PHC

4. *Ghulam Shabbir v. Mst. Bakhat Khatoon*, 2009 SCMR 644
5. *Javed Ishaque v. Muhammad Ishaque*, 2006 CLC 1093 Karachi
6. *Riaz Hussain Shah v. Chief Land Commissioner, Punjab Lahore*, 2000 YLR 633 LHC

REFERENCE MATERIAL

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

Module-25

CONTEMPT OF COURT LAWS

INTRODUCTION

This module covers the laws meant to deal with those who commit contempt of court and to deter intended disparagement of courts. It encompasses the meaning, definition and purpose of the contempt of court. The evolution of contempt of court law since the colonial time is also covered. The main focus, however, remains on the law relating to contempt of court in Pakistan, covering the relevant constitutional provisions, legislation and its salient features, and defences, jurisdiction and procedure.

OBJECTIVES

- To know the origin and evolution of the contempt of court law
- To understand the specific contempt of court law and those laws which contain provisions for contempt of court
- To learn the procedure for contempt of court proceedings
- To remove the reluctance of trainees in initiating action on appropriate occasions
- To sensitize them to the avoidance of situation amounting to contempt of court
- To apprise the trainees on recent case law on the subject

LEARNING OUTCOMES

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

- Apply correctly the provisions of contempt of court laws
- Take prompt and courageous action on appropriate occasions
- Maintain the decorum of the court first by shunning factors amounting to contempt, secondly, by handling skilfully the unavoidable situations

CONTENTS

Topic	Beak up	Description
Topic 1: Preliminaries	25.1	1. Meaning of court 2. Meaning of contempt 3. Origin and evolution of contempt of court 4. Contempt of court: Pakistan and other jurisdictions 5. Need and significance 6. Contempt of court vis-a-vis the right to fair trial under article 10-A of the

		Constitution of Pakistan, 1973
Topic 2: Conceptual basis of contempt laws	25.2	1. Legal definition of contempt of court 2. Purpose of contempt laws 3. Parameters of contempt of court as set out by higher courts 4. Legal defences
Topic 3: Substantive and procedural enactments in Pakistan	25.3	1. Constitutional provisions on contempt of court 2. Salient features of Contempt of Court Act, 1976 3. Salient features of Contempt of Court Act, 2012 4. Other enactments: The PPC (Section 228) r/w the CrPC (Sections 195, 476)
Topic 4: Trial	25.4	1. Nature of the trial 2. Procedure prescribed by Chapter XXII of the CrPC

GROUP ACTIVITY

- ➔ The Contempt of Court Act, 2012 in light of a Supreme Court Judgment
- ➔ The dire need for simplifying the contempt procedure in the CrPC

SYNDICATE RESEARCH

- ➔ The contempt of court law in Pakistan and common law countries: A Comparative Analysis of the UK and India

PRACTICAL EXERCISE

- ➔ While your court was in session, Mr. G entered in an obnoxious manner and started abusing the court. He also disrupted the court proceedings. His act was deliberate and intentional. He wanted to disparage the court and hamper its proceedings. You are determined to initiate contempt of court proceedings against him. How would you proceed and what options you have to prosecute him? Please document the whole proceedings of this hypothetical event.

CASE LAW

1. *Criminal Misc. Application no. 296 of 2008 in/and Criminal original petition no. 38 of 2008*, 2009 SCMR 780
2. *The State v. Muhammad Akbar Cheema, Advocate*, PLD 2006 Lah. 193
3. *Muhammad Gulzar v. Muhammad Habib & 05 others*, 2004 PCrLJ 1890 Lah.
4. *Zulfiqar Ali v. The State*, 1999 SCMR 2810

5. *Naushaba Kazi, XII Civil Judge Karachi (South) v. Mehjabeen Farzana*, Adv [2003 PCrLJ 227 Kar]
6. *Azam Jan Zarkoon v. The State*, 2000 PCrLJ 1621 Quetta

REFERENCE MATERIAL

- Provisions of contempt of court in the Constitution of Pakistan, 1973
- The contempt of Court Ordinance 2003
- The Contempt of Court Act, 2012
- The Contempt of Court Act, 1976
- Provision relating to contempt of court in the constitutions of 1956 and 1962

Module-26

INFORMATION & COMMUNICATION TECHNOLOGY

INTRODUCTION

The Information and Communication Technology (ICT) has a spectacular impact on each and every discipline. The judiciary and judicial work is no exception to it. The module is therefore aimed to orientate the trainees with use of the ICT and to enrich their literacy on the subject for the purpose. To achieve the purpose, the module covers basics of the ICT and the skills of computer for Microsoft Office and the internet. The module also covers the use of computer and related devices.

OBJECTIVES

- To have basic orientation with the ICT
- To enrich the literacy of the trainees on the subject
- To learn the operation of the computer-related devices
- To comprehend key concepts of the ICT
- To realize the importance of the use of the ICT in judicial work and legal research

LEARNING OUTCOMES

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

- Operate skilfully computer related devices
- Use software for official work
- Utilize the ICT for improving judicial performance

CONTENTS

Topic	Break up	Description
Topic 1: Introduction to ICT, Computer, Networks	26.1	1. Introduction & Evolution of ICT 2. Computer & Hardware 3. Software & Operating Systems 4. Network and Internet
Topic 2: Windows	26.2	1. Understanding Windows 2. Basic Operations 3. Settings (control panel) 4. Network settings 5. files types, extensions 6. Installing applications (office, multimedia, utility)
Topic 3:	26.3	1. Basics of interface

Microsoft Office (Word)		2. Setting page, printing options 3. Formatting, designing & Editing document, spell check 4. Inserting tables, charts, images, clipart, shapes, smart arts, header, footer, symbols etc 5. Using References, contents, footnote, end notes 6. Labels and Mail merge
Topic 4: Microsoft Excel	26.4	1. Basic Interface 2. Working with Cells, sheets 3. Headers, footers, Print area 4. Calculations using formula 5. Formatting, Sorting, Printing etc 6. Charts, Filters 7. Working with Courts Forms and Data
Topic 5: Microsoft PowerPoint	26.5	1. Basic Interface, Slides, notes page 2. Layouts, Design, Color schemes 3. Inserting slides, Photos, clip arts, charts 4. Animation, Slide Transitions 5. Slide show setting 6. Printing slides, Handouts
Topic 6: Microsoft Access	26.6	1. Basic concepts of database (Data, Information, Database, DMBS etc) 2. Tables 3. Queries 4. Forms 5. Reports
Topic 7: Internet & Email	26.7	1. Introduction to Internet 2. Networks, LAN/WAN, Intranet/Internet 3. Getting connected (Broadband, Wireless) 4. Websites 5. Email 6. Social Networking 7. Searching
Topic 8: Legal Research on Internet	26.8	1. General Law Sites 2. Law Journals 3. Case Law

GROUP ACTIVITY

- ➔ Understanding judicial statistical statements: preparation of the Peshawar High Court's DPEP statistical program

PRACTICAL EXERCISES

1. Drafting letters, Judgment, Orders using MS Word with all necessary formatting.
2. Using Excel, prepare a worksheet whereby you can maintain a list of cases. The system should be able to give you list of cases in pendency order.
3. Prepare an animated PowerPoint presentation.

REFERENCE MATERIAL

➔ Basic IT training manual

Module-27

ALTERNATIVE DISPUTE RESOLUTION (ADR)

INTRODUCTION

This module introduces ADR as a mechanism of dispute resolution. It discusses its main modes: Arbitration, Mediation, Conciliation, and Negotiation. Shari'ah's view on ADR has also been highlighted. The focus, nonetheless, remains on functioning of ADR in the Pakistani Legal System.

OBJECTIVES

- To understand the informal modes of dispute resolution
- To know the need and significance of ADR techniques
- To sensitize the trainees to the ADR-mandating provisions in various Pakistani statutes
- To learn the various required skills for conducting ADR, particularly mediation
- To study the subject under Islamic Jurisprudence

LEARNING OUTCOMES

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

- Utilize ADR techniques properly
- Refer appropriate cases to ADR experts courageously
- Determine the feasibility of a case for ADR easily

CONTENTS

Topic	Break up	Description
Topic1: Introduction to the ADR Landscape		1. Need & Significance 2. Formal Justice System 3. Informal Justice System
Topic2: Institutionalized ADR Mechanism		1. Sec 89-A CPC, 1908 2. Arbitration Act, 1940 3. Family Court Act, 1964 4. Small claims & Minor Offenses Ordinance 2002 5. KP Local Government Act 2013 6. KP Police Order 2016, Dispute Resolution Councils 7. Nizam-e-Adl Regulations 2009 8. Peshawar High Court: Judicial Esta Code 9. National Judicial Policy 2009 10. Trade Dispute Resolution Organization Act, 2016
Topic 3:		1. Cost saving

Advantages		2. Time saving 3. Permanent Resolution of dispute 4. Court Management; Fast tracking of cases
Topic 4: Types of ADR		1. Negotiation 2. Mediation 3. Arbitration 4. Conciliation
Topic 5: Mediation in Criminal cases		1. Murder 2. Domestic Violence 3. Hurts 4. Kidnapping 5. Road Accidents
Topic 6: Skills		1. Verbal and Non-verbal communication 2. Individual and joint meetings 3. Mediator interventions 4. Facilitating the making of effective order 5. Managing options 6. Engaging lawyers
Topic 7: Difficulties		1. No written rules of procedure 2. Litigants not inclined to 3. Lack of professionals 4. Attitude of lawyers 5. Lack of will on the part o judges
Topic 8: Practical steps		1. Change attitude 2. Examination of parties 3. Persuade the parties 4. Involve advocates
		5.
Topic 1: Preliminaries	27.1	6. ADR as a term & phrase 7. ADR and related terms 8. ADR as a concept 9. Need and significance [ADR v. Litigation] 10. Kinds/modes of ADR 11. <i>Shariah's</i> view on ADR 12. <i>Shariah's</i> alternative for the term ADR
Topic 2: History	27.2	1. ADR in the ancient societies 2. Role of China 3. Greek's role 4. ADR after the fall of Roman Empire 5. Indian <i>Panchayat</i> 6. <i>Jargha</i> of Pathans 7. Arab's <i>Tahkim</i> 8. ADR in Abrahamic Religions

		9. ADR in Pakistani Legal System
Topic 3: (A) Arbitration	27.3	1. Meaning and definition 2. Kinds 3. History 4. Subject matter 5. Legal frame work 6. Major topics of Arbitration Act, 1940
Topic 4: (B) <i>Tahkim</i>	27.4	1. Meaning and definition 2. History & legality 3. Subject matter 4. Other details
Topic 5: Mediation	27.5	1. Meaning and definition 2. History 3. Kinds 4. Subject matter 5. Mediation skills 6. Mid-arb & Arb-mid
Topic 6: (A) Conciliation	27.6	1. Meaning and definition 2. Conciliation; national & international use of 3. Kinds 4. Conciliation and Mediation; difference of 5. Conciliation as a Pre-trial Process 6. Conciliation in Pakistani Legal System
Topic 7: (B) <i>Sulh</i>	27.7	1. Meaning and significance 2. Kinds 3. Subject matter 4. Effects
Topic 8: (A) Negotiation	27.8	1. Meaning and definition 2. Kinds 3. Negotiation Skills 4. Strategies of negotiation 5. Negotiation in Pakistani Legal System
Topic 9: (B) <i>Mufawadhat</i>	27.9	1. <i>Mufawadhat</i> in <i>Shariah</i> 2. <i>Mufawadhat</i> in <i>Quran</i> 3. <i>Mufawadhat</i> in <i>Sunnah</i>

GROUP ACTIVITY

➔ Extent of powers of *Hakam*/arbitrator in family cases

SYNDICATE RESEARCH

- 1- The authority of *Hakam* in a family case
- 2- Touchstone for arbitrability and non-arbitrability of a case
- 3- Gaps between formal and informal justice systems
- 4- The concept of *Musalihat* in Shar' ai Nizam-e-Ad'l Regulation 2009.
- 5- Compromise under Order 23 of CPC.
- 6- ADR in Pakistani Legal System.
- 7- Juvenile Justice System and ADR

PRACTICAL EXERCISE

- ➔ Reconcile a family dispute, suit for dissolution of marriage

CASE LAW

1. Sura-Al-Hujrat (49) verse 09 & 10, Sura-Al-Nisa (04) 114
2. *Razzaq Hussain Shah v. Qazi with powers of Family Court*, 1986 CLC 1691
3. *Mir Dost Muhammad v. Government of Baluchistan and 3 others*, PLD 1980 Quetta
4. *Junaid Quraishi v. Family Court*, 2003 CLC 1001
5. *Muhammad Akram and others v. Ch. Muhammad Salim*, PLD 1964(W.P.) Lah. 490
6. *Messrs Nizari Co-operative Housing Society Ltd. v. Qamruddin M. Khimani and 4 others*, PLD 1982 Karachi 774
7. *Adamjee Construction Co. Ltd. v. Islamic Republic of Pakistan and 2 others*, PLD 2003 Karachi 180(b)
8. *Federation of Pakistan, Chambers of Commerce and Industry v. Messrs Al-Farooq Builders, Builders and Constructors*, 2001 SCMR 1243
9. *Ismail Brothers Ltd. v. S.M. Fazal ana Co.*, PLD 1958 Karachi 158
10. *Messrs U.I.G. (pvt) Limited through Director and 3 others v. Muhammad Imran Quraishi*, CLC, 2011, Karachi, 758
11. *Dr. Mrs. Yasmin Abbas v. Rana Muhammad Hanif and others*, PLD Lahore, 2005, 742
12. *Mukhtar Ahmad and 3 others v. The State*, 1999 PCrLJ 1107 Lah.
13. *Muhammad Akbar and another v. The State*, PLD 1996 Quetta 56
14. *The State v. Irfanullah Qazi*, 2007 MLD 1269 Karachi

REFERENCE MATERIAL

1. Jerome T. Barrett & Joseph P. Barrette, *A History of Alternative Dispute Resolution* Jossey-Bass, US, 2004
2. Howard Raiffa, *The art and Science of Negotiation*, Belknap Press US, 1998
3. Herb Cohen, *You Can Negotiate Anything*, Bantam Reissue edition US , 1982
4. Sriram Panchu, *Mediation, Practice and Law*, LexisNexis, Butterworths Wadhwa, Nagpur 2011
5. Madabhushi Sridhar, *Alternate Dispute Resolution*, LexisNexis, New Delhi, 2005

Module-28

CASE FLOW MANAGEMENT (PRE-TRIAL CRIMINAL)

INTRODUCTION

This module discusses the provisions governing & significance of the pre trial proceedings: starting with registration of a case or filing of a complaint to the commencement of trial. It inter alia focuses on the role of magistrate in supervising the investigation. It also highlights the difference between administrative and judicial work of a magistrate. Besides, discussion on impact of pre trial proceedings on fundamental rights also makes part of the module.

OBJECTIVES

- ➔ To know the need and significance of pre trial proceedings
- ➔ To understand the difference between administrative and judicial duties of a magistrate
- ➔ To realize the importance of the supervisory role of a magistrate during investigation
- ➔ To understand pre trial proceedings in the context of fundamental rights

- ➔ To learn skills for effective management of the pre-trial work

- ➔ To learn techniques for curbing the delay

LEARNING OUTCOMES

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

- ➔ apply the relevant provisions properly
- ➔ supervise the investigation efficiently and effectively
- ➔ pass orders promptly and appropriately
- ➔ Scrutinize cases with trial

CONTENTS

Topics	Beak up	Description
Topic 1: Preliminaries	28.1	1. Investigation and Inquiry: a. Meaning and difference b. Need, scope and significance 2. Pre trial proceedings vis-à-vis fundamental rights
Topic 2: Investigation: key topics	28.2	1. Police custody 2. Judicial custody 3. Statements u/s 161 CrPC 4. Statements u/s 164 and 164/364 CrPC 5. Discoveries and recoveries 6. Identification parade

		7. Exhumation 8. Release and discharge of the accused 9. Transfer of accused on warrant of arrest issued by other courts 10. Proclamation and attachment
Topic 3: Inquiry: key topics	28.3	1. Examination of complainant 2. Inquiry 3. Dismissal of the complaint 4. Issuance of process
Topic 4: Bail	28.4	1. Provisions as to bail 2. Provisions as to bonds
Topic 5: <i>Superdari</i>	28.5	1. What is meant by case property? 2. Nature of case property 3. Order for custody and disposal of property in pending cases 4. Order as to property seized by police

GROUP ACTIVITY

- ➔ Discuss the requirements for granting transit custody u/s 86 CrPC
- ➔ Discuss the non-compliance of Investigation Officer with S.173(5) CrPC

PRACTICAL EXERCISES

- ➔ A committed an offence in Karachi. He runs a cafeteria in the premises of district courts Peshawar. An official of your court informs you about accused presence in the cafeteria. How would you proceed in the matter?
- ➔ You are a Magistrate at Charsadda. A police officer has produced an accused before you on warrant of arrest issued by the Political Agent of Mohmand Agency. How would you dispose of the matter?

CASE LAW

1. *Maqsud Ahmad alias Sudi v. The State*, 2012 YLR 1954 FSC
2. *Abdul Aziz v. The State*, 2014 YLR 584 KAR
3. *Haseeba Taimur Afridi v. The State*, 2013 SCMR 1326
4. *Bashir Ahmad v. The State*, 2012 PLD 260 Lah
5. *Javed Iqbal v. Crescent Commercial Bank Ltd. Islamabad through Manager and 3 others*, 2009 PLD 382 Lah
6. *Akhter Hussain v. Station House Officer and others*, 2007 PCrLJ 1552 Lah
7. *Muhammad Babar Khan Ghumman v. Station House Officers and 4 others*, 2012 YLR 472 Lah
8. *Mst. Maqsood Mai v. Abdul Rashid and 4 others*, 2006 PLD 306 SC
9. *State v. Ubaidullah and another*, 2005 MLD 1883 Pesh

10. *Abdi Hussain v. The State and another*, 2014 YLR 61 Lah

REFERENCE MATERIAL

- ➔ Relevant provisions of CrPC
- ➔ Police Rules 1984

Module-29

PREVENTIVE JURISDICTION

INTRODUCTION

The module covers the legal provisions conferring preventive jurisdiction on magistrates. Lesson 1 discusses preliminaries. The rest deals with the preventive measures in regard to persons and properties. In the last lesson, role and preventive powers of police have been discussed.

OBJECTIVES

- To comprehend the relevant provisions of Preventive Jurisdiction.
- To realize the need and significance of preventive measures.
- To know semi-trial summary proceedings.
- To understand the role of magistrate in prevention of offences.
- To learn about the concept and functioning of jury in cases of public nuisance.

LEARNING OUTCOMES

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

- Take action promptly and appropriately.
- Show response not reaction to urgent situations.
- Invoke the relevant provision.

CONTENTS

Topic	Break up	Description
Topic 1: Preliminaries	29.1	1. Preventive measures: meaning 2. Need and significance 3. Preventive measures vis-à-vis concept of ' <i>Sad al- dhrai</i> ' of Islamic Jurisprudence as appears in <i>Sharai Nizam-e-Adl Regulation 2009</i> 4. Section 144: The role of <i>Zillah Nazim</i>
Topic 2: Behaviour	29.2	1. Security for keeping peace 2. Security for good behaviour 3. Orders u/s 112 and modes of its communication 4. Inquiry as to the truth of information 5. Findings of inquiry and the following actions 6. Remedies
Topic 3: Maintenance of public	29.3	1. Unlawful assembly: meaning of 2. Modes of dispersal

peace		3. Protections against prosecution
Topic 4: Public nuisance (conditional orders)	29.4	1. Meaning 2. Conditional order and modes of its service 3. Jury and inquiry 4. Injunctions pending inquiry 5. When and how the conditional order gets absolution? 6. Post-absolution obligations 7. Nature of proceedings 8. Remedies
Topic 5: Public nuisance (absolute orders)	29.5	1. Meaning of urgency & quantum of apprehended danger 2. Orders and modes of its service 3. property under orders: nature & location 4. Proper and improper orders 5. Remedies
Topic 6: Disputes as to possession and rights of use of immovable property	29.6	1. Nature of proceedings U/s 145 2. Preliminary order: requirements and omission of publication of notice 3. Attachment and Receiver 4. Written statements 5. The affect of a pending civil suit 6. Inquiry: procedure, determination and non-determination of possession 7. Cancellation and finality of the order 8. Dispute regarding rights of use of immovable property 9. Remedies
Topic 7: Police role	29.7	1. Scope of police report in proceedings u/s 145 2. Preventive powers of police: limits of

GROUP ACTIVITY

- ➔ Discussion on police-magistracy relations

SYNDICATE RESEARCH

1. Preventive Jurisdiction between Executive magistracy and Judicial magistracy.
2. Significance of police reports in preventive measures

PRACTICAL EXERCISE

- ➔ A , a convict for offence of *Qazaf* informed you via a message on cell phone about unlawful obstruction by B in the way leading to mosque where only Eid prayers are performed. Eid is to come after 09 months.
- Whether conditional order should be issued? In case of negative, write reasons. In case of affirmative, go ahead and right a conditional order.

CASE LAW

- 1) *Abdul Wahab v. State*, 1997 MLD 3274
- 2) *Muhammad Amin v. State*, PLD 1994 429 Kar
- 3) *Razghan v. State*, 2000 PCrLJ 69.
- 4) *Khalid Mehmood Malik v. State*, 2011 YLR 1226.
- 5) *Raz Muhammad v. District Magistrate*, 2000 PCrLJ 1702.
- 6) *Ghulam Muhammad v. Painsa Rahman*, PLD 2012, Pesh. 167
- 7) *Durrani v. Muhammad Jan*, PLD 1979 Quetta, 17.
- 8) *Naveed Khan v. Muhammad Aslam*, PLD 1991 AJ&K 60
- 9) *Mukhtiar Ahmad v. Haji Muhammad Saleem*, 2013 SCMR 357.
- 10) *National Highway authority, Islamabad v. State*, 2012 SCMR 569.

REFERENCE MATERIAL

1. Chapters VIII to XIII of the Code of Criminal Procedure 1898.
2. Imran Hassan Khan Nyazee, *Islamic Jurisprudence*, Islamic Research Institute Press, Islamabad, 5th reprint, 2010

Module-30

CASE FLOW MANAGEMENT (CRIMINAL-TRIAL)

INTRODUCTION

The module focuses on timely disposal of a criminal trial through effective and efficacious management. A judge besides having command on the procedural law must know the techniques how to be in control of the proceedings. Without compromising on due process of law, he has to curb the delay, ensure fairness, quality and timely adjudication of a case.

OBJECTIVES

- To realize the effects of irregularities and illegalities during trial
- To be mindful of the rights of the parties in general and to the rights of the accused in particular
- To learn curing of irregularities
- To curb delay
- To manage workload
- To conduct pre-trial conference & trial scheduling
- To procure attendance of witnesses
- To learn sentencing standards

LEARNING OUTCOMES

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

- Conduct the trial properly
- Avoid irregularities and illegalities
- Cure irregularities
- Apply the relevant provisions accurately
- Learn trial scheduling
- Learn techniques of effective management
- Exercise discretion judiciously

CONTENTS

Topic	Description
Topic 1: Problems in procuring attendance of accused	
Topic 2: Pre-Trial conference	1. Assessment of pleas, 2. production of documents, 3. charge framing and negotiations,

	- case property, - use of probation
Topic 3: Common mistakes in framing charge	
Topic 4: Trial Scheduling	- Fixation of dates (tentative time frame) - Diary management - Sorting & abandoning un-necessary witnesses - Experts witnesses - Order of examination of witnesses - Adjournments plan and counter strategy
Topic 5: Inquiries during trial	- Postponement of trial - Resumption of trial
Topic 6: Evidence	- Supervision of examination - Handling vexations cross examination - Objections on documents - Hostile witnesses
Topic 7: Arguments	- Charge - Sentencing
Topic 8: Sentencing parameters	- General principles of sentencing - Trends and initiatives in sentences - Mandatory sentencing - Victim impact - Sentencing options - Public opinion / media and sentencing - Reflection on judicial methods and appellate courts - Mitigating circumstances - Judicious Exercise of discretion - Probation order
Topic 9: Judgment writing	- Common mistakes - Distinguishing features of case law - Determination of compensation - Summary of facts - Points for determination - Admissible and irrelevant evidence - Appreciation of relied upon evidence - case property disposal - Absconding accused

GROUP ACTIVITY

- ➔ Discussion on differences between trial by magistrates and trial by Sessions Judges
- ➔ Section 322 PPC, no custodial punishment, Offence is, nonetheless, non-bailable .
Discuss and explore the logic and causes.

- ➔ Case u/s 337G PPC. No other Section of the Penal Code is there, neither from Prosecution nor from the court at the stage of framing Charge. The court is to order daman for *hashimah*. Discuss and explore the way-out.

CASE LAW

1. *Hakam Deen v. State*, 2005 YLR 2032 SC AJ&K
2. *Abdur Rashid v. State*, 1984 PCrLJ 402 Quetta
3. *Arshad Ali Shah v. Saeed Ahmad Ashraf*, 1996 PCrLJ 1673 Lah
4. *Naveed Asif v. The State*, 1988 PLD SC 99
5. *Jehanzeb v. The State*, 2002 PCrLJ 1929 Pesh
6. *Ghulam Muhammad v. State*, 1985 SCMR 1442
7. *State v. Muhammad Rasheed*, 2008 PCrLJ 247 Shariat-Court AJ&K
8. *Naseebullah Khan v. The State*, 1986 PLD 417 Kar
9. *Abdul Jabbar v. The State*, 1993 PLD 459 Lahore
10. *State v. Abrar Hussain Shah*, 1986 PCrLJ 2941 SC (AJ&K)
11. *Muhammad Sadiq v. State*, 1998 MLD 243 FSC

REFERENCE MATERIAL

- ➔ The Code of Criminal Procedure, 1908
- ➔ The Qanun-e-Shahadat Order, 1984
- ➔ The Nizam-e-Adl Regulation, 2009