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- Civil Services (Classification, Control and Appeal) Rules, 1960 (Kerala)**—*Rules 11 (1) and 31 (2)*—*The appellate authority is required to consider whether the facts on which the order imposing penalty was based have been established and whether the fact established afford sufficient ground for taking action and whether the procedure prescribed in the rules have been complied with and if not, whether such non-compliance has resulted in the violation of any of the provisions of the Constitution or in failure of justice and whether the findings are justified and whether the penalty imposed is excessive, adequate or inadequate—The word consider implies due application of mind of the above-mentioned conditions— Civil Services (Classification, Control and Appeal) Rules, 1965 (Central)— Rule 27 (2).*
- Sudhakaran, K. P. v. K.S.R.T.C. I.L.R. 2014 (2) Kerala . . . 795
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 89—Mediation is one of the best forms, if not the best, of conflict resolution—Advantages of resorting to mediation to settle disputes explained.*
- Vikram Bakshi v. Sonia Khosla (S.C.) I.L.R. 2014 (2) Kerala ... 658
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 92—Suit filed by one faction of Malankara Church against the other faction to gain control of a Church—Such suits fall under Section 92 and if prior leave had not been obtained for institution of the suit, the suit is liable to be dismissed for want of sanction.*
- John Jacob (Fr.) v. Poulose, N. I. (Fr.) I.L.R. 2014 (2) Kerala . . . 125
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order VIII, Rule 6C— The Court has the power to exclude the counter claim on motion made by the plaintiff at any time before issues are settled—No straight jacket formula can be adopted for exclusion of the counter claim and it is essentially within the discretion of the Court on motion made by the plaintiff—The mere fact that counter claim has been permitted to be set up by way of amendment to the written statement does not disable the Court from excluding it later.*
- Thankamma, P. v. Sajitha G Nair I.L.R. 2014 (2) Kerala . . . 882
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXI, Rule 92—In the absence of any allegation of fraud or other vitiating circumstance in the sale conducted by the Official Liquidator, it is not proper for the court to set aside the sale—Every attempt should be made by the court to ensure sale of the property for an adequate price, but it shall not be at the expense of the credibility of the court auction sale.*
- M/s Sithara Associates v. M/s Oshon Treads Ltd. I.L.R. 2014 (2) Kerala . . . 743
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXXIII, Rule 4—It is not mandatory that the court should examine the applicant in an application seeking permission to sue as indigent.*
- Sushil Thomas Abraham v. M/s Skyline Builders I.L.R. 2014 (2) Kerala . . . 215

- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXXIII, Rule 6— Failure to issue notice to the Government pleader before the application is posted for enquiry will not make the order invalid.*
Sushil Thomas Abraham v. M/s Skyline Builders I.L.R. 2014 (2) Kerala . . . 215
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXXIII, Rule 7— The only order which the court can pass after posting the indigent application for enquiry is an order of refusal—Order of rejection and order of refusal is one and the same.*
Sushil Thomas Abraham v. M/s Skyline Builders I.L.R. 2014 (2) Kerala . . . 215
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXXIII, Rule 15— Refusal to allow applicant to sue as an indigent person would bar subsequent application of like nature—Application for leave to sue as indigent in appeal—Suit and the appeal therefrom are in respect of the same right to sue and if an application for leave to sue as indigent is refused in the suit, such an application cannot be filed in the appeal.*
Sushil Thomas Abraham v. M/s Skyline Builders I.L.R. 2014 (2) Kerala . . . 215
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XLIII, Rule 1(t)—An order to pay cost as a condition to allow application to restore the appeal is an appealable order and such order cannot be challenged under Article 227—Constitution of India—Article 227.*
Shanmughadas v. Malayil Subrahmanian I.L.R. 2014 (2) Kerala . . . 161
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 107 and III—The proceedings under Section 107 cannot be initiated merely because a crime is registered— In the absence of any valid reason stated in the report which is relied on for initiating proceedings under Chapter VIII Cr. P.C., the Sub Divisional Magistrate cannot initiate proceedings under Sections 107 and 111 of Cr. P.C.*
Ahammad Kabeer v. State of Kerala I.L.R. 2014 (2) Kerala . . . 152
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 156 (3), 190, 200 and 202—It is not mandatory for the Magistrate to forward the complaint filed by a complainant to the police for investigation—If the Magistrate feels that he himself can conduct an enquiry, the Magistrate can conduct enquiry by himself instead of forwarding the complaint to the police for investigation.*
Muhammad Salim v. Sangeetha I.L.R.2014(2)Kerala . . . 80
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 156(3), 200 and 202—If a complaint is filed alleging grave offence, the Magistrate should not adopt the easy way of forwarding the complaint to the police for investigation under Section 156(3) Cr. P.C.—The Magistrate has the solemn duty to scrutinize the allegations in the complaint and the evidence that may be adduced under Section 200 Cr.P.C. to decide whether the enquiry has to be conducted by the Magistrate himself—The Court has the duty to protect the interest of the accused also, since at the time of conducting enquiry or forwarding the complaint to the police, the accused does not get any right of hearing.*
Nirmala Devi v. State of Kerala I.L.R. 2014 (2) Kerala . . . 252
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 173(2) and 173 (8)— Medical Negligence—In cases where the final report is filed based on the findings of the Expert Panel, the Investigating Officer has to file a further report as provided under Section 173(8) in case the Apex Body reverses the findings of the Expert Panel and taking*

- into consideration the views of the Apex Body, continue further investigation on that basis.*
- Suvarna v. Dr. Reni Philip I.L.R. 2014 (2) Kerala . . . 905
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 197—Sanction to prosecute—Unless there is failure of justice due to defect in the sanction order, High Court cannot interdict the proceedings, especially before evidence is lead in the case—Prevention of Corruption Act, 1988 (Central Act 49 of 1988)—Section 19.**
- State of Bihar v. Rajmangal Ram (S.C.) I.L.R. 2014 (2) Kerala . . . 300
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 320 and 482—Principles laid down to regulate exercise of power of High Court under Section 482 for quashing the proceedings pursuant to settlement arrived at between the parties, especially in respect of non-compoundable offences.**
- Narinder Singh v. State of Punjab (S.C.) I.L.R. 2014 (2) Kerala . . . 85
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 320 and 482— In the case of a non-compoundable offence being settled between parties, the High Court can quash the proceedings using its inherent power under Section 482 Cr. P.C.—The power to quash proceedings can be exercised even in cases where appeal is pending after conviction of the accused.**
- Thomas, V. C. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 238
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 357A— Compensation to victims—Interim compensation should be awarded to rape victims for their rehabilitation.**
- Suo Motu Proceedings (S.C.) I.L.R. 2014 (2) Kerala . . . 289
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 357C—All hospitals in the country are statutorily obliged under Section 357C to provide first aid or medical treatment, free of cost, to victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or 376E of the Penal Code.**
- Suo Motu Proceedings (S.C.) I.L.R. 2014 (2) Kerala . . . 289
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 378 (4)—Appeal against acquittal—Complainant in a complaint under Section 138 of the Negotiable Instruments Act can challenge the order of acquittal only by filing an appeal to the High Court with special leave, as provided under Section 378 (4) of the Code.**
- Omana Jose v. State of Kerala I.L.R. 2014 (2) Kerala . . . 669
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 394—In a case of conviction involving composite sentence of imprisonment and fine, the appeal will not abate on the death of the accused and the appellate court will have to dispose of the appeal on its merits.**
- Suo Motu v. Ismail, M. P. I.L.R. 2014 (2) Kerala . . . 702
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 394(2)— Abatement of appeal—Appeal challenging composite sentence of imprisonment and fine will not abate on the death of the appellant— Appellate court has to dispose of the appeal on merits.**
- Suo Motu v. Ismail, M. P. I.L.R. 2014 (2) Kerala . . . 378

- Code of Criminal Procedure, 1973 (Central Act 2 of 1914)**—Section 482— *The inherent powers of the High Court has to be exercised in case of significant and serious injustice—The power under Section 482 is intended to preserve, the existing right and not intended to create any non-existing right.*
Rahul Sehgal v. State of Kerala I.L.R. 2014 (2) Kerala . . . 777
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 482— *The High Court can interfere under Section 482 Cr. P. C. only in cases where the prosecution would amount to abuse of legal or judicial process—The power under Section 482 cannot be used as a weapon to undo legal or judicial proceedings or orders.*
Alice v. State of Kerala I.L.R. 2014 (2) Kerala .. 889
- Conduct of Election Rules, 1961 (Central)**—Rules 10(3), 22(3) and 30—*Writ petition seeking a direction to the Election Commission to effect necessary corrections in the ballot paper by altering the serial number and position of the candidate cannot be maintained without impleading all contesting candidates—Representation of the People Act, 1951 (Central Act 43 of 1951).*
Adv. Joice George v. Election Commissioner of India I.L.R. 2014 (2) Kerala . . . 517
- Constitution of India**—Part III—Fundamental Rights—*When the complaint raised by a resident citizen against action of the Municipal Corporation is founded on fundamental or other rights that are protected by the constitution, the action of the Municipal Corporation, purportedly taken under the provisions of other statutes, will also have to be examined against the back drop of the constitutional provisions.*
Philip George, C. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 264
- Constitution of India**—Articles 13(2), 14 and 16—*Any appointment made in violation of the mandate of Articles 14 and 16 of the Constitution of India is not only irregular but also illegal and therefore cannot be sustained—No law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution of India.*
Renu v. District and Sessions Judge, Tis Hazari (S.C.) I.L.R. 2014 (2) Kerala . . . 803
- Constitution of India**—Article 14—*Discrimination on the ground of sexual orientation or gender identity Impairs equality before law and equal protection of law guaranteed under Article 14 of the Constitution of India.*
National Legal Services Authority v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 306
- Constitution of India**—Article 14—*Separation of powers between the legislature, executive and judiciary is a consequence of principles of equality enshrined in Article 14 of the Constitution of India—If the law enacted by the legislature is shown to be an attempt to interfere with the judicial process, such law may be Invalidated, being in breach of separation of powers, even if the enactment of the law was within the competence of the legislatures.*
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Constitution of India**—Articles 14 and 16—Service—*Petitioners, who were temporarily appointed as Leprosy Inspectors from the employment exchange worked for nearly 2 decades discharging their duties and responsibilities after being put to 6 months training—Government regularizing their services prospectively declining to count the length of temporary service for computing the service benefits—The quality of service rendered being as trained hands for a specific purpose and on continuous officiating and*

discharge of duties and responsibilities as temporary hands, the refusal to count the past services of the petitioners for any service benefits, including pension, amounts to negation of the Fundamental Rights enshrined in Articles 14 and 16 of the Constitution.

Laila, T. M. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 841

Constitution of India—Articles 14, 15, 16, 19 (1)(a) and 21—Hijras, Eunuchs, apart from binary gender, to be treated as 'third gender' for the purpose of safeguarding their rights under Part III of the Constitution and the laws made by the Parliament and the State Legislatures—Right of transgender persons to decide their self-identified gender upheld and direction issued to Centre and State Governments to grant legal recognition of their gender identity as 'third gender'—Direction issued to Centre and State Governments to treat transgender persons as socially and educationally backward classes of citizens and to extend all kinds of reservation in cases of admission in educational institutions and for public appointments—Centre and State Governments directed to seriously address the problems faced by Hijras/transgender persons and to formulate welfare schemes for their betterment.

National Legal Services Authority v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 306

Constitution of India—Articles 14, 16 and 21—Admission to professional degree courses in Government Colleges—Students who willingly opted for Self Financing Colleges along with Government Colleges and students who opted for Government Colleges alone form different classes—Burden of showing that a classification rests upon an arbitrary and not on a reasonable basis or that discrimination is apparent and manifest in such classification, is upon that person who impeaches the administrative decision alleging it to be violative of the guarantee of equal protection.

Hanna Thasnim, K.V. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 388

Constitution of India—Articles 14, 16 and 229(2)—The powers under Article 229(2), to make appointment, cannot be exercised by the Chief Justice in an unfettered and arbitrary manner—Appointment should be made adhering to Articles 14 and 16 of the Constitution of India and the Rules made by the legislature.

Renu v. District and Sessions Judge, Tis Hazari (S.C.) I.L.R. 2014 (2) Kerala . . . 803

Constitution of India—Articles 15 and 16—Transgenders are entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution—State is bound to take affirmative action to give due representation to transgenders in public services.

National Legal Services Authority v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 306

Constitution of India—Article 19(1)(a)—Gender identity lies at the core of a citizen's identity and therefore gender expression has to be protected under Article 19(1)(a) of the Constitution—Values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India

National Legal Services Authority v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 306

Constitution of India—Article 21—Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.

National Legal Services Authority v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 306

- Constitution of India—Article 21—Right to life—The right to protect pregnancy is a facet of right to life—That right is not only of the mother and the child in the womb but also of the family.**
Kerala Public Service Commission v. Sini K. I.L.R. 2014 (2) Kerala . . . 383
- Constitution of India—Article 21A—Lack of upper primary classes in the Government Tribal School—Students belonging to the tribal community compelled to walk a distance of 14 km. to pursue their studies—Failure of the Government to consider the claim of the students to upgrade the existing school amounts to deprivation of their fundamental right to seek education—Government directed to provide educational facilities within a reasonable distance from the residence of the students.**
Suo Motu Proceedings v. State of Kerala I.L.R. 2014 (2) Kerala . . . 740
- Constitution of India—Articles 32 and 131—Res judicata—Finding recorded by the Supreme Court in the proceedings under Article 32 is as effective and final as in any other proceedings—The decision in Mullaperiyar Environmental Forum v. Union of India [(2006) 3 S. C. C. 643] operates as res judicata in respect of the issue of safety of the Mullaperiyar dam by increasing its water level from 136 ft. to 142 ft., and ultimately to 152 ft. after completion of further strengthening measures on the Mullaperiyar dam.**
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Constitution of India—Article 131—Kerala Irrigation and Water Conservation (Amendment) Act, 2006 declared to be unconstitutional, being in violation of the doctrine of separation of powers—The legislature cannot indirectly control the action of the court, by directly or indirectly setting aside the authoritative and binding finding of fact by the court, by invoking the 'Public Trust Doctrine' or the 'Precautionary Principle'.**
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Constitution of India—Articles 131 and 363—The jurisdiction of the Supreme Court to consider the dispute arising out of the Lease Agreement of 1886 is not barred under the proviso to Article 131 or Article 363 of the Constitution of India.**
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Constitution of India—Article 226—Writ of Quo Warranto—Locus Standi— A person who has no animosity or hidden agenda can maintain a writ of quo warranto—There is no law which states that a person who is convicted of a crime or is dismissed from service has no Locus Standi to challenge the appointment of a person on the ground of want of qualification.**
Menghani, B. v. Union of India I.L.R. 2014 (2) Kerala 176
- Constitution of India—Article 226—Prosecution of doctors for negligence— Circulars issued by the Government providing for appeal against the decision of the Expert Panel is not against the guidelines issued by the Supreme Court in Jacob Mathew's case—The intention of the Government in issuing the Circular is to protect the Doctor from being subjected to criminal prosecution without sufficient cause—Penal Code, 1860 (Central Act 45 of 1860)—Sections 336, 337 and 304 A.**
Suvarna v. Dr. Reni Philip I.L.R. 2014 (2) Kerala . . . 905
- Constitution of India—Article 226—Public Interest Litigation—Petitioner, a teacher for 15 years, filed the Public Interest Litigation pointing out deficiency in the running of**

institutions of B.Ed colleges without proper recognition and also improper decision making process of the National Council for Teacher Education—The concern expressed by the petitioner is found to be genuine and bona fide and therefore the Public Interest Litigation is maintainable—It will be advantageous for a public spirited citizen to approach the High Court, so that the Court can consider the alleged irregularity in judicial review and issue appropriate orders to ensure that such irregularities will not be continued or perpetuated.

Ajith Issac v. State of Kerala I.L.R. 2014 (2) Kerala . . . 985

Constitution of India—Article 226—Quo Warranto—The power to issue writ of 'quo warranto' provides the judiciary with a weapon to control the executive from making appointment to public office against law and to protect the public from usurpers to public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy.

Renu v. District and Sessions Judge, Tis Hazari (S.C.) I.L.R. 2014 (2) Kerala , . . . 803

Constitution of India—Articles 226 and 227—The powers under Articles 226 and 227 of the Constitution of India cannot be exercised to quash, a plaint filed before the civil court.

Jacky v. Tiny @ Antony (S.C.) I.L.R. 2014 (2) Kerala . . . 900

Constitution of India—Articles 229 and 235—Directions issued to all High Courts in the matter of recruitment to various posts in the High Courts and Subordinate Courts—High Courts to ensure that Statutory Rules dealing with the appointment of staff in the High Court as well as the Subordinate Courts are in conformity with Articles 14 and 16 of the Constitution of India—Appointments made in contravention of the Statutory Rules and without proper advertisement shall be void ab initio, except appointment like compassionate appointments which are permissible to be filled up without advertisement—High Court concerned or the Subordinate Court as the case may be shall undertake the exercise of recruitment at least once a year.

Renu v. District and Sessions Judge, Tis Hazari (S.C.) I.L.R. 2014 (2) Kerala . . . 803

Constitution of India—Article 235—Article 235 provides for exercise of complete administrative control by the High Court over the Subordinate Courts, including the ministerial staff and servants in the establishment of the Subordinate Courts—Such control is exclusive in nature, comprehensive in extent and effective in operation.

Renu v. District and Sessions Judge, Tis Hazari (S.C.) I.L.R. 2014 (2) Kerala . . . 803

Constitution of India—Article 235—Power of the High Court to initiate disciplinary action against any District Judge or Subordinate Judicial Officer—Exercise of power by the High Court under Article 235 will not in any manner offend the protection afforded under Articles 309 and 311— The power exercised by the High Court under Article 235 will not run contrary to Rule 10 of the Kerala Civil Service (Classification, Control & Appeal) Rules—Civil Service (Classification, Control & Appeal) Rules, 1960 (Kerala)—Rule 10.

Indira Devi, V. P. v. High Court of Kerala I.L.R. 2014 (2) Kerala . . . 1042

Constitution of India—Article 235—The Full Court of the High Court can authorise an Administrative Committee consisting of High Court Judges to carry out administrative works—The committee can be authorised to deal with disciplinary matters relating to judicial officers, including holding of disciplinary enquiry and suspension of judicial officers.

Indira Devi, V. P. v. High Court of Kerala I.L.R. 2014 (2) Kerala . . . 1042

- Constitution of India—Article 262—Kerala cannot contend that Periyar river is not an inter-State river.**
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Constitution of India—Article 265—A quasi judicial authority considering a stay application of an assessee under a taxation statute has to give reasons to support the order directing payment of any amount towards tax/interest pending disposal of the appeal—Reasons must be given by the authority to support not only the decision to waive payment of amounts due but also the decision directing an assessee to make some payments pending consideration of the appeal—Value Added Tax Act, 2003 (Kerala Act 30 of 2004)—Section 55.**
M/s Archana Agencies v. Commercial Tax Officer I.L.R. 2014 (2) Kerala . . . 1059
- Constitution (Scheduled Caste) Order, 1950—Caste certificate issued to persons claiming to be members of Thandan community, certifying them to be members of a Scheduled Caste, cannot be reviewed with retrospective effect on the basis of the change brought about by the Constitution (Scheduled Caste) Order Amendment Act, 2007 published in the Official Gazette on 30-8-2007—Benefit granted to a person in his capacity as member of Scheduled Caste can be withdrawn only if subsequently it is revealed that he was not entitled for Scheduled Caste status and the claim was originally made without bona fides.**
Unnikrishnan, R. v. Mahanudevan, V. K. (S. C.) I.L.R. 2014 (2) Kerala . . . 39
- Contract Act, 1872 (Central Act 9 of 1872)—Section 29—Principle of business efficacy—The principle of business efficacy can be invoked to read a term in an agreement, so as to achieve the result intended by parties at the time of making the agreement.**
Mathew, T. M. v. Meenangadi Grama Panchayat I.L.R. 2014 (2) Kerala . . . 374
- Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—Section 74B—There is no restriction in the District Co-operative Bank opening branches within the area of operation of member credit societies—Section 74B casts a duty on the central credit society to open a branch at the direction of the department, on the finding that the financial condition or the services offered by the Primary Co-operative Society to be bad—Section 74B does not in any way prevent the District Co-operative Bank from opening a branch even otherwise.**
Perumatty Service Co-operative Bank Ltd. v. Registrar of Co-operative Societies I.L.R. 2014 (2) Kerala . . . 243
- Co-operative Societies Rules, 1969 (Kerala)—Rule 186(1)(ii) and (v)—The required qualification for being promoted as Junior Clerk would be SSLC or its equivalent and successful completion of JDC as prescribed under Clause (ii) of sub rule (1) of Rule 186 and that for being promoted as Appraiser would be 7th standard as prescribed under Clause (v) of sub ride (1) of Rule 186.**
Jaya Kumaran Nair, V. v. Mudavanmugal Service Co-operative Bank Ltd. I.L.R. 2014 (2) Kerala . . . 855
- Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)—Section 7—Determination of market value—Predominant purpose for which the land "P" is used is material in determining whether sub-section (2) or (3) would apply—Section 7 (3) will apply if commercial building is situated in a property and the predominant purpose is to generate income from the building and not the land—Section 7 (2) will apply if the predominant**

- purpose is agricultural operation or agricultural operation cum residence—Section 7 (3A) would apply only when sub-sections (2) and (3) does not apply.*
Narayanan Nair, P. v. Dr. Lokeshan Nair I.L.R. 2014 (2) Kerala . . . 953
- Court Fees and Suite Valuation Act, 1959 (Kerala Act 10 of 1960)—Section 7(2)—**
'Agricultural land'—An arecanut or coconut garden would also come within the purview of the term 'Agricultural land' and mere presence of a house therein will not make it non-agricultural land,
Narayanan Nair, P. v. Dr. Lokeshan Nair I.L.R. 2014 (2) Kerala . . . 953
- Doctrine of "Desuetude"—Explained—The Doctrine of desuetude is not a generally favoured concept—The Doctrine of desuetude neither involves express repeal nor implied repeal—It is brought under the category of quasi repeal for which the law must have fallen into desuetude for a very considerable period of time and further more it must be established that there has been a contrary practice.**
Davis, B. O. v. Martin, B. T. I.L.R. 2014 (2) Kerala 196
- Doctrine of Stare Decisis—When Full Bench of the High Court overrules a prior precedent, the effect of the same is that it is a declaration of law as it always has been and that there is no question of prospective operation of declaration of law by the Full Bench—The management of minority educational institution is obliged to follow the procedure prescribed in Kurian Lizy v. State of Kerala for making appointment to the post of Headmaster.**
Manager, M.M.L.P. School v. Sajitha, V.B. I.L.R. 2014 (2) Kerala . . . 822
- Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940)—Section 34—Vicarious liability can be inferred against a company or its directors only after satisfying the conditions under Section 34—Simply because a person becomes the Chairman or the Director of a company, that does not mean that he is fully responsible for the day-to-day affairs of the company— There must be a specific averment in the complaint that the accused was in charge of the day-to-day business of the company and was the person responsible for the conduct of the business of the company.**
Rahul Sehgal v. State of Kerala I.L.R. 2014 (2) Kerala . . . 777
- Education Rules, 1959 (Kerala)—Chapter XIV A, Rule 43—Principles of Natural Justice—Revision before the Director of Public Instruction—Revisional authority is obliged to hear all the persons affected by it's order, irrespective of whether they are parties to the revision petition or not.**
Manager, M.M.L.P. School v. Sajitha, V. B. I.L.R. 2014 (2) Kerala . . . 822
- Education Rules, 1959 (Kerala)—Rule 51A—In a case where there is no clarity as to who is the manager of the school, due to the pendency of civil litigation, the educational authorities have necessary reserve and incidental power to take all requisite action so as to take care of the interest of the students and the teachers of the aided school.**
Chandrasekharan Manikoth v. State of Kerala I.L.R. 2014 (2) Kerala . . . 436
- Education Rules, 1959 (Kerala)—Rule 51A—The vital and relevant aspect in the determination of a claim under Rule 51A would be the date of first appointment of the claimant as well as the date of occurrence of the future vacancy—Where the management has more than one school and the management of the school is bifurcated in the manner known to law, a claim under Rule 51 A, which had arisen prior to such bifurcation in any of the schools**

has to be enforced against the first future vacancy that arises in any of the schools after bifurcation of the management.

Chandrasekharan Manikoth v. State of Kerala I.L.R. 2014 (2) Kerala . . . 436

Employees State Insurance Act, 1948 (Central Act 34 of 1948)—Sections 2 (17), 14, 85 (a) and 85 (e)—*Launching of prosecution without ascertaining the nature of the establishment and without an averment in the complaint that the accused was in charge of and responsible to the company for the conduct of the business, is not legally maintainable.*

Dr. Biju Ramesh v. Employees State Insurance Corporation I.L.R. 2014 (2) Kerala . . . 784

Employees State Insurance Act, 1948 (Central Act 34 of 1948)—Sections 85 (a) and 85 (e)—*Before institution of a complaint by the authorized officer, the principal employer can pay off the liability under the Act and in that event no offence under Section 85 (a) of the Act will be attracted.*

Dr. Biju Ramesh v. Employees State Insurance Corporation I.L.R. 2014 (2) Kerala . . . 784

Evidence Act, 1872 (Central Act 1 of 1872)—Section 32—*Dying declaration—If the evidence of the witnesses who were present at the time of recording the dying declaration is reliable and convincing, the dying declaration p. can be accepted as a true and voluntary statement made by the victim—It cannot be said that dying declaration, which is not recorded in the presence of or by a Judicial Magistrate is not admissible in evidence.*

Sasikumar @ Sasi v. State of Kerala I.L.R. 2014 (2) Kerala . . . 1025

Evidence Act, 1872 (Central Act 1 of 1872)—Section 32—*Dying declaration—Section 32 of the Indian Evidence Act would apply to all citizens of India, in the territories to which it applies, irrespective of their religion, cast and creed—Contention that Section 32 of the Evidence Act and the principles of dying declaration would not apply to Hindus would offend Articles 14 and 15 of the Constitution of India, besides being contrary to the spirit of Article 44 of the Constitution of India.*

Sasikumar @ Sasi v. State of Kerala I.L.R. 2014 (2) Kerala . . . 1025

Evidence Act, 1872 (Central Act 1 of 1872)—Section 32—*Dying declaration—The doctrine of "nemo moriturus praesumitur mentire" (a man will not meet his maker with a lie in his mouth) will apply to Hindus also.*

Sasikumar @ Sasi v. State of Kerala I.L.R. 2014 (2) Kerala . . . 1025

Forest Act, 1961 (Kerala Act 4 of 1962)—Sections 27, 63 and 64—*The offence under Section 27 of the Kerala Forest Act is cognizable and non-bailable— The provisions under Section 64 are applicable to offences other than those under Section 27 of the Kerala Forest Act, which are punishable for imprisonment with less than 3 years or with fine—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 2 (a), 2 (c) and 4.*

Suku @ Paravattom Suku v. State of Kerala I.L.R. 2014 (2) Kerala . . . 74

Forest Act, 1961 (Kerala Act 4 of 1962)—Sections 61 A and 61 B—*Show cause notice issued under Section 61B should contain all the particulars relied upon by the authority against the person whose vehicle has been seized under Section 61A—When prejudicial statements are relied upon, such statements shall not be used against the person, without giving him an opportunity to correct or contradict the same—Principles of natural justice.*

Abraham, K. L. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 711

- Government of India Act, 1935—Section 177—***By the legal fiction created under Section 177(1)(a), the presidency of Madras (Madras Province) became lessee under the 1886 Lease Agreement—The 1886 Lease Agreement was an existing contract made for the purpose of the Government of Province of Madras, on the commencement of the Government of India Act, 1955.*
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Guruvayoor Devaswom Act, 1978 (Kerala Act 14 of 1978)—Sections 2(c), 2(e), 2(i), 3, 4, 10(c), 11 and 28(1)—***The right to sue for recovery of any item of property, whether immovable or movable, on behalf of the Sree Krishna Temple at Guruvayoor and the presiding deity of that temple or on behalf of any of the subordinate temples attached to that temple or the deities of such subordinate temple, lies with the Guruvayoor Devaswom Managing Committee.*
Guruvayoor Devaswom Managing Committee v. Varkey, P. K. I.L.R. 2014 (2) Kerala .. 488
- High Court Judges (Salaries and Conditions of Service) Act, 1954 (Central Act 28 of 1954)—***Ten years' practise as Advocate shall be added to the qualifying service for reckoning pensionable service of a Judge, who was elevated from the Bar as Judge of the High Court.*
P. Ramakrishnam Raju v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 167
- Income Tax Act, 1961 (Central Act 43 of 1961)—Section 253 (5)—***Petition to condone delay in filing appeal—The sufficiency or otherwise of showing cause to condone delay should be weighed on the scales of justice also, depending upon the question whether the delay could be condoned at least on terms— This depends on the cause pleaded for delay and the view that the Appellate Court, Tribunal or Authority could take on a prima facie superficial examination of the grounds of appeal, which may also indicate that ends of justice requires the appeal to be entertained.*
Usha Johnson v. The Commissioner of Income Tax I.L.R. 2014 (2) Kerala .. 71
- India (Provisional Constitution) Act, 1947—Section 7(1)(b)—***The word 'all' used in the expression "all treaties and agreements" in Section 7(1)(b) is not intended to cover agreements which are not political in nature—1886 Lease Agreement being wholly non-political in nature, it has not lapsed under the main provision of Section 7(1)(b) of the India (Provisional Constitution) Act.*
State of Tamil Nadu v. State of Kerala (S.C.) I.L.R. 2014 (2) Kerala . . . 545
- Industrial Disputes Act, 1947 (Central Act 14 of 1947)—Section 11—***Re-opening of evidence by the management after winning over the union representative to give evidence against the workman would be an endeavour to render abortive the spirit of the legislation— Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XVI, Rule 21.*
Managing Director, Kerala Books and Publication Society v. Labour Court I.L.R.2014(2)Kerala . . .67
- Industrial Disputes Act, 1947 (Central Act 14 of 1947)—Section 17B—***High Court has a statutory obligation to pass order under Section 17B—The fact that the workman has landed property is not a ground to deny order under Section 17B.*
Aluva Co-operative Agricultural & Rural Development Bank No. E 87 v. Rajeev, V. P. I.L.R. 2014 (2) Kerala . . . 371

Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999 (Kerala Act 5 of 1999)—Sections 8(2) and 10— *The procedure to be followed by the District Board under Section 8(2) is not the procedure as provided under Section 233 of the Kerala Panchayat Raj Act, but the procedure prescribed by the Rules under the Industrial Single Window Clearance Board and Industrial Township Area Development Act—The non obstante clause in Sections 8 and 10 would make it clear that notwithstanding Section 233 of the Kerala Panchayat Raj Act, the District Board has jurisdiction to decide matters which can be decided by the Panchayat under Section 233 of the Kerala Panchayat Raj Act—Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 233.*

Boby Uthup v. State of Kerala I.L.R. 2014 (2) Kerala . . . 864

Inland Waterways Authority of India Act, 1985 (Central Act 82 of 1985)—Sections 2(b), 3, 4, 5, 8, 14, 25, 29, 31, 33, 34 and 35—*Appointment to the post of Director who has crossed the age limit is illegal—The Statute and Regulation clearly indicate and define the process of appointment to the post of Director—The Act or the Regulation do not give the authority the power to relax the age limit—It is only the Chairman who has the power to relax the age by a maximum of 3 years—Appointment of the 4th respondent to the post of Director, National Waterways Road held to be illegal—Regulation of the Inland Waterways Authority of India, framed under Section 35—Regulations 3, 4, 5, 20, 25 and 27.*

Menghani, B. v. Union of India I.L.R. 2014 (2) Kerala 176

Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000)—Sections 23, 24 and 26—*Merely because the Juvenile was voluntarily helping the inmates of the house in domestic work, it cannot be said that the juvenile is put to hazardous work or exposed to danger.*

Joseph v. State of Kerala I.L.R. 2014 (2) Kerala . . . 259

Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000)—Section 26—*Prosecution can succeed only when there is a specific and definite allegation that the juvenile was found employed for some hazardous job, without proper and adequate payment of wages/salary—The term "hazardous" indicates the risk and heaviness of the job, which the age of the child cannot bear.*

Alice v. State of Kerala I.L.R. 2014 (2) Kerala . . . 889

Land Acquisition Act, 1894 (Central Act 1 of 1894)—Section 28 A (3)— *In a reference under Section 28 A (3), claimant can only seek the same compensation as awarded by the court in the award relied on by the claimant and the claimant is not entitled to receive any amount over and above the compensation awarded by the Court in the earlier case.*

State of Kerala v. Indira Amma I.L.R. 2014 (2) Kerala . . . 141

Legal Services Authorities Act, 1987 (Central Act 39 of 1987)—Sections 20 and 21— *Settlement arrived before Lok Adalath wherein husband agreed to execute gift deed in favour of wife on a specified day—The husband having failed to execute the document on the said date, the wife was justified in approaching the executing Court for execution of the necessary document—Direction issued by executing court to the husband to execute the gift deed within 10 days upheld.*

Venugopalan, A. K. v. Pushpavally I.L.R. 2014 (2) Kerala . . . 850

- Limitation Act, 1963 (Central Act 36 of 1963)**—*Article 65—The possession of the transferor, which is subservient to the dedication to Guruvayoorappan, would not crystallize into clear and hostile possession so as to sustain a plea of adverse possession—The transferee who purchased the property knowing about the dedication cannot raise a plea of adverse possession against the full owner.*
Guruvayoor Devaswom Managing Committee v. Varkey, P. K. I.L.R. 2014 (2) Kerala . . . 488
- Limitation Act, 1963 (Central Act 36 of 1963)**—*Article 113—Period of limitation for filing a suit for compensation or for damages on account of tortious Act committed by K.S.E.B. is three years.*
Vava, K. K. v. Kerala State Electricity Board I.L.R. 2014 (2) Kerala . . . 481
- Lok Ayukta Act, 1999 (Kerala Act 8 of 1999)**—*Sections 9 and 24—Direction by the Lok Ayukta to the University to conduct second revaluation of the answer paper of the student—The Lok Ayukta cannot issue a direction to the University to revalue the answer paper, contrary to the express provisions contained in the statutory regulations.*
University of Kerala v. Parvathy Krishna I.L.R. 2014 (2) Kerala . . . 363
- Lok Ayukta (Powers of Civil Court) Rules, 1999 (Kerala)**—*Rule 3—The Lok Ayukta cannot arrogate to itself powers that are not expressly conferred under the very Act under which it is constituted—The interim orders passed by the Lok Ayukta cannot be in the nature of a final order and it cannot be in the nature of orders that fall outside the jurisdictional purview of the Lok Ayukta under the Act—Lok Ayukta Act, 1999 (Kerala Act 8 of 1999)—Sections 9 and 24.*
University of Kerala v. Parvathy Krishna I.L.R. 2014 (2) Kerala . . . 363
- Mahatma Gandhi University Regulations Relating to Revaluation and Scrutiny of Answer Scripts**—*Student securing 6 marks more in revaluation— Regulation providing for second revaluation only in the event of securing 10% or more marks but less than or equal to 25% marks—Student seeking second revaluation—In the absence of any provision for revaluation of answer books in the relevant rules, no candidate has the right to claim or ask for revaluation of his marks.*
Sruthi Rajagopal, A. v. Mahatma Gandhi University I.L.R. 2014 (2) Kerala . . . 1005
- Minor Mineral Concession Rules, 1967 (Kerala)**—*Rule 4(1 A)—Grant of quarrying permit— Competent authority to grant quarrying permit under Consolidated Royalty Payment System is the Geologist—Revenue Divisional Officer cannot issue any direction in derogation of the power of the Geologist.*
Sathiyamma v. Sreekumar I.L.R. 2014 (2) Kerala . . . 759
- Minor Mineral Concession Rules, 1967 (Kerala)**—*Rule 5(5)—No Objection Certificate from the District Collector is required only in the event of quarrying being carried on in respect of minor minerals specified in item 2 of Schedule I of the Rules—No Objection Certificate is not required for quarrying laterite building stone.*
Sathiyamma v. Sreekumar I.L.R. 2014 (2) Kerala . . . 759
- Motor Vehicles Act, 1939 (Central Act 4 of 1939)**—*Sections 68C and 68FF— Publication of the scheme in respect of Aluva-Vadakkumpuram Route— This would mean that there is a complete exclusion of private operators from operating on the said route or any portion thereof—A private operator can operate in a nationalized route only if the scheme expressly authorises the same—A private operator cannot demand any right to operate*

- on the route or any portion thereof which is notified under the scheme—Motor Vehicles (State Transport Undertakings) Rules, 1960 (Kerala)—Rule 1(3).*
Davis, B. O. v. Martin, B. T. I.L.R. 2014 (2) Kerala . . . 196
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Section 71 and Chapter VI—The Government understood the term "intermediate points" as stated in the Schedule I and the term "intermediate places" in Annexure A of the scheme in respect of the Aluva-Cherai and Aluva—Chathanad routes as one and the same—Refusal to grant permit on the ground that there is objectionable overlapping cannot therefore be justified.**
Sushamma v. Regional Transport Authority, Ernakulam I.L.R. 2014 (2) Kerala . . . 769
- Motor Vehicles (State Transport Undertakings) Rules, 1960 (Kerala)—Rule 3 and Form I—The Form does not control the Rule and as long as the Rules provide for exclusion, the word employed in the Scheme has to decide the true purport of the Scheme, whether it is in complete exclusion, partial exclusion or supplementation of existing road transport service.**
Sushamma v. Regional Transport Authority, Ernakulam I.L.R. 2014 (2) Kerala . . . 769
- Municipality Building Rules, 1999 (Kerala)—Rule 3A and Rule 11—The Secretary of a Municipal Corporation, while issuing building permits, is statutorily obliged to ensure that the construction, in respect of which the permit is issued, does not breach the provisions of any law—A validly framed and duly notified scheme under a Town Planning Act would come within the ambit of the term 'Other Law' for the purpose of Rule 11 of the Kerala Municipality Building Rules and this aspect has been clarified through the insertion of Rule 3A—Town Planning Act, 1960 (Kerala Act 3 of 1960)—Chapter III.**
Philip George, C. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 264
- Munnar Special Tribunal Act, 2010 (Kerala Act 13 of 2010)—Section 2(d)—The definition of the term 'dispute' in the Act takes in adjudication of issues with respect to the ownership, possession, use or any rights whatsoever, over the land in Munnar area, even between private individuals—The jurisdiction of the Tribunal is not confined to adjudication of disputes between a private individual and the Government or its officers.**
Asoka Kumar, N. v. Adimaly Block Panchayat I.L.R. 2014 (2) Kerala . . . 531
- National Commission for Minority Educational Institutions Act, 2004 (Central Act 2 of 2005)—Section 11 (f)—Declaration granted by the competent authority under the Act in respect of minority status of an educational institution will operate only from the date of the certificate or from the date of presumptive grant of the certificate—Only those acts done by the management subsequent to the above date are entitled to protection, as acts done by minority institutions.**
Manager, M.M.L.P. School v. Sajitha, V.B. I.L.R. 2014 (2) Kerala . . . 822
- National Council for Teacher Education Act, 1993 (Central Act 73 of 1993)—Section 14—The Southern Regional Committee of NCTE can grant recognition only if all the conditions as prescribed by the Rules and Regulations are complied with—Section 14(3) of the NCTE Act does not lay down any other method to relax such conditions—The power to relax any of the conditions as stipulated in the Act or the Regulations framed thereunder lies only with the chairman of the NCTE—The decision taken by the Southern**

- Regional Committee to relax the norms prescribed for starting and continuing the recognition of colleges is bad in law.*
Ajith Issac v. State of Kerala I.L.R. 2014 (2) Kerala . . . 985
- National Council for Teacher Education Act, 1993 (Central Act 73 of 1993)**—Section 17—*If for any reason the recognition of a college is withdrawn under Section 17(1) of the Act, such institutions shall discontinue the course with effect from the end of the academic session following the next date of communication of the said order.*
Ajith Issac v. State of Kerala I.L.R. 2014 (2) Kerala . . . 985
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—Section 138—*Comprehensive directions issued to Magistrate Courts to streamline the procedure in Cheque dishonour cases.*
Indian Banks Association v. Union of India (S.C.) I.L.R. 2014 (2) Kerala . . . 469
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—Section 138, Proviso (b)—*Date for reckoning the period mentioned in Proviso (b) of Section 138 is not the date on which the collecting bank received the information but the actual date on which the payee got that information.*
Thomas, P. J. v. Vijayakumari I.L.R. 2014 (2) Kerala . . . 536
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—Sections 138 and 141—*The deemed liability under Section 141 of the Negotiable Instruments Act will be attracted only when the company is arrayed as an accused in the case—The continuation of proceedings without impleading the company as a party would amount to an abuse of process of court— Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482.*
Vardanan, P. R. v. Vidhayadaran I.L.R. 2014 (2) Kerala . . . 791
- Paper Lotteries (Regulation) Rule, 2005 (Kerala)**—Rules 6 and 9—*The restriction imposed in terms of Rule 6(4) is on the agents of the lottery and not on the purchaser of a lottery— The authorities cannot refuse to make payment of the prize amount to a person who is residing outside the State—The nature of enquiry required for payment of prize winning tickets is to ensure the genuineness of the prize ticket and the good condition of the prize winning ticket as contemplated under Rule 9.*
Saroj Subash Nagori v. Director of State Lotteries I.L.R. 2014 (2) Kerala . . . 1055
- Partition**—*Possessory right is available for partition and can be partitioned unless the contesting parties could prove better title suggesting impartibility of property.*
Pathukutty v. Aisakutty I.L.R. 2014 (2) Kerala 522
- Payment of Gratuity Act, 1972 (Central Act 39 of 1972)**—Sections 4(3) and 4(5)—*The employer, enrolling in the Group Gratuity Cash Accumulation Scheme of the LIC, limiting the maximum gratuity payable to an employee to Rs.3.5 lakh, which was the maximum limit payable under Section 4(3)— In the absence of an agreement or contract to receive better terms of gratuity, the employee has no right to claim gratuity in excess of the statutory limit.*
Travancore Cements Employees Co-operative Bank Ltd. v. Ramachandran Nair, E. V. I.L.R. 2014 (2) Kerala . . . 224
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 149—*Even if the identity of some of the accused forming part of the unlawful assembly is not established or even if one or more*

- of the accused are acquitted granting benefit of doubt, that does not absolve the other accused from being proceeded against under Section 149 of the Indian Penal Code.*
Manilal v. State of Kerala I.L.R. 2014 (2) Kerala . . . 871
- Penal Code, 1860 (Central Act 45 of 1860)—Section 188—***The Magistrate shall take cognizance of the offence under Sections 172 to 188 I.P.C. only upon a complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate as stipulated in Section 195 (1) (a) Cr. P.C.—Private prosecution in respect of the offences under Sections 172 to 188 Indian Penal Code is barred—Criminal Procedure Code, 1973 (Central Act 2 of 1974)—Section 195 (1) (a).*
Nizam v. State of Kerala I.L.R. 2014 (2) Kerala . . . 963
- Penal Code, 1860 (Central Act 45 of 1860)—Section 498 A—***The usual and common domestic discord in any matrimonial home cannot amount to ‘cruelty’ within the meaning of Section 498 A—The alleged cruelty must be of such a nature, which is likely to drive the woman to commit suicide.*
Rosamma Kurian v. State of Kerala I.L.R. 2014 (2) Kerala . . . 132
- Penal Code, 1860 (Central Act 45 of 1860)—Section 509—***The accused, a vicar of the church allegedly using the following words in public, "Daisy why are you peeping? Why are you standing here? For peeping nothing is being done here"—The above quoted words cannot be stated to intrude into the privacy of a woman nor can it be said that it was intended to insult the modesty of a woman—The charge under Section 509 is not attracted.*
Mathew Pulimoottil Episcopa (Rev. Fr.) v. State of Kerala I.L.R. 2014 (2) Kerala . . . 233
- Practice and Procedure—***Binding nature of decisions rendered by courts of competent jurisdiction—Law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject-matter— Only exception to the doctrine of res judicata is fraud that vitiates the decisions and renders it a nullity.*
Unnikrishnan R.v.Mahanudevan,V. K.(S. C.)I.L.R.2014(2) Kerala . . . 39
- Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala Act 18 of 2001)—Sections 20 and 21—***Offence of transportation of river sand on 4-12-2009 (Prior to amendment of Section 25 by Act 15 of 2013)—There is a blanket prohibition on the Court from taking cognizance of any offence under the Act except upon a complaint in writing made by the person authorized under Section 25 of the Act by the State Government.*
Nizam v. State of Kerala I.L.R. 2014 (2) Kerala . . . 963
- Representation of People Act, 1951 (Central Act 43 of 1951)—Section 100(1)(d)(i)—***If the Election Tribunal finds that the candidate had suppressed material information in the affidavit filed along with the nomination, election will be set aside—Non-disclosure of material information in the affidavit is a valid ground for setting aside election.*
Kisan Shankar Kathore v. Arun Dattatray Sawant (S.C.) I.L.R. 2014 (2) Kerala . . . 717
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 13 (1)—***The non-obstante clause in the opening set of expression contained in Section 13 (1) is restricted to Section 69 or Section 69A of the Transfer of Property Act, 1882 (Central Act 4 of 1882)—Section 13 (1)*

enables the Secured Creditor to enforce the security interest created in favour of the Secured Creditor without intervention of Court or Tribunal—Transfer of Property Act, 1882 (Central Act 4 of 1882)—Section 69 and Section 69A.

Mathew Varghese v. Amritha Kumar, M. (S. C.) I.L.R. 2014 (2) Kerala .. 1

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 13(2)—*Lawyer notice issued on behalf of the secured creditor cannot be considered as notice under Section 13(2)—Only an officer of the bank, specified by the Board of Directors, can issue a notice of demand under Section 13 (2)—Security Interest Rules, 2002—Rule 2(a).*

Bobby Sebastian v. Authorised Officer, ICICI Bank I.L.R. 2014 (2) Kerala .. 973

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 13 (8)—*No sale or transfer of a secured asset can take place without informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor—Any such sale or transfer effected without complying with the said statutory requirements would be a constitutional violation nullifying the ultimate sale—Constitution of India—Article 300 A.*

Mathew Varghese v. Amritha Kumar, M. (S. C.) I.L.R. 2014 (2) Kerala .. 1

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Sections 13 and 37—*There is no conflict between the provisions of Section 13 of the SARFAESI Act with Rule 15 of the Income Tax Rules, 1962—Unless and until a clear 30 days notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor—In the event of a properly notified sale not taking place as scheduled for reasons not attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured assets on any subsequent date by relying upon the earlier notification—Security Interest (Enforcement) Rules, 2002 (Central)—Rules 8 and 9—Income Tax Rules, 1962—Rule 15.*

Mathew Varghese v. Amritha Kumar, M.(S.C.)I.L.R. 2014 (2) Kerala .. 1

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 37—*The effect of Section 37 would be that in addition to the provisions contained under the SARFAESI Act, in respect of the proceedings initiated under the SARFAESI Act, the Secured Creditor can also fall back upon the provisions of the other Acts mentioned in Section 37 for recovery of the amount due.*

Mathew Varghese v. Amritha Kumar, M.(S.C.)I.L.R. 2014 (2) Kerala .. 1

Security Interest (Enforcement) Rules, 2002 (Central)—Rules 8 and 9—*The detailed procedure prescribed under the Rules for sale of an immovable secured asset is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed.*

Mathew Varghese v. Amritha Kumar. M. (S.C.) I.L.R. 2014 (2) Kerala .. 1

Security Interest (Enforcement) Rules, 2002 (Central)—Rules 8 and 9—*The requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days individual notice to the borrower and also a public notice by way of publication in the newspaper—The use of*

the expression 'or' in Rule 9(1) should be read as 'and' as that alone would be in consonance with Section 13(8) of the SARFAESI Act—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(Central Act 54 of 2002)—Section 13(8).

Mathew Varghese v. Amritha Kumar, M. (S. C.)I.L.R. 2014 (2) Kerala .. 1

Security Interest (Enforcement) Rules, 2002 (Central)—Rules 8(1) to 8(3)—*The underlining purport in Rule 8 is to ensure that under no circumstances the rights of the owner, till such right is transferred in the manner known to law, is infringed—Merely because the provisions of SARFAESI Act and the Rules enable the Secured Creditor to take possession of the property belonging to the owner and also empowers the Secured Creditor to deal with the property by way of sale for the purpose of realizing the secured debt of the borrower, it does not mean that such wide power can be exercised arbitrarily or whimsically to the disadvantage of the borrower.*

Mathew Varghese v. Amritha Kumar, M. (S. C.) I.L.R. 2014 (2) Kerala .. 1

Service—Disciplinary proceedings—Disciplinary authority differing with finding of the enquiry officer—Disciplinary authority should state the reasons for disagreeing with the finding.

Steel Authority of India Ltd. v. Surendradas, M. R. I.L.R. 2014 (2) Kerala . . 929

Service—Public Service Commission—PSC directed to frame guidelines providing best possible measures to support women candidates who happen to face different situations in relation to pregnancy and maternity during the course of selection.

Kerala Public Service Commission v. Sini, K. I.L.R. 2014 (2) Kerala . . 383

Service—Qualifying service for pension—If an employee of the Central Government resigns to take up employment in KSEB, the service put in by such employee with the Central Government shall be counted as qualifying service for pension by the KSEB and the Board shall not insist for payment of prorata pension amount by the Central Government.

Babu M. Poullose v. K.S.E.B. I.L.R. 2014 (2) Kerala . . 457

Service Rules, 1959 (Kerala)—Part III, Rules 5 and 29 (a)—Denial of pension to persons resigning from service—Rule 29 (a) Part III, KSR is unconstitutional and ultra-vires in so far as it denies pension to persons who had resigned from service, not on account of any disciplinary proceedings or intended disciplinary proceedings.

Varghese, E. K. v. State of Kerala I.L.R. 2014 (2) Kerala . . 163

Service Rules, 1959 (Kerala)—Part III, Rule 11, Note 2—Qualifying service for pension—Statutory amendment to Note 2 to Rule 11 is applicable to employees of the Kerala State Electricity Board with effect from 10-12-2002.

Babu M. Poullose v. K.S.E.B. I.L.R. 2014 (2) Kerala . . 457

Specific Relief Act, 1963 (Central Act 47 of 1963)—Section 6—In a suit for recovery of possession filed under Section 6 of the Specific Relief Act, the defendant can set up a counter claim seeking to set aside the document relied on by the plaintiff—The limitation to set up a counter claim is prescribed under Order VIII, Rule 6A itself—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order VIII, Rule 6 A.

Thankamma, P. v. Sajitha G Nair I.L.R. 2014 (2) Kerala . . 882

State and Subordinate Services Rules, 1958 (Kerala)—Part II, Rule 10 (a)(ii)—As long as operation of Rule 10(a)(ii) is not specifically excluded in the notification, candidate with

- higher qualification but without the actual basic qualification, is eligible to apply for the post—Candidates with M.Com., but without B.Com., are eligible to apply for the post of Divisional Accountant in Kerala State Electricity Board.*
Manikandan, K. v. Kerala State Electricity Board I.L.R. 2014 (2) Kerala . . . 418
- State and Subordinate Services Rules, 1958 (Kerala)—Part II, Rule 10 (a)(ii)—Qualification—***When the higher qualification possessed by an applicant is in the same faculty as that of the lower qualification prescribed for the post concerned, the inescapable conclusion must be that it is a higher qualification presupposing the acquisition of the lower qualification.*
Manikandan, K. v. Kerala State Electricity Board I.L.R. 2014 (2) Kerala . . . 418
- State and Subordinate Services Rules, 1958 (Kerala)—Part II, Rule 10(ab)—Qualification of experience—***Experience gained by persons on temporary appointment, in a capacity other than paid or unpaid apprentice, trainee or casual labour, should be reckoned as due experience in terms of Rule 10 (ab).*
Sulochana, A. C. v. Kerala Public Service Commission I.L.R. 2014 (2) Kerala . . . 506
- State Road Transport Corporation (Qualification and Method of Appointment of Higher Division Officer) Regulations, 2012—***Appointment to the post of Assistant Transport Officer by promotion—The selection is to be based on seniority and also merit—The content of merit could be prescribed by the authorities by formulating additional and appropriate criteria and any such additional criteria cannot be described as amendment of the Regulations or as being in conflict with them—Road Transport Corporation Act, 1950 (Central Act 64 of 1950)—Section 45(2).*
Babu, T. v. Kerala State Road Transport Corporation I.L.R. 2014 (2) Kerala . . . 511
- Succession Act, 1925 (Central Act 39 of 1925)—Sections 82 and 85—***The bequest as per a Will has to be interpreted or construed taking into account its recitals as a whole and then determining the priority of bequest, if any, without in any manner impairing the true intention of the testator or testators.*
Guruvayoor Devaswom Managing Committee v. Varkey, P. K. I.L.R. 2014 (2) Kerala . . . 488
- Succession Act, 1925 (Central Act 39 of 1925)—Sections 82 and 85—***The testators clearly stipulating that in respect of one item of property, the property would be dedicated to Guruvayoorappan after the life time of the testators and the legal heir—The dedication made in the Will in respect of the said item of property is an absolute one and any transfer of the said property by the legal heir would be void.*
Guruvayoor Devaswom Managing Committee v. Varkey, P. K. I.L.R. 2014 (2) Kerala . . . 488
- Tax on Luxuries Act, 1976 (Kerala Act 32 of 1976)—Sections 2(ee), 2(f) and 4(1)—***The levy of luxury tax is on the luxury provided in the form of services—All services rendered by the hotel comes within the definition of luxury which is chargeable under the Act—While interpreting Sections 2(ee), 2(f) and 4(1), the word "in the hotel" has to be read as 'by the hotel' as well.*
Tissan J. Thachankary v. State of Kerala I.L.R. 2014 (2) Kerala . . . 977
- Tax on Luxuries Act, 1976 (Kerala Act 32 of 1976)—Sections 6(5) and 8(1)—***The assessment and reassessment can be made only by the assessing authority—An assessment under normal circumstance becomes final after the period specified under Section 6(5)—The*

- revisional authority cannot make reassessment, after the period of limitation prescribed under Section 6(5), by invoking his revisional powers under Section 8(1).*
Tissan J. Thachankary v. State of Kerala I.L.R. 2014 (2) Kerala . . . 977
- Torts**—*Where a power is vested with the authority to act for the benefit of a class of people, such power shall be exercised for the benefit of such people and failure to exercise such power will result in breach of statutory duty.*
Vava, K. K. v. Kerala State Electricity Board I.L.R. 2014 (2) Kerala . . . 481
- Town Planning Act, 1960 (Kerala Act 3 of 1960)**—*Sections 3, 5, 7, 8, 9, 11, 12, 13 and 17—In an area that has been developed in accordance with a scheme that was validly prepared and duly notified in accordance with the provisions of the Town Planning Act, future construction must adhere to the terms of the scheme and the plans approved thereunder—The mandate and purport of the scheme assumes the nature of a law that regulates future construction in the area and must bind subsequent purchasers of such land and user thereof.*
Philip George, C. v. State of Kerala I.L.R. 2014 (2) Kerala . . . 264
- Value Added Tax Act, 2003 (Kerala Act 30 of 2004)**—*Sections 25 and 67—There is no bar on the assessing authority in proposing or finalising the imposition of penalty simultaneously with the completion of assessment, in case the authority is satisfied from the available materials that there was wilful non-disclosure of the assessable turn over—It is not necessary for the assessing authority to finalise the assessment before arriving at a conclusion with regard to wilful non-disclosure of assessable turn over.*
Haleel Rahiman v. Commercial Tax Officer I.L.R. 2014 (2) Kerala . . . 1010
- Wakf Act, 1995 (Central Act 43 of 1995)**—*Sections 6, 7, 83 and 85—A suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court, as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.*
Faseela, M. v. Munnerul Islam Madrasa Committee (S.C.) I.L.R. 2014 (2) Kerala . . . 893
- Wakf Act, 1995 (Central Act 43 of 1995)**—*Section 51—Alienation of wakf property—Confirmation of auction—30 days time fixed for confirmation of sale—After 30 days, auction purchaser will not automatically get absolute right over the property—Wakf Board has the power to refuse confirmation of auction, even after 30 days.*
Abdurahiman Haji v. Kerala State Wakf Board I.L.R. 2014 (2) Kerala . . . 1014
- Wakf Act, 1995 (Central Act 43 of 1995)**—*Section 83—Power of remand—Wakf Tribunal has the power to remand the matter pending before it to the Wakf Board—Wakf Rules, 1996 (Kerala)—Rule 97.*
Abdurahiman Haji v. Kerala State Wakf Board I.L.R. 2014 (2) Kerala . . . 1014
