



INDIAN LAW REPORTS

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Order X, Rule 1A—On completion of pleadings, Civil Court shall conduct a hearing to consider whether the case should be referred to any one of the four ADR processes.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Order 21, Rule 60—The fact that by mistake the Court issued a proclamation under Order 21, Rule 60 in a suit for partition, will not entitle the court to invoke the provisions under Order 21 C.P.C—"Manner of publication and conduct of the sale " occurring in Rule 234(5) takes in a proclamation of sale as well—Civil Rules of Practice, 1971 (Kerala)—Rule 234(5).*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Order 23, Rule 3, Proviso— Where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall enquire as to whether there is such 'an adjustment or satisfaction—No other question shall be considered by the Court while adjudicating the existence of such an adjustment or satisfaction.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Order 40, Rule 1—Appointment of Receiver—Appointment of a Receiver is an exceedingly delicate and responsible duty of court which has to be discharged with utmost care and caution and only when the Court is satisfied that the requirements embodied in the expression "just and convenient" is fulfilled by the facts of the case.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1909)—*Order 40, Rule 1—Differences between Section 503 of Chapter XXXVI of the Code of Civil Procedure, 1882 and Order 40, Rule 1 of the Code of Civil Procedure, 1908, discussed—The court is invested with the discretionary jurisdiction to appoint a Receiver only when it appears to the court to be "just and convenient" while in the old Code of 1882 the court had the power to appoint a Receiver when "it appeared to be necessary "for the realisation, preservation or better custody or management of property—Code of Civil Procedure, 1882—Chapter XXXVI—Section 503.*

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- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order 40, Rule I—The principles relating to appointment of Receiver are—(1) To present the subject-matter (2) When it appears to the court to be just and convenient to do so (3) The discretion to appoint Receiver must be exercised judicially and cautiously (4) Appointment of Receiver being a very harsh remedy must be exercised only in extreme cases with utmost care and caution (5) Court while considering question of appointment of Receiver does not finally decide on the merits of the case (6) A Receiver cannot be appointed merely because it is expedient to do so, nor merely because it will do no harm.*
- Mary v. Biju P. Sebastian I.L.R. 2010 (3) Kerala .. 57
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Order 41, Rule 22—An appeal is not maintainable against a finding—A person who has succeeded in the suit, but against whom the Court rendered certain findings, cannot file an appeal challenging those findings—Correctness of the findings of the trial court can be assailed in the appeal filed by the defeated party.*
- Muhammed v. Chandrika I.L.R. 2010 (3) Kerala .. 358
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 11—Resjudicata—If the findings recorded in a judgment by a competent court in a previous : suit have relevance in a latter suit, the said findings cannot be ignored for the reason that the essential foundation to substantiate a plea of res judicata is not made out from the pleadings and no material of the previous case other than the judgment was produced in the latter case—Evidence Act, 1872 (Central Act I of 1872)—Sections 11, 13 and 35.*
- M/s V. O. Vakkan & Sons v. State of Kerala I.L.R. 2010 (3) Kerala .. 807
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 24—Transfer of Election Petition—Though Election Petition is to be tried by notified courts, High Court has jurisdiction to order transfer of Election Petition from one court to another— If the special statute does not provide separate procedure for discharging the duty conferred by such statute, the Court will be governed by the procedure which ordinarily governs the procedure in that court— Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 88(2).*
- Philip Koshy, M. (Adv.) v. Prof. Saji Chacko I.L.R.2010(3)Kerala .. 102
- Code of Civil Procedure, 1908 (Central Act 5 of 1908)**—*Section 51, Proviso (c)—Fiduciary relationship—All relationships which are built on mutual*

trust, dependence and confidence of a special variety can be described as fiduciary relationship.

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Section 51, Proviso (c)—Fiduciary relationship—Husband and wife share fiduciary relationship— Husband is bound in fiduciary capacity to account to the wife whenever she makes a demand for return of her property entrusted to him—Plea of 'no means' is not available to the husband in execution of a decree for money obtained by the wife in respect of her property entrusted to him.*

Sunitha, K. K. v. Ramesh, A.S. I.L.R. 2010 (3) Kerala .. 551

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Section 64—Court auction purchaser gets the property free of all encumbrances, including all attachments over the property—With the court sale all attachments subsisting over the property falls to the ground.*

Francis v. Navodaya Kunes and I oans (P) Ltd. I.L.R. 2010 (3) Kerala .. 605

Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Section 89— Appropriate stage for considering reference to ADR process in civil suits is on completion of pleadings—In matrimonial disputes, the ideal stage will be immediately after service of process, on the respondent and before respondent files his/her pleadings.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Section 89—Before referring the parties to an Alternate Dispute Resolution process, it is not necessary for the court to formulate or reformulate possible terms of settlement—Definition of 'Judicial Settlement' and 'Mediation' in clauses (c) and (d) of Section 89(2) should be interchanged to correct the drafting error.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—*Section 89 —'Conciliation — Court can refer only willing parties to conciliation.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 89—*Consent of parties is not required for referring them to Mediation, Lok Adalath or Judicial Settlement—Mediation is the appropriate process for settling complicated disputes whereas Lok Adalath is ideal for disputes which can be easily settled— . If the guidance of a Judge is required, Judicial settlement will be the appropriate choice.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 89—*Court cannot refer unwilling parties to arbitration in the absence of an arbitration agreement between the parties.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 89—*Directions to regulate the procedure for referring the cases to ADR process issued to Subordinate Courts.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 89 and Order 10 Rules IA to 1C—*The Court should explain the choices available regarding ADR processes to the parties, permit them to opt for a process by consensus and if there is no consensus, proceed to choose an appropriate process.*

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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92—*If the reliefs sought for in the plaint relate to removal of the present trustees and appointment of new trustees, the suit will come within the purview of Section 92—Averments in the plaint can be looked into by the Court for deciding whether or not leave should be granted to institute the Suit.*

St. Peters' and St. Pauls' Syrian Orthodox Church v. Varghese.K.S.
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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92—*Petition for leave must be in the form of an Original Petition as provided in Rule*

<i>56 of the Civil Rules of Practice—It shall not be in the form of an interlocutory application supported by an affidavit—Suit is not validly instituted until leave is granted.</i>	
Musaliyarakath Abdul Azeez v. Liwa Educational and Charitable Society I.L.R.2010(3)Kerala	.. 235
Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92—Though the proper procedure for seeking leave under Section 92 is to file an Original Petition, leave can be granted on an Interlocutory Application also.	
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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92(l)(c)- Clause (c) of Section 92 (1) has no application to a case where claim is made for possession of trust property in the hands of alienees of the trustee.	
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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—Section 92(l)(h)— Clause (h) of Section 92 (1) has to be read in conjunction with the specified reliefs provided under clauses (a) to (g) of Section 92(1).	
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Code of Civil Procedure, 1908 (Central Act 5 of 1908)—The suit on behalf of a Public Trust with the object or purpose of enforcing a private right does not come within the mischief of Section 92(1) of the Code.	
Musaliyarakath Abdul Azeez v. Liwa Educational and Charitable Society I.L.R.2010(3)Kerala	.. 235
Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 24(4)— Appointment of Public Prosecutors—Even though the scheme under Section 24(4) envisages the submission of panel by the District Magistrate to the Government, the mechanics of the process as judicially settled is that the Sessions Judge alone is competent to make the choice regarding the suitability, competency and acumen of the legal practitioner.	
Harish Kumar v. State of Kerala I.L.R. 2010 (3) Kerala	.. 958

- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 73—**
Though Courts are empowered to issue warrant under Section 73 during the course of investigation also, such warrant shall be issued only for procuring presence of a person before the Court and not before the investigating officer or Police, for aiding the investigation.
- Samdeep Varghese v. State of Kerala I.L.R. 2010 (3) Kerala .. 66
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 82, 83, 84 and 85—Release of property of absconding accused after it is proclaimed and attached—Time-limit and condition to be satisfied—An absconding accused, whose property is attached, has to make an application for release of the property within a period of two years from the date of attachment—Accused has to satisfy the court that (i) he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and (ii) that he had not received notice of the proclamation issued under Section 82 of the Code of Criminal Procedure—Accused has no right to file an application for release of the attached property after the expiry of the two year period.**
- Moideen v. S.I. of Police I.L.R. 2010 (3) Kerala .. 796
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 85—**
"Shall be at the disposal of the State Government", meaning of—The right of the Government over the attached property, is subject to the right of the absconding accused to get it released on his appearance within the time specified in the proclamation.
- Moideen v. S.I. of Police I.L.R. 2010 (3) Kerala .. 796
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Sections 142 and 133—**
An order under Section 142 can be passed only pursuant to a conditional order passed under Section 133, pending enquiry into the matter and that too to prevent imminent danger of a grave nature to the public—An Order under Section 142 has to be preceded by an order under Section 133.
- Gopinathan, P. v. Revenue Divisional Officer I.L.R. 2010 (3) Kerala .. 50
- Code of Criminal Procedure, 1973(Central Act 2 of 1974)—Section 167—**
There is no provision in the Code of Criminal Procedure requiring the police officer to submit a remand report, while producing the accused before the Magistrate Court—The police officer should send a copy of the

entries in the police diary which he is bound to maintain under Section 172 Cr.P.C., along with the accused.

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Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—*Section 197—If a member of the Kerala Police has committed an offence while acting or purporting to act in discharge of his official duty, the court is precluded from taking cognizance of such offence except with the previous sanction of the State Government—A police officer entitled to protection under Section 197(2) Cr.P.C. by virtue of the notification (S.R.O. No. 1211 of 77) issued under Section 197(3) Cr. P.C. need not be removable from his office by or with the sanction of the Government.*

Moosa Vallikkadan v. State of Kerala I.L.R. 2010(3)Kerala .. 522

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—*Section 197—Test to find out whether the alleged act was omitted by the accused during the course of his official duties—It is the quality of the act that is important and if the act falls within the scope and range of his official duties then the protection contemplated by Section 197 would be available to him—Whether the accused had acted dishonestly is irrelevant for the purpose of sanction.*

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Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—*Section 201—Return of complaint by Magistrate who lacks jurisdiction to entertain it—Magistrate shall not return the complaint amidst trial—Objection as to jurisdiction should be raised by the accused at the earliest opportunity.*

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Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—*Sections 204 and 206—Power to issue summons under Sections 204 and 206 Cr.P.C. is exclusively vested with the Magistrate—The said power cannot be exercised by Police Officers.*

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Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—*Sections 205 and 317— Accused is entitled to apply for exemption from personal appearance, even before executing a bail bond, if there exists sufficient reasons.*

Reddy, V. S. v. M/s Excel Glasses Ltd. I.L.R. 2010 (3) Kerala	.. 215
Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 210— <i>Complaint alleging implication in a false case filed by an accused, against whom a case was registered and a refer report filed after investigation— There is no provision in the Code debarring the Magistrate from taking cognizance of the private complaint filed by an accused while the refer report filed in the case against him is pending consideration before Court.</i>	
Benny, K. V. v. State of Kerala I.L.R. 2010 (3) Kerala	.. 643
Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 250— <i>Section 250 is not a penal provision—The provision is only a remedial provision for compensation for making false accusation without a reasonable cause.</i>	
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Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 251— <i>Summons trial—Magistrate is entitled to drop the proceedings if there are no materials for reading the substance of accusation against the accused —Once the particulars of offence have been read over to the accused, the trial commences, and thereafter the Magistrate is precluded from prematurely terminating the proceedings.</i>	
Anandavel v. Food Inspector I.L.R. 2010 (3) Kerala	.. 145
Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 260 <i>—'Petty Offence 'meaning of—Petty Offence within the meaning of Section 206 Cr.P. C., is an offence which is punishable only with fine not exceeding Rs.1000, but does not include any offence so punishable under the Motor Vehicles Act.</i>	
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Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 357(3) <i>— Sentence of imprisonment can be imposed for default in payment of compensation awarded under Section 357(3).</i>	
Abbas, K. A. v. Sabu Joseph (S.C.) I.L.R. 2010 (3) Kerala	.. 473
Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 410— <i>Withdrawal of case by Chief Judicial Magistrate—General directions issued.</i>	
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- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Sections 432 and 433— Orders of remission or commutation can be passed by the Governor, in exercise of power under Article 161 of the Constitution of India, only on the aid and advice of the Cabinet—Constitution of India— Article 161.*
- Balachandran, G. v. State of Kerala I.L.R. 2010(3)Kerala ..589
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 438— Conduct of the party who seeks relief under Section 438 of the Code is relevant to decide whether anticipatory bail should be granted or not— The extraordinary relief of anticipatory bail shall not be granted to a person who approaches the court with unclean hands.*
- Rajan v. State of Kerala I.L.R. 2010 (3) Kerala .. 610
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 438— High Court within whose jurisdiction a person apprehends arrest also can grant anticipatory bail—The applicant, in the anticipatory bail application, should satisfy the High Court that there is likelihood of his imminent arrest within its territorial jurisdiction.*
- Samdeep Varghese v. State of Kerala I.L.R. 2010 (3) Kerala .. 66
- Code of Criminal Procedure, 1973 (Central Act 2 of 1974)**—*Section 439— While considering the question of granting bail to accused alleged to be involved in an act of terrorism, the question is not how long the accused have been in judicial custody, but whether it is feasible to release them on bail in the security of the State— 'Terrorism'—What amounts to an act of terrorism, discussed.*
- Kamarudheen v. S.H.O., Muvattupuzha Police Station
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- Constitution of India**—*Article 14—An illegal grant in favour of one party do not give rise to a cause of action for attacking denial of the said benefit to another, relying upon Article 14 of the Constitution of India.*
- Kalarikkal Hotels (P) Ltd. v. State of Kerala I.L.R.2010(3)Kerala .. 530
- Constitution of India**—*Article 14—Upper age limit for appointment to non-teaching posts in Colleges—Government is discriminating against non-teaching staff vis-a-vis teaching staff when the upper age limit for recruitment to the former is not increased while that of the latter is*

<i>increased—Direction of Single Judge to increase the upper age limit for appointment to the post of non-teaching staff in colleges upheld.</i>	
Principal Secretary v. Jolly Varghese I.L.R. 2010 (3) Kerala	.. 275
Constitution of India—Article 19 (1)(d)—No person has a fundamental right to assemble or hold meeting on public roads or road margins, which are meant only for vehicular traffic and for the travelling public.	
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Constitution of India—Article 22(5)—The unexplained delay of 21 days in considering the representation of the detenu by the Government entitles the detenu to the benefit of release from detention.	
Sulaiman v. State of Kerala I.L.R. 2010 (3) Kerala	.. 670
Constitution of India—Articles 166 and 243Q—Notification issued by the Government with the approval of the Governor under Article 243Q(2) held to be proper— Governor has to act only with the aid and advise of the Council of Ministers while exercising executive functions, except where he is required under the Constitution to exercise the functions in his discretion.	
Sreekala, K. v. State of Kerala I.L.R. 2010 (3) Kerala	.. 615
Constitution of India—Article 226—Appointments to public offices—Only persons with clean antecedents should be appointed/nominated to public offices— Appointment of a member to the Dental Council of India, against whom Court had passed strictures based on his conduct, held to be illegal.	
Dr. Joseph Issac v. Union of India I.L.R. 2010 (3) Kerala	.. 399
Constitution of India—Article 226—Cause of action for the purpose of jurisdiction— The existence of some nexus to any one of the facts in the bundle of facts constituting the cause of action, with the territory over which the High Court exercises its jurisdiction, is sufficient to enable the Court to exercise such jurisdiction.	
Dr. Joseph Issac v. Union of India I.L.R. 2010 (3) Kerala	.. 399
Constitution of India—Article 226—Discretionary power under Article 226 will not be exercised to protect or safeguard an undeserving benefit.	
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- Constitution of India**—*Article 226—High Court has a duty to protect rights of the people of the State as a whole—Even if the prayer sought for in the writ petition is only for a direction in respect of a particular instance or a place, the court p, can issue general directions to protect and safe guard interest of the people as a whole.*
- Chief Secretary v. Khalid Mundapilly I.L.R. 2010 (3) Kerala .. 699
- Constitution of India**—*Article 226—High Court should not pass interim orders in matters affecting discipline of students—It is for the academic authorities to decide whether disciplinary action is called for in cases of student indiscipline.*
- Mahatma Gandhi University v. Sherin, S. I.L.R. 2010 (3) Kerala .. 844
- Constitution of India**—*Article 226—Judicial review is concerned with the decision making process and not with the decision itself.*
- Kalarikkal Hotels (P) Ltd. v. State of Kerala I.L.R.2010(3)Kerala .. 530
- Constitution of India**—*Article 226—No Government agency including Public Works Department, Police, Revenue and Local Authorities shall grant permission for holding meetings on public roads and road margins—Meetings shall be permitted only in stadiums, public grounds outside road margins and on the grounds of Educational Institutions on holidays—Police to prevent meetings being held on public road and road margins by removing stages, installations, articles and people from the venue of meetings conducted on public road and road margins.*
- Khalid Mundappilly v. Executive Engineer, PWD I.L.R. 2010 (3) Kerala .. 84
- Constitution of India**—*Article 226—Rejection offender—For considering the financial standing of the tenderer company, what is relevant are the accounts in respect of that company alone—In the absence of joint venture with other firms/ concerns, the financial particulars of those firms/concerns cannot form the basis for considering the financial standing of the tenderer company, unless it is so provided in the tender conditions itself.*
- P.T.C. Infrastructures and Developers v. Kerala Water Authority
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- Constitution of India**—*Article 226—Scope of interference in tender procedure—Unless the Court finds the decision to be so arbitrary and unreasonable which no man in his senses could have taken on the admitted facts of the*

<i>case, the Court would not be justified in interfering with the decision taken as part of the tender procedure.</i>	
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Constitution of India — <i>Article 226—Writ jurisdiction—Maintainability of Writ Petition—Writ jurisdiction will not be exercised by High Court when there are efficacious statutory remedies available to the aggrieved party.</i>	
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Constitution of India — <i>Article 226—Writ Petition challenging an appointment made by the Governor is maintainable without impleading the Governor as a respondent, since the Governor had acted as the Executive Head of the State—Since the State is a respondent in the Writ Petition, the Writ Petition cannot be dismissed for want of impleadment of the appointing authority.</i>	
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Constitution of India — <i>Article 361(1)—The Governor enjoys immunity and protection under Article 361(1) even when he exercises the powers of the appointing authority under Section 15(1) of the Right to Information Act—Governor cannot be impleaded as a respondent in a Writ Petition challenging appointment of a member of the State Information Commission.</i>	
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- Contracts**—*Authority entering into contract on behalf of State can cancel the contract, even if another authority has been named in the contract as the authority competent to cancel it.*
- State of Kerala v. K. Abdul Khader I.L.R. 2010 (3) Kerala .. 583
- Contract Act, 1872 (Central Act 9 of 1872)**—*Section 62—Cancellation of sale deed unilaterally by one of the parties to the sale would be against Section 62 of the Contract Act—Once a sale deed is executed the same cannot be annulled unilaterally, except by a decree of a court of law.*
- Pavakkal Noble John v. State of Kerala I.L.R. 2010 (3) Kerala .. 979
- Contract Act, 1872 (Central Act 9 of 1872)**—*Sections 172, 176 and 177—Even if the pledgor makes payment subsequent to the receipt of notice, unless there is clear evidence or materials to show that there has been a waiver or postponement of sale from the side of the pledgee, it could not be said that the pledgee could not effect sale at the time of his choice.*
- Syndicate Bank v. C. H. Mohammed I.L.R. 2010 (3) Kerala .. 33
- Contract Act, 1872 (Central Act 9 of 1872)**—*Sections 172, 176 and 177—If the pledgee has illegally sold the pledged goods and the debt is still outstanding, the remedy available to the pledgor is to sue for redemption or to sue for damages for conversion.*
- Syndicate Bank v. C. H. Mohammed I.L.R. 2010 (3) Kerala .. 33
- Contract Act, 1872 (Central Act 9 of 1872)**—*Sections 172, 176 and 177—It is mandatory for the pledgee/pawnee to inform the pledgor/pawnor about the intention to enforce the right of sale and it is not necessary that the notice should specify the time, date and place of sale—The absence of notice makes the sale void in law.*
- Syndicate Bank v. C. H. Mohammed I.L.R. 2010 (3) Kerala .. 33
- Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)**—*Section 80—Filling up vacancies of staff in society—Financial condition of the society is a relevant criterion to be considered by the Managing Committee before filling up vacancies of staff.*
- Mohanan v. State of Kerala I.L.R. 2010 (3) Kerala ..776
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- test to be conducted by outside agency—Managing Committee itself should appoint the outside agency and the power to do so should not be delegated to the President— What is meant by 'Outside agency' is an agency of repute like Institute of Co-operative Management or Productivity Council.*
- Mohanan v. State of Kerala I.L.R. 2010 (3) Kerala .. 776
- Co-operative Societies Rules, 1969 (Kerala)—Rule 187—***For appointment to a District Co-operative Bank in the quota reserved for employees of member societies, it is the date appointment that is crucial—The candidate should be in the service of the member Society on the date of his/her appointment to the District Co-operative Bank.*
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- Satheedevi v. Prasanna (S.C.) I.L.R. 2010 (3) Kerala .. 247
- Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)—Sections 69 and 70—***In cases where the Writ Petition is withdrawn at the admission stage without any consideration on merits by the court, the petitioners are entitled for refund of full court fees—The provision applicable in such cases is Section 70 and not Section 69.*
- Muralidharan, K. v. State of Kerala I.L.R. 2010 (3) Kerala .. 438
- Court Fees and Suits Valuation Act, 1959 (Kerala Act 10 of 1960)—Section 70—***Section 70 refers only to fee paid by mistake or inadvertence and does not contain any reference to either a suit or a petition.*
- Muralidharan, K. v. State of Kerala I.L.R. 2010 (3) Kerala .. 438
- Criminal Trial—***Appointment of Public Prosecutor or Government Law Officers should be made on the basis of their qualification, experience, integrity, reliability, reputation, character and antecedents and not on the basis of their political philosophy or ideology—Consideration of merit alone should be uppermost in the mind of the Sessions Judge while recommending names of Advocates for inclusion in the panel.*
- Harish Kumar v. State of Kerala I.L.R. 2010 (3) Kerala .. 958

Criminal Trial—*When the State is espousing the cause of the victims of crimes, the State has a duty to be neutral, impartial and fair—Justice to the victims should be the only consideration.*

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Divorce Act, 1869 (Central Act 4 of 1869)—*Sections 44 and 45—Period for filing appeal—Appeal period is 90 days from the date of order of Family Court as provided under the Divorce Act and not 30 days as provided under Section 19(3) of the Family Courts Act—Family Courts Act, 1984 (Central Act 66 of 1984)—Section 19(3).*

Jose, K. J. v. Mary Shiji I.L.R. 2010 (3) Kerala .. 941

Education Rules, 1959 (Kerala)—*Chapter XIVA, Note 2 to Rule 43—Qualification for promotion—Aspirant for promotion should be qualified as on the date of occurrence of vacancy—The date of filling up of vacancy is not material for assessing the eligibility.*

Jenany, J. R. v. Rajeevan, S. (S.C.) I.L.R. 2010 (3) Kerala .. 178

Education Rules, 1959 (Kerala)—*Chapter XXXII, Rule 4(3)—Appointment by transfer as H.S.S.T.—Where there are senior qualified High School Assistants entitled to be promoted as Higher Secondary School Teacher, Manager should make appointment by transfer to those posts, which can be filled by eligible H.S.A. of the school.*

Joymon,F. v. Asha Sindhu I.L.R. 2010 (3) Kerala .. 183

Electricity Act, 2003 (Central Act 36 of 2003)—*Section 15I—Cognisance of offences under the Electricity Act, taken on the basis of complaint filed by the police prior to 15-6-2007, is bad—Police given the power to investigate offences under the Act only by virtue of Section 151 A introduced with effect from 15-06-2007.*

Chacko,A.K. v. Assistant Executive Engineer, K.S.E.B.
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Electricity Act, 2003 (Central Act 36 of 2003)—*Section 15I—Occurrence, leading to registration of crime taking place after the introduction of Indian Electricity Act, 2003—Registration of crime for an offence punishable under the old Act (Indian Electricity Act, 1910) is misconceived—Indian Electricity Act, 1910 (Central Act 9 of 1910)—Section 39.*

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Evidence Act, 1872 (Central Act 1 of 1872)—*Section 65B—Admissibility of Electronic record—If the document does not satisfy the conditions under Section 65 B(2) or is not certified as required under Section 65B (4), it is inadmissible in evidence.*

Perumal A M. v. Star Tours and Travels (I) Ltd. I.L.R. 2010 (1) Kerala .. 10

Evidence Act, 1872 (Central Act 1 of 1872)—*Section 68—Proof of execution of Will—Propounder has to prove execution of the Will, even if the execution is admitted.*

Poulose, A. V. v. Indira, M. R. I.L.R. 2010 (3) Kerala .. 388

Excise and Prohibition Subordinate Service Special Rules, 1974 (Kerala)—*Rule 5—Qualification for appointment as Excise Guard—PSC insisting on pass in Physical Efficiency Test for being selected as Excise Guard PSC is competent to conduct such a test for ascertaining the capacity of the candidate for active outdoor work—By insisting on pass in Physical Efficiency Test, PSC is not introducing any new qualification.*

Venumohan, T. v. State of Kerala I.L.R. 2010 (3) Kerala .. 24

Family Courts Act, 1984(Central Act 66 of 1984)—*Free copy of order furnished by Family Court must show the date on which copy was made ready, date notified to receive it and date of delivery.*

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Family Courts Act, 1984 (Central Act 66 of 1984)—*Section 7(1) Explanation (c)— When the substratum of the case is that the matrimonial trust and faith reposed had been abused, any dispute arising due to abuse of such faith and trust would fall within the sweep of Explanation (c) to Section 7(1).*

Sindhu Sidharthan v. K. K. Sidharthan I.L.R. 2010 (3) Kerala .. 133

Foreign Liquor Rules, 1953 (Kerala)—*Rules ISA and 39—If the local needs do not justify the grant of an FL-3 Licence, the application can be rejected under Rule 13A(1)—Rule 39 gives ample power to the Government to take a decision on an application for grant of licence and to reject it on the ground of public interest or expediency—Rejection of an application for bar licence for a Hotel situated at the West Nada in Guruvayoor, held to be justified.*

- Kalarikkal Hotels (P) Ltd. v. State of Kerala I.L.R..2010 (3) Kerala .. 530
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—*Section 13(1A)(ii)—Section 13 (1A) (ii) recognises irretrievable breakdown of marriage as a valid ground for divorce—The question as to who is the decree-holder and who is the judgment-debtor or who is at fault is irrelevant when a claim for divorce is raised under Section 13 (1A).*
- Rajesh v. Sheela I.L.R. 2010 (3) Kerala .. 192
- Hindu Marriage Act, 1955 (Central Act 25 of 1955)**—*Section 23 (1) (a)—Mere non-compliance with decree for restitution of conjugal rights cannot be held to be a wrong under Section 23(1)(a)—Something more serious and graver should be established to justify rejection of the claim for divorce invoking the concept of wrong under Section 23(1)(a).*
- Rajesh v. Sheela I.L.R. 2010 (3) Kerala .. 192
- Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951)**—*Section 74(3)—The liability of a hereditary trustee is a personal liability and the same cannot be fastened on a succeeding trustee.*
- Zamorin Raja of Calicut v. Director of Local Fund Audit
I.L.R. 2010 (3) Kerala .. 748
- Income Tax Act, 1961 (Central Act 43 of 1961)**—*Section 192—Deduction of tax at source from salaried persons—Income Tax has to be deducted at source from the arrears of Dearness Allowance payable to employees before depositing the amount in the P.P. Account of employees—State cannot deduct the tax payable on D.A. arrears from the monthly salary.*
- State of Kerala v. Lilly George I.L.R. 2010 (3) Kerala .. 764
- Income Tax Act, 1961 (Central Act 43 of 1961)**—*Section 254(2)—Once the rectification application filed by one of the parties is considered and decided by the Tribunal, rightly or wrongly, a second rectification application on the same issue is not maintainable against the order issued by the Tribunal under Section 254(2) of the Act.*
- Commissioner of Income Tax v. M/s Aiswarya Trading Co.
I.L.R. 2010(3) Kerala .. 750
- Interpretation of Statutes**—*An exception clause has to be strictly interpreted—In case of doubt the interpretation should be in favour of the general provision and disfavouring the exception.*

- Project Officer, I.R.D.P. v. P. D. Chacko (S.C.) I.L.R. 2010 (3) Kerala .. 268
- Interpretation of Statutes**—*Where two interpretations are possible, Court should impute to the legislature an intention to prescribe a longer period of limitation.*
- Jose, K. J. v. Mary Shiji I.L.R. 2010 (3) Kerala .. 941
- Irrigation and Water Conservation Act, 2003 (Kerala Act 31 of 2003)**—*Section 5— The prohibition under Section 5 (1) is against construction of permanent structure in or across any water course for diversion of water from the water course—Such prohibition is not absolute—Construction can be made with previous permission of the Government—The Act is prospective in operation and the prohibition can apply only to constructions made after commencement of the Act.*
- Kanan Devan Hills Plantations Co. (P) Ltd. v. Mate of Kerala
I.L.R. 2010 (3) Kerala .. 685
- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—*Section 4(1)—The suitability of land is to be assessed by the requisitioning authority—Court can interfere with acquisition of land by the State only if it is found that either the notification is not for any public purpose or that it is issued with mala fide intention.*
- Dr. Jamaluddin, K. A. v. District Collector I.L.R. 2010 (3) Kerala .. 93
- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—*Section 18—Where there is exceptional delay on the part of the Land Acquisition Authority in the matter of finalising the proceedings, resulting in loss to the land owner, the Court can assess the compensation payable on the basis of the market value of land on a post-notification date.*
- Sebastian, M. v. State of Kerala I.L.R. 2010 (3) Kerala .. 419
- Land Acquisition Act, 1894 (Central Act 1 of 1894)**—*Section 28A—Application under Section 28A (1) should not be dismissed by the Collector, merely because the award relied on by the claimant is in relation to acquisition of garden land, whereas land of the claimant is wet land—He should consider the award also for determining whether the compensation awarded to the claimant should be enhanced.*
- Sushama, A. r. District Collector I.L.R. 2010 (3) Kerala .. 578

- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 2(25), Explanation 11 (a)— Deemed Kudikidappukaran—Minor son of a trespasser cannot claim to be in occupation of the dwelling house, so as to set up an independent claim of being a deemed kudikidappukaran of the property occupied by the trespasser.*
- Elachiar v. Wilson I.L.R. 2010 (3) Kerala .. 562
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 102—Appeal preferred against a dead person—Legal representatives brought on record subsequently by way of impleadment—No petition filed to condone the delay in impleading the legal representatives of the respondent—Held there is no valid appeal recognised by law.*
- Vareed Jacob v. E. A. Jayakumar I.L.R. 2010 (3) Kerala .. 455
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 102—Appeal filed by third party is not maintainable without preferring an application seeking leave of Appellate Authority to entertain his appeal—Leave applied for has to be considered by Appellate Authority, only after notice to interested parties—No appeal is provided under Section 102 for a proceedings in J-Form initiated under Section 72MM—The remedy of a third party aggrieved by such order is to approach the Land Tribunal under Section 72MM (8).*
- Vareed Jacob v. E. A. Jayakumar I.L.R. 2010 (3) Kerala .. 455
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 102(2)—Appeal filed after a delay of 34 years—No separate petition filed seeking condonation of delay showing justifiable cause—The appeal is "still born" and the Appellate Authority has no jurisdiction to admit the appeal without condoning the delay—The fact that a time-limit is fixed by a superior forum for disposal of appeal would not infuse life into a "still born appeal".*
- Vareed Jacob v. E. A. Jayakumar I.L.R. 2010 (3) Kerala .. 455
- Land Reforms Act, 1963 (Kerala Act 1 of 1964)**—*Section 125(3)—If the question of tenancy does not legally arise or the claim so raised is barred by resjudicata, the Civil Court cannot make a reference.*
- Vareed Jacob v. E. A. Jayakumar I.L.R. 2010 (3) Kerala .. 455
- Land Tax Act, 1961 (Kerala Act 13 of 1961)**—*The fact that a property is the subject-matter of a mortgage does not empower the Village Officer to*

refuse to accept land tax—There is no provision of law which prohibits acceptance of land tax in respect of a mortgaged property.

Hazeena v. The Tahsildar I.L.R. 2010 (3) Kerala .. 377

Mappila Marumakkathayam Act, 1939 (Act 17 of 1939)—*No member of a Mappila Marumakkathayee tarwad would have a share in the Mappila tarwad property, until a partition has taken place—The provisions under the Hindu Mitakshara Law in Malabar, on this aspect, is different from the Mappila Marumakkathayam Act.*

Varambamuriyantakath Katheesumma v. Kalarikkal Pullaikudi Anandan Nambiar I.L.R. 2010 (3) Kerala .. 292

Mappila Marumakkathayam Act, 1939 (Act 17 of 1939)—*Recitals in the Will unequivocally stated that property was bequeathed in favour of tavazhi—Bequest made by the testator in favour of his wife, daughter and their lineal descendants shows that testator bequeathed the property not in favour of named persons, but in favour of a class of persons—The property assumes the character of tavazhi properly.*

Varambamuriyantakath Katheesumma v. Kalarikkal Pullaikudi Anandan Nambiar I.L.R. 2010 (3) Kerala .. 292

Mappila Marumakkathayam Act, 1939 (Act 17 of 1939)—*Section 14 and Section 13 A— When a property is bequeathed in favour of a tavazhi, it becomes the property of the tavazhi—Thereafter the property is owned by the tavazhi as a composite entity—Number of members of tavazhi may fluctuate.*

Varambamuriyantakath Katheesumma v. Kalarikkal Pullaikudi Anandan Nambiar I.L.R. 2010 (3) Kerala .. 292

Mappila Marumakkathayam Act, 1939 (Act 17 of 1939)—*There is no bar for a Marumakkathayee to execute testamentary disposition in respect of his self-acquired property.*

Varambamuriyantakath Katheesumma v. Kalarikkal Pullaikudi Anandan Nambiar I.L.R. 2010 (3) Kerala .. 292

Motor Vehicles Act, 1988 (Central Act 59 of 1988)—*Section 166—Tribunals should not shut out oral evidence of the claimant or his witnesses— Endeavour of the Tribunal should be to help the victims and not to dispose of claim petitions in a mechanical manner—Awards should be speaking orders.*

Jaimon v. Sunilkumar, P.P. I.L.R. 2010 (3) Kerala	.. 277
Motor Vehicles Act, 1988 (Central Act 59 of 1988) — <i>Section 173 Practise of challenging awards of Tribunals on experimental basis, deprecated Nominal court fee of Rs.100 payable on filing appeal noted as one of the reasons for filing of appeals without merit—Need for appropriate amendment to Rule 397 (3) of the Kerala Motor Vehicles Rules, 1989 pointed out—Motor Vehicles Rules, 1989 (Kerala) Rule 397 (3).</i>	
Ahdul Khader v. Baby I.L.R. 2010 (3) Kerala	.. 5
Municipalities Act, 1994 (Kerala Act 20 of 1994) — <i>Sections 4(1) and (2)-- Before issuing a notification under Section 4(2)(e), the requirement under Article 243Q of the Constitution of India and sub-section (1) of Section 4 of the Municipalities Act shall be fulfilled and opinion of the Village Panchayat, Town Panchayat, Municipal Council or Municipal Corporation shall be considered—After consideration of the suggestion and opinion, further consultation with the Village Panchayat, Municipal Council, etc., is not required, before publishing a final notification under Section 4(2).</i>	
Sreekala, K. v. State of Kerala I.L.R. 2010 (3) Kerala	.. 615
Municipalities Act, 1994 (Kerala Act 20 of 1994) — <i>Section 368—Municipality cannot grant permission to hold meeting on public roads and road margins under its control, if such meetings obstruct free flow of traffic.</i>	
Chief Secretary v. Khalid Mundapilly I.L.R. 2010 (3) Kerala	.. 699
Munnar Special Tribunal Act, 2010 (Kerala Act 13 of 2010) — <i>Sections 3 (9), 4 and 5—The Tribunal does not have original jurisdiction to entertain any dispute—It can entertain only those disputes which are transferred to it by-Civil Courts of the State and the High Court.</i>	
Kanan Devan Hills Plantations Co. (P) Ltd. v. State of Kerala I.L.R. 2010 (3) Kerala	.. 685
Negotiable Instruments Act, 1881 (Central Act 26 of 1881) — <i>Section 138— Notice of demand—Notice returned with the endorsement that 'Addressee left'— Complainant has to adduce evidence to prove that the endorsement was wrong, that the addressee was available in the address and that he wilfully avoided receipt of notice.</i>	
Padmanabhan, S. v. Vasudevan Namboodiri, M.G. I.L.R. 2010 (3) Kerala	.. 349

- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138—**
Notice of dishonour returned by postal authorities with the endorsement "Address" continuously locked' It is sufficient that the notice is sent to the address given by the drawer of the cheque—If the drawer has changed his address thereafter, it is for him to inform the payee and the postal authorities about change in address—As long as such intimation is not given, Notice sent to the address of the drawer is sufficient notice.
- Perumal. A. M. v. Star Tours (Travels (1) Ltd. I.L.R. 2010 (3) Kerala .. 10
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 138**
—"Stop memo"—The burden is on the accused to establish that he had issued the 'stop memo 'for valid reasons.
- Reddy, V. S. v. M/s Excel Glasses Ltd. I.L.R. 2010 (3) Kerala .. 215
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 139—**
Presumption as to debt or liability—The presumption can be drawn only if execution of the Cheque is proved by the Complainant or on admission by accused that the cheque was issued by him.
- Padmanabhan, S. v. Vasudevan Namboodiri, M.G. I.L.R. 2010 (3) Kerala .. 349
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 141—**
Mere averment in the complaint that accused, as Directors, were in-charge of and was responsible to the company for the conduct of it s business is not sufficient to fasten criminal liability on them—There should be specific averment in the complaint about the part played by the Directors/accused in the transaction.
- Central Bank of India v. Asian Global Ltd. (S.C.) I.L.R. 2010 (3) Kerala .. 321
- Negotiable Instruments Act, 1881 (Central Act 26 of 1881)—Section 147—**
Compounding of offence—Court cannot accept composition of offence, once the Judgment is pronounced in appeal or revision—Instead of depositing fine amount in Court, accused paid the amount directly to complainant—Direction issued to Magistrate to consider the payment as deposit of fine—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 362.
- Beena v. Balakrishnan Nair I.L.R. 2010 (3) Kerala .. 50
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 10(2)—**
Delimitation Commission is not empowered to accept and entertain objections against the proposal published under Section 10(2), after the

- last date for submission of objections—A final delimitation Order cannot be modified based on belated objections.*
- Mohammed Kutty Haji v. State Election Commission
I.L.R. 2010 (3) Kerala .. 768
- Panchayat Raj Act, 1994 (Kerala Act 13 of 1994)—Section 35 (k)—**
Disqualification of members—Member ceasing to be one due to failure to attend meeting of the panchayat for three consecutive months—Where period prescribed is a month running from a particular date, the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts—The last meeting attended by the member was on 16-10-2008 and therefore the intimation dated 24-1-2009 intimating that he ceased to be a member of the Panchayat is valid.
- Krishna Kumar v. The Kerala State Election Commission
I.L.R. 2010 (3) Kerala.. 301
- Panchayat Raj (Procedure for Panchayat Meetings) Rules, 1995 (Kerala)—**
Manner of serving notice—Service by affixture of notice due to absence of the Panchayat member or any member of his family, in his house, to accept notice—Such service is valid.
- Krishna Kumar v. The Kerala State Election Commission
I.L.R. 2010 (3) Kerala .. 301
- Partition Act, 1893 (Central Act 4 of 1893)—Sections 2, 3 and 7—**
In a sale under the provisions of the Partition Act, it is the provisions under Rule 234 of the Civil Rules of Practice that would apply and not the provisions of Order 21 of the Code of Civil Procedure—Civil Rules of Practice, 1971 (Kerala)—Rule 234.
- Antony v. Joseph I.L.R. 2010 (3) Kerala .. 154
- Penal Code, 1860 (Central Act 45 of 1860)—Sections 166 and 167—**
Ingredients of— Mere allegation that accused had furnished wrong information to certain queries made under the Right to Information Act is not sufficient to attract the offences under Sections 166 and 167—In order to attract the offence under Section 166, it should be shown that the accused had furnished wrong information with intention to cause or with the knowledge that it is likely to cause injury to the complainant.
- Prabhakara Panicker v. State of Kerala I.L.R. 2010 (3) Kerala .. 226

- Penal Code, 1860 (Central Act 45 of 1860)**—Sections 339 and 431—*Obstruction of a public road by holding a meeting on or by the side of it, leading to blocking of road and passengers amounts to offences under Sections 339 and 431.*
 Chief Secretary v. Khalid Mundapilly I.L.R. 2010 (3) Kerala .. 699
- Penal Code, 1860 (Indian Act 45 of 1860)**—Section 409—*Dishonour of cheque issued by the accused, on an account maintained by another person, would not amount to an offence under Section 420 I.P.C., in the absence of pleadings to the effect that at the time when the cheque was delivered there was inducement to part with the property, so as to cheat the complainant,*
 Ismail Pillai v. Meera Sahib Abdul Jaleel I.L.R. 2010 (3) Kerala .. 317
- Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act 1 of 1996)**—Sections 32 and 33—*If no restriction is imposed preventing a person with disability from applying for a post, a disabled person cannot be denied the opportunity to apply for the post only on the ground of his/her disability—Candidate cannot claim reservation under Section 33 to a post unless the said post is reserved for persons with disability.*
 Lali, D. S. v. M.G. University I.L.R. 2010 (3) Kerala .. 512
- Pleadings**—*Necessity of effective pleadings by the State in matters relating to preventive detention—Inept handling of cases involving serious issues relating to preventive detention by the State is leading to undeserved benefits on account of procedural lapses.*
 Sulaiman v. State of Kerala I.L.R. 2010 (3) Kerala .. 670
- Police Act, 1961 (Kerala Act 5 of 1961)**—Section 19—*In view of the changed circumstance in the state, police cannot grant permission for holding public assemblies, procession and meetings on the streets—Section 19 should be treated as having become redundant or at least inoperative.*
 Chief Secretary v. Khalid Mundapilly I.L.R. 2010 (3) Kerala .. 699
- Prevention of Food Adulteration Act, 1954 (Central Act 34 of 1954)**—Section 7 (iii)—*When the statute mandates separate licenses for manufacture, stock and sale of food articles, and if the prosecution is for want of license, the prosecution should specify in the complaint and evidence, the activities which the accused had been doing in the premises, without obtaining a license—Prevention of Food Adulteration Rules, 1955 (Central)—Rule 50(i).*

- Ramesan, C. v. P. P. Gopinathan Achari I.L.R. 2010 (3) Kerala .. 147
- Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala Act 18 of 2001)**—*Section 23—Interim custody of vehicles seized for contravening the provisions of the Act—Condition to be imposed—Forgetting interim custody of the vehicle, owner of the vehicle should deposit 30% of the value of the vehicle in cash, as determined by the appropriate authority under the Motor Vehicles Act and provide either bank guaranty or immovable property as security for the balance value of the vehicle.*
- Shan, C. T. v. State of Kerala (F.B.) I.L.R. 2010 (3) Kerala .. 326
- Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala Act 18 of 2001)**—*Section 23—Interim custody of vehicles seized for contravening the provisions of the Act—Modalities to be followed; (i) Owner of the vehicle to be put on notice regarding the seizure, within three days of the date of seizure; (ii) Owner or any other person interested in the vehicle should file objections to the confiscation within a week of receipt of notice regarding the seizure; and (Hi) Confiscation proceedings should be finalised within six weeks.*
- Shan, C. T. v. State of Kerala (F.B.) I.L.R. 2010 (3) Kerala .. 326
- Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala Act 28 of 2001)**—*Section 23—Seizure of Vehicle for transportation of river sand without valid pass—Owner of the seized vehicle cannot insist that amount to be deposited in lieu of confiscation should be the same for successive seizure of the vehicle.*
- Rahim, S. A. v. District Collector I.L.R. 2010 (3) Kerala .. 442
- Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala Act 18 of 2001)**—*Section 25—A final report filed by the Police under Section 173(2) Cr.P.C. cannot be treated as a complaint for the purpose of taking cognizance under Section 25 of the Act—Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 173 (2).*
- Ismayil, V. v. State of Kerala I.L.R. 2010(3) Kerala .. 855
- Registration Act, 1908 (Central Act 16 of 1908)**—*Sections 17(1) (d) and 49—Tenant cannot set up the claim of perpetual lease on the basis of an unregistered document.*
- Sreedharan Nair v. Kannan A. G I.L.R. 2010 (3) Kerala .. 719

Registration Act, 1908 (Central Act 16 of 1908)—Section 32—*A vendor who had transferred immovable property belonging to him by executing a registered sale deed is not entitled to unilaterally cancel the sale deed by executing and registering a cancellation deed—Registering authority can refuse registration, if, on a cursory enquiry, it is clear that the person executing the cancellation deed is not having title over the property on the date of execution of the cancellation deed—Transfer of Property Act, 1882 (Central Act 7 of 1887)— Section 7—Registration Rules, 1958 (Kerala)—Rule 191.*

Pavakkal Noble John v. State of Kerala I.L.R. 2010 (3) Kerala .. 979

Registration Act, 1908 (Central Act 16 of 1908)—Section 32A—*A cancellation deed, cancelling a registered sale deed, can be registered only with the consent of both the original seller and buyer and not by the seller alone— Sub Registrar should refuse to register a cancellation deed, unilaterally cancelling a sale deed by the seller, without the consent of the purchaser.*

Pavakkal Noble John v. State of Kerala I.L.R. 2010 (3) Kerala .. 979

Representation of People Act, 1951 (Central Act 43 of 1951)—Section 83—*Dismissal of Election Petition at the preliminary stage—If Election Petition discloses material facts, High Court shall not dismiss the election petition at the preliminary stage for want of full particulars—If at all the full particulars are lacking, petitioner should be given an opportunity to supply the particulars.*

Ramachandran Master, K. K. v. Sreyamskumar, M.V. (S.C.)
I.L.R. 2010 (3) Kerala .. 167

Revenue Recovery Act, 1968 (Kerala Act 15 of 1968)—Section 50—*Amnesty Scheme for settling abkari dues—The scheme does not provide for cancellation of sale effected under the Revenue Recovery Act and for reconveyance of property retained by the Government as bought-in-land —Withdrawal of revenue recovery action contemplated under the Scheme only means that there will be no further revenue recovery proceedings and it does not invalidate revenue recovery proceedings which had culminated in sale of the property.*

State of Kerala v. George Jacob I.L.R. 2010 (3) Kerala .. 486

Revenue Recovery Act, 1968 (Kerala Act 16 of 1968)—Sections 72 and 81—*If the revenue recovery proceedings are taken without jurisdiction and the revenue sale, if any, conducted pursuant to such proceedings is void and not binding on a person aggrieved, whether he be a defaulter or not under*

the Revenue Recovery Act, a suit at the instance of such person is not barred by any of the provisions under the Revenue Recovery Act—Mere assertion that the proceedings are vitiated by fraud and illegality is not sufficient to get over the bar under Section 72 of the Revenue Recovery Act, enabling the defaulter to sue the Government as to the proceedings and the revenue sale.

M/s V. O. Vakkan & Sons v. State of Kerala I.L.R. 2010 (3) Kerala .. 807

Right to Information Act, 2005 (Central Act 22 of 2005)—Sections 7, 19 and 23—*Information furnished by a Public Information Officer, in response to a request made to him under Section 7 of the Act, can be treated as an "Order " and is hence appealable under Section 19—The bar under Section 23, against entertaining any suit, application or other proceeding is respect of any order made under the Act, is applicable to proceedings before the Criminal Court also.*

Prabhakara Panicker v. State of Kerala I.L.R. 2010 (3) Kerala .. 226

Right to Information Act, 2005 (Central Act 22 of 2005)—Section 8(1)(e)—*Application made by candidate for copy of valued answer sheet—There is no fiduciary relationship between the public authority and the examiner—Except for protecting the identity of the examiner, which is severable under Section 10, the Public Authority cannot refuse to give copy of the valued answer sheet to the candidate.*

Treesa Irish v. Central Public Information Officer I.L.R. 2010 (3) Kerala .. 892

Right to Information Act, 2005 (Central Act 22 of 2005)—Section 8(1)(j)—*The copy of the valued answer sheet cannot be refused to the candidate on the ground that it is personal information—A candidate writing an examination has a right to have his answer paper valued correctly and has a right to know whether the same has been done properly and correctly—Both the public authority and the examiner have a public duty to get the valuation done correctly and properly, which is a public activity and duty.*

Treesa Irish v. Central Public Information Officer I.L.R. 2010 (3) Kerala .. 892

Right to Information Act, 2005 (Central Act 22 of 2005)—Section 3—*Right to Information Act is essentially a fundamental right guaranteed by the Constitution of India.*

Treesa Irish v. Central Public Information Officer I.L.R. 2010 (3) Kerala .. 892

Right to Information Act, 2005 (Central Act 22 of 2005)—Section 3—*The right of a candidate to get copies of answer papers under the Right to Information Act is a fundamental right.*

Treesa Irish v. Central Public Information Officer I.L.R. 2010 (3) Kerala .. 892

Right to Information Act, 2005 (Central Act 22 of 2005)—Section 3—*The difficulties a public authority may encounter in the matter of supply of information is no to ground deny the information, if that information is available and not exempted form disclosure.*

Treesa Irish v. Central Public Information Officer I.L.R. 2010 (3) Kerala .. 892

Right to Information Act, 2005 (Central Act 22 of 2005)—*The eagerness of the public authority to limit the scope of the request for information arises out of its inertia, its innate resistance to change and its refusal to perceive or acknowledge the changing scenario.*

Treesa Irish v. Central Public Information Officer I.L.R. 2010 (3) Kerala .. 892

Rules of Business of the Government of Kerala—Rules 34(1)(i) and 34(2)(i)—*Procedure prescribed in Rules 34(1)(i) and 34(2)(i) provides for placing proposals for the grant of pardons, reprieves, respites or remissions and commutation of sentence before the Chief Minister who in turn has to submit the same to the Governor before issue of orders—The above procedure amounts to short-circuiting the Cabinet by circulating the file to the Governor without the aid and advice of the Council of Ministers and is hence unconstitutional— Need for immediate amendment to the provisions, highlighted.*

Balachandran, G. v. State of Kerala I.L.R. 2010 (3) Kerala .. 589

Service—*Ad hoc arrangements—Although it is open for the Government to make ad hoc arrangements by putting officers of their choice on additional charge, such ad hoc arrangements can be justified only as temporary measures— Ad hoc arrangements are to be made only as exceptions and not as the rule.*

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- Specific Relief Act, 1963 (Central Act 47 of 1963)**—*Section 16(c)—To enable the plaintiff to get a decree for specific performance, readiness and willingness on his part has to be independently established—Proof of breach committed by the defendant cannot be taken as proof of readiness and williness on the part of the plaintiff—In the process of establishing readiness and willingness to perform his part of the contract, plaintiff can rely on the breach committed by the defendant as an added circumstance.*
- Muhammed v. Chandrika I.L.R. 2010 (3) Kerala .. 358
- Stamp Act, 1959 (Kerala Act 17 of 1959)**—*Sections 28A and 45A—Instrument bearing insufficient stamp—If the consideration mentioned in the sale deed of a property is less than the fair value fixed by the Government under Section 28A, the Sub Registrar can direct the vendee to pay stamp duty payable on the fair value of land within 7 days—Unless such stamp duty is paid, the Sub Registrar is not bound to register the document.*
- Abid v. Revenue Divisional Officer I.L.R. 2010 (3) Kerala .. 448
- State and Subordinate Services Rules, 1958 (Kerala)**—*Part II, Rules 8 and 24—An employee appointed by transfer to another department will not lose his lien in the parent department till he is confirmed in the latter post—Completion of probation is different from confirmation—Decision of the Full Bench in Balakrishnan Nair v. Rammohan Nair, has not lost its precedential value due to merger with decision in appeal of the Apex Court.*
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- State and Subordinate Services Rules, 1958 (Kerala)**—*Part II, Rule 24—Confirmation in a post—Executive alerted on the need to exercise its power of confirmation of employee under Rule 24, without delay.*
- Premakumari, A. v. State of Kerala I.L.R. 2010 (3) Kerala .. 738
- Succession Act, 1925 (Central Act 39 of 1925)**—*Section 90—In the absence of a contrary intention in the Will, the property described in the Will shall be deemed to refer to and include the property answering that description as on the date of death of the testator.*
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- Wakf Act, 1995 (Central Act 43 of 1995)**— *Section 85—Exclusion of jurisdiction of Civil Court—Section 85 provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal—If the dispute is not one which is to be decided by the Tribunal as per provisions of the Act, the jurisdiction of the Civil Court is not ousted.*
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- Wakf Act, 1995 (Central Act 43 of 1995)**—*Section 85—Suit to evict tenant of the Wakf should be filed before the Civil Court and not in the Wakf Tribunal—Eviction of tenant is not a matter required to be determined by the Tribunal by or under the provisions of the Act.*
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- Will**—*Interpretation—Where two interpretations of a Will are possible, the Court will prefer that construction which avoids intestacy than the one which suggests intestacy.*
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