



LAND AND PROPERTY RIGHTS IN PAKISTAN

TRAINING MANUAL

LAND AND PROPERTY
R I G H T S
IN PAKISTAN

TRAINING MANUAL

March 2012, Islamabad

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Abbreviations

AC	Assistant Commissioner
AJK	Azad Jammu & Kashmir
BOR	Board of Revenue
CDA	Capital Development Authority
CNIC	Computerized National Identity Card
DC	Deputy Commissioner
DCO	District Coordination Officer
DDO	District Disbursement Officer
DDO-R	Deputy District Officer Revenue
DG	Director General
EDO-R	Executive District Officer Revenue
FATA	Federally Administered Tribal Areas
FSC	Federal Shariat Court
GoP	Government of Pakistan
KPK	Khyber Pakhtunkhwa
MBR	Member Board of Revenue
NWFP	North West Frontier Province
PDMA	Provincial Disaster Management Authority
PIU	Produce Index Unit
PLD	Pakistan Legal Decisions
PTD	Permanent Transfer Deeds
PTO	Provisional Transfer Orders
RO	Revenue Officer
SMBR	Senior Member Board of Revenue
TIP	Tax on Immovable Property
UC	Union Council

Preface

This Manual is an introduction to some of the principal concepts and institutions relating to the land administration system in Pakistan. It also highlights the basic problems that arise from the operation of this system and how a common man can find the solutions to land related issues. It has been designed for use by the common man, may it be a land owner or tenant, Government employees and civil society organizations engaged in service of the people or any person or organization that needs some basic information about the general aspects of the functioning of the rural land administration system in Pakistan.

This manual very briefly explains the land administration system in settled areas¹, types of property ownerships, transfer and sale procedures of property rights, acquisition of property by the state, rights and duties of tenants and landlords, leases and licenses, easement rights, property rights of women etc. The manual helps the stakeholders to understand the mechanics of the system and the particular problem that is being faced and then to find its simple and cost effective solution. It may not be a useful treatise for an academician or for a person who is in search of an answer to a particular technical question of law and fact for which he/she would require the services of a legal expert.

¹ Most of the areas in Pakistan have been subject to the settlement operation in which the land holdings have been consolidated, demarcated in various units (acres), soil classified and land revenue assessed. Some areas are still unsettled and the land administration is irregular.

CHAPTER 1

Introduction to Land Administration System

1. Definitions

- a. The terms 'land' and 'property' are often used interchangeably to convey the same meaning; however, a distinction is drawn between 'moveable' and 'immovable' property in various laws of Pakistan. The same distinction exists, but under different names, in many other legal traditions such as 'real' property and 'chattels' in the common law of the United Kingdom.
- b. Immovable property² is defined in Pakistan as follows:

'Immovable property' includes:

- ✓ Land, buildings;
- ✓ Benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth;

² Section 2 of the Registration Act 1908 and section 3 of the General Clauses Act, 1897.

- ✓ Hereditary allowances;
- ✓ Rights to ways, lights, ferries and fisheries;

However 'immovable property' does not include:

- ✓ Standing timber, growing crops or grass;
- ✓ Fruit upon and juice in trees, whether in existence or to grow in the future; and
- ✓ Machinery embedded in or attached to the earth, when dealt with apart from the land.

- c. 'Moveable property' is defined with reference to immovable property.

'Moveable property' means property of every description except immovable property³. It means that all other property that is not immovable property is included in the concept of moveable property. Standing timber, growing crops or grass, fruit upon and juice in trees whether in existence or to grow in the future and machinery embedded in or attached to the earth are also moveable property.

- d. Legal concepts governing moveable and immovable property are somewhat distinct and distinguishable from one another; so what may be true of moveable property may not be applicable on immovable property.

2. Property rights in the constitution

- a. Property rights are guaranteed under the Constitution of Pakistan, 1973, as well as under many special laws that deal with various types of property and various aspects of property rights.

³Section 2 of the Registration Act, 1908 and section 3 of the General Clauses Act, 1897.

- b. Particularly, Articles 23, 24, 172 and 173 of the Constitution of the Islamic Republic of Pakistan deal directly with private property rights.

Article 23 declares that:

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

- c. In other words, every person in Pakistan can purchase property, keep property in his/her name and can sell and gift it to anyone he/she likes. This right is available everywhere in Pakistan.
- d. This right to property is abridged by only two limitations:
 - i. The Constitution can put any limit on this right as article 24 has allowed the state to compulsorily acquire property from citizens.
 - ii. Law can restrict this right but the law has to be reasonable and it shall be only in public interest otherwise this law will be against this constitutional guarantee and, therefore, it shall be null and void under Article 8 of the Constitution.
- e. Article 24 makes one exception in the right to property and it makes the following provision with respect to the acquisition of private property by the state:

Article 24:

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

- f. Similarly, there are certain provisions in the Constitution that deal with property rights of the state. Article 172 states that any property, which has no rightful owner, shall vest in the Government of that province if located in a province, and in every other case, the Federal Government shall own it. It simply means that if a private person does not own a property, then it shall be owned either by the Provincial Government or the Federal Government.
- g. Right of the state to own property extends beyond its normal territory. All lands, minerals and other things of value within the continental shelf or the underlying ocean, beyond the territorial waters of Pakistan shall vest in the Federal Government. Mineral oil and natural gas within the province or the territorial waters adjacent thereto shall vest jointly in equal proportions in that province and the Federal Government.
- h. Article 173 of the Constitution allows the Federal Government and the Provincial Governments to grant, sell, dispose or mortgage any property that vests in them. These governments can purchase or acquire property. All properties acquired for the purposes of the federation or of a province shall vest in the Federal Government or the concerned Provincial Government.

3. Legal regime about property rights

There are various laws that regulate the entitlement, ownership, sale, transfer, acquisition, taxation, registration, tenancy etc. of immovable property and land. The following legislations are more important:

- ✓ The Transfer of Property Act, 1882;
- ✓ The Punjab Tenancy Act, 1887;
- ✓ The Land Acquisition Act, 1894;
- ✓ The Registration Act, 1908;
- ✓ The Colonization of Government Lands Act, 1912;

- ✓ The Sindh Tenancy Act, 1950;
- ✓ The Khyber Pakhtunkhwa Tenancy Act, 1950;
- ✓ The Provincial Land Revenue Act, 1967;
- ✓ The Baluchistan Tenancy Ordinance, 1978;
- ✓ The Land Record Manual;
- ✓ The Land Administration Manual; and
- ✓ The Settlement Manual.

4. Revenue department

- a. Pakistan is predominantly an agricultural economy with a majority of the rural population having specific property interests. Land administration started in this part of the world for collection of state revenue on land and agriculture. Therefore, in Pakistan, the department that deals with the administration of agricultural land is called the “Revenue” Department.
- b. The Revenue Department also issues instructions and policy guidelines under the over all control and supervision of the Provincial Governments.

5. Categories of land

All land in Pakistan can be divided into three basic categories:

Categories of land in terms of ownership are:

- ✓ Privately owned land;
- ✓ Village common land; and
- ✓ State owned land.

a. Privately owned land

- i. Citizens own most of the land in Pakistan. Private owners have full rights to sell, gift, exchange or dispose off their private land in any manner they wish, subject to some legal limitations. For instance, the law of Will, Gift and Preemption⁴ imposes certain restrictions. The Constitution and laws give equal rights of ownership, tenancy, and sale and purchase of land to men and women.
- ii. The owners of farmlands generally use their land for agriculture and animal breeding. Farmlands may be self-cultivated (khud kaasht) or cultivated through tenants who pay agreed rent to the owner either in cash or in kind. Though some owners of land get the land cultivated through servants or seasonal labour, it remains in the category of self-cultivated land.
- iii. Privately owned property is subject to automatic inheritance under personal laws and property rights devolve after the death of a legal owner on his/her legal heirs as per pre-determined shares under the relevant personal laws after implementation of a Will, if any. The rights to give away property under a Will are also somewhat restricted under Muslim personal law.

b. Village common land

- i. Village common land is called 'Shamilat' or 'Shamilat Deh'. The most appropriate translation of Shamilat in the English language can be "Common Land" or "Community Land". Common land may be used for purposes such as graveyards, community buildings, mosques, schools, dispensaries, playgrounds, village ponds, village roads, grazing grounds, firewood collection, passages for the movement of cattle etc.

⁴ Preemption allows a third party to intervene, in certain circumstances, and claim a right of first refusal in the event when land in a rural area is sold. The circumstances in which preemption is allowed are few and mostly close neighbors have the right to preemption.

c. State owned land

Some lands in Pakistan are called 'State owned' or “Crown” land (Sarkaari zameen). It means that its ownership or legal entitlement belongs to the government. The government may be federal, provincial or local.

6. Land administration system

- a. The history of the land revenue system in Pakistan goes back to Sultan Ala-uddin Khilji (1255 – 1316)⁵, who was the first ruler to introduce a system of land administration in Indo-Pak Sub-Continent. Mughal Emperor Akbar's minister for revenue affairs, Todar Mal (d. 1659)⁶ is rightly credited for laying down the basic foundations of the land administration system which is now prevalent in South Asia.
- b. The British colonialists improved and formalized the system by introducing legislations pertaining to the rights and responsibilities of owners of land vis-à-vis the State, the relationship between land owners and their tenants, rights and responsibilities of various categories of tenants, a system of adjudication of disputes in matters pertaining to land and also set out in detail powers and duties of the various categories of Revenue Officers. They also appointed revenue officials such as the Patwari, Headman, Tehsildar, District Land Collector⁷ etc.

⁵ The Muslim ruler who ruled Indo-Pak Sub-continent from 1296 to 1316.

⁶ Raja Todar Mal, Finance Minister in the cabinet of Mughal Emperor, Akbar.

⁷ Normally called 'Deputy Commissioner' and 'District Magistrate' appointed under the Land Revenue Act and the Code of Criminal Procedure, 1898.

7. Exercises

- a. What is the difference between 'land' and 'property'?
- b. How can we distinguish between 'moveable' and 'immovable' property?
- c. Are my property rights protected? If yes, under what legal regime?
- d. Can I sell shamilat?

CHAPTER 2

Land Administration System

The land administration system can be discussed in terms of:

- i. Territorial division; and
- ii. Functions of Revenue Officers.

1. Territorial division

- a. Land and property matters are generally administered by the Revenue Department under the control and guidance of the respective Provincial Government. The Federal Government has no land administration machinery and even the land owned by the Federal Government is handled by the Revenue Department of the respective province.
- b. For administrative purposes, Pakistan is divided into (i) the four provinces (ii) Islamabad Capital Territory (iii) Federally Administered Tribal Areas, and (iv) the Provincially Administered

Tribal Areas⁸. At a provincial level, the Board of Revenue (BoR) looks after the entire land administration. Each province is divided into Divisions⁹. For example, Punjab is divided into nine revenue divisions such as the Multan Division, Lahore Division etc. The Provincial Government appoints the Commissioner who is the head of the Division. Commissioners are senior civil servants normally belonging to the District Management Group of the Civil Service of Pakistan (Federal or from the Provincial Civil Service).

- c. Each division is administratively divided into many Districts and the number of districts in each division varies, approximately from three to six. A district is headed by a Deputy Commissioner or District Coordination Officer¹⁰ who is appointed by the Provincial Government. The Deputy Commissioner is usually a mid-ranking civil servant. In a province, a district is the basic unit of the administration, in matters of revenue or otherwise.
- d. Each District is sub-divided into Tehsils or Talukas. Each District has approximately three to five Tehsils or Talukas. The Assistant Commissioner, Deputy District Officer (Revenue) Tehsildaar/ Mukhtiarkar is the head of the revenue administration of each Tehsil/Taluka¹¹.
- e. Each Tehsil/Taluka is further sub-divided into a member of Mauzaas (Revenue estate/Mahaal or village). The basic unit of land administration is a village (Mauzaa). A village or a group of villages form a Patwar Circle is headed by a Patwari (or Tapedar in Sindh) who is the most basic and primary official of the revenue department.

⁸ Article 1 of the Constitution.

⁹ Before the devolution system was introduced in 2001, the Revenue Divisions were in all the provinces. The devolution system, introduced by President General Pervez Musharraf (1999-2008), abolished Revenue Divisions but now some provinces have resurrected the Revenue Divisions while some are in the process of resurrection.

¹⁰ In the pre-devolution era, the Deputy Commissioner who was also the District Magistrate headed the district but devolution changed it and replaced it with the District Coordination Officer. The devolution system is again in flux and some provinces have reverted to the Deputy Commissioner and some are still in the transition process.

¹¹ Some provinces have one more category i.e. subdivision that may consist of one or more Tehsils. In such areas, the Subdivision is headed by the Assistant Commissioner/Deputy District Officer (Revenue) while the Tehsil is headed by the Tehsildar.

- f. In some areas, by combining a group of Patwar Circles a new unit is made called a Girdawar Circle that is headed by a Qanoongo (Supervisory Tapedaar in Sindh).
- g. Sometimes, two to three Girdawar Circles constitute a Revenue Circle and it is headed by a Naib-Tehsildaar (Deputy Tehsildaar)/Naib Mukhtiarkar.
- h. Two to three Revenue Circles form a Tehsil and it is at this level where all the records of the land administration are prepared and maintained. The Tehsil is, accordingly, the principal unit of the Revenue Department in a district, whereas a district is a principal unit in a province.

2. Functions of revenue officers

Every person or relief agency has to interact in one way or the other with revenue officials. It is therefore, in the fitness of things, to briefly discuss the basic functions and duties of some of the revenue officials.

Basic revenue officers/offices are:

- ✓ Patwari or Tapedaar;
- ✓ Qanoongo, Girdawar or Supervisory Tapedaar;
- ✓ Tehsildaar or Mukhtiarkar¹²;
- ✓ Assistant Commissioner or Deputy District Officer (Revenue);
- ✓ Deputy Commissioner or District Officer (Revenue)
- ✓ Commissioner; and
- ✓ Board of Revenue.

¹² In Sindh, a Tehsildar is called a Mukhtiarkar.

a. Patwari or Tapedar¹³

- i. A Patwari is the lowest official in the revenue hierarchy but the functions performed by the Patwari make him the most important person in land administration.
- ii. A Patwari is appointed and transferred by the Assistant Commissioner (in most of the areas) or Deputy Commissioner (in some areas) by whatever nomenclature they are called.
- iii. A Patwari has a big “Basta” (bag) to maintain all land revenue records relevant to the citizens' land rights.

Patwari:

- ✓ Is custodian of all the records of land rights of the people;
- ✓ Records all changes of ownership and tenancy in the relevant registers of land record;
- ✓ Is a crop reporter who carries out harvest inspection of every field;
- ✓ Is a custodian of state property, located in a village and reports on any encroachment on state land and public roads.
- ✓ Is the village official to report on all-important happenings in the area such as floods, rains, calamities, infectious diseases etc.;
- ✓ Keeps the particulars of landowners and tenants up to date;
- ✓ Supplies copies of revenue records to the public;
- ✓ Handles the sale and purchase or creation of lien or charge or loan on any property;

¹³ A Patwari is called Tapedaar in Sindh whereas in the other three provinces and FATA, he is called a Patwari.

- ✓ Is directly involved in the process of acquisition of private land by the state for any public purpose such as construction of schools, motorways etc.;
- ✓ Assists higher officials in the allotment of resumed land to tenants under land reforms schemes;
- ✓ Is the basic official in relief efforts, as he facilitates the disbursement of disaster related relief;
- ✓ Collects land related taxes and other taxes such as loans on agricultural land advanced by banks (in some provinces); and
- ✓ Has additional functions such as helping in the de-limitation of constituencies, elections, population census and agriculture and livestock census.

b. Qanoongo/Girdawar¹⁴

A Girdawar is appointed and transferred by the Assistant Commissioner or Deputy Commissioner, by whatever nomenclature they are called.

The basic functions of a Qanoongo/Girdawar include:

- ✓ Periodical and yearly record maintained by the Patwari is inspected by the Girdawar;
- ✓ He is supposed to carry out 100% check of the cultivation inspection record (Khasra Girdawari);
- ✓ All entries made in the revenue record are attested by him; and
- ✓ Any document e.g. mutation, assessment etc. submitted to higher authorities is submitted through him.

¹⁴ The terms 'Qanoongo' and 'Girdaawar' are used interchangeably and he called the Supervisory Tapedaar in Sindh.

c. Tehsildar or Mukhtiarkar

- i. A Tehsildar is the officer in-charge of a Tehsil set-up and supervises all functions of the subordinate revenue officials such as the Patwaari, Qanoongo and Naib-Tehsildar, and guides them and provides them with leadership in their revenue functions.
- ii. A Tehsildar is a very important functionary of the land administration system as the primary unit of this administration is the Tehsil.
- iii. He is assisted by the Naib-Tehsildar (Deputy Tehsildar) or Naib-Mukhtiarkaar.
- iv. A Tehsildar is an Assistant Collector, Grade I or an Assistant Collector, Grade II under the Land Revenue Act, 1967.
- v. A Tehsildar belongs to the Provincial Revenue Service and is appointed and transferred by a Commissioner or Board of Revenue.

Tehsildar:

- ✓ Co-ordinates all functions of the Patwaris and Qanoongos;
- ✓ Makes sure that land records are correct and updated;
- ✓ Collects land revenue and other taxes for the state;
- ✓ Sanctions and mutates sales and purchases of land;
- ✓ Recommends all taxes assessed by the Patwaari;
- ✓ Works as Revenue Court; and
- ✓ Works as Tenancy Court.

d. Assistant Commissioner or Deputy District Officer (Revenue)¹⁵

- i. A Deputy District Officer (Revenue) (DDO-R) or Assistant Commissioner (AC) is the head of a sub-division. In some provinces (e.g. Punjab), there is no difference between a sub-division and a Tehsil whereas in some provinces (e.g. Sindh), there are more than one Tehsils in a sub-division. A Tehsildar heads each Tehsil administration whereas each sub-division is head by the Assistant Commissioner or Deputy District Officer (Revenue). If a Tehsil is a sub-division also, then it will be headed by the Assistant Commissioner or Deputy District Officer (Revenue) and under him will be a Tehsildar. The AC or DDO-R is either from the Provincial or the Federal Civil Service seconded to the Provincial Governments.

AC or DDO-R:

- ✓ Is the chief representative of the Provincial Government in the area;
- ✓ Supervises all works of the revenue administration;
- ✓ Is in-charge of relief work;
- ✓ Exercises powers of an Assistant Collector, Grade I or a Collector; and
- ✓ Hears appeals against the orders of the Tehsildars.

e. Deputy Commissioner or District Officer (Revenue)

- i. The office of the Deputy Commissioner (DC) was introduced by the British during the colonial period in the mid 19th century but was replaced under the Devolution Plan in 2001 by the District Co-ordination Officer (DCO).

¹⁵ In the pre-devolution era, the nomenclature was the 'Assistant Commissioner' but it was changed to the Deputy District Officer (Revenue) under the Devolution Plan introduced in 2001.

- ii. The system is again under transformation. Some provinces have gone back to the old system while some are still in the process of transition.
- iii. The DCO though generally is the head of a District, he/she does not have any revenue powers that are divested from him/her and instead vested in a new office called the District Officer (revenue) (DO-R).
- iv. DC or DO-R is either from the Provincial or the Federal Civil Service seconded to the respective Provincial Governments and posted in the districts by the Provincial Governments.

DC or DO-R:

- ✓ Is the District Collector (Revenue);
- ✓ Is the head of land administration; and
- ✓ Has many original, appellate and revisional powers against lower revenue officers.

DC or DCO is:

- ✓ The chief representative of the Provincial Government; and
- ✓ In-charge of relief and rehabilitation measures.

f. Commissioner/EDO-R

- i. The office of the Commissioner was introduced by the Britishers in the 19th century and it continued till 2001 when the devolution system was introduced and divisions were abolished.
- ii. Some provinces have re-introduced the office of the Commissioner whereas some are still in the process of transformation.
- iii. After devolution, the revenue powers of a Commissioner were conferred upon the Executive Officer (Revenue) (EDO-R) who

though was a district officer, had the revenue powers of the Commissioner but had no other administrative powers which were enjoyed by the Commissioner.

- iv. In some provinces, the Commissioner is assisted by the Additional Commissioner (Revenue) who has independent revenue powers, though the Commissioner can assign him work.

Commissioner:

- ✓ Is head of the revenue administration in a Division;
- ✓ Exercises the powers and functions of supervision and control of subordinate revenue authorities;
- ✓ Acts as appellate and revisional court;
- ✓ Is chief representative of the government in a Division; and
- ✓ Acts as coordinator of the government's activities in a Division.

g. Board of Revenue

- i. The Board of Revenue (BoR) is a statutory body that consists of many members and is headed by Senior Member, Board of Revenue (SMBR).
- ii. Members of the Board of Revenue also act as Secretaries to the government in their respective department e.g. a Member Colonies is Secretary to the Provincial Government on colony matters (land allotment) and a Member Relief is the Secretary to the Provincial Government on relief matters.

Board of Revenue:

- ✓ Is at the apex of the land administration system in a province;
- ✓ Leads the land administration system in a province;

- ✓ Advises the Provincial Government on policies related to land revenue, consolidation of holdings, land management, land reforms, settlement and rehabilitation, land taxation, allotment of lands, land acquisition etc.;
- ✓ Acts as Provincial Relief Commissioner Office: Provincial Governments, in an emergency such as floods and earthquakes, distributes relief goods through it. Now some of its functions are transferred to the Provincial Disaster Management Authorities;
- ✓ Is the highest Revenue Court in a province; and
- ✓ Handles appeals and revisions against judgements and orders of the Commissioners and Executive District Officers (Revenue).

CHAPTER 3

Basic Record-of-Rights

1. Introduction

- a. The government has a first charge (tax) on the produce from any piece of land. Therefore, an accurate record-of-rights is essential for the assessment of land revenue and its collection by the government. Furthermore, a correct record of rights is also necessitated to protect individual rights in property i.e. how much a person owns in which area.
- b. The system of record-of-rights in Pakistan comprises of:
 - i. 'Standing Records' that are once made and are permanent but are updated after a specified period of time; and
 - ii. 'Periodical Records' which contain some information with respect to an estate and is changed periodically.
- c. Without going into details, it can be said that land records are statements showing the following:

- ✓ Land owners, tenants, or in an estate, persons entitled to receive rents, profits, or produce of the estate or to occupy land therein;
- ✓ Nature and the extent of interest of concerned persons, and conditions attached to their rights as owners or tenants;
- ✓ Rent, land revenue, rates, cesses etc. receivable from and payable to each concerned person and to the Government;
- ✓ Wajib-ul-arz i.e. statement of customs, affecting rights or liabilities of owners and tenants, with respect to rights and liabilities in a revenue estate;
- ✓ Map of the Revenue estate;
- ✓ Shajra Kishtawar/Field Map;
- ✓ Shajra Nasab/Genealogical Tree;
- ✓ Rights in wells or rights in irrigation from other sources, if any;
- ✓ Determination of revenue assessment as per the Settlement Officer's orders; and
- ✓ Distribution of assessment over holdings as per the Settlement Officer's orders.

2. Basic land record documents

The most important documents of land records with which a common citizen is more concerned are the following:

a. Register Haqdarar Zamin (Land Owners Register)

- i. The Register Haqdarar Zamin was earlier known as the Jammabandi Register. It is the most important document of record-of-rights in the rural areas. It shows the owners of the lands, including details of the cultivator, tenant, soil and rent.

- ii. It is prepared or updated every four years for incorporating all mutations (Intiqal) that have taken place since the last register was prepared from the previous Haqdarar Zamin (land owners) register.
- iii. A Jamabandi is a register showing holdings of owners and tenants, showing their respective fields, payable revenue and the rent payable by tenants.
- iv. Jamabandi also contains the following particulars of owners and tenants:
 - (1) For Owner: father's name, tribe or caste, 'Got' or sub-tribe, if any, and residence;
 - (2) For tenant/cultivator: the father's name, tribe or caste, 'Got' or sub-tribe, if any, residence and status.

b. Field Map

- i. It is a cadastral map of a village and is called the 'Mussavi'.
- ii. It shows all fields, duly measured and numbered in a revenue estate/village. This is basically a surveyed paper map at different scales, depending upon the village area.
- iii. The traditional yardstick for measuring a land field is called a 'Karam' which is 5.5 feet in length and a 'Marla' which is 272 square feet. There are 20 marlas in one 'Kanal' and there are 8 kanals in one 'Acre'.
- iv. Each land parcel is given a 'Khasra Number' (parcel identification number) and the dimension of each side.
- v. Each Khasra Number is normally owned by one owner but in some areas, especially where the settlement operation has not taken place, there are more than one owner in one Khasra number.

- vi. A Mussavi is prepared at the time of settlement.
- c. **Shajra Kishtwar**
 - i. All Mussavis of a village are drawn up conjointly on a cotton cloth (Lattha) for day-to-day use by the Patwari, which is called the Shajra Kishtwar.
- d. **Register of Mutations (Register Inteqalaat)**
 - i. It contains the particulars of all sales and purchases, gifts etc. transactions, etc. that are entered by the Patwari and decided by the Revenue Officer.
- e. **Lal Kitab (Red Book-Village Note Book)**
 - i. This book has all the relevant details about the vital statistics of village lands e.g. the total area, area sown, assessment of land revenue/taxes/fee, number of entered and attested mutations, notes about changes in cultivation, tenancies, and ownership during the last four years.
 - ii. It also shows the population of a revenue estate/village and also gives the approximate number of livestock.
 - iii. It is essentially a statistical book of a village.
 - iv. It is called the 'Red Book' as it has a red cover.
- f. **Roznamcha Waqiati**
 - i. The Patwari keeps a register called the 'Roznamcha Waqiati' or the Daily Diary of Events.
 - ii. The Patwari is bound to record all notable happenings about land affairs in this diary. For instance, hailstorms, floods, severe rains, reports of all transactions of land, mutations, sales, gifts, elections, encroachments on state land, tours conducted by various revenue officers etc. are recorded in it.

g. Register Khasra Girdawari

- i. In every harvest season, the local Patwari makes a survey in his Patwar Circle and it is called a Girdawari.
- ii. The objective of a Girdawari is to collect all information about the cropped area under different crops sown by farmers in a Patwar Circle.
- iii. The Girdawari collects information about the date on which inspection of each harvest has begun, the kind of soil (Qism Zamin), type of crop (Jins) sown, and area sown (Raqba Kashta) with reference to each Khasra number (parcel identification number).
- iv. This register contains all details of the Girdawari/inspection of crop grown in each field, in each harvest, and all changes of ownership and tenancy.
- v. It helps to maintain a track record of possession of a particular patch of land for any reference in a dispute or a court case.
- vi. Khasra Girdawari/Register of field inspection is a part of the Patwari's record (basta) and it is one of the most important documents of land record.
- vii. The Patwari does field inspections twice every year.
- viii. A copy of a Register Khasra Girdawari is shown as under;

A Khara Girdawari contains information about:

- ✓ Which crop is being grown in which field or piece of land?
- ✓ Who is the tenant or cultivator of a particular piece of land?
- ✓ Any change in possession of a particular piece of land; and
- ✓ Any amendments in the village map.

- h. When a person is a tenant on a piece of land in a village but his/her name has not been entered as a tenant, he/she shall file an application to the Patwari of the village or the Tehsildar for noting his/her tenancy in the Khasra Girdawari and then in the Jamabandi. Sample application for recording tenancy addressed to Patwari is attached for reference.

Patwari
Mouza Basti Allah Yar
Tehsil Sheikhpura
District Sheikhpura

1 January 2012

Subject: Recording of Tenancy

Dear Sir

- I, Chaudary Karam ud Din, son of Saleem ud Din, caste Arain, am a tenant in a land measuring 10 acres, situated at khasra numbers 1234 to 1236 from early this year, but my name has not been entered as a tenant.
- The change in tenancy was earlier brought to your knowledge at the time of the second Harvest Inspection on 1 October, 2010 when you inspected the site but still a change was not been made in the records to my detriment.
- You are requested to insert applicant's name in Khasra Girdawari and effect a subsequent change in Jamabandi to protect my legal rights.

Yours truly,

Signature

.....
(Chaudary Karam ud Din)
S/o Saleem ud Din,
Sheikhpura

- i. Similarly, a person who buys a piece of land in a village has to file an application to the Patwari of village or concerned Tehsildar for noting the change of ownership in the Khasra Girdawari and the Jamabandi, if there is no mutation.

Tehsildaar/Patwari,
Mouza Basti Zafar Yar,
Tehsil Pariiabaad,
District Hashtnagar

Subject: Recording of Change of Ownership/Possession

- I, Chaudary Raheem ud Din, son of Saleem ud Din, caste Arain, have purchased land measuring 10 acres situated at khasra numbers 1234 to 1236 from Fazal Husain, son of Shabir Husain, by executing a sale deed on 25 September, 2011.
- The change in ownership and possession was earlier brought to your knowledge at the time of the second Harvest Inspection on 1st October, 2010.
- You are requested to insert the applicant's name in the Khasra Girdawari and effect a change in the Jamabandi.
- Copy of the registered Sale Deed is attached.

Yours truly,
Chaudary Raheem ud Din
S/o Saleem ud Din
Ferozewala
December 2012

- j. Additionally, the applicant may send a copy of the application to the Union Council of the area where the particular land is situated and to the concerned Revenue Officer through registered post/acknowledgement due.
- k. **Fard Malkiyat (Ownership Document)**
 - i. This document shows ownership of land; hence, it is called the "Fard Malkiyat" but it is generally referred to as 'Fard'.
 - ii. It is prepared from the Haqdarar Zamin (Jamabandi) Register and it incorporates changes made through mutation (intiqal). It is essentially just a copy of a particular part of the Haqdarar Zamin Register.
 - iii. Every owner wants it and needs it as a proof of his/her ownership. This Fard is needed as a proof for ownership or when someone wants to alienate land through a sale or a gift etc. For this purpose, the owner or the possible purchaser has to get a Fard from the local Patwari.
 - iv. The Patwari on payment of a nominal prescribed fee prepares it. The fee varies from area to area, but it is always only a few rupees and not in hundreds of rupees.
- l. The record-of-rights is updated after such time as prescribed by the Board of Revenue usually after every 4 years. This is called a periodical record and its purpose is to keep the record-of-rights up to date.

Patwari
Mouza Basti Chawan
Tehsil Kabirwala
District Khanewal

1 December, 2011

Subject: Provision of Fard

- I am an owner of a land measuring 2 acres, situated in Mauza Chawan in your area.
- I need a copy of FARD of my land for my record.
- You are requested to kindly grant me a FARD of my land along with entries of any loan or encumbrance on it, if any.

Yours truly,
Signature

.....
Malik Sajjad Ahmad
S/o Raheem Gul
Caste Afridi
Mauza Chawan
Kabirwala

3. Manual mode

- a. All records of land in Pakistan are prepared and maintained manually by the revenue officers especially the Patwari and these are checked and verified by the Tehsildar. Only a few land record documents are authenticated at the level of a Collector.
- b. In the province of Punjab, there is an ongoing project to computerize the record-of-rights but it is only applicable in few selected areas and is still at a preliminary stage. If land record is digitized then it will make the land management system more convenient and transparent.

4. Remedies

- a. If any person has a grievance or complaint about any matter, in terms of land record, he/she has many forums for the redressal of his/her complaint.
- b. The nature of the complaint determines the forum. For example, if there is a problem in the registration of tenancy, the complainant can apply to the Tehsildar.
- c. An appeal against the judgement of the Tehsildar lies before the Assistant Commissioner/Deputy District Officer (Revenue).
- d. Some appeals and revisions also lie before the Executive District Officer (Revenue) or the Commissioner.
- e. The Board of Revenue is the last decision making authority in the hierarchy.
- f. If a matter involves intricate questions of law or facts, then the matter can be agitated before a local Civil Court through a civil suit.
- g. In certain matters, a writ petition can also lie before a High Court.

5. Exercises

- a. Why are land records prepared?
- b. Who prepares land records?
- c. A Register Haqdaraan Zameen is the most important document in land administration. Explain this statement with examples.
- d. What is the difference between a shajra kishtwar and a shajra nasab?
- e. How can errors in records of rights be corrected?
- f. The Patwari has not entered my name as a tenant. How can I redress my grievance?

CHAPTER 4

Sale and Purchase of Property

1. What does sale-purchase mean?

- a. 'Sale of a property' means to give away a right in a property absolutely and 'Purchase of a property' means to get a right in a property. 'Sale and Purchase' is the most common mode of acquisition of rights to give away and to get a property.
- b. A sale may be made through a transaction between private individuals, companies or public bodies.
- c. A sale can be unconditional or conditional. In a conditional sale, an owner can attach certain conditions with the property at the time of the sale. For example, Akbar while selling a historical building can attach a condition that the purchaser cannot demolish this building or cannot convert it into a club etc. In this sale, the purchaser, Fazal, cannot demolish this building or convert it as per the condition applied.
- d. Apart from an outright sale agreement, a sale may include an allocation of property by a public authority to a person through

allotment, perpetual lease amounting to sale, auctions or ballot etc.

2. Do I have the right to sell?

- a. The 'right to sell' my ownership of a property is my fundamental and constitutional property right.

- ✓ Every owner of a property has a fundamental right to sell his/her right in a property;
- ✓ A sale can be affected through a valid and legal sale agreement or agreement to sell;
- ✓ A sale of my right will extinguish my right of ownership and the purchaser will become the owner of it;
- ✓ A sale may be out of the free will of an owner or through an order of a competent authority e.g. Ali is adjudged insolvent and the court orders the sale of his property to pay off his debts and
- ✓ A sale has to be against a legally valid consideration (price).

3. Who can sell his/her property?

- a. Every adult (major) person can sell his/her rights in a property. In Pakistan, the age of 'majority' is eighteen years and above.
- b. Every child (minor), who is under eighteen years of age, cannot sell his/her property. The child can sell his/her rights through his/her legal guardian, duly appointed by a court of competent jurisdiction i.e. the Guardian Court. The guardian shall have the express powers of sale from the court otherwise he/she cannot sell the property of the child.
- c. A natural guardian like a father or mother cannot sell the property of a child. A natural guardian can only sell the property of a child if he/she is appointed a legal guardian by the Guardian Court and the Court has given him/her express permission to transfer the rights of the child.

- d. No insane person can sell his/her property. When the owner of the property is an insane person, then only the legal guardian, duly appointed by a Court of competent jurisdiction, can sell the property of the insane, that too, when the Court has given the guardian permission to transfer the rights.

4. What laws govern transfer of property rights?

The following laws govern the sale and sale procedures:

- ✓ The Contract Act, 1872;
- ✓ The Transfer of Property Act, 1882. It is a general law describing concepts, principles of property and regulating the sale of interests in property;
- ✓ The Land Revenue Act, 1967. This is the basic law dealing with the records-of-rights in property and it authorizes mutations;
- ✓ The Registration Act, 1908. This law is applicable on the registration of sale deeds; and
- ✓ The local and special laws i.e. laws of the Cantonment Boards, local governments, private housing societies, cooperative societies, mutual societies etc.

5. How can I sell-purchase property?

A private sale agreement has to conform to four basic constituent elements of an ordinary agreement/contract, initiated by a:

- a. Valid offer (proposal) by one party to sell a property;

'A' offers to sell his/her ancestral land situated in Mauza Bharakahu, Islamabad to 'B'. The identity of the land is made known in the offer.

- b. Unconditional acceptance by the other party to purchase the property.

'B' accepts unconditionally 'A's' offer and agrees to buy his/her land.

- c. Valid intention to sell and purchase the said property. 'A' and 'B' shall have proper intention to sell and purchase the concerned property and the offer and acceptance shall not be a joke between friends.
- d. Payment of the agreed consideration, normally called the price. Consideration can include exchange with another property¹⁶.

'A' puts a price of Rs. 1 million for the property, which is accepted or paid by 'B'. This payment of consideration concludes the sale contract.

6. Free will is must

The sale and purchase agreement must be negotiated and executed freely, without any threat, fear, inducement, coercion etc.

'B' forces 'A' by threatening him/her to sell him/her his/her property for Rs. 1 million or induces him/her by cheating or fraud. Even if consideration is paid, this will not be a valid sale contract. It is void and does not exist in the eye of the law.

7. Shall sale agreement be in writing?

- a. Under the laws of Pakistan, a verbal or an oral sale agreement is valid.
- b. A written sale agreement is much better and it shall be preferred.
- c. It is much better and safer if the sale agreement is reduced to writing.
- d. It is advisable to reduce it into writing in the presence of two witnesses who should sign it.

¹⁶ Sections 3-9 Contract Act 1872.

- e. It is advisable to get the written document registered with the Registrar or at least with a Notary Public who is usually available in the court area.
- f. If the parties do not prefer registration, then they shall approach the revenue authorities for mutation.
- g. If it is not possible to execute a written document and an oral agreement is inevitable, consideration should be paid and possession should be handed over in front of two witnesses.

Sale Agreement

This Agreement is made at Islamabad on 23-11-2000, for the sale of a land measuring 1 kanal, situated at Plot No. 123, Street 21, Sector F/6 1, Islamabad and is entered into by and between A and B.

1. A s/o.....r/o.....has agreed to sell and B..s/o.....r/o..... has agreed to buy the above-mentioned property for a sum of Rs. 1 million.
2. B has given Rs. 1 million to A as consideration for the above mentioned property.
3. A has handed over physical possession of the above-mentioned property to B.
4. A and B have freely negotiated this sale agreement without any threat, fraud, coercion etc.
5. Both the parties have valid intention to sell and purchase the said property.
6. A assures that he/she is the sole owner of the above mentioned property and that the property is not subject to any charge, lien etc. nor any taxes are outstanding against it, as on the date of this Agreement.

In witness whereof the parties have signed this Agreement of sale.

Party A
Witness A

Party B
Witness B

8. What shall I do at the time of purchase?

- a. I shall ask the seller to provide me the proof of his/her ownership of the property that is proposed to be sold.
- b. I shall check the correctness and authenticity of the ownership documents from the relevant revenue authorities and the Registrar office.
- c. I shall ascertain that there is no issue of preemption.
- d. Let me ascertain that the property to be sold is owned, individually or jointly, by more than one person. If it is jointly owned, then I have to be sure whether all legal owners are selling the property or only one individual is selling. If only one person is selling, then I have to be sure that he/she has the full legal authority to sell.
- e. If only person is selling his/her share of property, then I have to be sure that the property is already divided amongst the owners and it is already demarcated and there will not be any problem in taking possession from the seller.
- f. Let me check whether the property being sold falls within shamilat as, in some areas of Pakistan, there are no proper settlements done and there are many owners in one khasra number. In this case, it is very likely that there will be a dispute about possession. In such cases, it has to be carefully ascertained that the property has been identified separately in shamilat and there will not be any problem in taking over possession of the property.
- g. I shall check that the property is not under any litigation or a court stay order is not in field to prohibit the sale.
- h. It is advisable to give an advertisement in the press about the intention of the purchase of the property and objections shall be invited within a stipulated time (generally 15 days) before finalizing the sale agreement.

- i. The property shall physically be inspected to check that (i) it exists there; (ii) there will be no issue in possession; (iii) there is no problem in right of way; (iv) local people and relatives of the owner do not have any problem in terms of preemption or any other claim etc.
- j. The seller may be asked to allow the purchaser to put up a board on the site indicating purchase of the rights and he/she may also be asked to put up a boundary wall around the property as the construction of the boundary wall or putting up the board on the site will alert interested and they can raise their concerns well in time. These things will help in any subsequent litigation especially for those places where there is likelihood of any dispute.
- k. If an attorney is negotiating the sale agreement, I shall check whether the attorney is valid and subsisting as power of attorney can be withdrawn or it can expire.
- l. Immediately after sale negotiations, the sale agreement shall be reduced to writing and signed by both the parties in the presence of at least two reliable witnesses.
- m. Payment shall be made through a bank cheque or a bank draft or a pay order as it helps in case of a dispute and it is a safer way of transaction as opposed to carrying cash.
- n. After completing the sale agreement, it shall immediately be registered with the concerned registrar and the process of mutation shall be initiated immediately.
- o. The seller may be asked to transfer the possession on the sale deed.
- p. In case of an oral agreement, the fact should be immediately brought to the knowledge of the concerned authorities e.g. the revenue officer for mutation or the housing society's office.

9. Remedies

- a. If there is a problem in the registration of a sale deed, then I have the right to apply to the Tehsildar or the Assistant Commissioner/ DDO-R.
- b. I can lodge a complaint before the Tehsildar/AC/DDO-R against the Patwari if he/she does not enter my mutation.
- c. If someone has sold my property by applying unfair means, I can apply to the AC/DDO-R to cancel mutation if the above solutions do not work.
- d. I can also approach a Civil Court for cancellation of registration and mutation.
- e. Ali was threatened and coerced at gunpoint to sell his flat in Islamabad. Now the threat is over. He can challenge this sale in a Civil Court.

10. Exercise

- a. Can I sell my land to my neighbour?
- b. What problem can I face if I sell my property through an oral agreement?
- c. I am an orphan. I need to sell my house to finance my studies. How can I sell my house?
- d. I had sold my property at a very low price due to my urgent economic needs. Now I am financially stable. Can I regain my property on the basis of inadequate price?
- e. My paternal uncle coerced me to sell my ancestral home to him though I did not want to sell it. Can I rescind this sale? If yes, what can I do about it?
- f. My attorney has sold my property against my instructions. What remedies are available to me?

CHAPTER 5

Inheritance Matters

1. Introduction

- ✓ Inheritance is an unearned right in property, which is endowed upon a person on the basis of blood relation by operation of law upon death of an owner of a property.
 - ✓ The property of a deceased Muslim is first used for payment of any outstanding debts of the deceased and funeral expenses and then it is divided among legal heirs.
- a. Right of inheritance is available only if it is recognised by the personal family law applicable to the deceased as per his/her faith.
 - b. Inheritance devolves automatically and immediately on the legal heirs of a person upon his/her death.
 - c. The entire property of a deceased person is subject to distribution at the time of death under the inheritance law applicable to him/her. However, this division of inheritance takes place after settling debts or expenses on the deceased's burials etc.

- d. If a Muslim nominates a particular legal heir with respect to his/her properties, such a legal heir is only entitled to take the deceased's property in his/her possession and distribute it among the legal heirs as per their shares as prescribed in the Muslim personal law.
- e. The Islamic law of inheritance is similar in application to moveable and immovable, ancestral and self-acquired tangible and intangible properties and to the benefits accruing from such properties.
- f. In Pakistan, various Shariat Application laws introduced during pre-partition¹⁷ and post-partition¹⁸ times and the Constitutions of 1956 and 1973 of Pakistan recognise the principle of application of personal laws to a deceased's property as per his/her religion.
- g. Under the existing laws of Pakistan, no one can be deprived of inheritable property on the pretext of traditions or customs.

2. Who is disentitled to inheritance?

a. Homicide

- i. Under the Muslim law of inheritance, a person guilty of killing his/her deceased relation is not entitled to a share in inheritance from the estate of the deceased e.g. if a son kills his father, he is not entitled to get his share in the property of his father.

- ✓ Killer does not get inheritance from killed. It is based on the principle of Islamic law that no one shall benefit from the proceeds of his/her crime.
- ✓ Under the Sunni Law, a person who has caused the death of another, whether intentionally, or by mistake, negligence, or accident, is debarred from succeeding to the estate of that other.

¹⁷ Shariat Application Acts in 1935, 1937, 1948, 1950, 1951, 1952 for different part of Pakistan.

¹⁸ More Shariat Application Acts were promulgated in 1962, 1964, 1983.

- ✓ Under the Shia Law, homicide acts as a bar to succession only if the death was caused intentionally.

b. Children of a person's pre-deceased child

- i. Under Sunni Law, children of a person's pre-deceased son or daughter are not entitled to a share in inheritance of such a person.
- ii. This is based on the principle that the right of inheritance of a legal heir devolves only on the death of the ancestor.
- iii. Thus, any interest in the property to which a person can succeed as an heir, would devolve on him/her if he/she survives the ancestor.
- iv. In simple words, the son of the pre-deceased son is not considered to be an heir.
- v. This is the traditional view held by a majority of Muslim scholars.

'A', a Sunni Muslim has two sons, 'B' and 'C'. 'B' dies in the life time of 'A', leaving son 'C'. 'A' then dies leaving 'C', his son, and 'D', his grandson son of 'B'. The whole of A's property will pass to 'C' to the entire exclusion of 'D'.

- vi. This traditional view was changed by the Muslim Family Laws Ordinance, 1960. The above-mentioned rule of exclusion is not recognised by the Muslim Family Laws Ordinance, 1960, of Pakistan.
- vii. Under this law, the offspring of a person's pre-deceased child (grandchildren) inherit such share from his/her property to which their father would have been entitled if he had lived.
- viii. The provisions of the Muslim Family Laws Ordinance, 1960 relating to inheritance rights of children of the pre-deceased child were challenged in the courts in 1999 and were declared to be against Islam. The matter is at present pending in an

appeal before the Supreme Court of Pakistan and provisions of the 1960 Ordinance are operative until the Court takes a final decision.

- ix. Thus, at least at the moment, offspring of pre-deceased children do have the right of inheritance in their grandparents' estate to the extent of the share of their deceased parent.

'A', a Sunni Muslim has two sons, 'B' and 'C'. 'B' dies in the life time of 'A', leaving son 'C'. 'A' then dies leaving 'C', his son, and 'D', his grandson. Then 'A's property will pass to 'C' and 'D' under Muslim Family Laws Ordinance 1961.

3. Categories of legal heirs

- a. Under Sunni law, there are three classes of heirs, namely:
 - i. Sharers: those who are entitled to a prescribed share of inheritance such as parents, sons, daughters, wives, husband etc;
 - ii. Residuaries: those who take no prescribed share, but succeed to "residue" after claims of the sharers are satisfied e.g. grandfather, paternal uncle etc; and
 - iii. Distant Kindred: all those blood relations who are neither Sharers nor Residuaries e.g. brother's son, daughter's children and their descendants, son of the paternal uncle etc.
- b. Division of the deceased's property is made on the principle 'nearer in degree excludes the more remote'.
- c. Under Shia law, there are two main groups of heirs, namely:
 - i. Heirs by consanguinity, that is, blood relations; and
 - ii. Heirs by marriage that is husband and wife.
- d. Heirs by consanguinity are divided into the following classes:
 - i. Parents and children and other lineal descendants;

- ii. Grand parents, brothers and sisters and their descendants;
and
 - iii. Paternal, and maternal uncles and aunts, of the deceased and
of his/her parents and grand parents and their descendants.
- e. The first class of heirs excludes the second from inheritance, and
the second excludes the third class of heirs¹⁹.

4. Inheritance laws of non-Muslims

The inheritance matters of the people of religious faiths, other than Islam, are dealt with in accordance with the personal laws of the deceased or as per their choice.

'A' a Roman Catholic dies leaving behind a will which says that his property shall be equally divided between his widow and son. 'A's' will has to be executed by an executor named in the Will without applying any other principle for division of property.

5. Laws governing inheritance

- a. In Pakistan, matters relating to the estates of deceased Muslims are governed under the Muslim Family Law Ordinance, 1961 and Shariat Application Acts of 1962, 1964 and 1983.
- b. Sunnis are mostly Hanafis and follow Imam Abu Hanifa while Shias follow Imam Jafar Saadiq and are called Jafaris.
- c. Every Muslim can indicate under what personal law, he/she wants to divide inheritance. In case of a dispute, the court will decide what personal law shall be applicable.
- d. A Muslim cannot insist on applying customary law in matters of inheritance. The customary law was used to disentitle women from inheritance. Now under Muslim personal law, women get inheritance as per the rules of their faith.

¹⁹ Chapter VIII of Mulla, Mahomedan Law, Mansoor Book, Lahore.

6. Gifts, Will and Inheritance

- a. Any property that is given by a deceased in his/her life time to a person through a gift, in compliance with applicable laws, cannot be subjected to division under the law of inheritance of the deceased. Therefore, firstly, the gift will be effected in the revenue documents and then the remaining property will be divided among the legal heirs as per their entitlements.
- b. However, if there are any legal lacunas in the gift that makes it invalid, the legal heirs of the deceased may take the matter to the court. Before the court, the legal heirs may challenge the gift and pray for inclusion of the gifted property in their inheritance.
- c. If there is a Will about the remaining property, then after effecting gift, the Will shall be complied with.
- d. After compliance with the Will, the remaining property shall be divided as inheritance.

7. Remedies for claiming inheritance

There is a difference of procedure in claiming inheritance in moveable and immovable properties.

a. Moveable Property

- i. After the death of a person, his/her legal heirs shall file a petition for obtaining a succession certificate.
- ii. Such a petition has to be filed in the court of the Senior Civil Judge in the city where the property or any part of property of the deceased exists.
- iii. Petition for grant of a succession certificate is filed under the Succession Act, 1925.
- iv. All or any of the legal heirs of the deceased may file such a petition.

- v. Where there is no serious dispute involved with respect to inheritance, one of the legal heirs files petition for grant of the succession certificate and all other heirs give consent in the court.
- vi. The court first issues notices and advertisements in newspapers to ensure if there is any other legal heir of the deceased who is not mentioned in the petition he/she may also join the proceedings.
- vii. In its final order, the court determines shares of all the legal heirs as per the personal law of the deceased and accordingly issues the succession certificate.
- viii. The applicant and other heirs may take possession, if not already taken, of the moveable property of the deceased and divide it amongst all legal heirs.

b. Immovable Property

- i. For claiming their respective inherited shares in urban immovable properties of a deceased person, his/her legal heirs shall file a civil suit for declaration in the court of the Senior Civil Judge of the area where the property or any part of the property of the deceased exists.
- ii. In such a suit for declaration, any one or all of the legal heirs of the deceased pray for declaring that they are the only legal heirs of the deceased and request that their respective shares in the property of the deceased be given to them.
- iii. The court determines the real heirs and their respective shares of all the legal heirs and orders division of the property, which is the subject matter of the suit as per the said shares.
- iv. The court does take into consideration such portions of properties, which may have been given away by the deceased to a particular person through a Will or a gift.

- v. If the property is a rural one, then the revenue authorities shall mutate the property in the name of the legal heirs as entered in the Pedigree table maintained by the revenue authorities.
- vi. If there is a problem in the pedigree table, then any aggrieved person may apply to the revenue authorities for a correction in the table and mutate accordingly.
- vii. If a legal heir is not happy with any matter relating to the inheritance or he/she is not satisfied by the redressal of the grievance by the revenue authorities, he/she has a right to agitate the matter in a Civil Court for final determination of the matter.
- viii. The judgement of the civil court, when it gets finality, shall be implemented by the revenue authorities.
- ix. If a brother manages to get all the inheritance property and denies his sister from her due share, she has a right to apply to the Tehsildar and the Civil Court for her right.

8. Template for issuance of a succession certificate

بیملاہت جناب سید رسول حج اسلام آباد

17-3-11

Proprietor of the property

18F-3-V

Date of Issuance

17-3-11

Date of

5-6-2010	حافظ خالد محمود	تمام متوفی اور تارکخ وفات
6	عقاری نمبر 18-F سٹریٹ نمبر 6 اسلام آباد	مقام سکونت متوفی بزرگت فائتہ اگر کوئی تارکخ وفات نہ ہو تو متوفی کی جائیداد کے لئے رہبر و خزانہ ہے
		رشتہ داران متوفی کے نام درج ہے
		وہ جن جن کا رتبہ سے مساں و عواید ہے
		نقصہ فوری کی رو سے بااثر ہے کہ یہ ایک متوفی ہے
		کوئی امر شریکیت عدالت کے جائزہ پر مائع ہو
		تفصیل حوضہ مہات حکمے وصول کیے گئے شریکیت
		رقم مبلغ 47686.17 روپیہ
		(مستقلین ہزار چھ سو چھیالیس روپے ستر گنے)
		اکاؤنٹ نمبر 0064874
		نیشنل بینک آف پاکستان میں پورچ
		سٹریٹ نمبر 6 اسلام آباد
		میں متوفی حافظ خالد محمود کی بیوی ہے
		جناب سے اس قدر عرصہ کہ
		جاری فرمایا جائے

میں تصدیق کرتا ہوں کہ مضمون مذکور بالا میرے ذاتی علم و حواس سے ہے

مورثہ

18-F سٹریٹ نمبر 6 اسلام آباد

حافظ خالد محمود (مورثہ)

17-3-11

9. Exercise

- a. I am the daughter of Mr. Ramlal who died in a road accident in the year 2000. My brothers have denied my share in the ancestral property. What shall I do to get my inheritance rights?
- b. My father has died last year. My name is not entered in the pedigree table. Revenue authorities are refusing to mutate my share of inheritance. What shall I do?
- c. I am poor. I think my brothers shall bear the loans of my deceased father and burial expenses on his death whereas, my brothers are insisting that loans and expenses shall be paid first. What is the true legal position?
- d. As a Sunni or a Shia Muslim, can I give all of my property to a stranger through a Will?
- e. As a Sunni or a Shia Muslim, can I give $\frac{1}{3}^{\text{rd}}$ of my property to one of my sons?
- f. My father died leaving behind one house and two cars. How should I, and other legal heirs, claim our respective shares in inheritance?
- g. Ali is a Sunni Muslim. Ali accidentally killed his father while driving the car. Is Ali entitled to a claim of inheritance?
- h. My father died in the life of my grandfather. Am I entitled to my father's share in inheritance of my grandfather.

CHAPTER 6

Making Gifts

1. Introduction

- a. A gift (called Hiba in Islamic law) is the transfer of property made immediately, and without any exchange or payment of consideration (price), by one person to another and accepted by the later.
- b. Gifts are usually made without receipt of any consideration in exchange. However, there are two kinds of gift, which involve consideration, i.e. 'Hiba bil lwaz' and 'Hiba ba shart-ul-lwaz' but these kinds of gift are closer to 'sale' of a property. Thus, we will not discuss these categories and will only discuss ordinary types of gifts.
- c. A gift can be made of all kinds of properties and interests i.e. moveable, immovable, tangible and intangible properties and even usufruct (income or profit of a property).

2. Who can make a gift?

- a. A gift of property can be made by any adult person (over 18 years of age) who is of sound mind.
- b. Males and females, both can make a gift whereas a child cannot make a gift.
- c. Both Muslims and non-Muslims can make a gift.
- d. Legal guardians can also make a gift on behalf of the person to whom he/she is a guardian (i.e. child or insane) if he/she is so empowered by the Guardian Court. However, it is better that such a guardian shall avoid making such gifts unless absolutely necessary in the interest of the child or the insane.

3. To whom can gift can be made?

- a. A gift of a property can be made in favour of a natural person (human being) or a legal person, such as a company, trust etc.

4. Considerations for making a gift

- ✓ A gift can be made to any person out of love and affection i.e. daughter, teacher etc.
- ✓ A gift can be made to any person in return for his/her services rendered to the donee i.e. a servant.
- ✓ A gift can be made even in favour of an institution dedicated to some social, religious or humanitarian causes in recognition of the services which such an institution may render to the society e.g. Edhi Centre.
- ✓ A gift can be made to a daughter to equalize her share in inheritance.

5. Ingredients of a gift

There are three main ingredients of a gift:

- a. Declaration of the gift by the donor;
- b. Acceptance of the gift by the donee; and
- c. Delivery of possession of the gifted property by the donor to the donee.

6. Do I have the right to gift?

- a. Yes. It is my fundamental legal right to alienate personal property through a gift.
- b. During my lifetime, I can gift all my property or a part of it.
- c. I can make a gift of the whole of that property of which I am the sole owner. However, I can make a gift of my share if the property is jointly owned.

7. Gift and free will

- ✓ A gift has to be made out of free will of the owner of a property and cannot be made on the orders of another person or an authority e.g. a gift on gunpoint is not valid.
- ✓ A gift made under coercion or undue influence is not valid, e.g., 'A' is an old man. He is coerced by his son 'B' to gift his property to 'B' or he will stop taking care of 'A'. If 'A' gifts his property to 'B' on the basis of such coercion, it is invalid.

8. Gift during death illness (Marz-ul-Maut)

- a. A person may gift his/her property during death illness (Marz-ul-Maut).
- b. A gift made during Marz-ul-Maut cannot take effect beyond 1/3rd of a donee's estate, after payment of funeral expenses and debts,

unless the legal heirs of the deceased endorse such a gift after the donor's death.

- c. A gift made in favour of an heir during Marz-ul-Maut cannot take effect unless other legal heirs endorse such a gift after the donor's death.

9. Form of a gift

- a. There is no specific format prescribed for a gift.
- b. It may be made orally or in writing. I can gift my property through a written instrument, called the 'Gift Deed', or even orally/verbally.
- c. In both forms it is necessary to make the gift in the presence of two witnesses.
- d. It is better to make a gift in writing, in the form of a 'Gift Deed', and get it registered with the relevant authorities i.e. the concerned registrar of the area where the donor resides or where the gifted property is located.

10. Form of a Gift Deed

- I, Saleem Ahmed, son of Mahmood Ahmed, resident of House No. 2, Shah Colony, Multan (the **Donor**), hereby gift the properties mentioned hereinafter to my sister Ms Salma Jabeen, wife of Mohammad Khan, resident of House No. 321, Model Town, Lahore (the **Donee**).
- Honda Civic car, 2011 Model, registration no. MUL 9834; and
- 5 tolas of gold.
- 50% of House No. 11, Street No. 2, Sector E 11, Islamabad.
- I hereby confirm that I am the sole owner of the above-mentioned three properties to the exclusion of any other person and that the said properties are free from any kind of charge, lien and encumbrance etc. of any person or institution.
- From the date of execution of this Gift Deed by me as the Donor, its acceptance by the Donee (below) and transfer of possession to the Donee, the above mentioned properties shall vest in the Donee to the exclusion of any other person including my legal heirs and she shall be entitled to use, lease, sell and pledge etc. the same in any manner she likes as its sole owner.
- Along with the execution of this Gift Deed and its acceptance by the Donee (below) I hereby transfer possession of the abovementioned properties to the Donee in the presence of two witnesses mentioned below.

Acceptance

- I, Salma Jabeen, wife of Mohammad Khan, resident of House No. 321, Model Town, Lahore, mentioned as Donee in the above Gift Deed, hereby **ACCEPT** gift of the properties mentioned above by the Donor in paragraph 1 (above).
- I further confirm that I have taken physical possession of the above-mentioned properties from the Donor.

Donor

Donee

Witness 1

Witness 2

11. Donor's rights after gifting property

- a. A donor loses all proprietary rights in the gifted property after its acceptance by the donee and transfer of possession.
- b. It is essential for the validity of a gift that the donor should immediately divest himself of all ownership, rights and dominions over the gifted property.
- c. When I make a gift of a property, I will completely divest myself from all rights over such property and I will have no right on the gifted property unless I have a limited right to revoke the gift.

12. Completion of a gift

- a. For a gift to be valid, there should be:
 - i. A declaration of gift by the donor;
 - ii. Acceptance of the gift on behalf of the donee; and
 - iii. Delivery of possession of the gifted property by the donor to the donee.
- b. As soon as these three conditions are met, the gift becomes complete.
- c. In certain cases, however, the transfer of possession is not required, for instance, a gift by a father to his minor child.
- d. In cases of gifts of immovable properties, the transfer of possession at times may be notional, e.g., in case of the gift of a house, which is occupied by lessees, the donor may transfer possession by handing over keys of the gifted house to the donee.

- ✓ 'A' gifts a house owned by her to her daughter 'B' by executing a gift deed registered with the concerned registrar;
- ✓ The house is in possession of 'A's' tenants;
- ✓ 'A' transfers possession of the gifted house to 'B' by handing over the keys of the house; and
- ✓ The gift is valid even without 'A' putting 'B' in physical possession of the house.

13. Revocation of a gift

- a. As a general rule, a donor may revoke a gift at any time before delivery of possession and not after that.
- b. As an exception to the above mentioned general rule, a gift may be revoked even after delivery of possession of the gifted property except in the following cases:
 - i. When the gift is made by a husband to his wife or by a wife to her husband;
 - ii. When the donee is related to the donor within the prohibited degree;
 - iii. When the donee is dead;
 - iv. When the gifted property has passed out of the possession of the donee by further sale, gift or otherwise;
 - v. When the gifted property is lost or destroyed;
 - vi. When the gifted property has increased in value, whatever be the cause of the increase;
 - vii. When the gifted property is so changed that it cannot be identified, as when wheat is converted into flour by grinding; and

- viii. When the donor has received something in exchange (iwaz) for the gift. This is in cases of Hiba-bil-iwaz and Hiba ba shart-ul-iwaz.
- c. A gift can only be revoked by the person who has made it and not by his/her legal heirs after his/her demise. However, on the basis of any legal lacuna found in the making of the gift, legal heirs may get it revoked by order of a court of competent jurisdiction.

14. Formalities in revocation of a gift after delivery of possession

- a. Once possession is delivered, nothing short of a decree of the court is sufficient to revoke the gift.
- b. A donor cannot revoke a gift by simply making a declaration for this purpose or on the grounds that he/she has filed a suit for resuming the gift.
- c. Neither a mere declaration of revocation by the donor nor the institution of a suit for resuming the gift is sufficient to revoke the gift.
- d. A donee can freely use the property gifted to him/her until the court passes a decree confirming revocation of the gift or injunction orders are passed by the court whereby the donee is stopped from using the gifted property until final orders are passed.
- e. In other words, until a decree is passed, the donee is entitled to use and dispose of the subject of gift.

15. How is a gift different from a Will?

- a. A Muslim may gift away all of his/her property to any person, including his/her legal heirs, through a gift.
- b. A gift so made is not subject to any endorsement by the legal heirs of the deceased donor, except in case of gifts made during 'Marz-ul-Maut' (death bed).
- c. On the other hand, through a Will, a Muslim can give away only a limited portion of his/her estate and it does require the endorsement of such a Will by the legal heirs of the deceased in some cases.
- d. The Will and Gift matters of non-Muslim citizens are governed by their personal laws or law of choice.

16. Registration of a Gift Deed

- a. A gift can be made verbally but it is always better to write it down.
- b. If the gift is reduced to writing in the form of a gift deed, then it is compulsorily registerable under the Registration Act, 1908.
- c. If possible, the gift shall follow mutation in the revenue record.

17. What precautions shall I take at the time of making a gift?

- ✓ I should ensure that I have a perfect title to the property of which I am making a gift;
- ✓ While making a gift of a share in joint property, I should ensure that I clearly state the nature and extent of my share in such a joint property;
- ✓ It will be better to give an advertisement in the press about the making of the gift after its completion i.e. after acceptance and delivery of possession to the donee;
- ✓ I should always prefer to make a gift in writing i.e. in the form of a 'gift deed';
- ✓ I should ensure that the gift deed is duly registered with the concerned registrar and all fees i.e. stamp duty and registration fees are duly paid for transferring a perfect title to the donee;
- ✓ On the gift deed it is advisable to note the facts of acceptance of the gift by the donee in writing and also the fact of transfer of possession where such possession is transferred notionally;
- ✓ In case of an oral gift, it should be made in front of two witnesses who can later testify the fact of the gift in front of revenue or other authorities for mutation or the housing society's office and consequently transferring the title of the property to the donee;
- ✓ I shall not make a gift attached with conditions e.g. I have made you a gift of rupees one thousand, provided that you serve me for next three days;

- ✓ I shall make a gift for a living person or an existing legal person only, as a gift to a person who is not in existence, is not valid;
- ✓ I shall make a gift when I am healthy and not during death illness;
- ✓ I shall make a gift in present tense. I shall not make a gift in the future; and
- ✓ I shall not make a gift in case I am the guardian of a minor or an insane person unless I have specific powers granted by the court to do so.

18. Remedies

- a. If I am forced to gift my property to a person, I can approach the civil court for its revocation.
- b. If I have been gifted agricultural property in a village through a registered gift deed or orally, I can apply to the Tehsildar/Patwari for mutation of record.
- c. If the Patwari does not make an entry in the record, I can lodge a complaint before the Tehsildar/AC/DDO-R against the Patwari.
- d. If a donor tries to revoke a gift made in my favour, I can approach the civil court for securing my right.

19. Exercises

- a. Can I gift any of my properties to any person or waqf/trust?
- b. What problem can a donee face if I make an oral gift of my property?
- c. What should I do after executing a gift deed?
- d. I had gifted a moveable property to my sister and had also transferred possession of that property after her acceptance. Can I revoke the gift now?
- e. I have a general power of attorney with respect to a property. Can I gift that property to someone?
- f. My brother forced me to gift him one of my landed properties. Under coercion I signed the gift deed. Is the gift valid? If not, what should I do?
- g. My father gifted his entire property to my brother during Marz-ul-Maut. Can I challenge such a gift?

CHAPTER 7

Making a Will

1. What is a Will?

- a. A 'Will' is a method by which a person may instruct, during his/her lifetime, about the treatment of his/her properties after his/her death.
- b. A person uses a Will when he/she wants his/her property to be treated after his/her death, differently from the personal law of inheritance, which is applicable to him/her.
- c. In addition to prescribing the treatment of the estate, a Will may also contain provisions relating to other matters. For instance, a person may state in his/her Will that his/her body should not be subjected to an autopsy or embalmment and should be immediately buried at a particular place in accordance with the rites of his/her religion. Such directions are only applicable and executed if they are in conformity with the law of the land.
- d. In Pakistan, every person who is over 18 years of age (a major) and of sound mind can make a Will during his/her lifetime with

respect to the disposal of his/her property after his/her death.

- e. Rules of making Wills are different for people of different religions and different sects of a religion.

2. Oral or written Will?

Although a Will can be made orally or in writing, it is better to reduce it to writing to avoid complications of proving it through evidence before courts in legal proceedings as it will be more difficult to prove an oral Will if it is disputed.

3. How much property can be given through a Will?

- a. The rules of making Will are different in every personal law.
- b. In Islamic law, the two major sects, 'Sunni' and 'Shia' have different rules for making Wills²⁰.
- c. A Sunni Muslim can dispose off a maximum of 1/3rd of his/her estate through a Will. The rest of the property has to be compulsorily divided among the legal heirs of a deceased Sunni Muslim.
- d. A Shia Muslim can dispose off more than 1/3rd of his/her estate through a Will.

4. Will in favour of a particular legal heir

- a. Sunni Muslims can make a Will in favour of one or more legal heirs, but such a Will is valid only if all other legal heirs give their consent.
- b. On the other hand, Shia Muslims can make a Will in favour of one or more legal heirs without the consent of others, if the share being disposed off does not exceed 1/3rd of the estate.

²⁰ There are two main sects of Muslims in Pakistan: Sunni and Shia. A vast majority is Sunni who follow the Hanafi school of thought of Imam Abu Hanifa (699-767 CE or 80-148 AH). The Shia sect follow Imam Jaffar Saadiq (702–765 C.E. or 83-148 AH). In inheritance, will, gift etc., matters, their personal law is applicable.

- c. If the Will is made by a Shia Muslim with respect to more than 1/3rd of the estate, then this Will will not be valid unless other legal heirs give their consent²¹.

'A' a Sunni Muslim has 3 residential plots of land of the same value. 'A' has 2 daughters and 1 son. In his lifetime 'A' makes his Will in writing in which he gives away one plot of land to his son in addition to his son's share in inheritance. After A's death, A's daughters refuse to consent to this Will and refuse to accept it. Hence, 'A's' Will is not valid.

'B' a Shia Muslim has Rs. 100,000 in a fixed deposit in a bank. 'B' has 2 sons and a wife. Before his death, 'B' makes his Will in writing in which he gives away Rs. 30,000 to his wife. 'B's' Will is valid even if his sons do not accept it.

5. Will made on the deathbed

- a. A person who is of sound mind may make a Will at any time after attaining the age of majority (over 18 years). However, there is one exception to this rule i.e. a Will made by a person while he/she is on their deathbed.
- b. A Will made by a person, whether in writing or verbally, while he/she is on their deathbed is not acted upon or executed after his/her death, unless the legal heirs of the deceased accept such a Will.

6. Wills made by non-Muslims

- a. Under the laws of Pakistan, non-Muslims can make a Will in their lifetime to gift away their entire estate unless their personal law imposes any particular restriction.
- b. In other words, the Islamic law of Wills does not apply to non-Muslims and there is no substantive public law governing Wills made by non-Muslims.

²¹ Mullah's Mahomedan Law, Mansoor Book House, Lahore, 2010, Chapter IX.

- c. The personal law of each citizen governs the Wills.
- d. Therefore, Hindus can make Wills according to their laws and Christians can make Wills according to their personal laws.
- e. However in procedural matters, Wills made by non-Muslims are governed by the Succession Act, 1925.

'A' a Parsi/Zoroastrian by faith has 2 houses. In his lifetime 'A' makes his Will in writing stating that all his property should be divided equally between his 3 legal heirs i.e. his widow and 2 daughters. 'A' appoints his nephew 'C' as an 'Executor' for executing his Will. 'A's' Will is valid and his property has to be divided after his death in accordance with the provisions of his Will subject to his personal faith.

7. Changing or revoking a Will

- a. A Will can be changed during the lifetime of a person who has made a Will.
- b. A Will cannot be changed, by a person making a Will, when that person is on his/her deathbed.
- c. A Will can be revoked during the lifetime of a person who has made a Will.
- d. A Will cannot be revoked by a person making a Will when he/she is on his/her deathbed.

8. Registration of a Will

- a. Wills can be made verbally or in writing.
- b. Written Wills shall be registered under the Registration Act, 1941.

9. What precautions do I need to take while making a Will?

- a. I should reduce my Will to writing, instead of pronouncing it verbally in front of somebody.

- b. If I have to make a Will verbally, then I shall announce it in the presence of two reliable witnesses.
- c. I should ensure that I only mention those properties in my Will which I own. If I own a share in a property and want to dispose of it through Will, I should mention the share clearly in my Will.
- d. I should give a reference of the documents of the title of the properties which I am including in my Will.
- e. I shall take all possible measures to identify exactly the property that is subject to the Will to avoid any confusion and subsequent dispute.
- f. I shall ensure, as a Sunni, that I do not dispose off more than 1/3rd of my property through a Will.
- g. As a Shia Muslim, if I give away more than 1/3rd of my property to any person who is not a legal heir, I should secure endorsement of such an act from my legal heirs.
- h. I should ensure that I execute my Will in front of two witnesses and give it to some trustworthy person who will produce it after my death.
- i. Ideally, I should make my legal heirs or other legal heirs, as the case may, witnesses to the execution of my Will. This is necessary for ensuring that after my demise my legal heirs do not have to go to court for settling inheritance matters with respect to my estate.
- j. I should ensure that my Will is duly registered with the concerned Registrar.
- k. If I am unable to register the Will myself, I should instruct the executor appointed by me to register the Will immediately after my death.
- l. In the Will, I shall appoint or nominate a person, an executor, who has to execute my Will. The executor may even be non-Muslim.

- m. My executors have to administer my Will according to my personal law and the Succession Act, 1925, in so far as these are applicable to Muslims.
- n. I cannot make a Will for a person who is not yet in existence. However, I can make a Will for a person in the womb provided he/she is born within six months of my death.
- o. I cannot make a Will for illegal purposes.

10. Remedies

- a. If I want to enforce the execution of my late mother's Will or if I want to challenge the same, I can file a case in the civil court.
- b. If I have been given agricultural property by my father in a Will, I can apply to the Patwari for mutation of record.
- c. If the Patwari does not make an entry in the record on the basis of the will, I can lodge a complaint before the Tehsildar/AC/DDO-R against the Patwari.

11. Exercises

- a. To what extent can I give away my property through a Will?
- b. What should I do after making a Will in writing?
- c. I am a Roman Catholic Christian. Which law will govern my Will?
- d. Can I revoke my Will and make a new one superseding my earlier Will?
- e. I am appointed as the executor by my father for his unregistered Will. Can I register it?
- f. What problems will be faced by my legal heirs if I make an oral Will?

CHAPTER 8

How are Property Rights Transferred?

1. Do we have the right to transfer?

The 'right to transfer' an ownership is a fundamental property right.

- ✓ Every owner of a property has a fundamental right to transfer its right in property through sale, gift, Wakf etc;
- ✓ The right to transfer is a part of the right of ownership;
- ✓ Transfer of property rights may occur automatically by operation of law without any intention to transfer e.g. inheritance after a death of an owner of a property;
- ✓ Transfer of property may also take place without the consent of the owner, but the after payment of price, as it is done in case of compulsory acquisition of a property by the state; and
- ✓ In some cases, transfer of property may take place without the consent of the owner and even without the payment of price as it is done under the land reforms.

2. Who can transfer his/her property?

- a. Every adult (major) person can transfer his/her right in a property. Under the laws of Pakistan, the age of 'majority' is eighteen years and above.
- b. Every child (minor) who is under eighteen years of age can transfer his/her rights through his/her legal guardian duly appointed by a court of competent jurisdiction i.e. The Guardian Court, and if the court has granted him/her permission to sell or transfer the property.
- c. The property of a child cannot be sold or transferred by a natural guardian such as a father and mother. A natural guardian can only transfer property if it is appointed as a legal guardian by the Guardian Court and the court has given him/her permission to transfer the rights of the child.
- d. If the owner of the property is insane, then the legal guardian, duly appointed by a court of competent jurisdiction, can transfer the rights of the insane, if the Court has given permission to transfer the rights.

3. What laws govern the transfer of property rights?

The following laws govern the transfer procedures:

- ✓ The Land Revenue Act, 1967. The law is almost similar in all provinces with minor changes. This is the basic law dealing with the records of rights in property and it authorizes mutations effecting change in ownership;
- ✓ The Transfer of Property Act, 1882. It is a general law, describing concepts, principles of property and regulating transfers of interests in property (sale, lease, mortgage etc.);
- ✓ The Registration Act, 1908. It details with registration of documents, registration processes and procedures. The law is applicable on any registration of transfer/sale deeds; and

- ✓ Local and special laws i.e. laws made by Cantonment Boards, Local governments, private housing societies, cooperative societies, mutual societies etc.

4. What modes of transfer are available to me?

As owner of a property, I can adopt one of the following modes to transfer my rights in a property:

- ✓ Mutation in revenue records;
- ✓ Registration of the transfer deed;
- ✓ Mutation followed by registration; and
- ✓ Oral or verbal agreement, without mutation and registration.

- Mutation of a right** in revenue records from one person to the other under the Land Revenue Act, 1967.
- Mutation is mostly done in rural areas, though sometimes second mode i.e. registration is also done before mutation.
- Registration of the transfer deed** with the relevant registration authorities/revenue authorities i.e. the Assistant Collector/ Tehsildar/ Mukhtiarkar under the Registration Act, 1908.
 - It is generally preferred in urban areas. In some urban areas, it is a legal compulsion that registration shall be done even if it is followed by mutation in revenue records.
 - Revenue authorities do not automatically enter names of the parties in the record-of-rights after registration though law requires that a copy of the registration shall be sent to the concerned revenue authorities for mutation as per registration.
 - However, transfers affected through registered deeds are accorded a better degree of credibility and a registered document is accepted without any further or elaborate inquiry in the process of mutation.

- d. **Mutation followed by the registration** is a combination of both the above-mentioned processes i.e. registration followed by mutation and not vice versa. This combination is better and safer as it creates more documentary evidence for the titles for ownership; hence, it is followed the most in common practice.
- e. **An oral or verbal agreement** is valid for transfer of a right in land under the laws of Pakistan.
 - i. An oral agreement for transfer may be done for a sale, purchase, gift, Will etc;
 - ii. Though an oral agreement is valid, it may create complications if transfer processes are not followed e.g. one party may not honour its commitments. In such eventuality, if the aggrieved party has to go to the Civil Court for a declaratory judgment to establish its rights, then there may be problems in evidence; and
 - iii. When an aggrieved party gets a decree of a court, only then do the revenue authorities carry out the mutation. In such cases, the registration process is neither followed nor is it required.

5. What are the salient features of the mutation process?

Ms. Noor Jahan wants to transfer her share in her property situated in Mauza Uthaal, Islamabad. What should she do to get a transfer through mutation?

- a. Ms. Noor Jahan herself or through a person holding her power of attorney (general) may report her intention to transfer the rights to the Patwaari;
- b. The Patwari shall furnish a copy of the report written by him free of cost to Ms. Noor Jahan;

- c. The Patwari shall also send a copy of such a report within a week to the Union Council concerned;
- d. The report so recorded shall be displayed in the office or a public place by the Patwari in a prescribed manner;
- e. If the report is not recorded by the patwari, Ms. Noor Jahan may;
 - i. Make a report in writing to the Nazim/Chairman/Administrator of the Union Council in which the land is situated;
 - ii. Make a report to the concerned Revenue Officer by registered post acknowledgment due; and when the Revenue Officer receives such a report, he/she shall cause the report to be entered in the mutation register.
- f. The mutation register consists of a counterfoil and foil. The former is the Patwari's copy of the register, the latter is removed after the order is passed, and is sent to the Tehsil to be filed with the jamabandi.
- g. The Patwari should make his entries in relevant columns. He shall briefly state the facts explaining the change, the names of the persons on whose information the entry is based, and require the Lambardar (Headman) concerned to attest the entry by seal or signature.
- h. The Patwari is, however, strictly forbidden to take the thumb-impression or the signature of Ms. Noor Jahan or of any of the parties to the transaction anywhere on the mutation sheet.
- i. The field Qanoongo must attest, by personal examination of papers concerned, every entry made by the Patwari in the counterfoil and foil, noting briefly that he has done so with the date below the report in the latter. He must sign the entries in both counterfoil and foil.
- j. The Revenue Officer shall attest the mutation, except in cases of inheritance or where acquisition is done through a registered deed

or under an order or decree of a court, in the presence of the person whose right has been acquired.

- k. Such a person shall be identified by two respectable persons preferably from Lambardars.
- l. The signatures or thumb-impressions of the identifiers shall be obtained by the Revenue Officer on the register of mutations.
- m. The inquiry and order on mutation shall be made in the Jalsa-e-Aam/common assembly at an appointed date in the revenue estate in which the land is situated.
- n. The Revenue Officer shall carefully compare entries in counterfoil and foil, and must write his/her order on the latter. He/she should see that all entries in the mutation sheets as well as his/her orders thereon are neatly and legibly written.
- o. The order should show whether the parties interested were all present; or if anyone was absent, the way in which his/her evidence was obtained; or, if it was not obtained, what opportunity was given to him/her to be present; also who identified the parties present, and the place at which, and date on which, it was written.
- p. No detailed record of the statements of parties and witnesses need to be made, but the order must briefly state the persons examined by the Revenue Officer, the facts to which they deposed and the grounds of the order.
- q. He/she must write with his/her own hands in the counterfoil, a very brief abstract of the operative part of his/her order giving numbers of the fields affected and their total area etc. No recital of the facts on which the order is based should be entered in the counterfoil.
- r. The inquiry and final order shall be made by the Revenue Officer within 3 months from the date of entry in the register of mutations.

- s. If no order is made within 3 months, the Revenue Officer shall explain the cause of delay to the Collector in the prescribed manner.
- t. The gist of the order on the mutation register shall be sent in the prescribed manner to:
 - i. Ms. Noor Jahan/the person whose right is acquired;
 - ii. The Union Council in which the estate is situated.
- u. Ms. Noor Jahan shall then get the Fard of her transaction for her record.

Application for Recording Mutation

Deputy District Officer-Revenue/Assistant Commission/Tehsildar
Tehsil Khanpur
District Rahim Yar Khan

Subject: Recording transfer of land through Mutation

1. That the applicant has purchased ten acres of land in muaza Karimabad, Tehsil Khanpur, Rahim Yar Khan from Mr. Islam s/o Maola Bux, cast Taat, r/o Basti Malana.
2. The purchased land is situated at khasra numbers 1234 to 5678 of muaza Karimabad.
3. It is requested that the same land may be mutated in my name and name of my wife, Ms Allah Rakhhi as a joint ownership.

Malik Dost Mohammad
S/o Malik Allah Yar
caste Rajput
r/o Mauza Karampur
Rahim Yar Khan

6 July 2011

6. What if someone wants registration first?

- a. He/she can register the documents for the transfer of property rights with the local specified and designated revenue officer.
- b. He/she must check as registration, even before mutation, of some land transfers in rural areas is obligatory in some parts of Pakistan. If his/her property is urban, then registration is mandatory for mutation. So the first step for him/her is to check whether registration is compulsory or optional.
- c. Transfers that ought to have been registered but are not registered, are not admissible in judicial proceedings relating to ownership disputes.
- d. He/she has to purchase the required stamp papers from government offices or authorized agents.
- e. The registrar's office can inform him/her about the exact amount of stamp papers to be used for registration. The amount is normally one to two per cent of the sale price of the property. Registration requires a registration fee as well.
- f. He/she shall get a sale agreement written from a local application writer (Arzi Nawees) who sits in or around the court premises or through his/her lawyer.
- g. Then the sale agreement documents have to be presented to the local Registrar/Sub Registrar who is a Tehsildar or a Magistrate on whom the District Collector confers the powers of registration.

7. How to object on a transfer of property?

- a. I can attend the Jalsa-e-Aam and object on the transfer of rights. The 1967 Revenue Act and relevant rules require a Revenue Officer to settle the claims of transfer of property rights in an open Jalsa-e-Aam/Common Assembly in the relevant revenue estate in the presence of the persons whose shares are to be purchased. Anybody can attend the assembly and record the objections and claims.

Application for filing objections on Mutation

Tehsildar
Tehsil Khanpur
District Rahim Yar Khan

Subject: Application for filing objections on Mutation

1. That the applicant is the owner of ten acres of land in muaza Karimabad, Tehsil Khanpur, Rahim Yar Khan and the said land was purchased last year from Mr. Islam s/o Maola Bux, cast Taat, r/o Basti Malana.
2. The purchased land is situated at khasra numbers 1234 to 5678 of muaza Karimabad.
3. That now Mr. Islam is selling this land to someone else.
4. It is requested that the same land may not be mutated in any name as I own the property.

Malik Altaf
S/o Malik Yar Khan
caste Rajput Rana
r/o Mauza Khanpupur

6 July 2011

- b. If my objection is not removed, then I can try to solve the problem amicably through a panchayat (the process of informal disputes resolution). If I do not see any success in the panchayat/jirga, then the matter can be determined through the Revenue Courts or Civil Courts.

8. Normal dispute resolution procedures

- ✓ We can file a review before the same officer for his/her own order on grounds of an error patent on the face of the record, clerical or arithmetical errors etc. with the caveat that the order of the predecessor may only be modified with prior approval of the next above Revenue Officer. For example if, instead of the year 2012, it is mistakenly written 20122. The same officer can correct it in the review;
- ✓ We can file an appeal before a higher revenue court. Normally, it is the court of a Collector of Grade I or a Collector if we have to challenge mutation. All issues of law and facts may be disputed, agitated or challenged in such an appeal. For example, if a grandson of a predeceased father is denied share in an inheritance from his grandfather, he can file an appeal, as it is against the existing laws in Pakistan;
- ✓ We can file a revision petition to a higher authority. Revision is maintainable on the grounds of jurisdiction only i.e. that a revenue officer has overstepped his/her jurisdiction or has done something for which he/she did not have jurisdiction. For example, a revenue officer who is not authorized to approve a mutation approves it. In this case, he/she has over stepped his/her jurisdiction. It can be challenged before a designated higher forum;
- ✓ We can file Civil Suits: If we are not satisfied from the Revenue Courts/Officers or some complex question of law and facts is involved, then the Civil Court's hierarchy becomes the eventual

course of the last resort. It is then better to file a case in a Civil Court;

- ✓ Sometimes, when one party exhausts remedies at all tiers of the revenue hierarchy including the Board of Revenue, it then challenges the decision of the revenue authorities before a local Civil Court and then the matter can go up to the level of the Supreme Court in another round of litigation. It is therefore, always advisable to take a complex matter to a Civil Court to avoid a double round of litigation; and
- ✓ In some matters, a constitutional writ petition can also be filed in a High Court.

9. Remedies

- a. For registration of a document evidencing transfer of property by me, I should go to the concerned registrar appointed for this purpose
- b. In case of properties situated in rural areas, I can object to a transaction for transfer of rights in a 'jalsa-e-aam'/common assembly, held by the concerned revenue officers.
- c. For mutation of record in case of rural property, I can approach the concerned revenue officer i.e. the Patwari, Tehsildar, Assistant Commissioner etc.
- d. For challenging any transfer of property in urban areas, I can file a case in the civil court.
- e. I can also file a constitutional writ petition if an illegality is committed by a public functionary.

10. Exercises

- a. What modes of transfer can I use for the transfer of my urban property?
- b. In what form should a transaction for transfer be given effect?
- c. What problems will a transferee face if I orally transfer my property through a gift, sale or exchange?
- d. Can I transfer a property owned by my minor child?
- e. What should I do if I have objections to a transaction of transfer of a rural property?

CHAPTER 9

Preemption

1. Introduction

- a. Preemption is the right of a neighbour to purchase an immovable property in preference to other persons. It is also called the right of first refusal.
- b. The law of preemption is based on the principle that a neighbour has a first right to purchase a property so that an alien does not enter a local area as it may disturb his/her right of quiet enjoyment of his/her property.
- c. The person exercising the right of preemption has to pay the market price of the property in question to its owner.
- d. The right of preemption can be exercised only with respect to immovable property and not with respect to moveable property. It is also not available in urban properties.
- e. In other words, the right of preemption is available with respect to rural immovable properties.

2. Exclusions from right of preemption

The following categories are specifically excluded from the right of preemption:

- ✓ Property acquired in inheritance, or through a Will or Gift;
- ✓ Property acquired in exchange of agricultural land;
- ✓ Property acquired in execution of a decree by orders of a court or an authority. It may be a civil, criminal or revenue court or revenue officer or local authority;
- ✓ Property acquired by paying a consideration other than valuable consideration, such as property given in dower or given as compensation/diyat²² in a murder or hurt case;
- ✓ Property owned by the Federal or a Provincial Government or a Local Government;
- ✓ Property acquired by Federal or a Provincial Government or a Local Government; and
- ✓ Property of a Waqf²³ or other institutions that use it for a charitable, religious or other public purpose.

3. Who holds the right of preemption?

Only following three categories of neighbours/persons enjoy the right of preemption:

- a. A person who is a co-owner in the corpus of the undivided immovable property which is the subject matter of the sale. Such a person is called the “Shaft Sharik”.
- b. A person who is a co-holder in special rights attached to the immovable property which is the subject matter of the sale, such

²² Diyat is a monetary compensation paid by a killer to the heirs of a killed person or by a convict to one who is hurt.

²³ Waqaf, under Islamic law means dedication of a property for some religious or charitable purpose. The ownership of the waqaf property does not vest in anybody and it vests in Allah for the beneficiaries.

as right of easement e.g., right of passage, right of passage of water or right of irrigation. Such a person is called “Shaft Khalit”.

- c. A person who owns an immovable property adjacent to the immovable property which is the subject matter of the sale. Such a person is called the “Shaft Jar”.

4. How is the right of preemption exercised?

The right of preemption has to be demanded at the time of the sale of the property in respect of which such a right is to be claimed.

The preemption right holder has to make demands of preemption rights in the following order:

- ✓ Immediate demand by a preemptor in sitting or meeting in which he/she has come to know of the sale. The right holder declares his/her intention to exercise the right of preemption. It is called a '**Talb-i-Muwathibat**';
- ✓ Demand made by a right holder by adducing evidence for existence of his/her right, is called a '**Talb-i-Ishhad**'; and
- ✓ Demand made by a person formally by filing a civil suit in the court of competent jurisdiction. It is called, '**Talb-i-Khusumat**'.

5. Process of exercising a right

- a. As soon as the preemption right holder becomes aware of the sale of a property with respect to which he/she has the right of preemption, he/she should immediately make a demand from the owner of such land to sell it to him/her (Talb-i-Muwathibat).

'A' is the owner of agricultural land (x), which lies adjacent to 'B's' land (y). 'A' learns in a village jalsa that 'B' immediately wants to sell his/her land (y) to his/her friend 'C' against a very good price for that. 'A' immediately tells 'B' that he/she would like to buy the land (y) on the same price as he/she is selling it to 'C' (Talb-i-Muwathibat).

- b. After making the demand (Talbi-Muwathibat), the right holder shall send a written notice (Talbi-Ishhad) to the seller within two weeks of the first demand if the seller does not agree to sell the property to the right holder. The notice should be attested by two witnesses and should confirm the preemptor's intention to exercise the right of preemption.

'B' does not pay any heed to 'A's' demand of buying his/her land (y). Therefore, 'A' sends a written notice of demand to 'B' after getting it attested from two elders of the village. The notice unequivocally discloses 'A's' intention to buy land (y) (Talbi-Ishhad).

- c. After satisfying the two above conditions, the preemptor should file a suit (Talbi-Khusumat) in the court of competent jurisdiction to enforce his/her right of preemption.

'B' simply disregards 'A's' demand of buying his/her land (y) and remains adamant to sell it to his/her friend 'C'. 'A' files a case in the concerned Civil Court in whose jurisdiction 'B's' land (y) is situated (Talbi-Khusumat). 'A' may get an order from court restraining 'B' from selling the land to 'C'.

6. Remedies

If the seller of a property in which I have a right of preemption does not pay any heed to 'Talbi-Muwathibat' and 'Talbi-Ishhad', I can file a case before the concerned civil court (Talbi-Khusumat).

7. Exercises

- a. Who holds the right of preemption?
- b. When should I claim my right of preemption with respect to a property?
- c. What are the three stages for claiming the right of preemption?
- d. Can I exercise my right of preemption with respect to a property acquired by a person through a gift, will or inheritance?
- e. Can I exercise right of preemption with respect to all kinds of property?

CHAPTER 10

Rights and Duties of Tenants

1. Introduction

- a. Specific laws regulate tenancy matters relating to agricultural land in Pakistan though local customs are also relevant.

Each province has its own Tenancy Law:

- ✓ The Punjab Tenancy Act, 1887;
- ✓ The Sindh Tenancy Act, 1950;
- ✓ The Khyber Pukhtunkhwa Tenancy Act, 1950; and
- ✓ The Baluchistan Tenancy Ordinance, 1978.

- b. The Tenancy Act of 1887 is a basic law and it is based on the codification of local customs blended with general principles of the Common Law developed in the United Kingdom over the last ten centuries. The provinces, according to their local needs and customs, have adopted this Act.

- c. The Act defines various underlying concepts and prescribes regulatory mechanisms for relationships between tenants and landlords (owners of the land).

- ✓ Tenancy, for the purposes of this manual, relates to a private land;
- ✓ 'Land' means land, that is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land;
- ✓ 'Landlord' means a person under whom a tenant holds land, and to whom the tenant is liable to pay rent for that land, even if he/she is not its owner; and
- ✓ 'Tenant' means a person who holds land under another person, and is liable to pay rent for that land to landlord²⁴.

2. What are categories of tenants?

- a. Under tenancy laws, tenants are of the following categories:

- i. Tenant for a fixed term exceeding one year;
- ii. Tenant from year to year;
- iii. Tenant at will; and
- iv. There were Occupancy tenants but the law abolished this category in 1952.

- ✓ **Fixed-term tenant** is a tenant who under a (i) contract or (ii) decree or (iii) order of a competent authority is a tenant for a fixed term i.e. two years or three years;

²⁴ Section 4 of The Punjab Tenancy Act, 1887 (All subsequent references in this chapter are to this law).

- ✓ **Tenant from year to year** is a tenant for one year only and then he/she either leaves the tenancy or gets it extended; and
- ✓ **Tenant at will** is one who is not a tenant for a fixed term. He/she can be ejected any time and he/she is neither an occupancy tenant nor a tenant for a fixed term or one year.

3. What rights do I have as a tenant?

The law gives me many rights as a tenant and protects these rights through tenancy courts. Some of the basic rights are as under:

- a. I am entitled to tend, cut and harvest the produce of my tenancy in due course of husbandry without any interference on the part of my landlord.
- b. I am entitled to exclusive possession of the produce of my labour.
- c. If my landlord takes the rent by division of the produce, then I am entitled to exclusive possession of the whole produce until it is divided between my landlord and me²⁵.
- d. I can make improvements in a tenancy. 'Improvement' means any work that is suitable to my tenancy, by which the value of my tenancy has been and continues to be increased, and which is either executed directly for its benefit, or is, after execution made directly beneficial to it.
- e. As improvement, I can do the following:
 - i. I can construct wells and other works for storage or supply of water for agricultural purposes;
 - ii. I can construct works for drainage and for protection against floods;
 - iii. I can plant trees, reclaim, enclose, level and terrace land for agricultural purposes and I can also do other works of a similar nature;

²⁵ Section 12.

- iv. I can erect buildings required for more convenient or profitable cultivation of my tenancy; and
- v. I can renew or reconstruct any foregoing works that increase the value of my tenancy²⁶.
- f. I will get compensation for improvements made for my tenancy. However, I will not get paid for such clearances, embankments, levelling, enclosures, temporary wells and water channels as are made by me in the ordinary course of cultivation and without my special expenditure.
- g. I can make these improvements with the express or implied consent of my landlord.
- h. I cannot be ejected and the rent of my tenancy cannot be enhanced until I am compensated for the improvements made²⁷.
- i. I know that it is not my right to get any compensation for any improvement made or started by me after the institution of suit or service of notice for ejection from my landlord²⁸.
- j. I can raise objections before the Collector against the proposed improvement by the landlord²⁹.
- k. If I get an extension in my existing tenancy for over 20 years, then I am disentitled from claiming compensation against any improvements earlier made by me on the tenancy³⁰.
- l. If I make a wasteland cultivable, I am entitled to a payment of compensation for such value additions (called 'disturbance') in addition to compensation for other improvements made by me. Such compensation cannot exceed 5 years rent of the land³¹.

²⁶ Section 4 (19).

²⁷ Section 68.

²⁸ Section 66.

²⁹ Section 61.

³⁰ Section 67.

³¹ Section 69.

- m. I have a right to apply to the Revenue Officer for determining compensation for improvement and/or disturbance³².
- n. I can relinquish tenancy by giving verbal or written notice of intention to relinquish on or before the 15th day of January to relinquish tenancy at end of that year.
- o. I may apply to the concerned Revenue Officer to cause the notice of relinquishment to be served on the landlord.
- p. If my tenancy rights are violated, then I may go to court and the court may punish the landlord. The landlord will be guilty of an offence punishable by imprisonment which may extend to one year or a fine or with both, if:
 - i. The landlord recovers from me anything in the shape of a cess, village cess or other contributions or dues or any other free services in addition to the rent payable;
 - ii. The landlord recovers from me, in lieu of the seed supplied to me, anything in excess of the seed actually supplied; and
 - iii. The landlord ejects me forcibly or against the provisions of law.

³² Section 71.

Application for dividing the produce

Tehsildaar/Mukhtiarkaar
Mehar Taluka
District Dadu

5 March 2011

Subject: Application for Division of Produce

1. The applicant Ali Mohammad s/o Nawaz Raheem, tribe Jamali, is the occupant/tenant of land situated at khasra numbers 1234 to 1236 Dhok Shah, owned by landlord Yasin Khan Baloch, son of Mehr Khan Baloch.
2. The tenancy is for a fixed term of 3 years starting from 1 July 2009 and the rent is payable in the form of 40 % of the produce.
3. The produce on the said land is now ready for harvest, but the landlord is preventing the applicant from harvesting the crops, despite the fact that the tenant is entitled to take exclusive possession of the produce before its division.
4. It is requested that the landlord may please be restrained from preventing the applicant from harvesting the crops. It is further requested that arrangements may please be made for division of produce under your supervision after the process of harvesting is complete.

Yours truly,

Ali Mohammad
s/o Nawaz Raheem
Dera Baluch, Mauza Kalu Khan
Mehar Taluka, District Dadu

4. What are my duties as a tenant?

There are many corresponding duties imposed upon me in return for my rights. My duties include:

- a. I have to pay rent to the landlord.
- b. It is my duty to call the landlord at the time of division of the produce if rent is taken by the division of produce so that he/she can take part in the division of the produce and takes possession of his/her share³³.
- c. It is my duty to facilitate the landlord if he/she wants to make improvements in a tenancy land.
- d. It is my duty to make required improvements such as clearances, embankments, levelling, enclosures, temporary wells, water channels etc. that tenants make in the ordinary course of cultivation and without any special expenditures³⁴.
- e. If my landlord makes improvements after obtaining permission from the Collector, then I may be directed by the Collector to pay enhanced rent.
- f. When I am a tenant for a fixed term under a contract or a decree or the order of a competent authority, I have to relinquish tenancy without notice at the end of that term³⁵.
- g. If I am a tenant (other than tenant for a fixed term), I may relinquish tenancy but it is my duty to give a verbal or written notice of intention to relinquish on or before the 15th day of January of the year in which I want to relinquish. If I do not give this notice, I would be liable to pay the rent of tenancy for any part of the ensuing agricultural year during which it is not let by the landlord or cultivated by the landlord himself³⁶.

³³ Section 12.

³⁴ Section 4 (19).

³⁵ Section 35.

³⁶ Section 36.

- h. I know that it is my duty to vacate my tenancy if I am so directed by a court. I shall be guilty of an offence punishable by imprisonment, which may extend to one year or fine or with both, if I refuse or fail to vacate the tenancy land in compliance with an order passed by a competent authority³⁷.

5. When can a tenant be ejected?

A fixed-term tenant has to vacate a tenancy at the expiry of the agreed term. He/she can be, however, ejected during the term of his/her tenancy on certain grounds.

A fixed-term tenant may be ejected during continuance of the term on the following grounds:

- ✓ If a tenant uses the land in such a manner that it becomes unsuitable for the purpose for which it was held;
- ✓ If a tenant fails to cultivate the land as per customs of the area without sufficient cause; and
- ✓ Any other reasonable grounds that could justify ejection under the contract or a decree or order e.g. breach of contract, non-payment of rent agreed between the tenant and the landlord etc³⁸.

³⁷ Section 116.

³⁸ Section 40.

Tehsildaar/mukhtiarkaar
Mehtar Taluka
District Dadu

5 March 2011

Subject: Petition against Ejection

1. The applicant Ali Mohammad, s/o Nawaz Raheem, tribe Jamali, has been in occupation of 2 acres of land situated at khasra numbers 1234 to 1236 Mauza Kalu Khan as a tenant since January 2000.
2. The land is owned by landlord Yasin Khan Baloch son of Mehr Khan Baloch.
3. The tenancy is for a fixed term of 15 years under an agreement between the landlord and the applicant, which was executed on 2 January 2000.
4. The rent of the above mentioned land is Rs. 8,000 and the applicant has been paying the same since the start of tenancy without default.
5. One month ago the landlord Yasin Khan Baloch asked the applicant to vacate the above-mentioned land. In response, the tenant asked the landlord about the reason for vacation. Since then the landlord has been threatening to eject the applicant by force.
6. Applicant's ejection by use of force by the landlord is against the law.
7. The tenancy is for a fixed term that would expire on 31 December 2014.
8. There are absolutely no reasonable grounds for ejection of tenant before the expiry of the term fixed under the contract.
9. It is requested that the landlord may please be restrained from ejecting the tenant from the land.

Yours truly,
Ali Mohammad
s/o Nawaz Raheem
Dera Baluch, Mauza Kalu Khan
Mehtar Taluka, District Dadu

6. What safeguards are available to a tenant?

- a. A tenant can be ejected only at the end of the agricultural year and not during the year³⁹.
- b. Only the concerned Revenue Officer/Tenancy Court can eject a tenant.
- c. A landlord can file an ejectment petition. A landlord can also file an application for service of a notice of ejectment of the tenant⁴⁰.
- d. In case of yearly tenancies, the Revenue Officer or landlord may send a notice of ejectment upon the tenant before the 15th day of November in any agricultural year. No notice can be served after this date. This is to save his/her crop cycles.
- e. A tenant has a right to contest liability to be ejected within 2 months from the date of receipt of a notice and he/she may also file a claim for compensation⁴¹.
- f. A tenant can be ejected between 1st May and 15th June only. Ejectment of a tenant outside this period needs special orders by the court⁴².
- g. In an ejectment case, the Revenue Court may not eject the tenant and may order awarding of compensation to the landlord instead, if in the opinion of the court, such compensation would adequately satisfy the injury suffered by the landlord⁴³.
- h. If uncut or untethered crops are standing on any part of the land, the tenant cannot be ejected from the tenancy until the crops are harvested. In such an eventuality, the Revenue Court may:

³⁹ Section 41

⁴⁰ Section 43

⁴¹ Section 45

⁴² Section 47

⁴³ Section 48

- i. Either fix a fair rent to be paid by the tenant to the landlord for the extended period; or
 - ii. Determine the value of the standing crops and order the landlord to pay the same value to the tenant and order ejectment forthwith⁴⁴.
- i. No landlord can eject or dispossess a tenant without his/her consent from his/her tenancy or without a decree of a court. If a tenant is ejected without due procedure, he/she may, within one year from the date of his/her dispossession or ejectment, institute a suit for recovery of possession or tenancy, or for compensation or for both⁴⁵.
- j. No tenant can be imprisoned on the application of his/her landlord in the execution of a decree for an arrear of rent during the continuance of his/her tenancy⁴⁶.

⁴⁴ Section 50.

⁴⁵ Section 50.

⁴⁶ Section 97

7. What forums are available to tenants?

- a. A tenant can approach the Revenue/Tenancy Court that deal with cases relating to tenancy matters.
- b. A Revenue/Tenancy Court is simply a Revenue Officer acting in a judicial capacity instead of an executive capacity under the relevant tenancy law.

Tenancy Courts are:

- ✓ Assistant Collector, 2nd Grade⁴⁷;
- ✓ Assistant Collector, 1st Grade⁴⁸;
- ✓ District Collector⁴⁹;
- ✓ Commissioner/Executive District Officer-Revenue; and
- ✓ Board of Revenue.

⁴⁷ Normally powers of the Assistant Collector, Grade II are conferred on the Tehsildar or Naib-Tehsildar.

⁴⁸ Normally powers of the Assistant Collector, Grade I are conferred on the AC/DDO-R or Tehsildar.

⁴⁹ Normally powers of the Collector are conferred on the DC, DO-R , AC/DDO-R.

A tenant can approach Revenue Officers for almost all matters between a tenant and a landlord including:

- ✓ Determination of rent payable;
- ✓ Enhancement or reduction of rent;
- ✓ Remission and suspension of rent;
- ✓ Ejectment of a tenant;
- ✓ Compensation for improvements or disturbance;
- ✓ Division or appraisalment of produce;
- ✓ Notice of ejectment and relinquishment;
- ✓ Recovery of possession or occupancy;
- ✓ Lease or conditions of tenancy;
- ✓ Account of village expenses; and
- ✓ Arrears of rent or money equivalent of rent.

Tehsildaar/Mukhtiarkaar
Mehar Taluka
District Dadu

Subject: Recording of Reduction in Rent

1. The applicant Ali Mohammad s/o Nawaz Raheem, tribe Jamali, is occupant of 3 acres of land situated at khasra numbers 1234 to 1236 Mauza Kalu Khan as a tenant.
2. Landlord Yasin Khan Baloch son of Mehr Khan Baloch owns the land.
3. The rent of the above mentioned land was increased from Rs. 8,000 to Rs. 10,000, two years ago on account of an improvement made by the landlord by installing a tube well.
4. The tube well has now been removed by the landlord as was noticed by yourself during recent 'Harvest Inspection due to which the rent has been reduced to Rs. 8,000.
5. Appropriate changes may please be made in Khasra Girdawari for recording reduction of rent to Rs. 8,000 and change may be made in Jamabandi.

Yours truly,

Ali Mohammad
s/o Nawaz Raheem
Dera Baluch, Mauza Kalu Khan
Mehar Taluka, District Dadu

11 January 2011

8. Exercises

- a. Under what circumstances can a tenant be evicted?
- b. What should I, as a tenant do, if the landlord does not allow me to keep possession of the produce?
- c. What should I do against an arbitrary and unjust increase in the amount of rent by the landlord?
- d. As a landlord what should I do if my tenant does not cooperate for making improvements on the land?
- e. If eviction orders are passed against a tenant, while there are crops standing on his/her field, what would happen to the crops?
- f. In case of ejectment of a tenant, under what circumstances can he/she be ordered to pay compensation to the landlord instead of being ejected?
- g. What are the consequences for the landlord if he/she charges the tenant in addition to the rent, takes anything in excess of the seed supplied by him/her or ejects him/her against the provisions of law?
- h. Rehman is a tenant for a fixed term ending on 15th June, 2016. His landlord serves a notice requiring him to vacate the land at the start of next agricultural year. What should Rehman do for securing his leasehold rights?
- i. Ali is a tenant from year to year on an agricultural land in Punjab. His tenancy expires on 1st January, 2012 and his landlord evicts him from the land. What right does Ali have for remaining in possession of the land or regaining possession of the land?

- j. Albert is a landlord and has leased his land to a tenant, Usman. Usman wants to install a tube well on the said land, but Albert resists it. What can Usman do under these circumstances?
- k. Ahmed's tenant Usman has dug a well and made terraces in the fields for making it more convenient and profitable to undertake agricultural activities on land. Usman, however, defaults in the payment of rent to Ahmed. What are the respective rights of the parties under these circumstances?
- l. Saleem is a poor farmer on land owned by Babar. On Saleem's request, Babar installs a tube well and other machinery for making sowing and harvesting easier for Saleem and accordingly raises the rent of land by Rs.100 per month. After a year, Babar removes the tube well and other machinery and keeps the rent at the same level. What should Saleem do?
- m. Saleem pays rent of land to the landlord, Babar in the form of 1/10th of the portion of the produce. At the time of harvest, Babar insists on harvesting the produce himself and keeping it in his possession on the pretext that he does not trust Saleem? What remedies are available to Saleem?
- n. Before which courts and officers (with judicial powers) will the parties agitate the above-mentioned matters?

CHAPTER 11

Easement Rights

1. Introduction

- a. An 'Easement' is a right relating to the property by virtue of its existence at a particular place and time.
- b. It is as an interest in a piece of land owned by another person consisting of the right to use or control the land, or an area above or below it, for beneficial enjoyment of his/her own land.
- c. The beneficial enjoyment of land by the holder of a right of easement may include possible convenience, a remote advantage or merely an amenity.
- d. The most common example of a right of easement is the 'right of way' of a person on another person's landed property for crossing it to access a public road.

- e. Easement is a right essentially attached to the property and not the person.

Most common easement rights are:

- ✓ Access and use of light;
- ✓ Access and use of air;
- ✓ Right of way;
- ✓ Artificial support from a piece of land; and
- ✓ Artificial support from things affixed to such land.

- f. Easement is not a right in a property or a right against its owner, but a right relating to the property by virtue of its existence at a particular place and time. It is actually an interest in land owned by another person with a right to use or control the land for a specific limited purpose (such as to cross it for access to a public road)⁵⁰.
- g. The Easements Act, 1882 defines and regulates easement rights. The Easements Act defines easement as a right which the owner or occupier of a certain land possess for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done with respect to certain other land which is not his/her own.
- h. The right holder of easement is called the 'dominant owner' and his/her land is called the 'dominant heritage'. The owner of the other land on which a liability of easement is to be imposed is called the 'servient owner' and his/her land is called a 'servient land'.

⁵⁰ Black's Law Dictionary (7th Edition) B. A. Garner.

2. What are the kinds of easement?

Four basic kinds of easements are:

- ✓ A dominant owner has a right to do an act on servient heritage. It is called a positive easement;
- ✓ A dominant owner has the right to prevent the servient owner from doing an act on the servient heritage. It is called a negative easement;
- ✓ A right without which it would not be possible for the dominant owner to beneficially enjoy dominant heritage. It is called an easement of necessity; and
- ✓ It is limited by time, subject to interruption, for a particular purpose or exercisable only at a particular time. It is called a limited easement.

3. Who can impose a right of easement?

- a. An owner of a property can impose an easement on his/her property.
- b. A lessee of a property can create easement on the leased property but liability imposed cannot last longer than the period of the lease.
- c. A mortgagor can also impose easement on mortgaged property, but such an imposition should not derogate from the rights of the mortgagee⁵¹.

4. Who can acquire a right of easement?

- a. An owner.
- b. A co-owner.

⁵¹ Sections 8 to 12 of Easement Act 1882.

- c. Any other person in possession of an immovable property may acquire an easement right for the beneficial enjoyment of such a property.

5. Modes of acquisition of easement

- a. A person may acquire a right of easement if he/she peacefully and without interruption enjoys this right for a period of 20 years.
- b. Easement may also be acquired under a local custom⁵².
- c. An easement can also be acquired by way of an agreement and in that case it is subject to the provisions of such an agreement.

6. Which law governs the rights of easement?

- a. The Easements Act, 1882 governs the right of easement in Pakistan.
- b. Local customs are also valid in establishing an easement.

7. Can I transfer my right of easement?

- a. The general principle is that where the right of easement is necessary for enjoyment of the transferred property, the right shall pass to the transferee automatically.
- b. The right of easement is not attached to me but it is attached to the property in respect of which it is claimed.
- c. The right of easement will transfer with the transfer of such property from me to the person who buys that property.
- d. I cannot transfer it to any other person independent of transfer of such property⁵³.

⁵² Section 15, 18 of Easement Act 1882.

⁵³ Sections 13 and 19 of Easement Act 1882.

'A' and 'B' own two pieces of land situated adjacent to each other. 'A' has a right of way over 'B's' property which is necessary for his/her access to the main road. 'A' sells his/her property to 'C', the right of way of 'B' transfers automatically with the property.

8. How is a right of easement to be enjoyed?

- a. The right of easement has to be exercised in a manner that is least burdensome for the other (servient) owner.
- b. It is to be confined to a determinate part of the property and shall not cover all the property.
- c. The holder of the right may alter the mode and place of enjoying his/her right of easement, but it should not be additionally burdensome for the other owner and should not be done unnecessarily⁵⁴.
- d. If a right holder reforms an act necessary for securing the enjoyment of his/her right of easement, he/she is obliged to make good any damage which may have been caused to the owner due to such acts⁵⁵.
- e. An easement of necessity shall always be limited to the extent of such necessity and the servient owner can obstruct excessive and unnecessary use of a right of easement⁵⁶.

⁵⁴ Section 24 of Easement Act, 1882.

⁵⁵ Sections 24 and 26 of Easement Act, 1882.

⁵⁶ Sections 28 and 31 of Easement Act, 1882.

- ✓ 'A' has a right of way over 'B's' property for accessing a well. 'B' has made a pavement on one side of his property so that 'A' can use it for taking his bullocks to the well. 'A' cannot take his bullocks through 'B's' garden for accessing the well;
- ✓ If 'A' widens an opening in the wall erected at 'B's' property for making it easier for his bullocks to cross it, he should make good the loss caused to 'A' by widening of the opening in the wall; and
- ✓ A new road is laid which connects 'A's' land with the place where the well is located. 'A's' right of way on 'B's' land comes to an end as it is no more necessary for 'A' to use 'B's' land for accessing the well.

9. How a right of easement becomes extinct

- a. My right of easement can be extinguished or be altered by operation of law or by my own or the servient owner's acts.
- b. The following are instances of extinguishment of the right of easement by operation of law:
 - i. Where easement is granted for a limited period, on the expiry of such expiration period.

'A' requests 'B' to allow him to pass through his lands for 'A's' convenience for a period of 6 months while his house is under construction. Parties enter into a contract to this effect. The right of easement would come to an end at the expiration of 6 months.

- c. Where easement is conditional on the performance or non-performance of an act, it stands extinguished when such an act is performed or not performed.

'A' has the right of way over 'B's' land in return for ploughing the field for 'B'. 'A' stops ploughing. 'B' can also prohibit the right of way.

- d. Where an easement is granted out of a necessity, it would come to an end as soon as the necessity comes to an end or as soon as it stops benefitting the beneficiary.
- e. With the destruction of the place or the source which gave rise to the creation of the right of easement.

'A' has the right to pass through 'B's' lands for accessing a well. The well gets dried. The right of easement comes to an end with the extinguishment of the reason for which it was claimed.

- f. An easement may be altered for giving the right of easement at another place⁵⁷.

'A' has the right of way over 'B's' land through the garden in front of his/her house. 'B' makes a pavement alongside the wall and requests 'A' to use that in exercise of his/her right of easement.

- g. The following are the instances of extinguishment of the right of easement by act of parties:
 - i. A right of easement comes to an end if its enjoyment is voluntarily abandoned or if it is not enjoyed for a continuous prescribed period of 20 years⁵⁸.

'A' has the right of way over 'B's' land. 'A' stops using 'B's' land for 20 years. His/her right of easement ceases to exist.

- ii. Where an easement right is granted under a contract, it would cease to exist if the contract is revoked as per the terms of such a contract or the period of easement expires as per the contract⁵⁹.

⁵⁷ Sections 44-46 of Easement Act, 1882

⁵⁸ Section 47 of Easement Act, 1882

⁵⁹ Section 39 of Easement Act, 1882

10. How to protect my easement right

- a. I should make sure that I do not stop using it for a period of 20 years.
- b. I should not unnecessarily put extra burden on the servient owner, on whose land I have the right of easement⁶⁰.
- c. I should not damage any part of the servient owner's property in exercise of my right.
- d. In case of easement by contract, I should ensure that the contract is reduced to writing.
- e. I shall ensure that I do not breach the terms of the contract that grants the easement right.
- f. I shall not disturb the whole property of the other person and shall confine to a determinate and required part of the property.
- g. If some damage is done to the other property for securing the enjoyment of my right of easement, I shall make good any damage, which may have been caused, to the owner due to my acts⁶¹.
- h. I shall restrict my easement of necessity to the extent of such necessity and shall not indulge in excessive and unnecessary use of a right of easement.

11. What can I do if easement is disturbed?

- a. If the servient owner obstructs my right of easement, I should immediately file a case in the court for the restoration of my right and for preventing the servient owner from obstructing my right.
- b. In case of obstruction, along with the suit, I should also file an application for the grant of a temporary injunction.

⁶⁰ Section 24 of Easement Act, 1882.

⁶¹ Sections 24 and 26 of Easement Act, 1882.

- c. If my right of easement is disturbed then, being a beneficiary, I can file a suit for compensation, provided that the disturbance has caused me substantial damage.
- d. I can prevent disturbance in my right to enjoy easement by obtaining an injunction order from the court⁶².

- ✓ If I benefit from a stream of water which reaches my fields after crossing a piece of land owned by 'B' and 'B' starts erecting a structure which obstructs the water course and prevents water from reaching my fields. I can file a suit in the civil court for obtaining injunction orders to prevent 'B' from erecting such a structure; and
- ✓ I can also file an application to award a temporary injunction to prevent 'B' from erecting the structure until a final decision in the case.

12. Remedy

- a. I may file a case in the local Civil Court, which is located in the area where I claim the right of easement.
- b. I can also approach the local revenue authorities in certain matters.
- c. I can also file an application before the local civil administration and police if there is a likelihood of any breach of peace.

⁶² Sections 32 to 35 of Easement Act, 1882.

13. Exercises

- a. Who can impose a right of easement?
- b. Who can acquire a right of easement?
- c. How can a right of easement be imposed?
- d. When is a right of easement transferred?
- e. Can I reclaim a right of easement which I have abandoned?
- f. What options do I have if my right of easement is obstructed?
- g. How and when can I enforce my right of way over the adjoining land?

CHAPTER 12

Leases

A 'Lease' is a contractual instrument used for giving away possession of properties or allowing their use in a particular way for a defined or limited period of time on agreed terms and conditions.

1. What is a lease?

- a. A lease is an act of granting possession or allowance to use land and tenement on a temporary basis for a certain time period against a payment of compensation, called rent, at a rate agreed upon between the lessor and the lessee.
- b. In Pakistan, leases in the rural and urban areas are treated differently under the following laws:

The Tenancies laws of each province - for leases in rural areas:

- ✓ The Rent-Restriction laws of each province and Islamabad Capital Territory-for leases in urban areas.

2. Leases in rural areas

- a. Matters of leases and tenancies in the rural areas of Pakistan primarily relate to agricultural land. These are informally regulated by local customs and formally by special tenancy laws.
- b. In rural areas, tenancies are managed by the provinces under the following laws:

Provincial Tenancy Laws:

- ✓ The Punjab Tenancy Act, 1887;
- ✓ The Sindh Tenancy Act, 1950;
- ✓ The Khyber-Pakhtunkhwa Tenancy Act, 1950; and
- ✓ The Baluchistan Tenancy Ordinance, 1978.

- c. Legislations in Sindh, Khyber Pakhtunkhwa and Baluchistan are almost replications of the Punjab Tenancy Act, 1887.
- d. There is a separate chapter on rural tenancies. Therefore, here we will limit ourselves to urban tenancies.

3. Leases in urban areas

- a. In the urban areas of Pakistan, leases are governed under the rent restriction laws promulgated by each province and by the Federal Government for the Islamabad Capital Territory.
- b. All these laws contain almost similar sets of rights and obligations for lessors and lessees.

Rent Laws applicable in urban areas are:

- ✓ The Punjab Rented Premises Act, 2009;
- ✓ The Sindh Rental Premises Ordinance, 1979;

- ✓ The West Pakistan Urban Rent Restriction Ordinance, 1959 (still applicable in Khyber Pakhtunkhwa); and
- ✓ The Baluchistan Urban Rent Restriction Ordinance, 1959.

4. How is a lease made in urban areas?

- a. A landlord and tenant should only make a lease by entering into a formal written tenancy agreement⁶³.
- b. After execution of the agreement, the landlord is duty bound to get it registered with the concerned rent registrar. In certain cases, for instance in Islamabad, it is the responsibility of both the landlord and the tenant to get their agreement registered.
- c. The landlord or the tenant can also register the tenancy agreement under the general law of the land, i.e. the Registration Act, 1908⁶⁴.
- d. In most areas, the registering authorities are from the revenue department; however, in Islamabad, it is the civil court.

5. What should be included in a tenancy agreement?

A tenancy agreement should contain⁶⁵:

- i. The particulars of the landlord and the tenant;
- ii. A description of the premises;
- iii. The period of tenancy;
- iv. The rate of rent, conditions for enhancement, due date and the mode of payment⁶⁶;

⁶³ Section 5, Punjab Rented Premises Act, 2009. There are similarities and dissimilarities between various rent laws but the general principles are the same. We are quoting the Punjab law here for reference. So all reference of sections are from the Punjab Rented Premises Act, 2009.

⁶⁴ Section 5.

⁶⁵ Section 6.

⁶⁶ If the rent is agreed to be fixed for only a part of the period of tenancy and no other agreement is made for the remaining part then the fixed rent is deemed to be applicable for the entire term of lease.

- v. The particulars of the bank account of the landlord if the payment is to be made through a bank;
- vi. The purpose for which the premise is let; and
- vii. Details of any amount paid in addition to the payable monthly rent i.e. advance rent, pagri (goodwill), security etc.

6. When and how is the rent to be paid?

- a. Rent is to be paid by the tenant on the date mentioned in the lease agreement.
- b. If no date of payment is mentioned in the agreement, then the rent for a month should be paid within the first 10 days of the following month⁶⁷.
- c. Rent is to be paid in such a manner as mentioned in the lease agreement.
- d. If no such stipulation is made in the agreement then the tenant should pay the rent through a money order or deposit it in the landlord's bank account⁶⁸.

7. What are the consequences of not complying with rent laws?

- a. If the tenancy is not made in accordance with the law, then any application, with respect to the leased property is not entertained by the adjudicating authority unless a fine is deposited in the government treasury.
- b. Such a fine is five per cent of the annual rental value of the premises, where the tenant is the applicant and ten per cent of the annual value where the landlord is the applicant⁶⁹.

⁶⁷ Section 7.

⁶⁸ Section 7.

⁶⁹ Section 9.

8. Who is the adjudicating authority in rent matters?

- a. Rent tribunals and rent controllers are the adjudicating authorities for dealing with rent matters.
- b. Normally powers of rent controllers are conferred on Civil Judges.
- c. For the purposes of registration, the government appoints rent registrars.

9. Other agreements and tenancy

Any other agreement (e.g. to sell or for any other matter) has no effect on the relationship of the landlord and tenant, unless the parties enter into a written agreement before the rent registrar for revocation of the tenancy agreement.

10. Can a tenant sub-let or transfer his/her rights in property?

A tenant cannot sublet property or transfer or assign any of his/her rights in a leased property without the landlord's written consent.

11. Obligations of a landlord

A landlord has the following obligations with respect to tenancy:

- ✓ He/she has to provide a certified copy of the agreement to the tenant;
- ✓ He/she has to make necessary repairs according to the agreement for keeping the leased premises habitable;
- ✓ He/she cannot cut off, suspend or withhold any amenity, utility or easement without a sufficient and just cause; and
- ✓ He/she cannot enter the premises without giving the tenant a reasonable notice.

- a. If a landlord fails to fulfil any of the above-mentioned obligations or any other obligations mentioned in the tenancy agreement, the tenant may file an application before the adjudicating authority. The adjudicating authority may pass orders to compel the landlord to fulfil his/her obligations.
- b. Where the landlord fails to make repairs or keep the premises habitable, the adjudicating authority may direct the tenant to make such repairs at his/her expense and settle the same later⁷⁰.

12. Duties of a tenant

A tenant has the following obligations with respect to tenancy⁷¹:

- ✓ Keep premises in the same condition in which it was let, except for normal wear and tear;
- ✓ Use premises only for such purpose for which it was let;
- ✓ Allow the landlord to enter the premises for inspection or repair;
- ✓ When the tenancy comes to an end, he/she should hand over the vacant possession of the premises to the landlord;
- ✓ Should not cause any nuisance to his/her neighbours; and
- ✓ Should not make any structural changes in the premises without prior written consent of the landlord.

- a. If the tenant fails to fulfil any of his/her obligations, the landlord may file an application for obtaining an order to direct the tenant to fulfil the obligation or evict the rented premises.

⁷⁰ Section 12.

⁷¹ Section 13.

13. On what grounds can a tenant be evicted?

A tenant may be evicted in the following cases⁷²:

- ✓ Upon expiration of the period of tenancy;
- ✓ If tenant fails to pay rent within 30 days after expiration of the time fixed for payment;
- ✓ If he/she commits a breach of the terms and conditions of the tenancy agreement;
- ✓ If he/she does not fulfil any of his/her duties/obligations mentioned above in serial no. 9;
- ✓ If he/she uses the rented premises for a purpose different from one for which it is let; and
- ✓ If he/she sub-lets the premises without the landlord's written consent.

14. What should I do if the landlord refuses to accept rent?

- a. If the landlord refuses to accept rent for the premises, I can file an application for the deposit of rent before the adjudicating authority (Rent Controller or Rent Tribunal).
- b. If the adjudicating authority allows deposit of rent, they would inform the landlord about it⁷³.

⁷² Section 15.

⁷³ Section 20.

15. What should I do if the landlord files a petition for eviction?

- a. I should first file an application for leave to contest the eviction petition.
- b. This application has to be filed within 10 days of my first appearance before the adjudicating authority⁷⁴.
- c. In other words, a tenant does not have an inherent right to defend the ejection petition; rather he/she needs to seek permission of the adjudication authority to defend the petition. In practice, all such applications are accepted.
- d. The leave to contest should state the grounds on which leave is sought and should be accompanied by his/her affidavit and affidavits of not more than 2 other persons as witnesses.
- e. If I fail to file the application for leave to contest or if it is refused, the adjudicating authority passes final orders.
- f. The adjudicating authority may order me to hand over the vacant premises to the landlord.
- g. If my application for leave to contest is accepted, it will be treated as my written reply to the landlord's petition for eviction.
- h. During the eviction proceedings, I will deposit the rent due against me within such time and in such a manner as directed by the adjudicating officer.
- i. In such cases, rent is usually ordered to be deposited in the court or in the bank account of the landlord⁷⁵.

⁷⁴ Section 22.

⁷⁵ Section 24.

- j. If the amount of rent is disputed then the adjudicating authority will fix a tentative rent and direct me to pay the same on a monthly basis.
- k. If I do not pay rent as directed by the authority, the authority may immediately pass final orders on the landlord's petition and may ask me to vacate the property. Therefore, it is very important to obey the orders of the authority if I want to save my tenancy.

16. Exercises

- a. Aleem enters into a lease agreement with Salman for taking his house on rent. The agreement does not mention the date on or before which Aleem should pay his rent. When should Aleem pay his rent for the premises?
- b. The agreement entered into by Aleem, as a tenant, and Salman, as a landlord, does not state the mode in which monthly rental should be paid. How should Aleem pay rent?
- c. As soon as Salman and Aleem execute a lease agreement, what should they do?
- d. Akram, the landlord, left the country for 3 years after giving his house on lease to Akbar and did not do necessary repairs of the house for the said period. Akbar thinks that certain repairs of the house are absolutely necessary. What should he do?
- e. Saleem, the landlord, wants to evict Aleem from the leased premises on the ground that Aleem has not paid the monthly rent and utility bills of the leased premises. What should Salman do?
- f. If Salman and Aleem fail to get their lease agreement registered what would its consequence be?

- g. Aleem uses the premises he has taken on lease for raising cattle, whereas according to the agreement he could only use it for residential purposes? What are the consequences of this and what remedies are available to the landlord?
- h. Salman and Aleem have a dispute as to the amount of rent of the rented premises. What should the parties do under these circumstances?

CHAPTER 13

Licenses

A 'License' is a contractual agreement used for giving away possession of a property or allowing its use in a particular way for a temporary and defined or limited period of time on agreed terms and conditions.

1. What is a license?

- a. A license is a revocable permission granted by one person (licensor) to another (licensee) to do an act which the latter would not be allowed to do otherwise e.g.
- b. 'A' allows 'B' to catch fish from a lake on his/her land for a period of 1 year. 'A' can take back/revoke this permission.
- c. A license is somewhat different from other proprietary interests such as a right of lease or sale.
- d. A license is somewhat similar to an easements and it is a contract.

- e. A license may be granted by a licensor in the circumstances and to the extent to which he/she possesses transferable interests in the property with respect to which the license is granted.

In Pakistan, the following laws deal with licenses:

- ✓ The Easements Act, 1882; and
- ✓ The Contract Act, 1887.

2. License under the Easement Act

License is defined in the Easements Act as under:

“Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license”.

3. How is a license granted?

- a. A license may be granted expressly or impliedly.
- b. It may be granted verbally or through a written document.

4. How should I treat the licensed property?

I should not use the license in a way that would make the licensed property 'dangerous'⁷⁶.

5. Can I transfer my rights under a license?

I cannot transfer my rights under a license unless it is already agreed upon in the license agreement or is expressly allowed by the licensor.

⁷⁶ Sections 53-57 of the Easement Act, 1882. All subsequent references to sections in this chapter are references to sections of this Act.

6. When and how may a license be revoked?

- a. Generally my license can be revoked by the licensor at any time, either expressly or impliedly.
- b. However, my license cannot be revoked if it involves a transfer of property or if I have executed a work of permanent nature by incurring expenses⁷⁷.

Revocation of a license is presumed in the following cases⁷⁸:

- ✓ The grantor ceases to have interest in the licensed property;
- ✓ The licensee releases it expressly or impliedly;
- ✓ The licence is granted for a limited period and that period expires;
- ✓ The licence is conditional upon doing or non-doing of an act and that act is done or not done;
- ✓ The licensed property is destroyed or altered, making it impossible for the licensee to benefit from the license;
- ✓ The licensee becomes the absolute owner of the licensed property;
- ✓ The license is granted for a particular purpose and that purpose stands fulfilled, becomes abandoned or impracticable;
- ✓ The license is obtained by the licensee by virtue of holding an office, character or employment and it ceases to exist; and
- ✓ The license is not used for a continuous period of 20 years and such non-use is not based on a contract between the parties.

⁷⁷ Sections 60-62.

⁷⁸ Section 62.

- c. After revoking the license, the licensor should give me reasonable time to leave the licensed property and remove my belongings from there.
- d. Where a license is granted for consideration/fee and the licensor revokes the license and evicts me before I have fully enjoyed the right obtained under the license, I may claim compensation from the licensor⁷⁹.

7. What is the difference between a lease and a license?

- a. A lease has more safeties while licenses are on a weaker footing.
- b. A lease can be terminated after reasonable notice while a license in most cases can be revoked after a short notice or without notice.
- c. A license is normally purely temporary while a lease has more period involved.
- d. A lease involves the creation of an interest in immovable property or a right to possess it. On the other hand if the parties do not intend to create an interest in the property, it is a license.
- e. It depends on the intention of the parties whether they are creating a lease or a license.
- f. If the document creates an interest in the property, it is a lease, but if it only permits a person to make use of the property of which legal possession continues with the owner, it is a license.

⁷⁹ Sections 63 and 64.

- g. Thus, apart from the intention of the parties in a transaction, the existence of exclusive possession of the right holder/grantee is a determining factor for ascertaining whether a transaction is a license or a lease⁸⁰.

8. Remedies

- a. If an official authority grants a license, then there may be remedies available within the hierarchy of that authority. For example, an Assistant Director passes a revocation order and the appeal may lie against his/her order before the Director of that authority. In such cases, it is important to avail that remedy/forum.
- b. A civil suit may also lie before a Civil Court under the relevant laws.
- c. A writ petition may be filed in a High Court if the authority acts against a law or principles of natural justice.

9. Exercises

- a. Nadeem gives a license to Shabir allowing him to hunt birds in the woods owned by Nadeem. Shabir after obtaining the license wants to install huge nets in the trees, which can damage the trees. Can Shabir do this?
- b. Shabir transfers his license to Ahmed for consideration and tells him to hunt birds in the woods owned by Nadeem without bringing it to Nadeem's knowledge. Can he do this?
- c. Noticing Nadeem's intention to install huge nets in the woods, within 1 week of grant of license, Shabir regrets his decision. What can he immediately do?

⁸⁰ AIR 1959 Supreme Court of India, page 1262, cited in Mulla The Transfer of Property Act, Ninth Edition, Ed. Solil Paul, pp. 1040-1041, Butterworth India, New Delhi.

- d. Shabir terminates Nadeem's license and tells him to immediately leave the premises within one hour. What should Nadeem do about the nets he has installed in the trees?
- e. Shabir terminates Nadeem's license and gives the license to another person, Asim, for one year for growing certain plants on the land and harvesting fruit. After 7 months Shabir terminates the license prematurely and tells Asim to leave the premises without harvesting the fruit from the plants grown on that land. What should Asim do?

CHAPTER 14

Land Reforms

1. Introduction

- a. Policy makers use 'Land Reforms' as an instrument to improve the system of land distribution and restoration of land to the rightful owners or possessors with the overall objective of making the use of land more equitable and to pave the way for better land development.
- b. The first land reforms committee was formed under the instructions of Quaid-e-Azam, Muhammad Ali Jinnah. Since then, various efforts have been made for land reforms from time to time.
- c. Major land reforms have been introduced in 1959, 1972 and 1977.
- d. Land surrendered to the government under these reforms or resumed by the Government from private owners of lands was to be used for re-distribution to the existing tenants.
- e. Regulations introduced under these land reforms progressively imposed restrictions on the maximum limit of land ownership and

also introduced an equitable system for distribution of resumed land by giving it to the occupant tenants or the ones who do not own any land at all.

2. Land Reforms, 1959

- a. The first 'Land Reforms' were introduced through Martial Law Regulation No. 64, enforced on February 7th, 1959.
- b. The ceiling on private ownership of land of an individual was limited to 500 acres for irrigated land and 1,000 acres for un-irrigated land.
- c. A landowner was, however, allowed to keep land in excess of the above-mentioned ceiling if the Produce Index Unit (PIU) of his/her entire holding was 36,000 due to variation in quality of lands in terms of productivity⁸¹.
- d. Orchards and studs were exempted for purposes of calculating the ceiling.
- e. The limit of land for 'economic holding' and 'subsistence holding' was 50 acres and 12.5 acres respectively.
- f. Landowners who surrendered their land were given some monetary compensation by the government⁸².
- g. Occupancy tenants (tenants that were there since ages) were given permanent proprietary rights of the land they occupied.
- h. The total land resumed by the Government under the 1959 Reforms was 2.5 million acres. It constituted almost 4.5 percent of the total cultivable land in the country.
- i. Out of this total, 2.3 million acres were distributed amongst 183,271 tenants and small landowners.

⁸¹ PIU represents the gross value of output of land on a per acre basis.

⁸² Hussain, A, (1982) 'Pakistan: Land Reforms Reconsidered' citing M, H, Khan (1981).

- j. Subsequent to these reforms, less than 8.5 percent of the landowners controlled more than 42 percent of the agricultural land as against 1 percent in 1947⁸³.

3. Land Reforms of 1972

The Second Land Reforms were introduced through Martial Law Regulation No. 115 of 1972, though the civilian government of that time issued it.

Salient features of the land reforms of 1972:

- ✓ The ceiling for individual landholdings was lowered to 150 acres and 300 acres for irrigated and un-irrigated lands respectively;
- ✓ The value of PIU for the ceiling was reduced from 36,000 to 12,000;
- ✓ An additional 2,000 PIU were allowed for owners of tractors and tube wells;
- ✓ No compensation was made to land owners for surrendering land;
- ✓ Exemptions made for orchards and stud farms etc. were abolished;
- ✓ The actual ceiling in Punjab was 466 acres and in Sindh was 560 acres due to some exceptions made to the ceiling of landholdings⁸⁴; and
- ✓ The area of land resumed by the government was only 0.6 million acres⁸⁵.

⁸³ Khan, S, S, (2010) 'Land Reforms – History, Legal Challenges and how Shariat Courts abolished them', available at <<http://secularpakistan.wordpress.com/2010/09/23/land-reforms-history-legal-challenges-and-how-shariat-courts-abolished-them/>>, viewed on 20th November, 2011

⁸⁴ Hussain, A, (1982) 'Pakistan: Land Reforms Reconsidered' citing M, H, Khan (1981).

⁸⁵ Hussain, A, (1982) 'Pakistan: Land Reforms Reconsidered' citing M, H, Khan (1981).

4. The land reforms of 1977

- a. The third land reforms were introduced through the Land Reforms Act (II of 1977).
- b. The ceiling was further lowered down to 100 acres for irrigated land and 200 acres for un-irrigated land.
- c. While calculating ownership, share in Shamilat (common village land) was also included.
- d. Individual landholding was subjected to a ceiling of 8,000 PIU of land.
- e. Two amendments were made in the 1977 Act in 1979.
 - i. The first amendment provided that a person who has surrendered land would have first right to get the land on lease; and
 - ii. The second amendment allowed the government to exempt educational institutions and cooperative farming societies from land reform.

5. The Qazalbash Waqf Case

- a. The Qazalbash Waqf was a charitable trust, which lost some lands due to the land reforms. It challenged the Land Reforms laws before the Federal Shariat Court⁸⁶ but the court declined to declare any provisions of the land reform laws against the injunctions of Islam.
- b. The Federal Shariat Court's judgement was appealed against before the Shariat Appellate Bench of the Supreme Court of Pakistan⁸⁷.

⁸⁶ Federal Shariat Court is a constitutional court established under Article 203 of the Constitution of Pakistan and it has the extraordinary power to declare any law against the Quran and Sunnah.

⁸⁷ PLD 1990 Supreme Court 1989.

- c. The Shariat Appellate Bench of the Supreme Court in a majority judgement declared various provisions of Land Reforms as un-Islamic.
- d. However, in later cases, the Supreme Court of Pakistan has clarified that if a 'decisive' step has been taken in the application of land reforms laws on a particular land, then that property shall be subject to land reforms, but if still no decisive action has been taken with reference to a particular land, then that land is not subject to the land reforms in light of the Qazalbash Waqf Case.
- e. As most of the lands have already been resumed by the state, in light of the above judgements, those resumed lands are available for allotment to deserving persons.

6. Who is entitled to resumed land?

The following persons are entitled to get land allotted under these reforms:

- a. A tenant whose name appears in the Revenue Records with respect to resumed land as a tenant in possession and as a cultivator in the preceding year. Such tenants were entitled to grant of such lands, which were shown in the revenue records to be in cultivating possession during Kharif 1971 and Rabi 1971-72. However:
 - i. Land granted to a tenant in cultivating possession, together with the land he/she already owns, should be equal to the 'subsistence holding' in the area; and
 - ii. A tenant in cultivating possession should not be a legal heir of the person from whom the land is resumed.
- b. The tenants of the area who owned less than a 'subsistence holding'.
- c. The other persons of the area who owned less than a 'subsistence holding'.
- d. The Government can put any terms and conditions on such a grant of resumed land.

- e. 'Subsistence holding' means an area of 32 acres for Baluchistan, 16 acres for Sindh, half a square or half a rectangle or 12.5 acres (whichever is more) for Punjab and Khyber Pakhtunkhwa.

To
Deputy Commissioner
District Bahawalpur

22 February 2011

Sub: Application for grant of land

Dear Sir

1. The applicant, Allah Vasaya son of Hassu, caste Gujar, has been cultivating a small piece of land measuring 20 kanals situated at khasra numbers 1234 to 1236 in Dera Nawab Saheb.
2. The applicant at present only owns a small piece of land measuring 1 kanal.
3. The government under the Land Reforms Regulations of 1972 has acquired the above-mentioned piece of land.
4. Applicant's name is entered in the Revenue Records as a tenant and occupant.
5. It is humbly requested that the applicant may please be granted the above-mentioned resumed land.

Yours truly,

Signature

.....
(Allah Vasaya)
s/o Hassu
Dera Nawab Saheb
District Bahawalpur

Deputy Commissioner
Karak

30 May 2009

Sub: Application for grant of land

Dear Sir

1. It is requested that the applicant, Saleem ud Din son of Taj Din, resident of Mian Khael may please be granted 1 acre of land situated at Khasra No. 3482, in Muaza Karri, District Sheikhupura.
2. The applicant cultivated the said land until 1972 as a tenant of Khan Mujibuddin. This is also evident from the relevant Revenue Record a copy whereof is attached with this application.
3. The government under the Land Reforms Regulations of 1972 has acquired the above-mentioned piece of land.
4. At present the applicant owns no land at all.
5. It is humbly requested that the applicant may please be granted the above-mentioned land as he had been cultivating the said land until last year.

Yours truly,

Signature

.....
Saleem ud Din
s/o Taj Din
Karak

Deputy Commissioner
Sahiwal

15 December 2011

Sub: Application for grant of land

Dear Sir

1. The applicant, Rehmat Masih son of John Anil, is a resident of Chak No. 110, Tehsil and District Sahiwal.
2. The applicant is a poor farmer and cultivates land as a year-to-year tenant.
3. Under the Land Reforms Regulations of 1972, the government has acquired various parcels of land in Sahiwal District from big landholders.
4. It is requested that the applicant being a land less person may please be granted land measuring at 13 acre in Chak No. 110 which would be enough for subsistence of the applicant and his family of 6 members.

Yours truly,

Signature

.....
Rehmat Masih
s/o Anil John
Chak No. 110
Sahiwal

CHAPTER 15

Acquisition of Land by State

1. Introduction

- a. Sometimes the state needs some land for a public purpose but no state land is available. In such an eventuality, the state has to acquire private land for a private purpose. Under article 24 of the Constitution of Pakistan, the state can compulsorily acquire and take possession of private properties temporarily or permanently.
- b. This power is an exception to the citizens' right to hold and dispose of property in any part of Pakistan under article 23 of the constitution.
- c. The acquisition by the state has to be for a public purpose and should involve compensation for acquisition which is to be determined as per the law.

2. Property can be acquired for a public purpose

Property can be acquired:

- ✓ For preventing danger to life, property or public health;
- ✓ For providing education and medical aid to all or any specified class of citizens;
- ✓ For providing housing and public facilities and services such as roads, water supplies, sewerage, gas and electric power to all or any specified class of citizens;
- ✓ For providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves;
- ✓ If any property which has been acquired by, or comes into the possession of, any person by any unfair means, or in any manner, contrary to law; and
- ✓ Enemy property or evacuee property under any law.

- a. As per the Land Acquisition Act, 1894, 'public purpose' implies the use of land for the general interest of and advantageous to the public at large and that confers some public benefits.
- b. Acquisition for 'public purpose' means that any such act that benefits the public at large and not merely a few individuals.

3. Applicable laws

The following laws are applicable to the acquisition of land by the state:

- a. The Land Acquisition Act, 1894: This law is general in nature and is applicable throughout Pakistan; and
- b. The Capital Development Authority Ordinance, 1960: Acquisition under law is only for lands falling under the Capital Development Authority Islamabad.

4. How is land acquisition done?

- a. Acquisition of land may be voluntary or compulsory.
- b. The process of acquisition is carried out by the designated Revenue Authorities.
- c. As the first step, the 'acquiring agency' (who wants to acquire land) i.e. a government department, whether federal, provincial or local, or a public company, has to decide to acquire a particular piece of land and make funds available for such an acquisition.
- d. The acquiring agency communicates its intention to the District Collector/Deputy Commissioner⁸⁸ of the area where the desired land is to be acquired is situated and deposits an approximate amount of compensation in the government treasury.
- e. This is a mere tentative amount and the collector has the authority to increase or decrease the amount of compensation in his/her final orders for acquisition.
- f. The collector, if he/she agrees that the objective for which the land is being acquired is a 'public purpose', he/she would issue a notification to that effect and order its publication in the official Gazette. In addition to it, a public notice of issuance of the notification would also be given.
- g. After this notification, the authorized officer of the Revenue Department may undertake the following with respect to the land:
 - i. Enter upon and survey the land;
 - ii. Dig or bore into the subsoil;
 - iii. Do all other acts necessary to adapt the land for the proposed 'public purpose';
 - iv. Set out boundaries of the land;

⁸⁸ In certain areas, some functions of land acquisition are carried out by the Commissioner or the Provincial government.

- v. Mark levels, boundaries and lines; and
- vi. Cut down and clear any part of any standing crop, fence or jungle if required⁸⁹.
- h. The authorized officer, who carries out any of the above functions, has to pay the affected person for all necessary damage.
- i. If any dispute arises with respect to the adequacy of payment for damage, the aggrieved person can apply to the chief revenue officer of the district, which is usually the collector.
- j. Then the collector undertakes the detailed demarcation to ensure that the land to be acquired is not already under any other public use i.e. being used as a graveyard, an educational facility, for a watercourse or if it is already notified by the collector for some other official requirement.
- k. After the above-mentioned demarcation, a Public Notice is caused, to be issued by the collector, which declares the government's intention to take possession of the land proposed to be acquired.
- l. Such a public notice also invites the filing of compensation claims and objections by all stakeholders before the collector.
- m. Another notification has to be published in the Gazette by the Divisional Commissioner if it is necessary to take immediate possession of the land.
- n. Such a notification provides for an extra 15 % payment to the owner or owners of the land.

5. How are objections to acquisitions decided?

- a. The collector looks into the objections filed by the affected persons with respect to the measurements and value of the land.

⁸⁹ Section 4 of the Land Acquisition Act, 1894. All subsequent references to sections are the sections of this Act.

- b. He/she then announces his/her 'Award' mentioning the following:
 - i. Actual area of the land;
 - ii. Compensation details for the land; and
 - iv. Apportionment of compensation among all relevant persons.
- c. This 'Award' of the Collector is final and conclusive⁹⁰.

⁹⁰ Section 11.

Collector Land
District Bahawalpur

1 January 2009

Sub: Objections to Proposed Land Acquisition

Dear Sir

1. I, Malik Yar Mohammad son of Malik Allah Yar, caste Arain, am a resident and owner of 30 acres situated at khasra numbers 1234 to 1278 in Dera Bakha.
2. As per your notification dated 24 December 2008, a part of my land measuring 10 acres situated at khasra numbers 1254 to 1275 is proposed to be acquired by the Punjab Education Department for building a school.
3. It is humbly submitted that the land in question houses my family's 400 years old ancestral graveyard and building of my 100 years old ancestral house. Both of these have extraordinary value for myself and also for the people of Dera Bakha.
4. The existence of graveyard and my family home can be confirmed by your honourable self by appointing a local commission.
5. It is requested that the proposed acquisition may kindly be abandoned and notification dated 25 December 2008 may kindly be withdrawn.

Yours truly,
Signature

.....
(Malik Yar Mohammad)
s/o Malik Allah Yar
Dera Bakha

Collector Land
District Sahiwal

30 March 2011

**Sub: Objections to amount of compensation
Acquisition of Land**

Dear Sir

1. The applicant, Saleem John son of Anees John is the owner of a piece of land which measures 40 kanals and is located at Khasra numbers 5892 to 5900 in Chak 32, Sahiwal District.
2. As per notification dated 25.03.2011 issued by your honourable self, the said piece of land is part of the land proposed to be acquired by the Punjab Health Department.
3. As per the orders passed by you in this matter the value of land has been indicated at rate of Rs. 100,000 per kanal, whereas the current market value (as on the date of notification) is Rs. 200,000 per kanal.
4. With the current value, the applicant will suffer a loss of Rs. 4 million (approx.)
5. This fact can be verified from an independent source and revenue record of registration of sales.
6. Therefore, it is requested that the land in question be correctly evaluated for the purposes of compensation.

Applicant,

Signature

.....
(Saleem John)
Sahiwal

6. Remedy if grievances are not addressed

- a. I can write an application to the collector and require him/her to refer the matter for determination of validity of his/her objection by a Civil Court.
- b. My objection may relate to:
 - i. Measurement of land;
 - ii. Amount of compensation;
 - iii. My entitlement as a beneficiary of compensation; and
 - iv. Apportionment of compensation.
- c. My application should contain grounds of objection on the award.
- d. On my application, the collector has to forward a reference to the Civil Court with the following details:
 - i. Situation and extent of the land;
 - ii. Particulars of any trees, building or standing crops thereon;
 - iii. Names of the persons who have an interest in such land;
 - iv. Amount awarded and paid for damage; and
 - v. Basis for determination of compensation by the collector⁹¹.

⁹¹ Sections 18, 19.

Collector Lands
Dera Murad Jamali

20-04-2010

**Sub: Request for Sending Reference to Civil Court
in matter Award No..009 dated 03-04-2010**

Dear Sir

1. I, Saleem Jan Jamali son of Mir Hazar Khan Jamali am the owner of land measuring 90 acres. Khasra numbers of the said land are from 1210 to 1305.
2. The said piece of land is proposed to be acquired by a public limited company for oil mining.
3. In this matter you have announced your Award on 03-04-2010.
4. I am surprised to see your findings in the Award and have serious objections to the amount of compensation determined under it by you.
5. Please note that in the Award dated 03-04-2010 you have not considered the following factors:
 - (i) The measurement of total land under being acquired has been mentioned as 85 acres and a parcel of 5 acres has been left out, whereas some boring works have already been carried out on the said parcel under your authorization.
 - (ii) Per acre price of land has been fixed arbitrarily. Almost 30 acres of land has been underpriced by half on the pretext that it includes a hilly area. This is absolutely untrue. The said 30 acres is at the nearby foothills and has been regularly under irrigation for the last 30 years. Average price of the said land can be verified from the relevant land records.
 - (iii) The tube well (deep bore) are installed on the land has not been considered for the purposes of compensation.
 - (iv) At least 6 houses belonging to peasants, which had been in use as dwelling places for last 40 years, have been demolished, but not counted for calculation of compensation.
 - (v) The crops which would have been ready by mid of May this year were destroyed during works carried out in January 2010 but have not been considered for the purposes of calculation of compensation.
6. The applicant has documentary proof in support of all the above stated facts and the same were provided to you at the time of filing of objections.

In view of the above, you are requested to refer the matter to the Civil Court for final decision so that the applicant can plead his case before the court.

Applicant,

Signature

.....
Saleem Jan Jamali
son of Mir Hazar Khan Jamali
Dera Murad Jamali

- e. If the land is being acquired for a purpose that is not public, then a constitutional writ petition may also lie before the High Court.

7. How shall I assess my compensation?

- a. I shall look into the following factors to determine whether the compensation for my land is adequate or if I have to file an application for a reference to be sent to the Civil Court⁹²:
 - i. The market value of my land at the time of issuance of the first notification for land acquisition;
 - ii. The payment of the additional amount equal to 15% of the market value of land in cases of compulsory acquisition when I do not give my consent in the initial negotiations with the collector;
 - iii. Any damage to my trees or standing crops on my land being acquired;
 - iv. Any damage caused to my other moveable or immovable property or my earnings;
 - v. If I have to change my place of residence or business due to the proposed acquisition and whether I have to incur some costs due to such a change; and
 - vi. Any damage sustained in the form of diminishing of my profits after publication of notification and before possession is taken.
- b. I cannot consider the following things for my compensation for land acquisition⁹³:
 - i. Degree of urgency in acquiring land;
 - ii. My disinclination to part with the land;
 - iii. Any damage sustained by me due to an act of another person;

⁹² Section 23 of the Land Acquisition Act.

⁹³ Section 24 of the Land Acquisition Act.

- iv. Any damage likely to be caused to my land after the publication of the declaration of acquisition or due to use to which the land will be put;
- v. Any likely increase in the value of my land due to use, to which it will be put after the acquisition;
- vi. Any likely increase in the value of another piece of land owned by a person who is also the owner of the land being acquired; and
- vii. Commencement of any outlay or improvements on my land after the first notification for acquisition by the collector.

8. Remedies

- a. As an affected person, if I have any claims and objections with respect to the acquisition, measurement, compensation etc. I should file my objections when the collector invites these objections.
- b. If the collector is violating any of my legal rights or if the collector is violating acquisition laws, then I can file a writ petition in a High Court.
- c. If I am not satisfied with the 'Award' made by the collector, I should make an application to the same collector requesting him/her to make a reference to the Civil Court.

9. Exercises

- a. Who can acquire land under the Land Acquisition Act?
- b. Is a private person or a private company or partnership entitled to compulsory acquisition of land?
- c. On what grounds may my land be acquired and by whom?

- d. My land is being acquired by WAPDA and I do not want to sell it. When and how and on what grounds, can I stop the process of acquisition?
- e. My land is in the process of acquisition and its value has increased after notification by the collector in the official Gazette to acquire land for the airport. Can I claim payment of more compensation on the basis of increase in value due to the proposed airport?
- f. I have been notified to immediately leave my dwelling place because of acquisition of my land. What options do I have for being compensated for immediately vacating the premises?

CHAPTER 16

Property Rights of Women

1. Introduction

- a. Women are entitled to the fundamental right to own, hold and transfer property under the laws of Pakistan.

Constitution of Pakistan (1973):

- ✓ Guarantees that every citizen has the right to acquire, hold and dispose off property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. (Article 23)
- ✓ Ensures equality of citizens in terms of property rights, both male and female, but the State can take affirmative action for women. (Article 25)
- ✓ Directs that the State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental

principle, from each according to his/her ability, to each according to his/her work. (Article 3)

- ✓ Mandates that steps shall be taken to ensure full participation of women in all spheres of national life. (Article 34)
- ✓ Directs that the state shall protect the marriage, the family, the mother and the child. (Article 35)
- ✓ Mandates that the State shall secure the - well-being of the people-irrespective of sex, caste, creed - or race, by - raising their standard of living, by preventing concentration of wealth and means of production and distribution in hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants. (Article 38)

- b. Similarly, under the Muslim Personal Law that is applicable in Pakistan, the women are entitled to acquire property through Purchase, Inheritance, Gift, Will etc. Additionally, there are certain sources of acquisition of property, which are particular to women only i.e. dower, dowry and bridal gifts etc.

2. Mehr-Dower

Under Muslim Personal Law, marriage is a social contract and for the completion and validity of this contract, husband has to pay a gift to his proposed wife as a condition of this contract. This gift is called 'Dower' or 'Mehr'.

- a. 'Mehr' is the exclusive property of a wife and she has the absolute right to use the dower exclusively for her use and benefit without any obligation for sharing it with anybody including her husband.
- b. A 'Dower' or 'Mehr' is in addition to the regular maintenance, which a husband has to provide to his wife and anything paid as

maintenance to the wife, cannot be counted towards the payment of dower.

- c. Anything of material value, over which the right of property can be exercised or which can be given in possession, can be given in dower. It can be moveable and immovable property, including profits from a property.
- d. A husband and wife can freely negotiate the terms and conditions about the amount and timings of payment of Mehr as per their convenience.
- e. There are two kinds of 'Dower' i.e. 'Prompt Dower' and 'Deferred Dower'. Prompt Dower becomes payable immediately at the time of marriage/consummation of marriage. Deferred dower becomes payable at the time fixed by the parties, or on demand.
- f. Husband and wife may fix some of the dower as prompt and some as deferred. Where the Nikah Nama (marriage contract) does not contain any details as to the mode of payment of the dower, the entire dower amount is presumed to be payable on demand⁹⁴.
- g. Islam does not fix the amount of Mehr. The amount of Mehr shall be according to the economic and social status of the parties, customs of the area or as the parties may decide among themselves. There is no maximum limit and it can be as high as the parties agree. The amount of the dower can be increased even after marriage by the consent of both parties i.e. the husband and wife.
- h. The wife has a right to relinquish a part or entire dower owed to her by her husband but the husband cannot ask for return of Mehr even on divorce (Talaq)⁹⁵.

⁹⁴ Section 10 of the Muslim Family Law Ordinance, 1961.

⁹⁵ Sura 4, al-Nisa, verse 20-21.

3. 'Dowry' or 'Jahiz'

Dowry means the property, whether moveable or immovable, which is given to a woman by her own family at the time of marriage.

- a. A woman does not have any enforceable legal right to get dowry from her family. It is only given as a matter of social tradition just to facilitate the new couple in settling down in a new house. The family of the bridegroom sometimes also gives some dowry items to the new family.
- b. Though a woman cannot claim to be given, by her family or the family of the bridegroom, any property as dowry but once the dowry is given to her, it becomes her personal property and she is the legal owner of it. No one can snatch it from her and if snatched, she has a legal right to recover it through courts.

4. Bridal Gifts

Bridal gifts are gifts given by a bridegroom, or his family, to his wife at the time or during the continuance of the marriage.

- a. Bridal gifts to a woman are her exclusive property. Neither the husband nor his family or the wife's family can claim these gifts. They are irreversible like other gifts.
- b. A wife is not bound to return these gifts to the husband or his family in case of a divorce (Talaq) or the dissolution of marriage. For protecting her right in any property given as a bridal gift, a woman can file a civil suit.
- c. There are some restrictions, however, under law on the amount of bridal gifts.

5. Rights of Inheritance

Inheritance means the automatic devolution of property on legal heirs at the time of the death of an owner of a property. Women have the right to inherit property in all kinds of relationships i.e. as a mother, wife, sister and daughter.

- a. The respective shares of women as per their relationships with the deceased are as follows: a wife gets one eighth of the estate and a daughter gets half of what a son gets.
- b. In the past, women were forced to relinquish their shares in inheritance in favour of male heirs. This relinquishment of share by a female in favour of a male heir of the deceased has been declared by the superior courts as illegal due to being against public policy⁹⁶.
- c. Such relinquishment of any right is not valid on any pretext, for instance, expenditure done by the male heirs on female heirs, maintaining the female heirs and protecting them etc⁹⁷.
- d. Under the new law, a grand-daughter whose father has died earlier, can get a share in inheritance on the death of her grandfather.
- e. The following laws govern the rights of inheritance of women:
 - i. Personal Laws of the concerned family;
 - ii. Muslim Family Laws Ordinance, 1961;
 - iii. Family Courts Act, 1964; and
 - iv. Case Law decided by the superior courts.

⁹⁶ Pakistan Law Decision, 1990; Supreme Court Page 1 .

⁹⁷ Ibid.

6. Will

- a. A woman can give specific instructions, by executing a 'Will' in her lifetime, about the treatment of her properties differently from the applicable personal law of inheritance. She may also acquire properties when nominated as a beneficiary in a Will.
- b. A woman under Sunni Fiqah or Jurisprudence can dispose off maximum $\frac{1}{3}^{\text{rd}}$ of her estate through a Will without the consent of other heirs. The rest of the property has to be compulsorily divided among the legal heirs of a deceased. If the Will is in favour of one of the legal heirs, then consent of other legal heirs is essential. If the Will is about more than $\frac{1}{3}^{\text{rd}}$ of the estate then the consent of other legal heirs is needed.
- c. A Shia woman can dispose off $\frac{1}{3}^{\text{rd}}$ of her estate through Will without the consent of other heirs and can also give away $\frac{1}{3}^{\text{rd}}$ to any legal heir without the consent of the other heirs. If the Will is about more than $\frac{1}{3}^{\text{rd}}$ of the estate then the consent of other legal heirs is needed.
- d. A Muslim woman can also be appointed as an executor of a Will made by any person.

7. Gift-Hiba

- a. A woman may give away a certain portion of her property through 'Hiba' and during her life she can dispose off all of her property by Hiba without the consent of her would-be heirs.
- b. She can also give specific instructions, by executing a Gift Deed, about the treatment of her properties differently from the applicable personal law of inheritance.
- c. Women can also acquire properties when nominated as the beneficiaries of a gift.

8. Tenancy Rights of Women

Women can acquire tenancy rights as lessees and can give away the tenancy rights as landowners. However, it is customary in Pakistan to give tenancy rights to male tenants only. If a woman is working as a tenant, her name shall be entered as a tenant in the Records of Rights to better protect her tenancy rights.

9. Lease of State Land

The state land is sometimes given on lease by the State to citizens under various schemes to cultivate it, develop it or raise herds. The law is neutral and it does not prohibit giving away any state land to women on lease in such schemes but it is not usually done. However, there are some schemes in Pakistan wherein land is given to women only.

10. Record of Rights

- a. Women owners of land are generally mentioned in the 'Record of Rights' maintained by the Revenue Officers, but they are sometimes excluded from certain particular documents like the Register Haqdaran-e-Zamin or 'Pedigree Table' (Shajra Nasab). This practice greatly affects their property rights.
- b. Women are sometimes deprived of receiving landed property as legal heirs of a deceased, because their names are not mentioned in certain documents relating to the Records of Land. These practices are completely illegal and women should be mentioned in all documents of the records-of-rights including the Register Haqdaran-e-zamin (Jamabandi), 'Pedigree table' (Shajra nasab), Khasra Girdawari etc.

11. Grant under Land Reforms

- a. Women are entitled to get land under various land reform schemes (1972 and 1977) and there is absolutely no prohibition under the law on grant of land, resumed by the state under the Land Reforms, to the women.
- b. Women shall apply for the grant of such land if they do not own any land or own small piece of land or they are tenants of the said land or otherwise they are entitled to grant of such resumed land under relevant laws and policies issued by the relevant governments regarding land reforms.

CHAPTER 17

Glossary

1. **Abadi:** Inhabited Site of Village.
2. **Abi:** Watered by lift from tanks, pool or streams.
3. **Assigned:** Which could normally be resumed by the ruler.
4. **Banjar Kham:** Land, which has remained unsown for 4 to 11 successive harvests.
5. **Batai Rent:** Taken by division of produce.
6. **Banjar Jadeed:** Cultivable land which has not been cultivated for four consecutive crops.
7. **Banjar Qadeem:** Land which has not been cultivated for eight consecutive crops.
8. **Barani:** Rain fed.
9. **Berun Line:** Outside of the demarcated forest. Line is fixed by erecting pillars of stone and masonry.
10. **Chahi:** Irrigated by a well.

11. **Charsala:** The revised edition of the record of rights of a village/estate, prepared once in every 4 years to update Jamabandi, Shajra Kishtwar and Shajra Nasab.
12. **Deh:** Village or estate.
13. **Demarcated forests:** Forest land or waste land under the control of the Forest Department of which boundaries have already been demarcated by means of pillars of stone or masonry.
14. **Farad:** A copy of land record.
15. **Farm Land:** Is almost entirely private-owned land, except in the case of 'Najaiz Nautor' or illegally encroached and cultivated state land.
16. **Ghahcharaee:** The grazing of cattle, sheep and other livestock.
17. **Ghair Mumkin:** Is uncultivated land such as bed of a nullah, road graveyard etc.
18. **Girdawar:** Revenue official who supervises the work of three or more Patwaris in his halqa (Circle).
19. **Girdawari:** Means periodical crop inspection, carried out usually twice a year by the patwari to verify the nature of crop, ownership, if people actual have possession of land etc.
20. **Granted:** That which could normally not be resumed, just as a gift under Muslim Law cannot be revoked after delivery of possession.
21. **Grazing Land:** According to almost all Wajib-ul-Arz the village community has time-honored right to graze its cattle and flocks in state-owned forests, unless any part is closed for regeneration purposes. In every village there is a common land or community land or Shamilat which is set apart for purpose of pasturage, graveyard, drinking of water by men or cattle. This land is called grazing land.
22. **Hail:** Is the best kind, by virtue of its proximity to the 'abadi' (residential houses).
23. **Jama Bandi:** Record of Rights.
24. **Jangal:** Uncultivated land covered with trees.

25. **Jinswar:** Return of Crops.
26. **Jareeb Kash:** Hired laborer or private person provided by those land-owners who handles the Jareeb during measurement of land in settlement operations.
27. **Jareeb:** An iron chain used to measure the land during settlement of land.
28. **Kaap:** Grassland used, because of its steep slope or rugged nature.
29. **Karam:** A unit of linear measurement, equal to 5 feet and 6 inches.
30. **Khali:** Not under crop.
31. **Khasra Girdawari:** Crop inspection register.
32. **Khata/Khatuni:** The term holding is known as Khewat and tenant's holding as khatuni. The term is also known as Khata.
33. **Khasara No:** A portion of land of which area is separately entered under indicative number in the record of rights.
34. **Khasra:** List of village fields in a village.
35. **Khalsa Land:** Un-encumbered land "pure" or "free" undisputedly used in reference to crown or state owned land.
36. **Kharaba:** Is apportion of cultivated land where crops have been damaged or destroyed by hailstorm, floods, drought or any other natural disaster.
37. **Kharif:** Autumn crop, (Fasal-e-Kharif) this season exists from July to September to February.
38. **Khud Kasht:** Land under the cultivation of the owner himself.
39. **Lambardar:** Village headman who was responsible for collection of land revenue and general assistance to the revenue administration. This has now been abolished in some parts of Pakistan.
40. **Latha:** Tracing cloth on which a map of the fields in a village is traced in black ink and number of fields and length of sides given in red ink. This is usually prepared at the time of settlement.

41. **Mahal:** A village or estate for which a separate Record-of-Rights has been prepared.
42. **Maira (Miani) Awwal/Waryal Awwal:** Is the land clear of pebbles and sand.
43. **Maira (Miani) Daum/Waryal Daum:** May have little pebbles and sand or mixture of both.
44. **Malguzar:** Included a tenant-at-will holding direct under the state and paying land revenue to it without any intermediary like a landlord.
45. **Malia:** Land revenue.
46. **Malkiat:** A share or portion of an estate held by one land owner or jointly by two or more land owners.
47. **Masavi:** Is the name of the field map or Shajra Kishtwar prepared on a special type of thick paper, with an underlining of muslin cloth.
48. **Mauroosi:** Literally hereditary, but is generally used in reference to occupancy tenants whose rights are heritable and even saleable with the consent of the landlord.
49. **Mauza:** A village, estate, mahal or deh.
50. **Misal-e-Haqqiat:** Construction of record-of-rights "Misal-e-Haqqiat" assessment of land revenue.
51. **Mutation:** The process of sanctioning as change in land papers, especially Jamabandi. New person who acquire right of land recorded instead of the former right holder.
52. **Muzara:** A tenant.
53. **Nehri:** Irrigated by canal or water channel.
54. **Nautor Kuninda:** A person who has brought state-owned land under cultivation.
55. **Nautor:** Khalsa land brought under cultivation.
56. **Non-Khalsa means Land:** Distinguished from land which had been assigned or granted to individuals by the ruler.

57. **Patwari:** Village register and accountant.
58. **Private forests:** Either belong to individuals or the village community on account of their Shamilat rights. Owners of private forests cannot sell their trees of at least 24" diameter standing on the ground.
59. **Qanoongo:** Supervisor of Patwaries.
60. **Rabi:** Spring crop, (Fasal-e-Rabi). This season exists from March to August.
61. **Roznamcha:** Diary.
62. **Shajra Nasab:** The genealogical tree of the landowners in a village, prepared at the time of settlement. Updated in Charsala after every four years, it is a mandatory part of the Record-of-Rights.
63. **Shamilat:** Is Khalsa land, given after the sanctioning of mutation, to the village community for both common purposes and individual possession or cultivation. There are three types of Shamilat recorded in the Record-of-Rights
64. **Tatima Shajra:** A revised map of any field in consequences of partition, transfer, inheritance etc.
65. **Tenants:** A person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person, and includes the predecessors and successors-in-interest of such person, but does not include:
 - i. A mortgagee of the rights of a land-owner;
 - ii. A person to whom a holding has been transferred, or an estate or holding has been left in farm, under the provisions of this Act, for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear; and
 - iii. A person who takes from Government a lease of unoccupied land for the purpose of sub-letting it.
66. **Thanghar (Rakkar):** Is relatively unproductive soil, with considerable admixture of stones, pebbles and sand.

67. **Un-demarcated forests:** All forest land and waste land (other than the demarcated forests) or such land under the management and control of Revenue Department and not appropriated for any purpose.
68. **Wajib-ul-Arz:** Is a document, prepared at the time of settlement, stating various customary rights and liabilities of landowners and other members of the village community interest and viz-a-vis the state.

Note: Some terms explained in this Glossary have been used in this Guide while some are not used here but have been added here as these are usually used in documents relating to the land rights in Pakistan.

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