



# INDIAN LAW REPORTS (Kerala Series)

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- Civil Procedure (Alternate Disputes Resolution) Rules, 2008 (Kerala)**—*Rules 20, 21 and 22—The cardinal principle of mediation is that whatever transpired in the mediation cannot be disclosed even before the court of law—An agreement entered into between the parties in a mediation cannot be used as evidence in a criminal case—The Court has to allow the parties to adduce evidence ignoring the mediation agreement and dispose off the case on the basis of evidence adduced by parties—Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138.*  
Sreelal v. Murali Menon I.L.R. 2014 (3) Kerala . . . 751
- Civil Services (Pension) Rules, 1972 (Central)**—*Rule 26(2)—Forfeiture of service on resignation—There is no requirement in the Rule that even the application for appointment in question should have been submitted, only after securing prior permission of the employer—All that is required is that the incumbent should have submitted the resignation, to take up another appointment, with proper permission from the competent authority—Right to receive pension is a valuable right which can be deprived only by a statutory prescription and the courts would be hesitant to deprive the employee of such a valuable right.*  
Ramesh, C. V. v. Director of Agriculture I.L.R. 2014 (3) Kerala . . . 721
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order VI, Rule 7 and Order XXIII, Rule 1—Plaintiff seeking permission to withdraw suit and file a fresh suit in respect of the same subject-matter on the ground that there was an omission to schedule the property in the case—This cannot be treated as a formal defect as contemplated under Order XXIII, Rule 1 (3) (a)—The expression 'formal defect' connotes some defect of form or procedure not affecting the merits of the case—The remedy of the plaintiff is to seek for amendment of the pleading.*  
Sugathan, K. R. v. Jyothi I.L.R. 2014 (3) Kerala . . . 621
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order VI, Rule 17— The well accepted general principle is that amendments could be allowed subject to satisfaction of two conditions, viz., (1) of not working injustice to the other side and (2) of being necessary for the purpose of determining the real question between the parties.*  
Sugathan, K. R. v. Jyothi I.L.R. 2014 (3) Kerala . . . 621

- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXIII, Rule 3— A compromise decree can be passed relating to matters outside the subject-matter of the suit or beyond the scope of the suit, so far as it relates to the same parties, if such matters are included in the terms of the agreement or compromise.*  
Haridas Chettiar v. Rajeswary I.L.R. 2014 (3) Kerala . . . 642
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXVI, Rules 10 and 14—The Advocate Commissioner has no right to be heard before his report is set aside—The Advocate Commissioner cannot challenge the order setting aside his commission report filed in a suit and appointing another Advocate Commissioner to execute the warrant of appointment.*  
Subhash, B. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 748
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXXIX, Rule 1— If the reliefs originally sought in the suit has become obsolete or unserviceable or a new form of relief seems to be more efficacious, it is imperative on the court to mould the relief in such a manner so as to undo the injustice.*  
Sudheesh Kumar v. Jayakumar, T. S. I.L.R. 2014 (3) Kerala . . . 65
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XLI, Rules 23, 23A and 25— Power of appellate court to remand—There cannot be a remand merely for the purpose of remand—Remand cannot be made merely for the purpose of enabling a party to fill up the lacuna in evidence.*  
Krishnan, A. v. Federal Bank Ltd. I.L.R. 2014 (3) Kerala . . . 157
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 24—Transfer of suit from one court to the other—It is for the District Judge in charge of the District to decide whether any suit or appeal should be transferred from one court to the other, in the exigencies of administration of justice.*  
Cardamom Marketing Corporation v. Ponnuraj, M. I.L.R. 2014 (3) Kerala . . . 63
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 51—If the judgment-debtor has saleable, movable or immovable property, from which sufficient amounts can be raised to satisfy the decree debt by sale of the same, save as mentioned under the proviso to Section 60 of the CPC, it can be held that the judgment-debtor has means to pay off the debt— The expression 'means' employed in Clause (b) of the proviso to Section 51 CPC includes saleable right or interest over any property also.*  
Secretary, Kallanode Service Co-operative Bank v. Philip Joseph, M. R. I.L.R. 2014 (3) Kerala . . . 1025
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 100— The jurisdiction of the High Court to interfere with the findings of facts under Section 100 C.P.C. is limited to cases where the finding is either perverse or based on no evidence.*  
Abraham Mathew v. Mariamma Yohannan I.L.R. 2014(3)Kerala . . . 239
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Sections 144 and 151— The jurisdiction to order restitution is inherent in every court and can be exercised whenever the justice of the case demands—When Section 144 does not strictly apply to a particular case, the court can invoke the inherent jurisdiction under Section 151 C.P.C. to order restitution— The inherent power must be exercised fairly and reasonably and only if the ends of justice require it or to prevent the abuse of the process of Court.*  
Sudhirkumar, V. S. v. Gloria Films I.L.R. 2014 (3) Kerala . . . 662

- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 146— Decree of injunction directing the owner of the land to do, or prohibiting him from doing, a particular act or thing in the plaint scheduled property, is binding on the subsequent assignees.*  
 Jihās, P. A. v. Salim I.L.R. 2014 (3) Kerala . . . 924
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 153— Amendment—When amendment is impermissible under Order VI, Rule 17, it cannot be allowed under Section 153 either.*  
 Kalpana v. Premkumar I.L.R. 2014 (3) Kerala . . . 708
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 24(8)— Appointment of Special Public Prosecutor—In the case of appointment of a Special Public Prosecutor, the Government has to apply its mind independently and take an independent decision as to whether there exist any public interest for appointment of a Special Public Prosecutor— The Government can get the views of the District Collector and District Superintendent of Police for taking the decision—For appointment of a Special Public Prosecutor, there is no consultative process as stipulated in Section 24 (1) or Section 24 (4) Cr.P.C.*  
 Yousuf, K. M. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 740
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 31 and 427—The question of commutation or remission of sentence is not a matter to be taken note of by the court at the time of passing the judgment imposing the sentence—The question whether the sentence should run concurrently or consecutively is a matter to be decided by the court irrespective of the probability or possibility of commutation or remission of the sentence at a future point of time—Subsequent commutation of sentence of life imprisonment could not be made a basis to take a particular case out of the purview of Section 427 (2) Cr. P.C.*  
 Achuthan v. State of Kerala I.L.R. 2014 (3) Kerala . . . 609
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 41—Power of police to arrest without warrant—Police Officer has to record reasons in writing which led him to conclude that the accused is liable to be arrested without warrant—Directions issued to ensure that Police Officer do not arrest the accused unnecessarily and Magistrate do not authorize detention of citizen, casually and mechanically.*  
 Arnesh Kumar v. State of Bihar (S.C.) I.L.R. 2014 (3) Kerala . . . 165
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 107, 108,109, 110 and IIJ—The Sub Divisional Magistrate has to be satisfied that the information provided is sufficient to initiate proceedings against the persons who are causing imminent danger to public peace and tranquillity—Mere filling of the form or reproducing the words in the Form 14 of the notice to be issued, without specifying the nature of explanation, reasons for forming the opinion etc., but, extracting the crime numbers alone is not sufficient compliance for passing an order under Section 111 Cr.P.C.—Failure to pass an order without specifying the nature of information, and reasons for forming the opinion, etc., will vitiate the entire proceedings.*  
 Santhosh, M. V. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 993
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 167(2) and 173(8)—The right under Section 167(2) to be enlarged on bail, would be available to an accused only*

- when the charge-sheet is not filed and investigation is kept pending beyond the period mentioned in the Section—Once the charge-sheet is filed the right under Section 167(2) right ceases—Such a right does not revive only because a further investigation remains pending within the meaning of Section 173(8).*  
 Jamsheed, T. P. v. National Investigation Agency I.L.R. 2014 (3) Kerala . . . 320
- Code of Criminal Procedure, 1973 (Central Act 2 of 1914)—Section 197—** *Sub Inspector of Police, being a public servant removable by a lesser authority than the Government, no sanction of the Government is necessary to prosecute him—Those officers removable by lesser Government authority are not protected under Section 197(1) of the Code.*  
 Harikumar, B. v. Suresh @ Karupooru Suresh I.L.R. 2014 (3) Kerala .. 223
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 197(2) and 197(3)—** *The notification issued by the Government under Section 197(3) is limited to members of the Kerala State Police who are put in charge of the maintenance of public order and not persons in charge of law and order— Distinction between 'public order' and 'law and order'—Explained.*  
 Harikumar, B. v. Suresh @ Karupooru Suresh I.L.R. 2014 (3) Kerala .. 223
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 285 and 465—** *Where a willing witness is to be examined by video conferencing, the absence of any arrangement between Government of India and the Government of a foreign country under Section 285(3) Cr. P.C., would not be a bar for examining that witness by video conferencing— The Courts must be alive to the technological development and scientific achievement and should not be rigid in interpreting the procedural provisions, in the matter of recording evidence,*  
 Nabeesathu Sudheer @ Mondhi Sudheer v. State of Kerala I.L.R. 2014 (3) Kerala . . . 35
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482—** *Disputes which are substantially matrimonial in nature or civil dispute with criminal facet can be quashed if the parties have entered into settlement and there is no chance of conviction.*  
 Gold Quest International (P) Ltd. v. State of Tamilnadu (S.C.) I.L.R. 2014 (3) Kerala . . . 957
- Constitution of India—Article 39A—** *Plaintiffs' claiming compensation of Rs.7,00,000 in the plaint but restricting their claim to Rs.3,00,000, on account of their inability to pay court fee, does not amount to waiver of plaintiffs' claim for full compensation—The Court, observing the mandate under Article 39A of the constitution, can grant full compensation without the court fee being paid in the plaint or appeal—Code of Civil Procedure, 1908 (Central Act 5 of 1908)— Section 107 (2) and Order XLI, Rule 33.*  
 Anitha v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala .. 182
- Constitution of India—Article 226—** *Application for starting stone crusher is to be considered on the basis of the position obtaining as on the date of consideration and not on the basis of the position as on the date of application.*  
 Palakkal Martin v. Ansar. C. I.L.R. 2014 (3) Kerala . . . 819
- Constitution of India—Article 226—** *Court cannot adjudicate whether answers chosen by experts, to the questions in PSC question paper, are actually correct answers.*  
 Nowfal, H. v. Kerala Public Service Commission I.L.R. 2014 (3) Kerala . . . 517

- Constitution of India—Article 226—Departmental enquiry—The enquiry officer performs a quasi-judicial function—The enquiry officer is expected to analyse allegations and counter allegations with the relevant evidence in the enquiry—The enquiry officer cannot refuse to consider any relevant fact—Any omission to consider relevant fact will result in an erroneous conclusion.**  
Mathew, K. T. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 351
- Constitution of India—Article 226—Election to the Managing Committee of the Co-operative Society held while writ petition challenging election notification was pending before the Single Bench—Writ petition disposed off directing the petitioners to pursue their remedy in an election petition, with a further direction that the limitation for such election petition shall commence only from the date of Judgment—Appeal filed challenging the direction regarding limitation—Though the Kerala Co-operative Societies Act prescribe a time-limit of one month from the date of election for filing an election petition, the High Court can pass an order setting the period of limitation from the date of Judgment, in order to ensure that the writ issued by the High Court under Article 226 is not a futile one.**  
Sulthan Bathery Co-operative Agricultural and Rural Development Bank Ltd. v. Jayaprakash, P. R. I.L.R. 2014 (3) Kerala . . . 556
- Constitution of India—Article 226—For appointment by transfer to the post of Nursing Tutor, a candidate should possess the qualification of either M.Sc. (Nursing) or B.Sc. (Nursing) from a recognized university—Contention that the qualification obtained by a candidate from an open university (IGNOU) cannot be taken into consideration, rejected—No distinction can be made between a degree obtained from an open university and a degree from a regular university.**  
Sindhu, M. G v. Santhosh, P. G I.L.R. 2014 (3) Kerala . . . 971
- Constitution of India—Article 226—Judicial review—Parameters for exercise of judicial review by the writ court.**  
Palakkal Martin v. Ansar, C. I.L.R. 2014 (3) Kerala . . . 819
- Constitution of India—Article 226—The procedural precincts circumscribing the adjudicatory process are only to subserve and to advance the cause of justice and not to obfuscate, much less to make the matters of merit perish on the altar of technicality.**  
Sindhu, M.G v. Santhosh, P. G I.L.R. 2014 (3) Kerala . . . 971
- Constitution of India—Article 226—Though there is no period of limitation for filing Writ Petition, petitioner should approach the court expeditiously and if there is delay, cogent reasons should be given for the same.**  
Vedanayakom, G v. Government of Kerala I.L.R. 2014 (3) Kerala . . . 931
- Constitution of India—Article 309—Acts done by the Government in exercise of its executive power relating to civil service cannot be said to be invalid merely because no rule or law has been made under Article 309—Once rules are made under Article 309, they would regulate the conditions of service, until legislation is made in that behalf by the appropriate legislature—By virtue of Section 3 of the Public Services Act, the Special Rules for the Kerala Technical Education is deemed to be the Rules under the Public Services Act and cannot anymore be treated as Rules framed under Article 309—Public Services Act, 1968 (Kerala Act 19 of 1968)— Sections 2 and 3.**  
Anandavally, M. K. v. Dr. P. G. Jairaj I.L.R. 2014 (3) Kerala . . . 83



- Consumer Protection Act, 1986 (Central Act 68 of 1986)**—Sections 2(jj) and 12 (IB) (ii)—*President of the State Commission may constitute Benches of the State Commission with one or more members—There is no statutory requirement that the Bench of the State Commission should consist of more than one member.*  
Jose, P. K. v. Aby, M. I.L.R. 2014 (3) Kerala . . . 689
- Contract**—*If clauses in the general conditions of the contract are not void or contrary to any provisions of the statute, parties to the contract have to comply with the general conditions.*  
Coastal Engineering, Konthuruthy v. Southern Railway I.L.R. 2014 (3) Kerala . . . 890
- Contract Act, 1872 (Central Act 9 of 1872)**—Sections 2 and 11—*A minor is not competent to contract as per Section 11 of the Indian Contract Act— Mortgage deed executed at a time when one of the contracting parties, namely the mortgagee, was a minor, held to be void—Majority Act, 1875.*  
Mathai Mathai v. Joseph Mary @ Marykkutty Joseph I.L.R. 2014 (3) Kerala . . . 843
- Contract Act, 1872 (Central Act 9 of 1872)**—Section 213—*An agent has no statutory right to sue the principal for accounts—However there may be special circumstances rendering it equitable that the principal should account to the agent—Such a case may arise where all the accounts are in possession of the principal and the agent does not possess accounts to enable him to determine his claim against his principal.*  
Mathew, P. T. v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala . . . 653
- Copyright Act, 1957 (Central Act 14 of 1957)**—Sections 13, 14 and 51—*There cannot be a copyright of an idea—However when a story is written by the author with a particular narration, by developing the said idea as an expression in accordance with the segment of his imagination, it cannot be said that the story is an idea—When an idea is developed as a story, it is an imaginary work of that particular person who makes the story.*  
Sudheesh Kumar v. Jayakumar, T. S. I.L.R. 2014 (3) Kerala . . . 65
- Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)**—Section 35 (2)—*In a suit for rendition of accounts, a preliminary judgment and decree has to be passed and thereafter the amounts have to be quantified and only then a final decree can be passed— At the time of passing the final decree, the court can levy the required court fees on the party, in favour of whom the final decree has to be passed.*  
Mathew, P. T. v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala . . . 653
- Criminal Trial**—*Only on the ground that the injured did not mention the names of the assailants to the Doctor who examined him, the case of the prosecution cannot be found to be unbelievable.*  
Nabeesathu Sudheer @ Mondhi Sudheer v. State of Kerala I.L.R. 2014 (3) Kerala . . . 35
- Doctrine of Merger**—*Explained—Doctrine of Merger is neither a doctrine of constitutional law nor a statutorily recognized doctrine—It is a common law doctrine founded on the principles of propriety, in the hierarchy of justice delivery system—The doctrine of merger would not take away the right of appeal conferred on a party to a proceedings from challenging an order, merely for the reason that the appeal preferred by another party was dismissed.*  
Mohammed Abdullah v. Ashique, M. P. I.L.R. 2014 (3) Kerala . . . 269

- Easements Act, 1882 (Central Act 5 of 1882)**—Section 52—Adverse Possession— *On the expiry of the licence, if the licensee asserts hostile possession and if the licensor sleeps over the matter, then the occupation of the licensee can be considered to have been converted into one of possession by a trespasser— In such cases the licensor will have to sue for recovery of possession and a suit for mandatory injunction will not be the remedy.*  
Abraham Mathew v. MariammaYohannan I.L.R. 2014 (3) Kerala .. 239
- Education**—Admission to P.O. Course in Medicine—State Government is not ' justified in prescribing lower qualifying criteria for in-service candidates vis-a-vis general candidates.  
Fenny, K. P. (Dr.) v. State of Kerala I.L.R. 2014 (3) Kerala . . 361
- Education Act, 1958 (Kerala Act 6 of 1959)**—Section 12—Liability of Manager of aided school to pay salary of suspended teacher on reinstatement— *Once the educational authority directs the Manager to reinstate the teacher and the Manager refuses to do so, the teacher shall be deemed to be on duty and it is open to the Department to recover the amount paid to the teacher from the Manager—Pendency of Rule 92 Revision Petition or the order of stay granted by the Government in that Revision Petition, will not disentitle the teacher from getting the pay and allowances with effect from the date of suspension, once the order of suspension is found to be unjustified—Education Rules, 1959 (Kerala)—Rule 67(8).*  
Vedanayakom, G v. Government of Kerala I.L.R. 2014 (3) Kerala . . . 931
- Education Rules, 1959 (Kerala)**—Chapter V—Decision of the Government to sanction Higher Secondary Courses in 148 Grama Panchayats where there is no Higher Secondary School and 382 batches in 8 Northern Districts from Ernakulam to Kasargode— *Challenge on the ground of being arbitrary and discriminatory cannot be entertained since the provisions of the Kerala Education Rules have not been amended to make Chapter V of Kerala Education Rules applicable to Higher Secondary Courses—There is no illegality in the Government issuing such an order and such Government Orders are in the realm of policy matter and the courts should not interfere with such decision or decision making process unless such policy decision is unconstitutional.*  
State of Kerala v. Manager, St. Roch's High School I.L.R. 2014 (3) Kerala . . 123
- Education Rules, 1959 (Kerala)**—Chapter V—Decision of the Government to sanction Higher Secondary Courses in 148 Grama Panchayats where there is no Higher Secondary School and 382 batches in 8 Northern Districts from Ernakulam to Kasargode not to be interfered with since the Government has the power and competence to change the policy on the basis of ground reality.  
State of Kerala v. Manager, St. Roch's High School I.L.R. 2014 (3) Kerala . . 123
- Education Rules, 1959 (Kerala)**—Chapter XIV A, Rules 62 and 67(3)—Retirement of teacher in aided school, who is on suspension on the date of attaining the age of superannuation— *The date of retirement of any employee covered by the last limb of Rule 60(c) is to be taken as the date on which the concerned employee attains the age of superannuation or the date on which he was placed under suspension, whichever is later—Such a teacher cannot claim that the date of retirement is the last date of the academic year—Service Rules, 1959 (Kerala)—Part I, Rule 60(c).*  
Haridasan, K. v. Deputy Director of Education I.L.R. 2014 (3) Kerala . . . 149

- Education Rules, 1959 (Kerala)**—*Chapter XXIII, Rule 12—The higher level verification is for the purpose of ensuring that the school in question has the necessary infrastructural requirements so as to accommodate an additional division, in addition to the divisions that were existing in the school, in the immediately preceding academic year—The mandate of Rule 12 appears to be that a higher level verification would be required only if the net result of the verification process necessitates the sanctioning of an additional division, in addition to the divisions that were sanctioned to the school for the immediately preceding academic year.*  
Shyni, M. R. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 1028
- Electricity Act, 2003 (Central Act 36 of 2003)**—*Section 126—In an assessment under Section 126(6) of the Electricity Act, for unauthorized use of electricity, the assessment shall be made at a rate equal to one and half times (two times with effect from 15-6-2007) the tariff applicable for the relevant category of service attracting higher tariff, for which the electricity supplied was unauthorizedly used, and not the relevant category of service to which the consumer belongs.*  
M/s Classic Color Lab v. Assistant Engineer I.L.R. 2014 (3) Kerala . . . 309
- Employees State Insurance Act, 1948 (Central Act 34 of 1948)**—*Sections 2 (9) and (22)—Person employed as Apprentice is not an employee engaged by a contract of employment and is not covered by Section 2(9).*  
Bharat Hotel v. The Regional Director, ESI Corporation I.L.R. 2014 (3) Kerala . . . 944
- Employees State Insurance Act, 1948 (Central Act 34 of 1948)**—*Section 2(22)—Performance allowance paid to employees is an additional remuneration paid to employees, covered by third part of Section 2(22)—Employer is liable to pay ESI contribution for performance allowance.*  
Bharat Hotel v. The Regional Director, ESI Corporation I.L.R. 2014 (3) Kerala . . . 944
- Evidence Act, 1872 (Central Act 1 of 1872)**—*Sections 3, 60 and 120—Compensation claim—Calculation of income—A poor or marginalized vendor of vegetables cannot be expected to be in possession of records regarding his income—The lack of documentary evidence does not lead to a conclusion that the oral evidence should be eschewed from consideration—In normal nature of human conduct, a husband would confide about his income to his wife and the evidence of the wife, regarding the income of her husband, need not be discarded unless its non-existence is more probable with reference to other relevant facts.*  
Anitha v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala . . . 182
- Evidence Act, 1872 (Central Act 1 of 1872)**—*Section 6—Res gestae—Newspaper reports are generally not admissible in evidence since they are considered as hearsay evidence—However in civil cases, a contemporaneous publication of news about the cause of the accident, cannot be brushed aside stating that it is only hearsay evidence, especially when there is no challenge to the contents of the report.*  
Mathew Varghese v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala . . . 526
- Evidence Act, 1872 (Central Act 1 of 1872)**—*Section 103—Plea of alibi—The burden of establishing the plea of alibi is on the accused—However, this will not absolve the prosecution from proving the case of the prosecution beyond reasonable doubt—Even if*

*the accused makes a false case in respect of his plea of alibi, that by itself is not a ground to hold that the case of the prosecution is true.*

Achuthan v. State of Kerala I.L.R. 2014 (3) Kerala . . . 609

**Evidence Act, 1872 (Central Act 1 of 1872)**—Section 106— *Presumption of fact is a rule of evidence which enables the court to presume a doubtful fact from the proved facts—Section 106 of the Evidence Act applies only to cases where the prosecution has succeeded in proving the facts, from which a reasonable inference can be drawn as to the existence of certain other facts, unless the accused in spite of his special knowledge as to such facts, failed to offer any explanation, which might drive the court to draw a different inference.*

State of Kerala v. Sudarsanan I.L.R. 2014 (3) Kerala . . . 473

**Family Courts Act, 1984 (Central Act 66 of 1984)**—Section 19(2)—*The order passed by the Family Court under Section 125 Cr. P.C., granting interim maintenance, is an interlocutory order against which revision cannot be filed in view of the bar contained in Section 19(4) of the Family Courts Act—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 125.*

Kaladharan v. Kavitha I.L.R. 2014 (3) Kerala . . . 514

**Fatal Accidents Act, 1855 (Central Act 13 of 1955)**—Sections 1A and 2— *Calculation of compensation—To determine the compensation on account of the loss of dependency under Section 1A of the Fatal Accidents Act, guidelines formulated by the Supreme Court in Sarala Varma 's case [(2009) 6 S. C. C. 121] can be followed—While calculating the payment of pecuniary benefit under the Fatal Accidents Act, the contractual benefits obtained need to be excluded—Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Section 168.*

Anitha v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala . . . 182

**Foreign Trade (Development and Regulation) Act, 1992 (Central Act 22 of 1992)**—Sections 3 and 5—*An executive instruction/policy, which is not statutory, cannot form the basis of an enforceable legal right—Notification under Section 5 of Foreign Trade (Development and Regulation) Act, is a subordinate legislation and it is law—Hence, it can form basis of a legal right—Constitution of India—Article 19(l)(g).*

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**Foreign Trade (Development and Regulation) Act, 1992 (Central Act 22 of 1992)**—Sections 3 and 5—*The condition requiring the obtaining of import permit for import of boric acid for non-insecticidal purpose is not unworkable or unreasonable—Insecticides Act, 1968 (Central Act 46 of 1968)—Section 38.*

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**Foreign Trade (Development and Regulation) Act, 1992 (Central Act 22 of 1992)**—Sections 3 and 5—*The Parliament did not intend to cover the entire field of issues relating to insecticides by way of parliamentary legislation under the Insecticides Act—The notifications making it compulsory to obtain import permit for import of boric acid intended for non-insecticidal purpose is not ultra vires/illegal—Insecticides Act, 1968 (Central Act 46 of 1968)—Section 38.*

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- Forest Act, 1961 (Kerala Act 4 of 1962)**—*Section 4—After issuance of notification under Section 4 of the Kerala Forest Act, all claims regarding assignment of the land has to be determined and decided by the Forest Settlement Officer—The District Collector has to ensure that no claim for assignment is allowed in the area which has been notified under Section 4 of the Kerala Forest Act—Kannan Devan Hills Reservation and Assignment of Vested Land Rules, 1977 (Kerala).*  
State of Kerala v. Sahya Haritha Sangham I.L.R. 2014 (3) Kerala . . . 963
- Forest Act, 1961 (Kerala Act 4 of 1962)**—*Sections 27, 61A and 61B—The owner or agent of a sawmill, whose mill was used for sawing or converting timber or any other item mentioned under Section 61A as property of the Government and involved in a forest offence, is also liable to be prosecuted under Section 27 (e) (in)—The machineries and tools in the sawmill are also liable to be seized and confiscated under Section 61A—It is for the owner or agent of the sawmill to make sure that the timber which is brought to the mill is not illicitly cut and removed from the forest, since the burden is on him to prove his innocence as required under Section 61B (2).*  
Moosa v. Authorised Officer and Divisional Forest Officer I.L.R. 2014 (3) Kerala . . . 765
- General Clauses Act, 1897 (Central Act 10 of 1897)**—*Sections 6 and 24— Notification Number 222 issued by the erstwhile Madras Government, so far as it is not superseded by any other notification, order, scheme, rule, form, bye-law issued under Section 4 of the Arms Act, should be deemed to continue in force and deemed to be issued under Section 4 of the Arms Act so far as the areas coming under the erstwhile Malabar District is concerned, even after the State Re-organisation and formation of the State of Kerala.*  
Jithu v. State of Kerala I.L.R. 2014 (3) Kerala . . . 504
- General Sales Tax Act, 1963 (Kerala Act 15 of 1963)**—*Section 26C—Section 26C is subject to the provisions of the Companies Act and the State and its authority cannot proceed against the Directors of a Company as if Section 26C contains a non obstante clause entitling the authority to ignore the provisions of the Companies Act.*  
Mohammed Harid, T. S. v. District Collector, Wayanad I.L.R. 2014 (3) Kerala . . . 200
- General Sales Tax Act, 1963 (Kerala Act 15 of 1963)**—*Section 26C—Though Section 26C was introduced with effect from 1-4-1999, it applies for recovery of liabilities incurred by the company prior to 1-4-1999 also—Director of a company, who was in office when the amount became due, is liable for amount due from, the company even if such liability had been incurred by the company any time prior to 1-4-1999, if the liability is remaining outstanding and is not recoverable from any person as stated in the section.*  
Mohammed Harid, T. S. v. District Collector, Wayanad I.L.R. 2014 (3) Kerala . . . 200
- Guruvayoor Devaswom Act, 1978 (Kerala Act 14 of 1978)**—*The District Court alone has the jurisdiction to entertain a suit as regards selection to the pout of 'Melsanti' in the Sree Krishna Temple at Guruvayoor—Civil Courts Act, 1957 (Kerala Act 1 of 1957)—Section 11 (1) and Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 9.*  
Vasudevan Namboodiri v. Parameswaran Namboodirippad, A. M. I.L.R. 2014 (3) Kerala . . . 589
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—*Section 13B—The Family Court or the High Court does not have the power to waive the period of 6 months prescribed in Section 13B(2)—It is only the Supreme Court which has the power to waive the waiting*

- period of 6 months while exercising the power conferred under Article 142 of the Constitution of India—Constitution of India—Article 142.*  
 Sindhu K. Rajan (Dr.) v. Ajith, M. (Dr.) I.L.R. 2014 (3) Kerala . . . 483
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)—Section 13 B—The principles of law stated in the decision Lakshmi Prasad v. Hareesh G. Panicker reported in 2014 (1) K.L.T. 850 to the effect that in appropriate cases the waiting period of 6 months prescribed under Section 13 B (2) can be waived is not good law and is against the binding precedents of the Supreme Court.**  
 Sindhu K. Rajan (Dr.) v. Ajith, M. (Dr.) I.L.R. 2014 (3) Kerala . . . 483
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)—Sections 13 B and 14—The right to file petition for divorce by mutual consent under Section 13B is subservient to Section 14 of the Act, which prevents the Court from entertaining any petition for dissolution of marriage by a decree of divorce unless, on the date of its presentation, one year has elapsed.**  
 Sindhu K. Rajan (Dr.) v. Ajith, M. (Dr.) I.L.R. 2014 (3) Kerala . . . 483
- Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956)—Sections 13 and 14—A Special Officer appointed by the State Government under Section 13 (1) of the Immoral Traffic (Prevention) Act cannot delegate his power to other subordinate officers, except under the grounds mentioned under Sections 14 and 15 of the Act—An Officer who is not empowered under the Act has no power to investigate, detect or prevent the offences falling under the Immoral Traffic (Prevention) Act.**  
 Raju, C.P. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 259
- Income Tax Act, 1961 (Central Act 43 of 1961)—Section 226(3)(iii)—It is mandatory that a copy of the notice issued to the garnishee by the department should be forwarded to the assessee—It is illegal to attach and debit a sum under Section 226(3) without serving a copy of the attachment on the assessee.**  
 Suntec Business Solutions Pvt. Ltd. v. Union of India I.L.R. 2014 (3) Kerala . . . 337
- Industrial Disputes Act, 1947 (Central Act 14 of 1947)—Section 33C(2)—A retired workman can maintain application under Section 33C(2), in respect of his claims with reference to the period of employment under the employer.**  
 Thomas, P. K. v. Sahithya Pravarthaka Co-operative Society I.L.R. 2014 (3) Kerala . . . 429
- Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (Kerala Act 5 of 2000)—Sections 7, 8 and 9—The District Single Window Clearance Board need not follow the procedure contemplated under Section 233 of the Kerala Panchayat Raj Act—However the right of the Panchayat to have audience and express its views in terms of the constitutional scheme is not divested and therefore the District Single Window Clearance Board has to take into consideration the stand of the Panchayat before granting any licence—Industrial Single Window Clearance Boards and Industrial Township Area Development Rules, 2000 (Kerala)—Rule 10.**  
 Chettikulangara Grama Panchayat v. State of Kerala I.L.R., 2014 (3) Kerala . . . 562
- Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (Kerala Act 5 of 2000)—Section 8—In the system of co-operative governance under the constitutional scheme, the dual aspect of single jurisdictional subject-matter can be shared at several different levels of governance without leading to any conflict—**

*The power conferred on the District Board or State Board is not intended to undermine the functioning of the Local Self Government Institutions— Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 233.*

Chettikulangara Grama Panchayat v. State of Kerala I.L.R. 2014 (3) Kerala 562

**Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (Kerala Act 5 of 2000)—Section 8—***The Panchayat rejecting the application for issuance of licence for establishing an industrial unit—The applicant thereafter approaching the District Single Window Clearance Board for grant of licence is not barred—The Doctrine of estoppel by election is not a bar for entertaining any application by the District Single Window Clearance Board, as the powers conferred on the Panchayat under Section 233 of the Kerala Panchayat Raj Act is not exclusive— Doctrine of issue estoppel explained—Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 233.*

Chettikulangara Grama Panchayat v. State of Kerala I.L.R. 2014 (3) Kerala . . 562

**Insecticides Act, 1968 (Central Act 46 of 1968)—Sections 2 and 38—***Insecticides not intended to be used for insecticidal purposes are exempted under Section 38 and will not come under the Insecticides Act—Even insecticides which are not intended for insecticidal purposes, can be regulated like any other goods under the terms of the Foreign Trade (Development and Regulation) Act—Trade (Development and Regulation) Act, 1992 (Central Act 22 of 1992)—Sections 3 and 5.*

Union of India v. Maliakkal Industrial Enterprises I.L.R. 2014 (3) Kerala . . 387

**Insecticides Act, 1968 (Central Act 46 of 1968)—Section 9—***The Act is aimed at controlling insecticides with a view to ensure the safety of human beings and animals—It is the bounden duty of the authorities to take appropriate action in case of violation of any of the provisions of the Act.*

Union of India v. Maliakkal Industrial Enterprises I.L.R. 2014 (3) Kerala . . 387

**Insurance Law—***Just because the insured made untenable claim or because he approached Consumer Disputes Redressal Forum seeking redressal of his grievance, insurer cannot refuse to renew the mediclaim policy—Insurer can refuse to renew mediclaim policy only if there is violation of terms and conditions of the policy.*

Prasad, N. D. v. New India Assurance Company Ltd. I.L.R. 2014 (3) Kerala . . 251

**Labour Disputes—***Settlement through mediation—The Government urged to initiated steps to formulate a mechanism for dispute resolution through mediation at enterprises level—The Government can seek assistance of the Kerala State Mediation and Conciliation Centre, High Court of Kerala for training mediators or for availing service of trained mediators of the mediation centers located in different Districts of Kerala, if it is permitted.*

Mathew, K. T. v. State of Kerala I.L.R. 2014 (3) Kerala . . 351

**Labour Law—***Departmental enquiry—Charge of insubordination—Duty of obedience in organizational hierarchy is not intended to be construed that one in lower rank must be slavishly submissive or obsequious in approach to his superior—If an employee expresses his dissatisfaction on an additional work being allotted 'to him, especially when there are no preordained system of distribution of work, such expression need not be construed as insubordination.*

Mathew, K. T. v. State of Kerala I.L.R. 2014 (3) Kerala . . 351

- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—Sections 23 (1A) and 28— Rule of appropriation in case of short fall in deposit of the amount due under an award, which is set aside—There can be no compartmentalization of the principal amount, interest and costs when the award is non-existent on the date of appropriation—Partial deposits by the requisitioning authority can only be appropriated towards interest and costs and then towards the principal amount—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order XXI, Rule 1.  
Mooney v. State of Kerala I.L.R. 2014 (3) Kerala . . . 679
- Legal Services Authorities Act, 1987 (Central Act 39 of 1987)**—Section 21— A mediator is only facilitating the parties to arrive at a settlement and helping the parties to draw the mediation agreement—A mediation cannot be treated at par with Lok Adalath as the mediator has no power to pass an award—Even if the mediation agreement reaches the criminal court, the criminal court cannot rely on the agreement and pass a civil decree relegating the parties to get the amount realized by filing execution petition before the civil court—A criminal court can either convict or acquit the accused on the basis of the evidence—Negotiable Instruments Act, 1881(Central Act 26 of 1881)—Section 138.  
Sreelal v. Murali Menon I.L.R. 2014 (3) Kerala . . . 751
- Limitation Act, 1963 (Central Act 36 of 1963)**—Article 113—In a suit for compensation against the State under the Fatal Accidents Act, Article 113 of the Limitation Act would apply—In a claim for compensation under Section 1A of the Fatal Accidents Act, for loss of dependency, against non-state wrong doers. Article 82 of the Limitation Act would apply and the period of limitation is 2 years—A claim for loss of estate is admissible under the Kerala Torts (Miscellaneous Provisions) Act and therefore the limitation is 3 years under Article 113 of the Limitation Act—Fatal Accidents Act, 1855 and Torts (Miscellaneous Provisions) Act, 1976 (Kerala Act 8 of 1977).  
Karunakaran Pillai K. v. Chacko I.L.R. 2014 (3) Kerala . . . 873
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—Section 166—In spite of producing the scene mahazar, wound certificate and report of AMVI regarding condition of the vehicle, Tribunal dismissing the claim petition on the ground that claimants failed to prove that the accident had occurred due to negligence of driver of the vehicle—Claim before Motor Accident Claims Tribunal is neither a criminal case nor a civil case—The standard of proof in an accident claim is much less than the standard of proof in a civil case or criminal case.  
Sherin J.Thankom v. Thankom I.L.R.2014(3)Kerala . . . 211
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—Section 175—Bar of jurisdiction of civil court—Suit for recovering damages suffered on account of collision between Kerala State Road Transport Corporation bus and car, on the basis of the receipt given by the driver of the bus that he will pay the repair charges of the car—Any action claiming damages suffered in road accident can be entertained only by a Tribunal constituted under Section 165 and jurisdiction of the civil court is specifically barred by Section 175.  
Kerala State Road Transport Corporation v. Reghunathan I.L.R. 2014 (3) Kerala . . . 218
- Municipalities Act, 1994 (Kerala Act 20 of 1994)**—Section 447(6)—Deemed licence—If the 30th day happens to be a holiday, the order on an application for licence communicated on the 31st day, will be within the period of 30 days envisaged under the statute and claim regarding existence of a deemed licence would not be available to the applicant—



*Interpretation and General Clauses Act, 1125 (Kerala Act 7 of 1125 M.E.)— Sections 8 and 9.*

Alexander, P. C. v. Mavelikkara Municipality I.L.R. 2014 (3) Kerala . . . 440

**Municipalities Act, 1994 (Kerala Act 20 of 1994)—Section 492 (3)—Consent of landlord—**  
*Where the building is let out for the purpose of conducting a specified business, the tenant proposing to conduct different business should produce consent of the landlord for conduct of such business, along with the application for licence—Rule of 'Unius Est Exclusio Alterius', explained.*

Alexander, P. C. v. Mavelikkara Municipality I.L.R. 2014 (3) Kerala . . . 440

**National Investigation Agency Act, 2008 (Central Act 34 of 2008)—Section 21—**  
*Accused cannot challenge the bail order and seek relaxation of the conditions imposed while granting bail, by filing a petition under Section 482 Cr. P.C.—Remedy wider Section 482 Cr. P.C. can be resorted to only in cases of manifest miscarriage of justice or when an inferior criminal court acts in excessive exercise of jurisdiction or when the action of that court is in lack of jurisdiction and if the order impugned, if allowed to stand, would result in gross injustice and violation of rights—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482.*

Majeed Koliyad @ Mohammed Abdul Kader Majeed v. National Investigation Agency I.L.R. 2014 (3) Kerala . . . 426

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138—**  
*The service of notice is imperative for maintaining a complaint under Section 138 of the Negotiable Instruments Act—A notice demanding huge amount which is more than the amount shown in the dishonoured cheque would not constitute a valid notice.*

Ramaraj v. Rajesh Kumar, T. S. I.L.R. 2014 (3) Kerala . . . 648

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138—**  
*Merely because there is an arbitration clause in the agreement between complainant and accused, complainant is not precluded from prosecuting the accused under Section 138 for dishonour of cheque—It is for the trial court to decide whether accused has a legally enforceable liability or not—High Court will not quash the complaint in such a case—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482.*

Rejimol Thomas v. Robert Martin I.L.R. 2014 (3) Kerala . . . 713

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Sections 138 and 143 (3)—**  
*Case under Section 138 of the Negotiable Instruments Act settled by mediation, wherein complainant agreed to give the accused 6 months time to pay the cheque amount—In order to promote the settlement arrived at in mediation, it is always better for the court to wait for such reasonable time as specified in the mediation agreement to allow the parties to honour the settlement.*

Sreelal v. Murali Menon I.L.R. 2014 (3) Kerala . . . 751

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Sections 138 and 147—**  
*Cases under Section 138 cannot normally be referred for mediation—However if the parties are interested in referring the matter for mediation, the same can be done only for the limited purpose of determining the amount for which the dispute can be settled and allowing the accused to pay that amount and thereafter for the complainant to withdraw the complaint*

*under Section 257 Cr.P.C. or for filing a compounding petition under Section 147—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 257.*

Sreelal v. Murali Menon I.L.R. 2014 (3) Kerala . . . 751

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138—A proviso is added to an enactment to qualify or create an exception to what is contained in the enactment—It does not by itself state a general rule—The judgment in Bhaskaran 's case reads the proviso as prescribing the ingredients of the offence instead of treating it as an exception to the generality of the enacting part, by stipulating further conditions before a competent court may take cognizance of the same.**

Dashrath Rupsingh Rathod v. State of Maharashtra (S.C.) I.L.R. 2014 (3) Kerala . . . 771

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138—If an offence punishable under Section 138 of the Negotiable Instruments Act is committed as part of a single transaction along with the offence of cheating and dishonestly inducing delivery of property, then such offence may be tried either at the place where the inducement took place or where the cheque, forming part of the same transaction, is dishonoured or at the place where the property, which the person cheated, was dishonestly induced to deliver or at the place where the accused received such property—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 182, 184 and 220.**

Dashrath Rupsingh Rathod v. State of Maharashtra (S.C.) I.L.R. 2014 (3) Kerala . . . 771

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Sections 138 and 142—Return of the cheque by the drawee Bank alone constitute the offence under Section 138 of the Negotiable Instruments Act and indicate the place where the offence is committed—The territorial jurisdiction is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn—The place or court where the Section 138 complaint is to be filed is not of the choosing of the complainant—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 177, 178 and 179.**

Dashrath Rupsingh Rathod v. State of Maharashtra (S.C.) I.L.R. 2014 (3) Kerala . . . 771

**Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Sections 138 and 145—Regardless of whether evidence has been led before the Magistrate at the pre-summons stage, either by affidavit or by oral statement, the complaint will be maintainable only at the place where the cheques stands dishonoured—The complaint cases, where proceedings have gone to the stage of Section 145(2) or beyond, shall be continued in the court where the case is pending—All other complaints (including those where the accused has not been properly served) shall be returned to the complainant for filing in the proper court—Such complaints, if filed/refiled within 30 days of their return, shall be deemed to have been filed within the time prescribed by law.**

Dashrath Rupsingh Rathod v. State of Maharashtra (S.C.) I.L.R. 2014 (3) Kerala . . . 771

**Nursing Council Act, 1947 (Central Act 48 of 1947)—Sections 10 and 11—Indira Gandhi Open University (IGNOU) is a recognized university and the B.Sc. (Nursing) degree issued by IGNOU has been recognized by the Indian Nursing Council—The Indian Nursing Council is estopped by conduct from invalidating retroactively the qualifications offered by IGNOU, more particularly in the absence of any statute operating against the said estoppel.**

Sindhu, M. G v. Santhosh, P. G I.L.R. 2014 (3) Kerala . . . 971

- Notaries Rules, 1956 (Central)**—*Application for appointment as Notary pending as on 28-2-2009 can be disposed of only in accordance with Notaries Rules as amended in 2009.*  
Sugathan, M. P. v. Union of India I.L.R. 2014 (3) Kerala . . . 446
- Notaries Rules, 1956 (Central)**—*Rule 8 (3)—Review can be moved only by an applicant whose application has been rejected or allowed in respect of only a part of the area to which it relates or against whom an order as to costs has been made under Rule 8(1).*  
Sugathan, M. P. v. Union of India I.L.R. 2014 (3) Kerala . . . 446
- Oaths Act, 1969 (Central Act 44 of 1969)**—*Section 7— Even if there is an omission to take oath or make any affirmation, that will not invalidate any proceedings or render inadmissible any evidence, in or in respect of which such omission, substitution or irregularity took place.*  
Nabeesathu Sudheer @ Mondhi Sudheer v. State of Kerala I.L.R. 2014 (3) Kerala . . . 35
- Panchayat Raj (Burial and Burning Grounds) Rules, 1998 (Kerala)**—*Rule 6(1) and (7)—The construction, opening and using of a new burial or burning ground, including crematorium, shall only be after obtaining a licence from the District Collector concerned.*  
Gopinathan, E. N. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 911
- Panchayat Raj (Burial and Burning Grounds) Rules, 1998 (Kerala)**—*Rule 6(7) and (8)—The provisions for publication in terms of Rule 6(7) in a daily newspaper inviting objections, complaints or suggestions with regard to issuance of licence, is mandatory.*  
Gopinathan, E. N. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 911
- Partition Act, 1893 (Central Act 4 of 1893)**—*Section 3—Principles of owelty— A co-sharer who has a major share in the property is entitled to purchase the shares of the other sharers by applying the principles of owelty on the ground of equity—The co-sharer is bound to pay to the other sharers the present market value of the property, which has to be determined by the Court.*  
Manappurath Abdulla v. Assiya I.L.R. 2014 (3) Kerala . . . 494
- Penal Code, 1860 (Central Act 45 of 1860)**—*Sections 292 and 294— Every Abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code—To make the word obscene and punishable under Section 294(b) IPC, it must satisfy the definition of obscenity—Obscene words must involve some lascivious element arousing sexual thoughts or feelings or the word must have the effect of depraving persons and defiling morals by sex appeal or lustful desires.*  
Latheef v. State of Kerala I.L.R. 2014 (3) Kerala . . . 78
- Penal Code, 1860 (Central Act 45 of 1860)**—*Sections 302 and 304—The accused allegedly pouring kerosene on the body of his wife and setting her on fire and thereafter trying to save her by pouring water on her—Contention that the offence committed falls only under the second part of Section 304 IPC not accepted—By the very act of causing burn injuries on the victim, the offence is complete and any subsequent attempt to minimize the magnitude of injuries or to save the injured would not take away the offence from the purview of Section 302 IPC, if the death of the victim takes place.*  
Manikandan v. State of Kerala I.L.R. 2014 (3) Kerala . . . 275
- Penal Code, 1860 (Central Act 45 of 1860)**—*Sections 373 and 375—The attempt to commit an offence begins when the preparations are complete and the culprit commences to do*

- something with the intention of committing the offence, which is a step towards the commission of the offence— The moment he commences to commit the offence, he must be said to have attempted to commit the offence.*  
 Madhu, V. T. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 698
- Penal Code, 1860 (Central Act 45 of 1860)—Section 376—***The allegation of rape will have to be proved by the prosecution by adducing positive evidence—Proof of paternity of a child, whether positive or negative, will not help the court in deciding the offence of rape.*  
 Divine Providence Foundling Home v. Raju Gopi I.L.R. 2014 (3) Kerala . . . 683
- Precedents—***Once a decision of a larger Bench has been delivered, it is that decision which mandatorily has to be applied—A co-ordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend the precedent for reconsideration by referring the case to be Chief Justice for constitution of a larger Bench.*  
 Dashrath Rupsingh Rathod v. State of Maharashtra (S.C.) I.L.R. 2014 (3) Kerala . . . 771
- Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005)—Sections 2 (a), 2 (f) and 12—***A daughter-in-law cannot arraign the lover/paramour of her mother-in-law as a co-respondent under Section 12, alleging domestic violence on the premise that they are in a domestic relationship—The concept of "relationship in the nature of marriage" occurring in Section 2 (f) of the Act can be invoked only by a female partner of the said relationship against the male partner and not by a third party to the said relationship.*  
 Biju Sreenilayam v. Raji I.L.R. 2014 (3) Kerala . . . 835
- Res judicata—***If it is not necessary to raise an issue for deciding a case, then there is no bar in raising that issue in a subsequent proceeding.*  
 Santha Sakku Bai v. State Bank of India I.L.R. 2014 (3) Kerala . . . 332
- Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009)—Sections 2(n) & (p), 3 and 12(1)(c)—***Kendriya Vidyalaya being a school belonging to the specified category, its obligation under the Right of Children to Free and Compulsory Education Act is limited to admitting at least 25% strength of the class from among the children belonging to the weaker sections in the neighbourhood and providing those children with free and compulsory education—Constitution of India—Article 21 A.*  
 Kendriya Vidyalaya Parents Association v. Union of India I.L.R. 2014 (3) Kerala . . . 861
- Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Central Act 2 of 2007)—Section 3—***The rehabilitation package for tribals belonging to the Warriam Adivasi Colony should be included in the next working plan of the area, in furtherance of the modification of their forest rights.*  
 Kuttan v. State of Kerala I.L.R. 2014 (3) Kerala . . . 498
- Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Central Act 2 of 2007)—Sections 3 and 4—***Rehabilitation of tribals in forest land cannot be said to be diversion of forest land—It is a case of modification of forest rights and should be conferred free of the requirement of paying of Net Present Value (NPV) and cost of compensatory afforestation.*  
 Kuttan v. State of Kerala I.L.R. 2014 (3) Kerala . . . 498

- Service**—*Culpable delay in disbursement of terminal benefits—Authority should pay interest for causing delay in disbursing terminal benefits.*  
Sakthidharan, M. K. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 575
- Service**—*Distinction between appointment by transfer and appointment by promotion—Explained.*  
Secretary to Government v. Surendran, P. V. I.L.R. 2014 (3) Kerala . . . 326
- Service**—*Transfer—Challenge to the order of transfer on the ground of mala fide—Person against whom allegation of mala fide is made is a necessary party to the Writ Petition and the allegation of mala fide will not be considered unless such person is impleaded in the petition.*  
Kerala State Centre for Advanced Printing & Training (C-APT) v. Joshy Isaac I.L.R. 2014 (3) Kerala . . . 857
- Service**—*University issuing general order that the contract entered into by it with appointees shall stand modified—The modified clause will apply to all existing contracts and not only to prospective contracts.*  
Aneykutty Joseph (Dr.) v. Kerala Agricultural University I.L.R. 2014 (3) Kerala . . . 513
- Service Rules, 1959 (Kerala)**—*Part III, Rule 3, Note 2—Before fixing the liability of a pensioner, specific details of each of the alleged liability and the basis of such liability should be intimated to the pensioner, so that he can effectively controvert the allegations—Material produced by pensioner to controvert the allegations should be considered by the authority at the time of passing final orders as to the liability of the pensioner.*  
Sakthidharan, M. K. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 575
- Service Rules, 1959 (Kerala)**—*Part III, Rule 3A—Pensioner is not entitled to claim terminal benefits when judicial proceedings are pending, though the conviction and sentence has been suspended pending disposal of the appeal.*  
Rajan, A. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 459
- Special Marriage Act, 1954 (Central Act 43 of 1954)**—*Sections 15 and 16—A writ of mandamus commanding the Marriage Officer to register a marriage without waiting for expiry of the notice period of 30 days cannot be granted—The notice period that is stipulated in Section 16 is to enable the public to respond and for the purpose of ascertaining whether the conditions stipulated in Clauses (a) to (e) of Section 15 have been complied with.*  
Sidharth Swaminathan v. Sub Registrar, Kottayam I.L.R. 2014 (3) Kerala . . . 595
- Special Rules for Kerala Technical Education Services (Amendment), 2010 (Kerala)**—*Rule 6A—Rule 6A, fixing the qualification norms much below the bench mark indicated by the All India Council for Technical Education, is liable to be quashed, being repugnant to the norms fixed by the AICTE—Rule 6A is arbitrary and unreasonable as it creates a classification among similarly situated persons—When the question of repugnancy between parliamentary legislation and state legislation arise, parliamentary legislation will predominate by virtue of the non obstante clause in Article 246 (1) or by reason of Article 254 (1)—All India Council for Technical Education Act, 1987 (Central Act 52 of 1987)—Sections 10(1)(i) and 23—Constitution of India—Articles 246 and 254.*  
Anandavally, M. K. v. Dr. P. G. Jairaj I.L.R. 2014 (3) Kerala . . . 83

- Special Rule in respect of the Post of Chief Photographer in the Police Department, 1992 (Kerala)**—*Post of Chief Photographer is not a promotion post for photographers and appointment to that post should be made by transfer from the category of photographers in the Department.*  
Secretary to Government v. Surendran, P. V. I.L.R. 2014 (3) Kerala .. 326
- Specific Relief Act, 1963 (Central Act 47 of 1963)**—*Section 20—Discretion to grant specific relief of agreement to sell land—Due to long lapse of time spent by parties in litigation, it is inequitable to grant specific performance of the agreement at the rate mentioned in the agreement—At the same time plaintiff should not be penalised for the delay caused in litigation—Defendant directed to execute sale deed at the rate mentioned in the agreement for the advance/sale consideration amount paid by plaintiff and plaintiff directed to pay market value fixed by court for the balance extent of land—Modality explained.*  
Wellington B. v. Shyama Prasad, D. I.L.R. 2014 (3) Kerala . . 880
- Specific Relief Act, 1967 (Central Act 47 of 1967)**—*Section 39—A suit for mandatory injunction simplicitor, seeking eviction of the licensee or a person in permissive occupation, whose license or occupation has been terminated by the licensor, is maintainable—It is not necessary for the licensee to file a suit for recovery of possession to evict such licensee—Easements Act, 1882 (Central Act 5 of 1882)—Section 52.*  
Abraham Mathew v. Mariamma Yohannan I.L.R. 2014 (3) Kerala .. 239
- State Bank of IVavancore (Employees) Pension Regulations, 1995**—*Regulation 18—Superannuation pension—An employee who has service of 19 years 11 months and 11 days is entitled to get superannuation pension as his tenure of service is to be counted as 20 years.*  
Santha Sakku Bai v. State Bank of India I.L.R. 2014 (3) Kerala . . 332
- State and Subordinate Services Rules, 1958 (Kerala)**—*Part II, Rule 8, 4th proviso—"Another service, not being Military service"—The expression definitely takes in those members who are absent from the service or a Subordinate Service in the State Government for any reason other than those specifically excluded in the opening paragraph of Rule 8.*  
Suveen S. Kamath v. State of Kerala I.L.R. 2014 (3) Kerala . . 26
- State and Subordinate Services Rules, 1958 (Kerala)**—*Part II, Rule 8, 4th proviso—"another service"—Service in the District Co-operative Bank falls within the term "another service" in the 4th proviso to Rule 8 and appointment pursuant to advise of the Public Service Commission shall be deemed to be an appointment made in the exigency of the public service for the purpose of Rule 8 of Part II, KS & SSR.*  
Suveen S. Kamath v. State of Kerala I.L.R. 2014 (3) Kerala . . 26
- State and Subordinate Services Rules, 1958 (Kerala)**—*Part II, Rules 8 and 26— On appointment of a full member to another service, he shall cease to have any lien in the earlier service—Only a member, who has not lost his lien in the parent department, will be entitled to come back on the basis of Rule 8.*  
Radhakrishnan Nair, M. v. Secretary to Government I.L.R. 2014 (3) Kerala .. 545
- State and Subordinate Services Rules, 1958 (Kerala)**—*Part II, Rule 13 A (2)— The exemption from passing special or departmental test under Rule 13A is for three years from the date*

- of occurrence of the vacancy and not from the date of temporary appointment to that post under Rule 13 A (I).*  
Jayakumar, G. v. State of Kerala I.L.R. 2014 (3) Kerala . . . 534
- State and Subordinate Services Rules, 1958 (Kerala)**—*Rules 9 and 27 (a)—Seniority—Seniority is to be reckoned from the date of first appointment, which does not include provisional appointment.*  
Sheela, T. R. v. Secretary, Health and Family Welfare Department I.L.R. 2014 (3) Kerala . . . 814
- Succession Act, 1925 (Central Act 39 of 1925)**—*Section 372—Family pension is independent and cannot be claimed through a deceased employee—Succession Certificate cannot take in the Family Pension payable to the nominee or legal heirs of deceased employee—In the absence of nomination, legal heirship certificate is sufficient to claim family pension.*  
Lalithambika, S. v. Nil I.L.R. 2014 (3) Kerala . . . 686
- Torts**—*KSEB leaving unattended stay wire and strut on the road margin leading to the appellant's left foot getting entangled in the loose wire resulting in severing of the left foot at midtarsal joint—The KSEB had a duty to remove such unwanted strut or stay wire and the KSEB should be held negligent and directed to pay compensation to the appellant—For assessing compensation for pain and suffering, the guidelines for assessment of loss under the Motor Vehicles Act can be followed—Motor Vehicles Act, 1988 (Central Act 59 of 1988).*  
Mathew Varghese v. Kerala State Electricity Board I.L.R. 2014 (3) Kerala . . . 526
- University Grants Commission (Affiliation of Colleges by Universities) Regulations, 2009**—*UGC regulations indicate that while the power to frame independent regulations to regulate technical education in affiliated colleges/institutions is with the UGC, the UGC itself has chosen to adopt regulations of the AICTE in the exercise of the said power.*  
Kollengode Educational and Charitable Trust v. All India Council for Technical Education I.L.R. 2014 (3) Kerala . . . 1
- University Grants Commission (Affiliation of Colleges by Universities) Regulations, 2009**—*While AICTE is the authority competent to regulate the field of Technical Education carried on by technical institutes other than those run by the Universities or their component institutes/colleges, regulation of technical education of colleges affiliated to the University is to be done by the University in accordance with the directions and guidelines issued by the University Grants Commission.*  
Kollengode Educational and Charitable Trust v. All India Council for Technical Education I.L.R. 2014 (3) Kerala . . . 1
- Value Added Tax Act, 2003 (Kerala Act 30 of 2004)**—*Sections 55 and 74—An order passed under Section 74 is not expressly excluded by Section 55—However an order passed under Section 74 would amount to the assessee admitting the commission of the offence alleged and opting for a composition of the offence in lieu of going through the process of statutory adjudication to determine the liability for penalty or prosecution of the assessee.*  
M/s.Trichur Auto Spares v. State of Kerala I.L.R. 2014 (3) Kerala . . . 173
- Value Added Tax Act, 2003 (Kerala Act 30 of 2004)**—*Section 70 B—To attract the penalty under Section 70 B, the person must bring the goods from outside the state projecting the purchase as one for his own use and utilize the said goods for purposes other than his*

*own use—The fact that the person may generate profits by making use of the goods will not detract the use from being its/his own use.*

State of Kerala v. M/s Leo Hospital I.L.R. 2014 (3) Kerala .. 23

**Value Added Tax Act, 2003 (Kerala Act 30 of 2004)—Sections 74 and 55—***It is not open to an assessee, who opts for compounding the offence under Section 74, to turn around and contest the order of the competent authority in accepting the application for compounding the offence—An assessee can contest the order of the competent authority in an appeal under Section 55 only in cases where there is a patent mistake in the quantification of the compounding fee payable.*

M/s Trichur Auto Spares v. State of Kerala I.L.R. 2014 (3) Kerala .. 173

**Wakf Act, 1995 (Central Act 43 of 1995)—Section 83(4A)—***One member of the State Civil Service should be appointed as a full-time member of the Wakf Tribunal.*

Ali Akbar, N. V. v. Abdul Azeez Mannisseri I.L.R. 2014 (3) Kerala .. 603

**Wakf Act, 1995 (Central Act 43 of 1995)—Section 83(4A)—***Wakf Tribunals constituted under the unamended provisions of the Act can continue to discharge their functions without waiting for re-composition as provided in the amendment.*

Ali Akbar, N. V. v. Abdul Azeez Mannisseri I.L.R. 2014 (3) Kerala .. 603

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