



INDIAN LAW REPORTS (Kerala Series)

INDEX TO I.L.R. 2014 (4) KERALA

NOMINAL INDEX

Abbas	v. Moideen Kunhi	..	1
Abdulla K.	v. State of Kerala	..	207
Abdul Jaleel	v. Station House Officer	..	135
Abdul Khader	v. District Collector	..	239
Abdurahiman, K. V.	v. Cheekilode Premalatha	..	945
Abdul Hameed, V. M.	v. Ramani	..	64
Abdul Latheef	v. State of Kerala	..	44
Abraham Jacob @ Avarachan	v. Mubarak, N.	..	459
Akalakunnam Village Service Co-operative Bank Ltd.	v. Binu, N. (S.C.)	..	605
Anagha Prasad	v. Abu, M. C.	..	175
Anand Anoop	v. Union of India	..	281
Antony, C. K.	v. Mathai M. Paikeday	..	297
Ashna Sofiya	v. State of Kerala	..	246
Assistant Commissioner, Coal Mines Pension Fund	v. Dharmarajan	..	236
Bava, V.	v. State of Kerala	..	452
Benson	v. State of Kerala	..	508
Biju Aduppukallungal	v. Advisory Board (KAAPA)	..	363
Bindu K. Unnithan	v. State of Kerala	..	790
Bineesh, P.	v. Kerala Public Service Commission	..	924
Bushara	v. Shibinu	..	639
Chairman and Managing Director, Union Bank of India	v. Ram Mohan, M.	..	580
Chakkingal Achuthankutty Nair	v. Chakkingal Seethakutty Amma	..	798
Cochin College	v. Ajith Kumar, K.	..	532
Devaki	v. State of Kerala	..	371
Femi Joseph	v. Branch Manager, Federal Bank	..	59

Fr. Jose Thenpillil	v. Karukutty Grama Panchayat	..	68
General Secretary, New Indian Express Employees' Association, Kerala	v. New Indian Express	..	219
George. A. V. (Dr.)	v. Chancellor	..	144
George, P. S.	v. Balakrishnan	..	966
Gopalakrishnan Nair	v. State of Kerala	..	438
Gopinathan, M.	v. State of Kerala	..	573
Gosala Vishnu Vasudevan	v. Travancore Devaswom Board	..	785
Hakkim, E.	v. Joint Registrar of Co-operative Societies	..	413
Hari Hara Krishnan, G. K.	v. State of Kerala	..	832
Hotel Mariya	v. Kerala State Electricity Board	..	495
Ilangeswaran	v. State of Kerala	..	839
Janakiamma	v. Bhaskaran Nambiar	..	917
Jayasree, K.	v. State of Kerala (F.B.)	..	610
Jayasree, V. V.	v. State of Kerala	..	351
Jose Santy	v. Land Acquisition Officer Tahsildar &	..	876
Kadar Pillai K.S.	v. M/s Goven Travels	..	826
Kalathumpadikkal Musthafa	v. Basheer, P. M.	..	112
Kalavathy, C.	v. State of Kerala	..	99
Kamalam, V.	v. Secretary, Cochin Devaswom Board	..	794
Kanakaveni, K.	v. Kasargod Municipality	..	487
Katavath Valappil Mohanan	v. Tharammal Ranjith	..	650
Kerala Chemicals and Proteins Ltd.	v. Labour Court, Ernakulam	..	585
Kerala State Toddy Shop Contractors Association	v. Prathapan, T. N., MLA (S.C.)	..	447
K. Link Healthcare (India) Pvt. Ltd.	v. George Alexander	..	959
Krishnakumar	v. Gopalakrishnan, V.	..	858
Kunhipathumma, T. C.	v. Tellicherry Taluk Land Board	..	251
Kunnamangalam Co-operative Housing Society Ltd.	v. Vasanthakumari	..	418
Manager, Andhra Bank	v. Reshma Syam, S.	..	905
Marcia Collin Noronha	v. State of Kerala	..	216
Mariyadas	v. Benjamin	..	471
Mohammed Rafi	v. District Collector	..	482
M/s BRD Finance Limited	v. District Collector	..	441
M/s Chakkiath Brothers	v. Assistant Commissioner	..	130
M/s ETL Corporate Services (P) Ltd.	v. Sarojini	..	106
M/s Harrisons Malayalam Ltd.	v. State of Kerala	..	668

M/s NTPC Ltd.	v. State of Kerala	..	811
M/s Kerala State Ex-servicemen	v. State of Kerala	..	503
M/s K. K. Builders	v. Commercial Tax Officer I, (Works Contract)..		519
M/s Shriram Transport Finance Company	v. Sunil. PR.	..	435
Namboorikandi Ahammed	v. District Collector	..	499
Narayanan Nambiar, T. V.	v. Kunkamma Amma, T. V.	..	851
Narayanan Pandarathil, E. K.	v. Vasudevan Pillai, P. K.	..	675
National Insurance Company Ltd.	v. Abdul Razaak	..	665
Nedumon Service Co-operative Bank Ltd.	v. Joint Registrar of Co-operative Societies	..	189
Neena Devadas	v. Sajeendran, K. G.	..	870
Neethu, U. R.	v. State Bank of Travancore	..	379
Palakkal Suhara	v. Palampadiyan Muhammed	..	937
Parasuraman, K.	v. Srinivasa Raghavan, P.	..	706
Paulson	v. State of Kerala	..	289
Paulson Zacharia	v. Commissioner of Police	..	625
Perumbavoor Municipality	v. Assistant Engineer (F.B.)	..	721
PNYS Chit Funds (Kerala) Pvt. Ltd.	v. Assistant Registrar of Chits	..	645
Prakash Joseph	v. M/s Malabar Cements Ltd.	..	467
President, Kunnampetta Ksheera Vyavasaya Sahakarana Sangham	v. Madhavan Nair, P.	..	456
Ramesh Kumar	v. State of Kerala	..	255
Raveendran @ Ravi	v. State of Kerala	..	627
Registrar, Indian Maritime University	v. Viswanathan, K. G. (Dr.) (F.B.)	..	736
Santhakumari	v. Raghavan Unni	..	950
Santhosh Babu, P. T. (Dr.)	v. Jayabharatham Nursing Home (Pvt.) Ltd.	..	9
Secretary, Kerala Public Service Commission	v. Seema I.	..	773
Shaji Jacob	v. Shaji, P. V.	..	597
Shameel, N. A.	v. Muhammed Ansari	..	427
Shebin. A. S.	v. Kerala Public Service Commission	..	341
Sreedevi Antherjanam	v. Bhavadasan Namboodiri	..	19
Sreerangan	v. New India Assurance Co. Ltd.	..	659
State Bank of Travancore	v. Paul C. M.	..	79
State of Kerala	v. Hamil Raphael	..	331
State of Kerala	v. Thomas Kurian	..	593
State of Kerala	v. Beevi Kannu. A. (F.B.)	..	885

Subramanian, N. R.	v. District Collector	..	874
Sunil Kumar, M. S.	v. Union of India	..	716
Suseelan, L.	v. Indian Bank	..	271
Tahsildar	v. Soman Peter (Dr.)	..	327
Thara Jayakumar	v. State of Kerala	..	160
Thayyil Muhammed	v. Koorimannil Pattiyil Showkath Ali	..	803
Ummar	v. Joint Regional Transport Officer	..	711
Union of India	v. Madhusoodhanan. P. O.	..	525
United India Insurance Co. Ltd.	v. Surendran, P. R. (F.B.)	..	909
Unnikrishnan Thashnath	v. Cochin Devaswom Board	..	635
Urmese J. Valooran	v. Padma, V. K.	..	767
Varghese, A. X.	v. State of Kerala	..	115
Vasudevan Bhattathirippad	v. Mallapally Thirumalida Mahadeva Temple..	..	387
Vijay Menon, K.	v. State of Kerala	..	262
Yamuna, M.	v. Hansly, A. V.	..	956

INDEX TO JOURNAL, SPEECH AND NOTIFICATIONS

Journal

"To Die or Not to Die"	..	i – ii
------------------------	----	--------

Speech

Full Court Reference held on 30 th September 2014, on the occasion of the Retirement of Honourable Mr. Justice Harun-UI-Rashid	..	i - xii
Speech delivered by Prof. (Dr.) N. R. Madhava Menon at the Law Day Lecture arranged by the Kerala Legal Services Authority and the Kerala High Court Advocates' Association at the High Court Auditorium on 26-11-2014.	..	xiii - xx

Notifications

The University Laws (Second Amendment) Act, 2014	..	i — iv
S.R.O. No. 167/2014—The Kerala Victim Compensation Scheme, 2014	..	v — x

ACTS

Central

1860—Act 45 of 1860—Penal Code			
Section 300, Exception 4	<i>See</i>	..	289
Sections 405 and 406	<i>See</i>	..	262
Section 498 A	<i>See</i>	..	262
1872—Act 1 of 1872—Evidence Act			
Section 35	<i>See</i>	..	175
1881—Act 26 of 1881—Negotiable Instruments Act			
Section 4	<i>See</i>	..	297
Sections 26 and 138	<i>See</i>	..	175

1894—Act 1 of 1894—Land Acquisition Act			
Section 4	<i>See</i>	..	811
Sections 12(2) and 18	<i>See</i>	..	876
1908—Act. 5 of 1908—Code of Civil Procedure			
Order I, Rule 10	<i>See</i>	..	106
Order V Rule 15	<i>See</i>	..	1
Order XIII, Rule 3	<i>See</i>	..	950
Order XXI, Rule 37	<i>See</i>	..	64
Order XXXII	<i>See</i>	..	59
Order XXXII, Rule 15	<i>See</i>	..	650
Section 35	<i>See</i>	..	945
Section 47 and Order XXI, Rule 90	<i>See</i>	..	706
Section 92	<i>See</i>	..	675
1925—Act 39 of 1925--Succession Act			
Section 63	<i>See</i>	..	471
1932 Act 9 of 1932—Partnership Act			
Section 44 (g)	<i>See</i>	..	937
1947—Act 14 of 1947—Industrial Disputes Act	<i>See</i>	..	456
Section 11 A	<i>See</i>	..	585
1948—Act 41 of 1948—Diplomatic and Consular Officers (Oath and Fees) Act			
Section 3	<i>See</i>	..	459
1955—Act 45 of 1955—Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act			
Section 12 and 13 A	<i>See</i>	..	219
1956—Act 1 of 1956—Companies Act			
Sections 529 A and 530	<i>See</i>	..	441
1956—Act 30 of 1956—Hindu Succession Act			
Sections 15(1) (a) and 16	<i>See</i>	..	874
1957—Act 67 of 1957—Mines and Minerals (Development and Regulation) Act			
Section 21 (4)	<i>See</i>	..	255
Sections 21 (4) and 22	<i>See</i>	..	255
1961—Act 25 of 1961—Advocates Act			
Section 30	<i>See</i>	..	467
1963—Act 36 of 1963—Limitation Act			
Article 112	<i>See</i>	..	721
Section 3	<i>See</i>	..	297
Section 5	<i>See</i>	..	803
Section 25 (3)	<i>See</i>	..	297
1963—Act 47 of 1963—Specific Relief Act			
Section 6	<i>See</i>	..	858
1967—Act 15 of 1967—Passports Act	<i>See</i>	..	716
1970—Act 37 of 1970—Contract Labour (Regulation and Abolition) Act			
Sections 2 (c) and 2 (e)	<i>See</i>	..	503
1972—Act 39 of 1972—Payment of Gratuity Act			
Section 4 (6)	<i>See</i>	..	580

1973—Act 2 of 1974—Code of Criminal Procedure			
Section 125	<i>See</i>	..	798
Sections 145 and 146	<i>See</i>	..	427
Sections 146(1) and 397	<i>See</i>	..	427
Sections 154, 156, 200, 202 and 204	<i>See</i>	..	115
Sections 156(3) and 202	<i>See</i>	..	839
Sections 173 (2) and 173 (8)	<i>See</i>	..	44
Section 173 (8)	<i>See</i>	..	44
Sections 204 and 319	<i>See</i>	..	438
Sections 252, 253, 262 and 263 (g)	<i>See</i>	..	135
Sections 345 and 346	<i>See</i>	..	246
Sections 345, 346 and 351	<i>See</i>	..	246
Section 372	<i>See</i>	..	597
Sections 378, 397 and 401	<i>See</i>	..	597
Section 394	<i>See</i>	..	627
Sections 397 and 457	<i>See</i>	..	255
Sections 427, 428 and 482	<i>See</i>	..	508
1982—Act 40 of 1982—Chit Funds Act			
Section 19(1)	<i>See</i>	..	645
1988—Act 59 of 1988—Motor Vehicles Act			
Section 52	<i>See</i>	..	452
Section 147, 1st Proviso	<i>See</i>	..	909
Section 166	<i>See</i>	..	659
Section 166	<i>See</i>	..	665
Section 166	<i>See</i>	..	870
1996—Act 26 of 1996—Arbitration and Conciliation Act			
Section 7	<i>See</i>	..	959
Section 17 (1)	<i>See</i>	..	435
2003—Act 36 of 2003—Electricity Act			
Section 126	<i>See</i>	..	495
Kerala			
1950—Act 15 of 1950—Travancore—Cochin Hindu Religious Institutions Act	<i>See</i>	..	794
Section 68	<i>See</i>	..	635
1957—Act 8 of 1958—Land Conservancy Act	<i>See</i>	..	668
1958—Act 27 of 1958—Nambudiri Act	<i>See</i>	..	19
Sections 2 (b), 3 and 15	<i>See</i>	..	19
1963—Act 1 of 1964—Land Reforms Act			
Section 2 (23A), 257 and 2 (8)	<i>See</i>	..	956
Section 81 (1)(f)	<i>See</i>	..	251
Section 102	<i>See</i>	..	803
1965—Act 2 of 1965—Buildings (Lease and Rent Control) Act			
Sections 2 (3) and 11(1)	<i>See</i>	..	9
Section 5	<i>See</i>	..	826
Section 11(3)	<i>See</i>	..	767
Section 11(3) First Proviso	<i>See</i>	..	767
Section 15	<i>See</i>	..	917
1968—Act 15 of 1968—Revenue Recovery Act			
Section 71	<i>See</i>	..	721

1969—Act 21 of 1969—Co-operative Societies Act	<i>See</i>	..	413
Section 34	<i>See</i>	..	239
Section 69	<i>See</i>	..	605
1975—Act 7 of 1975—Building Tax Act			
Section 2 (e), Explanation 2	<i>See</i>	..	327
Section 5A	<i>See</i>	..	499
1985—Act 12 of 1985—Mahatma Gandhi University Act			
Section 7	<i>See</i>	..	144
Section 56 (7)	<i>See</i>	..	532
1985—Act 21 of 1985—Motor Transport Workers Welfare Fund Act			
Section 8 A	<i>See</i>	..	711
1994—Act 13 of 1994—Panchayat Raj Act			
Sections 19 and 111 (2)	<i>See</i>	..	112
Section 207	<i>See</i>	..	68
Section 276	<i>See</i>	..	68
2003—Act 30 of 2004—Value Added Tax Act			
Section 8 (b)	<i>See</i>	..	519
Section 67	<i>See</i>	..	130
2006—Act 1 of 2007—Fanners Debt Relief Commission Act			
Sections 2(i), (ii), (vii) and (xiii)	<i>See</i>	..	418
2007—Act 34 of 2007—Anti-Social Activities (Prevention) Act			
Sections 2 (a), 2 (i), 2 (j) and 2 (o)	<i>See</i>	..	371
Sections 2 (o), 2 (p) and 15(1)	<i>See</i>	..	363
Sections 15(1) and 15(2)	<i>See</i>	..	363
2013—Act 29 of 2013—Finance Act			
Section 11	<i>See</i>	..	160
Madras			
1951—Act 19 of 1951—Hindu Religious and Charitable Endowments Act			
Section 39	<i>See</i>	..	832
ORDER			
Kerala			
1996—Rationing Order			
Clause 45(8)	<i>See</i>	..	885
RULES			
Kerala			
1958—State and Subordinate Service Rules			
Part II, Rule 10(b)	<i>See</i>	..	331
1959—Education Rules			
Chapter XIV A, Rule 43	<i>See</i>	..	216
Chapter XIV A, Rule 51 A	<i>See</i>	..	99
Chapter XIV A, Rule 51 A	<i>See</i>	..	610
1969—Co-operative Societies Rules			
Rules 2(1), 16 and 176	<i>See</i>	..	189
Rule 176	<i>See</i>	..	189
Rule 182(5)	<i>See</i>	..	605
1970—Land Reforms (Tenancy) Rules			
Rule 136 A	<i>See</i>	..	593

1976—Public Service Commission Rules of Procedure Rules 3 and 11	<i>See</i>	..	924
2000—Government Cultural Institutions Employees Pension and Gratuity Rules	<i>See</i>	..	207
REGULATIONS			
1995—State Bank of Travancore (Employees') Pension Regulation	<i>See</i>	..	79
2005—Kerala State Electricity Board Terms and Conditions of Supply Regulation 36(12)	<i>See</i>	..	482
SCHEME			
1998—Coal Mines Pension Scheme	<i>See</i>	..	236

SUBJECT INDEX

Administrative Law—Collateral challenge—Any action or order which is ultra vires and void ab initio can be challenged collaterally.			
	Cochin College v. Ajith Kumar K.	I.L.R. 2014 (4) Kerala	.. 532
Administrative Law—Collateral challenge—Officers of the State cannot collaterally challenge orders of superiors or the Government.			
	Cochin College v. Ajith Kumar K.	I.L.R. 2014 (4) Kerala	.. 532
Administrative Law—Difference between inherent power and incidental power, explained.			
	Cochin College v. Ajith Kumar K.	I.L.R. 2014 (4) Kerala	.. 532
Administrative Law—Void orders—In Administrative Law there are no void orders but only voidable orders—Until the order is challenged by the affected party and set aside by the Court, the order will continue to bind the party.			
	Cochin College v. Ajith Kumar K.	I.L.R. 2014 (4) Kerala	.. 532
Adverse Possession—The person who takes up the defense of adverse possession must know the identity of the true owner of the property and the plea should acknowledge the identity of true owner—There cannot be a plea of adverse possession against an unknown person—Alternate plea of adverse possession to that of title and ownership over the property is not maintainable.			
	George, P. S. v. Balakrishnan	I.L.R. 2014 (4) Kerala	.. 966
Advocates Act, 1961 (Central Act 25 of 1961)—Section 30—Section 30 of the Advocates Act does not confer on a litigant, a right to be represented by an Advocate in any proceedings whatsoever—Section 30 of the Advocates Act is intended to protect the right of audience of an Advocate, when the litigant he represents has a right to be represented by counsel in a proceeding—Section 30 of the Advocates Act only confers a right on an Advocate to appear before any Tribunal Or person legally authorized to take evidence.			
	Prakash Joseph v. M/s Malabar Cements Ltd.	I.L.R. 2014 (4) Kerala	.. 467
Anti-Social Activities (Prevention) Act, 2007 (Kerala Act 34 of 2007)—Sections 2 (a), 2 (i), 2 (j) and 2 (o)—A drug offender as defined in Section 2 (i) can be considered as a goonda as defined under Section 2 (j), so as to term him as a "known goonda " under Section 2			

- (o)—*It is not necessary to further prove that such drug offender is involved in any illegal activity which is harmful for the maintenance of public order.*
 Devaki v. State of Kerala I.L.R. 2014 (4) Kerala . . . 371
- Anti-Social Activities (Prevention) Act, 2007 (Kerala Act 34 of 2007)**—*Sections 2 (o), 2 (p) and 15 (1)—The authority passing the order under Section 15 (1) must record his subjective satisfaction that the person concerned is either a "known goonda" or a "known rowdy" and that he is indulging in or is likely to indulge or about to indulge in anti-social activities.*
 Biju Adupukallingal v. Advisory Board (KAAPA) I.L.R. 2014 (4) Kerala . . . 363
- Anti-Social Activities (Prevention) Act, 2007 (Kerala Act 34 of 2007)**—*Sections 15 (1) and 15 (2)—The Advisory Board has no jurisdiction to condone the delay in making the representation under Section 5 (2) of the Act.*
 Biju Adupukallingal v. Advisory Board (KAAPA) I.L.R. 2014 (4) Kerala . . . 363
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)**—*Section 7—An arbitration clause must be explicit, unequivocal and manifested in writing or acknowledged by both parties as provided under Section 7(1) of the Arbitration and Conciliation Act—An arbitration clause cannot be presumed or deduced from the agreement, by way of interpretations or inferences—Contract Act, 1872 (Central Act 9 of 1872)—Section 10.*
 K. Link Healthcare (India) Pvt. Ltd. v. George Alexander I.L.R. 2014 (4) Kerala . . . 959
- Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996)**—*Section 17 (1)—As per Section 17 (1), the Arbitrator may, at the request of a party, order a party to take any interim measure of protection— An Arbitrator can direct the defaulter, who is a party to the proceedings, to take an interim measure of protection by producing the vehicle— However the Arbitrator cannot execute the order by directing police assistance to ensure compliance of the order.*
 M/s Shriram Transport Finance Company v. Sunil, P.R. I.L.R. 2014 (4) Kerala . . . 435
- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—*Sections 2 (3) and 11 (1)—Tenant taking on lease the petition schedule room from a private limited Company— Petition for eviction filed by the Company through its Managing Director—The contention of the tenant that the person filing the Rent Control Petition is not the Managing Director of the Company would not amount to denial of title of the landlord, as contemplated under the 2nd Proviso to Section 11 (1).*
 Santhosh Babu, P. T. (Dr.) v. Jayabharatham Nursing Home (Pvt.) Ltd. I.L.R. 2014 (4) Kerala . . . 9
- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—*Section 5—Fixation of fair rent—If there is no material change in the factors affecting rent of the building between the date of filing petition for fixation of fair rent and the date of the final order, fair rent should be fixed by the court with effect from the date of the application.*
 Kadar Pillai K.S. v. M/s Goven Travels I.L.R. 2014 (4) Kerala . . . 826
- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—*Section 5—Fixation of fair rent—Rent Control Court cannot grant periodical revision affair rent—If the Landlord wishes to revise the fail-rent fixed by Court, he can approach the Court for revising the rent.*
 Kadar Pillai K. S. v. M/s Goven Travels I.L.R. 2014 (4) Kerala . . . 826

- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—Section 5—Fixation of fair rent—Section 5 (5) of the Act is restored and Rent Control Courts are directed to intimate the fair rent fixed to the local authority.
Kadar Pillai, K. S. v. M/s Govan Travels I.L.R. 2014 (4) Kerala .. 826
- Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—Section 11(3)—Bona fide need—Need of dependent of the landlord can be the need of the partnership firm of which the dependent is a partner.
Urmese J. Valooran v. Padma, V. K. I.L.R. 2014 (4) Kerala .. 767
- Building (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—Section 11(3) First Proviso—Landlord in possession of vacant residential building claiming eviction of non-residential building on the ground of bona fide need—Landlord need not plead or prove special reasons for non occupation of the residential building in her possession, for sustaining her claim for eviction of the non-residential building.
Urmese J. Valooran v. Padma V.K. I.L.R. 2014 (4) Kerala .. 767
- Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)**—Section 15—Section 15 will not apply where the landlord filed petition for eviction on a ground which was not available when the earlier petition for eviction was filed but which could have been anticipated by the landlord as a future need—Principles of *res judicata* or provisions contained in Rule 2 of Order II of the CPC would not apply to subsequent proceedings under the Rent Control Act—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order II, Rule 2.
Janakiamma v. Bhaskaran Nambiar I.L.R. 2014 (4) Kerala .. 917
- Building Tax Act, 1975 (Kerala Act 7 of 1975)**—Section 2 (e), Explanation 2— The cost of construction need not be shared equally between owners of different apartments or flats—The cost of construction need only be met jointly by various owners.
Tahsildar v. Soman Peter (Dr.) I.L.R. 2014 (4) Kerala .. 327
- Building Tax Act, 1975 (Kerala Act 7 of 1975)**—Section 5A—Luxury Tax—Luxury tax must be based on the plinth area of the building as obtained during the year for which the tax is levied—If there is enhancement or reduce of plinth area of the building after the initial assessment for building tax, the luxury tax payable will vary.
Namboorikandi Ahammed v. District Collector I.L.R. 2014 (4) Kerala .. 499
- Chit Funds Act, 1982 (Central Act 40 of 1982)**—Section—19(1)—Approval in terms of Section 19(1) is not required for a place of business which is used only to collect subscription from subscribers—‘Place of business’, explained.
PNYS Chit Funds (Kerala) Pvt. Ltd. v. Assistant Registrar of Chits I.L.R. 2014 (4) Kerala .. 645
- Civil Law**—Constructive *res judicata*—Judgment-debtors are not entitled to raise the plea of deemed tenancy under Section 7B of Land Reforms Act when they did not raise such plea in the suit or final decree proceedings—Executing Court cannot go behind the decree and adjudicate the plea of deemed tenancy—Land Reforms Act, 1963 (Kerala Act 1 of 1964)—Section 7B.
Narayanan Namb.ar, T. V. v. Kunkamma Amma, T. V. I.L.R. 2014 (4) Kerala .. 851
- Civil Law**—Temple Administration and Rituals—Normally and usually Tantric Right is conferred on a family or families—Usually, only when the Tantri express his incapacity

- to continue as Tantri or where the family becomes, extinct services of another Tantri is though, of—Sangam or Samithi concerned with the Management and Administration of the Temple is not empowered to change the Tantri.*
 Vasudevan Bhattathirippad v. Mallapally Thirumahda Mahadeva Temple I.L.R. 2014 (4) Kerala.. 387
- Coal Mines Pension Scheme, 1998—***Post retiral spouse is entitled to claim family pension under the scheme.*
 Assistant Commissioner, Coal Mines Pension Fund v. Dharmarajan I.L.R. 2014 (4) Kerala .. 236
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—***Order I, Rule 10—‘Necessary party’ means and includes no, only the person against whom relief is sought for; but also the person whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon the questions involved in the suit—No relief need be sought against the party.*
 M/s ETL Corporate Services (P) Ltd. v. Sarojini I.L.R. 2014 (4) Kerala .. 106
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—***Order V, Rule 15— Service of summons on adult member of the family on getting information that the defendant is working abroad and is not likely to be available in the address within a reasonable time—Such service is in accordance with Rule 15 of Order V.*
 Abbas v. Moideen Kunhi I.L.R. 2014 (4) Kerala . . 1
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—***Order XIII, Rule 3—Trial court has the power, at any stage of the suit, to reject any document which it considers irrelevant or otherwise inadmissible—The Trial Court must record its reasons for such rejection—To prove a will, whether registered or unregistered, at least one of the attesting witness should be called for the purpose of proving the execution and if no attesting witness can be found, the mode of proof as provided in Section 69 of the Evidence Act should be adopted—Evidence Act, 1872 (Central Act I of 1872)— Sections 63, 68 and 69.*
 Santhakumari v. Raghavan Unni I.L.R. 2014 (4) Kerala . . 950
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—***Order XXI, Rule 37— Arrest—Notice under Rule 37 can be issued only to a person who is liable to be arrested in execution of a decree—Women cannot be arrested in execution of a money decree and hence notice under Rule 37 cannot be issued to her.*
 Abdul Hameed V. M. v. Ramani I.L.R. 2014 (4) Kerala . . 64
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—***Order XXXII—Where a minor defendant, represented in suit through guardian, becomes major, he may choose to come on record and defend the case—If he does not bring the factum of majority to the attention of the court, he is bound by the Judgment or adjudication by the cowl.*
 Femi Joseph v. Branch Manager, Federal Bank I.L.R. 2014 (4) Kerala . . 59
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)—***Order XXXII, Rule 15— The reason for prescribing an adjudication under Order XXXII, Rule 15 is to find out whether the minor or unsound person is capable of protecting his interest—Only when such minor or unsound person is incapable of protecting his interest, any next friend or guardian can be appointed by the Court—When it is proved by evidence that such person is undergoing treatment for mental illness since long, a formal adjudication within the meaning of Order XXXII, Rule 15 C.P.C. is unnecessary—The non passing of a formal order under Order XXXII. Rule 15 C.P.C. is only a curable irregularity in cases where there is a full*

fledged adjudication regarding the competence of the unsound person to protect his interest.

Katavath Valappil Mohanan v. Tharammal Ranjith I.L.R. 2014 (4) Kerala . . . 650

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 35—*The object of Section 35 in awarding costs to a litigant is to secure to him the expenses incurred by him for the litigation, and not to enable him to make anything, in the way of gain or profit, or over and above the expenses incurred for maintaining or defending the action—An award of costs is in the discretion of the Court and an appeal lies against the imposition of costs only where the order as to costs involves a question of principle— When the Court exercise its discretion as to costs on facts, the Appellate Court would not interfere merely because it would have exercised the discretion differently.*

Abdurahiman, K. V. v. Cheekilode Premalatha I.L.R. 2014 (4) Kerala . . . 945

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 47 and Order XXI, Rule 90—*Strangers to the suit have no locus standi to file an application under Section 47 of the Code of Civil Procedure challenging the sale of the decree schedule property—The remedy of strangers, to challenge the sale, if their interest are affected by irregularities in the sale, is to prefer an application under Order XXI, Rule 90 C.P.C.*

Parasuraman, K. v. Srinivasa Raghavan, P. I.L.R. 2014 (4) Kerala . . . 706

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92—*The mere making of offerings to the God in order to please the deity does not transform a temple from private temple to a public temple—If the founder of the endowment did not make any stipulation for offering and contributions to be made by the members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.*

Narayanan Pandarathil, E. K. v. Vasudevan Pillai, P. K. I.L.R. 2014 (4) Kerala . . . 675

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92—*The uraallens/shebaitis are considered to be human ministrant of the deity—The uraima right cannot be alienated or transferred—Right of uraima or shebaitship is considered by Hindu law as inalienable, as the personal interest of uraallens/shebaitis cannot be detached from their duties.*

Narayanan Pandarathil, E. K. v. Vasudevan Pillai, P. K. I.L.R. 2014 (4) Kerala . . . 675

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92—*There must be a valid dedication for constituting a trust—In order to constitute a valid dedication, the dedication must be made by the owner of the property and the person dedicating his property should not reserve to himself any right in the soil or the property.*

Narayanan Pandarathil, E. K. v. Vasudevan Pillai, P. K. I.L.R. 2014 (4) Kerala . . . 675

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 125—*While ordering maintenance to be paid to the parents by a married daughter, the Court has to be satisfied that such married daughter has got sufficient means of her own, independent of the means or income of her husband.*

Chakkingal Achuthankutty Nair v. Chakkingal Seethakutty Amma I.L.R. 2014 (4) Kerala . . . 798

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 145 and 146—*The Executive Magistrate, after issuing notice under Section 145 (1) will have to conduct an enquiry and decide, if possible, who among the parties was in possession of the subject-*

matter at the relevant time—The order of declaration under Section 145 (6) is required only in cases where the Executive Magistrate has come to a decision under Section 145 (4) as to which party was in possession of the subject-matter at the relevant time—If the Executive Magistrate finds it difficult to decide who among the parties are in possession of the subject-matter, the Executive Magistrate is not required to make a declaration under Section 145 (6) and in such cases, the Executive Magistrate can resort to attaching the subject-matter under Section 146 Cr. P.C.

Shamed, N. A. v. Muhammed Ansari I.L.R. 2014 (4) Kerala . . . 427

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 146(1) and 397—Order passed by the Executive Magistrate under Section 146 Cr. P.C. is always subject to the decision of the competent civil court— An order under Section 146 does not decide the dispute between the parties and is therefore an interlocutory order and such orders are not amenable to the revisional jurisdiction under Section 397 of the Code of Criminal Procedure.

Shamed, N. A. v. Muhammed Ansari I.L.R. 2014 (4) Kerala . . . 427

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 154, 156, 200, 202 and 204—The High Court cannot issue a writ of mandamus to the Station House Officer to register a crime and investigate the case—If the police does not register a case on the basis of the complaint filed by the complainant, the complainant has got the remedy of filing a private complaint before the Magistrate and the Magistrate, after conducting enquiry and being satisfied of the existence of a prima facie case, can take cognizance and issue process to the accused.

Varghese, A. X. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 115

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 156 (3) and 202—The Magistrate, on receiving a private complaint in which the accused are residing beyond the territorial jurisdiction, is not bound to conduct an enquiry in terms of Section 202 Cr. P.C., in case he is opting to send the complaint for investigation under Section 156(3) Cr. P.C. to the concerned police station.

Ilangeswaran v. State of Kerala I.L.R. 2014 (4) Kerala . . . 839

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 173 (2) and 173 (8) — When a final report has been filed under Section 173 (2) Cr. P.C. by the investigating officer, the Court, on being satisfied that there is lapse or defects in the investigation, can on its own motion direct further investigation under Section 173(8) to be done by the investigating officer — The investigating officer can also by himself exercise the jurisdiction under Section 173 (8) and conduct further investigation on receipt of fresh facts or materials, after the filing of the final report under Section 173 (2) — it is desirable that the investigating officer should inform the said matter to the concerned Court and seek formal permission for conducting such further investigation.

Abdul Latheef v. State of Kerala I.L.R. 2014 (4) Kerala 44

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 173 (8)— The Public Prosecutor, who notices serious lapse committed by the investigating agency in not conducting the investigation properly, can invite the attention of the court through an application for satisfying the court in respect of the necessity to invoke the power of the court under Section 173(8).

Abdul Latheef v. State of Kerala I.L.R. 2014 (4) Kerala . . . 44

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 204 and 319 — *A person brought or arraigned as an accused under Section 204 or Section 319 Cr. P.C., without being given an opportunity of being heard against such a procedure, can approach the trial court itself for necessary orders and convince the trial court that the prosecution against him is not legally sustainable — If the trial court finds that there is nothing to implicate and prosecute the person brought in as an accused under Section 319 Cr. P.C., the trial court can drop the proceedings by passing appropriate orders.*
Gopalakrishnan Nair v. State of Kerala I.L.R. 2014 (4) Kerala . . . 438
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 252, 253, 262 and 263 (g) — *The Magistrate is bound to follow the procedure in summons cases for trying offences under summary trial cases as well — Failure to follow the procedure by the Magistrate will vitiate the conviction.*
Abdul Jaleel v. Station House Officer I.L.R. 2014 (4) Kerala . . . 135
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 345 and 346—*The maximum sentence that can be imposed by a court, which proceeds suo motu against an accused as provided under Section 345 Cr. P.C., for commission of the offence under Section 180 I.P.C., is fine not exceeding 200 rupees and in default of payment of fine simple imprisonment for a term which may extend to one month—Even under Section 345 Cr. P.C., the court will have to conduct a summary enquiry and hear the accused.*
Ashna Sofiya v. State of Kerala I.L.R. 2014 (4) Kerala . . . 246
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 345, 346 and 351—*The remedy of a person convicted by the court under Section 180 of the Indian Penal Code, by adopting the procedure prescribed by Section 345 of the Code of Criminal Procedure, is to file an appeal under Section 351 of the Cr. P.C. against such conviction—Revision against such conviction is not maintainable in view of the prohibition contained in Section 401 (5) Cr. P.C.—Penal Code, 1860 (Central Act 45 of 1860)—Section 180.*
Ashna Sofiya v. State of Kerala I.L.R. 2014 (4) Kerala . . . 246
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 372— *A complainant under Section 138 of the Negotiable Instruments Act is not a victim as contemplated under Section 372 Cr. P.C.—Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138.*
Shaji Jacob v. Shaji, P. V. I.L.R. 2014 (4) Kerala . . . 597
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 378, 397 and 401—*No revision will lie before the Sessions Court against an order of acquittal in a case instituted on a private complaint—The remedy of the complainant is to file an appeal before the High Court after obtaining leave of the High Court to prefer the appeal.*
Shaji Jacob v. Shaji, P. V. I.L.R. 2014 (4) Kerala . . . 597
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 394— *An appeal against conviction would finally abate on the death of the appellant, unless the near relatives of the appellant make an application to the Appellate Court for leave to continue the appeal as provided in the proviso to Section 394(2) Cr. P.C.—In case of the near relatives not moving the Appellate Court for leave to prosecute the appeal, the Appellate Court need not consider the appeal on merits on the death of the appellant—In such cases the appeal would abate bringing into force the judgment of the Trial Court.*
Raveendran @ Ravi v. State of Kerala I.L.R. 2014 (4) Kerala . . . 627

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 397 and 457—When claim for custody of property is made in a situation where no enquiry or trial is pending before the Court, the claim will have to be treated as one under Section 457 Cr. P.C.—Orders passed under Section 457 Cr. P.C. in such a situation can be questioned in revision under Section 397 Cr. P.C.—Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957)—Sections 4 (1A) and 21 (4).
Ramesh Kumar v. State of Kerala I.L.R. 2014 (4) Kerala .. 255
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 427, 428 and 482—The High Court should not normally invoke the power under Section 482 Cr.P.C. to give the benefit under Section 427 Cr.P.C. to the accused, long after he was convicted and sentenced by the trial court— However in appropriate cases, taking into account the possibility of the accused reforming himself, if such benefit is given, the High Court can show leniency and invoke the power under Section 482 to give the benefit under Section 427 Cr.P.C. to the accused.
Benson v. State of Kerala I.L.R. 2014 (4) Kerala .. 508
- Companies Act, 1956 (Central Act 1 of 1956)**—Sections 529 A and 530—As held in the decision of the Division Bench in Assistant Commissioner (Assessment) v. Official Liquidator, High Court of Kerala and another reported in I.L.R. 2014 (1) Kerala 609, just like Section 26 B of the Kerala General Sales Tax Act, Section 26A of the Kerala General Sales Tax Act must also give way to the provisions of Section 529 A of the Companies Act—General Sales Tax Act, 1963 (Kerala Act 15 of 1963)— Section 26 A.
M/s BRD Finance Limited v. District Collector I.L.R. 2014 (4) Kerala .. 441
- Constitution of India**—Article 226—Disciplinary proceedings—The statement of facts and allegations must be specifically furnished along with the memo of charges issued to the delinquent employee—Right to fair hearing requires that an employee or an officer should not be penalized by any decision affecting their rights without providing them prior notice of the accusation and an opportunity to present their own case.
Suseelan, L. v. Indian Bank I.L.R. 2014 (4) Kerala .. 271
- Constitution of India**—Article 226—Education Loan—A candidate who obtained selection to a recognized College in merit quota on the basis of admission test conducted by the institution, need not obtain 65% marks in the qualifying examination for being eligible to receive educational loan.
Manager, Andhra Bank v. Reshma Syam, S. I.L.R. 2014 (4) Kerala .. 905
- Constitution of India**—Article 226—Even if the person aggrieved does not make a representation before the Advisory Body within time or even if his representation is rejected on merits, that does not preclude the person aggrieved from challenging the order passed under Section 15 (1) before the High Court by filing a writ petition under Article 226—Anti-Social Activities (Prevention) Act. 2007 (Kerala Act 34 of 2007)—Section 15 (1).
Biju Adupukallungal v. Advisory Board (KAAPA) I.L.R. 2014 (4) Kerala .. 363
- Constitution of India**—Article 226—In case of any action taken in violation of the principles of natural justice, the existence of an alternative remedy will not prevent the High Court from exercising its jurisdiction under Article 226 of the Constitution of India.
Suseelan, L. v. Indian Bank I.L.R. 2014 (4) Kerala .. 271

- Constitution of India—Article 226—** *In the absence of any assertion as to how a particular provision offends any of the Articles of the Constitution, the same cannot be adverted to or held to be unconstitutional—A person who assails a provision to be ultra vires must plead the same in the proper perspective.*
 Kerala State Toddy Shop Contractors Association v. Prathapan, T. N., MLA (S.C)
 I.L.R. 2014 (4) Kerala . . . 447
- Constitution of India—Article 226—Jurisdictional fact—** *Existence of Jurisdictional fact is sine qua non to assumption of jurisdiction by Court of Tribunal.*
 M/s Harrisons Malayalam Ltd. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 668
- Constitution of India—Article 226—Non joinder of necessary party—** *Selection list cannot be challenged without junction of selected candidates, even if the list is challenged on the ground of constitutionality.*
 Bineesh, P. v. Kerala Public Service Commission I.L.R. 2014 (4) Kerala . . . 924
- Constitution of India—Article 226—** *Petitioner, an army personnel, making applications for discharge on compassionate grounds—Request not acceded to and the petitioner transferred to field area—Petitioner contracting a disease and recommended for discharge on medical grounds—Petitioner discharged, based on his earlier application, on compassionate grounds—Army rejecting the claim of the petitioner for disability pension—Action of the Army held to be invalid since the benefit to which the petitioner was entitled to in normal course of business cannot be denied only on the ground that the discharge of the petitioner was on compassionate grounds, although his disability.' has been acquired on account of stress and strain of military service—Pension Regulations for the Army, 1961 (Central)—Rule 178.*
 Union of India v. Madhusoodhanan, P. O. I.L.R. 2014 (4) Kerala . . . 525
- Constitution of India—Article 226—** *Selection and appointment of Melsanti in Sabarimala Temple—Terms of settlement arrived at in mediation before the Supreme Court indicate that adequate safeguards have been taken to eliminate all possibilities of bias in the selection process—In the absence of pleading and proof that the decision, leading to the selection of Melsanti is vitiated by bias, the Court will not interfere with the decision in exercise of its power of judicial review.*
 Gosala Vishnu Vasudevan v. Travancore Devaswom Board I.L.R. 2014 (4) Kerala . . . 785
- Constitution of India—Article 226—** *Service—Government Order stipulating that part-time language teachers who have put in more than 5 years service and have 8 periods of work shall henceforth be made full-time—A part time teacher having service as full time teacher should be eligible to reckon the full-time service also for the purpose of determining whether he or she has 5 years' service, as stipulated in the Government Order.*
 Bindu K. Unnithan v. State of Kerala I.L.R. 2014 (4) Kerala . . . 790
- Constitution of India—Article 226—** *Service—The involvement of a candidate in various criminal cases, despite the cases ending in acquittal, will show the unsatisfactory nature of his character and antecedents, rendering him unfit for public employment.*
 State of Kerala v. Hamil Raphael I.L.R. 2014 (4) Kerala . . . 331

- Constitution of India—Article 226—***The claim for 'Nokku Kooly' is not only an affront to the Constitution of India but would also amount to anti-social activity as defined in the Kerala Anti-Social Activities (Prevention) Act, 2007.*
Paulson Zacharia v. Commissioner of Police I.L.R. 2014 (4) Kerala . . . 625
- Constitution of India—Article 226—***The High Court would not normally exercise the discretion under Article 226 in cases where an efficacious alternative remedy is available—The exceptions being, violation of the principles of natural justice, proceedings taken under a law which is ultra vires and when the proceeding itself is an abuse of process of law.*
M/s Chakkiath Brothers v. Assistant Commissioner I.L.R. 2014 (4) Kerala . . . 130
- Constitution of India—Article 226—***Writ Petition is maintainable to enforce provisions of bipartite settlement.*
State Bank of Travancore v. Paul. C. M. I.L.R. 2014 (4) Kerala . . . 79
- Constitution of India—Article 226 (2) —***A person residing anywhere in the country, being aggrieved by an order of the Government, Central or State or authority or person, may have a right of action in law, but the Jurisdiction of the High Court under Article 226 can be invoked only when the cause of action arises within the territorial jurisdiction of the High Court, either wholly or partially—"Right of action" and "cause of action"—Distinction—The two terms are neither synonymous nor interchangeable—A right of action arises as soon as there is an invasion of right—A right of action is to enforce a cause of action.*
Anand Anoop v. Union of India I.L.R. 2014 (4) Kerala . . . 281
- Constitution of India—Article 226 (2)—Cause of action—Explained.**
Anand Anoop v. Union of India I.L.R. 2014 (4) Kerala . . . 281
- Constitution of India—Article 226(2)—***Service of impugned order will not give rise to a cause of action—It will give rise only to a right of action— Unless cause of action has arisen within its jurisdiction, the High Court cannot entertain Writ petition challenging the impugned order--'Cause of action ' and ' Right of action' explained.*
Registrar, Indian Maritime University v. Viswanathan, K.G. (Dr.) (F.B.) I.L.R. 2014 (4) Kerala . . . 736
- Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970)—Sections 2(c) and 2(e)—***A contractor within the meaning of Section 2(c) of the Act is a contractor in relation to an establishment which is defined under Section 2(e) of the Act—A contractor cannot be considered as a principal employer of the establishment.*
M/s Kerala State Ex-servicemen v. State of Kerala I.L.R. 2014 (4) Kerala . . . 503
- Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—***Recruitment of staff to the society—Circular No. 18/199 and 179/2011 of Registrar of Co-operative Societies—"Written test shall be conducted by an outside agency"—Outside agency includes a single individual.*
Hakkim, E. v. Joint Registrar of Co-operative Societies I.L.R. 2014 (4) Kerala . . . 413
- Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—Section 34—***Only the new committee or Administrator or Administrators or the Liquidator or the President or Secretary can apply to the Magistrate under Section 34 for securing the records and property of the society—Approval of Registrar of Co-operative Societies is a condition precedent for moving the Magistrate under Section 34.*
Abdul Khader v. District Collector I.L.R. 2014 (4) Kerala . . . 239
- Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—Section 69—***Dispute regarding procedure adopted for selection and appointment to the sub staff category in a co-operative society, would*

- not fall within the ambit of disputes to be resolved under Section 69 of the Co-operative Societies Act—Writ petition held to be maintainable—Constitution of India—Article 226.*
Akalakurram Village Service Co-op. Bank Ltd. v. Binu, N. (S.C.) I.L.R. 2014 (4) Kerala . . . 605
- Co-operative Societies Rules, 1969 (Kerala)—Rules 2(1), 16 and 176—***The Managing Committee of a Co-operative Society is not competent to enroll members in bulk, without considering their eligibility or capacity to become members of the society—A person would come within the definition of member only on being admitted to membership of the society in accordance with the procedure prescribed under Rule 16—Unless a person has been admitted to the membership of the society in accordance with the Act and the Rules, he cannot claim the benefit of the protection provided by sub rules 3 and 4 of Rule 16.*
Nedumon Service Co-operative Bank Ltd. v. Joint Registrar of Co-operative Societies I.L.R. 2014 (4) Kerala . . . 189
- Co-operative Societies Rules, 1969 (Kerala)—Rule 176—***Wherever a particular resolution is found to be against the provisions of the Kerala Co-operative Societies Act, Rules or Bye-laws or any direction or instruction issued by the Department, such resolution can be rescinded.*
Nedumon Service Co-operative Bank Ltd. v. Joint Registrar of Co-operative Societies I.L.R. 2014 (4) Kerala . . . 189
- Co-operative Societies Rules, 1969 (Kerala)—Rule 182(5)—***Circulars issued by the Government and Registrar of Co-operative Societies, stipulating the procedure for conducting selection to the posts of sub staff have statutory force.*
Akalakunnam Village Service Co-op. Bank Ltd v. Binu, N. (S.C.) I.L.R. 2014 (4) Kerala . . . 605
- Diplomatic and Consular Officers (Oath and Fees) Act, 1948 (Central Act 41 of 1948)—Section 3—***Section 3 of the Act enables a court to dispense with the proof of the genuineness of the seal and signature of a diplomatic or consular officer on a particular document—Section 3 does not dispense with the proof of a document according to law, if it is to be used as evidence in a court of law—If the document is otherwise relevant and proved in accordance with law, a copy of the said document duly authenticated in the manner prescribed by the Act, can be admitted in evidence.*
Abraham Jacob @ Avarachan v. Mubarak, N. I.L.R. 2014 (4) Kerala . . . 459
- Education Rules, 1959 (Kerala)—Chapter XIV A, Rule 43—***Leave substitute cannot claim priority over Rule 43 claimant, to the promotion post.*
Marcia Collin Noronha v. State of Kerala I.L.R. 2014 (4) Kerala . . . 216
- Education Rules, 1959 (Kerala)—Chapter XIVA, Rule 51 A—***First Proviso to Rule 51 A will not apply to those teachers who were relieved on account of termination of vacancy—Such teachers are entitled to the benefit of Rule 51 A even if they had service of less than one academic year—Teachers who were relieved prior to amendment of Rule 51 A in 2005 are also entitled to claim appointment in any post in the school, including higher or lower category.*
Jayasree, K. v. State of Kerala (F.B.) I.L.R. 2014 (4) Kerala . . . 610
- Education Rules, 1959 (Kerala)—Chapter XIV A, Rule 51 A—***Fur a teacher to claim preference as provided under Rule 51 A, as amended, he/she should be qualified at the time of relief—A Rule 51 A claim cannot be sustained on the strength of qualification acquired subsequent to relief from service—The words 'lower and higher' occurring in the rule should be understood in the context of the word 'same' and therefore the lower and higher post should be in the same discipline in which the teacher had rendered service as a qualified teacher.*
Kalavathy, C. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 99
- Electricity Act, 2003 (Central Act 36 of 2003)—Section 126—***If the offence was detected in the period between the date on which the Act came into force and the date on which notification was issued*

- by the State Government, exempting the State from provisions of the section, penalty can be levied only in accordance with Section 126.*
 Hotel Mariya v. Kerala State Electricity Board I.L.R. 2014 (4) Kerala . . . 495
- Evidence Act, 1872 (Central Act 1 of 1872)**—Section 35—*The birth certificate is issued in consonance with a register kept by the officer concerned as per the prescription of a statute—In the absence of any reason to find that the date of birth shown in the birth register is wrong, the birth certificate gets precedence over the entry in the school register.*
 Anagha Prasad v. Abu. M. C. I.L.R. 2014 (4) Kerala . . . 175
- Farmers Debt Relief Commission Act, 2006 (Kerala Act 1 of 2007)**—Sections 2 (i), (ii), (vii) and (iii)—*In order to fall within the sweep of 'farmer' as defined under Section 2 (xiii) of the Act, the person should be a holder of land not exceeding 4 Hectares and whose annual income does not exceed Rs.4 lakhs and whose principal means of livelihood is 'agriculture'—The Kerala Farmers Debt Relief Commission Act being a creature of the statute, the Commission is bound by the provisions of the Act—The Commission is not empowered to consider the application for waiver submitted by a person who does not fall within the sweep of farmer as defined under the Act.*
 Kunnamangahim Co-op. Housing Society Ltd. v. Vasanthakumari I.L.R. 2014 (4) Kerala . . . 418
- Finance Act, 2013 (Kerala Act 29 of 2013)**—Section 11—*Mangalya Nidhi Cess—The levy imposed on persons who conduct weddings and connected ceremonies in hotels having three star classification or above and auditoriums with a seating capacity of above 500, can only be treated as tax—There being no source available for such impost, under any of the fields of legislation enumerated in the Seventh Schedule to the Constitution of India, State Government held to be incompetent to enact the impugned legislation under Article 246 of the Constitution of India—Section 11 of Kerala Finance Act, 2013 and the Rules framed thereunder struck down—Constitution of India—Article 246 and Seventh Schedule, Entry 66 of List II.*
 Thara Jayakumar v. State of Kerala I.L.R. 2014 (4) Kerala . . . 160
- Government Cultural Institutions Employees Pension and Gratuity Rules, 2000 (Kerala)**—*An employee who retired after 21-10-2000 is entitled to gratuity on par with Government employees irrespective of his deemed date of retirement.*
 Abdulla, K. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 207
- Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951)**—Section 39—*Reduction of term of non-hereditary trustees from 5 years to 2 years by amending Section 39 cannot be said to be mala fide—Amendment should be seen as the manifestation of a policy decision of the Government to reduce the term of the office of the non-hereditary trustees—It is not for the Court to consider whether there is any need for such a decision—Court cannot be concerned with the wisdom of the policy—Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2012 and Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2014.*
 Hari Kara Krishnan, G. K. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 832
- Hindu Succession Act, 1956 (Central Act 30 of 1956)**—Sections 15(1) (a) and 16—*Father of the deceased is not a legal heir in the presence of daughter/son and husband of the deceased—In such a case, father's name should not be included in the legal heirship certificate.*
 Subramanian, N. R. v. District Collector I.L.R. 2014 (4) Kerala . . . 874
- Industrial Disputes Act, 1947 (Central Act 14 of 1947)**—Section 11 A—*The Labour Court is clothed with sufficient power to satisfy itself whether an order of discharge or dismissal of a workman was justified—The Labour Court has the power for reappraisal of the entire evidence—The High Court under Article 226 does not have similar power of reappraisal of the entire evidence—Constitution of India—Article 226.*
 Kerala Chemicals and Proteins Ltd. v. Labour Court, Ernakulam I.L.R. 2014 (4) Kerala . . . 585

- Industrial Disputes Act, 1947 (Central Act 14 of 1947)**—*There is no statutory mandate for the Labour Court to decide, as a preliminary issue, the jural relationship between a workman and the establishment—The attempt of the Labour Court should be to shorten the litigation life span rather than permit multi-tier agitation of issues, piecemeal.*
President, Kunnampetta Ksheera Vyavasaya Sahakarana Sangham v. Madhavan Nair, P. I.L.R. 2014 (4) Kerala . . . 456
- Kerala State Electricity Board Terms and Conditions of Supply, 2005**—*Regulation 36 (12)—The provision does not create any charge on the property containing the premises wherein the electric connection was provided—Property which contained a dismantled electric connection cannot be proceeded against for recovery of arrears of electricity charges due from the consumer who had availed the connection to the premises in that property.*
Mohammed Rafi v. District Collector I.L.R. 2014 (4) Kerala . . . 482
- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—*Section 4—There is no prohibition under the Land Acquisition Act from acquiring a piece of land, which had earlier undergone land acquisition proceedings and is in possession of a public undertaking of the Central Government.*
M/s NTPC Ltd. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 811
- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—*Sections 12(2) and 18—Even if the copy of the award is not annexed to the notice under Section 12 (2), the claimant has to necessarily take some steps to get the copy of the award from the Collector, keeping in mind the fact that his application under Section 18 had to be preferred within 6 weeks from the date of receipt of notice under Section 12 (2).*
Jose Santy v. Land Acquisition Officer & Tahsildar I.L.R. 2014 (4) Kerala . . . 876
- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—*Sections 12 (2) and 18—The period of 6 weeks contemplated in Section 18 (2) (b) should be reckoned from the date of receipt of notice from the Collector under Section 12 (2)—The application under Section 18 can be preferred even without receiving the compensation amount and the protest that is contemplated is essentially against award of the Collector, to the extent it determines the compensation at a figure which is less than what is expected by the person whose land is acquired.*
Jose Santy v. Land Acquisition Officer & Tahsildar I.L.R. 2014 (4) Kerala . . . 876
- Land Conservancy Act, 1957 (Kerala Act 8 of 1958)**—*In Land Conservancy Act, so as to find out unauthorised occupation, three kinds of jurisdictional facts may arise—1. An unauthorised occupation or encroachment in Government land, 2. Possession of Government land and 3. Dispute as to the title or kind of interest in the property—Proceedings under the Act cannot be initiated against person in legal possession, without determining legal possession.*
M/s Harisons Malayalam Ltd. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 668
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Sections 2(23A), 257 and 2(8)—The holder of a Karaima is not entitled to a certificate of purchase under Section 72K of the Act—The Karaima holder would be entitled to purchase the Karaima under Section 53 of the Act—A cultivating tenant is in relation to a land entitled to be possessed and cultivated whereas the holder of a Karaima is in relation to a land used principally for the purpose of erecting a homestead—Land Reforms Act, 1963 (Kerala Act I of 1964)- Sections 53 and 72K.*
Yamuna, M. v. Hansly, A. V. I.L.R. 2014 (4) Kerala . . . 956
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 81 (1)(f)—The exemption for cashew estate was reintroduced by inserting Section 81 (1)(f) to the Act by Act 6 of 2012 with effect from 19-6-2012—There is a drastic change to the explanation to Section 81 (1)(f) attributing meaning to the term 'cashew estate'—Density of the growth of cashew trees is a relevant factor for the purpose of qualifying for exemption under Section 81 (1)(f) of the Act.*
Kunhipathumma, T. C. v. Tellicherry Taluk Land Board I.L.R. 2014 (4) Kerala . . . 251

- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—Section 102—Leave of the appellate authority is not required to maintain an appeal by a person who is not a party to the proceedings before the Land Tribunal —The statutory provision is elastic to contain an appeal filed by any person aggrieved, for which no leave of the appellate authority is required.
Thayyil Muhammed v. Koorimannil Pattiyil Showkath Ali I.L.R. 2014 (4) Kerala . . . 803
- Land Reforms (Tenancy) Rules, 1970 (Kerala)**—Rule 136 A—The power under Rule 136 A is only to correct clerical or arithmetical mistakes in the order of the Land Tribunal, the Taluk Land Board or the Land Board, or errors arising therein from any accidental slip or omission—The said power cannot be invoked to settle the claim of tenancy or to upset the liability to surrender excess lands which have been concluded in the earlier proceedings.
State of Kerala v. Thomas Kurian I.L.R. 2014 (4) Kerala . . . 593
- Limitation Act, 1963 (Central Act 36 of 1963)**— Article 112—The Article will apply only to suits filed by the State or Central Government and not by Government Corporations or Welfare Fund Boards—Statutory body cannot get the benefit of Article 112.
Perumbavoor Municipality v. Assistant Engineer (F.B.) I.L.R. 2014 (4) Kerala . . . 721
- Limitation Act, 1963 (Central Act 36 of 1963)**—Section 3—It is for the court to determine whether the suit is barred by limitation or not, irrespective of the contention raised by defendant.
Antony, C. K. v. Mathai M. Paikeday I.L.R. 2014 (4) Kerala . . . 297
- Limitation Act, 1963 (Central Act 36 of 1963)**—Section 5—A very liberal approach has to be adopted in the matter of condonation of delay when a person, not party to the proceedings, files an appeal stating that his rights are prejudicially affected by the impugned order—Land Reforms Act, 1963 (Kerala Act 1 of 1964)—Section 102.
Thayyil Muhammed v. Koorimannil Pattiyil Showkath Ali I.L.R. 2014 (4) Kerala . . . 803
- Limitation Act, 1963 (Central Act 36 of 1963)**—Section 25 (3)—Debtor can enter into an agreement in writing to pay the whole or part of a time barred debt and a suit will lie to enforce that contract—Section 25 (3) does not revive a dead right but it merely resuscitates the remedy to enforce the right, which already exists.
Antony. C. K. v. Mathai M. Paikeday I.L.R. 2014 (4) Kerala . . . 297
- Mahatma Gandhi University Act, 1985 (Kerala Act 12 of 1985)**—Section 7—A Chancellor, who seeks to nullify an illegal appointment, does not exercise the power under Section 7 of the Act but merely acts on the settled legal premise that the investment by a statute, of a power to appoint, carries with it a power to determine such employment.
George. A. V. (Dr.) v. Chancellor I.L.R. 2014 (4) Kerala . . . 144
- Mahatma Gandhi University Act, 1985 (Kerala Act 12 of 1985)**—Section 56(7)—All appointments to the post of Lecturer in aided college need not be by way of direct recruitment—Government can issue directions to aided colleges in the matter of appointment of teachers.
Cochin College v. Ajith Kumar, K. I.L.R. 2014 (4) Kerala . . . 532
- Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957)**—Section 21 (4)—Where the property is seized by the police under Section 21 (4), any order regarding the property, including confiscation orders will have to be passed by the Court having jurisdiction—Under no circumstances can the District Collector pass orders regarding custody or confiscation of property seized under Section 21 (4) of the Act.
Ramesh Kumar v. State of Kerala I.L.R. 2014 (4) Kerala . . . 255
- Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957)**—Sections 21 (4) and 22—When there is no prosecution initiated under the provisions of Sections 21 (4) and 22 of the Act, the High Court can pass orders regarding the custody of the property, including

- releasing the property on strict conditions, subject to final orders to be passed by the competent court, in case prosecution is brought under the Act.*
Ramesh Kumar v. State of Kerala I.L.R. 2014 (4) Kerala . . . 255
- Mohammedan Law**—*Father can be given visitation rights in respect of his minor son who has not reached seven years of age—Personal law should be interpreted so as to protect welfare of the minor—Guardian and Wards Act, 1890 (Central Act 8 of 1890)—Section 17.*
Bushara v. Shibinu I.L.R. 2014 (4) Kerala . . . 639
- Motor Transport Workers Welfare Fund Act, 1985 (Kerala Act 21 of 1985)**—*Section 8 A—In cases where the vehicle was transferred prior to 7-6-2005, the liability to discharge welfare fund dues would be that of the previous owner of the vehicle—In such a case, authorities cannot insist that the welfare fund dues should be discharged before accepting tax from subsequent owner—Where vehicle is transferred after 7-6-2005, welfare fund dues would be a charge on the vehicle and the transferee would be liable to discharge the dues—The subsequent transferee can proceed against the previous owner for recovering the amount.*
Ummar v. Joint Regional Transport Officer I.L.R. 2014 (4) Kerala .. 711
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—*Section 52—The registering authority can refuse to record alteration in the certificate of registration, based on the report of the Vehicle Inspector, finding that the alteration would drastically affect the safety of the vehicle—Motor Vehicle Rules, 1989 (Kerala)—Rules 96, 103 and Motor Vehicle Rules, 1989 (Central)—Rule 126.*
Bava V. v. State of Kerala I.L.R. 2014 (4) Kerala .. 452
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—*Section 147, 1st Proviso—Compensation payable under the Workmen's Compensation Act to an employee engaged in driving the vehicle—Insurer is liable to pay compensation to an employee who suffers an accident while engaged in driving vehicle provided by employer, irrespective of whether he is employed as a driver or not, provided the accident arose out of and in the course of his employment.*
United India Insurance Co. Ltd. v. Surendran, P. R. (F.B.) I.L.R. 2014 (4) Kerala . . . 909
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—*Section 166—Father of deceased need not produce legal heirship certificate for claiming compensation for the death of his son—Any legal representative including a legal heir and not confined to a subsisting status governed by the laws of succession, would be entitled to claim compensation provided he sustained an injury due to the death of the deceased.*
Sreerangan v. New India Assurance Company Ltd. I.L.R. 2014 (4) Kerala . . . 659
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—*Section 166—Medical Board—Assessment of disability, which is an onerous responsibility, cannot be taken lightly by the medical boards constituted by the Government and while assessing the disability, balance should be struck between the interest of claimant and the insurer.*
Neena Devadas v. Sajeendran, K.G. I.L.R. 2014 (4) Kerala . . . 870
- Motor Vehicles Act, 1988 (Central Act 59 of 1988)**—*Section 166—Owner of the vehicle who entrusted his vehicle to an unlicensed driver is negligent and is liable to pay compensation for accident caused by such driver—Insurer need not adduce any further evidence to prove that registered owner had not exercised reasonable care in the matter—Dictum in Swaran Singh 's case will not apply to such a case.*
National Insurance Company Ltd. v. Abdul Razaak I.L.R. 2014 (4) Kerala. . . 665
- Nambudiri Act, 1958 (Kerala Act 27 of 1958)**—*Sections 2 (b), 3 and 15—Merely because the sharer did not enforce the separation of shares during the lifetime of the father, the same will not destroy whatever right the sharer has obtained by partition of the illom properties.*
Sreedevi Antherjanam v. Bhavadasan Namboodiri I.L.R. 2014 (4) Kerala . . . 19

- Nambudiri Act, 1958 (Kerala Act 27 of 1958)**—Sections 2 (b), 3 and 15—When the entire properties of an illom have been partitioned and members have taken their shares separately, by mere expansion of the family later, the properties would not become joint family property in its entirety again— The division being on per capita basis, the parties would have taken the property as tenants in common and not as joint tenants—Joint Hindu Family System (Abolition) Act, 1975 (Kerala Act 30 of 1976).
Sreedevi Antherjanam v. Bhavadasan Namboodiri I.L.R. 2014 (4) Kerala . . 19
- Nambudiri Act, 1958 (Kerala Act 27 of 1958)**—Nambudiris are governed by Hindu Mithakshara Law, except to the extent modified by custom or by statute—Madras Nambudiri Act, 1932 and Kerala Nambudiri Act, 1958 are statutes which provide for modification as regards right to partition—Madras Nambudiri Act, 1932.
Sreedevi Antherjanam v. Bhavadasan Namboodiri I.L.R. 2014 (4) Kerala . . 19
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—Section 4—Even if the promissory note is found to be materially altered, it can be used for collateral purpose of proving the original consideration.
Antony, C. K. v. Mathai M. Paikeday I.L.R. 2014 (4) Kerala . . 297
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—Sections 26 and 138—A postdated cheque drawn by a minor, payable after the minor attaining majority, will not make the minor criminally liable for the statutory offence under Section 138 of the Negotiable Instruments Act— Contract Act, 1872 (Central Act 9 of 1872)—Sections 11 and 68— Majority Act, 1875 (Central Act 9 of 1875)—Section 3.
Anagha Prasad v. Abu. M. C. I.L.R. 2014 (4) Kerala ..175
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)**—Sections 26 and 138—The dishonour of a cheque drawn by a person during minority, will not invite an offence under Section 138 of the Negotiable Instruments Act—Contract Act, 1872 (Central Act 9 of 1872)—Sections 11 and 68—Majority Act, 1875 (Central Act 9 of 1875)—Section 3.
Anagha Prasad v. Abu, M. C. I.L.R. 2014 (4) Kerala . . 175
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)**—Sections 19 and 111(2)— The Returning Officer is empowered to examine the nomination papers and reject any nomination if the candidate is found to be disqualified— The necessity of referring the question to the State Election Commission arises only if the Returning Officer cannot, by himself, come to a safe conclusion.
Kalathumpadikkal Musthafa v. Basheer, P. M. I.L.R. 2014 (4) Kerala . . 112
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)**—Section 207—Exemption from payment of Property Tax and Cess—Once the nature of the use of building, in respect of which exemption is sought for, falls under any of the categories enumerated in clauses (a) to (j) of Section 207 (1) read with Explanation, the Panchayat has to exempt the said building from property tax levied under Section 203 and Service Cess levied under Section 200 (2).
Fr. Jose Thenpillil v. Karukutty Grama Panchayat I.L.R. 2014 (4) Kerala . . 68
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)**—Section 276—The appellate committee has to hear the appellant in person, if he so desires and pass a reasoned order in the appeal—Hearing conducted by Secretary of the Panchayat cannot be equated to hearing by statutory appellate authority, which has a duty to hear the appellant.
Fr. Jose Thenpillil v. Karukutty Grama Panchayat I.L.R. 2014 (4) Kerala . . 68
- Partnership Act, 1932 (Central Act 9 of 1932)**—Section 44(g)—Loss of mutual trust and confidence is a ground for dissolution of a firm coming within the scope of Section 44(g) of the Act--While exercising equitable jurisdiction of the Court under Section 44(g), the Court has to consider

- whether the firm can be allowed to subsist in the interest of the partners who do not want the firm to be dissolved, without jeopardizing the right of the partners who want the firm to be dissolved.*
Palakkal Suhara v. Palampadiyan Muhammed I.L.R. 2014 (4) Kerala . . . 937
- Passports Act, 1967 (Central Act 15 of 1967)**—*Correction of date of birth in Passport—Passport issuing authority should correct the date of birth, even if the difference between the date of birth as recorded in the passport and the application is more than two years—The power need be exercised only if the authority is convinced that the claim is genuine.*
Sunil Kumar, M. S. v. Union of India I.L.R. 2014 (4) Kerala . . . 716
- Payment of Gratuity Act, 1972 (Central Act 39 of 1972)**—*Section 4 (6)—Where the statutory regulation permits the employer to withhold the gratuity till completion of disciplinary proceedings, authorities under the Payment of Gratuity Act cannot direct the employer to disburse the gratuity due to the employee—It is only a postponement of the date of superannuation and not a case where the statutory regulations override the provisions of the statute.*
Chairman and Managing Director, Union Bank of India v. Ram Mohan, M. I.L.R. 2014 (4) Kerala . . . 580
- Penal Code, 1860 (Central Act 45 of 1860)**—*Section 300, Exception 4— The benefit of Exception 4 to Section 300 I.P.C. can be claimed only when it is shown that there was no previous deliberation or determination to commit the act which caused the death of the deceased and that the fight between the offender and the victim was sudden and the act was caused in the heat of passion and the offender had not taken unfair advantage or acted in a cruel or unusual manner.*
Paulson v. State of Kerala I.L.R. 2014 (4) Kerala . . . 289
- Penal Code, 1860 (Central Act 45 of 1860)**—*Sections 405 and 406—The offence under Sections 405 and 406 is attracted only when the property which is entrusted is dishonestly misappropriated.*
Vijay Menon, K. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 262
- Penal Code, 1860 (Central Act 45 of 1860)**—*Section 498 A—It is only the court within whose local jurisdiction the offence was committed that has the territorial jurisdiction to take cognizance of an offence—The courts in Kerala cannot take cognizance of a matrimonial offence alleged to have been committed outside the state—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 177 and 178.*
Vijay Menon, K. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 262
- Practice**—*Lacuna in affidavit—Tribunal should have directed petitioner to cure the lacuna in the affidavit in support of the petition instead of dismissing the petition.*
Sreerangan v. New India Assurance Company Ltd. I.L.R. 2014(4) Kerala . . . 659
- Principles of "Eminent Domain"**—*Explained—The power of Eminent Domain exists in every sovereign State.*
M/s NTPC Ltd. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 811
- Public Service Commission Rules of Procedure, 1976 (Kerala)**—*Rules 3 and 11—Public Service Commission is empowered to fix the benchmark for inclusion in the ranked list and the basis of the ranking—Prescribing the benchmark for inclusion in the ranked list or the manner of conducting practical test will not amount to alteration of the criteria for selection after selection process has commenced.*
Bineesh, P. v. Kerala Public Service Commission I.L.R. 2014 (4) Kerala . . . 924
- Rationing Order, 1966 (Kerala)**—*Clause 45(8)—It is not mandatory for the District Collector or other authorized officer to give notice or to provide an opportunity to the Authorised Retail Distributor, as contemplated in first part of clause 45(8), before ordering temporary suspension of the Authorized Retail Distributor, pending enquiry—Essential Commodities Act, 1955 (Central Act 10 of 1955)—Section 3.*
State of Kerala v. Beevi Kannu, A. (F.B.) I.L.R. 2014 (4) Kerala . . . 885

- Revenue Recovery Act, 1968 (Kerala Act 15 of 1968)—Section 71**—*By a mere declaration by the Government, under Section 71, the amount declared to be recoverable under the Revenue Recovery Act will not get the character of 'Public Revenue Due on Land'—The declaration only enables the amount declared to be recovered as if it is arrears of public revenue due on land—Provisions of Revenue Recovery Act cannot be invoked to recover time barred debts.*
Perumbavoor Municipality v. Assistant Engineer (F.B.) I.L.R. 2014 (4) Kerala .. 721
- Service**—*Public Service Commission cannot accept application of any candidate who does not possess the qualification mentioned in the notification— If any other qualification is acceptable as equivalent to the prescribed qualification, that must be specifically stated in the notification.*
Shebin, A. S. v. Kerala Public Service Commission I.L.R. 2014 (4) Kerala . . 341
- Service**—*Recruitment to the post of Peon—Notification stipulating that candidates should have passed Xth standard but should not have passed XIIth standard—Candidate with ITI/ITC cannot be disqualified on the ground that they are overqualified, as ITI/ITC is not equivalent to Class XII—The notification does not prohibit the candidate from having any other qualification.*
Neethu, U. R. v. State Bank of Travancore I.L.R. 2014 (4) Kerala . . 379
- Service**—*Recruitment by Public Service Commission—Once the Government has identified a post as one suitable for appointing physically handicapped persons, the Public Service Commission cannot exclude such persons on the ground that he/she suffers from consequences of disability.*
Secretary, Kerala Public Service Commission v. Seema, I. I.L.R. 2014 (4) Kerala . . 773
- Service**—*Regularization of provisional employee—Provisional employee can he appointed in emergent situation where it is not possible to conduct recruitment—Such provisional employee should not be replaced by another provisional employee—The provisional employee should be sponsored by employment exchange, as far as possible.*
Kanakaveni, K. v. Kasargod Municipality I.L.R. 2014 (4) Kerala . . 487
- Service**—*'Sit back theory'—Settled position of seniority should not be permitted to be challenged after a long lapse of time—Each person is entitled to sit back and treat his appointment and promotion effected long ago as settled.*
Jayasree, V. V. v. State of Kerala I.L.R. 2014 (4) Kerala . . 351
- Service**—*Transfer—If the power of transfer of employee is abused or the transfer is not made in public interest, but for collateral purposes and with oblique motive, the order would stand vitiated warranting interference at the hands of the Court or the Tribunal.*
Gopinathan, M. v. State of Kerala I.L.R. 2014 (4) Kerala ... 573
- Specific Relief Act, 1963 (Central Act 47 of 1963)—Section 6**—*Any kind of dispossession without consent, otherwise than in due course of law, would come under dispossession envisaged under Section 6—Creation of documents illegally and clandestinely without the knowledge of the person to whom the matter should have been informed, with a view to dispossess that person who is in legal possession of the property amount to unlawful dispossession within the ambit of 'dispossession' under Section 6.*
Krishnakumar v. Gopalakrishnan. V. I.L.R. 2014 (4) Kerala . . 858
- State and Subordinate Service Rules, 1958 (Kerala)—Part II, Rule 10(b)**—*Non disclosure of particulars of criminal case, irrespective of whether the case has subsequently entered in acquittal or not, amounts to suppression of material facts, entitling the State to initiate action for termination of service of the employee.*
State of Kerala v. Hamil Raphael I.L.R. 2014 (4) Kerala . . 331

- State Bank of Travancore (Employees') Pension Regulations, 1995**—*Regulation 29 does not apply to retirement under Voluntary Retirement Scheme and employees with service below 20 years are entitled to receive pension— State Bank of Travancore Voluntary Retirement Scheme, 2001.*
State Bank of Travancore v. Paul, C. M. I.L.R. 2014 (4) Kerala . . . 79
- Service**—*Regularization of provisional employee—Provisional employee can be appointed in emergent situation where it is not possible to conduct recruitment—Such provisional employee should not be replaced by another provisional employee—The provisional employee should be sponsored by employment exchange, as far as possible.*
Kanakaveni, K. v. Kasargod Municipality I.L.R. 2014 (4) Kerala . . . 487
- Service**—*'Sit back theory'—Settled position of seniority should not be permitted to be challenged after a long lapse of time—Each person is entitled to sit back and treat his appointment and promotion effected long ago as settled.*
Jayasree, V. V. v. State of Kerala I.L.R. 2014 (4) Kerala . . . 351
- Service**—*Transfer—If the power of transfer of employee is abused or the transfer is not made in public interest, but for collateral purposes and with oblique motive, the order would stand vitiated warranting interference at the hands of the Court or the Tribunal.*
Gopinathan, M. v. State of Kerala I.L.R. 2014 (4) Kerala ... 573
- Specific Relief Act, 1963 (Central Act 47 of 1963)**—*Section 6—Any kind of dispossession without consent, otherwise than in due course of law, would come under dispossession envisaged under Section 6—Creation of documents illegally and clandestinely without the knowledge of the person to whom the matter should have been informed, with a view to dispossess that person who is in legal possession of the property amount to unlawful dispossession within the ambit of 'dispossession' under Section 6.*
Krishnakumar v. Gopalakrishnan. V. I.L.R. 2014 (4) Kerala . . . 858
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- State Bank of Travancore (Employees') Pension Regulations, 1995**—*Regulation 29 does not apply to retirement under Voluntary Retirement Scheme and employees with service below 20 years are entitled to receive pension— State Bank of Travancore Voluntary Retirement Scheme, 2001.*
State Bank of Travancore v. Paul, C. M. I.L.R. 2014 (4) Kerala . . . 79
- Succession Act, 1925 (Central Act 39 of 1925)**—*Section 63—Will—Proof of— Principles enumerated.*
Mariyadas v. Benjamin I.L.R. 2014 (4) Kerala . . . 471
- Travancore-Cochin Hindu Religious Institutions Act, 1950 (Kerala Act 15 of 1950)**—*Section 68— Refusal of Devaswom Board to permit a Kathakali performance depicting the life of Sree Narayana Guru, based on the opinion of the Thantri, held to be justified—Performance of religious practices according to the tenets, custom and usages prevalent in a temple are matters which cannot be intervened and regulated by law.*
Unnikrishnan Thashnath v. Cochin Devaswom Board I.L.R. 2014 (4) Kerala . . . 635
- Travancore-Cochin Hindu Religious Institutions Act, 1950 (T. C. Act 15 of 1950)**—*Ombudsman—The purpose of appointing the Ombudsman by the High Court was to enable the High Court to discharge its duties under the Act and as parens patriae over the affairs of the temples and its properties—The mechanism of the Ombudsman was intended to protect public interest and not for resolving the personal grievances of the employees of the Board and Temples—The complaints directed to be investigated by the Ombudsman are complaints filed with regard to*

- misappropriation, maladministration, corruption etc. in the functioning of the Board or the Temple or the institutions under the management and administration of the Boards.*
Kamalam, V. v. Secretary. Cochin Devaswom Board I.L.R. 2014 (4) Kerala . . . 794
- Value Added Tax Act, 2003 (Kerala Act 30 of 2004)—Section 8(b)—The computation of Tax under Section 8 (b) is with reference to the crushers employed by the dealer in the course of business and not with reference to the crushers in a unit—The compounding provisions have to be applied in respect of a dealer and not in respect of a unit run by the dealer.**
M/s K. K. Builders v. Commercial Tax Officer I (Works Contract) I.L.R. 2014 (4) Kerala . . . 519
- Value Added Tax Act, 2003 (Kerala Act 30 of 2004)—Section 67—No penalty proceedings can be initiated against an assessee on the basis of a mere dispute in classification—A dispute in classification cannot lead to a presumption of contumacious conduct on the part of the assessee or a finding regarding attempt to evade tax.**
M/s Chakkiath Brothers v. Assistant Commissioner I.L.R. 2014 (4) Kerala . . . 130
- Words and Phrases—'Collateral challenge'—Definition.**
Cochin College v. Ajith Kumar, K. I.L.R. 2014 (4) Kerala . . . 532
- Working Journalist and other Newspaper Employees' (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Central Act 45 of 1955)—Sections 12 and 13 A—The liability of a newspaper establishment to pay the interim rate of wages notified under Section 13A (1) of the Act will not be extinguished merely on account of issuance of the final notification under Section 12(1) of the Act.**
General Secretary, New Indian Express Employees' Association, Kerala v. New Indian Express I.L.R. 2014 (4) Kerala . . . 219
