JUDGMENT WRITING

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The judgment is not an ornate diction of Fancies of a brain, it is strictly an oracle Of findings arrived at by a trying mind. One way, it wraps justice in word; the Other ways it exposes worth of the Judge.

INTRODUCTION

WHAT IS A JUDGMENT?

In its broadest sense a judgment is the decision or sentence of the law given by a court of justice or other competent tribunal as a result of proceedings instituted therein, or the final consideration and determination of a court on matters submitted to it in an action or proceeding, whether or not execution follows thereon. More particularly it is a judicial determination that, on matters submitted to a court for decision, a legal duty or liability does or does not exist, or that, with respect to a claim in suit, no cause of action exists or that no defence exists. In a broader sense here defined, a decision of any court is a judgment. In a narrower sense the term "judgment" is limited to a decision of a court of law. Under most codes of procedure, judgments are defined in substance as the final determination of the rights of the parties in an action or proceedings. In America unlike Pakistan, the terms "judgment" and "decree" are more or less synonymous and inter changeable in code practice. The terms "judgment" and "order" in their widest sense may be said to include any decision given by a court on a question or questions at issue between the parties to a proceeding properly before the court.

A judgment is the judicial act of a Court by which it accomplishes the purposes of its creation. It is a judicial declaration by which the issues are settled and the rights and liabilities of the parties are fixed as to the matters submitted for decision. In other words, a judgment is the end of the law; its rendition is the object for which jurisdiction is conferred and exercised, and it is the power by means of which a liability is enforced against the debtor's property. A judgment constitutes the considered opinion of the court and is a solemn record and formal expression and evidence of the actual decision of a law-suit.

As a general rule, courts are not constituted for the purpose of making advisory decrees or resolving academic disputes. A proceeding seeking an advisory opinion or judgment will not find favour at the hand of the judiciary. A mere advisory opinion upon an abstract question is obviously not a judgment at all when no parties are to be bound, and the rights of no one are directly affected.

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ESSENTIALS OF JUDGMENT

It is essential to the validity of a judgment that it be based on, and be in conformity with, recognized principles and fundamentals of law. Where statutory powers are conferred on a court of inferior jurisdiction, and the mode of executing those powers is prescribed, the course pointed out must be substantially pursued, or the judgment of the court will be void. The validity, force and effect of a judgment must be determined by the laws in force at the time and in the State or country where it was rendered. It is essential to the validity of a judgment that it be the sentence or adjudication of a duly constituted court or judicial tribunal. Judicial powers are sometimes conferred on tribunals not technically courts, and decisions by such tribunals, in the exercise of powers thus conferred, are considered as judgments. According to some authorities, it is essential to the validity of a judgment that it be rendered by a court sitting at the time and also in the place authorised by law, the tribunal not being otherwise a court in any legal sense, and the proceedings being, therefore, coram non-judice. In some cases, however, it has been held that the fact that a term of court at which a judgment was rendered was held at a time other than that prescribed or authorised by law, while rendering the judgment erroneous and constituting ground for its reversal, does not render the judgment void; but a contrary view has also been taken and a judgment rendered under such circumstances has been held to be void. It has been held that the mere fact that the court was held at a place other than that directed by law will not of itself render the judgment void, as where the court errs with respect to the location of the country seat. Judgments should be rendered in open court and not in

chambers. In Pakistan, according to section 2(9) of the Code of Civil Procedure, judgment means the statement given by the Judge of the grounds of a decree and order, and Order XX, Rules 1 to 6, Civil Procedure Code, lay down the law in Pakistan relating to the pronouncements, signing and contents of judgments. These relate to judgment of civil courts. As regards criminal courts, sections 366 and 367 of the Code of Criminal Procedure, 1898 lay down the mode of delivery, language and contents of judgments. Sections 15 to 20 of the Code of Civil Procedure prescribe the place of suing and section 21 lays down as to when objection to territorial jurisdiction is to be taken. Chapter XV deals with the place of inquiry or trial of criminal proceedings and trials and section 531 Code of Criminal Procedure, 1898 states when proceedings in wrong place can be set aside.

Illegal constitution of the court with respect to the Judges sitting renders the judgment absolutely void. In the absence of a constitutional or statutory provision, forbidding a disqualified Judge from acting, a judgment rendered by a disqualified Judge is voidable but not void. It is essential to the existence and validity of a judgment that the decision shall have been rendered in an action or proceeding before the court, in some form recognised and sanctioned by law. Where the jurisdiction of a court depends on the amount in controversy, a judgment for a sum in excess of the amount over which the court has jurisdiction is void.

Judgment has to self-contained and it must show that the court has made an independent application of its mind to the facts of the case and the evidence adduced by the parties. It must reveal a consideration of such evidence and the conclusions to which such evidence would persuade. Where the finding, in a criminal case, is as to the guilt of some of the accused while to the innocence of others, the finding has to be supported by reason.

FORM AND CONTENTS OF JUDGMENTS

Strict formality ordinarily is not essential to the validity of a judgment, and substantial compliance with statutory requirements is sufficient.

A judgment should not decide more than what is necessary in law under which the proceedings have been taken. For example, in a proceeding under section 145 of the Code of Criminal Procedure, the Magistrate while deciding question of possession, cannot define shares of co-sharers. He has to find out only as to who was in actual possession.

In a criminal case, with regard to the conclusion that accused cannot be tried under Acts providing for treatment and training or rehabilitation of youthful offenders, the court must record special reasons for not doing so. When the defence musters up a number of witnesses, the court has to be extremely cautious and careful to enter verdict of guilty. It may do so only if the complainant's version is supported by some clinching circumstance of such character and quality as may reasonably assure the judicial mind about the truth of the real position against the accused.

Stating inclination merely is not sufficient, but the court must give reasons for disagreeing with defence contentions. When the judgment neither gave reasons for disagreeing with defence contentions nor adverted to the patent lapses of the investigations, it was held that accused were entitled to benefit of doubt. The defence evidence is as important as the judgment cannot be said to be complete.

In a case where truth cannot be separated from falsehood on account of the two being inextricably mixed up, the court cannot make out any absolute new case for the prosecution by conjecture. While separating the grain from the chaff, the court should not break the grain and mix the same with chaff.

The proper course is to scrutinize the prosecution evidence first and then to pass on the defence case. However, the reverse course, though irregular would not vitiate judgment.

JUDGMENT SHOULD BE COMPLETE IN ITSELF

A judgment should be complete in itself and contain within its four corners the mandate of the' court, without extraneous references, and leaving open no matters of description or designation out of which contention may arise as to the meaning. It should not leave open any judicial question to be determined by others.

LANGUAGE OF JUDGMENT

Although it has been held that, as a matter of practice, established precedents with respect to the language of a judgment should be followed, apart from statute no particular form of words is necessary to constitute a judgment, provided the words used are such as to indicate a final determination of the rights of the parties and the relief granted or denied.

JURISDICTIONAL RECITALS

Except as statute or court rule may otherwise provide, the judgment of a court of general jurisdiction need not, as a general rule, contain a recital of the jurisdictional facts.

A JUDGMENT MUST BE DEFINITE AND CERTAIN

A judgment must be definite and certain in itself, or capable of being made so by proper construction. It must fix clearly the rights and liabilities of the respective parties to the cause.

CONDITIONAL JUDGMENTS

As a general rule, a judgment must not be conditioned on any contingency; but in a number of instances, as where equitable relief is awarded, conditional judgments have been sustained.

ALTERNATIVE JUDGMENTS

As a general rule, a judgment should not be in the alternative, although under some circumstances, such as in actions for the specific recovery of property, an alternative judgment may be proper.

DICTA-BINDING FORCE

Statements which are not necessary to the decisions which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand (usually termed 'dicta') have no binding authority on another court, though they may have merely persuasive efficacy. Rights of property should not be upset, however, merely because, when historically traced through the reports of centuries, they rest upon a dictum, nor is it right to distrust a practice that follows on dicta when it is the practice and not the dicta that forms the binding authority. Even dicta of individual members of the House of Lords (in England), although of great weight, have been held not to be of binding authority; but, when dicta have been expressed unanimously by all the Judges of Divisional Court, it would not be seemly for the Judges of another Divisional Court not to follow them. Interlocutory observations by members of a court during the argument are not judicial pronouncements and do not decide anything.

JUDGMENT BASED ON EVIDENCE - FRAGILITY OF MEMORY

Very few of us are careful and accurate observers. Those of us who are are at our best when we can check our observations by repetition, which is exactly what is impossible in most matters where human testimony is required in court. The tricks played by our senses are terrifying to the seekers of truth. The evidence which is given is often not even a recollection of the events, but only a recollection of what the witness said about it soon after. A policeman will quite often be able to relate only what appears in his note, not by any means the least satisfactory kind of evidence. If one seeks to take him out of his framework, and to re-see the events in his mind's eye, so some detail, not regarded at moment but turning out to be important, can be recovered, in nine cases out of ten he cannot do it, though he honestly tries. His memory is of his note, of an observed happening. It needs no psychologist to show that, although instances occur of delayed reproduction, memory generally fades with the passage of time, and that, when a witness is required more than once to recall an event, his act of recalling on a subsequent occasion may be merely an imperfect memory of what he said on an earlier. If this is true, it is an interesting commentary on the legal rule whereby the witness's statement, given in court perhaps months after the event, is the real evidence while, his original proof of evidence, given perhaps within hours of the event, and his deposition at the preliminary hearing, given a few days or weeks after the event, are referred to only for the purpose of contradicting him and not as independent evidence. The legal insistence

upon the necessity for an oath and upon oral statement in court appears in this light to be irrational. It may also be pointed out that the rule excluding previous statements as evidence of the truth of the facts stated is fundamentally inconsistent with another rule, namely, that a witness who professes that he has forgotten the details of an event can refer to a memorandum of it which he made previously (not on oath, or subject to cross-examination) and have this memorandum accepted as part of his evidence.