

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LL.B. DEGREE PROGRAMME- LEVEL 3



FINAL EXAMINATION - 2021/2022  
PRINCIPLES OF EQUITY- LWU 1202/ LLU 3502  
DURATION – 03 HOURS

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Date: 23.01.2023

Time: 09.30 a.m.-12.30 p.m.

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Total No. of Questions: 08

Answer Five (05) questions selecting one question from Part 01 and four questions from Part 02.

Candidates will be penalized for illegible handwriting.

**PART 01 – Principles of Equity**  
**Answer only one (1) question from this part**

01. Comment on the following statement in the light of historical evolution of equity in English Law and its current trends:

*“I am convinced that in determining rights, particularly property rights, the only justice that can be attained by mortals, who are fallible and are not omniscient, is justice according to law; the justice which flows from the application of sure and settled principles to be proved or admitted facts. So in the field of equity the length of the Chancellor's foot has been measured or is capable of measurement. This does not mean that equity is past childbearing: simply that its progeny must be legitimate—by precedent out of principle. It is well that this should be so; otherwise, no lawyer could safely advise on his client's title and every quarrel would lead to a lawsuit.”*

*Cowcher V. Cowcher (1972) 1 All ER 943 at 948*  
(20 Marks)

02. "The Maxims of Equity should not be regarded as laws of equity but rather as guidelines which influenced the Court of Chancery when delivering judgements."

Comment on the above statement.

(20 Marks)

**PART 02- Law of Trusts**  
**Answer four (04) questions from this part**

03. Kavindu wishes to create a trust for the benefit of his 12-year-old daughter Mihiri. Consider whether Kavindu can legally:

- (a) appoint his 14-year-old son as the trustee.
- (b) execute a trust deed pertaining to his rubber estate without notarial execution as it is expensive to do so.
- (c) set aside the bulk portion of his bank deposits to facilitate Mihiri's education
- (d) Rs. 10 million to his brother Sameera for the benefit of Mihiri's children and grandchildren

Your answer should be supported by the relevant provisions of the Trusts Ordinance, and case law.

(05 Marks each)  
(05×04 = 20 Marks)

04. "Whereas the legal definitions of charity in English and Sri Lankan Law are basically similar, our law is distinctly wider on the aspect of public benefit. The Sri Lankan Courts have been willing to regard those belonging to a smaller community than would be so regarded in England as suitable beneficiaries of a charitable trust."

Critically evaluate the above statement in the light of relevant statutory provisions and case law.

(20 Marks)

05. Pasindu, an owner of a hotel in Hikkaduwa has a son. Pasindu went to his doctor for a medical test. The doctor informed him that his liver is very badly affected due to

alcohol consumption. Pasindu transferred his hotel to his brother Ravindu since he was concerned about the medical test and had the fear of death. After a week, the doctor called Pasindu and apologized for mix up with another patient's medical report. Thereafter, Pasindu requested Ravindu to retransfer the hotel to him. Ravindu refused to retransfer the hotel to Pasindu.

(a) Advise Pasindu in the light of the provisions of the Trusts Ordinance and case law.

(12 Marks)

b) Would your answer be different if Pasindu had transferred the hotel to his son instead of Ravindu?

Give reasons for your answer.

(08 Marks)

06. "Section 2 of the Trusts Ordinance No.09 of 1917 permits the application of English Law principles in the event of a *casus omissus*. It must be kept in mind that the English Law in such circumstances will be binding and not merely persuasive. One must be absolutely certain that none of the provisions in the Trusts Ordinance No.09 of 1917 apply in the particular scenario before turning to Section 2 of the Ordinance."

Critically explain the above statement.

(20 Marks)

07. Piyal appointed Amal as a trustee for his 40-acre Tea estate and the hotel in Nuwaraeliya. He directed Amal to maintain the properties until his daughters Wimali and Kamali attain the age of majority. Piyal died when Wimali was twelve years of age and Kamali was sixteen years of age. Amal hired a car twice a month to visit the tea estate in Nuwaraeliya at a cost of Rs.30,000/= per trip. If Amal had travelled to Nuwaraeliya by train, he would have spent only Rs. 2,500/=. When Wimali attained the age of 18 years, she asked Amal to sell the hotel and give her the portion she would become entitled to. In the meantime, Amal sold five acres of the land belongs to the tea estate to Bimal for Rs. 3 million. It is estimated that the market value of the five acres of the land is Rs.5 million. Wimali was aware of the sale of the land but did not make any effort to prevent it. Amal consulted a lawyer to transfer the properties to Wimali

and Kamali. He paid Rs.15,000/= from his own money for the consultation with the lawyer. When Kamali came to know of these decisions and transactions, she consults you for your advice.

Advise Kamali in the light of the provisions of the Trusts Ordinance. (20 Marks)

08. Write notes on any **Two (02)** of the following.

- (a) Trusts (Amendment) Act, No. 6 of 2018
- (b) Rule against perpetuities in trusts
- (c) Specific performance as an equitable remedy

(10 Marks each)  
(10×2 = 20 Marks)

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