

HIGH COURT OF SIKKIM

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

PAPER II – PROCEDURAL LAW

FULL MARKS -150

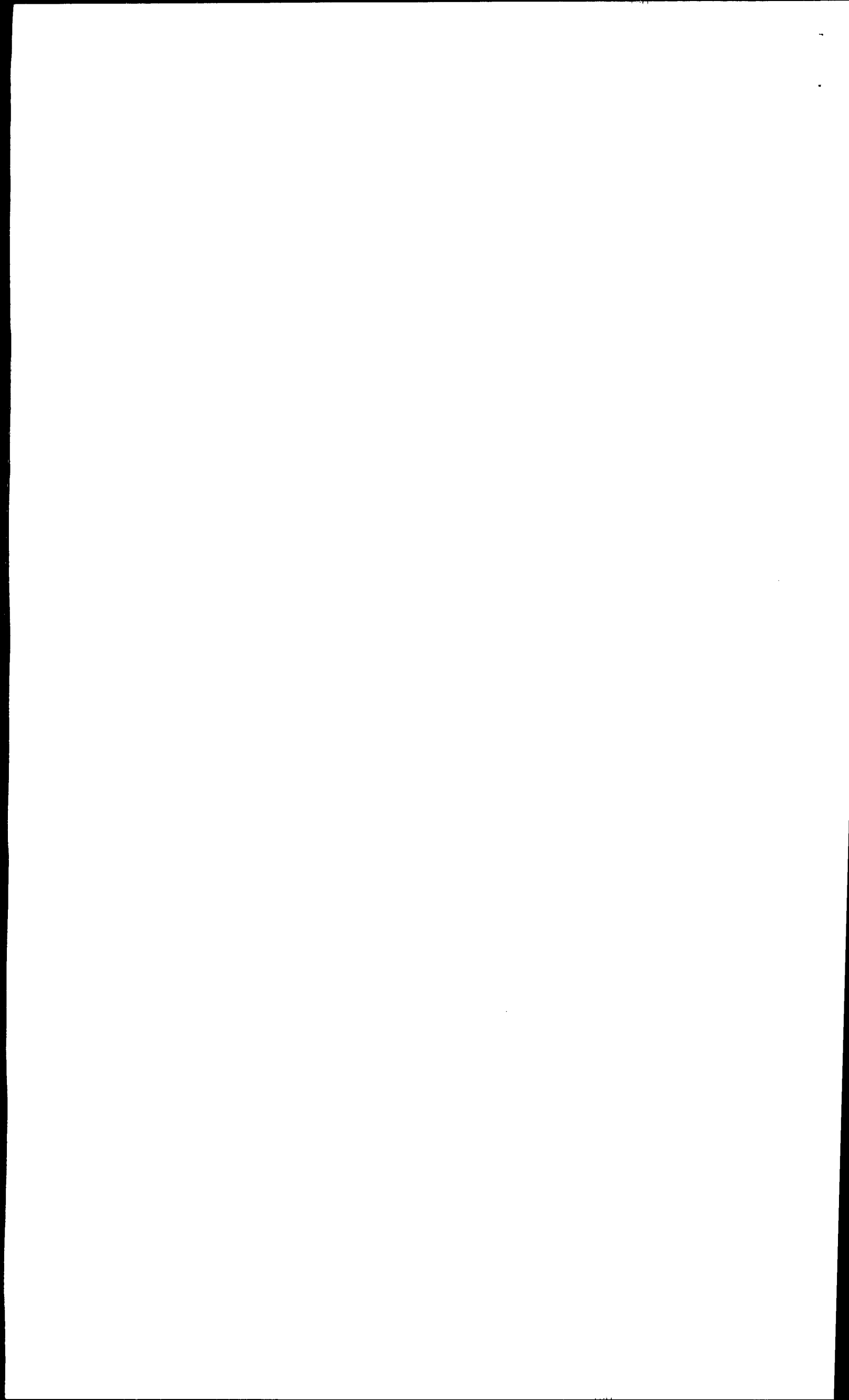
DURATION OF TIME – 3 HOURS

INSTRUCTIONS FOR THE CANDIDATES

1. Candidates are required to answer Question No.1 and 8 (eight) other questions taking at least 1 (one) question from each group. Question No.1 carries 30 marks, the rest carry 15 marks each.
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.
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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 Code of Civil Procedure, 1908

1. (a) Discuss the provisions of the Civil Procedure Code with regard to suits by or against the government or its officials.
- (b) Notice u/s 80 C.P.C. is given by 'A' of the proposed suit. However, 'A' dies before the institution of suit. Does the notice by 'A' enure for the benefit of his legal representative.



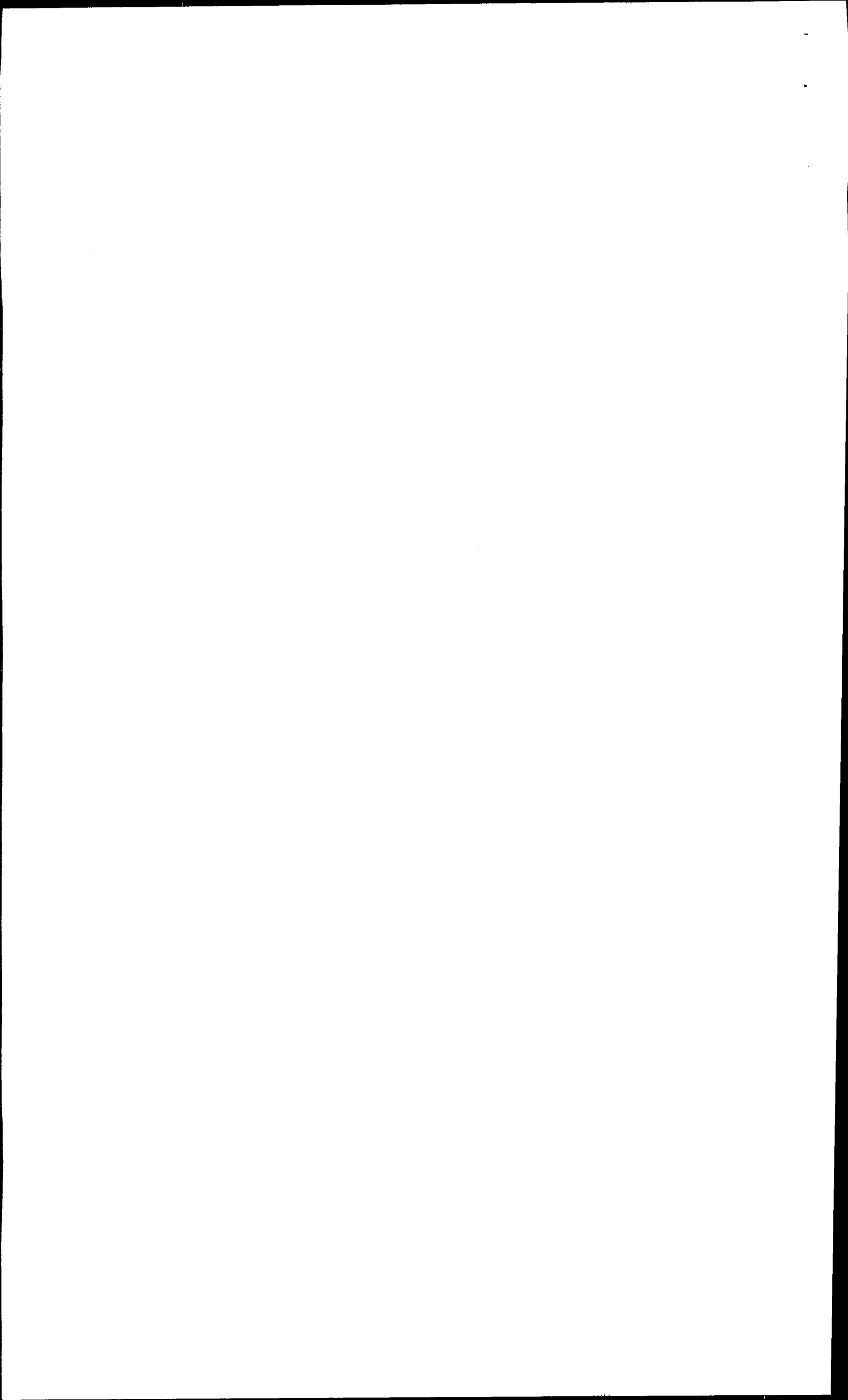
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2. (a) 'A' files a suit against 'B'. On the date of hearing, 'A' remains absent and the suit is dismissed for default. Advise 'A'.
 - (b) 'A' sues 'B' for a declaration of title to land and succeeds in obtaining a decree. 'A' then sues 'C' for possession. 'C' contends that 'B' is the owner of the property and that he is in possession as B's tenant. Decide giving reasons.
 3. What is review? In which Court and on what grounds will an application for review lie? Discuss.

Group B
Code of Criminal Procedure, 1973

4. (a) What is a 'judgement'? Explain generally the form and content of a judgment in a criminal trial.
- (b) In what cases can a judgment be recorded in an abridged form?
5. (a) Explain the meaning and importance of 'charge' in a criminal trial.
- (b) Elucidate the rule that 'for every distinct offence there should be a separate charge and each such charge should be separately tried'. Briefly explain the exception to this.

Group C
Indian Evidence Act, 1872

6. (a) What is 'Estoppel'? State and explain the different kinds of estoppels.
- (b) Distinguish between -
 - (i) Estoppel and res judicata
 - (ii) Estoppel and waiver
7. (a) What is the rule of res gestae? How has the Indian Evidence Act recognized this rule?



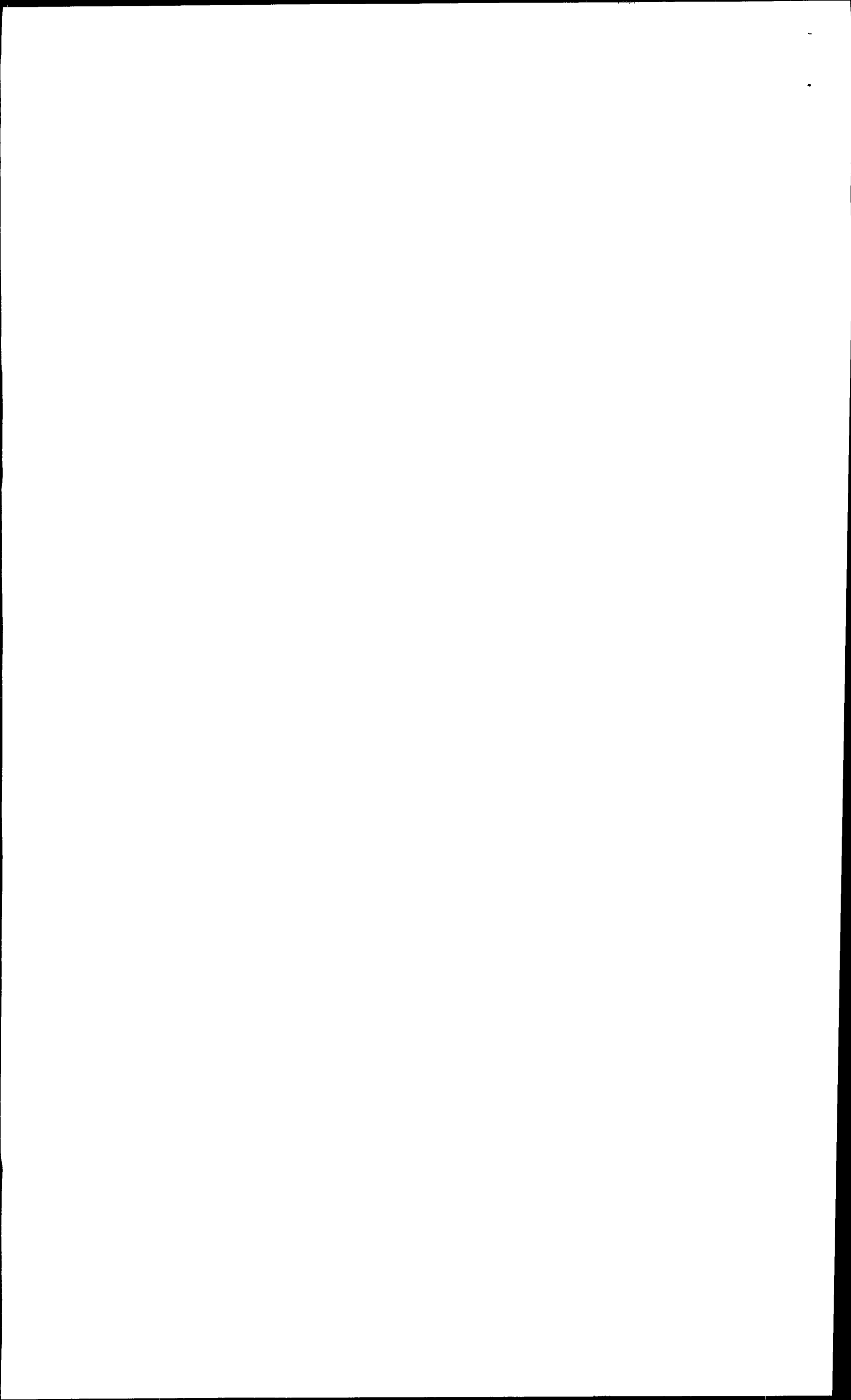
(b) 'A' after learning that 'C' had been murdered went to the spot and found that the body of 'C' was being taken to the house of 'C' by four persons who told him that 'B' had murdered 'C' and had run away. Does the statement of four persons form part of res gestae?

**Group D
Limitation Act, 1963**

- 8. Time commences to run the moment the right to sue accrues. State the exceptions if any, to this rule, giving illustrations.
- 9. "Limitation bars the remedy, but does not destroy the right." Discuss and state the exceptions, if any.

**Group E
Local Laws**

- 10. (a) Define the following terms in the light of Revenue Order No. 1 of 17th May 1917:-
 - (i) 'Biyaz'
 - (ii) 'Masikata'
 - (iii) 'Pakhuria'
- (b) Examine and illustrate the context in which the above terms have been used in the said revenue order.
- 11. (a) Describe the rules relating to registration of documents in Sikkim. Are there any exceptions to the general rule that only such documents that are duly registered are valid and admissible in evidence?
- (b) What is 'Certificate of Identification'? Who are the competent authorities authorized and empowered to issue such a certificate. Is such certificate equivalent to Sikkim Subject Certificate in all respects?
- 12. All old laws of Sikkim are protected by clause (k) of Article 371 (F) of the Constitution of India. Give your comments.



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HIGH COURT OF SIKKIM

RECRUITMENT TO THE POST IN THE CADRE OF SIKKIM SUPERIOR JUDICIAL SERVICE, 2012

PAPER - I : PROCEDURAL LAW

INSTRUCTIONS FOR THE CANDIDATES

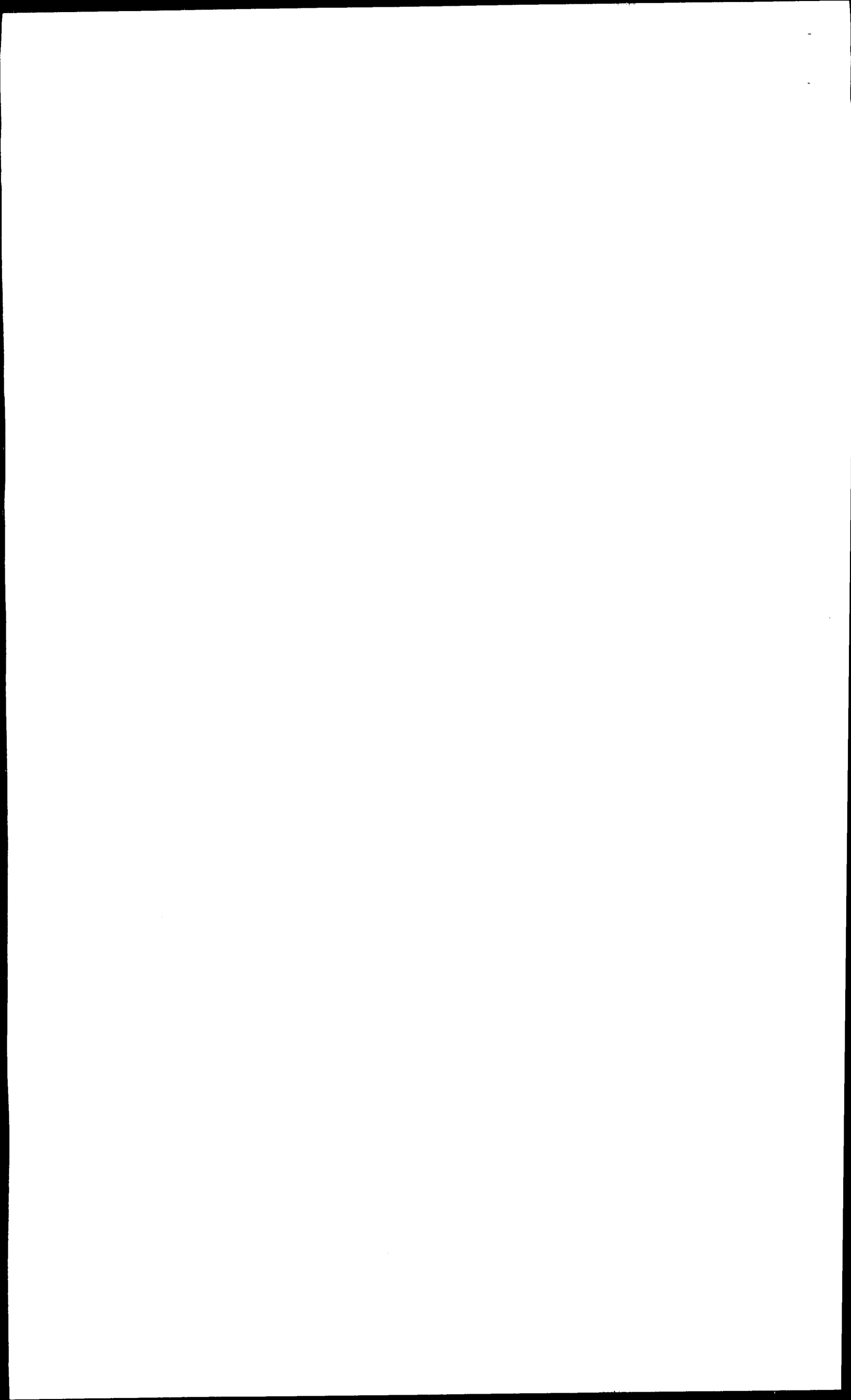
1. Candidates are required to answer Question No. 1 from Group-A and nine other questions. At least one question from each group is required to be answered. Answers mentioning statutory provisions and case laws will be graded better.
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FULL MARKS: 200

DURATION OF TIME: 3 HOURS

GROUP - A

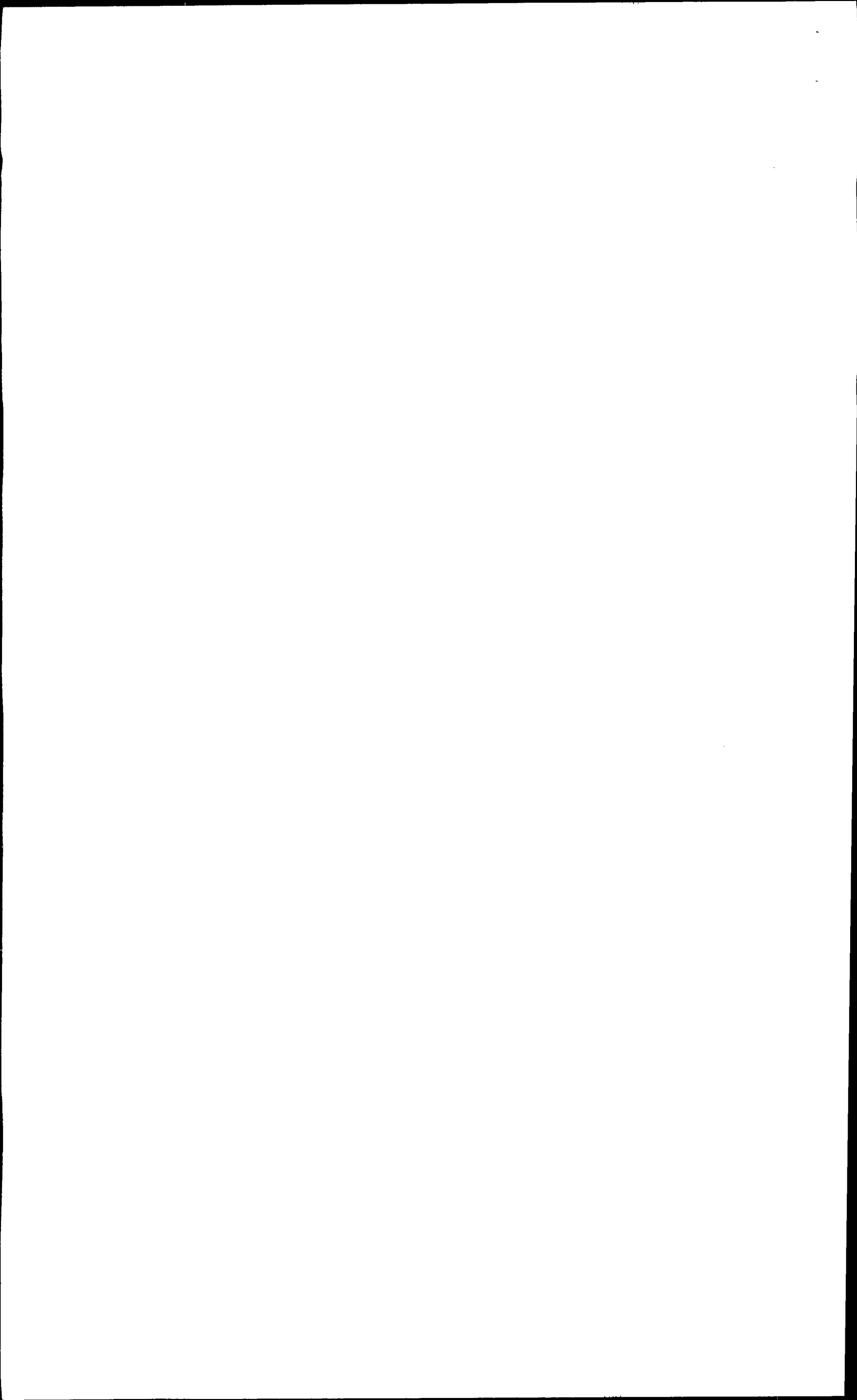
	Marks
1. Define the following:	
(a) Res-judicata and subjudice.	6
(b) Counter claim and set off	6
(c) Suit by indigent person	6
(d) Distinguish between Appealable Decree and Appealable Order with reference to provisions of CPC.	6
(e) What are the grounds on which civil second appeal lies under Section 100 CPC. Also mention the cases where second appeal is not maintainable.	6
	Total-30



2. State the provisions of CPC which govern the determination of the place of filing a *suit*?
 X resides at Gangtok, Y at Patna and Z at Guwahati. X, Y and Z being together at Delhi, X and Y make a joint promissory note payable on demand and deliver it to Z. Z files a *suit* for recovery at Delhi, X and Y object to the jurisdiction of Court at Delhi to try the suit asserting that the defendants X and Y do not reside at Delhi. How would you advise the parties about the validity of the objection and the various other alternatives for filing the suit. 20
3. Distinguish between Mediation, Conciliation and Arbitration. Comment on the powers of Court under Section 89 of CPC for promoting Mediation, Conciliation and Arbitration as alternative means for the settlement of disputes. Refer decided case/s on Section 89. 20

GROUP - B

4. Briefly discuss the following:
- (a) In what manner a police officer can seize, if at all, bank account, of an accused during investigation of a corruption case?
 - (b) Can a statement under Section 161 Cr PC be confronted to the witness, when he deposes before the Court?
 - (c) Apart from the investigating officer, can a Prosecutrix approach the Magistrate directly for recording her statement under Section 164 Cr PC during the course of investigation?
 - (d) Whether charges under Section 395 or 498A IPC against more than one person can be framed without the aid of Section 34 or 120-B IPC? 20
5. (a) Discuss the changes and additions made by the Code of Criminal Procedure (Amendment) Act, 2005 particularly the law of Plea Bargaining (Sections 265A to 265L).



(b) What particulars should an application for plea bargain contain? At what stage an accused may enter into a plea bargain.

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6. After the conclusion of evidence but before judgment, prosecutor applied under Section 311 Cr PC for summoning (i) Senior Scientific Officer of C.F.S.L to prove report (ii) Director of Explosives to give reasons for his opinion that bullet 'P' could be fired from gun 'P2' only (iii) Head constable to prove entries of Malkhana Register.

Accused also moved application for recalling the eye witness already examined for further cross-examination by new counsel appointed after death of previous counsel.

Decide both applications drafting orders mentioning the arguments for and against each application.

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GROUP - C

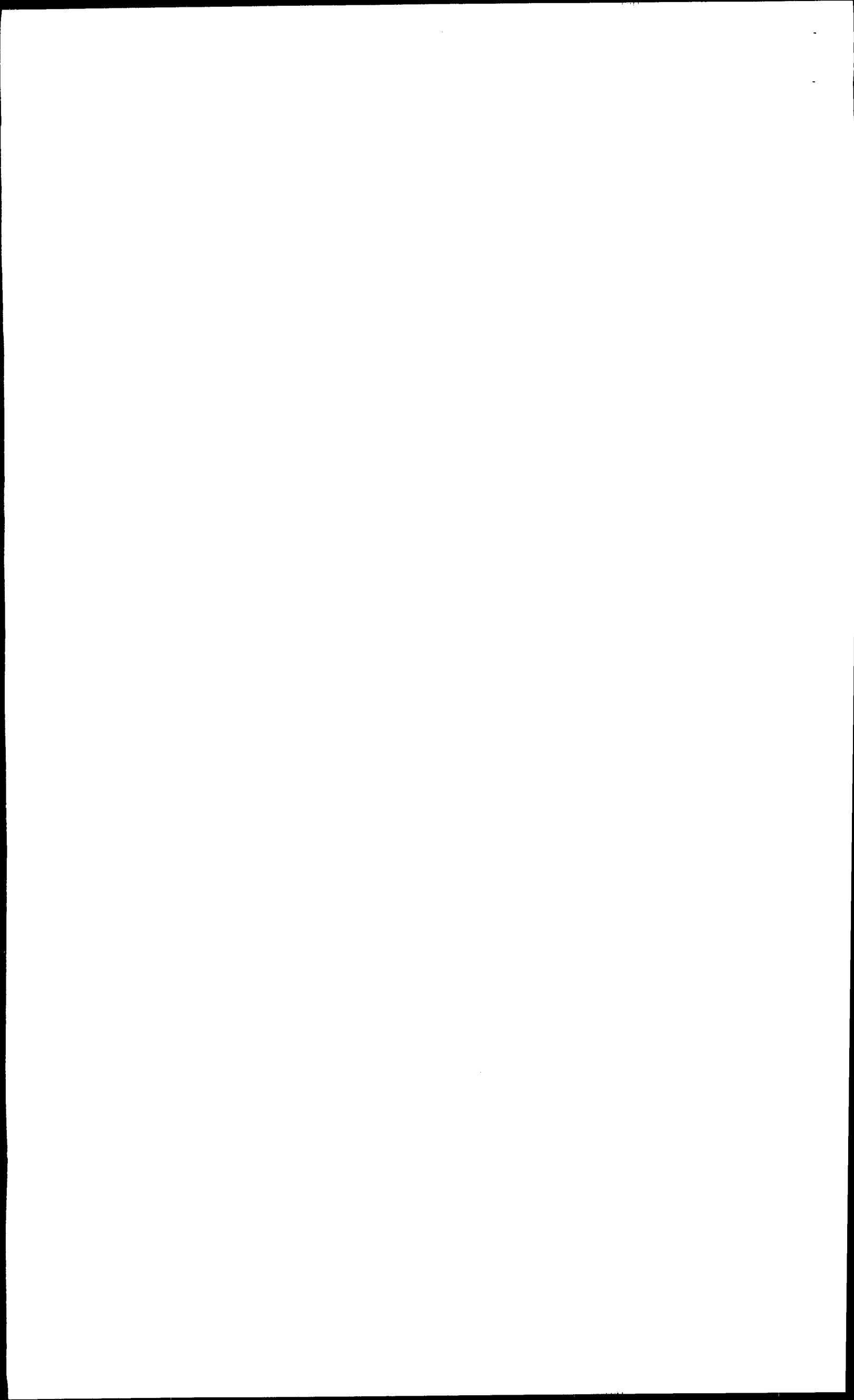
7. Decide the admissibility of information furnished by accused in police custody about the 'object produced' and 'facts discovered' in the context of Section 27 of Evidence Act. Refer leading judgment in this regard.

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8. (a) Define : (i) Public Documents, and
(ii) Private Documents.

(b) 'A' filed a suit for possession of land against 'B', who had encroached upon the land claiming to be the owner thereof. A produced the certified copy of the Sale Deed executed in his favour secured from the office of the Sub-Registrar. However, no evidence led in respect to the Sale Deed. At the time of argument 'A' relied upon the certified copy of the Sale Deed to establish his title over the suit property. Under which category the certified copy falls. Whether it is admissible in evidence. Decide with reasons.

(c) In a suit relating to boundary of the properties between two



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neighbours plaintiff summoned the Record Keeper of the Municipal Committee to produce the sanctioned plan of the defendant. The witness produced the document. Defendant wanted to cross-examine the witness. The Court declined the plea of the defendant to cross-examine. Is the order of the Court legally valid?

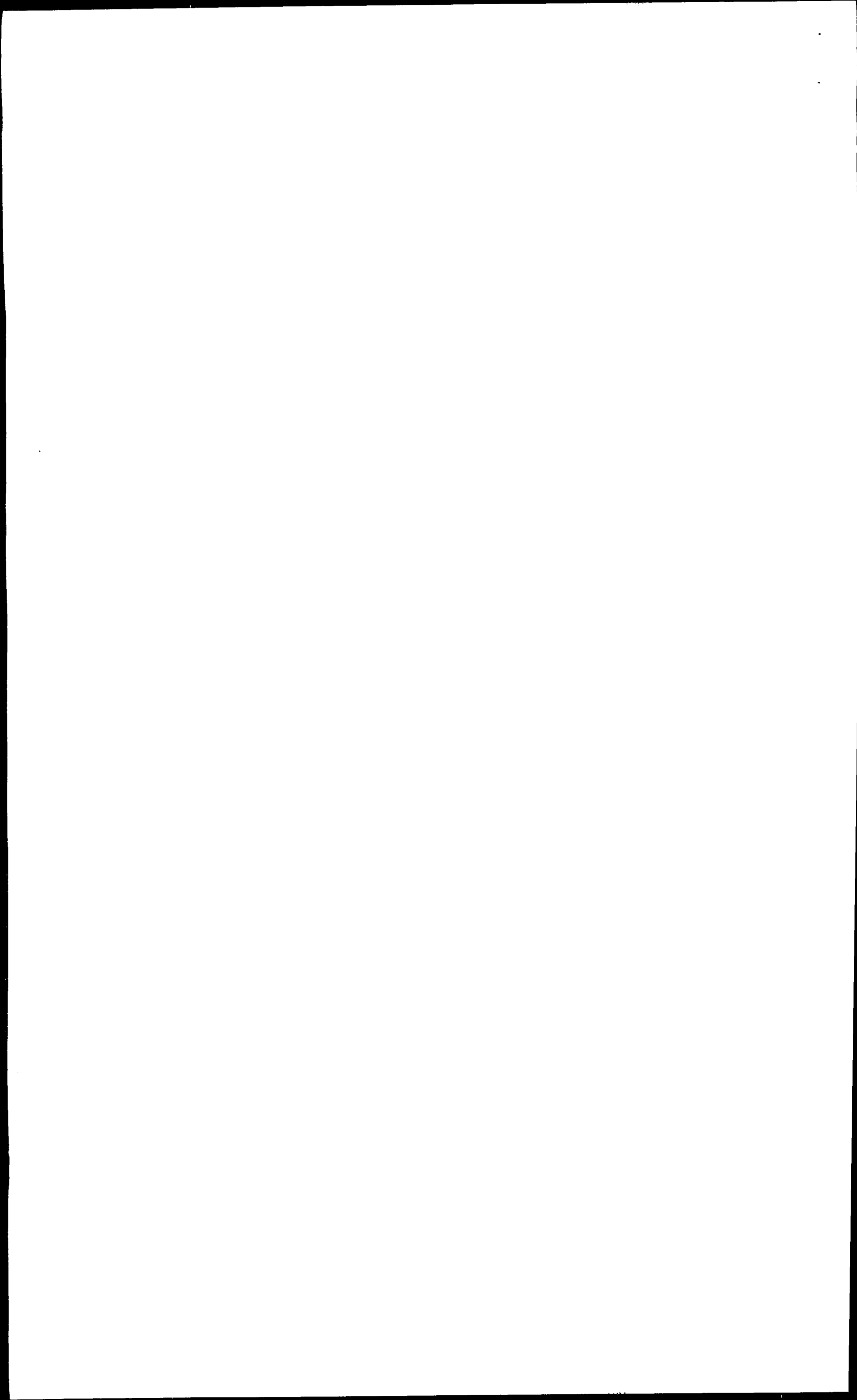
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9. (a) Read the circumstances which form the basis for exclusion of time in computation of period of limitation with reference to the relevant sections of Limitation Act.
- (b) A suit is decreed against 'A' for recovery on 2nd January, 2010. 'A' applied for the certified copy of the Judgment and Decree for filing the appeal on 10th January, 2010. Copy of the Judgment and Decree was made ready on 15th January, 2010. 'A' deposited the copying fee on 14th March, 2010 and collected the certified copy on 20th April, 2010 and filed the appeal on 1st May, 2010. Whether the appellant is entitled to exclusion of period of limitation spent for obtaining the certified copy of the Judgment and Decree? If 'yes' how and to what extent?
- (c) 'X' filed a suit for recovery of possession of his immovable property. Suit is dismissed on 07.07.2009 by the District Judge, Namchi. The plaintiff died after one month of the decision. His legal heirs filed an appeal on 05.12.2011 before the High Court. Decide as to whether the appeal is within the period of limitation. Record the reasons in support of your opinion.

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GROUP - D

10. (a) A Bhutia/Lepcha woman acquired property in Sikkim prior to her marriage. She married to a person of non Bhutia/Lepcha community. After her marriage she acquires additional property in her name. After her marriage she sells the entire property to a person not belonging to Bhutia/Lepcha



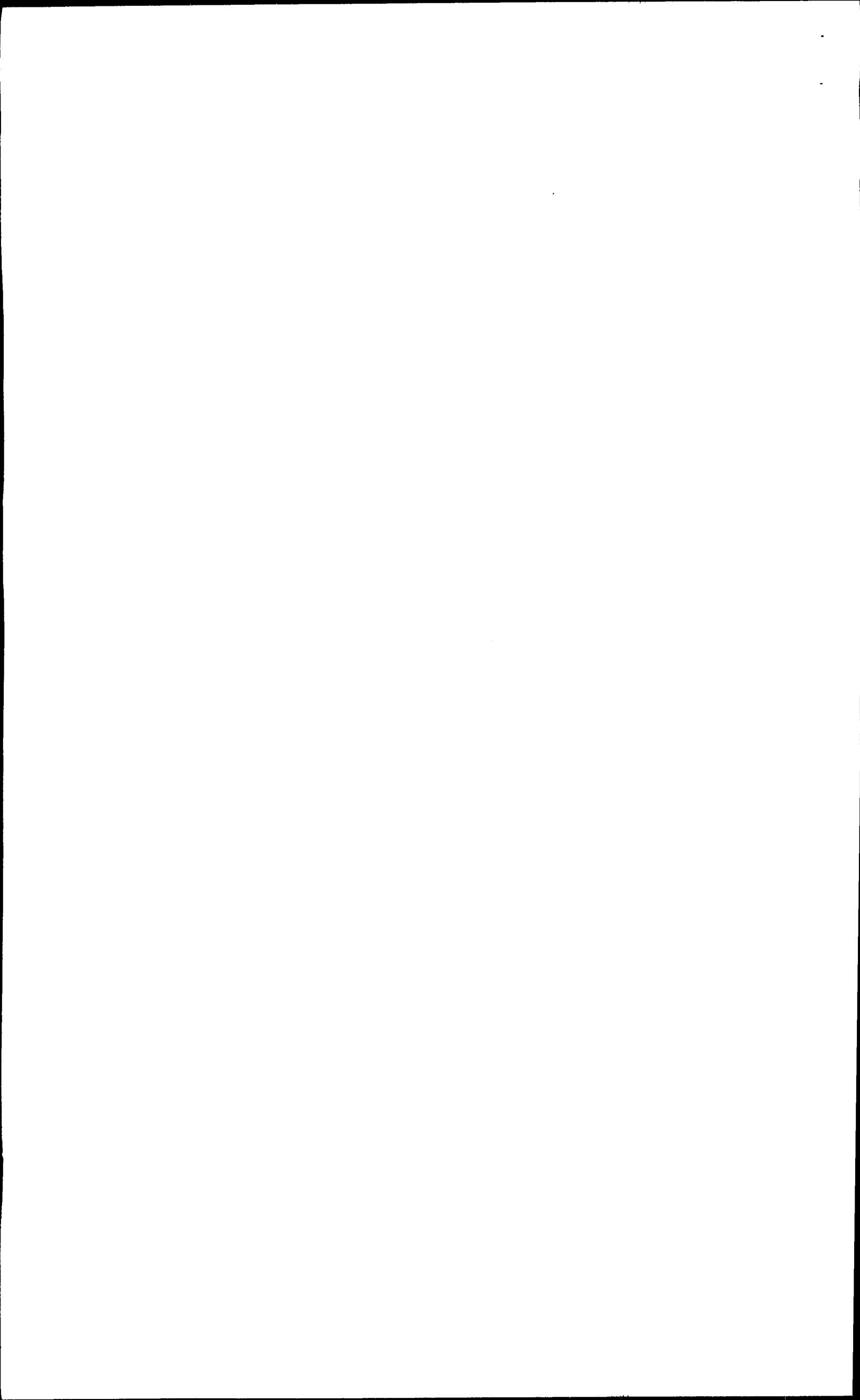
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community. Is the transaction of sale valid under local laws? If so how? If not why? Refer to the relevant notification/law.

- (b) A Sikkimese woman married to a non-Sikkimese approaches the Sub-Registrar for registration of a Sale Deed whereby she purchased immovable property in Sikkim. The Sub-Registrar refuses to register the document and initiates an inquiry regarding source of money for purchase of the property. Whether the action of the Sub-Registrar is legal, if so how? 20
11. (a) A landlord filed a suit for eviction against his tenant 'B' from a shop situated at Gangtok Bazar after expiry of period of lease by serving a notice under Section 106 of the Transfer of Property Act. The tenant contested the suit taking refuge under Gangtok Rent Control and Eviction Act. Decide the fate of the suit.
- (b) A tenant in a premises situated in Gangtok Bazar committed default in payment of rent for a period of 10 months. Landlord filed a suit for his eviction. Decide the fate of the suit. 20
12. (a) Under what law the Government can requisition or acquire land belonging to Bustiwallas for public purpose in the State of Sikkim? Explain various provisions in law relating to such requisition and acquisition and the procedure to be followed by the Collector or some other officer specially empowered by the State Government to perform the functions of a Collector under the Act.
- (b) Under what law transfer of land to non-agriculturist in Sikkim is prohibited? Explain the relevant provisions of the law applicable in Sikkim? 20

GROUP - E

Question paper on language will be provided in the Examination Hall.



HIGH COURT OF SIKKIM

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PAPER - II: SUBSTANTIVE LAW

INSTRUCTIONS FOR THE CANDIDATES

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FULL MARKS: 200

DURATION OF TIME: 3 HOURS

GROUP - A

- | | | Marks |
|----|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | (a) | Discuss the implication of various rights which have been conferred on daughters after the 2005 amendment in the Hindu Succession Act. Does this amendment operate retrospectively. |
| | (b) | Can a partition between Hindu Coparceners effected regarding immovable property without executing a registered document? Give reasons. |
| | (c) | 'A' a Hindu sells a coparcenary property in the lifetime of his |



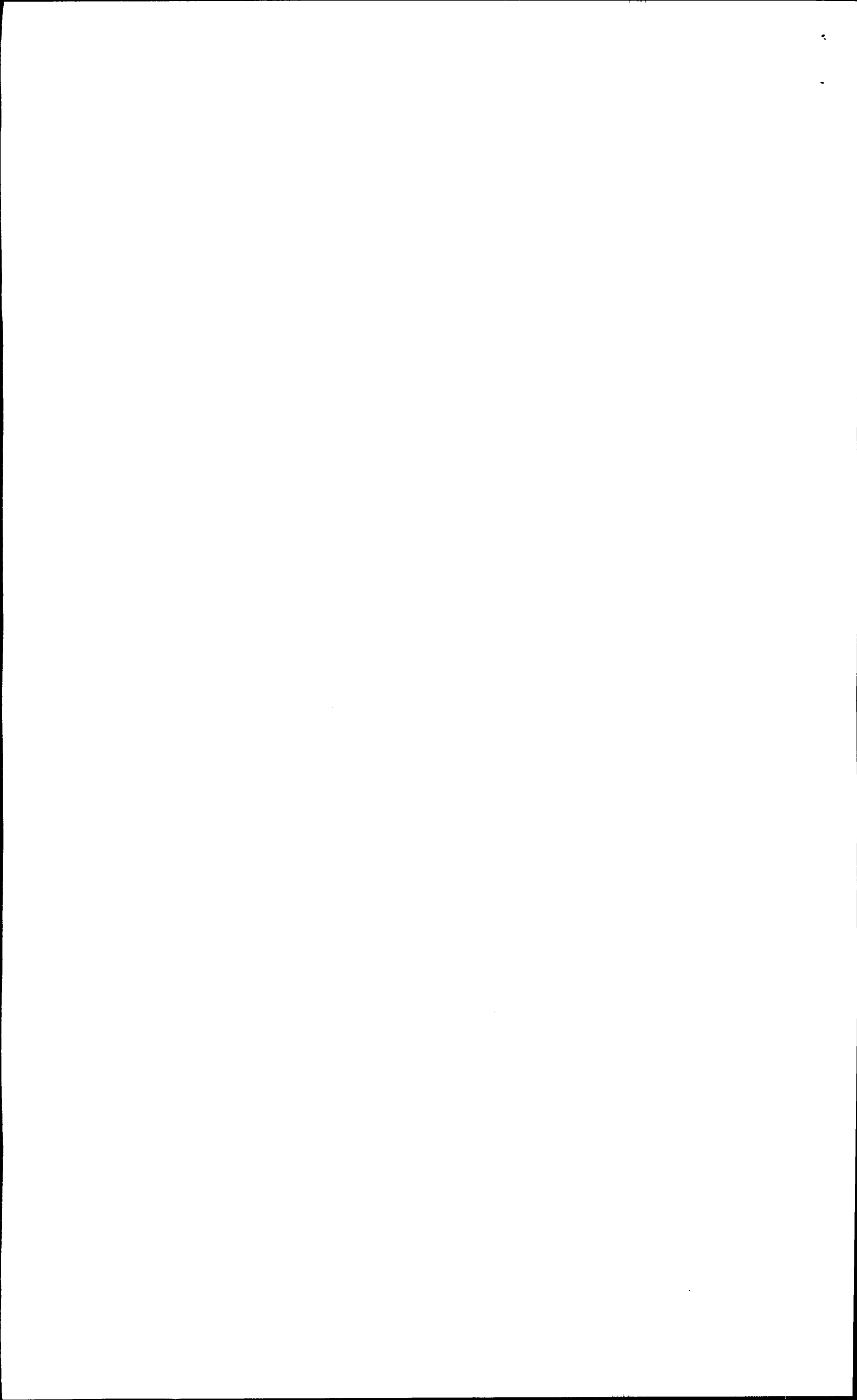
son 'B' without B's consent and without any justified necessity. 'B' dies after the sale. 6 months after the death of 'B' another son 'C' is born to A's wife from A. Discuss the right of 'C' who want to challenge the sale made by his father.

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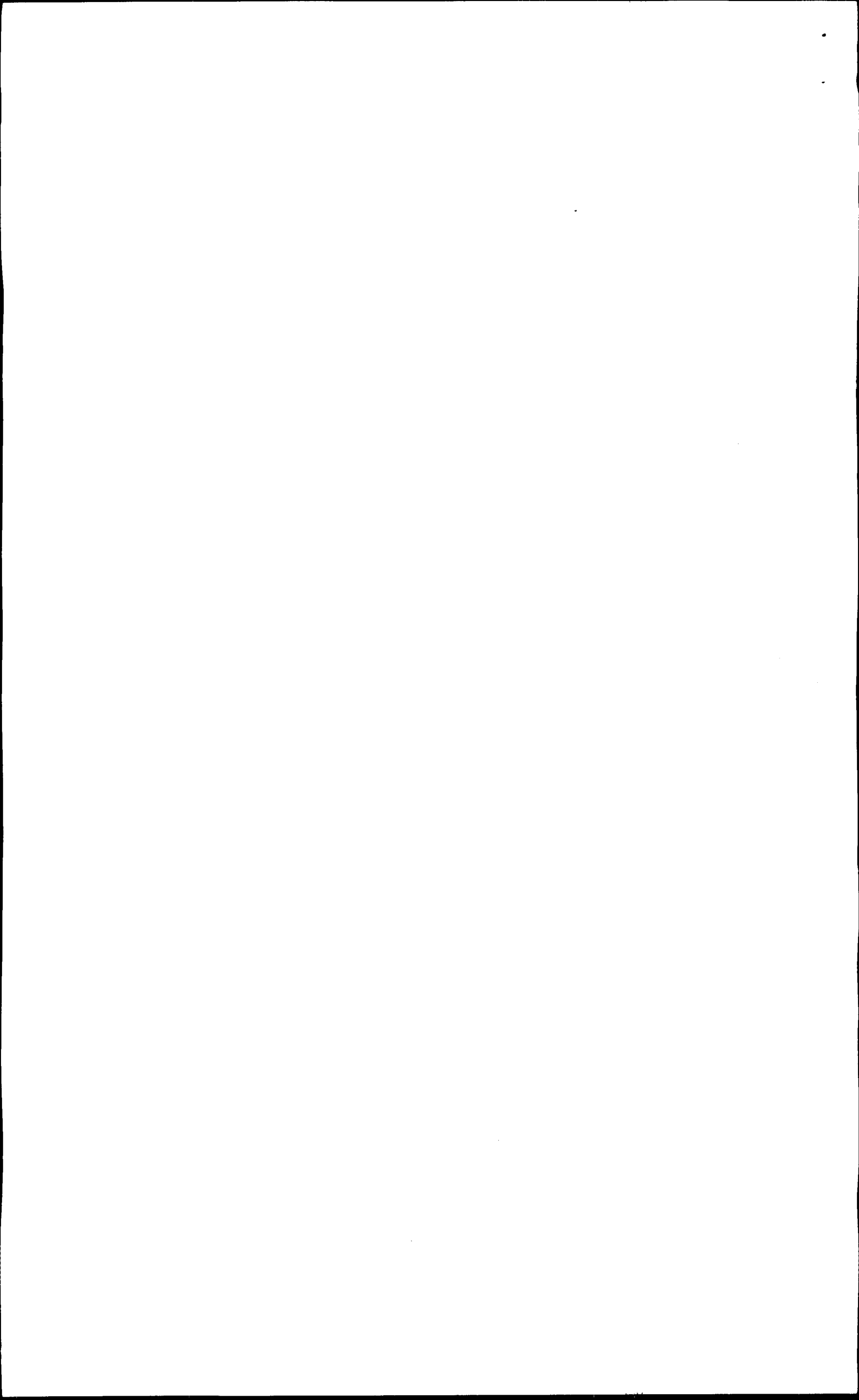
2. 'A' husband and 'B' wife file a petition under Section 13-B of the Hindu Marriage Act, 1955 within one year of marriage along with an application seeking permission to file petition and also to dispense with the period of second motion of six months. Discuss with the provisions of law and case law as to whether the petition can be entertained and whether the period of six months can be waived off? 20
3. (a) What are the grounds to challenge an Arbitration Award passed by Arbitral Tribunal constituted under Arbitration and Conciliation Act, 1996?
- (b) 'A' entered into a contract regarding supply of cotton cloth to 'B', who deals with manufacturing of readymade garments. Contract contains an arbitration clause for reference of dispute/differences to an arbitrator to be jointly agreed upon by the parties. 'B' raised dispute regarding quality and non-supply of cloth within time. 'A' filed a suit for recovery of price of cloth supplied in Civil Court. 'B' challenged the jurisdiction of Civil Court by filing an application without filing written statement. Is the action of 'B' justified? Decide with reference to the relevant provision and case law. 20

GROUP - B

4. (a) Give reasons if there can be a valid contract without adequate consideration?
- (b) Give exceptions to the rule that contracts in a restraint of trade are null and void?



- (c) 'A' agrees to marry 'B' if 'C', the wife of 'A' who is seriously ill dies. Give reasons if it is a valid agreement. 20
5. (a) Define the expression "frustration of contract".
- (b) When time is essence of contract. What is exception to above rule? Explain. 20
6. (a) What is the significance of the doctrine of *caveat emptor* in the present day context?
- (b) 'A' sells goods to 'B' in a container. The container is not sold but is supplied on a returnable basis. Goods become unfit for use not due to the quality of goods but because of the contaminated broken container. Discuss the law if any, under which 'B' can sue 'A' and what remedies he can get? 20
- GROUP - C**
7. (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 called as tenant holding over? Refer the relevant section of the Transfer of Property Act. 20
8. (a) Which contracts are not specifically enforceable under Specific Relief Act?
- (b) Can the following contracts be specifically enforceable:
- (i) A contract to execute mortgage
- (ii) A contract to lend money
- (iii) A contract to translation of a book into other language
- (iv) A contract to grant employment. 20
9. (a) Explain the cases/circumstances when an injunction can not be granted.
- (b) 'A' and 'B' both are workers of a political party and close friends. 'A' persuades 'B' to enter into an agreement with 'A' that he will not contest any election for the Assembly.



'B' is selected by the political party to contest the election for the Assembly. 'A' filed suit seeking injunction against 'B' for restraining him from contesting the election. Is he entitled to an injunction?

- (c) X, Y and Z are co-sharers in a land. Z starts raising construction over a part of the land without the consent of the X and Y. X and Y filed a suit seeking injunction against Z from raising construction over the joint property. What is the fate of the suit? Give reasons. 20

GROUP - D

- 10. A, B and C are partners of the firm XYZ which is in existence for the past 10 years. 'D' is admitted as a partner in the existing firm. After admission of 'D' as a partner 'F' files a suit against the firm for damages for causing loss to 'F' by fraudulent act of the firm committed prior to entrance of 'D' as a partner. What is the liability of 'D' as a partner in the firm towards 'F'? 20

- 11. (a) A, B and C are three partners of a firm. 'A' is conducting the business and managing the affairs of the partnership on behalf of the firm. 'A' enters into partnership on behalf of firm with D and E (another firm) without consent of other partners. Is the action of the 'A' justified? Whether the firm is bound by the action of 'A'. Explain with reasons.
- (b) A partnership firm 'X' having three partners A, B and C, deals in business of supply of motor parts to a transport company under a written agreement. A dispute arises between the transport company and the partnership firm in respect to the supplies made by the firm 'X'. 'A' enters into an agreement with the transport company for reference of disputes to the arbitration without the express consent of other partners. Does the action of the 'A' bind the partnership? 20



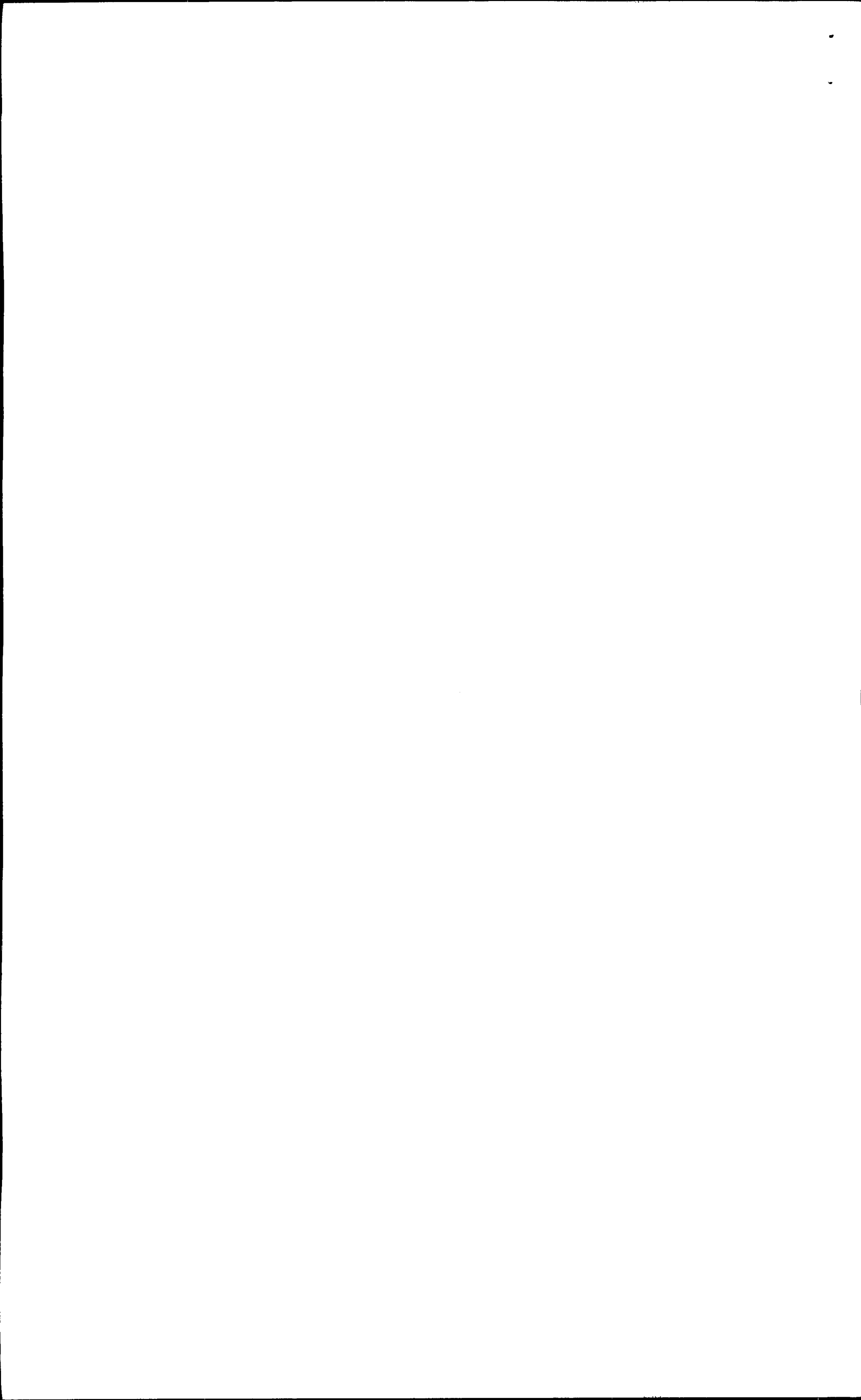
- 12. (a) What are the essential ingredients for raising presumption of service by post under Section 27 of General Clauses Act?
- (b) Parliament made enactment in respect to Cooperative Societies. The Act contained provisions for constitution of service and appointment of officers and employees under common cadre for a particular class of cooperative societies. A separate section empowers the Central Government to frame rules to regulate the service conditions of the employees. Rules are framed by the Central Government for initiating disciplinary proceedings and punishment of the delinquent employees. The Parliament repealed the Act and a new enactment is enacted. New law also contain similar provisions for framing service rules for its employees. However, no service rules are framed under the new Act. The competent authority initiated action against an employee by way of disciplinary proceedings and dismissed him from service after holding regular enquiry under old rules. Is the action of the employer legal and sustainable in law. Decide with reasons with reference to provisions of General Clauses Act.

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GROUP - E

- 13. 'A' was arrested and prosecuted for murder. He was convicted under Section 302 of the Indian Penal Code on 10.1.1995 and sentenced to imprisonment for life.

'A' has undergone 14 years of actual imprisonment and total period of imprisonment including remission comes to more than 17 years. No formal order has been made by the State Government either about remittance or commutation of sentence. 'A', therefore, pleads that in the absence of any formal order, it



must be deemed that Government has commuted his sentence to 14 years. Hence, any further detention in jail is illegal and he is entitled to be released forthwith. Give reasons for your answer and support with case law.

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- 14. (a) Even without intention to murder a person may be guilty of murder. Explain.
- (b) Decide the liability of 'A' in the following:
 - (i) 'A' receiving divine command in his dream sacrifices his child in the morning and later surrendered to the police.
 - (ii) 'B' claims that his body was resistant against sharp instruments and invite 'A' to get the facts tested. 'A' cut 'B' on his arm and 'B' bleeds to death.
 - (iii) In a fight between A and B outside B's house, B's wife with a baby in her arms intervened and tried to pacify both. 'A' strikes the lady, but hurts the baby in the process, who dies instantly.

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- 15. (a) State of Maharashtra enacted a law to prevent cruelty to animals under Entry No. 17 of List-III (Concurrent List) providing imprisonment of 6 months for the offence under the Act. Parliament also enacted law under the same entry later in time providing imprisonment of one year. Whether an accused guilty of commission of offence in Maharashtra will be liable for penalty under the State law or the Central law? Decide the controversy in reference to constitutional provisions.

- (b) What are the fundamental duties enshrined under the Constitution? Refer the relevant constitutional provisions.

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