



INDIAN LAW REPORTS

KERALA SERIES

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Sanjay Jacob v. M/s.Sakthan Kuries & Loans (P) Ltd.
I.L.R. 2010 (4) Kerala ..844
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXIII Rule 3**—*Any compromise should be reduced to writing and signed either by the parties or by their counsel before it can be made binding on the parties.*
Kerala Hindi Prachar Sabha v. Joseph. R. I.L.R. 2010 (4) Kerala . . 490
- Code of Civil Procedure, 1908(Central Act 5 of 1908)—Order XXXIII Rule 1**—*Plaintiff who remitted initial court fee at the time of presentation of plaint, can seek leave of Court to prosecute the suit as an indigent person—Such plaintiff has to prove the change of circumstances between date of presentation of plaint and date of filing the petition for leave, so as to claim exemption at the stage when it becomes payable.*
Jayaraj. K.K. v. Kalyani I.L.R. 2010 (4) Kerala . . 967
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXIII Rule 3B (2)**—*Intervenors who appeared pursuant to publication of notice of settlement need not sign the settlement—Their role is*

limited to expressing their willingness or opposition to the settlement arrived at by the parties to the proceeding.

Kerala Hindi Prachar Sabha v. Joseph. R. I.L.R. 2010 (4) Kerala . . 490

Code of Civil procedure, 1908 (Central Act 5 of 1908)—Order XXVI Rule 9—*Non-examination of the Advocate Commissioner to prove the exparte commission report impairs the evidentiary value of the report—The exparte commission report can be considered only for the purpose of passing orders on the interlocutory applications for interim relief of injunction—To claim a decree of injunction in the suit, the exparte commission report should be proved by examination of the Advocate Commissioner.*

Bhaskaran v. Shobha I.L.R. 2010 (4) Kerala . . 403

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXXVIII Rule 11—*The attachment of the property before judgment would not relieve the decree holder from the responsibility of proceeding against the said property within the period of limitation.*

Mohanachandran. R.S. @ Kannan v. Bhavani Amma Pankajakadhi Amma I.L.R. 2010 (4) Kerala . . 319

Code of Civil Procedure, 1908(Central Act 5 of 1908)—Order XXXVIII Rule 11—*Judgment debtor who had not raised any objection when attachment before judgment was effected and thereafter made absolute is precluded from raising objection to the attachment (made before judgment) in the execution proceeding—Principle of constructive res judicata would apply to different stages of the same proceeding.*

Sanjay Jacob v. M/s.Sakthan Kuries & Loans (P) Ltd.
I.L.R. 2010 (4) Kerala . .844

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XLI Rules 22 and 33—*The Decree holder, even in the absence of a cross objection, can still support the decree on the ground which went against them in the lower court.*

Puthumana Meenakshi Amma v. Puthumana Kalliani Amma
I.L.R. 2010 (4) Kerala . . 449

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XLI Rule 27—*The appellate Court cannot overlook the interdictions*

imposed for receiving additional evidence—The rigor imposed under Order 21 Rule 47 cannot be tampered with on the mere asking of a party.

Geetha Viswanathan v. Sasidharan I.L.R. 2010 (4) Kerala . . 505

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 11, Explanation IV—Constructive res judicata—Knowledge of the relevant fact is an essential ingredient to be ascertained before coming to a conclusion that a party ought to be barred from seeking relief on the ground of constructive res judicata.

Jayachandran. C. v. High Court of Kerala I.L.R. 2010 (4) Kerala . .18

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Sections 16, 17 and 20)—Suit for cancellation of document can be filed in the Court within whose territorial jurisdiction, the property is situated—The suit need not be instituted in the Court within whose territorial jurisdiction the document was registered.

Aravinda Raja v. Aravindakshan I.L.R. 2010 (4) Kerala . . 699

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 47—Illegality of pre-sale proceeding can be challenged under Section 47 whereas illegality of post-sale proceeding can be challenged only under Order XXI Rule 90—Post-sale proceeding commence from settlement of proclamation of sale—Non compliance with Rule 64 of Order XXI while drawing up the proclamation of sale is a post sale irregularity.

A.G.M. Constructions (P) Ltd. v. Shibu Kumar. S. I.L.R. 2010 (4) Kerala .58

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 47 —‘Representative’—The term is wide enough to take in a transferee-in-interest of any of the parties to the suit, provided the interest transferred is bound by the decree that may be passed in the suit—Pendente lite transferee can challenge court auction sale in his capacity as representative of judgment-debtor.

A.G.M. Constructions (P) Ltd. v. Shibu Kumar. S.I.L.R. 2010 (4)Kerala . . 58

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 144—Mortgaged property redeemed based on the decree in a suit for redemption—Decree of the Courts below reversed in Second Appeal —Contention that nothing survived as the property had already been

redeemed cannot be accepted as the gain obtained by a person on the basis of a wrong decree cannot cause prejudice or injury to the successful party—Principle enunciated in the legal maxim ‘actus curiae neminem gravavit’ (the act of Court shall prejudice no man), applies.

Udayakumar v. Rajalekshmi I.L.R. 2010 (4) Kerala . . 475

Code of Criminal Procedure, 1973(Central Act 2 of 1974)—Section 41
—Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case—In cases where arrest is imperative, the arresting officer must clearly record the reasons for arrest of the accused in the case diary before the arrest—In exceptional case where it becomes imperative to arrest the accused immediately, the reasons must be recorded in the case diary immediately after the arrest is made.

Siddharam Satlingappa Mhetre v. State of Maharashtra (S.C)
I.L.R. 2010(4) Kerala . . 763

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 125—Provisions of Chapter IX will not extinguish the liability to pay maintenance under personal law—Mahomedan law.

Naduthodi Youseff v. Naduthod Rubbeena I.L.R. 2010 (4) Kerala . . 37

Code of Criminal Procedure, 1973(Central Act 2 of 1974)—Sections 251, 254(1) and 256(1)—In summons cases, if the accused appears and pleads not guilty, Court has to adjourn the case to hear the prosecution—An accused in a summons case can be acquitted under Section 256(1), only if the complainant is absent on (i) the day appointed for appearance of the accused, if summons has been issued or; (ii) any day subsequent thereto to which ‘the hearing’ may be adjourned—‘Any day subsequent thereto to which ‘the hearing’ may be adjourned’ referred to in Section 256(1) of the Code is the day immediately succeeding the day appointed for appearance of the accused after recording plea of not guilty—Proper procedure to be followed by Magistrate Courts after the appearance of the accused, detailed.

Joseph. P.V. v. State of Kerala I.L.R. 2010 (4) Kerala . . 678

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 256(1)—In a case where summons was issued to the accused, the

day appointed for appearance of the accused is the date of appearance mentioned in the form of summons—In cases where summons is ordered, but not issued for want of process fee, there will be no day appointed for appearance in Court as referred to in Section 256(1) and in such cases the accused shall not be acquitted under Section 256(1), even if, the complainant is absent.

Subhash B. Ravu v. Varghese K.V. I.L.R. 2010 (4) Kerala . . 481

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 306(4)(b) and 482—*Since an approver is not a person accused of an offence, he cannot be enlarged on bail on an application filed under Sections 437 and 439 Cr.P.C.—In such a contingency notwithstanding the bar under Section 306(4)(b), the High Court can in a given case release the approver by invoking the inherent power under Section 482.*

Shammi Firoz v. National Investigation Agency I.L.R. 2010 (4) Kerala. . 390

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 307—*The bar under Section 306(4)(b) would not apply, if pardon was granted to the approver under Section 307 Cr.P.C. by the Special Court, which is a Sessions Court competent to take cognisance of the offence without a committal.*

Shammi Firoz v. National Investigation Agency I.L.R.2010 (4) Kerala. . 390

Code of Criminal Procedure 1973 (Central Act 2 of 1974)—Section 378—*Appeal against acquittal—While considering an appeal against acquittal the appellate court should bear in mind the presumption of innocence of the accused, which stands bolstered by the judgment of acquittal of the trial court—Interference in a routine manner, merely because another view is possible should be avoided, unless there are good and sufficient reasons and the judgment under appeal is found to be perverse.*

Babu v. State of Kerala (S.C) I.L.R. 2010 (4) Kerala .. 1

Code of Criminal procedure, 1973 (Central Act 2 of 1974)—Section 437—*The laxity, refusal or inability of the Investigating Officer to make a formal arrest of the accused who is in judicial custody in connection with another crime, cannot take away the right of the accused to apply for bail—For invoking Section 437 Cr.P.C. it is enough if the accused person is arrested or detained without warrant by an officer in-charge of a Police Station or appears or is*

brought before a Magistrate—Production of accused before the Magistrate Court on the strength of a production, warrant could be treated as 'brought before court' for the purpose of entertaining the bail application under Section 437 Cr.P.C.

Arun v. State of Kerala I.L.R. 2010 (4) Kerala .. 55

Code of Criminal Procedure, 1973(Central Act 2 of 1974)—Section 438—Anticipatory Bail—While considering bail applications courts should try to maintain a fine balance between societal interest vis-à-vis personal liberty, while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent Criminal Court.

Siddharam Satlingappa Mhetre v. State of Maharashtra (S.C)

I.L.R. 2010(4) Kerala .. 763

Code of Criminal Procedure, 1973(Central Act 2 of 1974)—Section 438—Factors and parameters to be taken into consideration by Courts dealing with anticipatory bail.

Siddharam Satlingappa Mhetre v. State of Maharashtra (S.C)

I.L.R. 2010(4) Kerala .. 763

Code of Criminal Procedure, 1973(Central Act 2 of 1974)—Section 438—Once anticipatory bail is granted, the protection should ordinarily be available till the end of the trial, unless the bail is cancelled by the Court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused.

Siddharam Satlingappa Mhetre v. State of Maharashtra (S.C)

I.L.R. 2010(4) Kerala .. 763

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482—Legal principles in regard to quashing of Criminal Proceedings as laid down by the apex court, reiterated—Courts should be cautious against the attempt to settle civil disputes by lodging criminal complaints.

Perumpallipad Payyuril Hydra Haji v. State of Kerala

I.L.R. 2010 (4) Kerala .. 983

Companies Act, 1956(Central Act 1 of 1956)—Section 433— A member of a Company, whether a natural person or a legal person cannot be

deemed to be a Company, unless the member is a Company in its own right—Even if, the Company has control over the member, that would not make the member a Company against which the petition under section 433 would lie in its own right.

Jayalakshmi v. Nair Service Society I.L.R. 2010 (4) Kerala . . . 344

Companies Act, 1956(Central Act 1 of 1956)—Section 433—*The jurisdiction of a Company Court, unlike that of the Writ Court under Article 226, is delineated by the provisions of the Act under which the Company Court functions—The principles which are apposite in the conduct of a Writ Petition may be irrelevant and inapplicable in the context of the Company Courts acting under the provisions of the Companies Act—Constitution of India—Article 226.*

Jayalakshmi v. Nair Service Society I.L.R. 2010 (4) Kerala . . . 344

Companies Act, 1956 (Central Act 1 of 1956)—Schedule 1, Regulation 26—*Member of the Company—Obtaining Succession Certificate in respect of shares of a company will not make the holder of the certificate, a member of the company—On submission of requisite application by the holder of Succession certificate, Board of Directors of the Company has the discretion to decide as to whether the applicant should be made a member of the company or not—Indian Succession Act 1925 (Central Act 39 of 1925)—Section 381.*

Thankam Paul (Dr.) v. City Hospital (Pvt.) Ltd. I.L.R. 2010 (4) Kerala. . . 578

Constitution of India—Article 14—Government Contract—Government Company can be given preference over others while awarding contracts even if the tender conditions do not provide for giving any such preference.

Biodigital (P) Ltd. v. State of Kerala I.L.R. 2010 (4) Kerala . . . 462

Constitution of India—Article 21A—*Government should encourage self-financed Schools that are run with their own funds and provide free education to students—The apprehension of the Government that there will be a fall in division in the neighbouring schools which are not English Medium Schools, whereas the appellants school is an English Medium School, is not a relevant consideration—Education Rules, 1959 (Kerala)—Chapter V Rules 2 and 2A.*

Tribal Mission v. State of Kerala I.L.R. 2010 (4) Kerala . . . 280

- Constitution of India—Article 141—Binding nature of precedents—A decision of a Constitution Bench of the Supreme Court is binding on a Bench of lesser strength—Decision rendered contrary to the dictum laid down by binding precedents is per incuriam.**
Siddharam Satlingappa Mhetre v. State of Maharashtra (S.C)
I.L.R. 2010(4) Kerala . . 763
- Constitution of India—Article 163—Council of Ministers to aid and advice the Governor—Even while discharging statutory functions, Governor is bound by advice of the Council of Ministers, unless the statute prescribes another mode for exercising the powers and discharging his functions.**
Binu. D.B. v. Governor I.L.R. 2010 (4) Kerala . . 923
- Constitution of India—Article 226—When writ petitions are finally heard, High Court should decide the cases on merit instead of relegating the parties to the Civil Court, considering the time that would be taken by Civil Court for adjudicating the issue finally.**
Padmavathi Amma v. Special Tahsildar (LA) I.L.R. 2010 (4) Kerala . . 617
- Constitution of India—Articles 226 and 227—Maintainability of Writ petition against order of Armed Forces Tribunal—High Court has jurisdiction to entertain Writ petition against orders of the Armed Forces Tribunal.**
Joby Varghese v. Armed Forces Tribunal I.L.R. 2010 (4) Kerala . . 564
- Constitution of India—Articles 243K and 324—Superintendence, direction and control of election process—Power of the election commission to control the election process does not extend to banning the use of plastic flex for election campaigning—Power should be used for pushing forward the process of a free and fair election and should not to be used for a purpose divorced from it.**
Flex Printing Owners Association of Kerala v. State Election Commission
I.L.R. 2010 (4) Kerala . . 373
- Constitution of India—Article-361—Immunity of Governor—It is limited to the civil liability arising out of the exercise and performance of powers and duties of office of the Governor.**
Binu. D.B. v. Governor I.L.R. 2010 (4) Kerala . . 923

- Constitution of India—Article 361—***While discharging the statutory duty of appointment of State Information Commissioner, Governor is protected under Article-361 and he cannot be impleaded in a Writ petition challenging appointment of State Information Commissioner—Right to information Act, 2005 (Central Act 22 of 2005)—Section 15.*
 Binu. D.B. v. Governor I.L.R. 2010 (4) Kerala . . . 923
- Consumer Protection Act, 1986 (Central Act 68 of 1986)—Section 13—***Decision of the Supreme Court in Martin F. D 'souza v. Moh 'd Ishfaqe, is per incuriam and cannot be treated as a binding precedent -Opinion of Doctor or Committee of Doctors is not necessary before taking cognisance of case of medical negligence.*
 Kishan Rao, V. v. Nikhil Super Speciality Hospital (S.C.)
 I.L.R. 2010(4) Kerala . . . 83
- Consumer Protection Act, 1986 (Central Act 68 of 1986)—Section 13—***In cases of Medical negligence, Consumer Forum need insist on expert opinion only if the Forum feels that the case can be decided only after obtaining opinion of an expert—It is for the Forum to decide whether expert opinion is required or not in a particular case.*
 Kishan Rao, V. v. Nikhil Super Speciality Hospital (S.C.)
 I.L.R. 2010(4) Kerala . . . 83
- Consumer Protection Act, 1986 (Central Act 68 of 1986)—Section 16(1A)—***Procedure for selection and appointment of members of the State Consumer Disputes Redressal Commission—Though the State Government is not bound to accept the recommendations made by the Selection Committee, the Government cannot arbitrarily ignore or reject the recommendations—If the appointment made by the State Government is subjected to judicial scrutiny, the Government is bound to produce the relevant records including the recommendations of the Selection Committee before the Court to show that there were valid reasons for not accepting the recommendation.*
 Chandramohan Nair. S. v. George Joseph (S.C) I.L.R. 2010 (4) Kerala . . . 609
- Contempt of Courts Act, 1971(Central Act 70 of 1971)—Section 15—***Written consent of the Advocate General is a condition precedent for initiating Criminal Contempt of Court proceedings when the*

proceedings is initiated by a party and not by the Advocate General or by the High Court in suo motu proceedings.

Rehim. P. v. Jayarajan.M.V. (F.B) I.L.R. 2010 (4) Kerala . . 165

Contempt of Courts (High Court of Kerala) Rules, 1971—Rule 7—

Initiation of Suo motu proceedings—Where a petition is presented by a person seeking initiation of Criminal Contempt of Court proceedings without obtaining written consent of the Advocate General, such petition can be treated as an information regarding commission of contempt—The said information should be placed before the Chief Justice on the Administrative side and the Chief Justice or a Judge designated by him shall take a decision whether it is expedient to take action under the Act on the basis of the said information—If it is found expedient to take action under the Contempt of Court Act, the Chief Justice is required to direct the information to be placed for preliminary hearing.

Rehim. P. v. Jayarajan.M.V. (F.B) I.L.R. 2010 (4) Kerala . . 165

Contempt of Courts Act, 1971(Central Act 70 of 1971)—Section 15—

The expression ‘High Court’ in Section 15 means the Chief Justice or a Judge designated by the Chief Justice on the administrative side under Rule 7 of Contempt of Courts (High Court of Kerala) Rules—The decision to initiate Criminal Contempt need not be taken by the Full Court and such a decision can be taken by the Chief Justice or by a Judge designated by the Chief Justice—Contempt of Courts (High Court of Kerala) Rules, 1971—Rule 7.

Rehim. P. v. Jayarajan.M.V. (F.B) I.L.R. 2010 (4) Kerala . . 165

Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—Sections 69,

70 and 70A—Co-operative Arbitration Court can accept proof affidavit in lieu of chief examination and issue commission for recording evidence.

David. T.K. v. Kuruppampady Service Co-operative Bank

I.L.R. 2010 (4) Kerala . . 904

Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)—

Sections 4, 21, 51 and Schedule I Article 1—In appeals filed under Section 54 of the Land Acquisition Act against the order of reference under Section 18, the court fee payable would be ad valorem court fee under Schedule I to Article 1 and not the court fee under Article

3 of Schedule II—Land Acquisition Act, 1894 (Central Act 1 of 1894)—Section 54.

Vasudevan Namboothiri v. State of Kerala I.L.R. 2010 (4) Kerala . . 588

Criminal Trial—*Burden of Proof and Doctrine of innocence—Except in cases where the statute does not impose the burden of proof on the accused, the burden of proof will always be on the prosecution—Even under statutes where there is provision for presumption of guilt of the accused, the statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution of India—Constitution of India—Articles 14 and 21..*

Babu v. State of Kerala (S.C) I.L.R. 2010 (4) Kerala . . 1

Criminal Law—*Punishment and punishable—Defined with reference to case laws.*

Dainabi. K. v. District Magistrate I.L.R. 2010 (4) Kerala . . 260

Customs Act, 1962 (Central Act 52 of 1962)—*Section 18—Provisional assessment—Provisional assessment is not permissible in a situation where the importer wants to defer assessment for reasons which are attributable to the importer—Provisional assessment can be made only when on account of the circumstances set out in Section 18 of the Act, the proper officer is unable to assess duty and not where the assessment is deferred at the request of the importer—Customs (Provisional Duty Assessment) Regulation, 1963.*

M/s Radha Krishna Trading Co. v. Commissioner of Customs
I.L.R. 2010 (4) Kerala . . 911

Dissolution of Muslim Marriage Act, 1939 (Central Act 8 of 1939)—*Section 2(vii)(f)—There need not be verbatim reproduction of the instances of inequitable treatment by the husband in the proof affidavit of the wife, if the details are mentioned in the petition for divorce and if contents of the petition are sought to be read as part of the affidavit—On admitted facts, if husband has remarried during the subsistence of the first marriage and if the first wife complains that she is being treated inequitably after second marriage, no purpose will be served by granting more time to the husband to file objections to the divorce petition.*

Parakkattil Abu v. Pachiyath Beekkutty I.L.R. 2010 (4) Kerala . . 239

- Divorce Act, 1869 (Central Act 4 of 1869)**—*Section 10(1)(x)*—*Anything that would hinder the ability of the spouse to blossom into his/her fullness and to enjoy life in matrimony must be held to fall within Section 10(1)(x) of the Divorce Act.*
 A: Husband v. B: Wife I.L.R. 2010 (4) Kerala . . 426
- Easements Act, 1882 (Central Act 5 of 1882)**—*Section 47*—*Extinction by non enjoyment—An easement by grant will not be extinct by non enjoyment—Under any Easement by grant, the party who is entitled thereto is having title in the land over which the easement is so provided and the right cannot be extinguished at the volition or act of the third party.*
 Aduvanni Saidu v. Aduvanni Moidutty I.L.R. 2010 (4) Kerala . . 338
- Education**—*Admission to super speciality medical course—Government cannot impose any eligibility condition that applicant should have completed compulsory rural service of one year or Senior residency in any Government Medical College or Government Hospital in Kerala.*
 Dr. Bindu Varghese v. State of Kerala I.L.R. 2010 (4) Kerala . . 111
- Education**—*Admission to Super speciality Medical course—Prospectus is the Magna Carta of admission—Applicant who did not challenge the terms of the prospectus before applying for admission cannot challenge it later.*
 Vipin. I.S. (Dr.) v. State of Kerala I.L.R. 2010 (4) Kerala . . 292
- Education**—*Admission to super speciality medical course—Seats cannot be reserved only for M.B.B.S. graduates from colleges in Kerala—Institutional preference cannot be given for more than 50% of seats—There cannot be any criterion other than academic merit for admission to super speciality medical course.*
 Dr. Bindu Varghese v. State of Kerala I.L.R. 2010 (4) Kerala . . 111
- Education—Examination Bye-laws of the Central Board of Secondary Education, 1995**—*Clauses 61(i) and 61(iv)*—*In the absence of provision for revaluation of answer papers no candidate can claim revaluation of answer papers as of right—Bye-laws of the CBSE provides only for verification of answer sheets.*
 Amritha Reji v. Union of India I.L.R. 2010 (4) Kerala . . 528

- Education Act 1958 (Kerala Act 6 of 1959)**—Section 6—Restriction on alienation of property of aided school—Previous permission in writing of the Director under Section 6 is not required for transferring a running school together with its management and properties—Previous permission contemplated in Rule 5A relates only to the stage of granting approval for change of management involving change of ownership—In such a case, permission of the Director can be given even after transfer of a running school with its management and properties—Education Rules, 1959 (Kerala)—Chapter XIV-A, Rule 5.
 Manager v. D.P.I. I.L.R. 2010 (4) Kerala . . 751
- Education Rules, 1959(Kerala)**—Chapter III, Rule 7—District Education Officer is not competent to exercise the power under Rule 7—Power under Rule 7 can be exercised only after affording an opportunity of hearing to the affected party.
 Manager, St.Thomas High School v. D.E.O. I.L.R. 2010 (4) Kerala . . 751
- Education Rules, 1959 (Kerala)**—Chapter VI, Rules 3, 5 and 10B—Correction of Date of Birth—Once the authority arrives at the satisfaction referred to in Rule 3(2) the correction of date of birth cannot be denied to the applicant by importing Rule 5—The consequences provided under Rule 10B cannot be a ground for denial of correction of date of birth.
 Kotins. K.B. v. State of Kerala I.L.R. 2010 (4) Kerala . . 398
- Education Rules, 1959 (Kerala)**—Chapter XIV A, Rule 43—Promotion—Candidates with requisite qualification as on the date of occurrence of vacancy alone are eligible to be promoted.
 Smitha Johny v. Josny Varghese (S.C) I.L.R. 2010 (4) Kerala . . 533
- Education Rules, 1959 (Kerala)**—Chapter XIV-A, Rule 58—Grant of leave without allowance—The paramount consideration in granting leave is the exigency of service and the welfare of the students and not convenience of the teacher—Remarks furnished by the Headmaster and Manager of the School to the Government along with application for leave is meant to assist the Government in taking a decision to grant leave or to refuse it—Headmaster and the Manager can include the relevant inputs as remarks to the leave application to assist the decision making process.

Deepa. S. v. State of Kerala I.L.R. 2010 (4) Kerala . . 825

Education Rules, 1959(Kerala)—*Chapter XIVA, Rule 65—Penalty cannot be imposed on the Manager of an aided School under Rule 65.*

Manager, St.Thomas High School v. D.E.O. I.L.R. 2010 (4) Kerala . . 729

Employees State Insurance Act, 1948 (Central Act 34 of 1948)—*Section 2(22)—Production incentive paid to the employees would fall within the definition of wages as defined under Section 2(22)—Additional remuneration paid, would fall within the definition of wages, even in the absence of a contract making such payment obligatory.*

Deputy Director, E.S.I. Corporation v. Traco Cable Co. Ltd. I.L.R. 2010 (4) Kerala . . 553

Evidence Act, 1872 (Central Act 1 of 1872)—*'Res ipsa loquitur'—In a case where negligence is apparent, principle of 'res ipsa loquitur' applies and complainant does not have to prove any thing further—It is a principle of evidence intended to assist a claimant in a claim for damages who, for no fault of his, is unable to adduce evidence as to how the accident occurred.*

Kishan Rao, V. v. Nikhil Super Speciality Hospital (S.C.)
I.L.R. 2010 (4) Kerala . . 83

Evidence Act, 1872 (Central Act 1 of 1872)—*Section 3—Court will have to adopt the standard of a prudent man while evaluating the evidence—It would be unreasonable to insist on production of documentary evidence regarding the ornaments and cash that had changed hands at the time of marriage.*

Bexy Michael v. Michael. A.J. I.L.R. 2010 (4) Kerala . . 382

Evidence Act, 1872 (Central Act 1 of 1872)—*Section 32(1)—Where the accused is being prosecuted for offence under Section 304B I.P.C. and Section 306 I.P.C., just because the offence under Section 498A I.P.C. is also alleged against the accused, the statements of prosecution witnesses as to what the deceased told them regarding the cause of death and the circumstances that led to the death will not become irrelevant under Section 32(1)—Decision of the Singh*

Bench in Mony @ Sureshkumar and others v. State of Kerala (I.L.R. 2010 (1) Kerala 234 = 2010 (1) K.L.D. 81) explained.
Unnimon @ Unnikrishnan v. State of Kerala I.L.R. 2010 (4) Kerala . . 818

Excise and Prohibition Subordinate Service Rules, 1974 (Kerala)—
Rule 5, Category 3, Clause 3—Physical Fitness—Even without any specific provision in the Special Rules, Public Service Commission can direct the candidates to undergo physical efficiency test for appointment to the post of Excise Guard, under Rule 3 of P.S.C. Rules of procedure—Public Service Commission Rules of Procedure, 1976(Kerala)—Rules 2(c) and 3.
Rajesh v. State of Kerala I.L.R. 2010 (4) Kerala . . 603

Family Court Act, 1984 (Central Act 66 of 1984)—*It is improper on the part of the Family Court to render its findings based on the contents of the report filed by the counselor attached to the Family Court—Counseling is a process which is absolutely confidential and it is impermissible for the Court to rely on the contents of the report to render any finding of facts.*
Preetha. K v. N. Bhaskaran I.L.R. 2010 (4) Kerala . . 297

Family Courts Act, 1984 (Central Act 66 of 1984)—*Section 7—Suit for return of gold ornaments—While issuing direction regarding return of gold ornaments, Family Court should direct return of specified sovereigns of gold or current price of the said number of sovereigns, so as to render justice to the wife.*
William David v. Linu Mary George I.L.R. 2010 (4) Kerala . . 729

Family Courts Act, 1984(Central Act 66 of 1984)—*Sections 7 and 8—Suit initiated in Civil Court by husband against wife in respect of matters enumerated under Section 7 and the explanation thereto—As the Civil Court lacks inherent jurisdiction, Civil Court should return the plaint under Order VII Rule 10 for presentation before the Family Court.*
Seema v. K.S.Jayagopal I.L.R. 2010 (4) Kerala . . 198

Forest Act, 1961 (Kerala Act 4 of 1962)—*Section 2(k)—Timber '—Cannot be given a restricted meaning as confined to those found in or brought from forest, but has to be seen with reference to the land at the disposal of the Government.*

- Conservator of Forests v. T. M. Sukumaran I.L.R. 2010 (4) Kerala . . . 146
- Forest Act, 1961 (Kerala Act 4 of 1962)**—*Section 61A (1) and (2)—Confiscation by-Forest Officers—Confiscation can be made only when a forest offence has been committed in respect of property of the Government of Kerala.*
- Moideen, K. K. v. Asst. Wildlife Warden I.L.R. 2010 (4) Kerala . . . 134
- Forest Act, 1961 (Kerala Act 4 of 1962)**—*Section 61A(1), Section 52 and Section 19— Confiscation by Forest Officer under Section 61A(1) in respect of seizure under Section 52 need not be with respect to timber from a forest notified under Section 19 of the Act—It need be only in respect of 'timber, charcoal, firewood or ivory', which is the property of the Government.*
- Conservator of Forests v. T. M. Sukumaran I.L.R. 2010 (4) Kerala . . . 146
- Forest Act, 1961 (Kerala Act 4 of 1962)**—*Sections 61A, 61B and 52— Burden of proof—When forest offence is made out, the burden is on the owner of the vehicle to prove to the satisfaction of the Authorised Officer that the vehicle had been used without his knowledge or connivance.*
- Conservator of Forests v. T. M. Sukumaran I.L.R. 2010 (4) Kerala . . . 146
- Forest Act, 1961 (Kerala Act 4 of 1962)**—*Section 61A(1) and Section 52 —Confiscation of property—Production of the seized goods before the Magistrate Court, has no relevance in proceedings for confiscation under Section 61 A.*
- Conservator of Forests v. T. M. Sukumaran I.L.R. 2010 (4) Kerala . . . 146
- General Sales Tax Act, 1963(Kerala Act 15 of 1963)**—*Section 30B(1) to (4)—When the genuineness of the contents of the declaration in Form C (under the CST Act) is in doubt, the burden is on the parties to the declaration or persons claiming the benefit of such declaration to establish the truth of the content of the document.*
- Pratiksh.A.Asher v. State of Kerala I.L.R. 2010 (4) Kerala . . . 516
- General Sales Tax Act, 1963(Kerala Act 15 of 1963)**—*Section 30 B(3) and (4)—The liability, joint or several under Section 30B(3) is not confined to the owner, driver or person in charge of the goods—The liability extends to the vendor of the goods also in view of the language of sub-section (4) of Section 30B.*

Pratiksh.A.Asher v. State of Kerala I.L.R. 2010 (4) Kerala .. 516

Head Load Workers Act, 1978 (Kerala Act 20 of 1980)—Section 1(3)

—Act not to apply to an establishment owned or controlled by the Central Government—Head load workers cannot claim employment as a matter of right in an establishment under control of a Central Government enterprise, if work carried on therein by third party is integrally connected to the work of the establishment.

Hindustan Latex Employees Welfare Society v. Trivandrum

District Headload and General Workers Union

I.L.R. 2010 (4) Kerala. . 304

Headload Workers Rules, 1981 (Kerala)—Rule 26A—An applicant who

applies for registration as headload worker under Rule 26A, cannot be denied registration on the ground that he is not already a headload worker working under the employer named in the application—All that is required for a prospective headload worker to get registration under Rule 26A is his physical ability to do headload work—For registration as an attached worker there is an added condition that the employer should express readiness to employ the applicant as a headload worker—Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983—Clause 6—Headload Workers Act, 1978 (Kerala Act 20 of 1980)—Section 13.

Rajeev. V. v. District Labour Officer I.L.R. 2010 (4) Kerala .. 689

Headload Workers (Regulation of Employment and Welfare) Scheme, 1983(Kerala)—Clause 7—The registration under Clause 7 is

required only if the employer wants to engage pool workers and not if he employs his own permanent attached headload workers.

Rajeev. V. v. District Labour Officer I.L.R. 2010 (4) Kerala .. 714

Headload Workers Rules, 1981 (Kerala)—Rule 26A and 26B—

Registration cannot be denied to unattached Headload Workers Under Rule 26A, on the ground that they are not already a headload workers—Denial of Registration under Rule 26A to new entrants to the profession of headload work amounts to violation of their fundamental rights—Constitution of India—Article 19(1)(g).

Rajeev. V. v. District Labour Officer I.L.R. 2010 (4) Kerala .. 714

- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—*Section 13(1)(ia)*
—*Irretrievable break down of marriage is a relevant factor/input for the Court while considering the ground of cruelty.*
Preetha. K v. N. Bhaskaran I.L.R. 2010 (4) Kerala . . . 297
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—*Section 13(1)(ia)*
—*While considering the grounds of contest for grant of a decree of divorce, the absence of denial of allegations and the want of interest on the part of the respondent/spouse is a relevant factor to be taken into consideration.*
Preetha. K v. N. Bhaskaran I.L.R. 2010 (4) Kerala . . . 297
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—*Section 23*—*The mere evidence/admission of having endured cruelty cannot be reckoned as condonation under Section 23 to tern down the relief under Section 13(1)(ia).*
Preetha. K v. N. Bhaskaran I.L.R. 2010 (4) Kerala . . . 297
- Hindu Religious and Charitable Endowments Act, 1951(Madras Act 19 of 1951)**—*No decision regarding appointment of a non-hereditary trustee shall be taken without first deciding on the question whether a non-hereditary trustee needs to be appointed—Such decision can be taken only after hearing the hereditary trustee, that too, only after notifying the hereditary trustee of the grounds for the proposal.*
Muttill Sree Vishnu Kshethra Samithi v. Assistant Commissioner (HR&CE) I.L.R. 2010 (4) Kerala . . . 549
- Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951)**—*The power of the competent authority under the provisions of the Hindu Religious and Charitable Endowments Act is only to supervise the affairs of the temple—Power to supervise does not include the power to appoint.*
Parakkad Sree Bhagavathy Devaswom v. Malabar Devaswom Board I.L.R. 2010 (4) Kerala . . . 541
- Income Tax Act, 1961 (Central Act 43 of 1961)**—*Section 43B*—*Amounts collected by K.S.E.B., pursuant to statutory obligations under the provisions of the Kerala State Electricity Duty Act, 1963—Section 43B(a) of the Income Tax Act with the amounts payable to*

the sovereign qua sovereign, but not amounts payable to the sovereign qua principal—Section 43B cannot be invoked to assess liability of the K.S.E.B. under the Income Tax Act with regard to the amounts collected pursuant to the obligation cast under Section 5 of the Kerala State Electricity Duty Act—State Electricity Duty Act, 1963 (Kerala Actof 1963)—Section 5.

K.S.E.B. v. Dy. Commissioner of Income Tax I.L.R. 2010 (4) Kerala. . 875

Income Tax Act, 1961 (Central Act 43 of 1961)—Section 115 J B—*The fiction created by under Section 115 JB cannot be pressed into service against the K.S.E.B. while making the assessment of tax payable under the Income Tax Act.*

K.S.E.B. v. Dy. Commissioner of Income Tax I.L.R. 2010 (4) Kerala. . 875

Interpretation of Documents—*In interpreting a document, it has to be read as a whole and understood in the light of the recitals therein— In discerning the provisions of a document, the context in which it is made may also be relevant.*

Chandran. K. v. Dr. K. Haridas I.L.R. 2010 (4) Kerala . . 950

Interpretation of Statutes—Strict interpretation—*While interpreting a provision of a Statute, if the language of the provision is clear, the Court shall not add or insert any expression in the provision.*

Joseph. P.V. v. State of Kerala I.L.R. 2010 (4) Kerala . . 678

Land Reforms Act, 1963 (Kerala Act 1 of 1964)—Section 72(4)—*Suit filed by plaintiff seeking redemption of mortgage, decreed by the trial court and confirmed by the appellate court—High Court, in second appeal, accepted the plea of deemed tenancy and dismissed the suit on 06-02-1976—Application for resumption filed by the plaintiff/landlord within six months thereafter held to be time barred as the right, title and interest in the property of the landlord vested with the Government on the expiry of six months from the commencement of Act 35 of 1969 (01-01-1970).*

Thankappan. B.K. v. Velayudhan Nadar Narayan Nadar I.L.R. 2010 (4) Kerala . . 408

Limitation Act, 1963(Central Act 36 of 1963)—Adverse Possession—*Permissive possession is not at all adverse—Limitation does not commence until possession becomes adverse. Possession does not*

become adverse until the party against whom such claim is notified of hostile possession.

Chandramathy. C.S. v. Devakeyamma I.L.R. 2010 (4) Kerala . . 634

Limitation Act, 1963 (Central Act 36 of 1963)—*Adverse Possession—Suit for fixation of boundary and injunction—Plea of adverse possession cannot be raised by the defendants in a suit for injunction and fixation of boundary, since recovery of possession on the strength of title is not claimed in the suit.*

Chandramathy. C.S. v. Devakeyamma I.L.R. 2010 (4) Kerala . . 634

Limitation Act, 1963 (Central Act 36 of 1963)—*Adverse Possession—When the suit property lies as a contiguous plot with the tharawad property, the rights exercised by the defendants over the suit property has to be considered as acts done on behalf of the owners of the property—Payment of tax over the suit property along with other items belonging to the defendants is not a circumstance showing that they have settled possession over the property.*

Chandramathy. C.S. v. Devakeyamma I.L.R. 2010 (4) Kerala . . 634

Limitation Act, 1963 (Central Act 36 of 1963)—*Articles 3 and 4—Suit against agent—Articles 3 and 4 determine the period of limitation for a suit against agent by the principal—Article 14 does not apply to such a suit.*

Kims Agencies v. Keltron I.L.R. 2010 (4) Kerala . . 746

Limitation Act, 1963 (Central Act 36 of 1963)—*Article 136—An application for amendment of a pending execution petition by including a new item of property not already included in the pending execution or an application containing an alternative mode of execution is a fresh application for execution as originally understood under Section 48 of the Civil Procedure Code, which is now imported to Article 136 and is therefore subject to the period of limitation prescribed under Article 136 of the Act—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 48 (Repealed by Section 28 of the Limitation Act).*

Mohanachandran. R.S. @ Kannan v. Bhavani Amma Pankajakadhi Amma I.L.R. 2010 (4) Kerala . . 319

Local Authorities (Prohibition of Defection) Act, 1999(Kerala Act 11 of 1999)—*Section 3(1)(a)*—*The act of voting in the election to the office bearers or in support of the no confidence motion is a crucial aspect to decide whether any elected member had voluntarily given up membership of the political party which elected him as a member of the Panchayat—Petitioners having voted in support of the no confidence motion moved against a member of their political party and also in favour of a candidate belonging to the opposite camp, in the election to the office bearers of the Panchayat, cannot justify their action by stating that they had expressed their free will and that the political party which they represent had not taken any action against them—Election Commission held to be justified in passing order of disqualification against the petitioners.*
Muhammed Kunhi. B. v. K.Abdulla I.L.R. 2010 (4) Kerala . . . 224

Lotteries Regulation Act, 1998(Central Act 17 of 1998)—*Sections 3 and 4(h)*—*The requirement that no lottery shall have more than one draw in a week operates on a lottery to lottery basis or scheme to scheme basis and does not have any impact on the total number of lotteries or schemes that an organising State could organise—Every bumper draw of a lottery is a bumper draw in relation to any such lottery or a scheme—Every lottery or scheme of an organising State can have one draw in a week and six bumper draws in an year.*
John Kennedy. A. v. State of Kerala I.L.R. 2010 (4) Kerala . . . 353

Madras Marumakkathayam Act, 1933 (Madras Act 12 of 1933)—*Section 48*—*The presumption is that, the bequest or gift by a male to his Marumakkathayee wife and children will enure to the benefit of the joint family (Thavazhi) unless the terms of the bequest or gift deed which are to the contrary are clear and without any contradiction—The burden is on the one who asserts to the contrary, to prove that the bequest or gift is otherwise than in favour of the Thavazhi.*
Chandran. K. v. Dr. K. Haridas I.L.R. 2010 (4) Kerala . . . 950

Madras Marumakkathayam Act, 1933 (Madras Act 12 of 1933)—*Section 48*—*Plaintiff relinquishing his right in the property in favour of his mother, on behalf of the Thavazhi—After execution of the release deed relinquishing his right, the plaintiff had no right to sue for any share in the property.*
Chandran. K. v. Dr. K. Haridas I.L.R. 2010 (4) Kerala . . . 950

- Mahomedan Law**—*Father of adult daughter is liable to maintain her till her marriage if the daughter is unable to maintain herself out of her own property.*
Naduthodi Youseff v. Naduthod Rubbeena I.L.R. 2010 (4) Kerala .. 37
- Marriage Laws**—*Matrimonial Cruelty*—*No husband has got the prerogative to rule over the career ambition of his wife, so as to deny her the opportunity to achieve and accomplish her life's ambition in respect of her employment—Such conduct on the part of the husband would amount to matrimonial cruelty.*
A: Husband v. B: Wife I.L.R. 2010 (4) Kerala .. 426
- Marriage Laws**—*Divorce*—*Matrimonial Cruelty*—*The nature of cruelty which would entitle a spouse for divorce must be identical for all religions—Law cannot recognize different varieties of cruelty as hindu cruelty, muslim cruelty, christian cruelty or secular cruelty to justify a decree for divorce—Constitution of India—Article 44.*
A: Husband v. B: Wife I.L.R. 2010 (4) Kerala .. 426
- Medical Council Act, 1956 (Central Act 102 of 1956)**—*States and Universities have to follow the standards prescribed for medical education by the Medical Council of India and they have no discretion in the matter.*
Dr. Hindu Varghese v. State of Kerala I.L.R. 2010 (4) Kerala .. 111
- Medical Council of India (Graduate Medical Education) Regulations, 1997**—*Regulations 5(2) and (5)(ii)—Eligibility for admission to MBBS course—A student aspiring for admission to MBBS course should secure 50% marks in the Entrance Examination—There cannot be any agreement between the Government and Medical Colleges to admit students, who do not satisfy the eligibility criteria stipulated in the Regulation.*
Shamin Sainudheen v. Medical Council of India
I.L.R. 2010 (4) Kerala . 183
- Medical Officers' Admission to Post Graduate Medical Courses under Service Quota Rules, (Kerala)**—*Rule 5 (1)—Reserving the only seat of M.Ch in Gastroenterology Surgery for in service candidate is*

not illegal—Reservation is on the basis of need of the Medical college.

Vipin. I.S. (Dr.) v. State of Kerala I.L.R. 2010 (4) Kerala . . . 292

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Section 67—Travel concession to those students who commute daily by Bus from Kerala to Colleges outside the State—The State Government can, in exercise of its authority under Section 67, extend concession to students travelling by stage carriages to colleges outside the State, if the permits for such stage carriages are issued by Transport Authorities in the State of Kerala—Government Order GO. (F) No. 97/96/PW&T and G.O.(P) No. 103/96/PW&T.

Sayyid Muhammad Haneef Thangal v. State of Kerala
I.L.R. 2010 (4) Kerala . . . 159

Motor vehicles Act, 1988 (Central Act 59 of 1988)—Section 173—All appeals preferred under Section 173 after 01-01-2011 shall be accompanied by Certified copy of award—Ordinarily, appeals accompanied by free copy of the award shall not be entertained after 01-01-2011.

Habeeb v. Sebastian T.C. I.L.R. 2010 (4) Kerala . . . 940

Motor Vehicles Rules, 1989 (Kerala)—Rule 387—Application for referring the claimant to be examined by a Medical Board cannot be dismissed by MACT without giving any reason—If the Tribunal fails to apply its mind to all relevant aspects that would definitely disable the Tribunal from assessing the 'just compensation' for which the claimant is entitled—Motor Vehicles Rules, 1989 (Kerala)—Rule 168.

Mini. P.K. v. Abdul Nazar I.L.R. 2010 (4) Kerala . . . 907

Motor Vehicles Rules, 1989 (Kerala)—Rule 392—Tribunals should consider claim petitions coming before it with requisite seriousness that is expected from a judicial forum and must show empathy to the unfortunate victims of road accidents.

Assain C.H. v. Keeran I.L.R. 2010 (4) Kerala . . . 203

Motor Vehicles Rules, 1989 (Kerala)—Rule 397(2)—Motor Accident Claims Tribunal should not dismiss an application seeking exemption from payment of Court Fee, without stating reasons for dismissal.

Gopi v. Biju I.L.R. 2010 (4) Kerala . . . 971

- Motor Vehicles Rules, 1989 (Kerala)**—Rule 398—*Certified copy—Free copy issued by Motor accident Claims Tribunal should bear endorsement provided in Rule 254 of the Civil Rules of Practise—Copy of the award without seal of the Tribunal and Certification of authorised officer cannot be treated as Certified copy—Civil Rules of Practise, 1971 (Kerala)—Rule 254.*
Habeeb v. Sebastian T.C. I.L.R. 2010 (4) Kerala .. 940
- Municipality Act, 1994 (Kerala Act 20 of 1994)**—Sections 10(2), 10(4), 10(5) and 10(6)—*There is no need to have a rotation between the classes Scheduled Caste, Scheduled Caste (Women) and Women (General) vis-à-vis General Quota in order to form a cycle of rotation.*
Velayudhan. V. v. Kerala State Election Commission
I.L.R. 2010 (4) Kerala .. 77
- Municipality Act, 1994 (Kerala Act 20 of 1994)**—Section 86(1)—*The words ‘in the service of’ occurring in Section 86(1) can only mean the condition of being an employee of the various categories of bodies mentioned in the Section—The prohibition in Section 86(1) is against persons in Government service and not merely on the members of a State or Subordinate service within the meaning of the said terms occurring in the Kerala State and Subordinate Service Rules, 1958 or the Kerala Civil Services (C.C. & A) Rules, 1960.*
Rajesh. O. v. State of Kerala I.L.R. 2010 (4) Kerala .. 277
- Municipality Building Rules, 1999 (Kerala)**—Rule 20(2)(d)—*The mere fact that there is provision under Rule 20(2)(d) to give notice to the Secretary before commencing of work would not absolve the Secretary from acting in terms of Rule 141—Municipality Building Rules, 1999 (Kerala)—Rule 141.*
Wireless-TT Info Services Ltd. v. S.I. of Police I.L.R. 2010 (4) Kerala .101
- Municipality Building Rules, 1999 (Kerala)**—Rule 141—*Construction of mobile tower—The Secretary of a local authority cannot issue permit to put up a mobile tower in the absence of a Structural Stability Certificate issued in terms of Rule 141(5)—The Structural Stability Certificate should be produced at the time of submitting the application for permit.*

- National Investigation Agency Act, 2008 (Central Act 34 of 2008)**—
Sections 11 and 22—The Unlawful Activities (Prevention) Act is a “scheduled offence” punishable under the N.I.A. Act and, therefore, till the Special Court is constituted by the State Government, it is the Sessions Court within the limits of which the offences were committed, which has to try the offences—Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967)—Section 2(d).
Ashruff v. State of Kerala I.L.R. 2010 (4) Kerala . . 664
- National Investigation Agency Act, 2008 (Central Act 34 of 2008)**—
Section 21—An accused seeking bail in cases investigated by the National Investigation Agency constituted under the NIA Act has to first apply for bail before the Special Court and cannot straight away apply to the High Court which is only an appellate forum—An order of the Special Court granting or refusing bail, is appealable to the High Court under Section 21(1) and (4) and such appeal shall be heard by a Bench of two Judges as provided by Sub Section (2).
Mohammed Nainar v. State of Kerala I.L.R. 2010 (4) Kerala . . 914
- National Investigation Agency Act, 2008 (Central Act 34 of 2008)**—
Section 43 D(5)—While considering bail application filed by the accused in cases investigated by the National Investigation Agency, Court will not shut its eyes against terrorist activities affecting the security, unity and integrity of the nation—Bail cannot be granted when there are reasons or grounds for believing that the accusation is prima facie true.
Mohammed Nainar v. State of Kerala I.L.R. 2010 (4) Kerala . . 914
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—*Section 138—If the cheque is returned unpaid due to insufficiency of funds, the offence under Section 138 is made out—It is immaterial that the cheque was returned unpaid also due to ‘Payment stopped’ and ‘Signature incomplete’ because even without these reasons, the cheque would have been dishonoured.*
Vijayakumar. V. v. Vijayan. M.T. I.L.R. 2010 (4) Kerala . . 244

- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—*Section 138—Burden of proof—Cheque returned unpaid with the remark ‘Signature incomplete’—It is for the accused to prove that the signature in the cheque is not affixed by him, especially when the Complainant has a case that the Cheque was issued by accused after affixing his signature therein.*
 Vijayakumar. V. v. Vijayan. M.T. I.L.R. 2010 (4) Kerala . . . 244
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—*Section 138—Court has to go by the averments in the complaint to ascertain the territorial jurisdiction, at the pre-cognisance stage—It is not necessary to examine witnesses at pre-cognisance stage to prove that cause of action had arisen within jurisdiction of the court.*
 Joy v. State of Kerala I.L.R. 2010 (4) Kerala . . . 143
- Ouster & Adverse Possession among co-sharers**—*The mere keeping of possession or not sharing income by itself is not sufficient to constitute ouster—There must be evidence of assertion of a hostile title coupled with exclusive possession and enjoyment by one of them to the exclusion of all others.*
 Puthumana Meenakshi Amma v. Puthumana Kalliani Amma
 I.L.R. 2010 (4) Kerala . . . 449
- Panchayat Raj Act, 1994(Kerala Act 13 of 1994)**—*Section 271(j)—Ombudsman appointed under Chapter XXV-B of the Kerala Panchayat Raj Act can exercise only those powers which are conferred on him under the Act and not otherwise.*
 Mayor of Kochi v. Ombudsman for Local Self Government
 Institutions (S.C) I.L.R. 2010 (4) Kerala . . . 291
- Partial Partition**—*There is no invariable rule that a suit has to fail merely due to seeking of partial partition—It is not mandatory that all properties should be included for seeking partition.*
 Puthumana Meenakshi Amma v. Puthumana Kalliani Amma
 I.L.R. 2010 (4) Kerala . . . 449
- Penal Code, 1860 (Central Act 45 of 1860)**—*Section 361—In order to attract an offence under Section 361 if is not necessary that taking or enticing of the minor out of the lawful keeping of the guardian*

must be by means of force, fraud or deceit—Even without any element of fraud, force or deceit and with the consent of the minor, the minor can be moved out of the custody of the guardian, which would perfectly answer the expression “takes or entices” under Section 361 I.P.C.

Shajahan v. State of Kerala I.L.R. 2010 (4) Kerala .. 42

Penal Code, 1860 (Central Act 45 of 1860)—Section 361—*The law assumes that the interest of the guardian concurs with the interest of the minor—Any invasion into the right of the guardian, even with the consent of the minor will have to be frowned upon by law by invoking Section 361 I.P.C.*

Shajahan v. State of Kerala I.L.R. 2010 (4) Kerala .. 42

Penal Code, 1860 (Central Act 45 of 1860)—Section 366—*In order to establish an offence under Section 366 I.P.C., it must first be established that the offence of kidnapping under Section 361 I.P.C. has been proved—Thereafter intention to force or compel the victim to marry the accused against her will or to compel or force her to have illicit sexual relationship with him has to be proved.*

Shajahan v. State of Kerala I.L.R. 2010 (4) Kerala .. 42

Penal Code, 1860 (Central Act 45 of 1860)—Section 464—First Part—*Execution of documents by the accused assigning rights over a property which does not belong to him will not attract the offence of forgery or creation of false document—However the purchaser may have a right to complain against fraudulent act of cheating—Penal Code, 1860 (Central Act 45 of 1860)—Sections 465, 467 and 471.*

Perumpallipad Payyuril Hydra Haji v. State of Kerala

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Penal Code, 1860 (Central Act 45 of 1860)—Sections 464, 465, 467, 468 and 471—*Making of false document—To be prosecuted for creating a false document, the maker of the document should have made or executed the document claiming himself to be someone else or claiming that the document is executed as authorised by some other person—In the absence of such claims, making of a document by itself will not amount to making of a false document.*

Perumpallipad Payyuril Hydra Haji v. State of Kerala

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- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act 1 of 1996)**—
Section 36—Vacancies not filled up to be carried forward—If candidates from a particular category of physically handicapped is not available, the vacancy earmarked for that particular category should be carried forward to the next recruitment year—If candidates from that particular category is not available in the next recruitment year also, that vacancy can be filled by interchange from among the other two categories.
 Muhazin. P. v. Government of Kerala I.L.R. 2010 (4) Kerala . . 835
- Practise and Procedure**—*Production of documents by plaintiff or defendant—Guidelines issued.*
 Bhanumathi v. K.R. Sarvothaman I.L.R. 2010 (4) Kerala . . 751
- Public Service Commission Rules of Procedure, 1976, (Kerala)**—*Rule 40—Rule 40 cannot be invoked as a matter of right by a candidate seeking permission to rectify a mistake in the application submitted by such candidate.*
 Shaiji Cherukattil v. K.P.S.C. I.L.R. 2010 (4) Kerala . . 737
- Representation of People Act, 1951 (Central Act 43 of 1951)**—*Section 99—Without naming the third party and hearing him, Election Tribunal cannot hold a candidate to be guilty of corrupt practice committed by third party—Before finding a candidate to be vicariously guilty of corrupt practice, such other person should be heard by the Election Tribunal.*
 Joseph. M. Puthussery v. T.S. John (S.C) I.L.R. 2010 (4) Kerala . . 851
- Representation of People Act, 1951 (Central Act 43 of 1951)**—*Section 123—Burden of proof in an election petition wherein the allegation is that of corrupt practice—An election trial where corrupt practice is alleged should be conducted like a criminal trial and the allegation should be proved as in a criminal prosecution.*
 Joseph. M. Puthussery v. T.S. John (S.C) I.L.R. 2010 (4) Kerala . . 851
- Representation of People Act, 1951 (Central Act 43 of 1951)**—*Section 123—Oral evidence alone is not sufficient for proving corrupt*

practice—There should be corroboration of oral evidence by documentary or other unimpeachable evidence.

Joseph. M. Puthuseery v. T.S. John (S.C) I.L.R. 2010 (4) Kerala . . 851

Representation of People Act, 1951 (Central Act 43 of 1951)—Section 123 (4)—*Consent of the candidate to the corrupt practice committed by a third person has to be proved before the candidate can be mulcted with the liability for committing a corrupt practice.*

Joseph. M. Puthussery v. T.S. John (S.C) I.L.R. 2010 (4) Kerala . . 851

Representation of People Act, 1951 (Central Act 43 of 1951)—Section 123 (4)—*‘Publication’—Reproduction of material from a magazine which is circulated in the constituency will not amount to publication of statement of fact relating to personal character or conduct of a candidate.*

Joseph. M. Puthussery v. T.S. John (S.C) I.L.R. 2010 (4) Kerala . . 851

Representation of People Act, 1951 (Central Act 43 of 1951)—Section 123 (4)—*There should be proof that the returned candidate believed the offending statement to be untrue and knowing it to be untrue allowed it to be made—Onus of proving that the returned candidate knew it to be untrue is on the election petitioner.*

Joseph. M. Puthussery v. T.S. John (S.C) I.L.R. 2010 (4) Kerala . . 851

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989)—Section 18—*A mere accusation of having committed an offence under the Act is sufficient to take away the power of the Court to grant anticipatory bail—The statutory interdict is only against the granting of anticipatory bail—There is no embargo against the concerned Magistrate Court from granting regular bail in an appropriate case.*

Prem Shameer v. State of Kerala I.L.R. 2010 (4) Kerala . . 621

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 13 (9)—*Unless the Company is ordered to be wound up or proceedings for winding up the company is pending, workmen of the company who claim priority in the distribution of assets by virtue of Section 529A of Companies Act cannot object to the*

proceedings taken by secured creditor against assets of the company.
Sasidharan Pillai. K.V. v. IOB I.L.R. 2010 (4) Kerala . . . 333

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(Central Act 54 of 2002)—*Section 34—Civil court cannot grant injunction in respect of any matter falling within the purview of the DRT/DRAT—The prohibition will apply to action proposed to be taken under the RDDBFI/SARFAESI Act also.*
Sasi v. HDFC I.L.R. 2010 (4) Kerala . . . 217

Security Interest (Enforcement) Rules, 2002—*Rule 3—Demand Notice—Personal service of notice amounts to due service of demand notice.*
South Indian Bank Ltd. v. Union of India I.L.R. 2010 (4) Kerala . . . 421

Security Interest (Enforcement) Rules, 2002 (Central)—*Rule 9(2), Second Proviso—Consent of the defaulter is not required for selling the secured asset for the reserve price fixed by the Authorised Officer—Consent of both creditor and debtor is required for selling the property at a price lesser than the reserve price.*
Varghese Ukken v. State Bank of India I.L.R. 2010 (4) Kerala . . . 645

Service—*Disciplinary proceedings—Courts would not interfere in judicial review merely on the technical contention that copy of the enquiry report was not served on the delinquent, except in cases where prejudice is demonstrated—An employ who was heard in the enquiry proceedings do not have a Constitutional right to represent against the proposed penalty.*
Damodaran Pillai. J. v. State of Kerala I.L.R. 2010 (4) Kerala . . . 809

Service Rules, 1959 (Kerala)—*Part-I, Rules 117 & 118—Medical leave—Cannot be availed as a matter of right—Leave sanctioning authority has the power to refuse medical leave.*
James Aerthayil (Fr.) v. Thomas. N.K. I.L.R. 2010 (4) Kerala . . . 960

Stamp Act, 1959 (Kerala Act 17 of 1959)—Section 28A—*Sale deed executed pursuant to a decree for specific performance—The buyer is liable to pay Stamp Duty payable on the fair value fixed for land as on the date of presentation of the document for registration.*
Renga Swamy Chettiar v. Mari Chettiar I.L.R. 2010 (4) Kerala . . 521

State and Subordinate Services Rules, 1958—Part-II, Note to Rule 14 (e)—*Granting marks by moderation in written examination is not the same as lowering marks to the necessary extent for identifying suitable candidates belonging to reserved community—If marks are granted by moderation, the provision for special recruitment provided in Rule 15 will be rendered nugatory.*
Jayachandran. C. v. High Court of Kerala I.L.R. 2010 (4) Kerala .. 18

State and Subordinate Service Rules, 1958 (Kerala)—Rules 10 and 13 —*Public Service Commission is incompetent to deal with the question of equivalence of education or other qualifications prescribed by the Special Rules, unless the Special Rules provide for the recognition of qualifications other than the prescribed qualification as equivalent to the prescribed qualification.*
Suma. A. v. Kerala Public Service Commission (F.B)
I.L.R. 2010 (4) Kerala . . 974

State and Subordinate Service Rules, 1958 (Kerala)—Rules 10 and 13 —*While Rule 10 deals with ‘educational and other qualifications’, Rule 13 deals with ‘special qualifications and special tests’—Rule 10 deals with the educational or other qualifications which provide the basic eligibility for competing for the posts whereas special qualifications and special tests occurring in Rule 13 are those qualifications that are required to be acquired or passed by the candidates seeking appointment or promotion in service.*
Suma. A. v. Kerala Public Service Commission (F.B)
I.L.R. 2010 (4) Kerala . . 974

Transfer of Property Act, 1882(Central Act 4 of 1882)—Section 54—*Plaintiff seeking decree of declaration of possession claiming possession based on an oral sale for Rs.3,000/- —The law recognizes only two modes of transfer of sale of immovable property, one by registered instrument and the other by delivery of possession applicable only in case of tangible immovable property of a value*

less than Rs.100/—Even if the plaintiff is assumed to be in possession of the immovable property, she is not entitled to the declaration of possession sought for.

Pankajakshy v. Devaki Ramakrishnan I.L.R. 2010 (4) Kerala. . . 207

Transfer of Property Act, 1882 (Central Act 4 of 1882)—Sections 122 and 127—Gift and Onerous Gift—To consider the question whether there has been an acceptance of gift by the donee, the slightest evidence of such acceptance would be sufficient—Even silence may amount to acceptance of the gift provided the donee has enjoyed the gift in her favour—When the gift is not an onerous gift, the normal presumption is that the donee is whose favour such a gift has been made would be willing to accept the gift once he or she comes to have knowledge of such gift.

Cherukat Vijayalakshmi v. Cherukat Gopalakrishna Menon

I.L.R. 2010 (4) Kerala . . . 485

Travancore-Cochin Hindu Religious Institutions Act, 1950 (T.C. Act 15 of 1950)—Sections 37, 41 and 42—Right of a person to file a suit before the District Court against an order of assumption passed under Section 37(1) cannot be crippled by issuing a composite notification under Section 37, 41 and 42.

Ambattukavu Bhagavathi Kshethra Samithy v. State of Kerala I.L.R. 2010 (4) Kerala . . . 256

Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955 (Act 12 of 1955)—Section 25—Publication under Order I Rule 8 of the Civil Procedure Code is not required in respect of an Original petition under Section 25 of the T.C. Act—Publication of the terms of settlement is required under Order 23 Rule 3B(2) before the Court grants leave for any settlement between the parties in a petition under Section 25,—Compliance with Order I Rule 8 is not required when a society registered under the T.C. Act sues or is being sued—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order I Rule 8 & Order 23 Rule 3B(2).

Kerala Hindi Prachar Sabha v. Joseph. R. I.L.R. 2010 (4) Kerala . . . 490

Tax on Paper Lotteries Act, 2005(Kerala Act 26 of 2005)—Section 2(l)—When the Bhutan Government asserts a particular person to be its ‘promoter’, the authorities under the Tax on Paper Lotteries Act

cannot insist on scrutiny the agreement, if any, between the Bhutan Government and any person appointed by it as its promoter for the purpose of receiving tax from the promoter.

John Kennedy. A. v. State of Kerala I.L.R. 2010 (4) Kerala . . . 353

Tax on Paper Lotteries Act, 2005(Kerala Act 26 of 2005)—Section 2(l)
—Only the Bhutan Government can appoint a promoter for sale of its lottery tickets in the State of Kerala for the purpose of the Tax on Paper Lotteries Act—There is no role for any intermediary, a sole agent, a sole purchaser or any other intermeddler in the commercial activities of the Bhutan Government in so far as the Tax Act is concerned.

John Kennedy. A. v. State of Kerala I.L.R. 2010 (4) Kerala . . . 353

University—Medical Council of India Regulation, 1997—Clause 12(2) and 12(3)
—A candidate need not secure the minimum required marks in internal assessment in all the subjects to enable him to appear for the subjects in which he had secured the minimum required marks.

Justeena Joseph v. M.G. University I.L.R. 2010 (4) Kerala . . . 314

Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967)—Section 43 D(2)(b)
—A plain reading of the provision indicates that there is no obligation of issuing notice to the accused while the Court is considering the report of the Public Prosecutor under the first proviso added by Section 43 D(2)(b) of the Act—It is enough if the accused are produced before the Court at the time of consideration of the Public Prosecutor's report for extension of the period of detention and the accused are informed that the Court is considering the question of extension of the period of their detention.

Ashruff v. State of Kerala I.L.R. 2010 (4) Kerala . . . 664

Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967)—Section 43 D(2)(b)
—After the production of the accused before the Magistrate and after the first remand of the accused, it is the Court of Sessions alone which can extend the remand and pass orders under Section 43 D(2)(b) to extend the period of remand beyond the period of 90 days upto 180 days after considering the report of the

Public Prosecutor—National Investigation Agency Act, 2008 (Central Act 34 of 2008)—Section 22.

Ashruff v. State of Kerala I.L.R. 2010 (4) Kerala .. 664

Wakf Act, 1995 (Central Act 43 of 1995)—Section 32 (2)(i)—Mutavalli of a Wakf is competent to institute a suit to protect and safeguard Wakf property.

Ravindran. D. v. Kinassery Yatheemkhana I.L.R. 2010 (4) Kerala. . 341

Wakf Act, 1995 (Central Act 43 of 1995)—Section 72(8)—Escaped assessment—Executive Officer of the Board can issue assessment order in respect of escaped assessment for the years in which returns are filed as well as for which no return is filed by the Mutawalli.

Anakayam Juma'th Palli and Madrassa v. Kerala Wakf Board I.L.R. 2010 (4) Kerala .. 544

Wakf Act, 1995 (Central Act 43 of 1995)—Section 72(8)—Limitation—Assessment in respect of escaped assessment can be made only within a period of five years from the last date of the year to which escaped assessment relates.

Anakayam Juma'th Palli and Madrassa v. Kerala Wakf Board I.L.R. 2010 (4) Kerala .. 544

Wakf Act, 1995 (Central Act 43 of 1995)—Section 84—Jurisdiction of the Wakf Tribunal—Once the property is found to be Wakf property, then any dispute, question or other matter relating to the property should be agitated before the Wakf Tribunal—A party can approach the Wakf Tribunal for determination of any dispute, question or other matters relating to the Wakf or Wakf property, irrespective of whether any order has been passed in respect of the subject matter under the Wakf Act or not.

Board of Wakf, West Bengal v. Anis Fathima Begum (S.C)

I.L.R. 2010 (4) Kerala .. 804

Warehousing Corporation's Act, 1962 (Central Act 58 of 1962)—Section 42(1)—Any modification in the retirement age of the employees is possible only after amendment of Regulations, which

require proper approval of the Government—If the Government declines approval for raising the retirement age, the Corporation cannot enhance the age of retirement.

State of Kerala v. Adithikutty Amma. D. I.L.R. 2010 (4) Kerala . . . 572

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions, Act, 1955(Central Act 45 of 1955)—Section 5—A journalist, whose service has been terminated by way of disciplinary action under the Working Journalist Act, is not entitled to gratuity—Section 5 of the Working Journalist Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act, which is a general law—Payment of Gratuity Act, 1972(Central Act 39 of 1972).

Rajan Sandhi. P. v. Union of India (S.C) I.L.R. 2010 (4) Kerala. . . 287

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