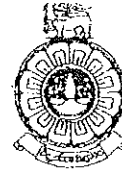


THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B. DEGREE PROGRAMME -LEVEL V
FINAL EXAMINATION 2017/2018
ENVIRONMENTAL LAW - LWU3314/ LLU5811
DURATION – 3 HOURS



Date :28.02.2020

Time:2 p.m. – 5 p.m.

Total number of questions – 07

Students will be penalised for illegible handwriting .

Answer five (04) questions.

1. Dreamland is a developing country, and the government is determined to reach the status of a developed country within the next ten years. To achieve this goal, the government of Dreamland launched several development projects in its capital city Rajpura. This resulted in mass migration to the capital from other parts of the country as a result of the job opportunities available from these projects. Due to the overpopulation in the city and increased vehicular pollution, exhaust from diesel generators, dust from construction sites, burning of garbage and illegal industrial activities, the air quality in Rajpura has decreased to alarming levels.

Recently, Rajpura has endured one of the worst periods of pollution on record, with a thick brown smog limiting visibility and causing burning eyes. The air quality index, which measures airborne particles, has been recorded as more than ten times the limit deemed healthy by the World Health Organization. Reportedly, thousands of people are suffering from respiratory infections and breathing difficulties during exercise or outdoor activities, and children are being admitted to the hospitals suffering from skin irritations. A survey conducted by a local newspaper of Dreamland reports that 34 children from Rajpura are currently in hospitals with lung damage due to the poor quality of the air. It further claims that this situation can lower children's immune system and increase the risks of cancer.

The Rajpura branch of the Medical Practitioners' Association wish to file a case against the government and relevant authorities for the failure to contain the air pollution and protect the health of citizens.

Assume that the laws and legal system in Dreamland is similar to that of Sri Lanka. Advise the Medical Practitioners' Association on whether they could successfully file this case as public interest litigation.

(25 Marks)

2. Discuss the following statements and consider how judges have dealt with them in decided cases. Your discussion should be supported with relevant provisions from statutory law and case law. You should cite examples from Sri Lanka and other jurisdictions to illustrate your answer.

i. 'Development projects affect not only the physical environment but also have impacts on societies and communities.'

(12.5 Marks)

ii. 'The traditional concept that development and ecology are opposed to each other, is no longer acceptable.'

(12.5 Marks)

3. Explain the legal principles and concepts which were established in the following cases;

(a) *Juan Antonio Oposa and others v. The Honourable Fulgencio S Factoran and another* (1994) Vol. 1 (3) SAELR 113

(b) *M M Khalid and Three Others v. Chairman, Sri Jayawardenepura- Kotte Urban Council* (1996) Vol.3 (3) SAELR 62

(c) *M C Mehta v. Kamal Nath and Others* (1997) Vol.4(3) SAELR 122; (1997) 1 SCC 388

(d) *Nair v. Costa* 28 N.L.R.385

(e) *New Zealand v. France* (1996) Vol.3 (1&2) SAELR 7

(5x5= 25 Marks)

4. '... the National Environmental Act No. 47 of 1980 established the Central Environmental Authority with the powers, functions and duties of making recommendations relating to national environmental policy and the conservation of natural resources, and engaging in related research, educational and advisory activities. However, the Act did not invest the Central Environmental Act with the power or a duty to effectively control pollution and degradation of the environment or to prevent persons from engaging in activities which pollute or degrade the environment.'

Ravindra Gunawardena Kariyawasam, Chairman, Centre for Environment and Nature Studies Vs Central Environment Authority and others, SC FR Application No. 141/2015, pg 12.

Do you agree with this dicta? Critically evaluate the effectiveness of the National Environmental Act (NEA) No.48 of 1980 as amended by Acts No.56 of 1988 and No.53 of 2000 in controlling and regulating polluting activities. Support your answer with relevant statutory provisions and case law. Your answer should also include suggestions to improve the effectiveness of the Act in this regard.

(25 marks)

5. Maulanka is a developing country that has been listed as one of the most investor-friendly states in the world. 'Big Brothers Resources Partners,' a large investment corporation based in a developed country, decided to invest in a joint venture to manufacture phosphate fertilizer using the apatite at Sawbagya a settlement in the central province of Maulanka. Sawbagya is rich in natural resources and used to be the second capital of ancient Maulanka. It is also accepted as the origin of the oldest civilization of Maulanka, and people there lead a peaceful life by continuing their ancient form of engraving as a profession.

Big Brothers Resource Partners decided to complete the project within eight months and negotiated with Maulanka to commence the project without going through the prescribed procedures.

Newspapers of Maulanka published articles on this mineral investment agreement with Big Brothers Resources Partners and predicted that it would take Maulanka to the next stage in development. Recently, an archaeological survey conducted in Sawbagya by the Department of Archaeology found an excavation site and submitted its report titled 'Sawbagya- One of the oldest urban sites in the world.'

'Barefoot Lawyers' a group of activist law students of Maulanka wishes to stop the government of Maulanka from approving this investment venture and seeks your advice. Assume that the legal system of Maulanka is similar to the legal system in Sri Lanka and advise them.

(25 marks)

6. "The recognition of the inter-relationship between environmental issues and human rights at both international and national levels has given rise to an important body of case law. Litigation on what are essentially environmental issues has often been based on fundamental rights provisions in national constitutions. Conversely, many human rights cases have been used to set environmental standards and protect natural resources".

Discuss this statement illustrating your answer with decided case law in the courts of Sri Lanka and other countries.

(25 marks)

7. Samagi Mawatha is a residential lane of 30 houses in Sathutupura. Bala and Ruminda are neighbours living in adjoining houses in Samagi Mawatha. Bala, started a chicken farm in his home, adjoining Ruminda's house without obtaining the necessary permits. Ruminda, who is a medical practitioner by profession, runs his private medical clinic at his house to provide free medical services to the neighbourhood. Ruminda finds that the noise of the chickens and the smells coming from Bala's farm are becoming unbearable and disturbing both his family and patients.

The residents of Samagi Mawatha find that the existence of the chicken farm is not only a nuisance, but a potential health hazard as the smell from the chicken farm cause difficulty in breathing. Sara, Ruminda's little daughter is particularly affected. Viraj, a university student living in the Samagi Mawatha, says that the smell is due to ammonia gas being released from the chicken farm, and it can cause respiratory failure in the long run.

Discuss the remedy available to Ruminda and the residents of Samagi Mawatha to remedy this situation. Cite case law in your answer.

(25 marks)

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