

# HIGH COURT OF SIKKIM

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

## PAPER – I PROCEDURAL LAW

### INSTRUCTIONS FOR THE CANDIDATES

1. Candidates are required to answer ten questions in all with at least one question from each group. 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

- |   | <b>Marks</b> |
|---|--------------|
| 1. Answer the following.                          |              |
| (i) Which of the following statements is correct? | <b>1</b>     |
| (a) limitation bars the judicial remedy           |              |
| (b) limitation extinguishes the right             |              |
| (c) limitation is a substantive law               |              |
| (d) both (a) & (c)                                |              |

- (ii) A instigates B to murder C. B refuses to do so 1  
(a) A is guilty for abetting B,  
(b) A is not guilty for abetting B,  
(c) A is not guilty as C is not murdered  
(d) None of the above.
- (iii) The maxim '*salus populi suprema lex*' means 1  
(a) no man is above the law  
(b) the welfare of the people is the supreme law  
(c) Every man is innocent unless proved guilty  
(d) An act itself is not criminal unless accompanied by guilty mind.
- (iv) An injury may be called grievous only if 1  
(a) it endangers life  
(b) it happens to be caused on a vital part of the body  
(c) both (a) & (b)  
(d) either (a) & b).
- (v) Which among the following words appears first in the Preamble to the Constitution? 1  
(a) Liberty  
(b) Equality  
(c) Justice  
(d) Fraternity
- (vi) A agrees to sell a horse worth Rs. 1000 for Rs. 10. A's consent to the agreement was freely given. The agreement is 1  
(a) voidable  
(b) void  
(c) contract  
(d) illegal
- (vii) Who may claim for maintenance under section 125, Cr. P.C.? 1  
(a) wife who has her own source of income  
(b) illegitimate minor child  
(c) stepson or daughter  
(d) brother and sister.
- (viii) Doctrine of restitution is contained in which of the following provision of CPC 1  
(a) section 144  
(b) section 148  
(c) section 148A  
(d) section 151

- (ix) The expression “costs shall follow the event” implies: 1  
 (a) the successful party is entitled to his costs  
 (b) each party shall bear his own costs  
 (c) the successful party is not entitled to his costs  
 (d) each party shall not bear his own costs.
- (x) Maintenance of a case diary by an investigation officer is mandatory under 1  
 (a) section 162 of Cr. P.C.  
 (b) section 167 of Cr. P.C.  
 (c) section 172 of Cr. P.C.  
 (d) section 173 of Cr. P.C.
- (xi) The doctrine of estoppels is a 1  
 (a) substantive law  
 (b) rule of equity  
 (c) rule of evidence  
 (d) law of pleadings.
- (xii) The rule of constructive *res judicata* is 1  
 (a) a product of judicial interpretation  
 (b) a rule of equity  
 (c) contained expressly in the CPC  
 (d) a part of Supreme Court rules.
- (xiii) The essential ingredients of a crime are 1  
 (a) motive, intention and knowledge  
 (b) motive, *mens rea* and *actus reus*  
 (c) *actus reus* and *mens rea*  
 (d) intention, preparation, attempt and commission.
- (xiv) Alibi is governed by which of the following provisions of the Evidence Act? 1  
 (a) section 9  
 (b) section 11  
 (c) section 13  
 (d) section 10
- (xv) Warrant case relates to an offence punishable with 1  
 (a) more than one year imprisonment  
 (b) more than three years imprisonment  
 (c) death penalty, life imprisonment or imprisonment exceeding two years  
 (d) more than five years imprisonment.
- (xvi) Double jeopardy means 1  
 (a) trying two persons jointly for the same offence  
 (b) trying the same person for two offences at two different times

- (c) putting the same person on trial twice for the same offence  
 (d) trying a person for different offences committed by him in one incident.
- (xvii) Leading questions can be asked during 1  
 (a) examination-in-chief  
 (b) cross-examination  
 (c) re-examination  
 (d) cannot be asked in any circumstances
- (xviii) A sees B drowning, but does not save him. B is drowned. A is guilty of 1  
 (a) murder  
 (b) abetment to commit suicide  
 (c) culpable homicide not amounting to murder  
 (d) no offences
- (xix) *Res gestae* implies 1  
 (a) Things done in the course of a transaction  
 (b) Fact in issue and surrounding circumstances  
 (c) Acts talking for themselves  
 (d) All of the above.
- (xx) Which Article of the Constitution mentions the Union List, State List and Concurrent List 1  
 (a) Seventh Schedule  
 (b) Article 246  
 (c) Eight Schedule  
 (d) Article 245

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**Total 20 Marks**

2. (i) Is the rejection of a plant decree? Give reasons for your answer. 2  
 (ii) Explain the term 'necessary party'. 2
- (iii) What is the consequence of non-appearance of both the parties when the suit is called on for hearing? 2
- (iv) What are the two courses open to an aggrieved person under the criminal law? 2
- (v) A, a minor boy of 14 years of age won a prize of rupees one crore in the television programme 'Kaun Banega Karorpati'. Can he claim maintenance from his father if the father neglects or refuses to maintain him? 2
- (vi) After the charge is framed and the trial is in progress, can the court alter the charge? 2

- |  |   |
|--|---|
| (vii) Is a First Information Report, an evidence?  | 2 |
| (viii) Are the remarks made by the spectators at the time A beat B in their presence relevant? | 2 |
| (ix) When is a suit instituted?  | 2 |
| (x) Can a plea of Limitation be taken against the defendant?                                   | 2 |

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**Total 20 Marks**

**Group – B**

- |  |   |
|--|---|
| 3. Define and distinguish between the following; |   |
| a. Set off and counter claim                     | 5 |
| b. Appeal and Revision                           | 5 |
| c. Preliminary decree and final decree           | 5 |
| d. Res judicata and estoppels                    | 5 |

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**Total 20 Marks**

- |   |    |
|---|----|
| 4. How will you decide that a suit is of civil nature? Are the following suits of civil nature?   |    |
| (i) Right to take out religious procession.   |    |
| (ii) Right to franchise.  |    |
| (iii) Suits against expulsion from caste.   | 20 |
| 5. What do you mean by temporary injunction? When can such injunction be granted? What are the important points for consideration while granting such injunction? | 20 |

**Group – C**

- |   |  |
|---|--|
| 6. Explain the meaning of “arrest”. What are the different rights of the arrested person under the provisions of the Criminal Procedure Code?   |  |
| A, an accused is arrested by the police without any warrant and is detained in the custody of the police for 14 hours without the permission or order of the Magistrate. Is such detention by the Police illegal? Give the relevant provisions if |  |

you know any under the Criminal Procedure Code.

20

7. Describe the procedure which a Judicial Magistrate is required to follow while recording confessions made in the course of the investigation. What is the evidentiary value of such recorded confessions? What difference in evidentiary value will it make if the procedure prescribed is not followed?

A, an accused, makes a confession before the Magistrate during investigation under section 164 Cr. P.C but his signature is not obtained in the confessional statement recorded by the Magistrate. Is such confession valid?

20

8. Answer the following;

(a) A voluntarily causes hurt to B. B, goes to police station to lodge FIR (First Information Report). Should the police officer record the FIR? Give reasons for your answer. 5

(b) A is accused of theft on one occasion, and of causing grievous hurt on another occasion. A gives an application in writing to try both the offences at one trial. Can the Magistrate allow the application? 5

(c) X, having reason to believe that he may be arrested on an accusation of having committed the offence of voluntarily causing grievous hurt, makes an application for anticipatory bail. Will you grant or reject such application? 5

(d) A, a complainant wants to withdraw a complaint, filed against B in a warrant tribal case. Can A do so? 5

**Total 20 marks**

**Group - D**

9. What do you understand by the expression "burden of proof"? Briefly state the rule as to the burden of proof in the following matters:-

(a) Whether a man is alive or dead

(b) Tenancy

(c) Ownership

(d) Legitimacy

20

10. Explain and illustrate the doctrine of Estoppel. Can the doctrine of estoppels be applied when truth of the matter is known to both the parties? Does estoppel require a fraudulent intention? **20**

11. What is the significance of period of limitation? What are the days which could be excluded while computing the period of Limitation?

Limitation expired on 15-6-1999, but the courts were closed from 2-6-1999, on account of summer vacation. So, the suit was filed on 2-7-1999, when the courts reopened. It was objected that the suit is barred by limitation. Decide. **20**

### **Group – E**

12. What does the term “collector” mean and include as per the definition given in Sec. 2(b) of the Sikkim Public Premises (Eviction of Unauthorized Occupants and Rent Recovery) Act 1980? Describe the relevant provisions of this Act, relating to the power of the collector to require payment of rent or damages from person in unauthorized occupation of Public Premises.

**20**

13. When can Govt. order demolition of building under the provisions of the Sikkim Allotment of House Sites and Construction of Buildings (Regulation and Control) Act 1985? What is the provision relating to removal of structures which are in ruins and likely to fall under this Act? Describe the procedure required to be followed by the concerned authority in such matter. **20**

### **Group – F**

Question Paper on Language will be provided in the Examination Hall

- १) हिज राति तपाईंको घर छेउमा आगलागी हुँदा प्रकाशचन्द्रको घर जलेर खरानी भयो । घटनाको सम्पूर्ण विवरण समेत खुलाएर स्थानीय प्रहरी कार्यालयमा एउटा प्राथमिकी दर्ता गराउनुहोस् ।

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अथवा

हिजको भगडाको कारणले एकजना युवकको हत्या भएको कुरा तपाईं प्रत्यक्षदर्शी हुनुहुन्छ, यस सन्दर्भमा गान्तोक सदरथानामा प्राथमिकी दर्ता गराउनुहोस् ।

- २) कुनै एक विषयमा छोटो निबन्ध लेख्नुहोस्  
क) प्रजातान्त्रिक देश भारतमा न्यायपालिकाको भूमिका  
ख) भारत देशमा सवैधानिक अधिकार  
ग) न्याय प्रणाली र हाम्राहरू नागरिकहरू  
घ) नागरिकहरूमा देशको न्याय व्यवस्थाको ज्ञान हुनु आवश्यक छ ।

८

- ३) कुनै ३ शब्दहरूको जनभाषामा अनुवाद गरी वाक्यमा प्रयोग गर्नुहोस्  
क) राजकोष, ख) प्रतिद्वन्द्वी, ग) सहिष्णुता, घ) उत्तराधिकारी, ङ) जनभावना, च) न्यायालय

# HIGH COURT OF SIKKIM

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

## PAPER – II SUBSTANTIVE LAW

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**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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