Guidelines on Writing Judgments

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"--Whatever the Court's statutory and constitutional status, the written word, in the end, is the source and the measure of the Court's authority. It is, therefore, not enough that a decision be correct – it must also be fair and reasonable and readily understood. The burden of the judicial opinion is to explain and to persuade and to satisfy the world that the decision is principled and sound. What the court says, and how it says it, is as important as what the court decides. It is important to the reader. But it is also important to the author because in the writing lies the test of the thinking that underlies it."

~ William W. Schwarzer
Director Emeritus, FJC
(Foreword to the First Edition)
Judicial Writing Manual: A Pocket Guide for Judges – Federal Judicial Center, 2013

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Foreword

Judgment writing, it is said, is not merely an art but a skill which can be learned, practiced, improved and refined. This handbook is an effort to compile statutory requirements and to offer some guidelines for writing good judgments, advised by renowned authors. It is primarily intended for new entrants in judicial service in Punjab to enable them to write judgments in accordance with law and practice. It would be a success if it also assists experienced judges in providing some food for thought to enhance their skills, or who may like to revisit their style in line with modern trends.

We hope it would be useful and instructive for the judges and help them in writing better judgments.

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INTRODUCTION

No exact instruction can be given as to how judgment should be prepared. The judge's individuality must be given free scope.

~ Civil Justice Committee Report, 1925.

All judgments cannot be similar; every judge has his/her own style of writing. As such it is neither possible nor advisable to prescribe a fixed template or a uniform format for judgment writing. A judge is free to choose both the form and the language in which his or her opinion is expressed. Every judge has his or her own approach and preferences to the form and organisation of the judgment, the use and abuse of language, units of writing and literary technique[1].

At the same time, however, there are some statutory requirements in our procedural laws that govern the principles of judgment writing. In addition to such requirements, the Lahore High Court has issued some instructions for district

[1] Reading Writing and Analysing Judgments by Andrew Goodman, Student Ed.pg143

judiciary from time to time. Those are binding in view of Article 202 & 203 of the Constitution. The objective of compiling these guidelines, therefore, is to provide a readily available resource to the judges concerned, in addition to highlighting some important aspects of judgment writing trends.

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Chapter-1

JUDGMENTS IN GENERAL

A judgment is the final determination of the rights and obligations of the parties in a case, before a court. Judgment usually means the judicial decision of a Court or Judge. The Code of Civil Procedure defines the judgment as a 'statement given by the Judge on the grounds of a decree or order'. It is only after the judge has reduced his/her decision into writing that a judgment comes into existence. Judgment would mean judicious determination of a dispute between parties specifying grounds and substantial reasoning for arriving at a particular decision.* The judgment has to be pronounced within fifteen days after the case has been heard and on such

judgment a decree shall follow simultaneously[2]. Generally, every litigation, civil or criminal, original or appellate, regular or miscellaneous is concluded or terminates in a judgment or order. A judgment is not a substitute for the record, however, it can present a resume of the entire litigation.

[2]*Mistry Muhammad Hassan v. Haji Said Muhammad 1986 CLC 1241 pg Section 2(9) and 33 Code of Civil Procedure (amended 2018) and Order XX Code of Civil Procedure Lahore High Court Rules and Orders Vol. I Chapter 11-A

A decree follows the judgment and it is the decree and not the judgment that is executable. Every statement of grounds will not be judgment but will be so only if such decision can result in a decree or an order.

Decree means the formal expression of adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. It may be preliminary or final. It may be partly preliminary and partly final.

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Chapter-2

ESSENTIAL REQUIREMENTS OF A JUDGMENT

The mandatory statutory requirements of a judgment[3] are:

a. Concise statement of the case
b. The points for determination
c. The decision
d. The reasons

Omission to include any of the above requirements may reverse the judgment i.e. an appellate court may remand the case to the civil court for re-writing of the judgment.[4]

The other essential requirements of a judgment, under normal circumstances, are:

(i) Heading of the judgment, including the title of the suit or proceeding (case number, date of institution & decision must be also mentioned, besides names of the counsel);

(stating the parties' names and addresses provides convenience to the

[3] Order XX Rule 4 CPC

[4] Judgments and How to write them, by S,D. Singh 4th ed.2008 pg 6

reader when some of the defendants are ex-parte or there are divergent defences before the court).

(ii) Facts put forward by the plaintiff and the defendant in a civil suit.

(iii) Points for determination (i.e. issues).

(iv) Decision on these points with reasons therefor.

(v) Final order granting or refusing to grant relief.

(vi) Signature and designation of the Judge (with powers as to jurisdiction) and the date of the decision, along with the prescribed certificate.

These requirements must be fulfilled even by an ex-parte judgment[5] Reasons must always be given; where reasons are not given the conclusion will not be binding. A court acts with material irregularity if it gives no reasons for its decision.[6] The decision should be based on the case as pleaded and should not travel beyond the issues as framed. Findings should not be given on matters which are unnecessary for the disposal of the case.

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5 2006 CLC 92

6 2000 SCMR 934

The characteristic of a good judgment is that it must be self-evident and self-explanatory. In other words, it must contain the reasons that justify the conclusions arrived at and these should be such that a disinterested reader can find them convincing or at least reasonable. The reasoning should not be left to the imagination of the reader for such an order is apt to be termed as arbitrary.[7]

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[7] Muhammad Hayat v. Ali Muhammad 1982 CLC 2380 at pg- Access to Justice in Pakistan by Justice (R) Fazal Karim, pg 591

Chapter-3

LANGUAGE

English or Urdu?

Lahore High Court Rules & Orders[8] provide that a judgment is to be written in the language of the Court or in English. The civil courts in Punjab usually record evidence in Urdu (even though the witnesses may be speaking in Punjabi, while testifying before a court). Most of the interim orders, granting adjournments, are also written in Urdu. Judgments, however, are mostly found in English. As such there has been a debate on whether to use Urdu or English for writing judgments.

The importance of writing in Urdu, being our national language and as mandated in Articles 28 and 251 of the Constitution of Pakistan, cannot be denied. More so, in the wake of the judgments of the apex court, reported in Munir Hussain Bhatti's case, reported in 2015[9] and others, it is mandatory to promote Urdu as official language.

If the judgment is required to be written in Urdu, it should be in simple and chaste language, and every endeavor must be made to use only recognized translations of technical terms. Where

[8] Lahore High Court Rules & Orders vol.1 chapter 11(2)
[9] PLD 2011 SC 751

no such translation exists or the existing translation of a technical term is found not suitable or comprehensive enough to express a particular idea, it might be desirable to mention the English equivalent for which such an attempt has been made, so that superior Courts may not find any difficulty in understanding what was intended.[10] For guidance to improve Urdu language skills, the office of the Urdu translation in Supreme Court or that of the Punjab Government may be consulted.

The High Court Rules & Orders[11], however, provide that presiding officers of subordinate courts who are well acquainted with the English language should write their judgments in English in appealable cases. When a judge writes a judgment in English, the decree should also be framed in that language.

As judgments are usually written in English, it is important to know the basic grammar rules. Whenever English is used, the use of complex words or Latin phrases should be avoided.

Overall, whatever the language used, it should be simple, grammatically correct and one which may be easily understood.

[10] PLD 2012 SC 132

[11] LHC Rules & Orders Vol 1 chapter 11 (9) and (10)

Language: Judicial Communication

Before writing a judgment, a judge must remember that he/she is performing a public act of communicating an opinion on the issues brought before him/her, after the trial by observing fair procedures. It is basically a communication to the parties coming before a judge for a decision.

It is generally recognized that clear and accurate thinking must precede clear and accurate expression. The first requisite must surely be clarity of thought. The judge must understand clearly what he/she intends to say before starting it.[12]

The narration of the facts, the arrangement of the subject, including the discussion of the evidence and the flow of the language should be such that the cumulative effect may create an interest in one who reads the judgment to go through it to the finish. The judgment must present a connected story of the entire case. The judgment is intended not merely for the appellate Court, where it is scrutinized on merits, but also for the parties and in many cases their descendants, generation after generation. Where a judgment deals with a point of general interest, even witnesses, friends and relations of the litigants like to go through it. It is sometimes even reported

[12] Access to Justice in Pakistan by Mr. Justice (R) Fazal Karim pg

in media, where the point decided therein is of general interest. The judgment must, therefore, be written in a form as may enable everyone who cares to read it, and not merely those who are acquainted with the facts of the same, to follow and understand it.[13]

Language to be Sober and Temperate:

The language used by a judge speaks of his or her character. A humble judge with human personality avoids using intemperate language. Judges should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation and reserve. They should refrain from being sarcastic in their judgments. The language of the judgment should be entirely devoid of anything approaching factiousness. Judges should be dignified and restrained in the expression of their opinions. They should try to avoid expressions which may attract a comment that the Judge had either made up his mind even before the initiated proceedings or had identified himself with a case to an extent that he was unable to appreciate the case or weigh the evidence before him impartially and without any bias.

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[13] Judgments and How to write them, by S,D. Singh 4th ed.2008 pg7-20

Chapter-4

CONTENTS OF A JUDGMENT[14]

a) Not to be Verbose or Prolix:

A lengthy judgment is not always a good judgment. There should be no repetition of ideas or expressions. Particular care should be taken in this respect when discussing depositions of witnesses. Such discussion should not be made an excuse for repeating the statements of witnesses over and over again. Generally, it is sufficient to mention the purpose of witnesses produced and the documents after stating the issues.

b) Judgment to be Precise and Concise:

While, however, there is virtue in brevity, the point should not be carried too far. The aim of the judge undoubtedly should be to say everything that requires to be said concisely and precisely, but even this not at the cost of a full and fair discussion of all questions of fact and law involved in the decision of a case. Brevity should not tend to obscurity.

c) Not to be Sketchy:

The judgment should not be sketchy or superficial. A judgment is sketchy when the judge takes a few points here and a few points

[14] Judgments and How to write them, by S,D. Singh 4th ed.2008

there, puts them together and records his or her findings in a vague, haphazard and imperfect form. Nor should a finding be recorded without proper reasoning and necessary discussion of the evidence. A sketchy judgment which does not tell the losing litigants why and how they have lost their case, is the worst form of a judgment which may even result in a remand of the case by the appellate Court for re-writing the same. Brevity does not, therefore, permit the Judge making his/her judgment so short as might invite a comment of that sort. If a judgment is too brief or contains no discussion nor any reasons are given, it will be set aside.[15]

d) Use of Abbreviations or Code Words:

The use of abbreviations or code words in the judgments should be strictly avoided. If intended to be used repeatedly, the abbreviation or the code should be explained first and then may be used subsequently in the abbreviated form.

e) Spellings of Proper Nouns:

Care should also be taken to spell proper nouns, names of persons and places, in the same manner throughout the judgment. Names of places should of course be spelt according to their recognized

[15] 2006 SCMR 1225

spelling, for example, the provinces Balochistan and Sindh should not be spelt as Baluchistan or Sind.[16]

f) Reference to Documents and Papers:

Documents should be referred to in the judgment by their Exhibit marks, e.g., "the mortgage deed, Ex. P-2", or "the letter, dated 5th March, 1983, (Ex. P-4)". If it becomes necessary to refer to any document which does not bear any exhibit mark, its index number should be invariably mentioned, as, "application, paper 13-A". or "report of the Commissioner paper 29-C".

g) Reference to Law Reports

Whenever reference is made to any reported decision of a superior court, the reference should be both by the names of the parties as well as volume and page of the report, and may be mentioned in italics, for example *Muhammad Amin v. Town Committee* (1992 CLC 2179 at pg.2118).

h) Reference to other Reports:

The Qanoon e Shahadat Order 1984 provides that the report of a case in a newspaper is not relevant, because a newspaper is not a book purporting to be a report of the rulings of a Superior Court. And even presumption cannot arise. But reports of such cases are sometimes looked into, if the reporting is believed to be of high order and is authentic and accurate. Reports available through search engines from

[16] In view of Constitutional Amendments, 1974 & 2010

internet such as Google may not be quoted unless their source and authenticity is verified.

i) Judgment to be balanced:

A judgment should also, above all things, be balanced, not only in ideas, but also in arrangement of the different topics discussed therein. There should be no display of emotion or sentiment. A Judge neither rewards virtue nor chastises vice. He/she has to administer even-handed justice even between the citizens and the State or the Government. The judgment has, therefore, to be clear, well considered and balanced, based on facts as presented to the judge and the law as he/she understands it. Judges must decide the case on legal evidence and not allow them to be carried by any sympathy for either party. They should not assume the role of an adviser or theologian and no sermon should be given in a judgment.

A judgment is also not well balanced if different topics dealt therein have not received proper attention. All issues of fact or law should receive the consideration and thought which their importance demands. If there is imperfect development of some points, or even over-development of others, the judgment would suffer from what has been termed as lopsidedness. The Judge should not allow

himself to be over-impressed by some aspects of the case so as to result in other aspects, less important perhaps, being ignored altogether. For example, if the question of Limitation has not been stressed in arguments by either party but there is ample evidence about it, it must be reasonably discussed.

j) All aspects to be discussed:

Every point, be it one of fact or law, has to be decided one way or the other. The Judge takes one view of the same. He supports his conclusions by discussing the evidence in support thereof, or advancing his reasoning on questions of law. But there is always the other side of the picture as well. There are certain pieces of evidence which do not accord with the views of the Judge, or there is some reasoning with which the Judge does not agree. The Judge cannot ignore even such evidence or reasoning altogether. There may be some awkward points which the Judge may find it difficult to explain. He cannot skip over them and record his findings. All such evidence or points must be noticed and explained as far as possible. They must be reconciled with the view the Judge takes of the whole case. If there is any fallacy in the reasoning, it must be exposed. Even if that is not possible, the Judge must give some indication as to why, in spite of it, other view was preferred.

It is, however, not obligatory upon the Judges to discuss purely hypothetical questions which may never arise. They should as a matter of fact not give any finding on points which are not in issue.

k) Avoid frequent cut-paste quotes

Since the advent of word processing, the cut and paste function is often too tempting for judges to resist. They cut and paste long passages from witnesses' statements, case laws and even statute. But cutting and pasting does not have that effect at all. It merely shows that the judge knows how to cut and paste. the best way for a judge to show that he or she understands an argument is to summarize it in his or her own words.

Cutting and pasting is also responsible for long block quotations from statutes or precedents, sometimes with a few words in italics or bold face or underlined. Often those few words are all the judge needs to quote. The rest can be paraphrased.

Insecurity is often the motive for this practice. Even experienced judges admit they are afraid that if they summarize the law they might get it wrong. Of course, if they can't get it right, if they can't express it clearly in their own words, they should not be using it as the basis of a legal conclusion.

When there is a good reason to quote an entire passage from a statute or precedent, the quoted material may be preceded with a summary in simple words or an indication of what inference the judge expects the reader to draw from it. In this way, if the readers skip the quoted material, they will still have the benefit of summary or analyses.[17]

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[17] Judicial Decision-Making Toolkit Pacific Judicial Development Program & Writing for the Court pg-53
by James C. Raymond

Chapter-5

STRUCTURE AND SEQUENCE

The structure and sequence of a judgment is usually based on IRAC model, followed in many jurisdictions, i.e. **I**ssues, **R**ules, **A**pplication & **C**onclusion. In Pakistan, however, the contents of a judgment are mandated in codified procedural law, as explained earlier in Essential Requirements (Chapter 2).

A judgment must identify the issues, set out the relevant facts, and apply the governing law to present or produce a clear, well-reasoned decision of the issues that must be resolved. The usual framework of a judgment contains the following: -

(i) An introductory statement of the nature of the suit and procedural posture.
(ii) A statement of the material facts (both or all the parties' case).
(iii) Issues or points for determination.
(iv) A discussion or findings on the issues & the resolution based on evidence as well as law.
(v) Conclusion and final necessary relief and order.

The organization and style of judgments can vary from case to case but this is the framework on which to build.

A new trend in judgment writing is use of headings and sub headings or Roman numerals, or other means of disclosing the organization to the reader, particularly when the judgment is long and subject matter complex. Similarly including tables and charts in a case that has multiple information or data, is helpful to a reader. They not only provide road signs for the reader, they also help the writer organize his or her thoughts and test the reasoning for a finding.[18]

James Raymond[19] discusses organizing a judgment in five steps:

1. Identify the issues and write a case specific heading for each
2. Arrange the issues in a sequence
3. Write a beginning
4. Analyze each issue
5. Write an ending

Some judges start by writing the opening paragraphs, or the closing paragraphs, or the

[18] Judicial Writing Manual: A Pocket Guide for Judges by Federal Judicial Center 2013

[19] Writing for the Court by James C. Raymond, Carswell 2010 pg.26

analysis of issues. It is difficult to maintain sequence in such writing. The 5-steps method outlined above has a few advantages. Instead of starting large, writing everything you know about the case- and never having time to reorganize or to delete the information that turns out to be irrelevant or repetitious-start small. Identify the issues first. Then provide a context for those issues by summarizing the story that produced them. Then write compact analysis of each issue- four or five lines of analysis- and a conclusion. Once you have that much done, build a huge fence around the text. Don't let anything in unless it has a job to do. This sequence will produce focused pleadings and judgments, crisp and to the point, both readable and "raid- able".[20] James Raymond has further given a checklist in the Judicial Decision-Making Toolkit[21] which is Appendix – I of this Handbook. Judges can use this checklist after writing a judgment to make it in a sequence and reader-friendly.

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[20] Writing for the Court by James C. Raymond, Carswell 2010

[21] Pacific Judicial Development Programme – Judicial Decision-Making Toolkit, January 2015, Additional Documentation

Chapter-6

COURT TO STATE ITS DECISION ON EACH ISSUE

The framing of issues plays an important part in the trial of a civil suit and upon the correct framing of the issues depends proper trial and the right decision of the case.

Issues are framed at the first hearing[22] of the suit from all or any of the following materials:[23]

a) allegations made by the parties or by any person present on their behalf, or by the pleaders of such parties;
b) allegations made in the pleadings or in answer to interrogations delivered in the suit; and
c) the contents of documents produced by either party.

Before framing the issues, parties should invariably be examined under Order X of the Civil Procedure Code so as to narrow down the points of difference as far as possible. The Judge should

[22] Order XIV, Rule 1(5) of the Civil Procedure Code
[23] Order XIV, Rule 3 of the Civil Procedure Code

himself read the pleadings carefully and then frame the issues.[24]

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.[25] Each material proposition affirmed by one party and denied by the other should form the subject of a distinct issue.[26]

Material propositions.— Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.[27] They are to be distinguished from relevant facts on which parties would be entitled to lead evidence at the time of actual trial. Material propositions of fact are composed of one or more relevant fact, but each relevant fact by itself will not form a material proposition.

Where proper issues are not framed by the trial court, the appellate court can remand the case for framing of proper issues or after itself framing proper issues.[28] For example, if in a suit for the

[24] 2008 SCMR 1384 (They should not rely upon draft issues filed by advocates of parties).PLD 2003 SC 184
[25] Order XIV, Rule 1(1) of the Civil Procedure Code
[26] Order XIV, Rule 1(3) of the Civil Procedure Code.
[27] Order XIV, Rule 1(2) of the Civil Procedure Code.
[28] 2009 SCMR 1256

recovery of money by the sale of mortgaged property, the execution and consideration of the mortgage deed are denied by the defendant, the material propositions are: (a) whether the defendant executed the mortgage deed in accordance with law, and (b) whether he received the consideration under it.

Relevant facts.— Relevant facts, on the other hand, necessary to be established for the proof of these propositions would be numerous, e.g., that the defendant signed the mortgage deed; he signed it in the presence of marginal witnesses, that the marginal witnesses themselves signed it in the presence of the defendant; that the defendant acknowledged execution of the document before the sub-registrar; that he was in need of money near about that time; that he acknowledged the receipt of the money before the sub-registrar; that immediately after the execution of the document the defendant paid some money to a prior creditor and so on. There will be no issues on any one of these individual facts. Only two issues will arise so far as this point is concerned:

1. Whether the defendant duly executed the mortgage deed dated ……?
2. Whether the defendant received the consideration under the mortgage deed?

But if the defendant admits all the necessary facts in connection with the execution and consideration of the mortgage deed, except this that the mortgage deed was signed by him in the presence of the marginal witnesses, that by itself will become a material proposition and would become the subject-matter of an issue.

Issues of fact and issues of law[29].— Issues are of two kinds: (a) Issues of fact, and (b) issues of law; and sometimes there are mixed issues of fact and law as well. In framing the issues, however, attempt should be made to have a clear conception of the facts and law on which parties are at issue and distinct issues should be framed as far as possible on propositions of fact and law.

Regard must also be had to the question of burden of proof at the time of framing the issues. The issues should be so framed as to bring out as far as possible which party should be required to begin evidence thereon. Thus, where in a suit for the recovery of arrears of rent the defendant alleges payment, the issue should not be "Has the rent not been paid by the defendant?", or "Whether or not rent has been paid by the defendant?", or "What, if any, is the rent due against the defendant?", but "Has the defendant

[29] Judgments and How to write them, by S,D. Singh 4th ed.2008

paid rent for the period ..... to the plaintiff?"

Issues of fact.— Issues of fact should be framed in a language which is precise, accurate and specific in respect of time, place, persons, things and circumstances, whenever material.

Issues of law.— Similarly issues of law should be framed in a language which is accurate, technical and precise so that the issue may be capable of being understood and answered without further explanation.

Issues not to be unnecessarily wide. In order to make sure that the issues are not unnecessarily wide, the Judge should try to separate in his own mind the distinct component parts which are really essential for the establishment of a right to the relief claimed or for defeating such a claim. In the case of all issues of fact, therefore, the allegations of the parties and their admissions should first be clearly analysed before setting out the issues and one distinct issue framed on each material proposition.

Issues on mixed questions of law and fact.— Thus in a suit for breach of a contract, it is not sufficient to frame an issue " Did the defendant commit breach of the contract?" Those disputed facts as a result of which it is said that the breach

of contract arises should be clearly brought out in the issues.8 Similarly where a plea is raised under Section 69 of the Partnership Act, the issue should be:

> "Is the plaintiff firm registered under Section 69 of the Partnership Act? If not, is it entitled to maintain the suit?"
>
> or
>
> "Is the firm ..... a registered firm and the plaintiff shown in the Register of firms as a partner in that firm? If not, is the suit barred by the provisions of Section 69(2) of the Partnership Act?"

In any case it would be wrong merely to say "Is the suit barred by Section 69 of the Partnership Act?", as such an issue does not bring out clearly the facts on which the parties are at issue and the plaintiff does not get an idea as to how and in what manner the provisions of Section 69 of the Partnership Act are pleaded against him.

Similarly, in pleas relating to estoppel, res judicata, limitation, etc., there are always certain facts in the background on the basis of which the plea is raised. Unless, therefore, all such facts are admitted, the issue should not be framed in a

general form such as "Is the suit barred by estoppel?" or "Is the suit barred by res judicata?" The issue as framed should also indicate the facts giving rise to the plea. A few instances of issues of mixed questions of law and fact may be cited with advantage:

1. Is the plaintiff in possession of property A? If not, is the suit for mere declaration barred under Section 42 of the Specific Relief Act?
2. Did the plaintiff refuse to purchase the property before Defendant 2 got the sale-deed executed in his favour? Is he now estopped from asserting his right of pre-emption?
3. Did the defendant purchase the property from the ostensible owner thereof in good faith and after taking reasonable care to ascertain that he had power to make the transfer? Is he entitled to protection under Section 41 of the Transfer of Property Act?

Issues to be arranged in logical sequence.— Issues on questions of fact should generally be put down first, then mixed questions of fact and law and issues on pure questions of law should come last. Issues of fact should as far as possible follow some logical sequence. In some cases, it is necessary to rely on the finding on one issue for discussing some other issue and in such cases

issues of the former type should be placed earlier than the latter. If issues are not arranged with some idea of the order in which they have to be discussed, the Judge will have to take up and discuss the issues in the judgment in a disarranged form, e.g., he may have to deal with say issue No. 5 first and then issue No. 2 and so on. This would not of course materially affect the quality of the judgment, but it certainly looks more decent to discuss the issues in their serial order.

In some cases, there is no logical sequence and each issue is also independent of the other and yet under some unwritten convention facts impress the mind in a certain order. Thus where in a suit for pre-emption, all the facts are denied, the arrangement of the issues may be something like this:

1. Is the plaintiff a co-sharer in the property in dispute? Is the defendant a stranger to that property? Has the plaintiff a preferential right to pre-empt as-against him?
2. Did the plaintiff perform all the *talabs*?
3. Is the ostensible sale consideration not the real sale consideration? If so, what was the price for which the property was sold?

Issues in a suit for malicious prosecution.— Similarly in a suit for malicious prosecution under similar circumstances, the arrangement of the issues might preferably be:

1. Did the defendant file any complaint against the plaintiff?
2. Did the proceeding terminate in plaintiff's favour?
3. Was the complaint malicious?
4. Was the complaint false or without reasonable and probable cause?
5. To what damages, general and special, is the plaintiff entitled?

The judgment of a trial court should contain a finding on all the issues separately.[30]

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[30] 2014 SCMR 1069, 2011 SCMR 1162

Chapter-7

APPRAISAL OF EVIDENCE

A judgment should be based strictly on the matter before the court and evidence on record, and not on outside evidence, however acquired. The Judge should not go out of the record and base his findings on matters within his personal knowledge, or conjectures.[31] Also the judgment should not be based on evidence recorded in another case.[32] Evidence recorded in another suit cannot be the basis of a judgment without an order consolidating the two suits.[33]

Reference to Evidence.[34] — Some judicial officers make a practice of prefacing judgments with a memorandum of the substance of the evidence, given by each witness examined which has to be referred to. This practice is irregular, when the memorandum is in addition to that made under Order XVIII, Rule 8, of the Code of Civil Procedure. All that the law requires is a *concise statement* of the case and not a reproduction of the evidence. The judgment

[31] Ministry of Inter-provincial Coordination v. Major Ahmad Nadeem (2014 CLC 600)

[32] Muhammad Arif v. Muhammad Farooq (2002 CLC 1361)

[33] Zaidi Hassan Shah v. Faizur Rehman Shah (2011 CLC 205)

[34] Hyderabad Development Authority v. Abdul Majeed (PLD 2002 SC 84). LHC Rules & Orders

should, however, be complete in itself as regards the requirements of Order XX, Rule 4 of the Code, and should set for the grounds of decision as concisely as is consistent with the introduction of all important matters.

It may be necessary, in particular cases, to refer to, and give a summary of the statements of a witness or witnesses; but, if so, such summary should be incorporated in the reasons given for the decision of the Court on the issue to which it relates. When it is necessary to refer to the evidence of a witness in the course of a judgment, the reference should be by name as well as the number of the witness.

The judgment should not also be based on any new point which comes to the notice of the Judge only at the time of the writing of the judgment and which point was not made the subject of question or argument in the hearing of the case before the court.

a) Reference to Parties and Witnesses:

There are certain things which may look unimportant or of no significance, but Judges who are particular about their judgments will certainly look to them. Reference to a party or a witness is sometime made by name and sometime by its reference number. For example,

if a witness is mentioned Ahmad Din and sometimes as "P.W.3", the result may be confusing and at times even annoying. The desirable course, however, is to refer him as far as possible as "Ahmad Din (P.W.3)". Reference to a plaintiff or defendant may also preferably be made by name and in any case where a person has been referred to at one place by one description, whatever it may happen to be, that description should be adopted throughout the judgment wherever it becomes necessary to refer to him.

b) Criticism of Witnesses:

A Judge is fully justified in making criticism in the judgment of matters relevant to the conduct and merits of the case and of persons who are not witnesses. The Judge is at liberty to make remarks on the character or conduct of witnesses for otherwise he/she cannot arrive at proper findings. The courts are not to be muzzled in expressing their opinion on the character of witnesses who have appeared to support a case which they consider false and fabricated. But whenever this is done, it should be in sober and becoming language. It should be restrained and in decorous terms, and confined to matters that are strictly relevant to the issue involved, and to the extent necessary. It is always desirable to express oneself only to the extent

necessary. In any case disparaging remarks which are not warranted by the evidence against a person should never be made. [35]

It is said that if there is one principle of cardinal importance in the administration of justice, it is this: The proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly without undue interference by anybody. At the same time, it is equally necessary that in expressing their opinions, they must be guided by considerations of justice, fair play and restraint. Sweeping generalizations defeat the very purpose for which they are made. In making disparaging remarks, therefore, against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider:

i. Whether the party whose conduct is in question is before the court or had an opportunity of explaining or defending himself;

ii. Whether there is evidence on record bearing on that conduct justifying the remarks; and

[35]Mirza Muhammad Iqbal v. The State (2007 SCMR 586)

iii. Whether it is necessary for the decision of the case, as an integral part thereof to animadvert that conduct.

Judicial pronouncements must be judicial and should not normally depart from sobriety, moderation and reserve. Judges who go out of their way and needlessly besmirch the character of a party or a witness will expose themselves to the attack of being devoid of judicial temper and proper judicial balance in their approach and conduct.

c) Remarks about Demeanor of Witnesses:

Remarks about the demeanor of a witness should be factual, and should be a note of the observations by the court and not of its inferences. These observations may include remarks about the look or the manner of a witness, his hesitation, his doubts, his variation of language, his confidence or precipitancy, his calmness or consideration. But to note these remarks for the first time in a judgment is not fair. It should be made while the witness is being examined or soon after the examination is over and should be made known to the counsel of the parties, who may have suggestions to make about the observations and the inference to be made therefrom.

As stated above, it is emphasized that Judges should be careful and avoid making criticism of the conduct of persons who are not witnesses. There should be no disparaging or libelous remarks against a person, who is neither a party nor a witness in the proceeding and who has had no opportunity to defend himself.

d) Remarks about Character of Women and special persons:

(i) The Court should be particularly careful in making remarks about the chastity of women. Gender stereo types such as "women working outside their house late night are, generally, of dubious character" or "women without purdah, in a public park, themselves invite trouble" must be avoided.[36]

(ii) It is sometimes offensive to make any unnecessary remark about colour or complexion or physical appearance of a witness in judgment, unless justifiable or necessary for identification.

(iii) Similarly remarks about vulnerable persons or persons with disabilities should be carefully worded. The Lahore High Court has directed that even the use of words, such as *physically*

[36] Muhammad Sharif v. The State (PLD 1957 SC 201)

handicapped or mentally retarded in official correspondence, circulars etc must be discontinued and replaced with *persons with disabilities or persons with different abilities*[37]. It is inappropriate to make any comment in the judgment which has negative bearing or harms the dignity of a person.

e) Remarks to be based on Evidence:

A comment upon the conduct of a person should be made only if the evidence before the Judge so warrants. Judges should not use their personal knowledge during the conduct of a case and comment on any party as a result of information received not in the case itself, but from outside sources.

f) Remarks about Public Servants:

Public servants are not immune from the ordinary judicial tribunals: no special privileges attach their position when they come as witnesses or accused before the Court and the Court is free to comment on their evidence so far as such comments are relevant to the matter before it. The testimony and conduct of revenue officers examined in a trial may also be commented upon to the degree as those of other

[37] Asfandyar Khan v. Government of Punjab (PLD 2018 Lahore 300)

material witnesses, but no further. If the court comes across a case and finds that a public officer has departed or deviated from the path of rectitude, it should in no uncertain terms condemn such action on the part of the public officer. But the Court must be very careful before it makes remarks which gravely affect the honesty, reputation and good name of the witness before it, nonetheless so when that witness is in the case in his capacity as a public servant and in the course of the discharge of official duties. And it is in any case not fair to make such remarks mainly upon conjectures or surmises or when the Court is itself uncertain of its grounds as to preface its remarks with the words "may be……." or "perhaps". And even if there is criticism of any individual public servant, there should be no condemnation of the revenue department, police and the like as a whole. There is nothing easier for a party than to fling mud at persons who find it very difficult to defend their conduct and it is the duty of the court to protect public officers from such mud-slinging. Where a public officer is conscientiously doing his duty, the Court should not make any suggestion in its judgment with regard to his impartiality and integrity.

g) Criticism of Government:

Similarly, while the courts of justice would not give countenance to the theory that government are at liberty to break the law whenever they find it convenient to do so, they should abstain from harsh or ungenerous criticism of measures taken in good faith by those who bear the responsibility of the Government.

h) Personal views about Political Activities:

Personal views entertained by judges about the activities of political parties or other bodies or organizations should not be allowed to obtrude in a judicial pronouncement.

The Judge should avoid all language which may suggest a bias in favour of or against any particular class or section of the people. As stated previously, it is usually unnecessary and in any case unsafe to indulge in generalizations. General remarks about any class or group of persons such as "Admittedly (such and such) people of caste are known for their criminal behaviour. That is why such names are found in FIRs" should be scrupulously avoided.

It is never necessary to pass remarks about a whole class, caste of society who are not before the court.

In cases of assumed communal aspect, the language of the judgment should be such as may by itself not promote the feelings of enmity, the promotion of which by others, it is the duty of the Courts to punish under the law.

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Chapter-8

JUDICIAL PRECEDENTS IN WRITING JUDGMENTS

In deciding a judicial proceeding, the Judge is bound by the decisions of the superior courts insofar as they lay down the law on any subject and those of the Supreme Court, and if there is no such decision, to follow, the authority of the High court to which he/she is subordinate.[38]

If there is a clear decision of the Supreme Court, it is not necessary to comment on the decisions of the High Court for the simple reason that the law laid down by the Supreme Court is the law of the land. So also if, in the absence of a decision of the Supreme Court, a particular point is covered by a decision of the Lahore High Court, the decisions of other High Courts need not be discussed.

Where, therefore, a Judge is called upon to decide a question of law, it becomes his duty to ascertain whether any pronouncement of the Supreme Court, Federal Shariat Court or the High Court exists on the point. Omission to do so would be as much dereliction of duty as omission to refer to the sections of a statute. It is thus the bounden duty of the judges of the

[38] Article 189/201 Constitution of Pakistan, 1973

district courts subordinate to a particular High Court to implicitly follow the decisions pronounced by that Court. The Judge of a subordinate Court, however brilliant and well trained a lawyer he/she may be, is not entitled to assume the powers, and refuse to follow the decisions, of the High Court to which his/her Court is subordinate, unless and until they have been over ruled by a higher Court. And a judicial precedent of a High Court does not cease to be binding upon subordinate Courts merely because all the relevant reasons in support of or against the view taken by that Court are not mentioned in the judgment or the actual decision is based upon a reason which does not appeal to the subordinate judge.

In following a decision of a superior Court, however, it is the ratio *decidendi* of such decisions that matters. They are not to be read out of context, even though propositions of law appear to be laid down in general terms. If the ratio *decidendi* of an earlier decision of the Supreme Court is expressly or impliedly abandoned or dissented from in a subsequent decision the earlier decision should be treated as obsolete. If the Court cannot consistently follow both the decisions, the later of the two decisions should be followed.

A judgment which has been reversed in appeal cannot be relied upon as a precedent and will not hold good as such even on a finding other than the one which was reversed in appeal. As such, care must be taken in relying upon older judgments. It is useful to check the status of a judgment before quoting it from the law site or website.

If there is a conflict between a ruling of a Division Bench and a later ruling of a single judge of the same High Court, the ruling of the Division Bench should be followed.

But even a single judge ruling of one's own High Court of an earlier date is binding on the court in preference to a later ruling, of another High Court, may be of even a larger Bench.

Decisions even of the highest court on questions which are essentially questions of fact cannot, however, be cited as precedents governing the decision of other cases, which must rest in the ultimate analysis upon their own particular facts. It is no use, therefore, appealing to precedents in such matters. No case on facts can be on all fours with those of another.

Under Article 189 of the Constitution, the law declared by the Supreme court is binding on all Courts and, therefore, even the principles

enunciated by that Court, including the *obiter dicta*, when they are stated in clear terms, have a binding force.

The *obiter dicta* of a Judge of the Supreme Court, even in a dissenting judgment, are entitled to high respect, especially if there is no direct decision to conclude the question at issue.

But decisions under one enactment may in the very nature of things be of little or no assistance for the decision of the question under another enactment.

a) Courts to apply correct and updated Law:

The Presiding Judge of a Court is presumed to know the law and is expected to apply the correct law, whether or not reliance is placed upon it by either party. No doubt the parties rely upon the law favorable to them, but their negligence in doing so does not justify any Court to decide a case before it contrary to law. Even where the question is whether or not the provisions of a particular law have been applied to a specified locality, failure on the part of the party relying upon it to cite or produce the relevant notification would not justify the Court deciding the issue against it. It is the duty of the Court to apply the correct law. Judges may keep

themselves abreast of new laws by frequently visiting official websites such as www.punjablaws online.

b) Directions of Superior Courts:

Where certain directions are given by a superior court in appeal or revision, the subordinate court is bound to comply with them.

A judge, for example, cannot deviate from or refuse to comply with the direction given by an appellate court while remanding a case. Refusal to do so would be denial of justice, and destruction of one of the basic principles in the administration of justice, based on hierarchy of courts.

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Chapter-9

FINAL ORDERS

Questions relating to the grant of proper relief and passing of final orders in civil cases are best addressed by reference to the forms of decrees provided in Order XX Rules 10 to 19. The passing of the final order, after the whole judgment has been written, might look easy and of comparatively lesser importance. But it is by no means so. It may require reference to the provision of law under which the order is passed and then recording of the order in strict legal language so as not to complicate matters at some future stage.

Final order must include order as to costs and also, compensatory costs when applicable.

Arriving at a Decision

More important than writing the judgment is, however, the arriving at a just decision in a case. For doing so, the Judges will have to take all the material facts, alleged or brought out in evidence into consideration, analyze the entire material before them in proper perspective, giving due allowance to human failings, constantly keep in view the onus for the proof of different disputed facts, try to understand the motive which may have impelled the litigants to make certain

allegations or the witnesses to depose in support of either of them, and then apply the law to the proved facts of the case.

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Chapter-10

GRANT OF RELIEF IN CIVIL CASES[39]

Decree to agree with the judgment.— A decree and judgment are separate and distinct documents. the decree has to contain the number of the suit, the names and description of the parties, the addresses of the parties, particulars of the claim and shall specify clearly the relief granted or other determination of the suit. It should be self-contained and capable of execution without referring to any other document[40].A decree must always agree with the judgment[41] and is, therefore, invariably drawn up in terms of the language used by the Judge in the operative portion of his judgment. The Judge must, therefore, bestow proper care and attention in writing the operative portion.[42]

Operative portion of the judgment. In majority of cases the writing of the operative portion of the judgment, whereby relief is granted to one side or the other, is a simple affair. If the plaintiff has himself drafted the relief clause in the plaint in clear and simple words, it might be enough for

[39] Judgments and How to write them, by S,D. Singh 4th ed.2008
[40] 1998 CLC 27
[41] Order XX, Rule 6 of the Code of Civil Procedure as amended by LHC
[42]

the Judge to say that the suit is decreed for the relief as prayed together with costs.

When relief simple.— If on the other hand a suit is dismissed, the operative portion of the judgment merely says that the claim is dismissed and costs are awarded to the defendant or defendants in such and such a manner. It is not always, however, that the matter is so simple.

Relief in complicated cases.— Either the relief which has been claimed by a plaintiff is complicated in itself, or has been drafted in a manner which is ambiguous and vague, or so worded that if granted in that very form is likely to cause unnecessary harassment to the defendant or might be difficult to execute. Then the Court may not on merits like to grant the plaintiff the whole of the relief payed for by him or in the form in which he has put it in the plaint. In all such cases it becomes the duty of the Judge to make the operative portion of the judgment specific and indicative of the intention in which the relief is intended to be granted.

When suit partly dismissed and partly decreed.—

Where a suit is partly dismissed and partly decreed, the extent to which the claim is decreed must be clearly specified and the order relating to

the payment of costs passed in some suitable form, such as:

" The suit is decreed for the recovery of possession over one-fourth of the property described at the foot of the plaint with proportionate costs against Defendant 1."

or

"The suit is decreed for the recovery of Rs..... only . The rest of the claim is dismissed. Parties will pay to and recover from each other costs in proportion to their success and failure."

When pending and future interest awarded.— When it is intended to award pending and future interest or profits in money suits, the rate and the amount over which interest or profit is to run should be clearly specified.

Grant of instalments. — If the Court directs a decree to be paid by instalment, the order should again be clear and specific. The discretion to order payment of the decretal amount by instalments should not be exercised so as to constitute a virtual denial of the decree-holder's

rights.[43] Instalments should not also be granted as a matter of course. The Court should give its reasons for granting the prayer.[44] But whenever instalments are granted, the amount of the instalments and the period for their payment should be specifically stated. It always creates some confusion in execution whenever there is vagueness about the amount of instalments.

Amount should be specifically mentioned.— Instalment orders are very often passed in some such words as " The defendant will pay the decretal amount in six equal half-yearly instalments." The order by itself is clear, but one has to calculate what is to be the amount of an instalment, whether it should be calculated after including decreed costs or without them, and how is the payment of future interest to be regulated. It is always desirable, therefore, to fix the amount of an instalment by the order itself. It will make the order definite as far as the parties are concerned, and save considerable time of the execution court.

When order for instalments combined with future interest.— The Court should also consider and pass orders as to what is to happen

[43] *KaramAli Khan v. Mohd. Siddique Ahmad, AIR 1935 Rang 495: 160 IC 344*

[44] *Manorama Devi v. Wajadi Acan, AIR 1935 Cal 559: 157 IC 1038*

in case of default in the payment of instalments. And if future interest is also awarded in the decree, the order should also specify whether interest is to run over the entire amount from the date of the decree, or only on those instalments with respect to which there is default. An order relating to the grant of instalments may thus take some such form as:

> " The suit is decreed for the recovery of Rs 50000 with costs and pending and future interest at 3% per annum. The decretal amount shall be payable in half-yearly instalments of Rs 10000 each beginning with 15th April, 2019. In case of any two instalments remaining unpaid, the entire balance will become payable forthwith."
>
> or
>
> "The suit is decreed for the recovery of Rs.25000 with proportionate costs. The defendant is allowed to pay in monthly instalments of Rs 10000 each beginning with 5th February, 1974. Future interest would be payable at 6% per annum over unpaid instalments with effect from the date of their default and in case any three instalments remain unpaid, the entire balance will become payable at once."

Suit for mesne profits.— Decrees in suits for mesne profits also sometimes cause confusion. In suits for the recovery of possession of immovable property and for rent and mesne profits, the grant of the latter relief becomes necessary if the suit is decreed for possession also. The Court may determine and grant a decree for past rents and mesne profits, i.e., those prior to the institution of the suit, at the time of passing the decree itself, or may direct an enquiry as to such rents and profits.[45] In the case of rent or mesne profits accruing due from the date of the institution of the suit, the Judge should direct an inquiry with respect thereto from such date until—

1) the delivery of possession to the decree-holder;
2) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through Court; or
3) the expiration of three years from the date of the decree, whichever event first occurs.

Enquiry about rent or mesne profits.— Whenever an enquiry is directed as to mesne profits, the Court should also at the same time decide the basis upon which the mesne profits are

[45] Order XX, Rule 12(1)(6) and (ba) of the Civil Procedure Code.

to be assessed.[46] A decree for mesne profits may be passed jointly and severally against all the trespassers who may have jointly kept the plaintiff out of possession for any particular period, or the respective liabilities of such trespassers may be ascertained in the plaintiffs suit against them.[47] In either case there should be a clear direction in the operative portion of the judgment if the rent or mesne profits are awarded against all the defendants jointly and severally, or in a certain proportion.

To be made by the Court itself and final decree passed.— The trial court should not direct the executing court to make enquiries about rent or mesne profits. Any such order would be without jurisdiction.[48] The Court should itself make the enquiry and then pass a final decree under Order XX, Rule 12(2) of the Code of Civil Procedure.[49]

In a suit for pre-emption, the relief should be granted with due regard to the provisions of Order XX, Rule 14 of the Civil Procedure Code. If there is only one claimant for the property, the decree should—

46 .....
47 .....
48 .....
49 .....

a) specify a day on or before which the purchase money should be paid, and
b) direct that on payment into Court of such purchase money together with the costs (if any) decreed against the plaintiff, on or before the day fixed as aforesaid, the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

The operative portion of the judgment in such a suit should thus run something like this:

> " The suit of the plaintiff is decreed for pre-emption subject to the payment of Rs ……. into Court within two months from today. Upon such payment Defendant 1 shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment. Defendant 1 will also pay costs of the suit to the plaintiff. But if the purchase money is not paid by the plaintiff within time, the suit shall stand dismissed with costs to Defendant 1."

Claims of rival pre-emptors.— Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct comply with the provisions of sub-rule (1) of Rule 14 of Order XX of the Civil Procedure Code.

Administration suits.— An administration suit is a suit for an account of some property and for its due administration under the decree of the Court. A preliminary decree is, therefore, passed first ordering such accounts to be taken and inquiries made. Even though the suit is filed by a single creditor, the decree is passed in favour of all the creditors.[50] The final decree is passed after the estate has been administered. It will allot out of the assets remaining in the hands of the Court or the administrator, the various shares to the parties entitled to receive them.[51] The Civil Procedure Code does not provide what the contents of the final decree should be. It will depend upon the nature of the dispute in each case.13[52]

Suit for recovery of immovable property.— In suits for recovery of immovable property, the decree should contain a description of such property sufficient to identify the same, and

[50] Abdul Rahim v. Khalid 2000 MLD 122
[51] 2014 CLC 1006 .
[52] Shahzadi Bi v. Rahmat Bi, AIR 1936 Lah 879: 168 IC 105.

where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.[53] It is, however, not necessary to give full description of the property in the operative portion of the judgment. It would be enough if reference is made to the property with respect to which the suit is being decreed in such detail that the decree-writer may be able to prepare the decree correctly. If there is any map or plan of the property in the file, that map or plan may be directed to be made part of the decree, so as to make the reference to the property easy. In some cases, it may be necessary to refer to the property with the help of some figures or letters. Thus the order in some cases may say, "The suit is decreed for possession over the piece of land marked ABCD in the map on paper 34/A of the file, which will form part of the decree."

Suit for recovery of movable property.— If the suit is one for the recovery of movable property and the decree directs that it shall be delivered to the plaintiff, there should be a further direction that if the property cannot be or is not delivered, then the defendant shall pay such and such

[53] Order XX, Rule 9, Civil Procedure Code

amount to the plaintiff.[54] The operative portion of the order may thus run as follows:

> "The suit is decreed for the specific delivery of the Singer Sewing Machine No. to the plaintiff within a month from today, together with full costs of the suit. If the defendant fails to deliver the machine the plaintiff shall be entitled to recover Rs. 8000 from him in lieu thereof."

Suits for dissolution of partnership or accounts of partnership.— In suits for the dissolution of partnership and the taking of partnership accounts, a preliminary decree is first passed declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved and directing such accounts being taken and other acts being done as are thought fit.[55]

Suits for accounts.— In suits for accounts, either between principal and agent or in any other case, also a preliminary decree is first drawn up directing accounts being taken.[56] Detailed instructions should in such cases be given for

[54] Order XX, Rule 10, Civil Procedure Code.
[55] Order XX, Rule 15, Civil Procedure Code
[56] Order XX, Rule 16, Civil Procedure Code.

what period accounts are to be rendered, who is the accounting party and in what manner accounts are to be taken or prepared.[57]

Suits for partition.— In suits for partition of property or for separate possession of a share therein, relief is to be granted under Order XX, Rule 18 of the Civil Procedure Code. If the decree relates to an estate assessed to the payment of land revenue to the Government, it will declare the rights of several parties interested in the property, but the actual partition or separation shall be made by the Collector or any designated subordinate of the Collector deputed by him[58] in accordance with the law, if any, for the time being in force relating to the partition or separate possession of shares of such estates.[59]

Partition of revenue-paying properties.— In Punjab, jurisdiction to make partition has been exclusively vested in Revenue Courts, under Section 172 of the Punjab Land Revenue Act. In all such cases Civil Courts will merely declare the shares of the parties and the parties will seek their remedy in Revenue Courts for actual

[57] Order XX, Rule 17, Civil Procedure Code.
[58] Order XX, Rule 18(1), Civil Procedure Code.
[59] Section 54, Civil Procedure Code.

partition or separate possession in accordance with the provisions of the revenue law.

Suits relating to partition of other immovable properties.— In suits relating to partition of other immovable properties, the relevant law is now Punjab Partition of Immovable Property Act, 2012. When there is a dispute as to the tititle or share in the property, the Court has to first determine and decide such title or share, which shall be deemed to be a decree. If the co owners submit private settlement, the court shall pronounce judgment and decree, otherwise partition will be through Internal auction or open auction as provided in the Act.

Relief in mortgage suits.— The grant of relief in suits based on mortgage deeds are governed by the provisions of Order XXXIV, Rules 2 to 9 of the Civil Procedure Code. In such cases it is not always necessary to incorporate all the terms prescribed by these rules in the operative portion of the judgment. If the suit is decreed it would be enough to say that preliminary or final decree be drawn up under rule such and such. But if, and to the extent, the terms of these provisions are varied, that variation should be specified in detail. It would thus be enough to draw up the operative portion of the judgment in mortgage suits in some such form as below:

Order in a suit for foreclosure. — " The suit is decreed for the foreclosure of the mortgage-in-suit in terms of Order XXXIV, Rule 2, Civil Procedure Code. The defendant shall pay Rs. 12000 to the plaintiff within six months from today, failing which the plaintiff would be entitled to apply for final decree under Order XXXIV, Rule 3, Civil Procedure Code. The plaintiff will get his costs from the defendant."

or

Order in a suit for recovery of mortgage money by sale**:** " The suit for the foreclosure of the mortgage is decreed. Preliminary decree be drawn up under Order XXXIV, Rule 2, Civil Procedure Code. The defendant is allowed to pay Rs 1200, the amount due under the mortgage, within six months from today. The plaintiff will also get his costs from the defendant."

or

Order in a suit for redemption of the mortgage.— " The suit is decreed for the recovery of Rs 1300 with costs and pending and future interest at the contractual rate at 10% per annum up to six months next

and thereafter at 3% per annum. Preliminary decree for sale be drawn up under Order XXXIV, Rule 4, Civil Procedure Code. The defendant is allowed six months' time to pay the decretal amount."

or

" The suit is decreed for the redemption of the mortgaged property detailed in list A of the plaint subject to payment of Rs 5367 within six months from today. Parties shall bear their own costs of the suit. Preliminary decree for redemption be prepared under Order XXXIV, Rule 7, Civil Procedure Code." [60]

Suits for injunction.— Suits for injunction probably require the greatest care inasmuch as disobedience of such orders makes the judgment-debtor liable to prosecution or punishment for contempt of Court. Reliefs for injunction are also at times drafted by the plaintiffs in very wide terms. The Judge should, therefore, think over the exact terms in which he desires to grant an injunction. It is perhaps never desirable to say that the relief for injunction was granted as prayed. That would almost invariably lead to

[60] Venkatapathi Nayani v. Puttamma Nagith, AIR 1936 Mad 609: 71 MLJ 499:165 IC 314. 1985 MLD 504

some future trouble. The exact words in which the injunction is intended to be granted should be incorporated in the operative portion of the judgment.

Mandatory injunction.— Where a mandatory injunction is granted against a defendant, some time should be granted to him for complying with the orders of the Court. If the defendant is required to comply with the injunction in a particular manner, full directions should be given to him with respect to it. The injunction and the directions accompanying it should be such that the Court may not itself feel any difficulty in enforcing its orders.

Relief in case of set-off.— If the defendant is allowed a set-off against the claim of the plaintiff, the order should state what amount is due to the plaintiff and what amount is due to the defendant and finally what amount is due to the plaintiff or the defendant.[61]

Decree against legal representatives.— If a decree is passed against the legal representatives of a deceased person, the relief should be granted against the assets of the deceased in the hands of the defendants. There can be no decree simply against the assets of the deceased person; it must

[61] Order XX, Rule 19(1) Civil Procedure Code.

always be against the assets in the hands of some person.[62] The operative portion of the judgment may in such cases be drawn up something like this:

> "The suit is decreed for the recovery of Rs.24,000 with costs against the assets of Khalil Ahmad, deceased, in the hands of the defendant."

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[62] 1991 CLC1986 and PLD 1986 Kar.

Chapter-11

PRONOUNCING JUDGMENT

The last, but by no means less important part of the judgment is signing thereof. Before a judgment acquires legal sanction behind it, it must be pronounced in open court, either immediately after the hearing of the case or at some subsequent time (*within 15 days*) of which notice shall be given to the parties or their pleader. This latter aspect is very often ignored by Judges. Whenever a judgment is reserved, either a date should be immediately fixed for its pronouncement, or if the judge is unable to do so, a date should be fixed for the purpose as soon as the judgment is ready and the judgment announced on that day.

Judgment:

When the judgment is pronounced it shall be dated and signed by the Judge, who should also invariably give his/her designation immediately below their signatures. The judgment is then complete. It cannot thereafter be altered or added to, except as provided under the law.

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Chapter-12

IMPACT OF DEMANDS OF CHANGING SOCIETY[63]

The exigencies of the times and of the society sometimes demand even from the judiciary, new, unconventional and uninhibited approach to problems arising from impact of radical changes in the outlook of the people and the impact of changing standards or values in all important spheres of human activity. It is not given to a Judge to make laws, nor can he/she accede to a pressing or popular demand by resorting to a ruse under the garb of his/her role as interpreter of the law. But, if ever and when, an appropriate occasion arises, a Judge is not to hesitate to cast away old and rusted moorings and venture into new, and may be troubled, waters of interpretation of laws to find out whether the particular law in question is so certain or inflexible as to be incapable of being adapted to meet the demands of the changed or changing society. Judges must exercise utmost caution and restraint. But if they find this can be done within the ambit of their jurisdiction, function and duty as a Judge, they must go ahead; else they must leave it to the Legislature.

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[63] Judgments and How to write them, by Justice S,D. Singh 4th ed.2008

APPENDIX – I

A CHECKLIST FOR JUDGMENTS AND DECISIONS[64]

Check the Background Section (if there is one)

- If it provides procedural history or names of counsel, do we really need this information?
- Is it justified because it contains facts or law relevant to more than one issue?

Read the First Page

- Does it say who (allegedly) did what to whom (WDWTW) who's arguing about what (WAAW) *before anyone set foot in court,* in case nutshell, without legal jargon?
- Does it include names, dates, procedural history, and citation of laws or precedents that have nothing to do with the issues at hand?
- Does it announce the issues in a predictive sequence, *without clutter but not too abstractly?*

Check the Analysis of Each Issue

- If it is a question of law, does the analysis include an impartial statement of losing party's position followed by its flaw, clearly stated?
- Is the controlling law or principle cited?
- If it is a question of fact, does it summarise each party's evidence?
- Does the evidence justify the finding?

[64] Judicial Decision-Making Toolkit – Additional Documentation, Pacific Judicial Development Programme, Available at: http://www.fedcourt.gov.au/pjdp/pjdp-toolkits

- Are the standard and burden of proof correctly applied?

Check the "Floor Plan" as Revealed in Headings

Have the issues listed in the introduction been turned into questions and used as headings?
Would the headings make sense to a non-lawyer?
Are they arranged in a sequence that makes sense?
If there are additional headings, are they necessary, logical, and helpful?

Check the Analysis of Each Issue

Has the writer made the mistake of narrating the trial or hearing instead of dividing the evidence according to the issues?

Is it Written for Grasshoppers?

- Does the reader have to jump from beginning to end to middle?
- Does it contain huge patches of cutting and pasting from the parties' submissions (instead of succinct summaries)?
- Does it contain block questions that are not preceded by summaries?
- What, if anything could be left out?
- What, if anything should be added?
- What, if anything is repeated?
- Will impartial readers feel that the losing party had a fair hearing?

Read the Conclusion

- Is the order written in language that would be clear to your next door neighbor?
- If appropriate, is the analysis succinctly summarized?
- If appropriate, are the consequences of the ruling explained?
- What impartial reader be persuaded by the result?

Check the Decision as a Whole

- Are there any words or phrases (e.g. jargon, Latin, or legalisms) they would seem out of place in a good newspaper?
- Are there any sentences more than two lines long that should be broken up?
- Is there any repetition that could be eliminated?

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APPENDIX – II

Lahore High Court Rules and Orders Volume 1 Chapter 11-A

JUDGMENTS AND DECREES

Preparation and Delivery of Judgments

1) Early Pronouncement advisable.—(a) On completion of evidence, the Court shall fix a date, not exceeding fifteen days, for hearing of arguments of parties, and the trial shall be over after such hearing.

(b) When the trial in Court is over, the Judge should proceed at once or as soon as possible to the consideration of his judgment. It is essentially necessary that he should do so while the demeanour of the witnesses and their individual characteristics are fresh in his memory. In any case pronouncement of judgment should not be delayed beyond a period of thirty days. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of those facts of the case about which the parties are not agreed. The oral and documentary evidence adduced upon each issue should be carefully reviewed and considered in the judgment].

Direction of Trial Courts.--"Judgment" is the one written, signed and pronounced in Court. Where the Trial Court had dictated the judgment and had also announced same but had not signed it; Presiding Officer having been transferred and handed over charge, such Presiding Officer, held, was in no position to sign the judgment. Without signatures, the judgment was not a proper judgment, nor, can a decree follow. Successor Court was ordered to rehear the arguments and pronounce the judgment in accordance with law within specified period.

2) Directions re: judgments.—In the preparation and delivery of judgment the attention of the Civil Courts is drawn to the following directions:-

i) The judgment should be written either in the language of the Court, or in English;

ii) When a judgment is not written by the Presiding Officer with his hand, every page of such judgment shall be signed by him;

iii) It should be pronounced in open Court after it has been written and signed;

iv) 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 by section 152 or on review;

v) If it is the judgment of any Court other than a Court Small Causes, now small claims & minor offences court, it should contain a concise statement of the case; the points for determination, the decision thereon and the reasons for such decision;

vi) If it is the judgment of a Court of Small Claims, it should contain the points for determination and the decision thereupon; and

vii) It should contain the direction of the Court as to costs.

4) Postponement.—Instances have occurred of judgments not being written until a considerable time after final arguments in a case have been heard. This practice is open to grave objections, and in any case in which judgment is not written and pronounced within 14 days

from the date on which arguments were heard, a written explanation of the delay must be furnished by the subordinate Court concerned to the District Judge. This is not meant to encourage a practice of reversing judgments; on the contrary, judgments should ordinarily be written as soon as arguments have been heard. It is only in the exceptional cases where the Court has to consider many rulings and cannot conveniently give judgment at once, that there is any justification for judgment being reserved.

5) Certificate of postponement.—The subordinate Courts should append to their monthly and quarterly statements a certificate to the effect that judgments have been pronounced in all cases, within a month of the hearing of the final arguments. Explanation should be given as regards any judgments not delivery within such period.

6) Procedure when Judges give over charge before pronouncing judgment.— Every District Judge or Civil Judge proceeding on leave or transfer, must before making over the charge, sign a certificate that he has written judgments in all cases in which he has heard arguments. Should an officer be forced to lay down his charge suddenly, he shall nevertheless write the judgments in such cases, and send them for pronouncement to his successor.

7) Persons employed for dictation of judgments.— Subordinate Courts should note that judgments are to be dictated only to persons employed for that express purpose or employed as copyists or typists.

8) Not to be written in Court before disposal of cause list.— The practice of the writing up judgments during the court hours in the earlier part of the day is to be deprecated. Judgments may be written after the day's cause list has been completed.

9) Language.— Presiding Officers of subordinate Courts, who are well acquainted with the English language, should write their judgments in English in appealable case. When a Subordinate Judge writes his judgment in English, the decree also should be framed in the same language.

10) Translation in Urdu.— Whenever the judgment is written in the English language, and any of the parties to the suit or appeal, if they were represented by counsel their counsel, are not acquainted with that language, the judgment must if any of the parties so require, and unless it is the judgment of a Court of Small Claims, be translated into Urdu. The High Court has not thought it advisable to issue instructions as to when the judgment of a Subordinate Court shall be translated by the presiding Officer and when other agency may be employed, as this is a matter which can be best settled by each District Judge for the Courts subordinate to him. District Judges are, however, requested to issue definite instructions on the subject. When the translation is not made by the Presiding Officer, he should always satisfy himself that it is correct.

11) Information of cancellation of registered instrument to be sent to registering officer.— It should be remembered that section 39 of the Specific Relief Act, 1877, requires that, when any registered instrument has been adjudged void or voidable, and the Court orders it to be delivered up and cancelled, the Court shall send a copy of its decree to the officer in whose office the instrument was registered with a view to such officer noting the fact of cancellation in his books.

12) Pronouncing, judgment after death of a party.— In Order XXII, rule 6, it is provided that, if any party to a suit dies between the conclusion of the hearing and the pronouncing of the judgment, such judgment may be pronounced, notwithstanding the death, and shall have the

same force and effect as if it had been pronounced before the death took place.

13) Judgment not legibly written.— Judgments (when not type-written) should always be written in a clear and legible hand. If they are not so written, such a copy should be made and placed on the record.

14) Civil powers to be disclosed in the record, judgment and decree.— Every judicial officer hearing or deciding a civil suit, proceeding or appeal, is responsible that the record and the final order of judgment and the decree in such civil suit, proceeding or appeal, shall disclose the civil powers which such officer exercised in hearing or deciding such suit, proceeding or appeal.

APPENDIX – III

Instructions from Member Inspection Team, Lahore High Court

No. 4008-117/74/MIT/HC.
Dated Lahore the 2nd May, 1974.

Subject: **SIGNING OF JUDGMENT AND JUDICIAL ORDER.**

The law requires that judgments and judicial orders shall be signed and does not provide that these may be initialed. The Chief Justice and Judges have noticed that sometimes Judicial Officers merely initial their judicial orders, therefore, their Lordships have been pleased to direct that in future all judicial orders shall be signed and not to be initialed.

No. 6190/Genl
Dated Lahore the 14th May, 1974.

Subject: **PRONOUNCEMENT OF JUDGMENTS BY THE JUDGES.**

The provisions of rule 3, Order XX of the Code of Civil Procedure, 1908 as well as sub-rule (3) of Rule 2, Chapter 1 1-A of the Rules and Orders of the Lahore High Court, Lahore provide that the judgment shall be dated and signed in open Court at the time of pronouncing it. It has come to the notice of the Chief Justice and Judges that in some cases the Judgments are pronounced by the Judges before these are written. It is, accordingly, directed to ensure that no Judgment is announced by the Judges unless they are written.

2. The above instructions should be brought to the notice of all the Judges posted in all Districts for strict compliance in letter and spirit. Any departure from

No. 13064.Gen./XI.D-4
Dated Lahore the 5th December, 1979.

Subject: STANDARD OF JUDGMENTS.

It has been noticed by their Lordships the Chief Justice and Judges that judgments delivered in the last or so of every month are not only of the required standard but are even below the normal standard of the author. The only reasons of this lapse could be the desire to earn the necessary number of units at the cost of the quality of the judgments.

2. Their Lordships do not approve of this way of working. It is expected that the members of the subordinate judicial shall spread their work over the whole month evenly so that their performance in the later part is not below the standard maintained in rest of the month.

No. 8401/Genl
Dated Lahore the 17th June, 1986.

Subject: PARAGRAPH NUMBERING OF JUDGMENTS.

It has come to the notice of the Hon'ble Chief Justice and Judges that some Judicial Officers do not number the paragraphs of the judgments they write. As a result, it becomes difficult to make reference to precise portions of their judgments which are assailed before this Court. The Hon'ble Judges have, therefore, been pleased to decide that paragraphs of all judgments written by Presiding Officers of subordinate Courts in the Punjab shall be numbered.

2. Note these instructions and also bring them to the notice of all concerned, for strict compliance.

3. This circular shall also apply to orders passed by the Judicial Officers especially the orders which are appealable or amendable to revision.

No. 7703/MIT/HC/REF: 32/91.
Dated Lahore the 10.6.1991.

Subject: **DEFICIENCIES IN THE JUDGMENTS OF THE SUBORDINATE COURTS.**

(i) It has been noticed that the Judges while writting judgments do not comply with the High Court Rules and Orders which require that all the details such as the date of institution of the suit, the date of decision etc. should be given in the heading of the Judgments. These Rules an Orders also require that the particulars of the disputed property and other details given in the plaint and written statement should be mentioned in the body of the order/judgment.

(ii) It has also become a common practice that the Judges instead of giving, details in the body of judgments as required by the High Court Rules and Orders in a slipshod manner indicate that the details can be found in the plaint and other documents. This is against the High Court Rules and Order and it causes lot of in-convenience and wastage of

time of the Appellate Courts to find these details from the documents.

His Lordship has further directed that the Judges in the Province to fully comply with the High Court Rules and Orders and give the details in their judgments as mentioned above.

No. 5723 MIT

Dated Lahore the 13th August, 1994.

Subject: GIST OF ARGUMENTS

It has come to the notice of Hon'ble Chief Justice and Judges of this Court that some times entire points in controversy raised and urged during arguments are not taken into consideration.

2. Impress upon all judicial officers working under your control, to invite gist or arguments well before being addressed, form it part of the file, if submitted specifically make mention thereof in the order sheet either way and dilate and resolve all these aspects in judgment.

3. Any lapse in this regard shall not be countenanced.

No. 28147/MIT/HC/C.O./144/94.

Dated Lahore the 26th September, 1994.

Subject: WRITING OF LEGIBLE JUDGMENTS/ ORDERS BY THE PRESIDING OFFICERS OF THE SUBORDINATE COURTS.

To write their orders/judgments very legibly and carefully so as to immediately make out the sense

which their orders/judgments are required to convey. If at all some order/judgment is written in hand and the handwriting of the Officer happens to be illegible/not clear, he shall always make out a point that the order/judgment is also get typed or re-written by a Court official having legible handwriting and the attached with the original one, duly counter-signed by the Officer concerned in token of authenticity of the order/judgment.

No. 21228/MIT/HC

Dated Lahore the 12th October, 2006.

Subject: **CORRECT USE OF NOMENCLATURE.**

It has been observed that some Judicial Officers do not mention their relevant jurisdiction while signing orders/judgments, in as much as Judgments in civil revisions/civil appeals are signed with the stamp of "Addl. Sessions Judge" instead of "Addl. District Judge".

2. The Hon'ble Chief Justice, taking note of this wrong practice, has been pleased to direct that henceforth the District & Sessions Judge/Addl. District & Sessions Judge shall mention their correct corresponding nomenclature in the judgments/orders in civil/criminal cases using the words "District" and "Sessions", respectively. Similarly Senior Civil Judges, Civil Judges/Guardian Judges, Judges Family Courts, Rent Controllers and Magistrates shall also use their correct corresponding nomenclatures in the judgments/orders.

APPENDIX – IV

Suggested Readings

1. Judgments and How to Write Them by SD Singh
2. Reading, Writing and Analysing Judgments: How Judges Decide Cases by Andrew Goodman Student edition 2006
3. Judgment and Books by Justice Oliver Wendell Homes:
    a. Collected Legal Papers
    b. The Essential Homes
4. Judgments and Books by Lord Denning
    a. The Discipline of Law by Lord Denning
    b. The Due Process of Law by Lord Denning
    c. What Next in Law by Lord Denning
    d. The Closing Chapter by Lord Denning
    e. Landmarks in the Law by Lord Denning
5. Writing for the Court by James C Raymond
6. Pacific Judicial Development Program Judicial Decision-making Toolkit
7. Judicial Writing Manual: A Pocket Guide for Judges by Federal Judicial Center, 2013
8. Brochure on Skills of Judgment Writing by Juicial Training & Research Institute, Uttar Pradesh
9. Access to Justice in Pakistan by Justice ® Fazal Karim
10. Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced and Foreign Judges Journal of Dispute Resolution 2015

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