



INDIAN LAW REPORTS

(Kerala Series)

INDEX TO I.L.R. 2013 (1) KERALA

NOMINAL INDEX

Abdul Khader	v. Abdullakutty	..	708
Abdul Rahiman, P. T.	v. State of Kerala	..	183
Abdul Rasheed	v. State of Kerala	..	473
Abdul Saleem	v. Fousiya	..	260
Abidha Beevi	v. State of Kerala	..	407
Advocate P. J. Manuel	v. State of Kerala	..	793
Ahammed Sherief	v. Kerala Value Added Tax Appellate Tribunal ..		457
Ammad, V	v. State of Kerala	..	421
Aniyan, T. V.	v. Raveendran, T. K.	..	17
Anthoyokkya Viswasa Samrakshana Samithi	v. Paulose, K.V.	..	982
Ashokan (Dr.)	v. Balachandran Keezhoth (Dr.)	..	681
Baby Varkey	v. State of Kerala	..	603
Beena Kannan	v. Abdullakutty	..	935
Biju, K. S.	v. Kerala Public Service Commission	..	289
Chacko, P. V.	v. State of Kerala	..	777
Chandran, A. P.	v. Velayudhan, E.	..	1053
Commissioner, Malabar Devaswom Board	v. Valliyodan Krishnan Nair	..	621
Devender Singh Kripal Singh @ Bunty Chor	v. State of Kerala	..	1055
Dijil	v. Sub Inspector of Police, Kunnamkulam	..	1031
Francis, M. D.	v. Aluva Municipality	..	213
Ganesh Pillai	v. Sudevan	..	206
George	v. Thomas, E. T.	..	559
Gopakumar, A. V.	v. State of Kerala	..	48
Grasim Industries Ltd.	v. Industrial Tribunal, Kozhikode	..	894
Hussain Punathil	v. Fathima	..	975
Indira, C. M.	v. Secretary, Kunhimangalam Grama Panchayat..		76
ITI Limited. Bangalore	v. Tahsildar	..	300
Jacob John	v. Kunjamma	..	788
Jageer, P. P.	v. Manager, S.N.M. College	..	1016
Jigesh, P.	v. State of Kerala	..	867
Jony Thomas Manjooran	v. K.S.E.B.	..	968
Joseph	v. Kerala State Electricity Board	..	26
Karam Veettil Parukutty Amma	v. Muhammedkutty	..	363
Kerala Bus Transport Association	v. Transport Commissioner	..	570
Kerala Public Service Commission	v. Shaiju I.L.	..	13
Kombi	v. National Highway Authority of India	..	266
Koshy Daniel	v. Rajan P.S.	..	577
Krishnan Mahadevan @ Mahadevan	v. Moniamma K.R.	..	1065

Kunhi Mohammed, V.	v. State of Kerala	..	499
Lakshmy Surendran	v. Surendran	..	241
Malabar Sand and Stones (Pvt.) Ltd.	v. Catholic Syrian Bank Ltd.	..	624
Malayi Kumudam	v. Venugopal M.V.	..	861
Manager, M/s Nadan Square	v. K.S.E.B.	..	448
Mary Varghese	v. Gijo George Varghese	..	597
Member Secretary (HRACC)	v. M/s Emerald Regency	..	340
Mohammed Abdul Kareem Faisal	v. Balakrishna Menon	..	233
Mohanan, C. (Dr.)	v. Deputy Commissioner of Income Tax	..	704
M/s Integrated Finance Co. Ltd.	v. Thomas P.G.	..	167
M/s Kairali Ayurvedic Health Resort Pvt. Ltd.	v. Commercial Tax Officer (Luxury Tax)	..	272
M/s Siemens Limited	v. Commercial Tax Inspector	..	399
M/s SMA Restaurant & Services Pvt. Ltd.	v. State of Kerala	..	428
Muhamad Shafi	v. State of Kerala	..	360
Mukundan	v. State of Kerala	..	495
Muralidharan Nair, V	v. Saju M. Antony	..	94
Muthuswamy	v. Noorudheen	..	417
Nagaraj, P. (Advocate)	v. Bar Council of Kerala	..	952
Narayanan	v. State of Kerala	..	377
Natarajan	v. Village Officer	..	1005
Navabharat Vignan Trust	v. Nasihudeen	..	102
Omana, E. A.	v. State of Kerala	..	526
Oriental Insurance Co. Ltd.	v. Nandan P.P.	..	246
Padikkal Kozhisseri Sumangala	v. Padikkal Kozhisseri Syamala	..	555
Parameswaran	v. Lekshmanan	..	888
Park Residency	v. State of Kerala	..	945
Prasanth, K.C.	v. Food Inspector	..	218
Raj an Menon	v. Bindu U.	..	931
Rajaram, K. R.	v. Shibu C.S.	..	1047
Raju	v. State of Kerala	..	1022
Republic of Italy	v. Union of India (S.C.)	..	719
Reshma, C. P.	v. Jayan P.K.	..	251
Roopakala Prasad	v. U.G.C.	..	118
Sakthi Ceramics	v. Supreme Ceramics	..	505
Sareena, O. P.	v. State of Kerala	..	537
Sasi Tharoor	v. State of Kerala	..	711
Secretary, K.P.S.C.	v. Sheeja P.R. (S.C.)	..	549
Securities & Exchange Board of India	v. Kunnankulam Paper Mills Ltd.	..	149
Seetha Ramachandran @ Seetha Varma	v. K.B. Radhakrishnan	..	798
Seline	v. Mary Varghese	..	372
Seline Fernandez	v. Bernard Francis	..	56
Shanimul Fatima	v. State of Kerala	..	464
Shihabudeen q	v. Seenath	..	859
Shreeji Transport Services (P)	v. Commissioner of Excise	..	226
Sibu, L. S.	v. Union of India	..	452
Siddique, P. K. A.	v. Regional Transport Authority, Kozhikode	..	829
Sreeja, S.	v. State of Kerala	..	345
Sree Krishna Sharma	v. State of Kerala	..	987
Srinivas Rao, K.	v. Deepa D.A. (S.C.)	..	813
Soman	v. State of Kerala (S.C.)	..	1
Soumya, V.	v. State of Kerala	..	513
Southern Refineries Ltd.	v. State of Kerala	..	696
St. George Syrian Church	v. Revenue Divisional Officer	..	385
Stanly Hedger	v. Florence	..	255
State of Kerala	v. Mahadevan Nair P.K.	..	391
State of Kerala	v. Joseph @ Baby (S.C.)	..	633

State of Kerala	v. Unni (F.B.)	..	637
State of Kerala	v. Francis M.A.	..	923
State of Kerala	v. Sneha Cheriyan (S.C.)	..	913
Sunil Mehta	v. State of Gujarat (S.C.)	..	993
Suresh, C. V.	v. Tobin ..	30	
Suresh Kumar, D.	v. Kerala State Co-operative Election Commission ..	565	
Swapna Jestus, K.	v. Secretary, Pulpally Grama Panchayat	..	534
Unnikrishnan Nair, S.	v. State of Kerala	..	109
Valsalakumari, K. V	v. State of Kerala	..	450
Valsamma	v. Abraham	..	278
Varkey	v. Chacko	..	82
Vasu, N. T.	v. Padinharepurakkal Aramughan	..	1069
Vibin, P. V.	v. State of Kerala	..	321
Vijayan	v. Sub Inspector of Police	..	965
Voluntary Health Association of Punjab	v. Union of India (S.C.)	..	901
Wilson Chakkappan	v. Tahsildar	..	191

Speech

Full Court reference held in the High Court of Kerala on 27-9-2012, on the appointment of Acting Chief Justice Mrs. Manjula Chellur as the Chief Justice of the High Court of Kerala.

.. i - x

Full Court Reference held in the High Court of Kerala on 28th September 2012, on the occasion of Retirement of Honourable Mr. Justice C. N. Ramachandran Nair.

.. xi - xxiv

Full Court Reference held in the High Court of Kerala on 2nd January 2013, on the occasion of Retirement of Honourable Mr. Justice M. Sasidharan Nambiar.

.. xxv - xxxiv

Index to Notifications

1. District Judge Selection—REC-4-56348/2012	..	i - ii
2. District Judge Selection—REC-4-56349/2012	..	iii - iv
3. District Judge Selection—REC-4-56350/2012	..	v - vi
S. R. O. No. 676/2012	..	vii - viii
G. O. (P) No. 277/2012/GAD	..	ix - x
The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995	..	xi - xvii
Official Memorandum—Scheduled Castes and Scheduled Tribes Development (E) Department.	..	- xix

ACTS

Central

1860—Act 45 of 1860—Penal Code			
Sections 96, 97, 99, 100 and 351	<i>See</i>	..	473

Section 124A	<i>See</i>	..	793
Section 153	<i>See</i>	..	793
Sections 182, 194, 195 and 195A	<i>See</i>	..	109
Section 302	<i>See</i>	..	537
Section 306	<i>See</i>	..	109
Section 375	<i>See</i>	..	633
Section 376	<i>See</i>	..	1022
Section 424	<i>See</i>	..	987
Section 498A	<i>See</i>	..	813
1869—Act 4 of 1869—Divorce Act			
Section 10 (1) (x)	<i>See</i>	..	255
1872—Act 1 of 1872—Evidence Act			
Sections 59 and 61	<i>See</i>	..	30
Section 91	<i>See</i>	..	30
Sections 67 and 73	<i>See</i>	..	377
Sections 4 and 105	<i>See</i>	..	473
1881—Act 26 of 1881—Negotiable Instruments Act			
Section 138	<i>See</i>	..	233
1882—Act 4 of 1882—Transfer of Property Act			
Section 54	<i>See</i>	..	55
Section 126	<i>See</i>	..	888
1894—Act 10 of 1894—Land Acquisition Act			
Sections 3(cc) and 4	<i>See</i>	..	300
1908—Act 5 of 1908—Code of Civil Procedure			
Section 11	<i>See</i>	..	577
Section 24, Order I, Rule 3 and Order II, Rule 3	<i>See</i>	..	102
Section 100	<i>See</i>	..	30
Section 115	<i>See</i>	..	417
Section 145	<i>See</i>	..	385
Section 148	<i>See</i>	..	266
Section 151, Order XXIII, Rule 3 and Order XLVII, Rule 1	<i>See</i>	..	798
Section 92	<i>See</i>	..	56
Order II, Rule 2	<i>See</i>	..	82
Order VIII, Rule 6A	<i>See</i>	..	82
Order XI, Rule 14	<i>See</i>	..	982
Order XLIII, Rule 1 (u)	<i>See</i>	..	788
Order XLVII	<i>See</i>	..	577
Order XLVII, Rule 1	<i>See</i>	..	577
Order XXI, Rule 32	<i>See</i>	..	278
Order XXI, Rule 92	<i>See</i>	..	206
Order XXIII, Rule 1	<i>See</i>	..	798
Order XXIII, Rule 1	<i>See</i>	..	505
Order XXXIII, Rule 11	<i>See</i>	..	26
Order XXXIX, Rule 1	<i>See</i>	..	935
1908—Act 16 of 1908—Registration Act			
Section 49	<i>See</i>	..	17
1920—Act 5 of 1920—Provincial Insolvency Act			
Sections 7 and 8	<i>See</i>	..	708

1940—Act 23 of 1940—Drugs and Cosmetics Act			
Sections 18 (a) (iv), 27(d) and 32	<i>See</i>	..	464
1947—Act 14 of 1947—Industrial Disputes Act			
Section 10 (1) (d)	<i>See</i>	..	894
1954—Act 37 of 1954—Prevention of Food Adulteration Act			
Sections 2(ia)(m), 7 and 16	<i>See</i>	..	218
1955—Act 25 of 1955—Hindu Marriage Act			
Section 25	<i>See</i>	..	241
Section 26	<i>See</i>	..	931
1956—Act 1 of 1956—Companies Act			
Section 55A	<i>See</i>	..	149
Sections 67 and 81(l)(c)	<i>See</i>	..	149
1956—Act 3 of 1956—University Grants Commission Act			
Sections 12 and 21	<i>See</i>	..	118
1957—Act 67 of 1957—Mines and Minerals (Regulation and Development) Act			
Sections 21(4A) and 22	<i>See</i>	..	1031
Section 23A	<i>See</i>	..	1031
1961—Act 25 of 1961—Advocates Act			
Section 35	<i>See</i>	..	952
Section 35 (1)	<i>See</i>	..	952
1961—Act 43 of 1961—Income Tax Act			
Section 158 BFA (2) Proviso	<i>See</i>	..	704
1962—Act 52 of 1962—Customs Act			
Sections 67 and 68	<i>See</i>	..	226
1963—Act 36 of 1963—Limitation Act			
Articles 124 and 137	<i>See</i>	..	798
1969—Act 18 of 1969—Registration of Births and Deaths Act			
Section 15	<i>See</i>	..	213
1973—Act 2 of 1974—Code of Criminal Procedure	<i>See</i>	..	1053
Sections 2(n) and 167(2)	<i>See</i>	..	1055
Section 24	<i>See</i>	..	867
Section 24 (8)	<i>See</i>	..	867
Section 25A	<i>See</i>	..	867
Sections 91, 244, 245 and 246	<i>See</i>	..	711
Section 107	<i>See</i>	..	407
Sections 125 and 128	<i>See</i>	..	251
Section 188	<i>See</i>	..	183
Sections 188 and 465	<i>See</i>	..	183
Sections 188A and 188	<i>See</i>	..	719
Section 197	<i>See</i>	..	94
Section 197	<i>See</i>	..	603
Sections 244 and 245	<i>See</i>	..	167
Sections 244, 245 and 246	<i>See</i>	..	993
Sections 428, 43.3 and 433A	<i>See</i>	..	637

Section 437 A	<i>See</i>	..	537
Section 438	<i>See</i>	..	48
Section 438	<i>See</i>	..	450
Section 457	<i>See</i>	..	495
Section 482	<i>See</i>	..	464
Section 482	<i>See</i>	..	987
1976—Act 80 of 1976—Territorial Waters, Continental Shelf Exclusive Economic Zone and other Maritime Zones Act			
Sections 5 and 7	<i>See</i>	..	719
1984—Act 66 of 1984—Family Courts Act			
Section 7	<i>See</i>	..	859
Section 9	<i>See</i>	..	813
1985—Act 61 of 1985—Narcotic Drugs and Psychotropic Substances Act			
Section 37	<i>See</i>	..	965
1985—Act 1 of 1986—Sick Industrial Companies (Special Provisions) Act			
Sections 22 and 22A	<i>See</i>	..	696
1986—Act 25 of 1986—Muslim Women (Protection of Rights on Divorce) Act			
Section 3	<i>See</i>	..	260
Section 3	<i>See</i>	..	975
1986—Act 68 of 1986—Consumer Protection Act			
Sections 27 (2) and 27 (3)	<i>See</i>	..	777
Section 27 (3)	<i>See</i>	..	777
1987—Act 39 of 1987—Legal Services Authorities Act			
Section 20	<i>See</i>	..	597
Sections 20 and 22C	<i>See</i>	..	1069
1988—Act 49 of 1988—Prevention of Corruption Act			
Section 19	<i>See</i>	..	603
1988—Act 59 of 1988—Motor Vehicles Act			
Sections 2 (11) and 74	<i>See</i>	..	246
Sections 59, 72 and 74	<i>See</i>	..	829
Sections 68 and 86	<i>See</i>	..	829
Section 166	<i>See</i>	..	570
		..	559
1994—Act 57 of 1994—Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act			
Sections 7 and 16 A	<i>See</i>	..	901
2000—Act 56 of 2000—Juvenile Justice (Care and Protection of Children) Act			
Sections 10 and 11	<i>See</i>	..	48
2002 — Act 54 of 2002—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act Section 13(3 A) <i>See</i>			
		..	624
2003— Act 36 of 2003— Electricity Act			
Section 126	<i>See</i>	..	968
Section 126 (5)	<i>See</i>	..	968

Kerala

1077 M.E.— Act 1 of 1077 M.E.— Abkari Act Sections 3(16), 3(17), 3(1 7A), 3(18) and 55(a)	<i>See</i>	..	421
1957— Act 1 of 1957— Civil Courts Act Section 13	<i>See</i>	..	555
1958— Act 38 of 1958— Land Relinquishment Act Section 4	<i>See</i>	..	1005
1959— Act 10 of 1960 — Court Fees and Suits Valuation Act Section 27(a)	<i>See</i>	..	372
Sections 42(c) and 42(e)	<i>See</i>	..	1047
1959— Act 17 of 1959— Stamp Act Sections 47 and 48	<i>See</i>	..	191
1960— Act 16 of 1960— Home Guards Act Sections 3, 6, 7 and 14	<i>See</i>	..	321
1961— Act 5 of 1961— Police Act Section 120 (d)	<i>See</i>	..	793
1965— Act 2 of 1965 — Buildings (Lease and Rent Control) Act Section 11 (4) (ii)	<i>See</i>	..	861
1976— Act 32 of 1976 — Tax on Luxuries Act Section 6 (6)	<i>See</i>	..	272
1985— Act 12 of 1985 — Mahatma Gandhi University Act	<i>See</i>	..	1016
1994— Act 13 of 1994— Panchayat Raj Act Section 204	<i>See</i>	..	76
Section 4(2)	<i>See</i>	..	363
Section 27 1 J	<i>See</i>	..	428
Sections 271 M (4)(b) and 271 S	<i>See</i>	..	428
Section 35 (1) (p)	<i>See</i>	..	526
Section 248	<i>See</i>	..	603
2003— Act 30 of 2003— Value Added Tax Act Sections 8(b) and 8(f)(i)	<i>See</i>	..	457
Section 47	<i>See</i>	..	399
2007—Act 34 of 2007—Anti-social Activities (Prevention) Act Proviso (ii) to Section 2(p)	<i>See</i>	..	407
Section 3	<i>See</i>	..	407

Madras

1951—Act 19 of 1951—Hindu Religious and Charitable Endowments Act Sections 39 (2) and 42	<i>See</i>	..	621
---	------------	----	-----

RULES**Kerala**

1953—Foreign Liquor Rules Rule 13 (3B)	<i>See</i>	..	340
---	------------	----	-----

1959—Education Rules			
Chapter VII, Rule 5 (3)	<i>See</i>	..	499
Chapter XIV A, Rules 7A and 51 A	<i>See</i>	..	913
Chapter XIV A, Rule 51A	<i>See</i>	..	513
1959—Service Rules			
Part III, Rule 3 C	<i>See</i>	..	391
1966—Transfer of Registry Rules			
Rule 2	<i>See</i>	..	945
1969—Co-operative Societies Rules			
Rule 35A(1)	<i>See</i>	..	565
Rule 35A(2)	<i>See</i>	..	565
1976—Public Service Commission Rules of Procedure			
Rules 11 (v), 15A and 22	<i>See</i>	..	13
Rule 13	<i>See</i>	..	549
1990—Land Acquisition Rules			
Rule 9 (3)	<i>See</i>	..	300
1996—Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules			
Rules 10 and 19	<i>See</i>	..	534
1999—Municipality Building Rules			
Rule 60	<i>See</i>	..	1065
2002—Protection of River Banks and Regulation of Removal of Sand Rules			
Rules 27 and 28	<i>See</i>	..	360
Regulations			
2000 — University Grants Commission (Minimum Qualification required for appointment and career Advancement of Teachers in University and Institutions Affiliated to it) Regulations Clause 1.3.3	<i>See</i>	..	118

SUBJECT INDEX

- Abkari Act, 1077 M.E. (Kerala Act 1 of 1077 M.E.)**— Sections 3(16), 3(17), 3(17 A), 3(18) and 5 5 (a) — *The four words 'imports', 'exports', 'transports' and 'transits ' in Section 55(a) have to be read disjunctively as separate offences — If a person transports liquor within the State in contravention of the provisions of the Act, Rules or Orders made under the Act, the offence under Section 55(a) is complete even without an allegation of import.*
 Ammed, V. v. State of Kerala I.L.R. 2013 (1) Kerala .. 421
- Advocates Act, 1961 (Central Act 25 of 1961)**—Section 35—*The Bar Council gets power to make reference to the Disciplinary Committee only if it has reasons to believe that an Advocate on its role is guilty of professional or other misconduct — The requirement of "reason to believe " only contemplates satisfaction of the Bar Council that the complaint is genuine and not laid with the purpose of harassing the Advocate.*
 Nagaraj, P. (Advocate) v. Bar Council of Kerala I.L.R. 2013 (1) Kerala .. 952
- Advocates Act, 1961 (Central Act 25 of 1961)**—Section 35(1)— *The expression "misconduct" should be construed and understood bearing in mind the fact that the Advocates Act is to*

regulate a privileged class of persons, who because of their privileged status are subject to certain disabilities and rigid rules of professional conduct — The provision under Section 35(1) will rope in practicing Advocates who commit professional misconduct and also other misconduct which render them unworthy to wear the robes of this noble profession.

Nagaraj, P. (Advocate) v. Bar Council of Kerala I.L.R. 2013 (1) Kerala . . 952

Anti-social Activities (Prevention) Act, 2007 (Kerala Act 34 of 2007)—*Proviso (ii) to Section 2(p)—The incident contemplated in Proviso (ii) to Section 2(p) should be an incident that occurred due to a dispute between immediate neighbours — The Proviso directs to omit only those offences committed by a person by virtue of his involvement as a neighbour or as a close relative of the neighbour, in an incident that occurred due to a dispute between immediate neighbours.*

Abidha Beevi v. State of Kerala I.L.R. 2013 (1) Kerala .. 407

Anti-social Activities (Prevention) Act, 2007 (Kerala Act 34 of 2007)—*Section 3 — When the maximum period for which a person can be detained is determined to be 6 months, a delay of more than 4½ months in passing the detention order, after the last anti-social activity, can be considered as inordinate delay.*

Abidha Beevi v. State of Kerala I.L.R. 2013 (1) Kerala . . 407

Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—*When an area where the building is situated, was originally part of a Panchayat which was notified under Section 1(3) of the Act, is deleted from that Panchayat and included in a Panchayat which is not notified under Section 1(3) of the Act, the provisions of the Kerala Building (Lease and Rent Control) Act would have no application to such area and only the Civil Court will have jurisdiction to entertain suit for eviction of tenants of buildings situated in that area.*

Karam Veettil Parukutty Amma v. Muhammedkutty I.L.R. 2013 (1) Kerala . . 363

Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—*Section 11(4)(ii)—As the definition of building includes the appurtenant land as well as other structures, any additional construction which reduces utility of the appurtenant land will attract the ground for eviction under Section 11(4) (ii)—Buildings (Lease and Rent Control) Act, 1965 (Kerala Act 2 of 1965)—Section 2(1).*

Malayi Kumudam v. Venugopal, M. V. I.L.R. 2013 (1) Kerala . . 861

Canon Law—*Canon Law will not override the Civil Law of the land—Canon Law can have theological or ecclesiastical implication to the parties.*

Seline Fernandez v. Bernard Francis I.L.R. 2013 (1) Kerala . . 56

Canon Law—*Church and its properties would not vest in the Pope or the Arch Bishop as delegates of the Pope even in accordance with Canon Law— The property vests in the parish and the parish is competent to initiate proceedings in the Civil Court to protect the properties of the church even as per Canon Law—Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Order I, Rule 8.*

Seline Fernandez v. Bernard Francis I.L.R. 2013 (1) Kerala . . 56

Canon Law—*Examining the Canon Law as a whole, what is discernible is that the temporal goods belonging to a parish, which, by law, is a public juridic person do not belong to the diocese—Both "Parish" and "Diocese" are public juridic persons and are also bound to take care of the church properties by civilly valid methods and observe the prescripts of both Canon and Civil Law—It is not mandatory for the administrator to obtain written permission of their "Ordinary" (Bishop) before initiating or contesting litigation before a civil forum.*

Seline Fernandez v. Bernard Francis I.L.R. 2013 (1) Kerala . . 56

- Civil Courts Act, 1957 (Kerala Act 1 of 1957)**—Section 13—Appellate jurisdiction—Subject-matter of a suit for partition is the fractional interest claimed by plaintiff in the property sought to be partitioned—Forum of appeal is decided on the basis of valuation of the fractional interest claimed by plaintiff—Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)—Section 7(4).
Padikkal Kozhisseri Sumangala v. Padikkal Kozhisseri Syamala I.L.R. 2013 (1) Kerala . . 555
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Section 24, Order I, Rule 3 and Order II, Rule 3—The circumstances required for transferring a case from one court to another for joint trial are (1) the common question of law or common question of fact must arise from all such suits and (2) in all such suits, the right to relief must be in respect of or arising out of the same act or transaction or same series of act or transaction and (3) all parties in the suit which is sought to be transferred must be present in the suit with which joint trial is sought for.
Navabharat Vignan Trust v. Nasihudeen I.L.R. 2013 (1) Kerala . . 102
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Section 92—A suit could be said to be one under Section 92 only if there is in existence a public trust of a religious or charitable character and either a breach of trust or direction from the court are deemed necessary for administration of such trust and the prayers are one or other of the relief specifically mentioned in the section—The above three ingredients should exist together.
Seline Fernandez v. Bernard Francis I.L.R. 2013 (1) Kerala . . 56
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Section 100—Maintainability of Second Appeal—There is no blanket ban interdicting the High Court from interfering with concurrent findings on question of title in a Second Appeal—If the concurrent finding is perverse or based on no evidence, High Court will interfere in Second Appeal.
Suresh, C. V. v. Tobin I.L.R. 2013 (1) Kerala . . 30
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Order II, Rule 2—The rule will apply only if the cause of action for the suit and for the counterclaim preferred by plaintiff is the same—If the cause of action for filing counter-claim by the plaintiff against the defendant arose after filing the suit, counter-claim is not barred by Order II, Rule 2.
Varkey v. Chacko I.L.R. 2013 (1) Kerala 82
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Order VIII, Rule 6A—Civil Procedure Code does not prohibit plaintiff from preferring counterclaim against the defendant—Plaintiff can prefer counter-claim in answer to the counter-claim raised by defendant against plaintiff as each counterclaim is to be treated as a plaint claim.
Varkey v. Chacko I.L.R. 2013 (1) Kerala . . 82
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Order XXXIII, Rule 11—After the amendment of Order XXXIII, Rule 11 CPC, there is no compulsion on the Court to pass an order for payment of court fee and the matter is left to the discretion of the Court, having regard to the totality of facts and circumstances of each case—Decisions rendered by the High Court contrary to the above statutory provisions is rendered per incuriam.
Joseph v. Kerala State Electricity Board I.L.R. 2013 (1) Kerala . . 26
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—Order 21, Rule 92—Third party can challenge the title of the Judgment-debtor to the property by filing a suit against the Judgment-debtor, Decree-holder and Auction purchaser, even after the property is sold in court auction and the sale is confirmed.
Ganesh Filial v. Sudevan I.L.R. 2013 (1) Kerala . . 206

- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 148—Dismissal of arbitration petitions, re-presented after the expiry of 30 days, on the ground of lack of power—The upper time-limit fixed in Section 148 C.P.C. cannot take away the inherent powers of the court to pass orders as may be necessary for the ends of justice—Arbitration and Conciliation Act, 1940 (Central Act 10 of 1940)—Section 34.*
Kombi v. National Highway Authority of India I.L.R. 2013 (1) Kerala .. 266
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order 21, Rule 32— Order 21, Rule 32 empowers the Execution Court to proceed against and punish a contumacious judgment-debtor for violating or disobeying a decree of injunction—Proceedings under the Contempt of Courts Act is not maintainable for the said purpose—Contempt of Courts Act, 1971 (Central Act 70 of 1971).*
Valsamma v. Abraham I.L.R. 2013 (1) Kerala . . 278
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order 21, Rule 32—When there is a prayer for attachment and sale of the property, it is incumbent upon the court to attach the property and proceed in accordance with law as provided under sub-rule (3) and (5)—Mere detention in civil prison alone is not the procedure envisaged under Order 21, Rule 32.*
Valsamma v. Abraham I.L.R. 2013 (1) Kerala . . . 278
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 145—Where a dispute concerning land or water is likely to cause breach of peace, the Executive Magistrate is fully empowered to initiate action under Section 145—Mere pendency of civil suit will not deprive the jurisdiction of the Magistrate to take action under Section 145—If civil suit in respect of land and water between the same parties are pending and any interlocutory order declaring the possession of one or other party is made by the court, the Magistrate taking action under Section 145 has to proceed with care and caution and consider whether taking action under Section 107 or Section 144 of Cr.P.C. would suffice to abate the apprehended breach of peace.*
St. George Syrian Church v. Revenue Divisional Officer I.L.R. 2013 (1) Kerala . . 385
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 115—Order refusing to set aside ex parte decree in a suit, which was affirmed in appeal, can be challenged in revision under Section 115—The order cannot be challenged in Writ Petition under Article 227.*
Muthuswamy v. Noorudheen I.L.R. 2013 (1) Kerala . . 417
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order 23, Rule 1— Withdrawal of suit—Trial court has the power to entertain application to withdraw the suit, even after an order of remand.*
Sakthi Ceramics v. Supreme Ceramics I.L.R. 2013 (1) Kerala . . 505
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 11— Res judicata—The Appellate Court, after upholding the decree and judgment of the Trial Court against the plaintiff, could not have granted liberty to the appellant/plaintiff to institute a fresh suit— The finding of the Appellate Court that the dismissal of the suit would not stand in the way of the plaintiff from filing a fresh suit, would still be res judicata.*
Koshy Daniel v. Rajan, P. S. I.L.R. 2013 (1) Kerala . . 577
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XLVII—Rejection of Special Leave Petition by the Supreme Court by a non-speaking order does not take away the jurisdiction of the Court, Tribunal or Forum, whose order forms the subject-matter of the petition for Special Leave, to review its own order, if grounds for exercise of review jurisdiction are shown to exist.*
Koshy Daniel v. Rajan, P. S. I.L.R. 2013 (1) Kerala . . 577

- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XLVII, Rule 1—The power of the Court to rectify an error or mistake committed by it is not fettered merely for the reason that pursuant to the impugned judgment granting the plaintiff liberty to file a fresh suit, the unsuccessful plaintiff has filed a fresh suit.*
Koshy Daniel v. Rajan, P. S. I.L.R. 2013 (1) Kerala . . 577
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXIII, Rule 1— Order XXIII, Rule 1 deals with suits and part of the claims raised in the suit—It cannot apply to interlocutory applications and orders passed thereon.*
Seetha Ramachandran @ Seetha Varma v, K. B. Radhakrishnan I.L.R. 2013 (1) Kerala . . 798
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 151, Order XXIII, Rule 3 and Order XLVII, Rule 1—The power of the court under proviso to Rule 3 of Order XXIII is not one drawn from the powers of the court under Order XLVII—The proviso to Rule 3 of Order XXIII is wider in its import and application, than the powers of the Court under Order XLVII CPC.*
Seetha Ramachandran @ Seetha Varma v. K. B. Radhakrishnan I.L.R. 2013 (1) Kerala . . 798
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XLVII, Rule 1 (u)—Regular Second appeal is not maintainable against an order of remand by the appellate Court— Party aggrieved by order of remand should file appeal against the order.*
Jacob John v. Kunjamma I.L.R. 2013 (1) Kerala . . 788
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XI, Rule 14— Production of documents—At any stage of the suit Court can direct party to produce documents in his possession on power—Defendant can seek such an order even prior to filing the written statement—Document sought to be produced must be relevant for determination of the question raised in the suit.*
Anthoyokkya Viswasa Samrakshana Samithi v. Paulose, K. V. I.L.R. 2013 (1) Kerala . . 982
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order XXXIX, Rule –If on grant of temporary injunction, the irreparable injury caused to the defendant will be more when compared to the loss caused to the plaintiff, then, even if there is a prima facie case and the balance of convenience is in favour of the plaintiff, temporary injunction need not be granted in favour of the plaintiff.*
Beena Kannan v. Abdullakutry I.L.R. 2013 (!) Kerala .. 935
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 197—In view of the Explanatory Note to S.R.O. No. 1211/1997, the protection under Section 197 is extended to all members of the Kerala Police Force charged with maintenance of public order.*
Muralidharan Nair, V. v. Saju M. Antony I.L.R. 2013 (1) Kerala . . 94
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 197—The importance is not on the nature of the act alleged but whether the alleged act is done in the discharge of the official duty or purported discharge of official duty.*
Muralidharan Nair, V. v. Saju M. Antony I.L.R. 2013 (1) Kerala . . 94
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 438— A juvenile in conflict with law would also come within the meaning of 'person' as covered by Section 438 and is hence entitled to apply for pre-arrest bail—Though as far as a juvenile in conflict with law is concerned the Juvenile Justice Board is the competent authority, power of the Juvenile Justice Board can be exercised by the High Court and the Court of Session—Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000)—Section 6.*
Gopakumar, A.V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 48

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 188—Sanction of the Central Government is required only for enquiry/trial and not for taking cognizance of the offence against the offender by the court—An application for further investigation before the enquiry/trial commences can be entertained by the court—However after the enquiry/ trial proceeds without sanction, any order of the Magistrate permitting further investigation would stand vitiated.*
Abdul Rahiman, P. T. v. State of Kerala I.L.R. 2013 (1) Kerala . . 183
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 188 and 465—If enquiry/trial is proceeded without sanction, that by itself would not insulate the accused once proceeded against from being proceeded afresh after obtaining sanction—However if trial ends in acquittal of the accused, the accused cannot be proceeded against again since such acquittal is not a curable irregularity under Section 465 of the Code of Criminal Procedure.*
Abdul Rahiman, P. T. v. State of Kerala I.L.R. 2013 (1) Kerala . . 183
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 244 and 245—After appearance of the accused on receipt of process from the court under Section 204, an application for discharge can be entertained only under Section 245(1) and (2), that too after recording the evidence as contemplated under Section 244 of the Code of Criminal Procedure.*
M/s Integrated Finance Co. Ltd. v. Thomas, P. G. I.L.R. 2013 (1) Kerala . . 167
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 125 and 128—Section 128 Cr.P.C. is supplementary to Section 125 Cr.P.C.—An application for recovery of maintenance should be made either to the Magistrate who passed the original order or his successor or to a Magistrate having jurisdiction over the place where the person against whom the order is made resides.*
Reshma, C. P. v. Jayan, P. K. I.L.R. 2013 (1) Kerala . . 251
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 107—In cases where proceedings under Section 107 Cr. P.C. have been initiated against the detenu, the detaining authority has to consider whether the proceedings initiated under Section 107 Cr. P.C. was insufficient for preventing the detenu from committing anti-social activities.*
Abidha Beevi v. State of Kerala I.L.R. 2013 (1) Kerala . . 407
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 438—Anticipatory bail can be granted only to a person apprehending arrest on accusation of having committed a non-bailable offence—Anticipatory bail cannot be granted in cases where coercive steps are initiated by the court for non appearance of the accused.*
Valsalakumari, K. V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 450
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 482—Earlier petition filed by petitioners seeking similar reliefs was dismissed as withdrawn—Subsequent petition by same petitioners, seeking same prayer in a different style, is not maintainable.*
Shanimul Fatima v. State of Kerala I.L.R. 2013 (1) Kerala . . 464
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 437 A—Court cannot insist the accused for execution of bond under Section 437 A, if a bail bond was executed by the accused earlier, either during crime stage or after his appearance before Court.*
Sareena, O. P. v. State of Kerala I.L.R. 2013 (1) Kerala . . 537
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 437 A—The word 'shall' appearing in Section 437A is to be construed and interpreted only as directory.*
Sareena, O. P. v. State of Kerala I.L.R. 2013 (1) Kerala . . 537

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 457—*While the Investigation of a Criminal Case is in progress, the Magistrate is competent to pass order under Section 457 for release of both movable and immovable property seized during the course of investigation— Section 451 of the Code of Criminal Procedure is not applicable in a case where investigation is going on and no enquiry or trial is pending.*
Mukundan v. State of Kerala I.L.R. 2013 (1) Kerala .. 495
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 197—*The requirement of sanction, so far as it relates to public servant coming under Section 21 of the Indian Penal Code, is extended to even retired public servants in case of offences committed as part of official duty— Penal Code, 1860 (Central Act 45 of 1860)—Section 21.*
Baby Varkey v. State of Kerala I.L.R. 2013 (1) Kerala .. 603
- Code of Criminal Procedure, 1973 (Central Act 2 of 1914)**—Sections 91, 244, 245 and 246—*The Court has to decide whether there is sufficient ground to proceed against the accused to frame charge against him on the materials tendered by the complainant in the enquiry under Section 244(1) Cr.P.C. and not with reference to any document produced or sought to be produced by the accused —The accused cannot ask the court to invoke the powers under Section 165 of the Evidence Act to summon any document, at the stage of enquiry under Section 244(1) Cr.P.C., in order to prove his innocence—Evidence Act, 1872 (Central Act I of 1872)— Section 165.*
Sasi Tharoor v. State of Kerala I.L.R. 2013 (1) Kerala . . 711
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Sections 428, 433 and 433A—*Remission of sentence only reduces the punishment and does not interfere, with the conviction or revise the judgment of the Court.*
State of Kerala v. Unni (FB.) I.L.R. 2013 (1) Kerala . . 637
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 188 A— *Death of two Indian Fishermen due to firing by Italian Marines, sailing on an Italian Merchant Ship, within the Indian Contiguous Zone but outside the Territorial Waters off the coastline of the State of Kerala—The authority of Kerala Police is limited to the Territorial Waters off the Kerala coastline—Extension of the application of the Code of Criminal Procedure and the Indian Penal Code to the Exclusive Economic Zone, of which the Contiguous Zone is a part, would entitle only the Union of India to take cognizance of, investigate and prosecute persons who commit any infraction of the domestic laws within the Contiguous Zone—Kerala Police has no authority to investigate such infraction— Union of India directed to set up a Special Court to try the case, in consultation with the Chief Justice of India—Territorial Waters, Continental Shelf, Executive Economic Zone and other Maritime Zones Act, 1976 (Central Act 80 of 1976)—Sections 5 and 7.*
Republic of Italy v. Union of India (S.C.) I.L.R. 2013 (1) Kerala . . 719
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 188—*The Parliament has the power to make and apply the law to persons, who are not citizens of India, committing acts, which constitute offences prescribed by the law of this country, irrespective of the facts whether such act are committed within the territory of India or whether the offender is corporeally present or not within the Indian territory at the time of commission of the offence. (J. Chelameswar, J. Concurring)*
Republic of Italy v. Union of India (S.C.) I.L.R. 2013 (1) Kerala . . 719
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—Section 24— *Appointment of Special Public Prosecutor in T. P. Chandrasekharan murder case—The fact that the case was investigated by a special investigation team headed by the Additional DGP is itself a pointer to the fact that it is not an ordinary murder case—Decision of the Government to*

- appoint a Special Public Prosecutor in public interest, for prosecution of the case cannot be faulted.*
Jigesh, P. v. State of Kerala I.L.R. 2013 (1) Kerala .. 867
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 24(8)—***The absence of consultation under sub-sections 4 and 5 of Section 24 Cr.P.C. does not bar the Government from appointing a Special Public Prosecutor under Section 24(8) Cr.P.C.*
Jigesh, P. v. State of Kerala I.L.R. 2013 (1) Kerala . . 867
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 24(8)—***The accused cannot dictate as to who should be engaged/appointed as the Prosecutor/Special Public Prosecutor to conduct the prosecution—The jurisdiction of the Court to examine the correctness and sustainability of the order passed under Section 24(8) Cr.P.C. by way of Judicial Review, cannot be exercised, as if it were an Appellate Authority/Appellate Court.*
Jigesh, P. v. State of Kerala I.L.R. 2013 (1) Kerala .. 867
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 25A—***It is not mandatory to constitute a Directorate of Prosecution under Section 25A—Section 25A has not been implemented in the State of Kerala—The Director General of Prosecution appointed under the executive orders issued under Article 162 of the Constitution of India does not automatically become the Director of Prosecution under Section 25A Cr.P.C.*
Jigesh, P. v. State of Kerala I.L.R. 2013 (1) Kerala .. 867
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482—***If the Court is satisfied that no purpose will be served by allowing the proceedings against the accused, who have not challenged the same, to continue, the court can still quash the entire proceedings against the accused, even though they have not approached the court seeking such relief.*
Sree Krishna Sharma v. State of Kerala I.L.R. 2013 (1) Kerala . . 987
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 2(n) and 167(2)—***Accused committing theft of two cars, to facilitate theft of valuables in a house—Separate crime registered by the Police for theft of the vehicles—Police seeking custody of the accused in respect of investigation into the cases relating to the two stolen cars—Even if the commission of theft of the vehicles are being investigated under different crimes, there is no legal bar for the police asking for custody of the accused in the crime, to carry out the investigation in respect of the offence of theft of the two stolen cars, if the application is within 15 days from the date of first remand—Penal Code, 1860 (Central Act 45 of 1860)—Section 33.*
Devender Singh Kripal Singh @ Bunty Chor v. State of Kerala I.L.R. 2013 (1) Kerala . . 1055
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 167(2)—***The investigating officer has to follow the guidelines issued by the Supreme Court while dealing with persons in custody of the police.*
Devender Singh Kripal Singh @ Bunty Chor v. State of Kerala I.L.R. 2013 (1) Kerala . . 1055
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 244, 245 and 246—***Framing of charges—Evidence referred to in Sections 244, 245 and 246 will be admissible only if the same is produced and proved in accordance with the procedure established under the Evidence Act, which includes the right of the parties against who the evidence is produced to cross-examine the witnesses concerned.*
Sunil Mehta v. State of Gujarat (S.C.) I.L.R. 2013 (1) Kerala . . 993

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*The ground realities and hardships of litigants has to be taken into consideration before dismissing a petition filed by the complainant for condoning his absence.*
Chandran, A. P. v. Velayudhan, E. I.L.R. 2013 (1) Kerala . . 1053
- Companies Act, 1956 (Central Act 1 of 1956)**—*Section 55A—Section 55 of the Companies Act will not bar jurisdiction of the Securities and Exchange Board of India to pass orders in respect of matters specifically provided under the Securities and Exchange Board of India Act and the Securities & Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.*
Securities & Exchange Board of India v. Kunnankulam Paper Mills Ltd. I.L.R. 2013 (1) Kerala . . 149
- Companies Act, 1956 (Central Act 1 of 1956)**—*Sections 67 and 81(l)(c)—When a company exercises its power under Section 81(l)(c), giving right to a shareholder to renounce his sharers in favour of persons who are not shareholders and if such right is given to 50 or more persons that will be deemed to be an offer made to any section of the public as provided under Section 67(1) and (2)—When an offer is made to a section of the public, the company will have to comply with the provisions applicable, with respect to public issue.*
Securities & Exchange Board of India v. Kunnankulam Paper Mills Ltd. I.L.R. 2013 (1) Kerala . . 149
- Constitution of India**—*Article 21—The right to life means something more than mere survival or animal existence—It is implicit that a person must be free from fear and threat to life in as much as life under fear and threat of death will be no life at all—The right to life would include right to live with human dignity.*
Vibin P.V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 321
- Constitution of India**—*Article 21—The status of a person is not a relevant factor or criteria to decide the remedy under public law for infringement of right to life, except for fixation of quantum of compensation.*
Vibin P.V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 321
- Constitution of India**—*Articles 21 and 226—In a case where the infringement of the fundamental rights of a citizen is established, the Court can direct compensation to be paid by the State.*
Vibin, P. V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 321
- Constitution of India**—*Article 162—Admission to B.Sc. Nursing Course— Government has the power under the Constitution and Section 21 of the General Clauses Act to amend the prospectus—General Clauses Act, 1897 (Central Act 10 of 1897)—Section 21.*
Sreeja, S. v. State of Kerala I.L.R. 2013 (1) Kerala . . 345
- Constitution of India**—*Article 226—In a case were there is clear violation of fundamental rights, the existence of alternate remedy will not bar the jurisdiction of the High Court under Article 226 of the Constitution of India.*
Vibin, P. V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 321
- Constitution of India**—*Article 226—The High Court, in exercise of jurisdiction under Article 226, can grant compensation to the victims who suffered infringement of their right to life and personal liberty guaranteed under the constitution, notwithstanding the right to remedies under civil suits or criminal proceedings.*
Vibin, P. V. v. State of Kerala I.L.R. 2013 (1) Kerala . . 321
- Constitution of India** — *Article 226 — The power of judicial review is not intended to be exercised to grant "advance rulings of administrative approvals " to validate executive*

- orders — The Government cannot refuse to carry out its functions by directing an individual to obtain orders of the High Court or the Supreme Court on a case to case basis — It amounts to failure on the part of the Government to take responsibility to exercise power in accordance with the statutory provision.*
Member Secretary (HRACC) v, M/s Emerald Regency I.L.R. 2013 (1) Kerala . . 340
- Constitution of India** — *Article 226 — A Trade Union registered under the Act is neither an instrumentality nor an agency of the State discharging public duty and is therefore not amenable to the writ jurisdiction of the High Court — The remedy of a person having a grievance of non-conduct of election is to move the Registrar of Trade Unions or the Civil Court seeking appropriate reliefs — Trade Unions Act, 1926 (Central Act 16 of 1926)— Sections 3, 5 and 6.*
Sibu, L. S. v. Union of India I.L.R. 2013 (1) Kerala . .452
- Constitution of India** — *Article 226 — Penalty imposed under Section 126 of Electricity Act, 2003 for unauthorised use of electrical energy was challenged in writ petition — During pendency of writ petition, consumer availed the benefit of OTS Scheme and remitted the amount as per the Scheme — Once benefit of One Time Settlement is availed by the consumer, he cannot challenge the penalty on merits under Article 226.*
Manager, M/s Nadan Square v. K.S.E.B. I.L.R. 2013 (1) Kerala . . 448
- Constitution of India** — *Articles 72 and 161 — The grant of pardon exercised under Article 72 or Article 161 of the Constitution of India or under Sections 306, 432 and 433 Cr.P.C. is in exercise of the sovereign power of the State — The power under Article 72 and Article 161 of the Constitution of India is absolute and cannot be fettered by any statutory provision such as Sections 432, 433 or 433 A Cr.P.C. or by any Prison Rules — Code of Criminal Procedure, 1973 (Central Act 2 of 1974)— Sections 432, 433 and 433A.*
State of Kerala v. Unni (F.B.) I.L.R. 2013 (1) Kerala ... 637
- Constitution of India** — *Article 297(3) — Article 297(3) authorizes the Parliament to specify from time to time the limits of various maritime zones such as territorial waters, continental shelf etc. — The Union of India has the authority to apply and enforce the laws of the country against the persons and things beyond its territory when its legitimate interest are affected — Penal Code, 1860 (Central Act 45 of 1860)— Sections 2 and 4. (J. Chelameswar, J. Concurring)*
Republic of Italy v. Union of India (S.C.) I.L.R. 2013 (1) Kerala . . 719
- Constitution of India**—*Article 226—Service—Correction of date of birth in service records—A person seeking correction of his date of birth in the service records has to submit all the relevant documents along with his application to establish his case—There must be strict compliance with the direction issued by the Government—Delay caused by the Commissioner for Government Examination, in effecting the correction of date of birth in the SSLC Book, is no ground to deviate from strict compliance of the Government Order.*
State of Kerala v. Francis, M. A. I.L.R. 2013 (1) Kerala . . 923
- Consumer Protection Act, 1986 (Central Act 68 of 1986)**—*Sections 27(2) and 27(3)—The Forum/Commission does not require any sanction from the High Court to summarily try the offences relating to non-compliance of its orders for imposition of penalties as provided in the Act—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)— Section 260.*
Chacko, P. V. v. State of Kerala I.L.R. 2013 (1) Kerala .. 777
- Consumer Protection Act, 1986 (Central Act 68 of 1986)**—*Section 27(3)—No special conferment of powers of a Judicial First Class Magistrate on the Forum/Commission, by a notification issued by the Government, is needed by the Forum/Commission to exercise its powers to impose penalties against persons who violate or fail to comply with any of*

- the orders of the Forum/Commission—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 11 and 32.*
Chacko, P. V. v. State of Kerala I.L.R. 2013 (1) Kerala .. 777
- Co-operative Societies Rules, 1969 (Kerala)**—*Rule 35A(1)—Procedure regarding conduct of election—Committee is competent to fix the date of election and unless there is violation of any statutory provision, the date fixed by the committee has to be approved.*
Suresh Kumar, D. v. Kerala State Co-operative Election Commission I.L.R. 2013 (1) Kerala .. 565
- Co-operative Societies Rules, 1969 (Kerala)**—*Rule 35A (2), Explanation— 'Registrar' in the case of Primary Society, the area of operation of which does not exceed one circle, is the Assistant Registrar of the concerned circle.*
Suresh Kumar, D. v. Kerala State Co-operative Election Commission I.L.R. 2013 (1) Kerala .. 565
- Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)**—*Section 27(a)—Computation of Court Fee—In a case where the plaintiff seeks a declaration that he is entitled to an easement of necessity over land of another, the issue regarding title of the plaintiff to the dominant tenement is unnecessary—Plaintiff is entitled to succeed even if he is only an occupier of the dominant tenement—Plaintiff need not pay court fee on the market value of the dominant tenement.*
Seline v. Mary Varghese I.L.R. 2013 (1) Kerala . . 372
- Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)**—*Sections 42(c) and 42(e)—A contract of lease is merely an agreement that a lease will be entered into on a future date—Consideration for such a document is not the future rent that is agreed upon by the parties, or the market value of the property or fraction interest of the property but only reciprocal promises made in relation to the grant and acceptance of a lease on a future date pursuant to such agreement of lease—The court fees payable has to be calculated on the aggregate amount of fine or premium, if any, and the average of the annual rent agreed to be paid as stipulated in Section 42(c) and not on the basis of the market value as stipulated in Section 42(e)—Contract Act, 1872 (Central Act 9 of 1872)—Section 2(i).*
Rajaram, K. R. v. Shibu, C. S. I.L.R. 2013 (1) Kerala . . 1047
- Criminal Law**—*Award of appropriate sentence—Proportionality and deterrence are the most prominent rationale to be adopted by courts for awarding appropriate sentence to the accused—To understand the relevance of consequences of criminal conduct from a sentencing standpoint, the court must examine (1) whether such consequences enhanced the harmfulness of the offence and (2) whether they are an aggravating factor that need to be taken into account while deciding on the sentence—Social consequences of the culpable act and its impact on other people can be a relevant consideration for giving a heavier punishment, within limits fixed by the law.*
Soman v. State of Kerala (S.C.) I.L.R. 2013 (1) Kerala .. 1
- Customs Act, 1962 (Central Act 52 of 1962)**—*Sections 67 and 68—Goods that are deposited in a Bonded Warehouse have not come into the Country or the State—The goods can be permitted to be released for consumption only on payment of duty under Section 68—Excise Officials have no jurisdiction over liquor which is in the custody of the Customs Officials, while it is being transferred from one Bonded Warehouse to another Bonded Warehouse—Liquor Transit Rules, 1975—Ride 3.*
Shreeji Transport Services (P) v. Commissioner of Excise I.L.R. 2013 (1) Kerala . . 226
- Divorce Act, 1869 (Central Act 4 of 1869)**—*Section 10(1)(x)—Refusal of one of the spouses to have a child will amount to cruelty constituting ingredients for grant of divorce under Section 10(1)(x).*
Stanly Hedger v. Florence I.L.R. 2013 (1) Kerala . . 255

- Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940)**—*Sections 18(a)(iv), 27 (d) and 32— Directors of pharmaceutical company proceeded against for manufacturing and selling misbranded insulin syringes—When specific imputation has been made that the accused have committed the offences, absence of specific particulars in the complaint that two Directors of the company, who were proceeded against, were in-charge of the company at the relevant time, cannot be given much significance and proceedings against those Directors cannot be quashed.*
Shanimol Fatima v. State of Kerala I.L.R. 2013 (1) Kerala .. 464
- Education**—*Though Government has the power to amend the prospectus, the amendment should be made in time so as not to affect rights of the candidate—Amendment cannot be made after publication of rank list.*
Sreeja, S. v. State of Kerala I.L.R. 2013 (1) Kerala .. 345
- Education Rules, 1959 (Kerala)**—*Chapter VII, Rule 5(3)—Education Department Calendar— There is no General Calendar nor any Muslim Calendar— There is only one Calendar issued by the Education Department—Circular issued by the Director of Public Instruction stating that no applications will be entertained for alteration in the Calendar cannot be a bar to the statutory power of the Director to make alteration to the Calendar if need arises.*
Kunhi Mohammed, V. v. State of Kerala I.L.R. 2013 (1) Kerala .. 499
- Education Rules, 1959 (Kerala)**—*Chapter XIV A, Rule 51 A—Intention behind amendment to Rule 51 A explained—After amendment of Rule 51 A, protected teachers are entitled to claim appointment against vacancies arising in future, in the same, higher or lower level of teaching posts under the concerned educational agency, provided the teacher is qualified to be appointed to that post.*
Soumya, V. v. State of Kerala I.L.R. 2013 (1) Kerala .. 513
- Education Rules, 1959 (Kerala)**—*Chapter XIV A, Rule 51 A—Qualification should be assessed as on the date of occurrence of vacancy and not on the date of arising of claim under Rule 51 A.*
Soumya, V. v. State of Kerala I.L.R. 2013 (1) Kerala .. 513
- Education Rules, 1959 (Kerala)**—*Chapter XIV A, Rules 7A and 51'A—Directions issued to regulate appointments giving rise to 51A claim.*
State of Kerala v. Sneha Cheriyan (S.C.) I.L.R. 2013 (1) Kerala .. 913
- Electricity Act, 2003 (Central Act 36 of 2003)**—*Section 126—Revision of penalty—Assessing officer is not empowered to revise, reopen or rectify the assessment of penalty once finalised under Section 126, especially on the basis of audit instruction—Once the penalty is finalised the assessing officer becomes functus officio.*
Jomy Thomas Manjooran v. K.S.E.B. I.L.R. 2013 (1) Kerala .. 968
- Electricity Act, 2003 (Central Act 36 of 2003)**—*Section 126(5)—Penalty at the rate applicable to LT- VIII tariff cannot be imposed for unauthorised extension.*
Jomy Thomas Manjooran v. K.S.E.B. I.L.R. 2013 (1) Kerala .. 968
- Evidence Act, 1872 (Central Act 1 of 1872)**—*Sections 59 and 61—Admission of execution of documents will not amount to admission of contents of such documents—Veracity of existence of the facts stated in a document cannot be proved by mere production or marking of the documents by virtue of Section 3 read with Sections 59 to 62, especially if such facts are disputed and are in issue.*
Suresh, C. V. v. Tobin I.L.R. 2013 (1) Kerala .. 30

- Evidence Act, 1872 (Central Act 1 of 1872)**—Section 91—*There is no bar under Section 91 to adduce oral evidence to prove the very existence of disposition or sale of property—The restriction applies only to tendering of oral evidence in respect of the terms of disposition of property and not disposition of the property itself.*
Suresh, C. V. v. Tobin I.L.R. 2013 (1) Kerala . . 30
- Evidence Act, 1872 (Central Act 1 of 1872)**—Sections 67 and 73—Section 67 of the Evidence Act does not prescribe the mode of proof of the disputed signature or handwriting—It is Section 73 of the Evidence Act which deals with the comparison of signature, writing or seal with others—Various methods of proving a signature or writing—Explained.
Narayanan v. State of Kerala I.L.R. 2013 (1) Kerala . . 377
- Evidence Act, 1872 (Central Act 1 of 1872)**—Sections 4 and 105—*The accused must establish, from evidence and other matters before the Court, that the circumstances which he proposes to prove to get the benefit under Section 100 IPC exists, by disproving the mandatory presumption that such circumstance do not exist—Penal Code, 1860 (Central Act 45 of 1860)— Section 100.*
Abdul Rasheed v. State of Kerala I.L.R. 2013 (1) Kerala . . 473
- Family Courts Act, 1984 (Central Act 66 of 1984)**—Section 7—*The proceedings in respect of right, title and possession of immovable properties, arising out of a matrimonial dispute, can be instituted only within the local limits of the Family Court within whose jurisdiction the property is situated—Code of Civil Procedure, 1973 (Central Act 2 of 1974)—Section 16.*
Shihabudeen v. Seenath I.L.R. 2013 (1) Kerala . . 859
- Family Courts Act, 1984 (Central Act 66 of 1984)**—Section 9—*Duty of Court to make efforts for settlement—Family Court shall take all efforts to settle matrimonial dispute by referring the case to mediation—Cases where Counsellors have reported failure to resolve the dispute should also be sent for mediation, with the consent of both parties to the Us.*
Srinivas Rao, K. v. Deepa, D. A. (S.C.) I.L.R. 2013 (1) Kerala . . 813
- Foreign Liquor Rules, 1953 (Kerala)**—Rule 13(3B)—*After the High Court declared the relevant provisions of G.O. (P) No. 192/2011/TD, which prohibits issuance of bar licence to new three star hotels, as void and inoperative, the local law in the State of Kerala does not prohibit grant of bar licence to hotels with three star classification.*
Member Secretary (HRACC) v. M/s Emerald Regency I.L.R. 2013 (1) Kerala . . 340
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—Section 25—*Claim for maintenance—Amendment of claim—If the amendment sought for does not constitute a new cause of action or raise a new case, but only amounts to adding to the facts already on record, the amendment sought for can be allowed even after the period of limitation.*
Lakshmy Surendran v. Surendran I.L.R. 2013 (1) Kerala . . 241
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—Section 26—*Custody of Children—Family Court can grant visitation rights to either of the parents or modify the visitation rights already granted by virtue of the powers under Section 26—If permanent custody of the minor is given by Family Court to one of the parents, other parent can seek visitation rights or modification thereof before the same Family Court, irrespective of territorial jurisdiction of that Court.*
Rajan Menon v. Bindu, U. I.L.R. 2013 (1) Kerala . . 931
- Home Guards Act, 1960 (Kerala Act 16 of 1960)**—Sections 3, 6, 7 and 14—*Act done by the Home Guards in the course of their duties under the police force shall be deemed to be*

an act done in the course of employment under the State and the State shall be held liable for such act as if it had been done by the police force.

Vibin, P. V. v. State of Kerala I.L.R. 2013 (1) Kerala . . . 321

Income Tax Act, 1961 (Central Act 43 of 1961)—*Section 158 BFA (2) Proviso-Exemption from penalty cannot be granted under the proviso to Section 158 BFA (2) unless all requirements are satisfied—Requirements to be satisfied are cumulative—Filing of 'Nil' return "would not satisfy the requirements of the proviso.*

Mohanam, C. (Dr.) v. Deputy Commissioner of Income Tax I.L.R. 2013 (1) Kerala . . 704

Industrial Disputes Act, 1947 (Central Act 14 of 1947)—*Section 10(l)(d)~The Government should apply its mind and form an opinion with regard to the existence of an industrial dispute before referring the dispute to the Industrial Tribunal for adjudication.*

Grasim Industries Ltd. v. Industrial Tribunal, Kozhikode I.L.R. 2013 (1) Kerala . . 894

Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000)—*Sections 10 and 11—While considering an application for bail submitted by a juvenile in conflict with law, the Court should keep in mind the objectives of the enactment—Direction issued by the Sessions Court for execution of bond by the juvenile, as a condition for grant of anticipatory bail is not in conformity with the objectives of the enactment.*

Gopakumar, A. V v. State of Kerala I.L.R. 2013 (1) Kerala . . 48

Land Acquisition Act, 1894 (Central Act 10 of 1894)—*Sections 3(cc) and 4— 'Government Company' is expressly excluded from the definition of 'Company'—Part VII of the Act will not apply to Government Company.*

ITI Limited, Bangalore v. Tahsildar I.L.R. 2013 (1) Kerala . . 300

Land Acquisition Rules, 1990 (Kerala)—*Rule 9(3)—Agreement executed between Government of Kerala and Indian Telephone Industries permitting Government to resume the land acquired for the company, if the company does not use the land for the purpose for which it was acquired, within a period of two years—This agreement is not hit by Section 23 of the Contract Act as it is in accordance with the rule—Contract Act, 1956 (Central Act 1 of 1956)—Section 23.*

ITI Limited, Bangalore v. Tahsildar I.L.R. 2013 (1) Kerala . . 300

Land Relinquishment Act, 1958 (Kerala Act 38 of 1958)—*Section 4—If there is no order of vesting by the Revenue Divisional Officer, the relinquishment will not become final as against third party but it will become final as against owner of the land and persons claiming under him.*

Natarajan, R. v. Village Officer I.L.R. 2013 (1) Kerala . . 1005

Legal Services Authorities Act, 1987 (Central Act 39 of 1987)—*Section 20—The award passed by the Lok Adalat should cause termination/cessation of the case referred to it—The recording of the terms of settlement arrived at by the parties for the resolution of the dispute and fixing a date for verifying compliance, without disposal of the case, cannot be treated as an award passed by the Lok Adalat—Such recordings made by the Lok Adalat cannot be treated as an award and deemed to be a decree passed by a Civil Court.*

Mary Varghese v. Gijo George Varghese I.L.R. 2013 (I) Kerala . . 597

Legal Services Authorities Act, 1987 (Central Act 39 of 1987)—*Sections 20 and 22C—For execution of an award passed by the Lok Adalat on a matter taken cognizance by it under Section 20 of the Act, transmission of the award from the Lok Adalat to the Civil Court is not required—The award which is a deemed decree can be filed in the concerned court with a request to execute it—The necessity for transmission of awards arises only when a*

permanent Lok Adalat passes an award with respect to a matter coming under Chapter 6A and when the permanent Lok Adalat takes cognizance under Section 22C.

Vasu, N. T. v. Padinharepurakkal Aramughan I.L.R. 2013 (1) Kerala . . 1069

Limitation Act, 1963 (Central Act 36 of 1963)—Articles 124 and 137—*To entertain an application under Order XXIII, Rule 3 CPC, Article 137 of the Limitation Act would apply and not Article 124 of the Limitation Act, since the Proviso under Rule 3 of Order XXIII cannot be stated to be one conferring powers merely of review.*

Seetha Ramachandran @ Seetha Varma v. K. B. Radhakrishnan I.L.R. 2013 (1) Kerala . . 798

Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951)—Sections 39 (2) and 42—*The number of trustees in a temple under the Madras Hindu Religious and Charitable Endowments Act, at a given point of time, cannot exceed five in number—Section 39(2) of the Act holds primacy over the provisions of the scheme as regards the total number of trustees to be appointed in a temple.*

Commissioner, Malabar Devaswom Board v. Valliyodan Krishnan Nair I.L.R. 2013 (1) Kerala . . . 621

Mahatma Gandhi University Act, 1985 (Kerala Act 12 of 1985)—*Dismissal from service—Non-execution of indemnity bond with the management before availing Leave Without Allowance—Not an irregularity warranting major punishment of removal from service.*

Jageer, P. P. v. Manager, S. N. M. College I.L.R. 2013 (1) Kerala . . 1016

Mahatma Gandhi University Act, 1985 (Kerala Act 12 of 1985)—*Non-execution of indemnity bond before availing Leave Without Allowance—Lecturer held responsible for all financial liability incurred by the management, on account of the appointment of substitutes during his absence with interest and also the cost of litigation.*

Jageer, P. P. v. Manager, S. N. M. College I.L.R. 2013 (1) Kerala . . 1016

Mediation—*Pre-litigation mediation—All mediation centres directed to set-up Help desks to conduct pre-litigation mediation.*

Srinivas Rao, K. v. Deepa, D. A. (S.C.) I.L.R. 2013 (1) Kerala . . 813

Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957)—Sections 21(4A) and 22—*The Court can take cognizance of the offence and order confiscation of the vehicle only on a written complaint made by a person authorized in this behalf by the Central Government or State Government—Mineral Concession Rules, 1967 (Central)—Rule 60A.*

Dijil v. Sub Inspector of Police, Kunnamkulam I.L.R. 2013 (1) Kerala . . 1031

Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957)—Section 23A—*In cases where the offences are compounded under Section 23A of the Act and Rule 60A of the Rules, confiscation order cannot be issued in respect of the vehicle which was engaged in transportation of the minerals—Mineral Concession Rules, 1967 (Central)—Rule 60A.*

Dijil v. Sub Inspector of Police, Kunnamkulam I.L.R. 2013 (1) Kerala . . 1031

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*The insurer or owner is not liable to compensate the drive for the injury sustained by him as a result of his own negligence, unless the policy covers the driver or owner.*

Oriental Insurance Co. Ltd. v. Nandanam, P. P. I.L.R. 2013 (1) Kerala . . 246

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—Sections 68 and 86—*Cancellation and Suspension of permits—Transport Commissioner is not a 'Transport Authority' and cannot issue Circular which will impinge upon the power of the transport authority to cancel or suspend the permit—Clauses 20 & 30 of Circular No. 17/2011 of Transport Commissioner quashed—Motor Vehicle Rules, 1989 (Kerala)—Rules 185 and 186.*

Kerala Bus Transport Association v. Transport Commissioner I.L.R. 2013 (1) Kerala . . 570

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*Sections 68 and 86—Owner/ Permit holder of the vehicle cannot be kept waiting till proceedings pursuant to check report is finalised, before his permit can be renewed.*

Kerala Bus Transport Association v. Transport Commissioner I.L.R. 2013 (1) Kerala 570

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*Section 166—In case of permanent disability, compensation should be awarded under two heads (1) for physical disability or loss of amenities of life and (2) for loss of earning power—There is no need to award compensation for physical disability and for loss of amenities in life separately, as both heads are one and the same.*

George v. Thomas, E. T. I.L.R. 2013 (1) Kerala . . 559

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*Sections 2(11) and 74— The educational institution vehicles, whatever be the nomenclature given in the permit, contract carriages are which attracts the provisions of Section 74.*

Siddique, P. K. A. v. Regional Transport Authority, Kozhikode I.L.R. 2013 (1) Kerala . . 829

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*Sections 59, 72 and 74—The condition imposed by the transport authorities restricting the user of the vehicle owned by educational institutions as 15 years is outside the purview of the jurisdiction vested with the transport authorities—Such condition could be prescribed only by the State.*

Siddique, P. K. A. v. Regional Transport Authority, Kozhikode I.L.R. 2013 (1) Kerala . . . 829

Municipality Building Rules, 1999 (Kerala)—*Rule 60—A permit under Rule 60 can be granted only to owners of small plots having less than 125 sq. mtrs.—A building permit under Rule 60 cannot be granted to the same person if he is having any plot adjacent to or abutting the small plot—The words used "for constructing different building" in the proviso to Rule 60 no way enlarges or militate against the spirit of what is stipulated and provided under the Rule.*

Krishnan Mahadevan @ Mahadevan v. Moniamma, K. R. I.L.R. 2013 (1) Kerala . . 1065

Muslim Women (Protection of Rights on Divorce) Act, 1986 (Central Act 25 of 1986)—*Section 3—Multiplier of 10 can be taken for computing the fair and reasonable provision, in appropriate cases.*

Abdul Saleem v. Fousiya I.L.R. 2013 (1) Kerala . . 260

Muslim Women (Protection of Rights on Divorce) Act, 1986 (Central Act 25 of 1986)—*Section 3—Petition for correction of quantum of compensation claimed by divorced wife should be entertained by the Magistrate, if adequate reasons and justifiable grounds are made out.*

Abdul Saleem v. Fousiya I.L.R. 2013 (1) Kerala . . 260

Muslim Women (Protections of Rights on Divorce) Act, 1986 (Central Act 25 of 1986)—*Section 3—It is the status of the parties as on the date of divorce that has to be considered for ordering fair and. reasonable provision to the divorced wife—The provision under Section 3 has been made to avoid vagrancy of the divorced wife and to enable the divorced wife to lead a reasonable and decent life, even after divorce.*

Hussain Punathil v. Fathima I.L.R. 2013 (1) Kerala . . 975

Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985)—*Section 37—Section 37 of the NDPS Act would be applicable only in cases of offences under Sections 19, 24 and 27A and cases involving commercial quantity—When the investigating officer files the final report beyond the period prescribed under Section 167*

(2) Cr.P.C., the Magistrate cannot order the detention of the accused beyond the period prescribed under Section 167(2) Cr.P.C., even if the crime is committed while the accused is on bail in another case—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 167(2).

Vijayan v. Sub Inspector of Police I.L.R. 2013 (1) Kerala . . 965

Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138—For determining territorial jurisdiction, Magistrate has to go by the averments in the complaint—The place from which statutory notice was issued, where reply was received and residence of the complainant, all falling within jurisdiction of the same Magistrate—Averment in the complaint that the cheque amount is to be paid at the complainant's residence—The Magistrate has territorial jurisdiction to entertain the complaint.

Mohammed Abdul Kareem Faisal v. Balakrishna Menon I.L.R. 2013 (1) Kerala . . 233

Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 204—If BSNL sells SIM cards, other telephone apparatus or goods from the telephone exchange, then BSNL is liable to pay profession tax to the Panchayat, within which the said telephone exchange is situated—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 482 and Kerala Panchayat Raj (Profession Tax) Rules, 1966—Rule 2(c).

Indira, C. M. v. Secretary, Kunhimangalam Grama Panchayat I.L.R. 2013 (1) Kerala . . 76

Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 4(2)—The distinction between Section 3 of the Panchayat Act and Section 4(2) of the Panchayat Raj Act is that in the former it was within the powers of the Government to do the acts referred to in Section 3 whereas in the latter the Government could act only on the basis of the resolution of the Panchayat or in consultation with the Panchayat.

Karam Veettil Parukutty Amma v. Muhammedkutty I.L.R. 2013 (1) Kerala . . 363

Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 271J—The Ombudsman for Local Self Government Institutions can pass interim orders only after the Ombudsman records its findings against the Local Self Government Institution or its officials and forms an opinion that there is a prima facie case.

M/s SMA Restaurant & Services Pvt. Ltd. v. State of Kerala I.L.R. 2013 (1) Kerala . . 428

Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Sections 271 M (4)(b) and 271 S—Statutory authority can wield only those powers which are vested in it by the statute—The Ombudsman cannot enquire into matters in respect of which a remedy is available from the Tribunal for Local Self Government Institutions.

M/s SMA Restaurant & Services Pvt. Ltd. v. State of Kerala I.L.R. 2013 (1) Kerala . . 428

Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 35 (I) (p)—Disqualification of members for not convening Grama Sabha two times consecutively—Since Section 35 (I) (p) has been amended retrospectively, with effect from 1-11-2010, disqualification under the Section would arise only when there is an omission to convene Grama Sabha three times consecutively.

Omana, E. A. v. State of Kerala I.L.R. 2013 (1) Kerala . . 526

Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 248—In order to put forward a plea of protection under Section 248, the President, the Secretary, or other employee should be in office at the time of taking cognizance—Penal Code, 1860 (Central Act 45 of 1860)—Section 197.

Baby Varkey v. State of Kerala I.L.R. 2013 (1) Kerala . . 603

Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 (Kerala)—Rules 10 and 19—Renewal of licence—Belated application for renewal

of licence need not be accompanied by consent of the landlord—Local authority cannot insist on production of consent of landlord for renewal of licence—If the application is not filed within time, applicant should pay additional fee.

Swapna Jestus, K. v. Secretary, Pulpally Grama Panchayat I.L.R. 2013 (1) Kerala . . 534

Penal Code, 1860 (Central Act 45 of 1860)—Sections 182, 194, 195 and 195A— *Investigation transferred from the CBCID to the CBI as per the orders of the High Court— Investigating Officer of the CBI committing suicide naming certain persons responsible for his death—The CBCID while investigating the case registered for the suicide of the Investigating Officer cannot determine the legality, propriety and correctness of the investigation conducted by the CBI with respect to the evidence gathered by them after taking over the investigation from the CBCID in the earlier crime—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)— Section 195.*

Unnikrishnan Nair, S. v. State of Kerala I.L.R. 2013 (1) Kerala . . 109

Penal Code, 1860 (Central Act 45 of 1860)—Section 306—*To proceed against a person for the offence under Section 306, there must be abetment for commission of suicide by the said person—The mere mentioning of the name of a person in a suicide note as being responsible for the death of the person committing suicide would not amount to an offence under Section 306.*

Unnikrishnan Nair, S. v. State of Kerala I.L.R. 2013 (1) Kerala . . 109 .

Penal Code, 1860 (Central Act 45 of 1860)—Sections 96, 97, 99, 100 and 351— *Right of private defence—In order to extend the benefit under Section 100IPC to an accused, who voluntary caused death to another, the following facts must be established: (1) that deceased was the assailant (2) that deceased committed the offence of "assault" (3) that such assault by the deceased occasioned in exercise of private defence by accused and (4) that such assault by the deceased was such as may reasonably cause apprehension that death or grievous hurt would be the consequence, had he not exercised his right of private defence.*

Abdul Rasheedv. State of Kerala I.L.R., 2013 (1) Kerala .. 473

Penal Code, 1860 (Central Act 45 of 1860)—Section 100—*The burden of proof under Section 105 of the Evidence Act can be discharged by the accused either by adducing independent evidence or by relying on circumstances which may emerge from the evidence and other materials available in court—Evidence Act, 1872 (Central Act 1 of 1872)—Section 105.*

Abdul Rasheed v. State of Kerala I.L.R. 2013 (1) Kerala .. 473

Penal Code, 1860 (Central Act 45 of 1860)—Sections 100 and 351—*The presence of injury on an accused may not be an inevitable requirement to establish the defence plea of private defence under Section 100 IPC—The gesture or preparation from the side of the deceased must be of a nature referred to in Section 351 IPC as it would cause any person present to apprehend that the one who make such gesture or preparation is about to use criminal force on that person.*

Abdul Rasheed v. State of Kerala I.L.R. 2013 (1) Kerala .. 473

Penal Code, 1860 (Central Act 45 of 1860)—Section 302—*Rarest of rare case—The Supreme Court in Swamy Shraddananda (2) 's case [Swamy Shraddananda v. State of Karnataka (2008) 13 SCC 767] did not give power to the Sessions Court to impose the harsher variety of life sentence as awarded in Swamy Shraddananda (2) 's case—The area of remission, commutation, etc. is not within the purview of the Sessions Court—The power to impose the harsher sentence of imprisonment for life, as awarded in Swamy Shraddananda (2) 's case, is vested with the constitutional courts alone.*

State of Kerala v. Unni (F.B.) I.L.R. 2013 (1) Kerala .. 637

- Penal Code, 1860 (Central Act 45 of 1860)**—Section 302—Rarest of rare case—After the introduction of the Code of Criminal Procedure, 1973, the sentencing policy is shifted from the perspective of the nature of crime to the nature of crime and the criminal—Now the courts have to say why sentence of death has to be imposed and what are the circumstances which amount to rarest of rare cases.
State of Kerala v. Unni (F.B.) I.L.R. 2013 (1) Kerala . . 637
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 375—Rape—Appeal filed from Judgment in two Sessions cases involving a series of rape cases— High Court acquitting all the accused save one as per common judgment—Just because the prosecutrix had been a willing partner to sexual intercourse with accused in one case does not mean that she was a consenting party in all instances of alleged rape—High Court should have considered facts of each case separately while deciding the appeals—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)— Sections 385 and 386—Powers of the Appellate Court.
State of Kerala v. Joseph @ Baby (S.C.) I.L.R. 2013 (1) Kerala . . 633
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 124A—In a democratic set up, publishing or preaching of protest or even questioning the foundation of the form of Government causing disaffection towards the Government and thus committing any offence under Chapter VI of the IPC, has to be examined within the letter and spirit of the Constitution—To prosecute an accused for the offence under Section 124'A of the IPC, sanction under Section 196 Cr. P.C. is a mandatory requirement for the court to take cognizance of such offence.
Advocate P. J. Manuel v. State of Kerala I.L.R. 2013 (1) Kerala .. 793
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 153—To constitute an offence under Section 153 Indian Penal Code, it has to be shown that the act which was the cause of provocation for the offence of rioting, was itself illegal.
Advocate P. J. Manuel v. State of Kerala I.L.R. 2013 (1) Kerala .. 793
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 498A—Criminal courts dealing with 498A cases should refer the case to mediation before taking up the cases for trial.
Srinivas Rao, K. v. Deepa, D. A. (S.C.) I.L.R. 2013 (1) Kerala .. 813
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 424—In order to attract Section 424 IPC, it has to be proved that there was dishonest or fraudulent concealment before moving the property and there was assistance for removal of the property with such intention—The repossession of vehicle on the basis of the terms and condition in the hire purchase agreement would not constitute an offence under Section 424 IPC.
Sree Krishna Sharma v. State of Kerala I.L.R. 2013 (1) Kerala .. 987
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 376—A minor girl living in primitive village condition cannot be expected to disclose the experience of rape undergone by her to others.
Raju v. State of Kerala I.L.R. 2013 (1) Kerala .. 1022
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 376—In rape cases corroboration is not a matter of law, but a guide of prudence as the testimony of the victim is vital, unless there are compelling reasons for corroboration.
Raju v. State of Kerala I.L.R. 2013 (1) Kerala . . . 1022
- Penal Code, 1860 (Central Act 45 of 1860)**—Section 376—Punishment for rape-Sentence imposed by the Court should not be too lenient or disproportionately severe—If the sentence is lenient, it loses its deterrent effect—The Court, while awarding sentence, has

a duty to guard itself against the two tendencies and should draw a proper balance between them.

Raju v. State of Kerala I.L.R. 2013 (1) Kerala . . 1022

Police Act, 1961 (Kerala Act 5 of 1961)—Section 120(d)—*To constitute an offence under Section 120(d) of the Kerala Police Act, the affixing of poster on the wall or building without permission of the custodian, must have caused defacement to the wall or building.*

Advocate P. J. Manuel v. State of Kerala I.L.R. 2013 (1) Kerala . . 793

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994 (Central Act 57 of 1994)—Sections 7 and 16A—*Direction issued by the Supreme Court to strictly implement the provisions of the Act so as to give effect to the objective behind the enactment—Courts to take steps to dispose of all pending cases under the Act within a period of six months.*

Voluntary Health Association of Punjab v. Union of India (S.C.) I.L.R. 2013 (1) Kerala . . 901

Prevention of Corruption Act, 1988 (Central Act 49 of 1988)—Section 19—*Where the public servant has abused the office which he held but ceased to hold the said office at the time of taking cognizance, sanction under Section 19 of the Prevention of Corruption Act is not necessary.*

Baby Varkey v. State of Kerala I.L.R. 2013 (1) Kerala . . 603

Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954)—Sections 2(ia)(m), 7 and 16—*Sale of pickle—Amendment to the Rule as per which the standard prescribed is varied—In cases which have not been concluded by a judgment of conviction, the benefit of the amended Rule which dilutes the rigor imposed by the earlier Rule must be extended to the accused—This benefit cannot be extended to cases in which the trial has ended in conviction of the accused—Prevention of Food Adulteration Rules, 1955—Appendix B—Item No. A.16.16 and Item No. A. 16.42.*

Prasanth, K. C. v. Food Inspector I.L.R. 2013 (1) Kerala . . 218

Protection of River Banks and Regulation of Removal of Sand Rules, 2002(Kerala)—Rules 27 and 28—*Non-consequence of remittance of price of vehicle used for transporting sand and fine fixed by the District Collector—Failure to pay the amount can result only in sale of the vehicle—The amount cannot be recovered by initiating revenue recovery proceedings against driver of the vehicle.*

Muhamad Shafi v. State of Kerala I.L.R. 2013 (1) Kerala . . 360

Provincial Insolvency Act, 1920 (Central Act 5 of 1920)—Sections 7 and 8—*An insolvency petition can be presented either by a creditor or by a debtor, if a debtor commits an act of insolvency—Section 8 does not prohibit the presentation of an application by a debtor adjudging him insolvent against a Corporation, Association or a Company.*

Abdul Khader v. Abdullakutty I.L.R. 2013 (1) Kerala . . 708

Public International Law—*Concept of sovereignty and exercise of sovereign rights, explained—In an area in which a country exercises sovereignty, its laws will prevail over other laws, in case of conflict between the two.*

Republic of Italy v. Union of India (S.C.) I.L.R. 2013 (1) Kerala . . 719

Public Service Commission Rules of Procedure, 1976 (Kerala)—Rules 11 (v), ISA and 22—*A candidate who has incorrectly bubbled the Optical Mark Reader (OMR) answer script, cannot challenge rejection of his answer script on the ground that the Commission has mistakenly included his name in the rank list—The OMR guidelines should be strictly*

- complied with by the candidates—Decision reported in I.L.R. 2012 (4) Kerala 975—Overruled,*
Kerala Public Service Commission v. Shaiju, I. L. I.L.R 2013 (1) Kerala . . 13
- Public Service Commission Rules of Procedure, 1976 (Kerala)—Rule 13—Once the main list is exhausted, the supplementary list automatically loses its significance—A supplementary list has no separate existence de hors the main list.**
Secretary, Kerala Public Service Commission v. Sheeja, P. R. (S.C.) I.L.R. 2013 (1) Kerala . . 549
- Registration Act, 1908 (Central Act 16 of 1908)—Section 49—Reception of unregistered document in evidence—Unregistered document cannot be used for the purpose of establishing that the document created or declared or assigned or limited or extinguished, a right to immovable property.**
Aniyan, T. V. v. Raveendran, T. K. I.L.R. 2013 (1) Kerala . . 17
- Registration Act, 1908 (Central Act 16 of 1908)—Section 49—Reception of unregistered document in evidence—Unregistered lease deed cannot be looked into for the purpose of ascertaining term of the lease as the term of the lease imposes a limit on the interest of the parties to that agreement.**
Aniyan, T. V. v. Raveendran, T. K. I.L.R. 2013 (1) Kerala . . 17
- Registration of Births and Deaths Act, 1969 (Central Act 18 of 1969)—Section 15—Correction of name—Once the name is corrected by publication in the Official Gazette, the Registrar has to consider the application for correction of name in the Birth Register—The section only contemplates that the Registrar should be satisfied about the mistake in the entry.**
Francis, M. D. v. Aluva Municipality I.L.R. 2013 (1) Kerala . . 213
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002)—Section 13(3A)—Issuance of notice under Section 13(2) enables the party concerned to file a representation or objection and the bank is liable to pass reasoned orders and communicate the same to the party within one week—The representation under Section 13(3A) need not be limited to objections as to the lapses or failures on the part of the Bank, but could also include those circumstances which are relevant for persuading the bank from not proceeding with further steps under Section 13(4)—Security Interest Enforcement Rules, 2002—Rule 3A.**
Malabar Sand and Stones (Pvt.) Ltd. v. Catholic Syrian Bank Limited I.L.R. 2013 (1) Kerala . . 624
- Service—Appointment to the post of reserve driver in Kerala State Road Transport Corporation—Change in conditions stipulated in the original notification cannot be effected by an erratum notification, after commencement of selection procedure—Candidate to be considered should possess a valid licence as on the date of application or should have a licence which had expired within thirty days of the last date of application—A candidate cannot be disqualified, even if validity of his licence expires during the selection process.**
Biju, K. S. v. Kerala Public Service Commission I.L.R. 2013 (1) Kerala . . 289
- Service—1992 Pay Revision Order—Option for choosing a date for revised pay scale—Right to opt is limited to the existing scale of pay as on the date of commencement of the pay revision—Those appointed to a post on or after 1-3-1992, whether for the first time in Government Service or by transfer or by promotion from another post, shall be allowed pay in the new post, only in the revised scale.**
State of Kerala v. Mahadevan Nair, P. K. I.L.R. 2013 (1) Kerala . . 391

- Service**—*Selection to the post of Registrar in Kannur University—Where the selection committee had prescribed certain norms for selection of candidates, without informing the applicants about such norms, applicants can challenge the selection even after participating in the selection process—Kannur University Act, 1996 (Kerala Act 22 of 1996)— . Section 11(1).*
Ashokan (Dr.) v. Balachandran Keezhoth (Dr.) I.L.R. 2013 (1) Kerala . . 681
- Service Rules, 1959 (Kerala)**—*Part III, Rule 3C—Recovery of excess payment— Government is entitled to recover excess payment made to an officer by mistake, even after his retirement.*
State of Kerala v. Mahadevan Nair, P. K. I.L.R. 2013 (1) Kerala .. 391
- Sick Industrial Companies (Special Provisions) Act, 1985 (Central Act 1 of 1986)**—*Sections 22 and 22A—The State Government, after having participated in the proceedings before the BIFR, cannot act contrary to the directions issued by the BIFR, without having challenged the order of the BIFR—The burden is heavily on the Government to establish that, on account of public interest, it would be inequitable to hold the Government bound by the promise,*
Southern Refineries Ltd. v. State of Kerala I.L.R. 2013 (1) Kerala .. 696
- Stamp Act, 1959 (Kerala Act 17 of 1959)**—*Sections 47 and 48— Purchaser prevented from getting cancellation of a sale certificate executed on stamp paper effected, on account of interim orders passed by the court as well as Government—The said delay should be taken as due to unavoidable circumstances, beyond the control of the purchaser and Section 48(3) (b) of the Kerala Stamp Act has to be applied and refund of the stamp duty paid ought to be allowed—Stamp Rules, 1960 (Kerala)—Rules 18 and 19.*
Wilson Chakkappan v. Tahsildar I.L.R. 2013 (1) Kerala . . 191
- Tax on Luxuries Act, 1976 (Kerala Act 32 of 1976)**—*Section 6(6)—The power of rectification is conferred on the assessing authority and the appellate authority for the purpose of rectifying errors apparent on the face of the records—An illegal order cannot be corrected by rectification under Section 6(6) of the Act—In the guise of rectification, one cannot seek a rehearing by the assessing authority or the appellate authority.*
M/s Kairali Ayurvedic Health Resort Pvt. Ltd. v. Commercial Tax Officer (Luxury Tax)
I.L.R. 2013 (1) Kerala . . 272
- Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Central Act 80 of 1976)**—*Sections 5 and 7— Territorial Waters, Contiguous Zone and Exclusive Economic Zone— Contiguous Zone is within the Exclusive Economic Zone of India and the laws governing the Exclusive Economic Zone would also govern incidents which occur within the Contiguous Zone.*
Republic of Italy v. Union of India (S.C.) I.L.R. 2013 (1) Kerala .. 719
- Transfer of Property Act, 1882 (Central Act 4 of 1882)**—*Section 54—On registration of a sale deed, the title will normally pass to the purchaser from the date of execution of the sale deed; registration being prima facie proof of intention to transfer property—Any contra intention or condition of payment of consideration as a pre-condition for passing of title has to be gathered from the recitals of the deed and is a conclusion on facts— Contract Act, 1872 (Central Act 9 of 1872)—Sections 10 and 25.*
Seline Fernandez v. Bernard Francis I.L.R. 2013 (1) Kerala . . 56
- Transfer of Property Act, 1882 (Central Act 4 of 1882)**—*Section 126— Revocation of gift— After acceptance of gift by the donee, donor cannot unilaterally revoke the gift by executing cancellation deed stating that the gift has not been accepted—Acceptance of gift can be by so many means—Handing over the prior title deeds of the property by the*

- Donor to the Donee and collection of the gift deed by the Donee from Sub Registrar's office, are all indicative of acceptance of gift.*
Parameswaran v. Lekshmanan I.L.R. 2013 (1) Kerala . . 888
- Transfer of Registry Rules, 1966 (Kerala)—Rule 2—Partnership reconstituted— Property of firm vesting in the reconstituted firm—Revenue Department should effect transfer of registry of immovable property to the name of the reconstituted firm without insisting on production of registered document evidencing transfer of property—Partnership Act, 1932 (Central Act 9 of 1932)—Section 14.**
Park Residency v. State of Kerala I.L.R. 2013 (1) Kerala . . 945
- United Nations Convention on the Law of the Sea, 1994—Article 97—Incident of Navigation— A criminal act cannot be treated as an incident of navigation.**
Republic of Italy v. Union of India (S.C.) I.L.R. 2013 (1) Kerala . . 719
- University Grants Commission Act, 1956 (Central Act 3 of 1956)—Sections 12 and 21— Notification issued by the U.G.C. prescribing minimum marks for clearing National Eligibility Test—Change of aggregate marks by the U.G.C. at the final stage, just before declaration of results would be hit by Article 14 of the Constitution of India—Even if power is vested with the U.G.C. under Section 12, that power cannot be exercised whimsically—Constitution of India—Article 14.**
Roopakala Prasad v. U.G.C. I.L.R. 2013 (1) Kerala 118
- University Grants Commission (Minimum Qualification required for Appointment and Career Advancement of Teachers in University and Institutions Affiliated to it) Regulations, 2000—Clause 1.3.3—Clearance of NET alone being the eligibility for Lecturership, fixing of aggregate marks as a qualifying criteria and eligibility goes beyond the scope of the Regulation and is hence ultra vires—Fixing of standards can be done only through subordinate legislation and not by executive orders.**
Roopakala Prasad v. U.G.C. I.L.R. 2013 (1) Kerala . . 118
- Value Added Tax Act, 2003 (Kerala Act 30 of 2003)—Sections 8(b) and 8(f)(i)—Application for compounding filed by the petitioner, who is conducting a metal crusher unit, under Section 8(b) cannot be rejected, placing reliance on Section 8 (f) (ii).**
Ahammed Sherief v. Kerala Value Added Tax Appellate Tribunal I.L.R. 2013 (1) Kerala . . 457
- Value Added Tax Act, 2003 (Kerala Act 30 of 2003)—Section 47—Detaining and seizing of goods are two different concepts—Goods which are detained may be released under Section 47(2) on furnishing security or bond or on realization of tax—Goods which have not been released on furnishing security can be seized by the officer—The waiting period of 30 days mentioned in Section 47(8) is applicable both when the goods are seized and also to goods which are detained and released on furnishing security—Value Added Tax Rules (Kerala)—Rule 67(8) and (9).**
M/s Siemens Limited v. Commercial Tax Inspector I.L.R. 2013 (1) Kerala . . 399
- Words and Phrases— 'Trespass' and 'Possession', explained—Mere 'trespass' does not amount to 'dispossession'.**
Varkey v. Chacko I.L.R. 2013 (1) Kerala . . 82
- Words and Phrases—Obiter Dictum and Ratio Decidendi—Explained.**
Valsamma v. Abraham I.L.R. 2013 (1) Kerala . . 278