

**THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LLB DEGREE PROGRAMME - LEVEL 5  
FINAL EXAMINATION 2020/2021 ( OPEN BOOK)  
ENVIRONMENTAL LAW-LLU5811/LWU3314  
DURATION – THREE (03) HOURS**



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**Date: 13<sup>th</sup> September 2021**

**Time: 9.30 a.m. – 12.30 p.m.**

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**Please read the instructions carefully.**

**Candidates will be penalized for illegible handwriting.**

**The paper consists of five (05) questions. You should answer four (04) questions. Question no.(1) in Part A is compulsory. You may choose three questions from Part (B).**

**PART -A**

**This question is compulsory.**

1. “Sustainable development includes (a) “the commitment to integrate environmental considerations into economic and other development”, and (b) the requirement “to take into account the needs of economic and social development in crafting, applying and interpreting environmental obligations.”

***Phillippe Sands, Principles of International Environmental Law***

Select TWO (2) laws of Sri Lanka and TWO (2) international environmental conventions and discuss the extent to which they fulfil one or both of these elements of sustainable development.

**(25 Marks)**

## **PART-B**

### **Answer THREE questions ONLY from this part**

2. 'Gemma' is an island State enriched with natural resources. The central province contains a large area of forests known as the Nagaraja Forest which is world renowned. These forests are home to rich biodiversity and are classified as a biodiversity hotspot. A significant population of indigenous people also live in the forest. These indigenous people maintain a lifestyle that has remained unchanged for centuries and depend on the biodiversity of the forests for their sustenance. They are seldom seen by outsiders. The Nagaraja Forest has been listed as a World Heritage Site.

The government built a power plant in the central province of Gemma just outside the boundaries of the Nagaraja Forest. A month ago, a blast at the power plant caused a massive fire which spread to the Forest. The fire was described as the worst in Gemma's history, lasting a week and killing 58 indigenous people and resulting in hundreds of others being injured and hospitalized. According to the situation analysis report, 65 percent of the forests have been destroyed as a result of this incident, and there has been a massive loss of biodiversity, including flora and fauna. Furthermore, Gemma scientists warn that the loss of the forest will have an impact on water sources of Gemma, particularly in the central province. The indigenous people who have lived in the forest since time immemorial are now homeless and are unable to sustain their traditional lifestyle.

'Save the Green' an association of environmental activists wishes to support the indigenous people. Assume that the Constitution of Gemma is the same as that of Sri Lanka and discuss (a) whether the 'Save the Green' can file an action on behalf of the affected indigenous people (b) what constitutional rights have been violated (c) whether and how any of the Directive Principles of State Policy can be cited to further interpret and enforce those rights.

Support your answer with relevant statutory provisions and case law from both Sri Lanka and other jurisdictions.

**(25 Marks)**

3. 'Orbis' is a developing State which experienced a severe economic crisis in the recent past. The government of Orbis decided to launch several development projects with the assistance of private and foreign investments to restore the economic stability of Orbis. This initiative named 'Making Orbis Great Again', includes three development projects described as follows:
- a) The first proposed project is to build a harbour on the eastern coast of Orbis. This area is world famous for coral reefs. It has also been declared as a marine sanctuary due to the presence of blue whales in the area. People living in this area earn money by working for tourists and engaging in fishing. The government of Orbis intends to privatize the harbour and hand it over to a foreign investor on a 99-year lease.
  - b) Under the second project, the government decided to develop a highway from the central province to the capital city. The proposed highway passes through a part of a national park, which is the habitat of migratory species of birds and endemic birds. Another section of the highway will be built over an area which archaeologists believe contain the remains of an ancient city.
  - c) As the third development project, the government decided to build a free trade zone in the southern province of Orbis which has the country's highest unemployment rate. The proposed land for this free trade zone includes a wetland which has been declared as a Ramsar site.

To expedite the process of development of these projects, the government of Orbis decided to avoid the formal procedures required to commence a development project.

A non governmental organization called Movement for Human Rights and Development (MHRD) wish to challenge these projects.

Assume that the law in Orbis is the same as that of Sri Lanka and Orbis has acceded to all the international conventions that Sri Lanka has acceded to.

**(25 Marks)**

4. 'Friends in Business' is a chemical factory producing perfumes and operating in the capital city of State 'Ozo'. It is well known for its famous luxury perfumes. It also exports its supplies to 14 foreign countries. A recent article titled 'The other side of Friends in Business' published in a weekend newspaper described the environmental pollution caused by the business activities of 'Friends in Business' with evidence and testimonies of affected people. The following were the issues raised by the article.
- Approximately 20,000 people living in shanties near the factory complain that the production wastes of the factory are discharged into the stream that runs near the factory which is their primary source of water. As a result, the stream has become unsafe for drinking. Many people in the shanties are already suffering from vomiting and diarrhea as a result of drinking this water.
  - These people are also disturbed by the strong chemical odor emanating from the factory, which has polluted the air and caused residents to develop respiratory problems. According to elderly people's testimonies, the chemical odor from the factory has caused them to develop sleeping disorders and severe breathing difficulties.

The reporter of this article also mentions that when she contacted the relevant authorities to report this incident, she was informed that the factory is operating with all necessary permits and that the export revenue generated by this factory benefits the country as well. She was also told that many of the people living in the shanties near the factory are employed in it. The factory has also set up a primary school for the children in the area.

After reading the article, how would you advise the affected people and the factory management on the legal issues arising from this situation?

Support your answer with statutory provisions and decided case law.

Assume that the laws in Ozo are the same as that of Sri Lanka.

**(25 Marks)**

5. "Our environmental jurisprudence ..... has weaved our constitutional values and fundamental rights with the international environmental principles."

*Ashgar Leghari v Federation of Pakistan, 4 et 14 September 2015, W.P. No. 25501/2015.*

To what extent do you think this quotation is applicable to environmental jurisprudence in Sri Lanka? Discuss with reference to case law.

**(25 Marks)**

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