

HIGH COURT OF SIKKIM

135

RECRUITMENT TO THE POST IN THE CADRE OF SIKKIM SUPERIOR JUDICIAL SERVICE, 2013

PAPER I – SUBSTANTIVE LAW

FULL MARKS -200

DURATION OF TIME – 3 HOURS

INSTRUCTIONS FOR THE CANDIDATES

1. Candidates are required to answer 10 (ten) questions in all taking 1 (one) question from each Group. Each question carries 20 marks.
2. No candidate shall be allowed to enter the examination hall beyond 30 minutes from the time of commencement of the examination. Any candidate joining the examination hall late will not be allowed any extra time.
3. No candidate shall be allowed to leave the examination hall before expiry of one hour of commencement of the examination.
4. Candidate is not required to state his name or indicate any sign anywhere in the answer sheet which may be conceived as a mark of his identification. Candidate using additional answer sheets will not indicate their roll number, name or any other marks on such additional sheets.
5. No candidate is permitted to carry with him/her mobile phone, any electronic equipment capable of being used as a mean of communication, any book, slip or writing in any form capable of being used in the examination.
6. Violation of these instructions will entail the cancellation of examination/expulsion.

Group A

Indian Penal Code

1. (a) There is much difference in the scope and applicability of section 34 and section 149 of the Indian Penal Code though they have some resemblance and are to some extent overlapping. Comment.
- (b) Distinguish between common intention, abetment and criminal conspiracy.



- 2. What is culpable homicide? When does it amount to murder and when does it not amount to murder?
- 3. Decide the liability of A in any five of the following situations:-
 - (i) A thrusts his hands into the pocket of B but finds nothing as the pocket is empty.
 - (ii) A instigates B to instigate C to murder Z. Accordingly B does so and C commits the murder.
 - (iii) A, a priest, presides at the ceremony of the bigamous marriage which is performed in B's house.
 - (iv) A instigates a child below 7 years to put poison in B's drink. The child by mistake gives poison to C who was sitting by the side of B.
 - (v) A instigates B to murder C but B refuses to do so.
 - (vi) Z is carried away by a tiger and A in good faith intending to save the life of Z fires at the tiger but his shot kills Z.
 - (vii) A under the influence of liquor, ravished a girl who died.
 - (viii) A, a Kabiraj, cuts the piles of a patient who dies after operation.
 - (ix) B, a student, was beaten and injured by A, the Principal, for showing disrespect to his class teacher. On the complaint of the father of B, A was prosecuted.
 - (x) B who had molested a girl, was taken round the village on a donkey with a blackened face by A as the members of the girls' family were bent upon taking revenge.

Group B
Transfer of Property Act

- 4. (a) What are the conditions for determination of lease under Transfer of Property Act?
- (b) State the period of notice for determination of a year to year commercial lease under Transfer of Property Act.



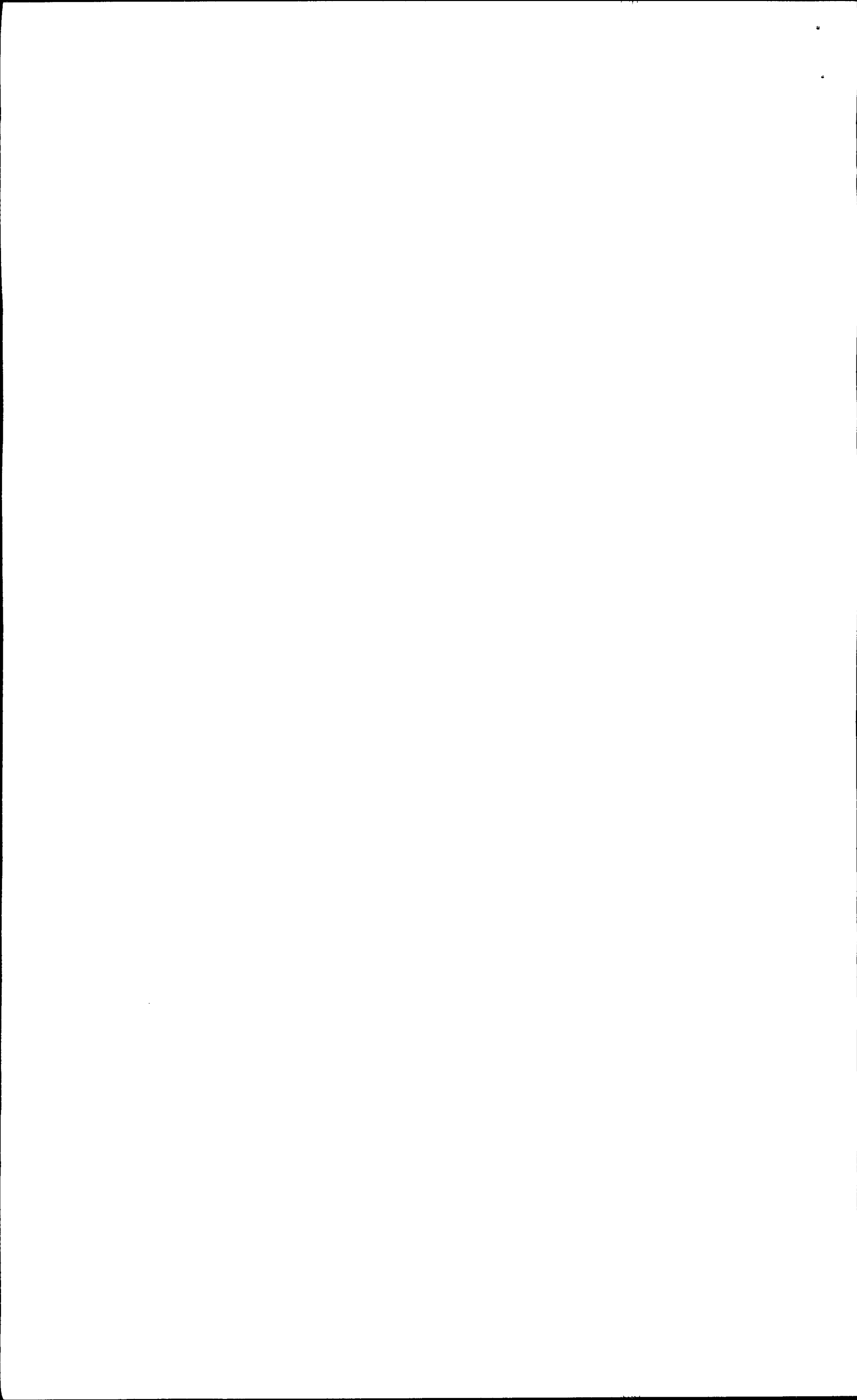
- (c) Who is a "tenant by holding over"? Refer the relevant section of Transfer of Property Act.
- 5. What is meant by rule against perpetuity? Illustrate this by pointing out the distinction between English and Indian Laws.
- 6. (a) Define 'License' and point out the difference between lease and license.
(b) Does a tenancy from month to month determine on the death of the tenant?

**Group C
Specific Relief Act**

- 7. (a) When may Court order for specific performance of contract and when must it refuse to do so?
(b) A appoints B as trustee of his property with specific directions to give the property on lease for 5 years. B enters into a contract with C to lease out that property to C for 10 years. Is this contract specifically enforceable?
- 8. What are the principles for issue of injunctions under the Specific Relief Act? What are the nature of injunctions that can be granted under the Act?

**Group D
Constitutional Law**

- 9. Write a critical note on Public Interest Litigation in India with the help of leading cases. How far has it affected the principle of locus standi?
- 10. (a) Which is the Constitutional Amendment Act by which Sikkim became the 22nd State?
(b) Who are the Citizens of India in Sikkim? Answer this in the context of Indian Citizenship Act, 1955?
(c) What is the provision in the Constitution of India under which the High Court of Sikkim was brought into existence?
(d) Which provision of the Constitution is relevant for the purpose of giving representation to different sections of the population of Sikkim? Name the leading case on the question?



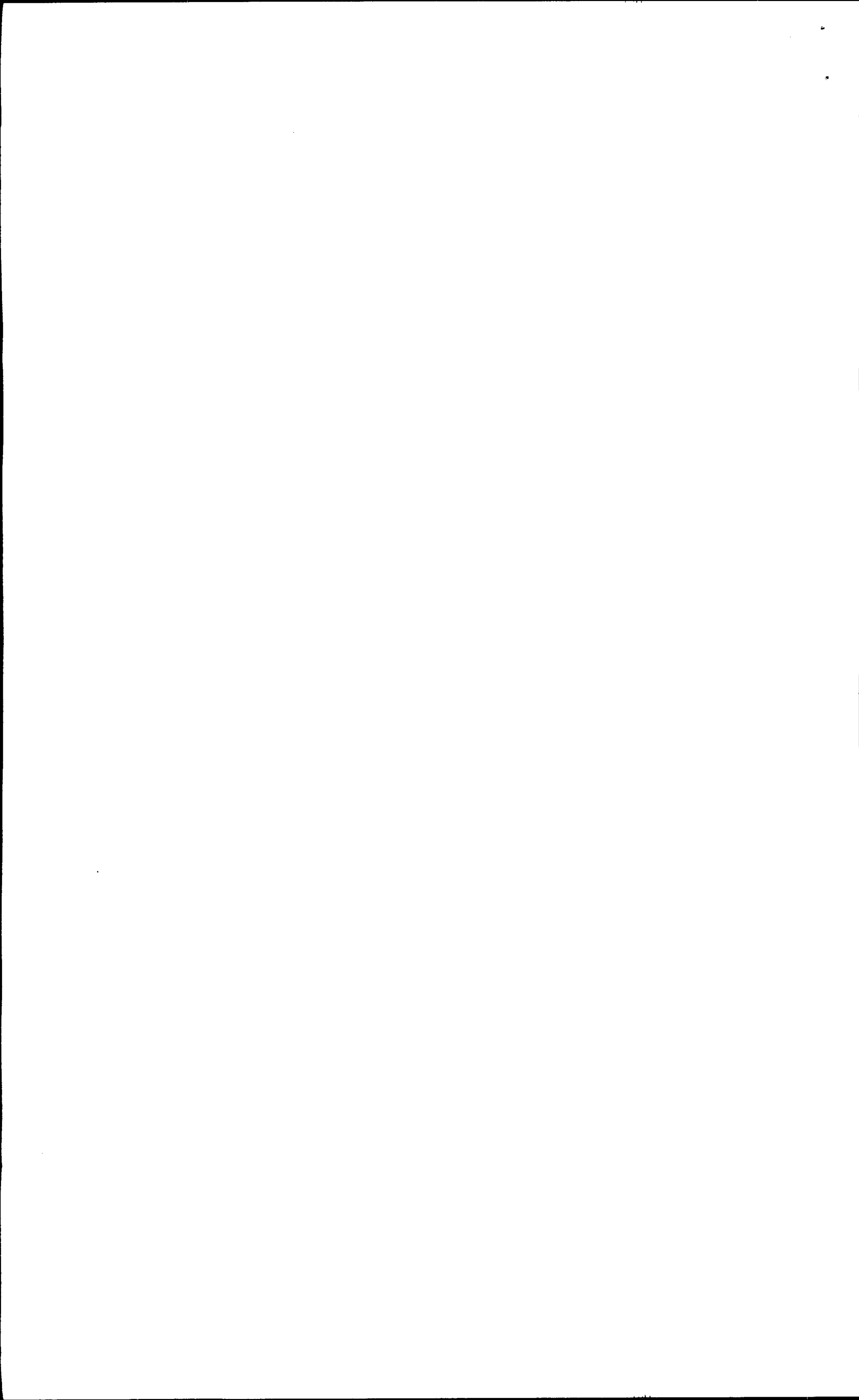
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11. (a) Explain the significance of Article 16 of the Constitution of India?
- (b) In *Indira Sawhney vs. Union of India* : AIR 1993 SC 477, a new concept was introduced for the purpose of service.
- (i) State and explain briefly the new concept.
 - (ii) What is the permissible limit for making reservations in employment?
 - (iii) Explain the meaning of 'Roster' in employment?

Group E
General Clauses Act

12. What is the meaning of service by post? Discuss the principle underlying Section 27 of the General Clauses Act, 1897 and the conditions of applicability of the Section.
13. (a) Write short notes on the following:-
- (i) Express repeal
 - (ii) Implied repeal
- (b) What are the consequences of repeal of a statute?

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Group F
Partnership Act

14. (a) Examine the correctness of the following statements:-
- (i) "Registration of firm though not compulsory is practically necessary".
 - (ii) "Partners are bound to be just and faithful to each other".
- (b) Ram and Shyam entered into a contract to carry on wheat business in partnership. The contract is silent as to the duration of the business. Ram, thereafter, denies carrying on business in partnership. Shyam files a suit for specific performance of contract against Ram. Will he succeed?



- 15. (a) "There is no stronger fiduciary relation known to law than that of a partnership". Amplify and state the standard of conduct to which the partners must adhere to.
- (b) A, B and C carried on business for profit, but under very special condition to C that C was to contribute neither labour nor money and not to receive any profit but to lend the firm his name. Is C liable as a partner to third parties? Is so, why?
- 16. 'A minor cannot enter into a contract of partnership and that is why minors are not required (1) to sign the application for registration, (2) to certify the copy'. In the light of this statement elaborate upon the position of a 'minor' in a partnership agreement with reference to relevant sections of Indian Partnership Act, 1932, by taking aid of decided cases.

Group G
Sale of Goods Act

- 17. (a) "Risk prima facie passes with property". Explain. What are the exceptions to this rule?
- (b) 'X' in Madras writes to 'Y' in Bombay to send to 'X' a packet of patent medicine. 'Y' accordingly sends the packet. 'X' finds some defect in the medicine. Can 'X' receive the price of medicine from 'Y'?
- 18. (a) "Passing of Property' and 'Delivery of Goods' are two different concepts. Explain the same in the light of the provisions of 'The Sales of Goods Act' and the case law.
- (b) What are the effects of goods perishing before sale but after agreement to sell?

Group H
Arbitration Act

- 19. (a) State the grounds on which Court may set aside an arbitral award. Within what time limit the application for setting aside an award may be presented.
- (b) Discuss the jurisdiction of arbitral tribunals. What are the rights of a party aggrieved by an arbitral award?



20. "An award passed by an arbitrator is considered binding between the parties". Discuss the circumstances under which an award may be set aside.

✓ **Group I**
Indian Contract Act

21. Explain the concept of 'misrepresentation' in matters of contract. A induced B to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, B complained that there were many defects in the motorcycle. A proposed to get it repaired and promised to pay 40% of the cost of repairs. After a few days, the motorcycle did not work at all. B sues A for the recovery of amount paid for the purchase of the motorcycle. Will B succeed?
22. (a) Define 'bailment' and give its essentials.
- (b) What are the different duties of bailee under the Indian Contract Act?

Group J
Hindu Law

23. (a) Discuss the changing concept of 'cruelty' as a ground of matrimonial relief under both the Hindu Law and Muslim Law.
- (b) Does insulting statements or misbehavior from in-laws amount to cruelty?
24. (a) What are the requirements of a valid adoption?
- (b) What are the effects of adoption on -
- (i) Right to Remarriage
 - (ii) Inheritance
 - (iii) Obligation to Maintenance

