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## NEWS, VIEWS AND LAW NOTES

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Editors: ADLA Staff

### NEWS AND REVIEWS:

#### News

#### What a judge expects from Lawyers.

Hon'ble Chief Justice of Pakistan urged the legal fraternity to do self-retrospection to preserve the nobility of the legal profession.

What judges expect from lawyers, he explained in the following words:

- A good lawyer is required to have command over history, mathematics and literature.
- A good lawyer needs to have a much more well-rounded personality to deal with multiple statutes and other disciplines.
- A good lawyers must learn from his seniors and show respect for them.

- Hard work is expected from good lawyers as it is the key to success in legal profession.

**[Source: Business Recorder July 23, 2019]**

## **ESSAY**

### **The Dismal State of Child Rights in Pakistan By justice (R) Ali Nawaz Chauhan**

The rights of children are guaranteed under Article 25A of the Pakistan's Constitution. However, the author presents a deplorable state of affairs in the country in this regard. As per the author, so far no integrated child protection case management and referral system exists. The author believes that the children in Pakistan suffer from malnourishment, and most of them experience child labor. The existing system, in the words of author deprives them of any form of safety and recognition. As per the findings of the author, these children are denied education and health care. Majority of them are subjected to sex trade even through government agencies. The author suggests required improvements

in the existing laws and to create awareness amongst the masses for safety and well-being of the children.

**[Dismal States of Child Rights in Pakistan: PLD 2019 Journal 33]**

**Global Economy's Next Winners**

**By Susan Lund, James Manyika and Michael Spence.**

In a recently published article partners of Mckinsey and Company have analyzed the automation age and the ongoing scenarios of the Global Economy. In their perspective, after the wave of globalization, developed countries are heading towards protectionism and leading economies are looking towards rising demand in the emerging markets. As per authors, uncertainty looms over developing countries due to increased automation thereby limiting the options of employment opportunities. Nevertheless, the authors believe that direction of **trade in services** presents an optimistic picture and it may lead the future growth and global demand.

**[Foreign Affairs: July August 2019: 121]**

**BOOK REVIEW**

## **The Death of Treaty Supremacy: An Invisible Constitutional Change**

**By David L. Sloss**

In author's perspective, the new principles, enunciated by US Courts such as treaties only supersede inconsistent local laws when they are self-executing [Fujii v. State], have questioned the strength of Supremacy clause of the Bi-lateral Investment Treaty [BIT] and the court's reliance on defensible interpretation of the US Constitution; however, a desire to change the domestic law is notable. It looks as if, these emerging principles of interpretation enunciated by the courts are leading to the evaporation of the effectiveness of bilateral treaties.

**[Santa Clara University, Legal Studies Research Paper No: 4 – 16]**

### **NOTES**

**Anthea Roberts**

**Is International Law International? [Oxford University Press]**

In this work the author convincingly shatters our illusion about international law's universality and makes the case for comparison in international law. The author explains how this conflict was

covered by US, UK and French textbooks. US casebooks extensively debated the necessity of war and justified it, whereas French textbook termed the war as violation of international law, similarly UK text books also propose that war was illegal. The debate leads to the conclusion that international lawyers should become dabblers in comparative law.

## **RECENT CASES**

### **International Decisions**

*The decision of the Supreme Courts of Kenya in Francis Karioko Muruatetu and another v. Republic\** has given new meaning to the Constitutionality of the mandatory death penalty, definition of life imprisonment, right of fair trial, right to human dignity and right to equal protection in international and comparative law.

**[\*FRANCIS KARIOKO MURUATETU V. REPUBLIC. PET. NO. 15 & 16/2015. <http://kenyalaw.org/caselaw/cases/view/145193>**

### **Loan between Foreign Subsidiaries is Bona Fide Debt: Tax Court Determines By US Tax Court**

In Illinois Tool Works v. Commissioner, the United States Tax Court held that a loan between two foreign subsidiaries constituted

“bona fide debt.” In reaching its conclusion, the court applied a fourteen-factor balancing test for determining whether a payment from a corporation to its shareholders ought to be treated as a loan or as a dividend. The case showed how difficult it can be for courts (as well as Congress and the Treasury) to distinguish debt from equity for corporate taxation purposes.

**[US Tax Court: Docket NO. 10418-14]**

**Supreme Court of Pakistan Explains ways to Determine Value of Imported Goods.**

When imported goods could be assessed on the basis of transactional value within the framework of law, then there is no occasion to assess such goods on the basis of value of identical goods sold in the domestic market explains Supreme Court of Pakistan.

When the goods without any difficulty could be assessed on the basis of the transaction value under subsection (1) of S. 25 of the Customs Act i.e. the price actually paid or payable for the goods sold for export to Pakistan, then the question of invoking subsection (5) of S. 25 did not arise at all.

**[Collector of Customs v. Faisal Enterprises: 2019 SCMR 1126]**

**Sindh High Court Explains the Rights of the Holder of Bill of Lading.**

In *International Trading v. ARK Global DWC – LLC*, the Sindh High Court decided that a Bill of Lading was conclusive evidence of shipment in the hands of consignee or the endorsee and a holder of the bill of lading was always under an expectation that he was entitled to proceed against the ship or its owner in the event of loss or damage to his goods.

**[PLD 2019 Sindh 344]**

**RECENT LEGISLATION**

**Government Enacts Assets, Declaration Act, 2019**

Through Finance Act, 2019, the Government of Pakistan has enacted Asset Declaration Act, 2019, which came into force with immediate effect. The purpose of the Act is to make provisions for voluntary declaration of undisclosed assets, sales and expenditure. The law provides for to make a declaration in respect of undisclosed property. The law inter alia provides for timely payment of tax, and

lays down conditions for declaration, mode and manner of repatriation of foreign income and assets.

### **RECENT GUIDANCE**

**State Bank of Pakistan Provides Anti-Money Laundering And Combating the Financing Of Terrorism (AML/CFT) Regulations Vide BPRD Circular Letter No. 16 Of 2018.**

**By Corporate Law Decisions Magazine [CLD] [March, 2019].**

The State Bank of Pakistan through a recently circulated letter, released amended version of AML/CFT Regulations in order to provide clarity on implementation of AML/CFT requirements for banks and DFI's. The new circular has introduced new requirements for financial institutions to align their obligations with the requirements of Financial Action Task Force [FATF].

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