

# HIGH COURT OF SIKKIM

(Questions for Recruitment to the post in the cadre of Sikkim Judicial Service, 2017)

## PAPER – II SUBSTANTIVE LAW

### INSTRUCTIONS FOR THE CANDIDATES

1. Candidates are required to answer ten questions in all with at least one question from each group. Each question carries 20 Marks. Answers mentioning statutory provisions and case laws will be graded better.
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 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 means 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.

**Total Marks: 200**

**Duration of Time: 3 Hours**

### GROUP – A

1. Answer the following.

- I. 'X', a magician agrees with 'Z' to discover treasure by magic. The agreement is
  - (a) voidable at the option of 'Z'.
  - (b) illegal
  - (c) void
  - (d) impossible in itself and void

- II. Nothing is an offence which is done by a child below the age of
- (a) six years
  - (b) seven years
  - (c) eight years
  - (d) twelve years.
- III. 'Justice, social, economic and political' is
- (a) guaranteed by Fundamental Rights in the Constitution
  - (b) guaranteed to the people by writs issued by the Constitution
  - (c) an idea enshrined in the Preamble to the Constitution
  - (d) all of the above.
- IV. Fundamental Duties contained in Article 51A of the Constitution are
- (a) enforceable per se even if there is no statute making such duty a legal duty;
  - (b) not enforceable but nevertheless fundamental in the governance of the country;
  - (c) enforceable when some fundamental right is violated;
  - (d) not enforceable in the absence of a statute making such duty a legal duty.
- V. The executive power of the Union is vested in the
- (a) Union Cabinet
  - (b) President of India
  - (c) Prime Minister
  - (d) Prime Minister and Council of Ministers.
- VI. Right to life emanates from
- (a) Article 21 and includes right to die
  - (b) Article 19 and does not include right to die
  - (c) Article 19 and 20 and does not include right to die
  - (d) Article 21 and does not include right to die.
- VII. A change in the nature of obligation of a contract is known as
- (a) novation
  - (b) rescission
  - (c) alternation
  - (d) repudiation.
- VIII. Which one of the following conclusions can be drawn from the maxim 'de minimis non curat lex'
- (a) An act is not criminal unless accompanied by a guilty mind
  - (b) Nothing is an offence done by a child under 7 years of age
  - (c) Every person is liable for his own acts
  - (d) Trifling acts do not constitute an offence.

- IX. A partnership firm is
- (a) a distinct legal entity from its partner
  - (b) not a distinct legal entity from its partner
  - (c) juristic person
  - (d) both (a) & (c).
- X. Grave and sudden provocation is a
- (a) question of law
  - (b) question of fact
  - (c) mixed question of fact and law
  - (d) a presumption under the law.
- XI. Section 149 of the IPC is
- (a) declaratory provision
  - (b) creates a distinct offence
  - (c) a rule of evidence
  - (d) all of the above.
- XII. 'A' threatened to commit suicide if his wife did not execute a sale deed in favour of his brother. The wife executed the sale deed.  
This transaction is
- (a) voidable due to coercion
  - (b) voidable due to undue influence
  - (c) void being immoral
  - (d) void being forbidden by law.
- XIII. Which one of the following is not punishable under the Indian Penal Code
- (a) Preparation to wage war against the State
  - (b) Preparation to commit murder
  - (c) Preparation to commit dacoity
  - (d) Preparation to commit depredation on the territory of a friendly power.
- XIV. A suit for possession under section 5 of the Specific Relief Act, 1963 can be filed within
- (a) 3 years
  - (b) 6 months
  - (c) 12 years
  - (d) 30 years
- XV. Condonation of Delay under section 5 of the Limitation Act, 1963
- (a) can be claimed as a matter of right
  - (b) is a matter of discretion of the court
  - (c) can be claimed only if there exists a 'sufficient cause' for the delay
  - (d) both (b) & (c).

XVI. 'A' puts his hand in the pocket of 'B' for stealing money, but pocket was empty. 'A' is guilty of

- (a) Theft
- (b) Attempt to commit theft
- (c) Mischief
- (d) No offence.

XVII. Marriage is a sacrament amongst

- (a) Hindus
- (b) Muslims
- (c) Christians
- (d) both (a) and (c)

XVIII. Cruelty is a ground for

- (a) divorce
- (b) judicial separation
- (c) both divorce and judicial separation
- (d) only divorce and not judicial separation.

XIX. A Hindu joint family is a

- (a) corporation
- (b) juristic person
- (c) composite family
- (d) neither (a) nor (b) nor (c).

XX. A female can be a coparcener under

- (a) the *Mitakshara* law as applicable in Bengal, Bihar and Uttar Pradesh
- (b) the *Mitakshara* law as applicable in Madras
- (c) the *Dayabhaga* law
- (d) neither (a) nor (b) nor (c).

2. Hindu women's life estate has been enlarged into full ownership under the Hindu Succession Act, 1956. State the relevant provisions of law and comment.
3. What are the requisites of a valid gift in Hindu Law? State the nature and extent of the right of the father to dispose of his separate property by way of gift.
4. Discuss the changing concept of 'Cruelty' as ground of matrimonial relief under the Hindu Law and Muslim Law both. Refer the recent case law on the subject.

## GROUP – B

5. When is a contract complete?

A, makes an offer by letter properly addressed to 'B'. On receipt of the letter 'B' posts an acceptance letter to 'A' but in the meanwhile postal delivery peons go on strike. Is there a binding contract? Give reasons in support of your answer.

6. Answer the following giving reasons citing relevant provisions of law on the point.

- (i) 'A' finds B's purse and gives it to him. As a token of thankfulness B promises to give 'A' Rs 1,000/-. Can 'A' claim the money?
- (ii) Being fed up with each others quarrelling nature, both husband and wife entered into an agreement in which wife agreed to live separately from her husband permanently and husband agreed to pay her a monthly allowance of Rs 5000/- and started paying the money every month. However after six months the husband failed to pay the allowance? Can the wife enforce against her husband in a Court of law?
- (iii) 'A' for natural love and affection, promises to give his son 'B' Rs 10,000/- 'A' puts his promise to 'B' into writing and registers it. Can 'B' claim the promised amount from 'A'?
- (iv) 'A' agrees to allow the use of his hall to 'B' for holding a concert on a scheduled date. However, the hall is destroyed by fire prior to the prescribed date and 'B' sues 'A' for damages for breach of contract. Will 'B' succeed?

7. "Risk prima facie passes with property". What are the exceptions to this principle?

- (i) X bought a horse for Y for Rs 5000/- from Z stipulating for 5 days trial. The horse was delivered to X but before the expiration of those 5 days the horse died without any fault on the part of X. then Z sued X for recovery of Rs 5000/-. Decide.
- (ii) 'X' in Madras writes to 'Y' at Bombay to send to 'X' a packet of patient medicine. 'Y' accordingly sends the packet. 'X' on receipt of the packets finds some defects in the medicine. Can X receive the price of medicines from Y? Decide.

### GROUP – C

8. State with reasons whether partnership is created in the following cases –
- (i) A, B and C run a business to get equal share to yearly profit from business.
  - (ii) 'x' runs his business and enjoys its profit and suffers its losses.
  - (iii) 'y' lends money to x's business and gets of profit from 'x'.
  - (iv) A firm agrees to pay 'Z' its manager a share of profits in lieu of remuneration.
9. What do you mean by specific performance of contract? What contracts cannot be specifically enforced?

Can specific performance be obtained in the following contracts?

- (i) a contract to marry
- (ii) a contract to lend money on a mortgage
- (iii) a contract by guardian to purchase immovable property on behalf of minor.

### GROUP – D

10. What do you understand by “Sikkim Laws” as defined in Sikkim Interpretation and General Clause Act, 1978? What is the effect of expiration of such laws? Explain.
11. Explain the distinction between “vested interest” and “contingent interest”. Give illustrations.
12. Define gift. What are the essentials of a valid gift? Distinguish it from a sale under the Transfer of Property Act.

### GROUP – E

13. Explain what is meant by the dictum “to constitute a crime there must be a guilty mind”. Find out what crimes have been committed in the following cases and by whom?

- (i) *A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused, Z believing the ground to be firm treads on it, falls in and is killed.*
- (ii) *A knows Z to be behind the bush. B does not know it, A intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush; B fires and kills Z.*
- (iii) *A by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush. A not knowing that he was there.*

**14.** What are the different stages in the commission of a crime?

Is impossible attempt punishable?

A thrusts his hand into the pocket of B but finds nothing as the pocket is empty. Is he liable?

**15.** Explain the nature and scope of the 'rule against double jeopardy' as incorporated in Article 20 (2) of the Indian Constitution.

**16.** Discuss the scope and extent of the power of the Parliament to amend the Constitution. Are there any limitations on the amending power of Parliament?

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