

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Consumer Appeal No.05/2016

Ashfaq Ahmed Khan VS PTCL & another.
Appellant: In person.
Respondents by Barrister Faisal Khan, Advocate.
Date of Hearing: 04.03.2016.

Consumer Appeal No.06/2016

Ashfaq Ahmed Khan VS PTCL & another.
Appellant: In person.
Respondents by Barrister Faisal Khan, Advocate.
Date of Hearing: 04.03.2016.

Criminal Appeal No.11/2016

PTCL & another VS Ashfaq Ahmed Khan.
Appellants by Barrister Faisal Khan, Advocate.
Respondent: In person.
Ch. Muhammad Haseeb, Standing Counsel.
Ms. Shazia Bilal, State Counsel.
Date of Hearing: 04.03.2016.

Criminal Appeal No.15/2016

PTCL & another VS Ashfaq Ahmed Khan.
Appellants by Barrister Faisal Khan, Advocate.
Respondent: In person.
Ch. Muhammad Haseeb, Standing Counsel.
Ms. Shazia Bilal, State Counsel.
Date of Hearing: 04.03.2016.

Criminal Appeal No.40/2016

Ch. Nadeem Ahmed VS Addl: District Judge and other.
Appellant by Ch. Abdul Ghafoor, Advocate
Respondent No.2 By: Malik Abdul Munir, Advocate.
Ch. Muhammad Haseeb, Standing Counsel.
Ms. Shazia Bilal, State Counsel.
Date of Hearing: 18.03.2016

Consumer Appeal No.113/2015

Muhammad Akram Malik VS M/s Telenor Pakistan Ltd. etc.
Appellant: In person.
Respondent No.1 by Mr. Muhammad Junaid Akhtar,
Advocate.
Respondent No.2 by Barrister Munawar Iqbal Duggal,
Advocate.
Ch. Muhammad Haseeb, Standing Counsel.
Ms. Shazia Bilal, State Counsel.
Date of Hearing: 04.03.2016.

Consumer Appeal No.185/2015

Muhammad Akram Malik	VS	Ehsan Raqib, etc.
Appellant		In person.
Respondent No.1		In person.
Date of Hearing:		04.03.2016.

MOHSIN AKHTAR KAYANI, J. By this single judgment I intend to decide all the captioned consumer appeals as common questions of law and facts are involved in all these appeals.

2. In **Consumer Appeal No.113/2015** the appellant has prayed for setting aside of judgment dated 08-05-2015 and has further prayed that respondents be framed and punished in accordance with Section 9 of Islamabad Consumer Protection Act, 1995 for infringement of appellant's fundamental rights guaranteed by the Constitution and having committed criminal breach of trust by indulging in unfair trade practice i.e. issuance of SIM in the name of appellant without his consent by misusing copy of his CNIC (lying in their custody as trust). It is also prayed that compensation and damages to the tune of Rs.100,000/- may also be granted to the appellant/complainant being victim of unfair trade practice/criminal breach of trust. The respondents may also be directed to disclose number of third SIM illegally sold in the name of appellant (by misusing his CNIC) to a third person alongwith details of number of SIM, name of unauthorized seller, purchaser and user of third SIM.

3. The facts in brief relating to **Consumer Appeal No.113/2015** are that the appellant purchased two SIMs No.0345-5547802-3 from Telenor/respondent No.1 however, a third SIM was illegally sold by respondent No.1 to a third person without express consent/knowledge of appellant by misusing his CNIC. The appellant asked respondent No.1 to divulge number of third SIM, name of its unauthorized seller and purchaser/user which was refused whereupon the appellant filed a complaint before the Additional District Judge Islamabad which was dismissed in a slipshod manner on 25-05-2013 hence, the instant appeal.

4. The brief facts relating to **Consumer Appeal No.185/2015** are that appellant handed over Japan made remote controller of Sony TV set to the respondents on 03-11-2014 for minor repair which was retained by them however, after one week the

respondents informed the appellant that original remote control set cannot be repaired and retained the same for sending it to Sony Company's main workshop. They persuaded the appellant to purchase a copy of remote control from them for Rs.500/- which was purchased against a sum of Rs.500/-. The said remote control was found defective and on the very next day the appellant visited workshop of respondents and demanded the replacement of defective remote control but respondents flatly refused and even usurped original remote control. The appellant filed a complaint before the Consumer Court, Islamabad however, the said complaint was dismissed vide order dated 14-10-2015, hence, the instant consumer appeal.

5. The brief facts relating to **Consumer Appeal No.05/2016** are that on 30-11-2010 the complainant got installed a landline telephone connection and broadband internet from PTCL/respondent No.1. The said internet connection was 1 Mbps. However, respondents upgraded the said broadband internet connection of 1 Mbps to 2 Mbps and then to 4 Mbps. Resultantly, the appellant was being charged against the broadband connection of 4 Mbps without any lawful justification. The appellant filed a complaint before the Additional District Judge, Islamabad and the Court concerned vide order dated 21-12-2015 imposed a penalty of Rs.40,000/- upon the respondent No.1 alongwith compensation of Rs.100,000/- payable to the appellant. Hence, the instant appeal filed by the appellant alleging therein that the amount of compensation be enhanced from Rs.100,000/- to Rs.10,000,000/- and has further prayed that the respondents be directed to pay a Rs.200,000/- as cost of litigation. Hence, the instant appeal.

6. Brief facts relating to **Consumer Appeal No.06/2016** are that on 20-03-2016 a landline telephone, broadband internet connection and smart TV was installed at the address of the appellant and appellant was regularly paying the bill of the same. The smart TV connection of the complainant was not working for the last two weeks however, despite repeated requests respondent No.1 did not pay any heed to the requests of the appellant. The appellant asked respondent No.1 for 1 Mbps but the respondents upgraded the 1 Mbps to 2 Mbps and then to 4 Mbps without any lawful authority. Resultantly, the appellant was being charged against the broadband

connection of 4 Mbps without any lawful justification. The appellant filed a complaint before the Additional District Judge, Islamabad and the Court concerned vide order dated 21-12-2015 imposed a penalty of Rs.40,000/- upon the respondent No.1 alongwith compensation of Rs.100,000/- payable to the appellant. Hence, the instant appeal filed by the appellant alleging therein that the amount of compensation be enhanced from Rs.100,000/- to Rs.10,000,000/- and has further prayed that the respondents be directed to pay a Rs.200,000/- as cost of litigation. Hence, the instant appeal.

7. Brief facts relating to **Criminal Appeal No.11/2016** are that through the instant appeal, the appellants have assailed the order dated 21-12-2015 passed by learned Additional District Judge, Islamabad whereby the appellants have been ordered for payment of fine of Rs.40,000/- alongwith compensation of Rs.100,000/- payable to respondent No.1. Hence, the instant appeal.

8. Brief facts relating to **Criminal Appeal No.15/2016** are that through the instant appeal, the appellants have assailed the order dated 21-12-2015 passed by learned Additional District Judge, Islamabad, whereby the appellants have been ordered for payment of fine of Rs.40,000/- alongwith compensation of Rs.100,000/- payable to respondent No.1. Hence, the instant appeal.

9. Brief facts relating to **Criminal Appeal No.40/2016** are that through the instant Criminal Appeal, the appellant has assailed the order dated 22.01.2016 passed by the learned Additional District Judge, Islamabad whereby the complaint of the appellant was dismissed on the ground that only payment receipt of the product has been annexed with the plaint wherein it was written "service warranty one year". The learned Additional District Judge further declared that the from the plain reading of receipt suggests that the responsibility of respondent does not extend to the replacement of product i.e. the geyser rather the respondent was only liable for service of product within year of its purchase, hence the instant appeal.

10. Arguments of learned counsel for the parties in each of the above mentioned appeals as well as learned Standing Counsel and learned State Counsel have been heard, record perused.

11. From the meticulous perusal of the orders assailed by the appellants through the captioned appeals it transpires that the same have been passed by the “Authority” in terms of Islamabad Consumer Protection Act, 1995. However, from the perusal of the said orders it is very much evident that the same have been passed without taking into consideration the very spirit of law and the procedure to be adopted as per the golden principles laid down by the legislature and refined /modified with the passage of time to bring improvements towards achieving the destination of substantial justice to ultimately meet the ends of equity and fair play as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Certainly to reach at a just and fair conclusion, the procedure and mechanism set forth by the law in its true perspective is required to be followed strictly. However, the orders assailed by the appellant through the captioned appeals, reflect a different impression. While dealing with the complaint in each and every matter, the “Authority” has undertaken the entire exercise only by comparing and perusal of pleadings of the parties i.e. complaint, reply of complaint submitted by the respondent and attached documents, hence, it is important to understand the core question as:-

1. What procedure has to be followed when punishment is awarded and;
2. What procedure has to be followed while awarding compensation.
3. What would be the minimum standard to be applied while resolving the controversy under the term “inquiry”
4. What would be the minimum standard of evidence required in Consumer Complaints.
5. What are the implication of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 upon the grey areas of Islamabad Consumer Protection Act, 1995?

12. Before parting with these questions it is necessary to overview the provisions of Islamabad Consumer Protection Act, 1995 in order to protect the interest of the consumer which is evident from its preamble is reproduced hereunder:-

“An Act to provide for protection and promotion of the rights and interests of the consumers”

13. Three Words are given special weightage i.e. promotion, protection and interest.

- a) **Promotion** means “The action of promoting someone or something to a higher position or rank or the fact of being so promoted”

- b) **Protection** means “A legal or other formal measure intended to preserve civil liberties and right”
- (c) **Interest** means “The feeling of wanting to know or learn about something or someone.

Hence it is made clear by the legislature while using the above mentioned words that the main person whose interests/rights and feelings are to be protected is a “consumer” in Islamabad Consumer Protection Act, 1995. The said Act is the first Law of its nature passed by the Parliament, therefore, it is considered as initial legislation on the subject and thereafter Provincial Assemblies also step forward for the following legislation:-

1. The Punjab Consumer Protection Act, 2005.
2. The Punjab Consumer Protection Rules, 2009.
3. The Khyber Pakhtunkhwa Consumers Protection Act, 1997.
4. The Balochistan Consumers Protection Act, 2003.

14. The most important aspect of this law is word **“Consumer”** defined in Section 2

(c) of the Act *ibid* which is reproduced as under:-

- (i) Buys goods for a consideration which has been paid or partly paid and partly promised to be paid or under any system of deferred payment or any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or
- (ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services.

15. However, in order to understand the above term, the comparison available in

different legislations of the world have been perused and the conclusion arrived at is:-

At present there is no universally agreed definition of the term “consumer” for legal purposes. However, its definition has been attempted and debated at length by various jurists and consumer activists, and a good deal of literature is available, for example, Nadel (1971), Smith (1990), Sethi & Seetharaman (1994), Rachagan (1997), etc.

- a) The definition of “consumer” in the guidelines given for a Model Law for Consumer Protection in Asian countries, drafted by Dr. Sothi Rachagan defines “consumer” as a person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic, or household use of consumption; and does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, primarily for the purpose of re-supplying them in trade; or consuming them in the course of a process of production or manufacture; or in the case of goods, repairing or treating in trade other goods or fixtures on lands. Consumer related legislation in the developing countries has been reviewed by Dr. S. Sothi Rachagan in order to draw out their comparison and contrast, which is set forth herein below:
- b) The Brazilian Consumer Protection Code 1990 (BCPC) contains four definitions of the term “consumer”. The first two definitions are general or residual and apply when either of the other two specific

definitions are not applicable. The third definition applies only to products and services liability, whereas the fourth definition applies only to commercial practices. The BCPC offers protection to legal entities regardless whether they are profit-making or not in nature. However, the corporate consumers are provided protection only when they use goods or services as end users.

- c) The Consumer Act of Philippines 1991 (CAP) restricts the definition of consumer to a 'natural person', who is a purchaser, lessee or recipient of consumer products, services or credit. This definition is further amplified in the definition of consumer products and services as meaning 'goods, services and credits', which are primarily for personal, family, household, or agricultural purposes. In contrast to the BCPC, the CAP excludes all corporations including charities. However, it is important to note that it includes all goods bought by individuals for agricultural purposes, even when the individual is a large-scale planter engaged in wholly commercial agriculture.
- d) The Indian Consumer Protection Act 1986 (ICPA) provides two definitions of consumer; one in relation to goods and the other in relation to services. In relation to goods, it excludes persons who obtain goods for resale or any commercial purpose, thus excluding self-employed persons. It was amended in 1993 to change definition in order to include self-employed persons in it by way of an explanation, which qualifies that 'commercial purpose' of earning his livelihood by means of self-employment.' However, the definition of consumer in relation to services is broad, and includes not only persons who hire any service for themselves for a consideration but also beneficiaries of such services.

16. The other important definitions includes “Services” and “Unfair Trade Practice” used in Islamabad Consumer Protection Act, 1995 which are reproduced as under:-

- (e) “Services” includes services of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing processing, accountancy, supply of electrical, mechanical or any other form of energy, boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security or purveying a news or other information, and similar other services, but does not include the rendering of any service free of charge or under the contract of personal service; and
- (f) “unfair trade practice” means a trade practice which, for the purpose of sale, use or supply of any goods or for provision of any service or for their promotion, adopts one or more of the following practices, causes loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption, or charging for the goods and service in excess of the prices fixed by an authority authorized to do so under any law for the time being in force or in furtherance of such sale, use or supply makes any statement, whether orally or in writing, or by chalking on walls or through sign-boards on neon-sign or by distributing pamphlets or by publication in any manner, including through electronic media, by _____

17. Islamabad Consumer Protection Act, 1995 provides two way protection to the consumer i.e. (i) by way of punishment to be awarded to a person playing unfair trade

practice with the consumer while adopting Criminal Procedure and (ii) by granting compensation to the consumer. Islamabad Consumer Protection Act, 1995 differentiate the procedural aspect of punishment and compensation, which can be observed from the following table:-

Criminal procedure for punishment		Procedure for compensation
1	<p>Complaint Sec 8 (1)</p> <p>A complainant may in respect of any goods sold or delivered or any service provided or supplied or against any unfair trade practice file a complaint with the Authority.</p>	<p>Complaint Sec 8 (1)</p> <p>-do-</p>
2	<p>Sec 8 (3)</p> <p>Where on examination of the complaint received under subsection (1) or sub-section (2), the Authority is of the opinion that any right of the consumer has been infringed, it shall cause the notice of the complaint to be served on the respondent who shall be required to give his reply within a period of seven (7) days.</p>	<p>Sec 8 (3)</p> <p>-do-</p>
3.	<p>Sec 8 (4)</p> <p>After considering the complaint and the reply of the respondent after providing the parties an opportunity of being heard, or if no reply is received and after such inquiry as the Authority may deem appropriate it may pass such orders as the circumstance may require.</p>	<p>Sec 8 (4)</p> <p>-do-</p>
	<p>Section 8A</p> <p>Without prejudice to the foregoing provisions and in addition to the powers exercisable by the Authority where any right of a consumer is infringed or contravened by way of profiteering, hoarding, black-marketing, adulteration of food items, selling of expired</p>	

	<p>items of food and other item unfit for human consumption of charging for goods and services in excess of the prices fixed by the competent authority under any law for the time being in force, it shall be tried by a special Magistrate appointed under section 14A of the Code of Criminal Procedure, 1898, (Act VI of 1898) in a summary manner as provided in sections 262 to 265 of the said Code</p>	
	<p>Sec 9 (1) Penalties</p> <p>Where any right of consumer required to be protected under section 5 of the Act is in any way infringed, the person responsible for such infringement shall be punished with imprisonment which may extend to two years, or with fine which may extend to forty thousand rupees, or with both.</p> <p>Sec 9(2)</p> <p>Whoever makes advertisement through print or electronic media or be chalking on walls or in any other manner in contravention of section 7, he shall be punished with imprisonment which may extend to two years, or with fine, which may extend to thirty thousand rupees, or with both.</p>	<p>Sec 9 (3)</p> <p>The Authority may, where it may deems appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.</p> <p>Sec 9(4)</p> <p>The Authority may, where it deems necessary for protection of the rights of other consumers, order for confiscation of any goods or material or direct for their destruction.</p>

Hence, from the above comparison following words/terms are surfaced which are the basic factors to be considered necessary by the Authority/ Court while adjudicating

upon the consumer complaints:-

1. Examination
2. Opinion.
3. Consideration, considering.
4. Opportunity of being heard.
5. Inquiry.
6. Deem appropriate

All these terms /key words are not defined specifically in the Islamabad Consumer Protection Act, 1995, however, the terms are defined/explained in the different law books /judgments/dictum laid down by the superior Courts in the following manner:-

1. Examination

According to Black Law Dictionary “**Examination**” means “An investigation; search; interrogation.

In Criminal Practice it means “an investigation by a magistrate of a person who has been charged with crime and arrested, or of the facts and circumstances which are alleged to have attended the crime and to fasten suspicion upon the party so charged, in order to ascertain whether there is sufficient ground to hold him to bail for his trial by the proper court”?

In Trial Practice “The examination of a witness consists of the series of questions put to him by a party to the action, or his counsel, for the purpose of bringing before the court and jury in legal form the knowledge which the witness has of the facts and matters in dispute, or of probing and sifting his evidence previously given.”

2. Opinion

According to Webster Dictionary, opinion is a belief stronger than impression and less strong than positive knowledge. It can also be called a view; judgment, etc. The words ‘to opine’ mean (i) to think, (ii) to suppose, or (iii) to hold or express an opinion. And the word ‘opinion’ means (i) a belief not based on absolute certainty or positive knowledge but on what own mind; (ii) an evaluation, impression or estimation of the quality or worth of a person; (iii) to formal judgment of an Expert on a matter in which his/her advice is sought; (iv) the statement by a judge bearing on a case. **PLD 1995 Kar.436**

Section 13 of the Income Tax Act, 1922, defines the word ‘opinion’ as: “An opinion on the basis whereof a statutory authority is proceeding, may be accurate or erroneous, but it must be an honest opinion or conviction, based on tangible material capable of sustaining such opinion, and not a mala fide opinion or a colourable exercise of statutory power. **PLD 1988 Lahore. 725**

With reference to Sec. 309 Cr. P.C., it has been held that the word ‘opinion’ implies that the assessors should apply their minds and then come to the conclusion of guilty or not guilty. For this purpose they must consider the facts, apply the law to them and thereafter draw their conclusions. **PLD 1960 Kar. 1; PLR 1960 (1) 422.**

The use of the word ‘opinion’ in Sec. 16 of the Criminal Law Amendment Act (XIV of 1908) is significant and it clearly shows that the legislature intended the criterion to be purely subjective and not objective. **PLD 1964 Kar. 478.**

Martial Law Order [CMLA] No. 12, para. 2 Word “opinion” used in para. 2 is equivalent to the word “satisfaction” mentioned in certain other enactments dealing with preventive detention. Forming of opinion by detaining authority is a must and essential ingredient in detention cases. Opinion or satisfaction of detaining authority has to be clearly mentioned in order itself and not to be presumed. It is further held that detention in the absence of such an opinion or satisfaction, is illegal. **PLD 1979 Lahore 91.**

3. Consideration-Considering.

Word ‘consideration’ has been discussed and referred to in Volume I of Second Edition of “Words and Phrases Legally Defined” by John B. Saunders. Butterworths. 1969 Edition as under:-

“A ‘consideration’, I apprehend, is something which one takes into account as a factor in arriving at a decision. “ (Hanks v. Minister of Housing and Local Government (1963) 1 All ER 47).

The Concise Oxford Dictionary, 7th Edition at page 201 gives the meaning of the word ‘consider’ as “contemplate mentally, weigh merits of (course of action, claim candidate, etc.)”.

Chamber 21st Century Dictionary at page 292 defines ‘consideration’ as “a fact, circumstance, etc. to be taken into account”

“Due consideration” has been defined by Black’s Law Dictionary, 5th Edition of 1979 at page 448 as under:-

“To give such weight or significance to a particular factor as under the circumstances it seems to merit, and this involves discretion. (United States ex rel. Maine Potato Growers and Shippers Association v. Interstate Commerce Commission, 66 App. D.C 398, 88 F.2d 780, 783)”

Even otherwise, the term “due consideration” interpreted in its perspective can only mean proper, serious, reasonable, fair and honest application of mind and evaluation of comparative rights and records of eligible candidates. **2003 MLD 98**

4. Opportunity of being heard.

Opportunity defined in the Black’s Law Dictionary by Bryan A Garner Eighth Edition means that the fact alleged doer of an act was present at the time and place of the act. Wherein the term opportunity to be heard has been defined as the chance to appear in a Court or other Tribunal and present evidence and argument before being deprived of a right by governmental authority.

The opportunity to be heard is a fundamental requirement of procedural due process. It ordinarily includes the right to receive fair notice of hearing, to secure the assistance of counsel, and to cross-examine adverse witnesses.

Hearing. ____ “The word “hearing” therefore, means taking of evidence or consideration of question relating to suit enabling the Judge to come to a final adjudication and not consideration of merely an interlocutory matter”. **PLD 1983 SC (AJ&K) 223.**

“Means date on which either evidence recorded or arguments heard, or other steps taken by Court towards further proceedings”. **PLD 1973 Lahore 659.**

“**Hearing of a case**” ---Meaning and scope---Hearing (of a case) meant a meaningful, purposeful and effective hearing which enabled a judge to

understand the legal and factual proposition involved in the matter as opposed to an illusionary and cursory hearing conducted barely as a formality and to bring on record mere compliance of the rule of hearing---Where effective hearing was not provided, it shall tantamount to non-hearing of the party concerned and the legal consequences of non-hearing of parties shall follow. **2015 SCMR 1550.**

In the context of (b) Civil Procedure Code (V of 1908), O.IX, r. 8 the expression “.....when the suit is called on for hearing”, the word “hearing” implies taking down of evidence or hearing arguments or where question relating to the determination of suit is considered. **PLD 1970 Lahore. 412.**

“The word ‘hearing’ has a restricted meaning perhaps out of the natural anxiety of Courts to ensure that cases are decided on merits. The Code has neither defined the term nor does it at the same time differentiate between a date when, say evidence is to be recorded or arguments are to be heard or issues are to be framed as against those for which, say, the defendants are summoned or the case is otherwise adjourned. In the Code itself every adjourned date has been termed as a date of hearing. It may be emphasized that the Court has not to hear the plaintiff or the defendant but it has to hear the case. Thus in a sense the coming-up of the case before the Court on any adjourned date of hearing cannot be termed anything but its hearing. It was contended that to interpret the word ‘hearing in such a way may lead to harsh results but appears that it is always at liberty to show that his absence was due to sufficient causes and Court have generally been liberal in enlarging the scope of such causes”. **PLD 1972 A J & K 7.**

“The right of “hearing” does not mean that, as said in common parlance, that hear from the one ear and let that pass from the other, as if there was nothing in between to hold or ponder about. When the law or general principles of law require that a person shall be heard before he is condemned, it postulates that what he says shall be considered, and, if not accepted, the reasons thereof shall be given. To hold otherwise would amount to saying that only formality of “hearing” might be gone through, even without actually hearing, or, considering what is said. In such circumstances, nobody adjudge as to whether the petitioner had been dealt with on facts and reasons and not arbitrarily fancifully”. **PLD 1975 Lahore 1385; PLJ 1966 Lahore 35; Law Notes 1975 Lahore 675.**

5. Enquiry/Inquiry.

Term “**Inquiry**” is synonymous to word “**Examination**” according to Webster’s New World Dictionary (Third Edition) the word “**Inquiry**” means (1) the Act of Inquiring (2) an investigation or examination and according to chambers 21st century Dictionary (Revised Edition) term “**Inquiry**” means an act or the process of asking for information, an investigation specially a formal one. **PLD 2006 Kar. 314.**

Inquiry was the first step towards the commencement of the process of the judicial or quasi judicial proceedings--- inquiry was conducted to collect the primary evidence in respect of an offence or allegations by the police officer or any other officer/person duly authorized by competent authority. **2016 P.Cr.L.J 336.**

Word “**Enquiry**” means an act or the process of asking for information. The process of asking for information includes asking of information from affected person also. **2007 YLR 3203.**

6. Deemed appropriate.

Appropriate._____“The word “appropriate” is susceptible to a wide connotation and includes suitable or proper. Words “make an appropriate order” employed in subsection (3) of section 21 of the Sindh Rented Premises Ordinance, 1979 are of significance, they empower the appellate Court to pass a remand order.” **PLD 1994 SC 52.**

Deem. _____“The expression “deem” is commonly used to create legal fiction and introduce an artificial conception. Speaking generally when legislature commands that a language is to be deemed to be something, obvious conclusion is that in reality it is not that thing, what the legislature requires it to be treated. It is settled rule that the Court is entitled to ascertain the object for which the legal fiction is creation and confined to the purposes for which it is meant.” **1993 SCMR 745.**

“The word “deemed”, is used, great deal in modern legislation different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is the uncertain for the purpose of a statute, but in each case, it would be a question as to with what object, the Legislature had made a deeming provision. **PLD 1997 Lahore. 499.**

“The word ‘deemed’ is defined in Stroud’s judicial Dictionary as: “when a thing is to be ‘deemed’ something else it is to be treated as that something else with the attendant consequences, but it is not that something else”. **PLD 1973 Lahore. 164.**

“Word ‘deemed’ used in statute is commonly introduced to create legal fiction and when used in relation to a particular thing it implies that legislature wants that thing to be treated as something which in reality it is not”. **PLD 1988 Lahore. 49.**

Hence, for what has been discussed above, it is necessary for an “Authority” under Islamabad Consumer Protection Act, 1995 to follow the procedure of Section 8 for punishment or compensation purposes. Keeping in view the words and terms used in the said section of law from its meanings defined above as when the special law is silent qua the definition of different terms, it is imperative upon the Courts to adopt the meaning of ordinary sense or to use dictionary meanings even they are bound to follow the meaning generally defined in different authoritative decisions of High Courts and Supreme Court.

The general terms of “examination, inquiry, opinion, consideration, opportunity of being heard and deem appropriate” are not considered in their true prospective by the courts below, hence it can safely be concluded that in all above mentioned consumer or

criminal appeals arising out of Islamabad Consumer Protection Act, 1995 following loopholes/lapses/deficiencies have been observed:-

- a) Trial Court has not recorded any evidence.
- b) No document has been exhibited in evidence in terms of Qanun-e-Shahadat Order 1984.
- c) Statement of witness or cross-examination of the witness has not been recorded.
- d) Technical/Expert witness has not been called or produced in order to prove the cases, where it was so required.
- e) No order has been passed by the Authority/Court to give a meaningful step in terms of Section 8(4) under the term “it may pass such order” through which the Authority can further undergo towards the recording of evidence or give its reasons for not doing the same.

Therefore, in order to clarify the entire procedural steps the Authority/Court has to observe the following steps during the consumer complaints in terms of Islamabad Consumer Protection Act, 1995 because no word or words of summary trial is/are mentioned in the Act *ibid* while adjudicating upon the complaints filed under Islamabad Consumer Protection Act, 1995 by the “Authority”.

STAGE-I

The Authority i.e. Court of Session during the course of examination of the Complaint, if the Authority/Court formulated its opinion on the basis of prima facie reading of available facts, documents, evidence and correspondence of parties if any comes to the conclusion that any right of the consumer has been infringed then section 8 (3) comes into play i.e. **“it shall cause the notice of the complaint to be served on the respondent who shall required to give his reply within period of 7 days”.**

STAGE-II

The Authority /Court has to consider the following factors while passing the order :-

1. Complaint.
2. Reply of respondent, documents.
3. After providing the parties and opportunity of being heard (statement of the parties, cross-examination of the parties, documentary evidence for the purposes of inquiry).

The word “after” has been used twice in Section 8 (3) of Islamabad Consumer Protection Act, 1995 by the legislature, which confirms the intention of the legislature

to give more emphasis on the re-evaluation, due opportunity, hearing, evidence of the parties and to allow the parties to produce their evidence in order to prove their respective pleas before passing any order.

Hence, after consideration of all the above aspects which otherwise are essential to meet the ends of justice, equity and fair play, the “Authority” has to consider all kind of information, collection of facts, recording of evidence by adopting the procedure of framing of issue, recording of evidence, and by allowing the witness to be cross-examined or receiving documentary evidence and thereafter can pass such order which qualifies the determination of the dispute with reasons, logic and based upon evidence available on record.

STAGE-III

After considering the above mentioned factors of stage-II, the Court has to pass order for the determination of consumer complaint. However, two separate kinds of speaking orders are required **(a) for the purposes of prosecution** and **(b) for the purpose of compensation.**

If the “Authority” comes to the conclusion that prima facie some offence has been committed which is referred in section 8-A e.g., hoarding, profiteering, blackmailing, adulteration of food items, selling expired items of food and other items unfit for human consumption or charging for goods and services in excess of the prices fixed by the competent authority then follow the procedure available in Section 262, 263 & 264 Cr.P.C. for the purpose of summary trial which can only be tried by Special Magistrate appointed U/S14-A of Cr.P.C. 1898, therefore, matter to that extent can be referred to Special Magistrate and penalties U/S 9(1) and 9(2) of Islamabad Consumer Protection Act, 1995 be given after the summary trial. However, Special Magistrate can award the punishment to the extent of six (6) months. Therefore, if the quantum of punishment to be awarded is more than six (6) months, the “Authority” Court of Sessions can also pass the same after adopting the procedure under Cr. P.C.

b) For the purposes of compensation, speaking order in terms of Section 9 (3) and 9 (4) of the Consumer Protection Act, 1995 has to be passed, keeping in view the entire pleadings, evidence, documents and technical expert evidence if any.

18. From above discussion, it is clear that during the course of inquiry, Authority has to:-

- (i) frame issues if so required.
- (ii) record statements of witnesses.
- (iii) allow cross-examination.
- (iv) receive documentary evidence, if any and Qanun-e-Shahadat Order 1984 has to be applied in essence.

19. The above mentioned analogy can be drawn from three different examples of special statutes i.e. Islamabad Rent Restriction Ordinance, 2001, Government Servants (Efficiency and Discipline) Rules, 1973 and Companies Ordinance, 1984.

- a) **Islamabad Rent Restriction Ordinance, 2001**, which only deals with the issues of landlord and tenant but it only provides the concept of inquiry wherein application of CPC, 1908 and Qanun-e-Shahadat Order, 1984 is excluded but even then the Rent Controller in order to decide the questions relating to default, expiry of lease, personal bonafide need, reconstruction or issue of structural change applies the mechanism of framing of issues, recording of evidence, cross-examination upon the witnesses, receive documentary evidence, allow summoning of record only to resolve the controversial question or contentious issues between the parties although no such procedure has been provided.
- b) **Government Servants (Efficiency and Discipline) Rules, 1973** wherein case of any civil servant where major penalty of compulsory retirement or dismissal was imposed on him after summary procedure and he denied the allegations, it was not the case of having recourse to the shortest procedure of show cause notice as controversial questions of facts were involved which could not be resolved without recording of evidence and without giving opportunity of cross-examination to civil servants. Reliance is placed upon **PLD 1994 Supreme Court 222 "Nawab Khan and another versus Government of Pakistan through Secretary Ministry of Defence Rawalpindi and others"**, wherein it has been held that:-

“Under Rule 5(1)(iii) of the Rules, an authorized officer has discretion to decide, whether in a disciplinary proceeding against a civil servant in response to his reply to the charge-sheet, a regular inquiry should be held or not. The above discretion is not controlled by any precondition or guideline but nevertheless this discretion like all other discretion is to be exercised fairly and reasonably and not arbitrarily or capriciously with the object to deny the civil servant the right of fair defence. So if the charge is founded on admitted documents/facts, no full fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the

parties to cross-examine the witnesses. In such a matter if findings of fact are recorded without recording any evidence, the same will be based on surmises and conjecture, which will have no evidentiary value as to warrant imposition of any punishment on the civil servant concerned.”

- c) **Section 9 of Companies Ordinance, 1984** provides summary procedure to be applied during the issues related to the affairs of company, including mis-management of its affairs, shares transfer, winding up, powers and functions of CEO, directors, memorandum and Articles of Association, jurisdiction of Board of Directors, AGM and SGM were exclusively decided by the Company Bench of High Court having its jurisdiction but in order to resolve certain complicated questions, only summary procedure has been provided under the law.

Now in order to understand the term summary procedure provided in Companies Ordinance, 1984, reliance is placed upon **2005 CLD 747 [Karachi], Rauf Baksh Kadri and others versus M/s. National Technology Development Corporation Ltd. And others**” wherein it has been held that:-

“From the preamble of the Ordinance, it is apparent that the purpose of the Ordinance is to consolidate and amend the law relating to the companies and certain other associations for the purpose of the healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith. The purpose of the Ordinance obviously is to adjudicate all matters falling under the Ordinance finally to achieve the results for which the Ordinance has been enforced.

The questions arises that how the Court can, without entering into a detailed inquiry pertaining to the provisions of sections 152, 290 and 305, referred above, satisfy itself and adjudicate the matter finally resolving the disputes between the parties? Can the Court without entering into in-depth investigation by recording evidence, give any finding as to ‘fraudulent’ action or ‘sufficient’ cause as provided under section 152(1)(a)? Can the Court under section 153(3) decide the question of title for any person without determining the points to that effect and recording the necessary evidence? Where, under section 290(1) the Applicant can claim himself to be the member holding not less than 20% shares and the same is denied by the other side, can the Court give any finding in affirmative or negative without entering into a detailed investigation, which will again require evidence? Whether the Court, without entering into the investigation and recording evidence, can opine under subsection (2) of section 290 that the company’s affairs are being conducted in an unlawful and fraudulent manner or in the manner not provided for in its memorandum or in a manner oppressive to the members etc. as provided under subsection (1) of section 290. Similarly under section 305 without in-depth inquiry including the recording of evidence, can the Court

be satisfied for winding-up the company if the case falls, amongst others, under sub-clauses (ii), (iii) and (iv) of clause (f) ibid.”

“Therefore, the obvious answer to the above questions would be in the negative. Final adjudication of the controversies indicated hereinabove can only be made after framing the points for determination and recording the evidence where serious disputes as to the documents etc. arise between the parties. It is, however, correct that in all cases the investigation may not be in-depth but can be conducted by looking into the documents and evidence filed along with the pleadings.”

“With due respect to the learned Judges deciding those cases, in my humble opinion this can never be the intention of the legislature while directing the Courts to adopt summary procedure under section 9 ibid. Obviously, the Court is not to follow the complicated procedure as in a civil suit and its technicalities but is required to adjudicate the same expeditiously in a manner it deems fit and appropriate in the circumstances of each case.

The sum-up of the dictionary meanings of ‘summary proceedings’ referred above is that the case is to be disposed of promptly in simple manner out of the regular course of the common law. Nowhere is there a restriction on the forum in recording the evidence for final conclusion. If the matter can be decided by apparent perusal of the pleadings, it may be done so and if the Court deems necessary to frame point of determination and record evidence, the Court must not-hesitate to do the needful on the ground that intricate and complex questions of facts are involved.”

“I am of the considered view that there is no limitation on the powers of the Court in regard to the manner in which the power has to be exercised under the Ordinance; and that the power should be liberally exercised without driving the parties to agony by ordering the litigation to be carried out before some other forum.”

“The upshot of the above is as follows:--

- (a) *The summary procedure appearing in section 9 of the Ordinance does not exclude the consideration by the Court of controversial facts nor does it restrict it from deciding such controversies.*
- (b) *There is no legal impediment in the Ordinance for the Courts entering into any inquiry, framing the points of determination, requiring oral evidence or evidence through affidavits.”*

“The cases in hand, in my opinion, are covered by the Ordinance and the factual controversies raised therein are to be adjudicated by this Court. The controversies, however, are of the nature, which cannot be decided without an investigation/inquiry or by recording evidence. I, therefore, find it necessary to first determine the disputed points and thereafter call for evidence.”

And the latest view in this regard is 2016 SCMR 213 Company Court jurisdiction, factual controversy is reproduced hereunder:-

a) Section 9 (3) of the Companies Ordinance, 1984 did not abridge or curtail the power of the (Company) Court to enter into a factual inquiry, frame issues for determination, and record oral evidence in the proceedings before it to determine the issues relating to a "company" or its members covered under the Companies Ordinance, 1984---Company Court having jurisdiction under the Companies Ordinance, 1984, could receive evidence in cases it thought appropriate in circumstances of the case---All matters relating to companies irrespective of the fact whether factual controversy was involved or not were required to be tried by a court having jurisdiction under the Company Ordinance, 1984---Civil court would not be the appropriate forum for resolving such matters".

20. From the above discussion, inference can safely be drawn that while adjudicating upon the complaint under Islamabad Consumer Protection Act, 1995, the Authority/Court especially while awarding compensation in terms of section 9(3) of the Act shall conduct an enquiry which includes:-

- (a) Framing the points of determination/ issues.
- (b) Requiring oral evidence or evidence through affidavits.
- (c) Allow parties to cross-examine the witnesses.
- (d) Produce documentary evidence.
- (e) Call record from any authority, company, office.
- (f) Summon any expert witness to resolve the technical question of issue related to proposition in hand.
- (g) Principles of Qanun-e-Shahadat Order, 1984, has to be applied.

21. Besides the above mentioned principles of enquiry, Authority under Islamabad Consumer Protection Act, 1995 has to observe the difference of penalty, fine and compensation under the said law as concept of fine is only available in criminal prosecution in terms of Section 9 (1), (2) of Islamabad Consumer Protection Act, 1995 after holding summary trial by Special Magistrate or Authority as the case may be, if the Authority comes to the conclusion after holding the enquiry in terms of Section 8 and 8-A of the Act to impose fine as punishment then it must be differentiated from compensation. In order to understand the difference of penalty and fine.

Reliance is placed upon **2016 SCMR 69 “Pakistan Telecommunication Authority Vs. Pakistan Telecommunication Company Limited”** wherein it was held that:-

“In Stroud’s Judicial Dictionary Of Words And Phrases, Fifth Edition Volume 4 By Johns S. James, the meaning of “Penalty” and “Fine” describes as under:-

“Penalty”

(1) *“‘Penalty’ is an ambiguous word. A Penalty may be the subject-matter of an information, or of a complaint” (per Wright J., R. v, Lewis [1896] 1 Q.B. 665). See Chisholm v. Mackenzie, 30 S.L.R. 604, cited PAIN.*

(2) *Where an Act imposes a penalty for anything done (Crepps v. Durden, 2 Cowp. 640, cited NECESSITY) or omitted to be done (Llewellyn v. Glamorgan Vale Railway [1898] 1 Q.B. 473, cited OWNER) on a day, that generally means only one penalty for the entire day; e.g. a man may “exercise his ordinary calling on a Sunday” on any number of times on a particular Sunday but will only be liable to one penalty therefore under Sunday Observance Act 1677 (c. 7) (Crepps v. Durden). So, only one penalty could be recovered for each day that a railway company offended against Railway Clauses Consolidation Act 1845 (c. 20), s.54, by not making a substituted road for an existing road which the company had interrupted (Llewellyn v. Glamorgan Vale Railway)”.*

(3) *“The civil liability arising from a breach of a statutory duty is of a wholly different nature from a penalty for such a breach. The former gives no cause of action unless damage to a third party follows from it, and then, in general, gives ground for an action for the amount of such damage at the suit of such third parties. But penalties for breaches of statutory duties apply whether damage has been caused or not” (per Fletcher Moulton L.J. In David Britannia Merthyr Coal Co. [1909] 2 K.B. 149 (Sub Nom. Britannic Merthyr Coal Co. v. David [1910] A. C. 74), Cited Mine See DUTY, See also simmons v. Newport, etc. [1921] 1KB 616; Couch v. Steel, 23 L.J., QB 125).*

Fine:

(1) *“Fine, finis. Here (litt. S. 194 signifieth a pecuniarie punishment for an offence, or a contempt committed against the King, and regularly to it imprisonment appretaineth. And it is called finis, because it is an end for that offence. And in this case a man is said facere finem de transgressionem, etc., cm rege, to make an end or fine with the King for such a transgression. It is also taken for a sum given by the tenant to the lord for concord and an end to be made. It is also taken for Pakistan Telecommunication Authority (PTA), Islamabad v. Pakistan Telecommunication C. Ltd., Headquarters (Sh. Azmat Saeed, J)*

the highest and best assurance of land, etc,” (Co. lit 126 b). See further Termes de la ley; cowel; Jacob; 5 encye, 341-343; for form of fine of lands. See 2 b 1. Corn App. XIV. CP. REDEMPTION.”

In the Oxford Companion to Law by David M. Walker, the term of “Penalty” and “Fine” is stated as under:

“Penalty.

A sum of money payable as compensation or as punishment. Many statutes impose penalties for non-implementation of a public duty. Penalties may be agreed upon by the parties, as in a bond subject to a condition, where a party binds himself to pay a sum, frequently double the amount secured, if the condition is not complied with. Parties to a contract may agree that, in the event of a breach, the one in breach will pay to the other an agreed sum, if this sum cannot be regarded as a genuine pre-estimate of the damage likely to be sustained by a breach of contract, but is rather a sum stipulated in terrorem of the party in breach, it is deemed to penalty and is irrecoverable so far as in excess of the damage actually sustained.

Fine:

(I) In criminal law, a sum of money, ordered to be paid to the Crown by an offender by way of punishment. At common law a fine was one of the penalties for a misdemeanour. In 1861 statute permitted a fine for certain felonies but only in 1948 were courts empowered generally, to fine persons convicted of felonies Magistrates courts have limits set on the amount of fine imposed for various kinds of offences and statutory offences normally provide for fines within stated limits as the, or a, penalty. Payment of a fine may be enforced by the Crown suing the offender in the civil courts, or, after judicial inquiry into his means, by imprisoning for default in payment.”

(emphasis supplied)

In the Black’s Law Dictionary Tenth Edition by Bryan A. Garner, the meaning of “Penalty” and “Fine” is stated as follows:

“Penalty:

(15c) I. Punishment imposed on a wrongdoer, usu. In the form of imprisonment or fine, esp, a sum of money exacted as punishments for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party’s loss). Though usu. For crimes penalties are also sometimes imposed for civil wrongs.

Civil penalty (17c) A fine assessed for a violation of a statute or regulation.

Fine:

5. A pecuniary criminal punishment or civil penalty payable to the public treasury. *Fine, vb*

“this word is ambiguously taken in our law, for sometimes it is taken for a sum of money or mulct imposed or laid upon an offender for some offence done, and then it is also called a ransom. And sometimes it is taken for an income, or a sum of money paid at the entrance of a tenant into his land: [sometimes as a sum paid for the renewal of a lease, and sometimes as a sum paid for the renewal of a lease and denominated a fine for renewal:] and sometimes it is taken for a final agreement or conveyance upon record, for setting and securing of lands and tenements.” 1 Edward Hilliard Sheppard’s Touchstone of Common Assurance 2B (Richard Preston ed., 7th ed. 1820) (brackets in original)”

22. Compensation under Islamabad Consumer Protection Act, 1995 is only to be given in case of unfair trade practice, if proved after holding an enquiry by the Authority. However, the provision of Section 9 (3) of the Act imposes restriction to award compensation upon the Authority only to the extent the consumer has suffered any damage or loss through the act of unfair trade practice, hence, it can safely be concluded that under this law general damages cannot be awarded rather actually suffered loss or damage is to be considered as measuring factor to award the same only to the consumer.

23. Consumer right to claim special or any other kind of damages under general law is protected notwithstanding the claim awarded by the Authority under Islamabad Consumer Protection Act, 1995, therefore, the consumer can file separate claim/suit in the Court of general jurisdiction for his relief.

24. It is pertinent to mention here that Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 has to be applied and given effect in every statute whether it is silent on the said aspect but the same is fully applicable, Article 10-A of the Constitution is reproduced hereunder:-

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled **to a fair trial and due process.**

However, the term ‘due process of law’ referred in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 can be summarized as follows:-

- (1) A person shall have notice of proceedings which affect his rights.
- (2) He shall be given reasonable opportunity to defend.

- (3) That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of its honesty and impartiality, and
- (4) That it is a Court of competent jurisdiction. Above are the basic requirements of the doctrine 'due process of law' which is enshrined, inter alia, in Article 4 of the Constitution. It is intrinsically linked with the right to have access to justice which is a fundamental right. This right, inter alia, includes the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. A person cannot be said to have been given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegation made against him. Reliance is placed upon **PLD 1999 SC 1126/1998 SCMR 1863 "New Jubilee Insurance Company Limited Vs. National Bank of Pakistan and Aftab Shahban Mirani Vs. President of Pakistan and others**

25. "**Due process of law**" clearly imposes a duty upon the Courts, Authority, judicial or quasi judicial forums, executives to give fair opportunity to everyone to defend himself, afford a fair opportunity for submission of cases by means of pleadings, i.e. complaint, petition, replies, applications, statements, affidavits etc and allow them to appear in person, record their statements, cross-examine the witnesses against them and produce the record in terms of law and it is the duty of the courts, Administrative Tribunals, executive officers to follow the procedure available in relevant laws, statutes in a manner as provided and if the procedure is silent even then the minimum standard is to be followed on the touchstone of Art 10-A of the Constitution failing which entire edifice constructed will crumble down. However, all these ingredients are missing from the judgments assailed by the appellants before this Court.

26. In nutshell, all the captioned consumer appeals are hereby dismissed and orders passed by the Authority are set-aside. The cases are remanded back to the Authority for proceeding with the same and to conclude the same within 45 days of receipt of this judgment and pass appropriate, speaking orders after adhering the procedure in accordance with law.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on _____

JUDGE

Ramzan

Approved for reporting.