JUDGMENT WRITING

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"It is said that this play [i.e. the judgment writing] is the oldest surviving courtroom drama in world literature. Much of literature, as in life, deals with the tension between the [desire of] people to take justice into their own hands [take] revenge or engage in self-help as opposed to the processes of the law, which, importantly from our point of view, are determined by a fair trial and fair judgment" [albeit][1]

In the state of growing litigation, backlog and insufficient research facilities, a good quality judgment has become a challenge of the day in the legal fraternity. A well written to the point judgment based on comprehensive analysis of facts and laws is not only an indication of the intellectual level of the judge but is also a reflection of the standard of the judicial system. In view of this author, the most important element of a good judgment is "CLARITY". Clear thinking is the key to clear writing. When we speak of a "speaking judgment", it entails clarity of mind of the judge. A speaking judgment exhibits two things:

I. It explains the decision to the parties concerned.

II. It makes available reasons for an appellate Court to consider.

A judgment should be a self contained document.[2] Simple, brief and clear is the best. Some judgments almost write themselves. The practice of writing lengthy judgment is not appreciated[3]. The judge should write to express not to impress. Only the material facts should be stated in a chronological order. What is required is a reasoned judgment and not reasons for the judgment.

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[1] Justice Rosyln Atkinson, "Judgment Writing" (Delivered to Magistrates Conferences, gold Coast, March 21, 2002)

[2] see e.g. Balraj Taneja and another v. Sunil Madan and another, AIR 1999 SC 3381

[3] See. e.g. Amina Ahmed Dossa vs. State of Maharashtra; AIR 2001 SC 656.

The judgment formulates the decision the judge has made. It informs the parties exactly about what the Court orders them to do and how the decision shall be executed. Any vague formulation of an execution order could cause the parties to start a new dispute about the execution and the contents of the decision.

It is pertinent to point out that tone and attitude are extraneous to a balanced judgment. If the courtroom is allowed to vibrate with the heat generated outside it the adjudicatory process suffers and the search for truth is stifled.[4]

Even if the criticism is reformatory, the words should be dignified and restrained.[5] Unbalanced language is out of place in a judicial adjudication.[6] The Indian Supreme Court disapproved the practice of passing adverse remarks against presiding judge of the Lower Court as it damages the judicial system as a whole[7].

CIVIL PROCEDURE CODE

SECTION 33

"The court, after the case has been heard, shall pronounce judgment, and on such judgment decree shall follow".

ORDER XX RULE No.1.

(Quote) 1. "JUDGEMENT WHEN PRONOUNCED:-
On completing of evidence the court shall fix a date, not exceeding fifteen days, for hearing of arguments of parties.

2. The court shall after the case has been heard, pronounce judgment in open court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their advocates" (Unquote)

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[4] see e.g. State "Delhi Administration" v. Laxman Kumar and others, 1986 Gr. L.j 155
[5] see e.g. Alok Kumar Roy v. Dr. S.N. Sarma and another, AIR 1968 SC 453.
[6] see e.g. D.Macropollo and Co. (private) Ltd v. D. Macropollo and co. (Private) Ltd, Employees Union and others, AIR 1958 SC 1012
[7] see e.g K.P.Tiwari v. State of M.P.1994 Cr L.j.1377.

A judgment in other words is a statement given by the judge of the grounds of a decree or order u/s 2(9) C.P.C. which defines judgment, as "JUDGEMENT MEANS STATEMENT GIVEN BY THE JUDGE OF THE GROUNDS OF A DECREE OR ORDER". The "order" has been defined in section 2(14) C.P.C. as "ORDER MEANS THE FORMAL EXPRESSION OF ANY DECISION OF A CIVIL COURT WHICH IS NOT A DECREE."

Irrespective of whether it is an "ORDER" or a "DECREE" it must contain discussion of a question(s) at issue and reasons therefore. It must be precise, logical, clear and without creating confusion in the minds of the parties. There should be a statement of grounds of decision in a judgment. Appellate judgment which does not comply with the provision of **Order XLI Rule 31** is no judgment in the eye of law. A judgment which is duly written but not publicly announced is ineffective and further proceedings taken by the same court are held to be invalid[8]**(PLD 1962 SC 97).** The judgment can be pronounced at once or on some further day after hearing the arguments. Further day means within reasonable time.

Where a party is not allowed to conclude its evidence, judgment is liable to be set aside. A decree falling short of the requirements of order **XX C.P.C.** with regard to its contents is not sustainable. In case of a compromise decree, the decree sheet should conform to compromise and not to the original entries in the plaint. A judgment is the one written, signed and pronounced as per Court-Rule 2 of the Lahore High Court Rules and Order Vol. 1 Chapter ll-A which draws attention to the following directions:

1. The judgment should be written either in the language of the Court, or in English;

2. When a judgment is not written by the presiding officer with his hand, every page of such judgment shall be signed by him;

3. It should be pronounced in open Court after it has been written and signed;

4. It should be dated and signed in open Court at the time of being pronounced and when, once signed shall not afterwards be added or added to save as provided in Section 152 or on review;

[8] See PLD 1962 S.C. 97.

5. If it is a judgment of any Court other than a Court of Small Causes, it should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision;

6. If it is the judgment of a Court of Small Causes, it should contain the points for determination, the decision thereon and the reasons for such decision;

7. It should contain the direction of the court as to costs.

General Features of a Judgment:

1. Self contained
2. Unambiguous
3. Conveniently Intelligible
4. Lucid and capable of only one interpretation without guess or probabilities.
5. no vagueness or ambiguity
6. no possibility of double interpretation
7. no extraneous considerations
8. reasons (See General Clauses Act)

JUDGMENTS ON JUDGMENT WRITING

1. "Issues in civil proceedings are to be decided on preponderance of evidence. In case of word against word party on whom onus lay must fail"; See **case titled Allah din vs habib, cited as PLD 1982 SC 465**

2. "Limitation does not run where impugned order is passed without hearing and notice to a party whose presence was otherwise necessary"; See **case titled Mst Rehmat Bibi & others vs Pannu Khan and other cited as NLR 1982 SCJ 166.**

3. "Judgment passed without hearing and without informing the party of the existence of the ex-parte order is no judgment question of limitation does not arise against void order"; See **case titled Sayeed Nazir hasan vs settlement commissioner cited as PLD 1974 Lah 434. See also case titled Muhammad Ashraf etc. vs. Muhammad Usman etc. cited as (1973 SCMR 403;). Also see generally PLD 1971SC 61.**

4. "The requirements that orders of court ought to be publicly made and announced is not only a matter of accepted judicial procedure ,but invariably a requirement of law regulating the functioning of Civil and Criminal Courts"; See **case titled Lachmandas vs Central Govt cited as PLDI973 SC 379**

5. "Order appealed against found to be a nullity - Appellate *Authority can entertain and* decide on *merit even a* time *barred appeal* against a void order."; See case titled **Sayed Muhamad Alam vs Syed Mandi Hassan cited as (PLD 1970 Lah 6).See generally PLD 1971 Lah. 746 and PLD 1969 Lah.1039.**

6. "Mere observation in a case under Order 37 C.P.C based on Pronote while considering the grounds of leave on P.L.A that the defendant has not given any justification for grant of leave not considering the affidavit attached thereto , and asking the plaintiff to prove his case , the conclusion drawn by the trial judge was wrong. Judgment feel short of requirements of order **XX C.P.C"; See case titled Muhammad Yousaf vs Allah Yar cited as PLD 1987 LAH 101**

7. "Judgment would mean judicious determination of dispute between parties specifying grounds and substantial reasoning for arriving the particular decision. Judgment, held ought to be self contained, un ambiguous, conveniently intelligible, lucid and capable of only one interpretation without leading for guess or probabilities with regard to matters sought to be determined. Proper or valid judgment would be devoid of apparent vagueness, ambiguity or possibility of different or double interpretation. **Bar of**

limitation for filing appeal , against decrees passed in utter disregard of legal requirement viz recording of reasons for granting decree would not be applicable"; See **case titled Mistry Muhammad Hassan vs Haji Said Muhammad cited as 1986 CLC 1241 (Quetta).**

8. "The signing of judgment as envisaged **u/s 369of Cr.P.C** is signing in open court at the time of pronouncement of the judgment and not signing at the home .in the case, therefore, the simple writing and signing of the judgment was wholly ineffective and did not operate as a bar to further proceedings"; See **case titled Amin Sharif vs Syeeda Khatoon cited as PLD 1962 SC 97.**

9. "Order void ab initio- A nullity- such order does not require to be set aside in appeal or any other proceedings"; See case titled **Khuda Bakh vs Khusi Muhammad etc. cited as PLD 1976 SC 2008.**

10. "Order of a tribunal found to be without jurisdiction. All successive orders based upon it are illegal and liable to be quashed in writ jurisdiction".

11. "Judgment did not conform to the provisions of law as it was to be based on evidence in the case and **not other material or factor** was to be taken into consideration. Furthermore the relief had to follow findings on the issue and should have been consistent with those findings. Such a disposition of the matter could not qualify to be a judgment in law and was liable to be set aside"; **See case titled. Meaple Leaf Cement Factory Ltd vs Waryam etc cited as PLD 2006 LAH 506. Also see 2006 YLR 108.**

12. "Lack of issue -wise findings not fatal" **See case titled Umer Din vs. Ghazanfar AM cited as 1991 SCMR 1816; Also see generally 2006 SCMR 185; 2006 YLR 711; PLD 2007 PESH 14**

13. "However, issue-wise judgment from the original trial court"; See case titled **Habibullah vs Azmatullah cited as PLD 2007 SC 271. See also 2007 MLD 476.**

14. "Trail court while recording its findings on merit of the case did not further discuss the evidence. It is not a reasoned judgment under Order XX"; See **case titled. Amir Tufail vs Muhammad Sadiq etc cited as 2006 CLD 91; See also case titled Mst Yasmin Akhter vs Abdul Mateen Zahid cited as 2007 CLC 972. (Shariat Court AJ & K).**

15. "Issue wise discussion not mandatory for Appellate Court"; **See case titled Niamat Khan and others vs Hamzullah Khan etc cited as 2006 CLC 125; See also 2006 CLC 662**

16. "Even ex-party order/judgment is required to be a speaking order/judgment even if passed under **Order IX Rule 6.** If initial order was void, no limitation"; See **case titled. Wapda vs Mir khan Muhammad Khan Jamali cited as 2006 CLC 92(Quetta).**

17. "Mere reproduction of evidence by the Appellate Court did not mean that the evidence of the parties has been discussed or referred to, judgment revealed cursory and casual approach of Appellate Court to the case. Judgment suffered from non-reading of evidence on record .Trial court had acted illegally etc. Judgment of the appellant was set aside and case was remanded to the Appellate Court"; See **case titled. Sayed Zulfiqar Hussain Naqvi vs Sayed Gulzar Hussain Shah cited as 2005 YLR 2817.**

18. "In a pre- emption suit, parties themselves modified original decree. Supreme court accepted, agreed and modified the original decree in terms thereof';. See **case titled Muhammad Sadiq and others vs Taj and others cited as 2005 SCMR 1668.**

19. "Decree in suit for rendition of accounts - levy of stamp duty on such decree, scope, phrase any property" as used in section 2(15) of stamp act 1989 would include both types of moveable or immovable properties" See **case titled M/S Faisal Traders vs M/S Syngenta Pakistan Ltd cited as 2005 YLR 2503.**

20. "Where law provides for writing, announcing and signing a judgment that must be done in a way to get validity to the judgment" See **case titled Raja Muhammad Sarfraz Khan & others vs Noor Muhammad cited as 2007 SCMR 307.**

21. "Judgment written and signed after its pronouncement would be a mare irregularity"; See **case titled. Mst. Zohra Begam and others vs Muhammad Ismail cited as 2008 SCMR 143, Also see 2007 CLC 760.**

22. "Conclusion of Distt. Judge that trial Judge had recorded his judgment with pencil in his own hands comprising 33 pages and it was impossible that such a judgment could be written in 45 minutes and that too while Trial Judge (Senior Civil Judge) was in bathroom, upheld by the Supreme Court as unexceptionable"; See **case titled. MST Zohra Begam and others vs Muhammad Ismail cited as 2008 SCMR 143.**

23. "Constitutional jurisdiction of High Court, delayed pronouncement of judgment after 10 months of hearing arguments, proceedings involved civil rights, hence, considered as civil proceedings, Regardless of **whether jurisdiction exercised by High Court was original appellate or constitutional,** once proceeding before High Court were of civil

nature ,the C.P.C would apply unless specifically excepted. Unreasonable delay of 10 months had caused prejudice. Bulk of documentary evidence going to the root of the case did not find mention in the High Court Judgment. Supreme Court converted Leave petition into appeal and remanded the case"; See **case titled . Muhammad Awais and others vs Fedration, cited as 2007 SCMR 1587.**

24. "Specific performance , Rescission of contract. Decree of the Court for specific performance of agreement is in the nature of preliminary decree and extension of the time for deposit of sale consideration - conveyance deed has to take place- during this period decree-contra continues to subsist-extension of the time is not an alteration or modification of a decree"; See **case titled. Tasneem Ismail and others vs M/S Wafi Associates and others cited as 2007 SCMR 1464**

25. "Contents of judgment and decree excepted from judicial officer that he would pass the speaking order to enable everyone to have an idea or the view which found favour with the presiding officer or such court or Tribunal- Judgment should contain concise statement of the case, points for determination which had been raised, the decision thereon reason for such decision judicial order must be speaking and meaningful by it self exhibiting that the court had applied its mind to the resolution of all the material issues"; See **case titled . Mollah Ejahar AM vs Govt Of East Pakistan and others cited as PLD 1970 SC 173, See also case titled Muhammad Irshad and Others vs MST Hanifa Begum alias Bagi and others cited as PLD 2007 SC (AJ & K) 20.**

26. **TIME FOR PRONOUCEMENT OF JUDGMENT** "Order XX, R.1 ,High Court Rules & Orders (Lahore) Vol .V Chap IV R. 5 -not only O. XX R.1 C.P.C or Rules 5 of the Chapter IV of the High Court Rules and Orders Vol V but also the fiscal statutes had no prescribed time for pronouncement of the judgment, nevertheless , it was desirable to deliver the judgment without inordinate delay so that the justice must not only be done by manifestly appear to be done"; **M.A.N0.338/L.B of 2003, 2005 PTD (TRIB) 318.**

27. "Ground in the Appellate Court, inter alia, that **Trail Court** was not legally competent to **decide four issues collectively** being against O XX R.5 C.P.C -held - no doubt Trial Court should have given **finding on each issue separately,** but where certain issue were linked with each other and where considered together, such consideration was not violative of **O** XX R. 5 C.P.C"; **See case titled MUHAMMAD AFZAL & OTHERS VS WALI MUHAMMAD cited as 2004 CLC 658 AND case titled KARIM BUX & 2-OTHERS VS MANZOOR AHMAD ETC, cited as PLD 2005 (Kar) 50; Also see generally 2004 CLC 1438; 2004 CLC 370.**

28. "Service Tribunal mentioned in detail respective pleadings but had not resolved those points. No reason given in support of conclusion nor evaluation of documentary evidence made/discussed .It is no judgment in the eye of law"; **2004 PLC (C.S)843**

29. "Petitioner's grievance was that the notified officer passed the order against them after the notified officer had been transferred. Notified officer was transferred on 12-1-1998 with immediate effect but he still heard the case on 13-1-1998and decided it on 16-1-1998. Contention that the order of transfer would have taken effect after the same has been published in the official Gazette Held- Notified officer should not have adjudicated the case because his transfer was with **immediate effect** on 12-1-1998. It's **legal efficacy** was not dependent upon its publication in the Gazette as it took effect immediately"; See **case titled Barkat ali vs Addl Commissioner cited as 2004 MLD 1633**

30. "Successor judge can pronounce judgment written by his predecessor-Transferred judge who heard the case **could complete the judgment which could have been announced by his successor.** If case had been heard by Court or presiding officer, such officer could pronounce judgment/order even if he had been transferred or promoted. Where a presiding officer had concluded the hearing of the matter before his transfer, such officer could decide the matter before relinquishing the charge. The ratio is that if the outgoing judge has already heard the case, he could decide the same"; See **case titled. Barkat Ali vs Addl Commissioner cited as 2004 MLD 1633**

31. "Findings of the Rent Controller on the issue of default were given in a single sentence and did not discuss the accumulative effect of statement of the tenant where he had explained reasons for non-tendering of the rent. Judgment was violative of O .XX irrespective that C.P.C did not apply in the rent matters"; See **case titled Mujib-ur- Rehman vs Zafar ali Khan cited as 2004 CLC 189 (B).**

32. "Trail Court failed to give issue wise findings- Appellate Court while maintaining the judgment did not form points for determination ignoring mandatory requirements of O. XLI R.31 C.P.C judgments & decrees of both the lower courts set aside" See **case titled MST Feroza vs Anjumman-e- Ittehad-e- Baluchan & others cited as 2004 YLR 1535 Kar.**

33. "Under Land Acquisition Act Section 23, failure of referee Court to give findings on issue of the time of possession from when the interest will be payable to them- Judgment suffered from non -decision on such issue-

Case Remanded"; See case titled **M. Salim & 7-others vs Land Acquisition Collector, cited as 2004YLR 807 Lah.**

34. **COSTITUTIONAL PETITION**

"Member Board of Revenue, reserved the judgment/order and passed order after about ten months of hearing the case. Statutory obligation under Order XX Rule 1 C.P.C was to decide matters within thirty days of hearing the case. The order was not sustainable and was declared to be of no effect"; See **case titled. Muhammad Latif vs Member Board of Revenue/Chief Settlement Commissioner & others cited as 2003 CLC 1064 Lah.**

35. "Order XX , High Courts Rules & Orders Vol. 1 , Chapter 1, R.2 Correction in judgment except u/s 152 C.P.C or a review after announcement , when the court becomes " functus officio". Therefore *"correction"* was not sustainable in the eye of law"; See case titled *MIS* **Norrani Traders vs. Civil Aviation cited as 2001 YLR 2277 Kar.** See **also case titled, Pakistan Industrial Promoters vs Nawazish Ali Jafari cited as 2003 YLR 1277, Also see case titled Govt NWFP vs. Arsala Khan and others cited as 2003 CLC 1189 &PLD 2001 Pesh.47.**

36. "Judgment to be signed. Sending of the files to the office of the Court was a ministerial act and could not be determinative of the date of the signing the judgment"; See case titled **Mian Muhammad Shahbaz Sharif vs. Election Commission of Pakistan, cited as PLD 2003 Lah 646.**

37. "Necessary ingredients of the judgment explained"; See **case titled. Akhter Saeed vs. Azad Kasmir Government cited as PLD 2003 SC (AJ& K) 1; Also see 2002 CLC 4 Pesh.**

38. "Disposal of interconnected and interlinked issues would not cause any prejudice to a party"; See **case titled Umer Din vs. Ghazanfer ALI & OTHERS cited as 1991 SCMR 1816, See also case titled Aziz ullah Khan etc. vs. Gul Muhammad Khan cited as 2000 SCMR 1647and case titled Abdul Sattar vs. Bashir Ahmad etc. cited as 2004 CLC 370 Kar.**

39. "Trail court had dealt with the matter in a proper way and the omission to discuss the issue wise ratio had not resulted in injustice. High Court declined to interfere with the concurrent judgments below"; See **case titled Hazrat Ali Khan vs. Mir Wali Khan, cited as 2003 YLR 801 Pesh.**

40. "No need to specifically give the issue no or reference as long as the question in question i.e. the "limitation" was consciously dealt with"; See **case titled Mst Satto alias Sattan vs. Gaman, cited as 2003 CLC 456 Lah.**

41. "Decree must agree with judgment"; See case titled **Dilmeer vs. Rajab Ali & Others, cited as 2003 MLD 484 Lah.**

42. **Order XX Rule 1 *(2)* - CONTITUTION ART 254**

"Provisions of O.XX R. 1 (2) are directory in nature and not mandatory and do not provide for consequence in case it is not strictly adhered. High Court announced judgment after more than five months in violation of O.XX R .1 (2) C.P.C was in consequential having no material bearing on merits"; **See case titled. Jumma Khan & others vs. MST Bibi Zenaba & others cited as PLD 2002 SC 823. Also see 2002 CLC 1704.**

43. "Where no evidence was produced on the issue framed, the Courts below were left with no other option but to decide the same against the side on which onus of proof lay"; See **case titled . Aziz ullah khan vs. Gul Muhammad khan, cited as 2000 SCMR 1647.**

44. "Judgment, decree or order- Distinction"; See **case titled Sardar Muhammad Ibrahim Khan vs. Govt of AJ & K, cited as PLD 1990 SC (AJ & K) 23.**

BASIC LAWS

(i) C.P.C Section 2 (9); 2(14); 33, order XX.
(ii) General Clause Act
(iii) High Court Rules & Orders (Vol. 1 Chapter ll-A)