



**INDIAN LAW REPORTS
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INDEX TO I.L.R. 2011 (1) Kerala

NOMINAL INDEX

		Page
Achuthanandan, V. S.	v. R. Balakrishna Pillai (S.C.)	.. 569
Ajayan alias Baby	v. State of Kerala (F.B.)	.. 1
Akbar Ali	v. Narayanankutty	.. 877
Alappuzha Muhiyudheen Masjid Association	v. Abdul Khader (F.B.)	.. 768
Anil Kumar	v. K. R. Honey	.. 353
Ansari Kannothe	v. State of Kerala	.. 403
Antony Cardoza	v. State of Kerala	.. 530
Aruna Ramachandra Shanbaug	v. Union of India (S.C.)	.. 913
Asokan, N.	v. State of Kerala	.. 1066
Biju, R. S.	v. Madhavikutty Amma	.. 872
Biju Xavier	v. Christy Fernandez	.. 136
Boban Joseph	v. Manikantan Nair (S.N.)	.. 3
BPL Ltd.	v. Pegasus Assets Reconstruction (P) Ltd.	.. 637
Catholic Reformation Literature Society	v. K.S.E.B.	.. 657
Central Electricity Regulatory Commission	v. National Hydroelectric Power Corporation Ltd. (S.C.)	.. 401
Centre for PIL	v. Union of India (S.C.)	.. 1001
Chalambattil Balan	v. Chalambattil Sreedharan	.. 268
Chandrika	v. Cochin Thirumala Devaswom (S.N.)	.. 4
Chella Rowther	v. Remabhai	.. 975
Commissioner of Income Tax	v. M/s Best Wood Industries and Saw Mills (F.B.)	.. 254
Commissioner of Income Tax	v. M/s O.E.N. India Limited (S.N.)	.. 7
David Morise	v. State of Kerala (S.N.)	.. 3
District Collector	v. Sreekumari Kunjamma, V. K. (F.B.)	.. 13
Dr. Prasanna, M. P.	v. State of Kerala (S.N.)	.. 1
Dr. Subrahmaniam Swamy	v. State of Kerala	.. 833
Dr. Tresa Radhakrishnan	v. Chancellor, University of Kerala	.. 688
Elsy P. Oomman	v. State of Kerala	.. 286

Enathu Service Co-operative Bank Ltd.	v. Consumer Disputes Redressal Forum	.. 423
Firose	v. Revenue Divisional Officer	.. 980
George Thomas	v. T. N. Menon	.. 165
Haleema, V. M.	v. High Court of Kerala	.. 50
Hindustan Unilever Ltd.	v. Tahasildar, Kanayannur Taluk	.. 905
H. K. A. Agencies	v. Actia India Pvt. Ltd.	.. 378
HLL Life Care Ltd.	v. Hindustan Latex Labour Union	.. 77
Hotel Leelaventure Ltd.	v. State of Kerala	.. 1046
Hydro-Tech, Engineers & Contractors	v. State of Kerala	.. 817
Jabeer, M. P.	v. Nilufer, P. P.	.. 258
Jagpal Singh	v. State of Punjab (S.C.)	.. 491
Kaipadath Property Development Company (P) Ltd.	v. State of Kerala	.. 434
Kalarikkal Hotels Private Limited	v. State of Kerala	.. 1033
Kallathil Sekharan	v. Kallathil Sreedharan	.. 25
Kartheikeyan	v. Deputy Commissioner of Excise	.. 372
Karthikeyan, P. S.	v. Registrar of Co-op. Societies	.. 669
Kumaran	v. Kumaran	.. 292
Kunjan Raghavan	v. K.S.E. Board	.. 184
Kunjumol C. Immanuel	v. Shibu, S. N.	.. 226
Latheef, K. A.	v. Food Inspector	.. 299
Majeed, C. A.	v. Afira	.. 121
Malayimmal Raveendran	v. Malayimmal M. Vimala	.. 993
Manager, M.M.U.P. School	v. Deputy Director of Education	.. 895
Manilal, K. N.	v. Johnson, E. F.	.. 305
Max New York Life Insurance Co. Ltd.	v. Insurance Ombudsman	.. 276
M/s Asset Homes Pvt. Ltd.	v. State of Kerala	.. 310
M/s G. K. Engineering Works	v. St. John the Baptist Church, Aluva.	.. 361
M/s K.R.S. Latex (India) Pvt. Ltd.	v. Federal Bank	.. 395
M/s Midas Polymer Compounds (P) Ltd.	v. Asst. Commissioner of I.T. (F.B.)	.. 330
M/s Neptune Ready Mix Concrete Pvt. Ltd.	v. Intelligence Officer (S.N.)	.. 4
M/s Reshmi Constructions Builder & Contractors	v. N.T.P.C.	.. 680
M/s Sree Ramachandran Enterprises	v. State of Kerala (S.N.)	.. 6
Muhammed Haji, P. V.	v. Mundoli Muhammed Hajee (S.N.)	.. 8
Murukeshan	v. State of Kerala	.. 159
Muthoot Leasing and Finance Ltd.	v. Asiya, N. P.	.. 809
Nalini Sheela	v. Subramanian Chettiar Shanmughan Chettiar	.. 205
Narayanan, N.M.	v. Naduvil Madom	.. 549

New India Assurance Company Ltd.	v. State of Kerala	..	426
Omanakutty Amma	v. Sajeevkumar, M. R.	..	474
Palakkad Municipality	v. N. Abdul Muthalif (S.N.)	..	4
Pallikunnu Grama Panchayat	v. District Superintendent of Police	..	70
Pappinisseri Eco Tourism Society	v. State of Kerala	..	747
Peethambaran	v. Dileepkumar Panicker	..	127
Pepsico India Holdings Pvt. Ltd.	v. Food Inspector (S.C.)	..	85
Philips Alfred Malvin	v. Y. J. Gonsalvis	..	985
Prafull Goradia	v. Union of India (S.C.)	..	503
Pushpa @ Leela	v. Shakuntala (S.C.)	..	247
Rajeev Alexander	v. Seynullabdeen	..	210
Ramankutty Nair, K.	v. Radhika G. Nair	..	105
Ratheesh Chandran, A. R.	v. Sarojini Amma	..	193
Raveendran, T.	v. State of Kerala	..	341
Ravi Chandran, K. K.	v. A. R. Philip (S.N.)	..	7
Reji, E. M.	v. State of Kerala (S.N.)	..	5
Sandhya Kurumthottickal	v. State of Kerala	..	44
Sani Xavier	v. R. T. A. and others (S.N.)	..	1
Sasi, P. K.	v. Murukan Achari (S.N.)	..	3
Sathiapalan, P. K.	v. The Joint R.T.O. (S.N.)	..	7
Scaria Paul	v. M/s Paracka Industries	..	53
Sethunath	v. John Varghese	..	176
Shibi, M. V.	v. State of Kerala (S.N.)	..	8
Shihabudheen, A.	v. Principal Controller of Defence Accounts	..	662
Shivaprasad, V.	v. State of Kerala	..	697
Sindhu Gopalakrishnan	v. Sebastian	..	231
Sivananda Yoga Vedanta Dhanwantari Ashram	v. State of Kerala	..	555
State of Kerala	v. Shijil (S.N.)	..	5
State of Kerala	v. P.G. Kumari Amma	..	508
State of Kerala	v. Southern Fisheries Corporation	..	974
State of Kerala	v. Lali, M. S.	..	1041
Subair, S. S.	v. DLF Home Developers Ltd.	..	116
Sudhakaran	v. State of Kerala	..	890
Sudheesh Kumar, G.	v. Commissioner of Excise	..	101
Sulaiman	v. Thottiparambil Alipa	..	171
Sulochana Peter	v. Chellamma Swarnamma	..	61
Sumangala, K.	v. State of Kerala	..	37
Sundara Rajan, T. P.	v. State of Kerala	..	604
Sunil Kumar, T. S.	v. Secretary to the Government	..	676
Sunitha	v. State of Kerala	..	152
Suresh Lal, R.	v. Drugs Controller of Kerala	..	562
Susi	v. State of Kerala	..	773

Swaminathan, K.	v. Radhakrishna Prasad (S.N.)	..	1
Syndicate Bank	v. Ramachandran Pillai (S.C.)	..	498
Terumo Penpol Ltd.	v. State of Kerala (S.N.)	..	2
T. G. N. Kumar	v. State of Kerala (S.C.)	..	321
Thandayankandy Lakshmi	v. K. K. Rahmath	..	803
United India Insurance Company Ltd.	v. Manoj	..	358
Unity Hospital Pvt. Ltd.	v. State of Kerala (F.B.)	..	19
Unnikrishnan	v. Kunhibeevi	..	785
Valliyoth Karunan	v. State of Kerala	..	524
Varghese, A. M.	v. Government of Kerala	..	884
Varkey	v. Union of India	..	218
Velayudhan, P.	v. Kerala State Co-op. Employees' Pension Board	..	384
Vicar, Jerusalem, Marthoma Church	v. Mamman Thomas	..	142
Vicar, St. Mary's Church	v. State of Kerala	..	623
Walter Alexander (Dr.)	v. Registrar	..	869
Wayanad District Wholesale Consumers Co-operative Store Ltd.	v. Thomas, K. D.	..	334
Xavier	v. John	..	824

INDEX TO JOURNALS, NOTIFICATIONS and SPEECHES

Speech

Full Court Reference held in the High Court of Kerala on 9-2-2011, on the occasion of retirement of Honourable Mr. Justice M. N. Krishnan	..	i—vi
---	----	------

Notifications

Direct Recruitment to the post of Munsiff-Magistrate on N.C.A. vacancies	..	vii—xii
Direct Recruitment to the post of District and Sessions Judge on N.C.A. vacancies of SIUC Nadar and OBC [Eighth item in Rule 17 (1), Part II, KS & SSR]	..	xix—xxii
G.O. (P) No. 6/2011/GAD.	..	xxiii—xxiv
Kerala State Electricity Regulatory Commission (Renewable Purchase Obligation and its Compliance) Regulations, 2010	..	iii—vi
Kerala State Higher Judicial Service Examination, 2011	..	xxv—xxviii
Kerala State and Subordinate Services (Amendment) Rules	..	xvii—xviii
S.R.O. No. 670/2010—The Kerala Abkari Shops Disposal (Amendment) Rules, 2010	..	i
S.R.O. No. 59/2010—The Family Courts (Kerala) Amendment Rules, 2010	..	ii
S. R. O. No. 1174—The Kerala Judicial Ministerial Subordinate Services (Amendment) Rules, 2010	..	xiii
S. R. O. No. 1175—The Kerala Judicial Ministerial Services (Amendment) Rules, 2010	..	xiv—xvi

INDEX TO ACTS AND RULES (Central & Kerala)

ACTS

Central

1860—Act 45 of 1860—Penal Code		
Sections 375 and 376 <i>See</i>	..	341
Section 375 <i>See</i>	..	341
Section 376 <i>See</i>	..	524
Section 309 <i>See</i>	..	913
1872—Act 1 of 1872—Evidence Act		
Section 27 <i>See</i>	..	1
Section 114 <i>See</i>	..	184
Section 34 <i>See</i>	..	305
Section 50 <i>See</i>	..	268
Section 116 <i>See</i>	..	549
Section 112 <i>See</i>	..	993
1882—Act 4 of 1882—Transfer of Property Act		
Section 54 <i>See</i>	..	292
Section 48 <i>See</i>	..	824
1908—Act 5 of 1908—Code of Civil Procedure		
Order 41, Rule 33 <i>See</i>	..	61
Section 47 and Order XXI, Rule 15 <i>See</i>	..	127
Sections 10 and 47 <i>See</i>	..	142
Order XXI, Rule 101 <i>See</i>	..	226
Order XXI, Rule 58 <i>See</i>	..	292
Order XXI, Rule 90 (S.N.) <i>See</i>	..	1
Section 60 and Order XXI (S.N.) <i>See</i>	..	3
Order 41, Rule 22 <i>See</i>	..	361
Order XXI, Rules 97 to 103 <i>See</i>	..	785
Section 11 (S.N.) <i>See</i>	..	7
1932—Act 9 of 1932—Partnership Act <i>See</i>	..	53
1940—Act 10 of 1940—Arbitration Act <i>See</i>	..	25
1947—Act 14 of 1947—Industrial Disputes Act		
Section 33 <i>See</i>	..	77
1949—Act 10 of 1949—Banking Regulation Act		
Sections 6 and 8 <i>See</i>	..	637
1954—Act 37 of 1954—Prevention of Food Adulteration Act <i>See</i>		
Section 17 <i>See</i>	..	85
Section 23 (1A) (ee) and (hh) <i>See</i>	..	85
1956—Act 74 of 1956—Central Sales Tax Act		
Sections 9 (2B) and 23 (3A) (S.N.) <i>See</i>	..	2

1960—Act 59 of 1960—Prevention of Cruelty to Animals Act	<i>See</i> ..	44
1961—Act 43 of 1961—Income Tax Act		
Sections 147 and 148	<i>See</i> ..	254
Section 80 IB	<i>See</i> ..	330
Section 37(1) (S.N.)	<i>See</i> ..	7
1963—Act 36 of 1963—Limitation Act		
Section 10	<i>See</i> ..	361
1963—Act 47 of 1963—Specific Relief Act		
Section 21 (3)	<i>See</i> ..	205
1971—Act 40 of 1971—Public Premises (Eviction of Unauthorised Occupants) Act	<i>See</i> ..	498
1973—Act 2 of 1974—Code of Criminal Procedure		
Sections 36 and 173 (2)	<i>See</i> ..	159
Section 173 (8)	<i>See</i> ..	231
Sections 173 (8) and 397 (2)	<i>See</i> ..	231
Section 160 (S.N.)	<i>See</i> ..	3
Section 205	<i>See</i> ..	321
Section 298 (S.N.)	<i>See</i> ..	5
Section 313	<i>See</i> ..	321
Section 137 (2)	<i>See</i> ..	474
Section 197	<i>See</i> ..	530
Section 379	<i>See</i> ..	569
1986—Act 68 of 1986—Consumer Protection Act		
Section 3	<i>See</i> ..	423
1986—Act 29 of 1986—Environmental (Protection) Act		
Section 5	<i>See</i> ..	403
Sections 3, 5 and 23	<i>See</i> ..	747
1986—Act 25 of 1986—Muslim Women (Protection of Rights on Divorce) Act		
Section 3	<i>See</i> ..	121
1988—Act 59 of 1988—Motor Vehicles Act		
Section 66	<i>See</i> ..	176
Section 80 (3) (S.N.)	<i>See</i> ..	1
Section 147	<i>See</i> ..	171
Sections 2 (3) and 50	<i>See</i> ..	247
Section 147 (1) (a) (i)	<i>See</i> ..	358
1988—Act 49 of 1988—Prevention of Corruption Act		
Section 19	<i>See</i> ..	530
1989—Act 24 of 1989—Railways Act		
Sections 123 and 124A	<i>See</i> ..	218

1989—Act 33 of 1989—The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act	
Section 3 (2) (V) <i>See</i>	.. 341
1995—Act 43 of 1995—Wakf Act	
Section 69 <i>See</i>	.. 768
1996—Act 26 of 1996—Arbitration and Conciliation Act	
Section 11	.. 136
Sections 6, 11(8), 19 and 26 <i>See</i>	.. 136
Section 11 <i>See</i>	.. 116
Section 2 (e) <i>See</i>	.. 378
Sections 9 and 42 <i>See</i>	.. 378
Sections 9, 34 and 42 <i>See</i>	.. 378
Section 2 (e) <i>See</i>	.. 680
Sections 7 and 34 <i>See</i>	.. 680
Section 9 <i>See</i>	.. 809
2002—Act 54 of 2002—SARFAESI Act	
Sections 5 (1) and (2) <i>See</i>	.. 637
2003—Act 45 of 2003—Central Vigilance Commission Act	
Section 4 <i>See</i>	.. 1001
2003—Act 36 of 2003—Electricity Act	
Section 126 (3) <i>See</i>	.. 657
2005—Act 43 of 2005—Protection of Women from Domestic Violence Act	
Sections 5 and 12 <i>See</i>	.. 152
2007—Act 55 of 2007—Armed Forces Tribunal Act	
Sections 19 and 29 <i>See</i>	.. 662
Kerala	
1077—Act 1 of 1077 M.E.—Abkari Act	
Section 67 B <i>See</i>	.. 426
1950—Act 15 of 1950—Hindu Religious Institutions Act	
Section 18 (2) <i>See</i>	.. 604
1950—Act 15 of 1950—Travancore-Cochin Hindu Religious Institutions Act	
Section 86 <i>See</i>	.. 549
1958—Act 6 of 1959—Education Act	
Section 35 <i>See</i>	.. 623
Section 7 <i>See</i>	.. 895
1959—Act 10 of 1960—Court Fees and Suits Valuation Act	
Section 73A (S.N.) <i>See</i>	.. 4

1963—Act 15 of 1963—General Sales Tax Act	
Section 45A (3) and (5) (S.N.) <i>See</i>	.. 4
1963—Act 1 of 1964—Land Reforms Act	
Section 2 (25) <i>See</i>	.. 105
Section 105 <i>See</i>	.. 105
Section 73 (8) (S.N.) <i>See</i>	.. 4
1965—Act 2 of 1965—Buildings (Lease and Rent Control) Act	
Section 11(1) <i>See</i>	.. 193
Section 11 (2) (b) and 11 (3) <i>See</i>	.. 193
Section 11 (3) <i>See</i>	.. 165
Section 11 (4) (v) <i>See</i>	.. 353
Section 11 (4) (i) <i>See</i>	.. 803
Section 11 <i>See</i>	.. 877
Section 12 <i>See</i>	.. 872
Section 11 (3) <i>See</i>	.. 975
Section 11(iv)(1) (S.N.) <i>See</i>	.. 8
1974—Act 17 of 1974—Kerala University Act	
Section 17 (13) <i>See</i>	.. 688
Section 2 (27) <i>See</i>	.. 869
1975—Act 7 of 1975—Building Tax Act	
Section 2 (e) <i>See</i>	.. 13
Section 3 <i>See</i>	.. 19
Section 5 <i>See</i>	.. 974
1994—Act 20 of 1994—Municipality Act	
Section 51 (4) <i>See</i>	.. 697
1994—Act 13 of 1994—Panchayat Raj Act	
Section 252 <i>See</i>	.. 70
Section 52 (1A) <i>See</i>	.. 210
Section 102 (1) (d) <i>See</i>	.. 210
1998—Act 12 of 1998—Revocation of Arbitration Clause and Reopening of Awards Act	
Sections 2 (1) and 3 <i>See</i>	.. 817
2005—Act 25 of 2005—Kovalam Palace (Taking over by Resumption) Act <i>See</i>	.. 1046
2007—Act 34 of 2007—Anti-Social Activities (Prevention) Act	
Section 3 (1) <i>See</i>	.. 773
2008—Act 28 of 2008—Conservation of Paddy Land and Wet Land Act	

Section 5 <i>See</i>	..	434
Section 13 <i>See</i>	..	434
Section 23 <i>See</i>	..	980
2010—Act 13 of 2010—Munnar Special Tribunal Act		
Sections 2 (c), 2 (d) and 10 <i>See</i>	..	884

RULES

Central

1965—Prevention of Cruelty to Draught and Pack Animals		
Rules <i>See</i>	..	44
1971—Defence of India Rules		
Rule 9 <i>See</i>	..	555
1989—Motor Vehicles Rules		
Rule 82 (2) <i>See</i>	..	176
2002—Security Interest (Enforcement) Rules		
Rule 8 (5) and (6) <i>See</i>	..	395

Kerala

1953—Foreign Liquor Rules		
Rule 13 (3) <i>See</i>	..	1033
Rule 39 <i>See</i>	..	1033
1957—Minor Mineral Concession Rules		
Rule 8 (1) (e) (S.N.) <i>See</i>	..	3
1959—Education Rules		
Chapter XIVA, Rule 56 (4) <i>See</i>	..	286
Chapter III, Rule 2 <i>See</i>	..	623
Chapter XXXI, Rules 3 and 4 <i>See</i>	..	895
Chapter XIV A Rule 61 (5) <i>See</i>	..	1041
1959—Service Rules		
Part III, Rule 56 (1) <i>See</i>	..	37
1969—Co-operative Societies Rules		
Rule 15 (3) (5) <i>See</i>	..	334
Rule 185 (8) <i>See</i>	..	669
Rule 187 (S.N.) <i>See</i>	..	8
1977—Arbitration Rules		
Rule 14 <i>See</i>	..	25
1979—Drugs (Price Control) Order		
Clause 18 <i>See</i>	..	562
1989—Motor Vehicles Rules		
Rule 95 (1) (S.N.) <i>See</i>	..	7

1994—Co-operative Societies Employees' Self Financing Pension Scheme Clause 21 <i>See</i>	..	384
1996—Abkari (Disposal of Confiscated Articles) Rules Rule 4 (2) <i>See</i>	..	372
1999—Municipality Building Rules Rule 11 <i>See</i>	..	310
2002—Abkari Shops Disposal Rules Rule 2 (m) <i>See</i>	..	101
Rule 8 <i>See</i>	..	890
2003—Value Added Tax Rules (S.N.) Rule 39 (5) (iv) <i>See</i>	..	6

SUBJECT INDEX

Abkari Act, 1077 M.E. (Kerala Act 1 of 1077 M.E.)—Section 67 B—Confiscation of vehicle involved in Abkari offence—Vehicle stolen from the custody of the owner—Insurer paid compensation to insured and the insured released his rights to the insurer—Vehicle later seized while transporting illicit spirit—Confiscation of vehicle ordered—Insurance Company can challenge the order of confiscation—Benefit given to the owner of the vehicle by exculpating him can be used by Insurer to contend that the vehicle is not liable to be confiscated.		
New India Assurance Company Ltd. v. State of Kerala I.L.R. 2011 (1) Kerala	..	426
Abkari (Disposal of Confiscated Articles) Rules, 1996 (Kerala)—Rule 4(2)—When the confiscation rules contain clear statutory provisions as to the manner in which, and the conditions subject to which, a vehicle could be provisionally released pending confiscation proceedings, it is not open to any statutory authority acting under any Abkari Law to issue any order for release, except in conformity with that statutory condition.		
Karthikeyan v. Deputy Commissioner of Excise I.L.R. 2011 (1) Kerala	..	372
Abkari Shops Disposal Rules, 2002 (Kerala)—Rule 2 (m)—Nagarkavu, which is the abode of snake god, is also a place of worship of Hindus and is in no way different from ordinary temples where deities are installed—Abkari Shops Disposal Rules, 2002 (Kerala)—Rule 7(2).		
Sudheesh Kumar, G. v. Commissioner of Excise I.L.R. 2011 (1) Kerala	..	101
Abkari Shops Disposal Rules, 2002 (Kerala)—Rule 2 (m)—Temple situated in private property, but open to worship by the public, answers the description of temple under Rule 2 (m).		
Sudheesh Kumar, G. v. Commissioner of Excise I.L.R. 2011 (1) Kerala	..	101
Abkari Shops Disposal Rules, 2002 (Kerala)—Rule 8—Favourable test report on the second sample does not ipso facto supersede the test result of the first sample—The report on the second sample, relied on by the accused, is admissible in		

evidence—As to which of the two reports is acceptable is a matter for decision by the court—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 293, Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954)—Section 13.

Sudhakaran v. State of Kerala I.L.R. 2011 (1) Kerala .. 890

Administrative Law—*The power to require attendance of a person and to direct production of documents, as part of an enquiry, cannot be exercised superfluously and should be exercised with specificity.*

Hindustan Unilever Ltd. v. Tahasildar, Kanayannur Taluk I.L.R. 2011 (1) Kerala .. 905

Administrative Law—*Resorting to enquiries by merely calling for documents in relation to property, without disclosing the nature of the proceedings in relation to which documents are called for, or indicating the power under which production of documents is sought for, amounts to an arbitrary exercise of power.*

Hindustan Unilever Ltd. v. Tahasildar, Kanayannur Taluk I.L.R. 2011 (1) Kerala .. 905

Adoption—*By virtue of various statutory enactments, it is now possible for a Christian to adopt a child under the Civil Law of the land.*

Philips Alfred Malvin v. Y. J. Gonsalvis I.L.R. 2011 (1) Kerala .. 985

Anti-Social Activities (Prevention) Act, 2007 (Kerala Act 34 of 2007)—*Section 3(1)—Proceedings initiated against detenu under Chapter VIII of Cr. P.C. is a relevant circumstance to which the mind of the detaining authority must be applied before ordering preventive detention under the KAAPA—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Chapter VIII—Section 107.*

Susi v. State of Kerala I.L.R. 2011 (1) Kerala .. 773

Arbitration Act, 1940 (Central Act 10 of 1940)—*An Arbitrator is well within his powers to follow his own procedure so long as he does not transgress the well-settled principles of equity and good conscience and does not travel beyond the four corners of the mandate given to him—His action and decisions must be based on principles of fairness and natural justice.*

Kallathil Sekharan v. Kallathil Sreedharan I.L.R. 2011 (1) Kerala .. 25

Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—*Sections 6, 11 (8), 19 and 26—The arbitrator has ample powers to appoint or seek the assistance of an expert in a particular field to assist him in resolving the dispute—It is not necessary for the arbitrator appointed to be an expert on technical matters, that are involved in the dispute.*

Biju Xavier v. Christy Fernandez I.L.R. 2011 (1) Kerala .. 136

Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—*Section 11—Maintainability of arbitration request—Person who is not a party to the agreement containing arbitration clause can also be referred to arbitration, if the non-party has no objection to submit to the authority of the arbitrator.*

- Subair, S. S. v. DLF Home Developers Ltd. I.L.R. 2011 (1) Kerala .. 116
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Section 11—***The existence of complicated questions of fact and law involved in the case would not affect the binding nature of the arbitration clause contained in the agreement executed between the parties.*
- Biju Xavier v. Christy Fernandez I.L.R. 2011 (1) Kerala .. 136
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Section 2(e)—***Where the High Court is the civil court of original jurisdiction in a district, that court will be the court for the purpose of Section 2(e) of the Act.*
- H. K. A. Agencies v. Actia India Pvt. Ltd. I.L.R. 2011 (1) Kerala .. 378
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Sections 9 and 42—***An application under Section 9 can be filed prior to the arbitral proceedings, during the arbitral proceedings, or after the arbitral proceedings—The reference to arbitral agreement in Section 42 will cover all the above three instances.*
- H. K. A. Agencies v. Actia India Pvt. Ltd. I.L.R. 2011 (1) Kerala .. 378
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Sections 9, 34 and 42—***Where plurality of courts have jurisdiction to deal with the matter and where an application under part I of the Arbitration and Conciliation Act has already been filed (including an application under Section 9) in one court, all subsequent applications must be before the same court.*
- H.K.A. Agencies v. Actia India Pvt. Ltd. I.L.R. 2011 (1) Kerala .. 378
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Section 2(e)—***The Court of the Additional District Judge to which an application under Section 34 of the Act has been made over by the Principal District Judge, has got jurisdiction to decide such applications—The Additional District Judge exercises the same functions and powers of the District Judge in relation to matters made over to him—Arbitration Act, 1940 (Central Act 10 of 1940)—Section 34.*
- M/s Reshmi Constructions Builder & Contractors v. N.T.P.C. I.L.R. 2011 (1) Kerala .. 680
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Section 2(e)—***The Additional District Judge is not inferior to the District Court—Whenever the law wanted to state for any specific purpose that the Court of the Additional District Judge is subordinate to the District Court, it has specifically stated so—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 24.*
- M/s Reshmi Constructions Builder & Contractors v. N.T.P.C. I.L.R. 2011 (1) Kerala .. 680
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)—Sections 7 and 34—***The Government does not establish Additional District Court in the Civil District under Section 4, but only appoints more District Judges additionally to the District Court, established under Section 3.*
- M/s Reshmi Constructions Builder & Contractors v. N.T.P.C. I.L.R. 2011 (1) Kerala .. 680

- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)**—Section 9—
District Court passing an order of attachment before Judgment—Affected party can move the same court for lifting the order of attachment and need not file separate suit—The court has inherent power to lift the order of attachment, if circumstances so warrant.
- Muthoot Leasing and Finance Ltd. v. Asiya, N. P. I.L.R. 2011 (1) Kerala . . . 809
- Arbitration Rules, 1977 (Kerala)**—Rule 14—*The power of the Arbitrator to record compromise reported by parties is not circumscribed or curtailed by the provisions contained in Order XXIII C.P.C.—Arbitrator is entitled to act on the basis of the submission made before him by the parties or their authorised representatives—Rule 14 of the Kerala Arbitration Rules does not have any application to the proceedings pending before the Arbitrator—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXIII, Rule 3.*
- Kallathil Sekharan v. Kallathil Sreedharan I.L.R. 2011 (1) Kerala . . . 25
- Armed Forces Tribunal Act, 2007 (Central Act 55 of 2007)**—Sections 19 and 29—
Tribunal is vested with power to execute it's order—Tribunal can initiate criminal contempt proceedings for failure to implement it's directions—Armed Forces Tribunal (Procedure) Rules, 2008—Rule 5.
- Shihabudheen, A. v. Principal Controller of Defence Accounts I.L.R. 2011 (1) Kerala . . . 662
- Banking Regulation Act, 1949 (Central Act 10 of 1949)**—Sections 6 and 8—
The acquisition of financial assets through transfer and the transfer of the said financial assets by a banking company, would not by itself come within the purview of trading, buying or selling—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 5.
- BPL Ltd. v. Pegasus Assets Reconstruction (P) Ltd. I.L.R. 2011 (1) Kerala . . . 637
- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—
Section 11(1)—The chance of success of the tenant in a civil suit is one of the tests for determining whether the plea of the tenant was bona fide or merely intended to protract matters.
- Ratheesh Chandran, A. R. v. Sarojini Amma I.L.R. 2011 (1) Kerala . . . 193
- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—
Section 11(2)(b) and 11(3)—In the suit filed by the landlord, tenant suffering a decree of eviction after contesting the title of the landlord—During appeal against the said decree, tenant contending that the provisions of the Rent Control Act have been made applicable, based on which the decree is set aside by the appellate

court—The tenant cannot question the title of the landlord in the Rent Control proceedings subsequently initiated, as the contentions of the tenant in the appeal presupposes an admission regarding her status as a tenant.

Ratheesh Chandran, A. R. v. Sarojini Amma I.L.R. 2011 (1) Kerala .. 193

Buildings (Lease & Rent Control) Act, 1965 (Kerala Act 2 of 1965)—
*Section 11 (3)—Petition for eviction under Section 11 (3) is not maintain-
able where the landlord intends to let out a portion of the building
to a new set of tenants, after evicting the existing a tenants—In such case
eviction can be sought only under Section 11 (4) (iv).*

George Thomas v. T. N. Menon I.L.R. 2011 (1) Kerala .. 165

Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—
*Section 11(4)(v)—The order of eviction under Section 11(4)(v) is based on the
entailment of liability by the tenant due to any action or inaction on his part—
Even if the landlord has sold away the building, such sale cannot be a subsequent
event having fundamental impact on the landlord's right to evict the tenant under
Section 11(4)(v).*

Anil Kumar v. K. R. Honey I.L.R. 2011 (1) Kerala .. 353

Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—
*Section 11(4)(i)—“To terminate the transfer or Sublease” used in the proviso to
Section 11(4)(i) means full and effectual termination of sublease or transfer in the
sense that the alleged sublessee or transferee is sent away from the building—The
initiation of proceedings by the tenant against the sublessee for eviction is not
sufficient to satisfy the proviso to Section 11(4)(i).*

Thandayankandy Lakshmi v. K. K. Rahmath I.L.R. 2011 (1) Kerala .. 803

Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—Section 11—
*Petitions for eviction can be consolidated if there is similarity or identity of
matters—Tenant cannot question the legality of joint trial order before Revisional
Court unless it was objected to before the Rent Controller.*

Akbar Ali v. Narayanankutty I.L.R. 2011 (1) Kerala .. 877

Buildings (Lease and Rent Control) Act, 1964 (Kerala Act 2 of 1965)—
*Section 11(iv)(1)—Alleged subtenant doing business in the leased premises for a
long time—Doing business for a long period in the premises would not amount to
evidence that the landlord has permitted the sublessee to do such business.*

Muhammed Haji, P. V. v. Mundoli Muhammed Hajee I.L.R. 2011 (1)
Kerala (S.N.) .. 8

Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—Section 12—
*The denial of the tenant as to existence of arrears of rent must be specific—Non
specific denial will amount to admission by non traverse.*

Biju, R. S. v. Madhavikutty Amma I.L.R. 2011 (1) Kerala .. 872

Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—
*Section 11 (3)—Bona fide need espoused by the deceased Landlord may
survive him if the need pleaded is for the benefit of his family members also—Only*

those subsequent events which completely efface the case set up by the party can be taken note of.

- Chella Rowther v. Remabhai I.L.R. 2011 (1) Kerala . . . 975
- Building Tax Act, 1975 (Kerala Act 7 of 1975)**—*Section 2(e)*—*Single building consisting of separate flats constructed by the same owner can be assessed only as a single building, since the building does not fall within Explanation (1) or (2) of Section 2(e)*—*Building containing separate apartments can be assessed as separate buildings only if they fall within the explanations to Section 2(e).*
- District Collector v. Sreekumari Kunjamma, V. K. (F.B.) I.L.R. 2011 (1) Kerala . . . 13
- Building Tax Act, 1975 (Kerala Act 7 of 1975)**—*Section 3*—*Exemption of Buildings from the purview of the Act*—*Buildings used principally for educational purposes*—*Wherever hostel is compulsory for approval of a course of study or for an educational institution, the hostel building qualifies for exemption from levy of Building Tax.*
- Unity Hospital Pvt. Ltd. v. State of Kerala (F.B.) I.L.R. 2011 (1) Kerala . . . 19
- Building Tax Act, 1975 (Kerala Act 7 of 1975)**—*Section 3*—*Hostel building attached to educational institution is exempt from building tax even if charges are levied from students for coaching as well as for hostel facilities.*
- Unity Hospital Pvt. Ltd. v. State of Kerala (F.B.) I.L.R. 2011 (1) Kerala . . . 19
- Building Tax Act, 1975 (Kerala Act 7 of 1975)**—*Section 5*—*Unless the roof terrace of a commercial building is enclosed, area of the terrace cannot be included in the plinth area of the building for assessing building tax.*
- State of Kerala v. Southern Fisheries Corporation I.L.R. 2011 (1) Kerala . . . 974
- Central Vigilance Commission Act, 2003 (Central Act 45 of 2003)**—*Section 4*—*While selecting the person to be appointed to the post of Central Vigilance Commissioner, institutional integrity is the primary consideration which the High Power Committee should bear in mind, while making the recommendation under Section 4*—*Under Section 4(1), the High Power Committee should take into consideration what is good for the institution and not what is good for the candidate.*
- Centre for PIL v. Union of India (S.C.) I.L.R. 2011 (1) Kerala . . . 1001
- Central Vigilance Commission Act, 2003 (Central Act 45 of 2003)**—*Section 4*—*Recommendation of High Power Committee under Section 4 need not be unanimous.*
- Centre for PIL v. Union of India (S.C.) I.L.R. 2011 (1) Kerala . . . 1001
- Christian Law**—*Adoption*—*Canon Law*—*Canon 110, 111, 1094*—*A valid adoption made in accordance with the civil law, as applicable to the child adopted, alone is recognized by the canon law.*
- Philips Alfred Malvin v. Y. J. Gonsalvis I.L.R. 2011 (1) Kerala . . . 985

- Christian Law—Adoption—Baptism Certificate—Mere entry in the baptism certificate or register is not sufficient to confer the status of an adopted child on a person, where the personal law applicable to them does not recognize such adoption.**
 Philips Alfred Malvin v. Y. J. Gonsalvis I.L.R. 2011 (1) Kerala . . . 985
- Civil Procedure Code, 1908 (Central Act 5 of 1908)—Sections 10 and 47—The executability of the decree as a nullity, can be challenged only when (i) the right remedy is sought by the right person in the right proceedings and circumstances and (ii) the lack of jurisdiction in the Court for passing the decree is patent on its face, enabling the executing Court to take cognizance of such a nullity based on want of jurisdiction—Otherwise the normal rule that an executing Court cannot go behind the decree, must prevail—Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965).**
 Vicar, Jerusalem, Marthoma Church v. Mamman Thomas I.L.R. 2011 (1) Kerala . . . 142
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order 41, Rule 33—Where the admissibility of the appeal is shown to be barred by law, the party cannot press for the consideration of the appeal on merits by invoking the wide powers of the appellate court under Order 41, Rule 33.**
 Sulochana Peter v. Chellamma Swarnamma I.L.R. 2011 (1) Kerala . . . 61
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order 41, Rule 33—The power under Order 41, Rule 33 can be invoked when a portion of the decree appealed against is inseparably connected with a portion not appealed against and the appellate court is satisfied that leaving the decree untouched would result in injustice or inconsistency in the decree rendered by the Court.**
 Sulochana Peter v. Chellamma Swarnamma I.L.R. 2011 (1) Kerala . . . 61
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order 41—Cross objection—Defendant not challenging the decree of the trial court in favour of the plaintiff—Defendant filing cross objection in appeal filed by other defendants, who had no common interest—Held the cross objection filed by the defendant was not entertainable and consequently the defendant could not prefer a Second Appeal challenging the appellate decree.**
 Sulochana Peter v. Chellamma Swarnamma I.L.R. 2011 (1) Kerala . . . 61
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order 41—Cross objections preferred in an appeal is akin to that of a cross-appeal and a dismissal of the cross objection, on any ground other than maintainability, must be based on a decision on such cross objection and a decree must be passed.**
 Sulochana Peter v. Chellamma Swarnamma I.L.R. 2011 (1) Kerala . . . 61
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXI, Rule 101—It may not be proper and correct to say that on presentation of a claim resisting a decree, the entire burden is on the decree-holder to establish his right over the property covered by the decree, and further, prove that such decree is binding on such claimant as well—When a decree or order is challenged by a stranger setting up an independent right, his position is that of a plaintiff asserting**

his right over the property covered by the decree or order—Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—Section 11(2)(b) and 11(3).

Kunjumol C. Immanuel v. Shibu, S. N. I.L.R. 2011 (1) Kerala . . . 226

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 11—Res judicata—Adverse finding on issues framed on the counter claim of the defendant, if not challenged, shall operate as res judicata barring any further challenge to the decree passed on the suit claim in favour of the plaintiff.

Ravi Chandran, K. K. v. A. R. Philip I.L.R. 2011 (1) Kerala (S.N.) . . . 7

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 47 and Order XXI, Rule 15—Order XXI, Rule 15 C.P.C. enables a joint decree-holder to execute the decree in its entirety—If the whole of the decree cannot be executed, the decree-holder will have to work out his rights in an appropriate suit for partition and obtain necessary reliefs there to.

Peethambaran v. Dileepkumar Panicker I.L.R. 2011 (1) Kerala . . . 127

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXI, Rule 58—Order XXI, Rule 58 applies only to cases of attachment—There cannot be a claim petition in relation to a charge—Transfer of Property Act, 1882 (Central Act 4 of 1882)—Section 55 (6)(b).

Kumaran v. Kumaran I.L.R. 2011 (1) Kerala . . . 292

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 60 and Order XXI—When execution is levied by attachment of salary, necessarily the amount has to be deducted from the salary of the judgment-debtor.

Sasi, P. K. v. Murukan Achari I.L.R. 2011 (1) Kerala, Case No. 5 (S.N.) . . . 3

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order 41, Rule 22—The provision enables the party to not only support the decree but also to urge that the findings against him by the court below ought to have been in his favour.

M/s G. K. Engineering Works v. St. John the Baptist Church, Aluva
I.L.R. 2011 (1) Kerala . . . 361

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXI, Rules 97 to 103—Suit by a third party impeaching the correctness of Court sale, is not maintainable—All such questions should be adjudicated under Rules 97 to 103 by the Execution Court.

Unnikrishnan v. Kunhibeevi I.L.R. 2011 (1) Kerala . . . 785

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 36 and 173 (2)—By having recourse to Section 36 Cr.P.C., Superior Police Officers cannot interfere with the investigation conducted by their subordinates—Superior Police Officers can take over the investigation and conduct the same with the same amount of freedom and flexibility as could be enjoyed by their subordinates and with the same amount of accountability which was saddled on such subordinates.

- Murukeshan v. State of Kerala I.L.R. 2011 (1) Kerala .. 159
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 173(8)—**
The complainant has the right to file a petition seeking further investigation, if the real culprits are not included in the final report or there is lacuna in the investigation which will cause failure of justice.
- Sindhu Gopalakrishnan v. Sebastian I.L.R. 2011 (1) Kerala .. 231
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 173(8) and 397(2)—Order rejecting application filed by the defacto complainant for further investigation under Section 173(8) Cr.P.C.—The said order is neither a final order nor an interlocutory order and is one falling in between a final order and an interlocutory order and the outcome of such order is likely to affect the interest of the parties in trial and therefore such order is amenable to revisional jurisdiction—Code of Criminal Procedure, 1973 (Central Act 2 of 1974).**
- Sindhu Gopalakrishnan v. Sebastian I.L.R. 2011 (1) Kerala .. 231
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 160—Section 160 authorises an Officer investigating a case, to require the attendance before him only of a person within the limits of his own or of any adjoining station.**
- David Morise v. State of Kerala I.L.R. 2011 (1) Kerala, Case No. 6 (S.N.) .. 3
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 205—**
The satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the Magistrate, who is the master of the Court in so far as the progress of the trial is concerned and none else—The discretion of the Magistrate under Section 205 of the Code cannot be circumscribed by laying down any general directions in that behalf.
- T. G. N. Kumar v. State of Kerala I.L.R. 2011 (1) Kerala (S.C.) .. 321
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 298—**
Mere production of certified copy of documents without proving the documents by any other mode provided by law, would not meet the requirement of proof contemplated under Section 298.
- State of Kerala v. Shijil I.L.R. 2011 (1) Kerala (S.N.) .. 5
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 313—**
Dispensation with the personal examination of an accused in terms of Section 313 is within the trial court's discretion, to be exercised keeping in view certain parameters enumerated therein and not as a matter of course.
- T. G. N. Kumar v. State of Kerala I.L.R. 2011 (1) Kerala (S.C.) .. 321
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 137(2)—**
'Reliable evidence'—Reliable evidence is the evidence which can be relied up on by a competent court—Plaint copy is only a pleading and cannot be relied upon as 'reliable evidence' for the purpose of Section 137(2) of the Code.
- Omanakutty Amma v. Sajeevkumar, M. R. I.L.R. 2011 (1) Kerala .. 474

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 197—While sanction under Section 19 of the P.C. Act to prosecute a person who has ceased to be a public servant is not necessary, sanction under Section 197 Cr. P.C. to prosecute a person for any of the offences under the I.P.C. is necessary, even if such person has ceased to be a public servant—Prevention of Corruption Act, 1988 (Central Act 49 of 1988)—Section 19.*
- Antony Cardoza v. State of Kerala I.L.R. 2011 (1) Kerala .. 530
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 379—Appeal against acquittal by third party held to be maintainable before the Supreme Court in view of the special circumstances arising in the case.*
- Achuthanandan, V. S. v. R. Balakrishna Pillai (S.C.) I.L.R. 2011 (1) Kerala .. 569
- Conservation of Paddy Land and Wet Land Act, 2008 (Kerala Act 28 of 2008)**—*Section 5—Preparation of data bank and its notification is not a condition precedent for taking preventive action under the Act.*
- Kaipadath Property Development Company (P) Ltd. v. State of Kerala
I.L.R. 2011 (1) Kerala .. 434
- Conservation of Paddy Land and Wet Land Act, 2008 (Kerala Act 28 of 2008)**—*Section 13—Power of District Collector—Collector cannot order re-conversion of alleged ‘Kole land’ without determining whether it is wet land or paddy land and whether it was used for cultivation prior to conversion—Remedial and penal action under the Act can be taken only after the data bank is prepared and notified.*
- Kaipadath Property Development Company (P) Ltd. v. State of Kerala
I.L.R. 2011 (1) Kerala .. 434
- Conservation of Paddy Land and Wet Land Act, 2008 (Kerala Act 28 of 2008)**—*Orders passed under the Kerala Land Utilisation Order are not nullified by operation of the latter Act—Kerala Land Utilisation Order.*
- Kaipadath Property Development Company (P) Ltd. v. State of Kerala
I.L.R. 2011 (1) Kerala .. 434
- Conservation of Paddy Land and Wet Land Act, 2008 (Kerala Act 28 of 2008)**—*Section 23—Prosecution for conversion of Paddy land or Wet land can be launched only after publication of the data bank.*
- Firose v. Revenue Divisional Officer I.L.R. 2011 (1) Kerala .. 980
- Constitution of India**—*Article 226—Writ of Mandamus—Party aggrieved by judgment in Writ Petition should file either Review Petition or Appeal against judgment—Registrar General of the High Court is not competent to take any action against the petitioner in Writ Petition on the ground that the Writ Petition was mala fide.*
- Haleema, V. M. v. High Court of Kerala I.L.R. 2011 (1) Kerala .. 50
- Constitution of India**—*Article 226—Alternate remedy—When statutory power conferred on an authority is exercised in a patently illegal manner, arising out of evident non-compliance of the mandatory procedure, the writ court is justified in exercising the jurisdiction vested in it under Article 226, even in cases where alternate remedy is available.*

- M/s K.R.S. Latex (India) Pvt. Ltd. v. Federal Bank I.L.R. 2011 (1) Kerala .. 395
- Constitution of India—Article 226—***In exceptional cases, the High Court may issue orders to render justice, without in any manner impairing the effect of the statutory law governing the field—When such a power is being exercised, the writ court would loathe transgress the statutory limitations, unless equivalent appropriate conditions are imposed.*
- Kartheikeyan v. Deputy Commissioner of Excise I.L.R. 2011 (1) Kerala .. 372
- Constitution of India—Article 226—***Writ of Mandamus cannot be issued commanding amendment of the Special Rules to include any particular qualification as the requisite qualification for the post.*
- Reji, E. M. v. State of Kerala I.L.R. 2011 (1) Kerala (S.N.) .. 5
- Constitution of India—Article 227—***The power of superintendence under Article 227 cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner.*
- T. G. N. Kumar v. State of Kerala I.L.R. 2011 (1) Kerala (S.C.) .. 321
- Constitution of India—Article 226—***Maintainability of writ petition—Writ petition is maintainable irrespective of availability of efficacious alternate remedy, if the petition raises important questions of interpretation of statute and jurisdiction of statutory authority.*
- Kaipadath Property Development Company (P) Ltd. v. State of Kerala
I.L.R. 2011 (1) Kerala .. 434
- Constitution of India—Article 21—***Right to life—Necessity to retain common water sources, such as ponds, emphasised.*
- Jagpal Singh v. State of Punjab (S.C.) I.L.R. 2011 (1) Kerala .. 491
- Constitution of India—Article 27—***Freedom as to payment of taxes for promotion of any particular religion—Bar under Article 27 is attracted in cases where statute by which tax is imposed provides that proceeds of the tax will be utilised for the purpose of any particular religion—Prohibition under Article 27 also applies where substantial portion of proceeds levied under a general taxing statute, is utilised for the purpose of any particular religion.*
- Prafull Goradia v. Union of India (S.C.) I.L.R. 2011 (1) Kerala .. 503
- Constitution of India—Article 226—***The writ jurisdiction of the High Court should not be exercised normally when there exists effective alternate remedy—The alternate remedy will not operate as a bar for entertaining the writ petition in 3 contingencies namely (1) For the enforcement of any fundamental right. (2) For violation of principles of natural justice (3) Where the order or proceedings are wholly without jurisdiction or when the vires of an Act is challenged—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002).*
- BPL Ltd. v. Pegasus Assets Reconstruction (P) Ltd. I.L.R. 2011 (1)
Kerala .. 637

- Constitution of India—Articles 295 and 296—Sree Padmanabhaswamy Temple—**
Sree Padmanabhaswamy Temple, besides being a great Hindu temple, is a building of great architectural value and its treasures are worth preserving, and should be protected and exhibited for public view—State Government directed to take steps to take over control of the temple.
 Sundara Rajan, T. P. v. State of Kerala I.L.R. 2011 (1) Kerala .. 604
- Constitution of India—Article 366(22)—After the commencement of the Constitution of India no one can acquire the status of Ruler in view of the Twenty Sixth Amendment to the Constitution of India—Hindu Religious Institutions Act, 1950 (Travancore-Cochin Act 15 of 1950)—Section 18(2).**
 Sundara Rajan, T. P. v. State of Kerala I.L.R. 2011 (1) Kerala .. 604
- Constitution of India—Article 226—The eventuality of a vaccum created due to a decision rendered by the Writ Court can be remedied by the Court by evolving interim arrangements—Vaccum created by declaring that the provisions of the Town Planning Act, 1939 and the Madras Town Planning Act, 1920 cannot survive and that Section 51(4) of the Municipalities Act is unworkable, sought to be remedied by directing that Municipalities including Municipal Corporations can have recourse to the existing Town Planning Schemes and the Detailed Town Planning Schemes till alternate arrangements are made by the Government.**
 Shivaprasad, V. v. State of Kerala I.L.R. 2011 (1) Kerala .. 697
- Constitution of India—Article 14—Islamic Banking—Where the State is proposing to carry on some business by participation in venture jointly with others, the decision cannot in any way be called distribution of largess, for the reason that tenders were not invited.**
 Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India—Article 14 to Article 16, Article 25 to Article 30, Article 51(A) —“Secularism”, “religion”, “Secular activity associated with religious practice”—Defined with reference to case laws.**
 Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala . 833
- Constitution of India—Articles 25 to 28—Islamic Banking , based on the principles of Shariah—To categorize laws as non secular because the prescription of such laws coincides with certain religious belief would not be conducive to promotion of an orderly society either secular or non secular—If the purposes of the State are to be classified as ‘Non Secular’ simply because of the mandate of the law made by the State coincided with the beliefs of a religion or originated in a religion , virtually no law can be made.**
 Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India—Article 25 to Article 30—Islamic Banking—Participation by State—Payment of money from the exchequer proposed to be made with a view to achieve a commercial benefit—Such payment would not have the primary and direct effect of supporting or maintaining the religion—The main and primary purpose is commerce and not propagation of religion.**

- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 25 to Article 30—Even those activities which can be called purely religious are also amenable to regulation by the State’s law making authority, if the State rationally comes to a conclusion that such practices are not conducive to the public order or requirements of morality of the society or are harmful to the health of the society.*
- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 25 to Article 30—Islamic Banking—Participation by State of Kerala—The Constitution does not create an absolute embargo on the State’s association with every and any religious activities, nor does the Constitution permit the establishment of a theocratic State—The Constitution expressly recognizes that there can be secular activities such as economic, financial, political activities associated with religious activities.*
- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 27—The spending of money by the State on an activity which has a basis in some religion does not by itself attract the prohibition contained in Article 27.*
- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 28 to Article 30—The Indian Constitution does not adopt the American doctrine of “wall of separation”—Difference between the Constitution of India and the Constitution of the United States of America—Discussed.*
- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 226—Order passed by the District Education Officer, set aside by the Deputy Director of Education in appeal—Challenge against order of the DDE on the ground of competency—DDE is also an appellate authority from the orders of the DEO—High Court can refuse to interfere with the impugned order if it would result in resurrection of an illegal order—Education Rules, 1959 (Kerala)—Chapter XIV A.*
- Manager, M.M.U.P. School v. Deputy Director of Education I.L.R. 2011 (1) Kerala .. 895
- Constitution of India**—*Article 226—Public Interest Litigation—Locus Standi—A legal objection before a Constitutional Court to a particular practice of the State on the ground that it is inconsistent with the obligation of the State under the provisions of the Constitution, is amenable to challenge by a private party under the writ jurisdiction.*
- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 298—To restrict the commercial interaction of the State even with a religious denomination, on the ground that it is inconsistent with the declaration that the State should be a ‘secular republic’ would be illogical, having regard to the scheme of the Constitution.*

- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*While interpreting the Constitution or determining the Constitutional validity of the statutes, the court cannot be guided by the views expressed by individual officers of the State as the court has to ascertain the true meaning of the statute made by the legislature.*
- Dr. Subrahmaniam Swamy v. State of Kerala I.L.R. 2011 (1) Kerala .. 833
- Constitution of India**—*Article 21—Right to life—Passive Euthanasia can be permitted—When withdrawal of life support to patient in permanent vegetative state can be permitted.*
- Aruna Ramachandra Shanbaug v. Union of India (S.C.) I.L.R. 2011 (1) Kerala .. 913
- Constitution of India**—*Articles 21 and 226—Procedure to be followed by High Court while deciding application seeking approval to withdraw life support to an incompetent person in permanent vegetative state.*
- Aruna Ramachandra Shanbaug v. Union of India (S.C.) I.L.R. 2011 (1) Kerala .. 913
- Constitution of India**—*Article 226—The Court has to act as parens patriae in the case of an incompetent person who is unable to take decision whether to withdraw from life support or not—High Court has the power to grant approval for withdrawing life support to an incompetent person in permanent vegetative state.*
- Aruna Ramachandra Shanbaug v. Union of India (S.C.) I.L.R. 2011 (1) Kerala .. 913
- Constitution of India**—*Article 32—Directions issued by the Supreme Court regarding procedure to be followed for selection of suitable person to be appointed as Central Vigilance Commissioner.*
- Centre for PIL v. Union of India (S.C.) I.L.R. 2011 (1) Kerala .. 1001
- Constitution of India**—*Articles 14 and 300 A—If the statutes were, by a legislation, to decide a conflict, that too, a conflict of interests in which that particular State has also a stake, that would be nothing short of arbitrariness and such a power cannot be conceived or acceded to any legislature.*
- Hotel Leelaventure Ltd. v. State of Kerala I.L.R. 2011 (1) Kerala .. 1046
- Constitution of India**—*Article 229—Power of the Chief Justice to appoint staff of High Court is absolute and cannot be curtailed by the legislature or executive—State cannot impose a condition that the appointment of staff will be proportional to the number of sitting Judges.*
- Asokan, N. v. State of Kerala I.L.R. 2011 (1) Kerala .. 1066
- Constitution of India**—*Articles 300A and 301—When the Union of India and the State have conflicting claim of title to a piece of property, the State cannot, by legislation, assert its title to the immovable property.*
- Hotel Leelaventure Ltd. v. State of Kerala I.L.R. 2011 (1) Kerala .. 1046

- Constitution of India**—*When the legislature itself decides a disputed issue, it damages the basic structure of the Constitution of India, namely, separation of power between the legislature, the executive and the judiciary—The constitutional scheme shows a clear anxiety on the part of the framers of the constitution to preserve and promote the principles of separation of powers and independence of judiciary and the judicial process.*
- Hotel Leelaventure Ltd. v. State of Kerala I.L.R. 2011 (1) Kerala . . . 1046
- Consumer Protection Act, 1986 (Central Act 68 of 1986)**—*Section 3—Complaint filed by member of Co-operative Society against the society is maintainable—Section 69 of Co-operative Societies Act does not take away the jurisdiction of the Consumer Forum—Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—Section 69.*
- Enathu Service Co-operative Bank Ltd. v. Consumer Disputes Redressal Forum I.L.R. 2011 (1) Kerala . . . 423
- Co-operative Societies Employees’ Self Financing Pension Scheme, 1994 (Kerala)**—*Clause 21—The amendment brought about to Clause 21, by substituting the words ‘after completing a minimum of 20 years of qualifying service on attaining the age of 50 years’ with the words ‘after completing a minimum of 20 years of qualifying service or attaining the age of 50 years’, being a welfare measure, which promotes the object of the scheme, is retrospective in operation.*
- Velayudhan, P. v. Kerala State Co-op. Employees’ Pension Board I.L.R. 2011 (1) Kerala . . . 384
- Co-operative Societies Rules, 1969 (Kerala)**—*Rule 15(3)(5)—Milk societies which are essentially engaged in marketing of the product of their members, who are dairy farmers or farmers of agriculture produce, in bulk, squarely fall under producer societies covered by clause 5 and are not consumer societies covered under clause 3 of Rule 15.*
- Wayanad District Wholesale Consumers Co-operative Store Ltd. v. Thomas, K. D. I.L.R. 2011 (1) Kerala . . . 334
- Co-operative Societies Rules, 1969 (Kerala)**—*Rule 185(8)—The power of relaxation must be exercised by the society as well as the Registrar only in exceptional cases and such exercise must be with circumspection and caution.*
- Karthikeyan, P. S. v. Registrar of Co-operative Societies I.L.R. 2011 (1) Kerala . . . 669
- Co-operative Societies Rules, 1969 (Kerala)**—*Rule 187—Continuous employment, from the date of making application till date of appointment in the Apex/Central Society, is the mandatory requirement to qualify for appointment under the quota reserved for employees of Member Societies in the Apex/Central Society.*
- Shibi, M. V. v. State of Kerala I.L.R. 2011 (1) Kerala (S.N.) . . . 8
- Costal Zone Management Plan**—*Costal Regulation Zone-I category—An Industry, Process or Operation cannot be carried on in area classified as CRZ-I—Mangrove forest in Kerala come under CRZ-I category—Environmental Protection Rules, 1986—Rule 5(3a).*

Ansari Kannoath v. State of Kerala I.L.R. 2011 (1) Kerala	..	403
Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960) —Section 73A— <i>Municipalities are not exempted from paying court fee under the Kerala Court Fees and Suits Valuation Act—General Clauses Act, 1897(Central Act 10 of 1897)—Section 3(15).</i>		
Palakkad Municipality v. N. Abdul Muthalif I.L.R. 2011 (1) Kerala, Case No. 9 (S.N.)	..	4
Criminal Investigation — <i>Passing on piecemeal or full information to the media by the police officers during investigation and attempt by the media to sensationalize the news by suppression, exaggeration or distortion of material aspects, depreciated.</i>		
Murukeshan v. State of Kerala I.L.R. 2011 (1) Kerala	..	159
Criminal Trial — <i>Need to streamline and legalise the procedure in the Vigilance Department—While a preliminary enquiry before the formal registration of a crime case is desirable in corruption charges against public servants, the police cannot disregard or flout the provisions of the Cr. P.C., while proceeding further after such preliminary enquiry.</i>		
Antony Cardoza v. State of Kerala I.L.R. 2011 (1) Kerala	..	530
Criminal Trial — <i>Need for speedy disposal of cases involving corruption charges leveled against public servants—Special courts or regular courts entrusted with cases involving corruption charges against public servants should give priority to such cases and conclude the trial within a reasonable time—High Court having overall control and supervisory jurisdiction under Article 227 of the Constitution of India is expected to monitor and call for a quarterly report from the court concerned for speedy disposal.</i>		
Achuthanandan, V. S. v. R. Balakrishna Pillai (S.C.) I.L.R. 2011 (1) Kerala	..	569
Defence of India Rules, 1971 (Central) —Rule 9— <i>Person who was not in possession of any portion of the protected area as on 28-6-1963 cannot claim any right over it, unless he is in possession of a permit issued by the competent authority.</i>		
Sivananda Yoga Vedanta Dhanwantari Ashram v. State of Kerala I.L.R. 2011 (1) Kerala	..	555
Drugs (Price Control) Order, 1979 —Clause 18— <i>Manufacturer not to refuse sale of drug except for ‘Good and sufficient reason’—Manufacturer’s refusal to supply drugs directly to retailer or wholesale dealer on the ground that the supply has to be channelled through stockist or distributor is a good and sufficient reason to refuse to sell directly to a dealer.</i>		
Suresh Lal, R. v. Drugs Controller of Kerala I.L.R. 2011 (1) Kerala	..	562
Drugs (Price Control) Order, 1979 —Clause 18— <i>Appointment of stockist is within exclusive commercial domain of the manufacturer and Drugs Controller cannot interfere with contractual obligations of the manufacturer or stockist.</i>		
Suresh Lal, R. v. Drugs Controller of Kerala I.L.R. 2011 (1) Kerala	..	562

- Education**—*Eligibility of students from Lakshadweep to join professional course in mainland – Candidates who have passed the qualifying examination ‘in a year prior to the year of selection’ does not mean that only those candidates who passed the qualifying examination in the year immediately preceding the year of selection shall be eligible.*
- Jabeer, M. P. v. Nilufer, P. P. I.L.R. 2011 (1) Kerala .. 258
- Education Act, 1958 (Kerala Act 6 of 1959)**—*Section 35—In order to attract the powers under Sec.35, the Government should be satisfied that a difficulty has arisen and an order is required or expedient for the purpose of removing the difficulty in giving effect to the provisions of the Act—Education Rules, 1959 (Kerala)—Chapter I—Rule 3.*
- Vicar, St. Mary’s Church v. State of Kerala I.L.R. 2011 (1) Kerala .. 623
- Education Act, 1958 (Kerala Act 6 of 1959)**—*Section 7—Shifting of UPSA to LPSA by Manager on the ground of vacancy arising in L.P. Section—Contention of the Manager that there was no prohibition in the Act or Rules, cannot be accepted—The Manager cannot assume powers by himself, de hors the express powers conferred on the Manager by the Act and Rules—Kerala Education Rule, 1959—Chapter III, Rule 9.*
- Manager, M.M.U.P. School v. Deputy Director of Education I.L.R. 2011 (1) Kerala .. 895
- Education Rules, 1959 (Kerala)**—*Chapter XIVA, Rule 56 (4)—Service of aided school teacher can be terminated only in accordance with the provisions of Rule 75 of Chapter XIVA—The teacher will not cease to be in service in accordance with Rule 56(4), unless proceedings are taken under Rule 75.*
- Elsy P. Oomman v. State of Kerala I.L.R. 2011 (1) Kerala .. 286
- Education Rules, 1959 (Kerala)**—*Chapter III, Rule 2—The Government does not have any power or authority to revise or reconsider an order passed by the Director under Rule 2—If a dispute arises between the parties constituting the Educational Agency, which cannot be resolved under any specific provisions of Kerala Education Act and Rules, the parties have to work out their remedies before the Civil Court and not before the Government or the educational authorities.*
- Vicar, St. Mary’s Church v. State of Kerala I.L.R. 2011 (1) Kerala .. 623
- Education Rule, 1959 (Kerala)**—*Chapter XXXI, Rules 3 and 4—The posts of UPSA and LPSA are different in category and the nature of duties are also different—The teachers teaching in these posts cannot be shifted at the whims and fancies of the Manager.*
- Manager, M.M.U.P. School v. Deputy Director of Education I.L.R. 2011 (1) Kerala .. 895
- Education Rules, 1959 (Kerala)**—*Chapter XIV A Rule 61(5)—The status of a teacher appointed to a leave vacancy is only that of a provisional employee—After*

appointment on regular basis, the leave period availed before completion of one year by a provisional employee appointed to a leave vacancy, cannot be reckoned for the purpose of increment and grade benefits—Government directed to instruct statutory authorities to approve appointment of teachers in leave vacancy, only if they are certified medically fit for service for a reasonable period.

State of Kerala v. Lali, M. S. I.L.R. 2011 (1) Kerala . . . 1041

Electricity Act, 2003 (Central Act 36 of 2003)—Section 126(3)—Additional bill issued under Section 126(3) alleging unauthorised use of electricity—Consumer aggrieved by the additional bill should challenge the bill before Appellate Authority as provided under Section 127—CGRF has no jurisdiction to entertain the complaint filed by a consumer against the bill issued by the Board—Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005—Regulation 2(f) (vii).

Catholic Reformation Literature Society v. K.S.E.B. I.L.R. 2011 (1) Kerala . . . 657

Environmental (Protection) Act, 1986 (Central Act 29 of 1986)—Section 5—Though the Central Government has delegated its power to the State Government, such delegation does not denude the authority of Central Government to initiate action, if in its opinion, such action necessary in public interest.

Ansari Kanoth v. State of Kerala I.L.R. 2011 (1) Kerala . . . 403

Environmental Protection Act, 1986 (Central Act 29 of 1986)—Sections 3, 5 and 23—By reason of delegation of powers vested with the Central Government under Section 5, the Central Government is not denuded of its authority to initiate action under Section 5 of the Act.

Pappinisseri Eco Tourism Society v. State of Kerala I.L.R. 2011 (1) Kerala . . . 747

Environmental Protection Act, 1986 (Central Act 29 of 1986)—Section 5—The activities undertaken for the theme park proposed to be established by the Pappinisseri Eco Tourism Society comes within the expression 'industry, process or operation' referred to Section 5 and Rule 5(3a)—Environment (Protection) Rules, 1986—Rule 5(3a).

Pappinisseri Eco Tourism Society v. State of Kerala I.L.R. 2011 (1) Kerala . . . 747

Environmental Protection Act, 1986 (Central Act 29 of 1986)—Map No. 66 A , prepared by the Kerala State Coastal Zone Management Authority categorizing the property of the theme park in CRZ-1 is proper—The activities carried on by the Pappinisseri Eco Tourism Society in the property are in violation of the restrictions prescribed by the CRZ notification.

Pappinisseri Eco Tourism Society v. State of Kerala I.L.R. 2011 (1) Kerala . . . 747

Eviction—Encroachment of public property—Encroachers of land used by the general public for common purposes should be evicted without any leniency and land should be retained for common use—Even house constructed by encroacher should be demolished.

- Jagpal Singh v. State of Punjab (S.C.) I.L.R. 2011 (1) Kerala .. 491
- Eviction—Puramboke land—Directions issued to all States to prepare scheme for eviction of trespassers of public land.**
- Jagpal Singh v. State of Punjab (S.C.) I.L.R. 2011 (1) Kerala .. 491
- Evidence Act, 1872 (Central Act 1 of 1872)—Section 27—Authority of concealment is not sine qua non for admissibility of information made to a Police Officer by an accused in custody—Such information, which is otherwise admissible does not become inadmissible solely for the reason that such information does not reveal authorship of concealment.**
- Ajayan alias Baby v. State of Kerala (F.B.) I.L.R. 2011 (1) Kerala .. 1
- Evidence Act, 1872 (Central Act 1 of 1872)—Section 116—Tenant put in possession by Landlord cannot dispute the title and authority of such Landlord to seek eviction, provided title of the Landlord is not effaced by any subsequent event such as transfer of ownership.**
- Narayanan, N.M. v. Naduvil Madom I.L.R. 2011 (1) Kerala .. 549
- Evidence Act, 1872 (Central Act 1 of 1872)—Section 114—Presumption by Court regarding the existence of certain facts which the Court thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case—Common course of human conduct on account of the operation of law of nature includes human conduct attributable to the ability to think and act as an ordinary human being—In the common course of human conduct, it has to be presumed that a person facing a situation which may result in his death would resort to everything possible under his command to escape from the clutches of death.**
- Kunjan Raghavan v. K.S.E. Board I.L.R. 2011 (1) Kerala .. 184
- Evidence Act, 1872 (Central Act 1 of 1872)—Section 34—The entries in the books of accounts, by itself, does not form substantive evidence—Since an entry in the accounts book is an admission by the maker himself in his own favour, it can be accepted as evidence only if it has strictly complied with the requirements contained in Section 34 of the Evidence Act.**
- Manilal, K. N. v. Johnson, E. F. I.L.R. 2011 (1) Kerala .. 305
- Evidence Act, 1872 (Central Act 1 of 1872)—Section 50—When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact—A member of the family can speak as to what he has been told and what he has learnt about his own ancestors, provided what he says is an expression of his own independent opinion.**
- Chalambattil Balan v. Chalambattil Sreedharan I.L.R. 2011 (1) Kerala .. 268

- Evidence Act, 1872 (Central Act 1 of 1872)**—Section 112—*In cases of dispute over maternity, the presumption under Section 112 cannot be attracted—When the court is called upon to decide the question of maternity, it has to examine the materials placed before it and enter a finding based on the said materials.*
- Malayimmal Raveendran v. Malayimmal M. Vimala I.L.R. 2011 (1) Kerala . . . 993
- Foreign Liquor Rules, 1953 (Kerala)**—Rule 13(3)—*Prohibition of sale of liquor in Guruvayoor Town—Government should take into account the interest of the revenue and of tourists while considering renewal of license to bar hotels and to other outlets run at Guruvayoor.*
- Kalarikkal Hotels Private Limited v. State of Kerala I.L.R. 2011 (1) Kerala . . . 1033
- Foreign Liquor Rules, 1953 (Kerala)**—Rule 39—*Denial of Bar License on the ground of public interest—Grant of license to other outlets held amounts to discrimination—Constitution of India—Article 14.*
- Kalarikkal Hotels Private Limited v. State of Kerala I.L.R. 2011 (1) Kerala . . . 1033
- General Sales Tax Act, 1963 (Kerala Act 15 of 1963)**—Sections 45A (3) and (5)—*Additional court fee in terms of Notification S.R.O. No.226/2002 is payable on applications filed under sub-sections (3) and (5) of Section 45A, challenging orders passed under Section 45A(1), also—Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)—Section 76(1) and (2).*
- M/s Neptune Ready Mix Concrete Pvt. Ltd v. Intelligence Officer I.L.R. 2011 (1) Kerala, Case No. 8 (S.N.) . . . 4
- Hindu Law**—*Ancestral property—A property can ordinarily be reckoned as ancestral only if the present holder has got it by virtue of being a son or descendant of the original owner—When the father obtains the grandfather's property by way of gift, he receives it not because he is a son or has any legal right to such property, but because his father chose to bestow a favour on him, which he could have bestowed on any other person as well and the interest which he takes in such property must depend upon the Will of the grantor.*
- Chalambattil Balan v. Chalambattil Sreedharan I.L.R. 2011 (1) Kerala . . . 268
- Hindu Religious Institutions Act, 1950 (Travancore-Cochin Act 15 of 1950)**—Section 18(2)—*Sree Padmanabhaswamy Temple—As per Article VIII (b) of the Covenant of Accession Agreement and Section 18(2) of the Travancore-Cochin Hindu Religious Institutions Act, the temple is vested in trust in the Ruler of Travancore—The term 'Ruler' used in the Accession Agreement and in Section 18(2) of the Travancore-Cochin Hindu Religious Institutions Act, has to be understood with reference to the definition of Ruler in Article 366(22) of the Constitution of India—Constitution of India—Article 366(22).*
- Sundara Rajan, T. P. v. State of Kerala I.L.R. 2011 (1) Kerala . . . 604

- Hindu Religious Institutions Act, 1950 (Travancore-Cochin Act 15 of 1950)**—*Sree Padmanabhaswamy Temple—Origin and history of the temple traced—The temple was treated as a State/Public temple and was never regarded as private property of the Ruler of Travancore or as his family property.*
- Sundara Rajan, T. P. v. State of Kerala I.L.R. 2011 (1) Kerala .. 604
- Income Tax Act, 1961 (Central Act 43 of 1961)**—*Sections 147 and 148—Once the assessment is reopened for any valid reason recorded under Section 148(2), then the entire assessment is open for the Assessing Officer to bring to tax any item of escaped income which comes to his notice in the course of such reassessment.*
- Commissioner of Income Tax v. M/s Best Wood Industries and Saw Mills
I.L.R. 2011 (1) Kerala (F.B.) .. 254
- Income Tax Act, 1961 (Central Act 43 of 1961)**—*Section 80 IB—Even production of intermediary products is sufficient to entitle the assessee for deduction available to new industrial units—Compound rubber, being an intermediary from which tyre is manufactured, is covered by Section 80 IB of the Income Tax Act.*
- M/s Midas Polymer Compounds (P) Ltd. v. Assistant Commissioner of
Income Tax I.L.R. 2011 (1) Kerala (F.B.) .. 330
- Income Tax Act, 1961 (Central Act 43 of 1961)**—*Section 37(1)—Payment made under Voluntary Retirement Scheme on voluntary retirement of large number of employees is nothing but a capital expenditure which could be claimed as a deduction in a phased manner in the course of several years.*
- Commissioner of Income Tax v. M/s O.E.N. India Limited I.L.R. 2011 (1)
Kerala (S.N.) .. 7
- Industrial Disputes Act, 1947 (Central Act 14 of 1947)**—*Section 33—Protected workmen—Management is not bound to approve the entire list of names forwarded by the Union for recognition as ‘Protected Workmen’—Management can decline to recognize any of the workmen sponsored by union as protected workman for valid reason—If the union is aggrieved by decision of the Management, it can raise a dispute under Rule 61(4) and decision of the authority shall be final—Industrial Disputes Rules, 1957 (Kerala)—Rule 61.*
- HLL Life care Ltd. v. Hindustan Latex Labour Union I.L.R. 2011 (1)
Kerala .. 77
- Insurance**—*Insurance premium fixed and policy issued when service tax was payable—Insurer cannot unilaterally change the premium amount later and claim payment towards service tax in addition to the premium fixed at the time of issuing the policy.*
- Max New York Life Insurance Co. Ltd. v. Insurance Ombudsman
I.L.R. 2011 (1) Kerala .. 276

- Interpretation of Statutes**—*Retrospective nature of amendment—Normally prospective operation alone can be given to an amendment which affects a vested right—When the amendment is only curative in nature, brought about with the idea of supplying an omission, it is only a clarificatory and curative amendment and therefore will relate back to the time when the provision was introduced.*
- Velayudhan, P. v. Kerala State Co-op. Employees’ Pension Board I.L.R. 2011 (1) Kerala .. 384
- Kerala University Act, 1974 (Kerala Act 17 of 1974)**—*Section 17(13)—Nomination of the seven Heads of Departments of the University who are not otherwise Members of the Senate, to the senate has to be made strictly in the order of seniority and by rotation—No discretion is vested with the Chancellor to evolve any other method of nomination.*
- Dr. Tresa Radhakrishnan v. Chancellor, University of Kerala I.L.R. 2011 (1) Kerala .. 688
- Kerala University Act, 1974 (Kerala Act 17 of 1974)**—*Section 2(27)—‘Teacher’—Scientific Officer is not a teacher and should retire at the age of 55 years—Just because Scientific Officer is a research guide, he will not become a teacher.*
- Walter Alexander (Dr.) v. Registrar I.L.R. 2011 (1) Kerala .. 869
- Kovalam Palace (Taking over by Resumption) Act, 2005 (Kerala Act 25 of 2005)**—*The legislation is wholly without authority and is in violation of the doctrine of separation of powers where under the legislature does not get the power to adjudicate disputes—Kovalam Palace (Taking over by Resumption) Act held unconstitutional, void and inoperative—Constitution of India—Articles 14, 19, 300 A and 301.*
- Hotel Leelaventure Ltd. v. State of Kerala I.L.R. 2011 (1) Kerala .. 1046
- Landlord and Tenant**—*Suit for recovery of damages for use and occupation—Unless there is evidence to assist the court in fixing the damages for use and occupation, Court should not fix an amount much above the rent prevalent in the locality, as damages.*
- Narayanan, N.M. v. Naduvil Madom I.L.R. 2011 (1) Kerala .. 549
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 2(25)—“Kudikidappukaram”—Value of additional construction made by the alleged kudikidappukaram should be excluded while assessing the value of the building in respect of which the claim is raised.*
- Ramankutty Nair, K. v. Radhika G. Nair I.L.R. 2011 (1) Kerala .. 105
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 105—Burden is on the party who alleges that local inspection was conducted without notice to prove that fact—Even if Revenue Inspector did not give notice of inspection, report cannot be rejected solely for that reason.*
- Ramankutty Nair, K. v. Radhika G. Nair I.L.R. 2011 (1) Kerala .. 105

Land Reforms Act, 1963 (Kerala Act 1 of 1964)—Section 73(8)—*The jurisdiction of the Civil Court while delivering a property in execution of a decree for arrears of rent in respect of a land covered by the Kanam Tenancy Act, 1955, is not barred, for the reason that a different mode of execution is provided under Section 73(8) of the K.L.R. Act—Kerala Land Reforms Act, 1963—Sections 73(8) and 125.*

Chandrika v. Cochin Thirumala Devaswom I.L.R. 2011 (1) Kerala,
Case No.10 (S.N.) . . . 4

Limitation Act, 1963 (Central Act 36 of 1963)—Section 10—*In case of a duty arising out of a fiduciary relationship between the plaintiff and defendant, whereby the defendant had a legal obligation to pay the amount due to the plaintiff, the equitable doctrine of trust and confidence comes into play.*

M/s G. K. Engineering Works v. St. John the Baptist Church, Aluva
I.L.R. 2011 (1) Kerala . . . 361

Minor Mineral Concession Rules, 1957 (Kerala)—Rule 8 (1)(e)—*Licence holder is free to engage in any permissible method of mining, whether mechanical or manual and the only condition is that mining should be done in accordance with the terms and conditions of licence—Mines and Minerals (Development and Regulation) Act, 1957 (Kerala Act 67 of 1957)—Section 15.*

Boban Joseph v. Manikantan Nair I.L.R. 2011 (1) Kerala, Case No. 7 (S.N.) . . . 3

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Section 66—*The interdiction in Section 66 is against the owner of a vehicle from using it as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods except otherwise than in accordance with the terms and conditions stipulated in the permit—The statutory thrust being against user of a vehicle as a transport vehicle without a permit, even after the expiry of the validity of the permit, the policy will nevertheless cover the risk of third parties, if the vehicle was not being used as a transport vehicle at the time of the accident.*

Sethunath v. John Varghese I.L.R. 2011 (1) Kerala . . . 176

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Section 147—*Insured paying premium for covering risks associated with loading and unloading work in the vehicle—Where such premium is paid, Insurer is liable to recompense the Headload worker for damages suffered by him while travelling in the vehicle, accompanying the goods loaded by him in the vehicle.*

Sulaiman v. Thottiparambil Alipa I.L.R. 2011 (1) Kerala . . . 171

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Sections 2(3) and 50—*Registered owner of the offending vehicle, whose name continues in the records of the registering authority, is equally liable to pay compensation, in spite of transfer of his vehicle—The liability of the Insurance Company is co-extensive with that of*

the registered owner, in whose name the policy subsists in spite of transfer of the vehicle.

Pushpa @ Leela v. Shakuntala I.L.R. 2011 (1) Kerala (S.C.) .. 247

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*Section 147(1)(a)(i)—Liability of Insurer—Insurer is liable to recompense the claimant, even if the claimant/owner of the goods, accompanying his goods in a Goods Autorickshaw had suffered injury—It is immaterial that the Goods Autorickshaw did not have a seat other than that of the driver—Insurer can recover the amount from the owner of the vehicle after satisfying the award.*

United India Insurance Company Ltd. v. Manoj I.L.R. 2011 (1) Kerala ..358

Motor Vehicles Rules, 1989 (Central)—*Rule 82(2)—The rule only postulates that a tourist permit shall be invalid from the date on which the motor vehicle covered by the permit completes 9 years, unless the motor vehicle is replaced—There is no embargo against using a vehicle otherwise than as a transport/commercial vehicle carrying passenger for hire or reward, after expiry of its tourist permit—Insurance Company would be liable to indemnify the owner and driver from liability arising out of an accident during the course of such use.*

Sethunath v. John Varghese I.L.R. 2011 (1) Kerala .. 176

Motor Vehicles Rules, 1989 (Kerala)—*Rule 95(1)—Allotment of ‘fancy numbers’—In order to have entitlement for reservation of fancy number, the applicant must either be an owner of a vehicle or a proposed purchaser—In the absence of any concrete steps taken by the applicant to purchase the vehicle, he cannot be termed as a proposed purchaser—The mere intention to purchase a vehicle would not make the applicant a proposed purchaser.*

Sathiapalan, P. K. v. The Joint R.T.O. I.L.R. 2011 (1) Kerala (S.N.) .. 7

Municipality Act, 1994 (Kerala Act 20 of 1994)—*Section 51(4)—The provisions of the Town Planning Act, 1939 and Madras Town Planning Act, 1920, with regard to the preparation of General Town Planning Schemes and Detailed Town Planning Schemes cannot survive in the light of Part IX A of the Constitution of India and the Municipality Act, 1994—The provisions of the Town Planning Acts are inconsistent with the provisions of Part IX A of the Constitution of India and the Municipality Act, 1994—Section 51(4) of the Municipality Act, 1994 is unworkable—Constitution of India—Part IX A—Town Planning Act, 1939—Madras Town Planning Act, 1920.*

Shivaprasad, V. v. State of Kerala I.L.R. 2011 (1) Kerala .. 697

Municipality Building Rules, 1999 (Kerala)—*Rule 11—Issue of permit—Just because the site was inspected and the plan sent to statutory authorities for obtaining NOC, does not mean that the local authority is bound to approve the plan and issue building permit to the applicant, on receipt of NOC from those authorities—Plan and permit should conform to the Building Rules*

prevailing as on the date of scrutiny and not in accordance with the Rules as on the date of submission of application.

- M/s Asset Homes Pvt. Ltd. v. State of Kerala I.L.R. 2011 (1) Kerala . . . 310
- Munnar Special Tribunal Act, 2010 (Kerala Act 13 of 2010)**—Sections 2(c), 2(d) and 10—*There is no ouster of jurisdiction of Criminal Courts by constitution of the Munnar Special Tribunal—The cases which would stand transferred to the Tribunal on its constitution are cases involving disputes of a civil nature in respect of ownership, possession, use, etc., of land in Munnar area pending in the Civil Courts and other authority and not cases pending in the Criminal Courts in the State.*
- Varghese, A. M. v. Government of Kerala I.L.R. 2011 (1) Kerala . . . 884
- Muslim Women (Protection of Rights on Divorce) Act, 1986 (Central Act 25 of 1986)**—Section 3—*A divorced Muslim Woman is not entitled to get any amount exclusively for iddat period over and above the “provision and maintenance” to be made under Section 3 of the Act.*
- Majeed, C. A. v. Afira I.L.R. 2011 (1) Kerala . . . 121
- Muslim Women (Protection of Rights on Divorce) Act, 1986 (Central Act 25 of 1986)**—Section 3—*The reasonable and fair provision and maintenance to a divorced woman shall be made within the iddat period, failing which a cause of action arises for filing a petition under Section 3 of the Act.*
- Majeed, C. A. v. Afira I.L.R. 2011 (1) Kerala . . . 121
- Natural Justice**—*The question whether there is violation of Principles of Natural Justice depends on the facts of the case—Mere technical infringement of natural justice is not sufficient—Unless prejudice is shown, violation of Principles of Natural Justice ipso facto will not be accepted as a ground to quash a decision.*
- Pappinisseri Eco Tourism Society v. State of Kerala I.L.R. 2011 (1) Kerala . . . 747
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)**—Section 252—*Duty of Police Officer—Construction of building in violation of statutory prescriptions—Police Officer has the duty to render assistance to the Panchayat to enforce the stop memo issued by Panchayat or officer thereof and to ensure that the construction is not proceeded with in violation of stop memo.*
- Pallikunnu Grama Panchayat v. District Superintendent of Police I.L.R. 2011 (1) Kerala . . . 70
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)**—Section 52(1A)—*‘Fake return’—It is not every omission or inaccuracy of statement that would render Form 2A fake—Only deliberate and wilful suppression of material details which the candidate was bound to disclose in the declaration, will render the form fake.*
- Rajeev Alexander v. Seynullabdeen I.L.R. 2011 (1) Kerala . . . 210
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)**—Section 102(1) (d)—*Mere inaccuracy or suppression in Form 2A by itself is not sufficient to declare the*

election void—The inaccuracy or suppression should have materially affected the result of the election.

- Rajeev Alexander v. Seynullabdeen I.L.R. 2011 (1) Kerala .. 210
- Partnership Act, 1932 (Central Act 9 of 1932)**—*In the absence of the relief of dissolution of the firm and settlement of accounts, decree for perpetual prohibitory injunction cannot be passed against another partner, where the partnership is a partnership-at-will—Intervention of the court to settle the differences by prohibitory orders at the instance of one partner against the other, in the absence of the relief of dissolution of the firm and settlement of accounts, is not desirable and is not in consonance with the provisions of the Partnership Act—Specific Relief Act, 1963 (Central Act 47 of 1963).*
- Scaria Paul v. M/s Paracka Industries I.L.R. 2011 (1) Kerala .. 53
- Penal Code, 1860 (Indian Act 45 of 1860)**—*Section 375—The wordings in the exception and explanation to Section 375 would show that the word sexual intercourse would include penetration—When a person, who is accustomed to sexual intercourse, states that she was subjected to ‘rape’, it is to be appreciated, even if the prosecution has not specifically elicited that there was penetration.*
- Raveendran, T. v. State of Kerala I.L.R. 2011 (1) Kerala .. 341
- Penal Code, 1860 (Indian Act 45 of 1860)**—*Sections 375 and 376—Even penetration without ejaculation is sufficient to constitute an offence under Section 376 I.P.C.—Spermatozoa may not always be present in the case of rape—Spermatozoa can be detected only if there was ejaculation.*
- Raveendran, T. v. State of Kerala I.L.R. 2011 (1) Kerala .. 341
- Penal Code, 1860 (Central Act 45 of 1860)**—*Section 376—Absence of other injuries on the victim’s body need not always lead to an inference regarding consensual sex, especially when the victim is a mentally challenged person—A predominant sense of fear that the assailant, or the event by itself may induce on the victim would be sufficient to incapacitate the victim from resisting the onslaught to her person.*
- Valliyoth Karunan v. State of Kerala I.L.R. 2011 (1) Kerala .. 524
- Penal Code, 1860 (Central Act 45 of 1860)**—*Section 376—Non-examination of the prosecutrix, who is a mentally challenged person, by itself is not fatal to the prosecution case.*
- Valliyoth Karunan v. State of Kerala I.L.R. 2011 (1) Kerala .. 524
- Penal Code, 1860 (Central Act 45 of 1860)**—*Section 309—Parliament requested to consider deletion of Section 309 from the statute.*
- Aruna Ramachandra Shanbaug v. Union of India (S.C.) I.L.R. 2011 (1) Kerala .. 913

- Practise and procedure**—*Service of Notice issued by Supreme Court—Service to be effected through registered post and through E-mail in commercial litigation and in cases where urgent orders are required—Advocate filing Caveat to furnish his E-mail address.*
- Central Electricity Regulatory Commission v. National Hydroelectric Power Corporation Ltd. (S.C.) I.L.R. 2011 (1) Kerala .. 401
- Prevention of Corruption Act, 1988 (Central Act 49 of 1988)**—*Section 19—Sanction—The independent application of mind and the consequent satisfaction arrived at before according prosecution sanction are matters which could be proved by examining the sanctioning authority and nobody else.*
- Antony Cardoza v. State of Kerala I.L.R. 2011 (1) Kerala .. 530
- Prevention of Cruelty to Animals Act, 1960 (Central Act 59 of 1960)**—*Directions issued by the High Court to all Police Officers, Executive Magistrates and other empowered officers to ensure that donkeys are not moved into the Sabarimala, Pampa, Erumely, Nilackel and other areas during the Sabarimala season, except in accordance with the provisions of the Act and Rules governing prevention of cruelty to animals—Prevention of Cruelty to Animals Rules, 1960 and Transport of Animals Rules, 1978.*
- Sandhya Kurumthottickal v. State of Kerala I.L.R. 2011 (1) Kerala .. 44
- Prevention of Cruelty to Draught and Pack Animals Rules, 1965 (Central)**—*The Rules prescribe the maximum load that a donkey could be forced to carry and the general working conditions, the animal can be subjected to—The donkeys cannot be transferred or transported in any manner without the support of appropriate certification, in terms of the Rule.*
- Sandhya Kurumthottickal v. State of Kerala I.L.R. 2011 (1) Kerala .. 44
- Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954)**—*Section 17—In a complaint against a Company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business—Mere bald allegation that a person was the Director of a Company against which certain allegations had been made is not sufficient to make such Director liable.*
- Pepsico India Holdings Pvt. Ltd. v. Food Inspector (S.C.) I.L.R. 2011 (1) Kerala .. 85
- Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954)**—*Section 23 (1A)(ee) and (hh)—Prescription of method of analysis as provided under Section 23(1A)(hh) of the P.F.A. Act, is mandatory—Non-specification of the level of tolerance, with respect to the presence of pesticide residue in Sweetened Carbonated Water in the table appended to Rule 65(2) of the P.F.A. Rules, 1955, would render any prosecution based on the finding regarding presence of pesticide residue, futile—In the absence of any specification regarding tolerance limits, mere presence of pesticide residue in Sweetened Carbonated Water would not render the article of food adulterated.*

- Pepsico India Holdings Pvt. Ltd. v. Food Inspector (S.C.) I.L.R. 2011 (1) Kerala .. 85
- Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954)**—*When sufficient reason is shown for the delay in filing the application under Section 13(2) of the Act, the trial court should not mechanically dismiss the application, without considering as to whether the reason for delay was justifiable.*
- Latheef, K. A. v. Food Inspector I.L.R. 2011 (1) Kerala .. 299
- Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005)**—*Sections 5 and 12—Application filed by victim under Form No.II along with domestic incident report in Form No.I—Dismissal of application for the reason that no complaint as contemplated under Section 2(d) of Code of Criminal Procedure was filed by the petitioner, held to be improper—The expression ‘complaint’ in the Protection of Women from Domestic Violence Act, 2005 and the Rules thereunder has been used in a generic sense and is not to be understood in the context of a complaint as defined under the Code of Criminal Procedure—Every person in authority dealing with victims of domestic violence has to approach the problem with a sense of gender sensitivity—Protection of Women from Domestic Violence Rules, 2006 (Central Rules).*
- Sunitha v. State of Kerala I.L.R. 2011 (1) Kerala .. 152
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Central Act 40 of 1971)**—*‘Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/Financial Institutions’, issued by the Central Government vide Resolution dated 30-5-2002 are not statutory in character and are not ‘laws’ since the guidelines were not issued in exercise of any statutory power under the Public Premises Act or any other Statute—Guidelines or executive instructions which are not statutory in character, are not laws, and compliance thereof cannot be enforced through Courts.*
- Syndicate Bank v. Ramachandran Pillai (S.C.) I.L.R. 2011 (1) Kerala .. 498
- Railways Act, 1989 (Central Act 24 of 1989)**—*Sections 123 and 124A—An untoward incident as defined in Section 123 of the Railways Act includes the accidental falling of a passenger from a train—When the act of the deceased passenger does not come within any of the categories in Clauses (a) to (e) of the Proviso to Section 124A, the death of the deceased would come within the ambit of accidental falling of a passenger from a train carrying passengers, defined as an untoward incident and the Railways is liable to pay compensation for such incident.*
- Varkey v. Union of India I.L.R. 2011 (1) Kerala .. 218
- Revocation of Arbitration Clause and Reopening of Awards Act, 1998 (Kerala Act 12 of 1998)**—*Sections 2(1) and 3—Except in the case of agreements within the meaning of Section 2(1)(a) read with Section 2(1)(b), the Act does not nullify the Arbitration and Conciliation Act insofar as it relates to contracts in which the Government is a party.*

- Hydro-Tech, Engineers & Contractors v. State of Kerala I.L.R. 2011 (1)
Kerala .. 817
- Revocation of Arbitration Clause and Reopening of Awards Act, 1998 (Kerala Act 12 of 1998)**—*Preamble—If the language of an enactment is capable of more than one meaning, the interpretation that comes nearest to the purpose and scope of the preamble is to be preferred.*
- Hydro-Tech, Engineers & Contractors v. State of Kerala I.L.R. 2011 (1)
Kerala .. 817
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)**—*Sections 5(1) and (2)—The acquisition of rights or interest in financial assets can be carried out by any bank or financial institution and the same need not be confined only to a securitisation company or a reconstruction company alone—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Sections 2(1)(l), 2 (1) (ha), 2(1)(ze) and 2(1)(zf).*
- BPL Ltd. v. Pegasus Assets Reconstruction (P) Ltd. I.L.R. 2011 (1)
Kerala .. 637
- Security Interest (Enforcement) Rules, 2002 (Central)**—*Rule 8(5) and (6)—Service of 30 days notice with respect to the sale to be conducted under Sub-rule (5) of Rule 8 is a mandatory pre-requisite—The mandatory requirement of notice to the borrower is not waived by publication of the notice in newspapers.*
- M/s K.R.S. Latex (India) Pvt. Ltd. v. Federal Bank I.L.R. 2011 (1) Kerala .. 395
- Service**—*Transfer of employees belonging to preferential categories—Clause II of G.O.(P) 15/89/P. & ARD dated 22-5-1989—After the expiry of 5 years of service in a particular station, a candidate belonging to the preferential category cannot claim any protection against transfer—After the expiry of 5 years of service in a particular station, a person belonging to a preferential category can be transferred even to accommodate a person not belonging to a preferential category.*
- Sunil Kumar, T. S. v. Secretary to the Government I.L.R. 2011 (1) Kerala .. 676
- Service Rules, 1959 (Kerala)**—*Part III, Rule 56(1)—Voluntary retirement—Appointing authority has discretion to accept the request for voluntary retirement with less than three months' notice provided employee gives sufficient reason for shorter notice period—Notice period of less than three months per se will not make the application invalid.*
- Sumangala, K. v. State of Kerala I.L.R. 2011 (1) Kerala .. 37
- Specific Relief Act, 1963 (Central Act 47 of 1963)**—*Section 21(3)—Grant of compensation to the plaintiff in addition to decree for specific performance—Compensation in addition to specific performance can be granted only where the*

court is satisfied that decree for specific performance is insufficient to meet the ends of justice.

Nalini Sheela v. Subramanian Chettiar Shanmughan Chettiar I.L.R. 2011 (1) Kerala .. 205

Strict Liability—*Death due to electrocution from live supply wire of the K.S.E. Board—K.S.E. Board being statutorily conferred with the sole authority for distribution of power within the State, the principle of strict liability is applicable to the Board for accidents arising during the course of supply of power within the State.*

Kunjan Raghavan v. K.S.E. Board I.L.R. 2011 (1) Kerala .. 184

The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989)—*Section 3(2)(V)—In order to constitute an offence under Section 3(2)(V), there must be materials to conclude that the offence was committed on the victim for the reason that such person is a member of the Scheduled Caste/Scheduled Tribe.*

Raveendran, T. v. State of Kerala I.L.R. 2011 (1) Kerala .. 341

Torts—*Medical Negligence—Merely because a woman has become pregnant after sterilization, it does not ipso facto, lead to the conclusion that the Doctor was negligent—Plaintiff has to adduce proper evidence that Doctor was negligent in his conduct—Liability of Medical Practitioner/Doctor is to be tested on criteria adopted in Bolam v. Friar Hospital (1957) 2 All E.R. 118 (known as Bolam’s principle).*

State of Kerala v. P. G. Kumari Amma I.L.R. 2011 (1) Kerala .. 508

Torts—*Medical Negligence—Principles that could be applied in claims for compensation arising out of medical negligence—(i) If a Doctor fails to act towards his patient with the standard of care reasonably expected of him, and as a foreseeable result of the doctor’s breach of duty a child is born whose potential for life would have been lawfully terminated but for the doctor’s negligence, the law entitles the mother to recover damages for the foreseeable loss and damage she suffers in consequence of the doctor’s negligence. (ii) The mother is entitled to damages for the financial loss incurred in the upkeep of the child all through adulthood and for the financial loss suffered, because of loss of earnings or the incurring of expenses as a result of her obligation to the child which she would otherwise have sought to avoid. (iii) The mother is entitled to recover general damages for the discomfort and pain associated with the continuance of her unwanted pregnancy and delivery or her abortion —In appropriate cases, the mother is also entitled to general damages for the foreseeable additional anxiety, stress and burden involved in bringing up a handicapped child.*

State of Kerala v. P.G. Kumari Amma I.L.R. 2011 (1) Kerala .. 508

Transfer of Property Act, 1882 (Central Act 4 of 1882)—*Section 54—A decree for specific performance of an agreement for sale would not, by itself, be effective as a transfer of title, so long as the sale deed is not executed in favour of the successful vendee, either by the vendor himself, or by the court—Specific Relief Act, 1963 (Central Act 47 of 1963).*

Kumaran v. Kumaran I.L.R. 2011 (1) Kerala .. 292

- Transfer of Property Act, 1882 (Central Act 4 of 1882)**—Section 48—*In a case where two deeds to transfer the same property or one involving portions of the property, are executed on the same day, it must be proved as to which deed was in fact executed first—Where two or more deeds are executed on the same day and the order of their execution cannot be ascertained, all the deeds will take effect at once—Registration Act, 1908 (Central Act 16 of 1908)—Sections 47 and 49.*
- Xavier v. John I.L.R. 2011 (1) Kerala .. 824
- Travancore**—*Cochin Hindu Religious Institutions Act, 1950 (Kerala Act 15 of 1950)—Section 86—Cochin Devaswom Board is not a necessary party in a suit filed by a Hindu religious institution for eviction of its tenant—Supervisory power of the Devaswom Board does not whittle down the right of the landlord to seek eviction of the tenant or to realise the arrears of rent/ licence fee.*
- Narayanan, N.M. v. Naduvil Madom I.L.R. 2011 (1) Kerala .. 549
- Value Added Tax Rules, 2003 (Kerala)**—Rule 39 (5)(iv)—*If the assessment is initiated for any return period in the financial year itself, Rule 39(5)(iv) does not apply and the assessment can be completed for such return period or return periods through separate orders for each return period.*
- M/s Sree Ramachandran Enterprises v. State of Kerala I.L.R. 2011 (1) Kerala (S.N.) .. 6
- Wakf Act, 1995 (Central Act 43 of 1995)**—Section 69—*Jurisdiction to frame scheme for managing Wakf property vests with the Wakf Board and not with the Wakf Tribunal—Application to frame scheme is not maintainable before the Wakf Tribunal.*
- Alappuzha Muhiyudheen Masjid Association v. Abdul Khader (F.B.)
I.L.R. 2011 (1) Kerala .. 768

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