

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME- LEVEL 5
FINAL EXAMINATION -2021/2022
LLU5810/LWU3312-LAND LAW
DURATION- 3 HOURS



DATE: 17 January 2023

TIME: 9.30 a.m – 12.30 p.m

Answer any five (05) questions only.

Candidates will be penalized for illegible handwriting.

1. "There is abundant authority that a party claiming a declaration of the title must have title himself. To bring an action *Rei vindicatio* the plaintiff must have ownership actually vested in him...[T]he authorities unite in holding that the plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie."

As per Macdonell C.J.

De Silva v. Goonetilleke 32 NLR 217,219.

Does the above quotation correctly reflect the application of the concept of ownership in *Rei vindicatio* action in Sri Lanka? Critically analyse.

Support your answer with relevant case law.

(20 marks)

Questions No. 2,3,4, and 5 are based on the following factual scenario.

Harry was a successful businessman carrying on business in Kegalle. He became an owner of land described as Polwatta in extent of 8 acres on a deed of sale in 1979. More than half of Polwatta was a rubber plantation. At the time of his death in 2015, he had two daughters and two sons. They were Lily, Ginny, Albus and Severus. Thirty years before his death, Harry returned to Kandy, his hometown, leaving the management of the land in Kegalle in the hands of his first son, Albus. In May 2010, five years before his death, Harry gave a power of attorney to his second son, Severus, to manage all movable and immovable properties in the Kegalle District. Harry executed a Deed of Gift (D1) in May 2014 by gifting 1/10 of Polwatta to Lily. For some

reasons, in June 2014, he executed a Deed of Transfer (D2) on the same undivided share of Polwatta to Minerva.

After the execution of power of attorney, Severus entered Polwatta and built a house, storage-building and dug two large ditches to prevent the soil erosion of the land from heavy rains. The house and storage-building were used to make rubber sheets. There is no evidence that Severus shared his profits from rubber sheets in Polwatta with his brother or sisters.

There is a freshwater spring in the Northern part of Polwatta. The owners of adjacent lands used to draw water from this spring for a long period of time. They used a three-foot-wide footpath over Polwatta to reach the spring and fetch water to their places of residence.

Ginny filed a partition action at Kegalle District Court in 2022 seeking a decree for the partition of Polwatta.

...End of Scenario...

2. Albus claims that he be declared entitled to the entire Polwatta, by virtue of his undisturbed, uninterrupted, and exclusive possession over thirty years.

Discuss, whether Albus would be successful in his claim or not. Support your answer with relevant case law.

(20 marks)

3. Answer the following questions by referring to the relevant case law where necessary.

- a) Advise Severus whether he would be entitled to claim compensation for the house, storage-building, and two large ditches.

(15 marks)

- b) Advise Severus concerning the co-owners' rights on common property.

(05 marks)

4. Hagrid intends to buy 1/10 of Polwatta which Harry gifted to Lily. The notary retained by Hagrid conducted a search on Lily's title in Polwatta and revealed the following:

- Deed of Gift (D1) registered in September 2014.
- Deed of Transfer (D2) registered in August 2014.
- Deed of Transfer (D2) registered in the wrong folio without a cross-reference to the original folio containing the details of Polwatta.

Discuss whether Hagrid would acquire a good title to Lily's undivided share based on D1.

Support your answer with relevant statutory provisions and case law.

(20 marks)

5. Owners of adjacent lands seek your opinion on whether they could claim a right of cartway to reach the spring and build a pipeline to convey water from the spring to their lands. Also, Ginny wishes to challenge the adjacent landowner's right to draw water from the spring in Polwatta.

Advise both parties by referring to the relevant case law.

(20 marks)

6. "In possessory actions, it is not appropriate to investigate the title for the purpose of deciding whether or not a party's claim to possession of land is justified in law. The purpose of a possessory suit is not to adjudicate upon title but to give speedy relief to a person who, claiming to be the owner of property in his own right has been dispossessed otherwise than by process of law."

Edirisuriya v. Edirisuriya (1975) 78 N.L.R. 388 p. 393.

In light of the above statement, critically evaluate the basic requirements of possessory action.

Support your argument with relevant statutory provisions and case law.

(20 marks)

7. Assume that you wish to present a research paper titled 'the significance of the effects of actual possession in land law of Sri Lanka' at a student research symposium organised by the Open University of Sri Lanka.

Write your paper on the following sub-headings, supporting your argument with the relevant statutory provision and case law.

a) Definition of the concept of possession.

(08 marks)

b) The mental and physical elements of possession.

(12 marks)

8. Write short notes on any **two (2)** of the followings:

- a. Parenthetical Clause in Section 3 of the Prescription Ordinance No 22 of 1871.
- b. Necessary Parties to a Paulian Action
- c. *Exceptio rei venditae et traditae*
- d. Factors vitiating priority by registration

(Each part carries 10 marks)

(10 x 2 = 20 marks)

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