

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LL. B DEGREE PROGRAMME – LEVEL 3  
FINAL EXAMINATION – 2017/2018  
LLU3904/LWU1412 - LEGAL METHOD  
DURATION – THREE (03) HOURS



DATE: 3<sup>rd</sup> March 2020

TIME: 09.30 a.m. – 12.30 p.m.

Answer five (05) questions only with at least two questions each from part 1 and 2.

Candidates will be penalized for illegible handwriting.

**PART ONE- ROMAN LAW**

1. Assume that you are invited to represent Sri Lanka in a Law Conference which will be held in Italy based on the theme of 'Roman Law - the Foundation of a Legal System'.

You are required to deliver a speech focusing on the history of the Roman law.

Draft your speech with reference to the periods of Roman history and sources of Roman law.

(20 Marks)

2. a) "All Roman citizens were allowed to make a will, take under a will and to witness a will."

Do you agree with the above statement? discuss with reference to relevant legal principles and examples.

(12 Marks)

- b) Discuss the different forms of wills that were in use at different periods of Roman law.

(8 Marks)

(Total- 20 Marks)

3. Consider the accuracy of the following statements with relevant to the Roman law.

i) Legislative power in Rome changed through different periods of its history.

ii) *Dos* was evidence that marriage and not *concubinage* was intended.

iii) Emperor Justinian played a significant role in codifying the law.

iv) The eldest surviving male ancestor of a family exercised unlimited power over his family.

(4x5=20 Marks)

4. (I)

(a) Camilia married Austin by completing *Confarreatio*. They had a son name Onus and when he started to walk he suffered from a serious illness and was disabled. Austin who was emotionally affected by the situation of his son committed suicide. Now Camilia who lives alone with her disabled son, wants to adopt a child.

b) Pablo, a Senator, intends to marry Cilvia, a wealthy actress disowned by her patrician family. Pablo wants to know the requirements for a valid marriage. Cilvia wishes to know who is required to provide the *dos* and any precautions that she needs to be aware of in respect of *dos*.

Advise Camilia, Pablo and Cilvia.

(5x2= 10 Marks)

· II) "Roman law brings out clearly the concept of ownership, as distinct from possession."

Do you agree with the above statement? Substantiate your answer with relevant legal concepts and practical examples.

(10 Marks)

(Total- 20 Marks)

#### PART TWO- LEGAL METHOD

5. "The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."

*Pepper v Hart (1993) 1 All ER at P. 50.*

Discuss the above statement with reference to the rule of statutory interpretation. Your answer should be substantiated with reference to relevant case law.

(20 Marks)

6. "Equity arises out of the tendency of all law to become rigid.... Equity comes in true to form to mitigate the rigours of strict law."

Lord Denning, *The Family Story* (1981). P.176

Critically discuss the rationale for recognition of equity as a source of law, with reference to the above statement.

(20 Marks)

7. (I)

Nilupul has recently returned to Sri Lanka and is residing in the village of *Wedagama*. He has obtained a scientific training in Australia in collecting medicinal plants from forests and attempts to engage in collecting medicinal plants using his knowledge in the forest of *Wedagama*. The villagers prevented him by doing so stating that only a particular community of the village named Palos has the right to collect medicinal plants in the forest and they claim that this practice has continued uninterrupted from time immemorial. Furthermore, elders of the village point out that Nilupul does not belong to this particular community. However, all such activities of communities are prohibited under the provisions of the Fauna and Flora Protection Act of Sri Lanka.

Advise Nilupul with reference to the test that the courts have adopted to enforce a local custom.

(10 Marks)

(II)

"The answer to this interesting question is that the whole doctrine of precedent is based on the theory that as a general rule judges do not make mistakes either of fact or of law."

*Arthur L. Goodhart, Determining the Ratio Decidendi of a Case, The Yale Law Journal, Vol. 40, No. 2 (Dec., 1930), pp. 161-183.*

Critically discuss the above statement with reference to the doctrine of *stare decisis*

(10 Marks)

(Total-20 Marks)

8. After becoming a party to the World Health Organization Framework Convention on Tobacco Control the State of Sealand enacted a law titled National Authority on Tobacco Act, No .9 of 2017.

The preamble of the Act provides:

“Whereas it has become necessary to protect the public from the ill effects of smoking tobacco...”

Section 9 of the Act provides;

“No person shall smoke any tobacco product within any enclosed public place.”

The University of North Sealand is a national university situated in the capital city of Sealand. The canteen which belongs to the Faculty of Engineering is called the ‘open canteen’ as it has only three walls covering three sides of the canteen and the open side facing the playground. The canteen is covered by a roof and its floor is cemented.

Malshan, a student of the university, smoked a cigarette in the canteen during lunch time while the canteen was crowded with many students. He has been charged under section 9 of the Act for committing an offence. Malshan argues that the canteen which is recognized as the open canteen is not an enclosed public place as it does not have a wall on one side.

Assume that you are an Attorney-at-Law and advise Malshan by identifying the relevant rules of statutory interpretation.

Substantiate your answer with relevant case law.

**(20 Marks)**

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