

THE OPEN UNIVERSITY OF SRI LANKA

LL.B. DEGREE PROGRAMME - LEVEL 5

FINAL EXAMINATION - 2021/2022

ENVIRONMENTAL LAW - LLU5811/LWU3314

DURATION - 3 HOURS



Date: 24 January 2023

Time: 9.30 am - 12.30 pm

Students will be penalised for illegible handwriting.

It is an examination offence to have unauthorized documents, mobile phones and any other electronic device with you in the examination hall.

Answer **Question 1** from Part 1 and **THREE** questions from Part 2.

Part I - this question is compulsory (40 marks)

1. An island called Divaina off the western coast of Ravanarata is the home of about 600 people. Their livelihood consists of fishing and coconut farming. In recent years the people have started earning a great deal of money from ecotourism by taking visitors on whale watching excursions. They also rent their houses to tourists who come to watch the flocks of birds inhabiting a large lake, which is also a Ramsar site. The lake is the habitat of migratory species at certain times of the year. The lake has also been declared a Nature Reserve under the Fauna and Flora Protection Ordinance of Ravanarata.

Dolphins have been recently discovered off the western coast of Ravanarata. Among the species discovered is one that is critically endangered with a few hundred specimens left in the world. It is believed that this area has become a breeding ground for these animals. In 2021 it was declared a Marine Sanctuary under the Fauna and Flora Protection Ordinance of Ravanarata, in order to protect these animals.

A few months ago a foreign mining company found large deposits of ilmenite in Divaina. The government proposes to enter into an agreement with this company to mine the ilmenite. Although an EIA has not yet been done on the project a statement issued by the relevant government authority states as follows:

- (a) The project is essential, as Ravanarata is bankrupt and requires

- revenue to sustain itself until an IMF loan is obtained.
- (b) There are no viable alternatives to the project as ilmenite is found only on Divaina.
 - (c) Access to private land for exploration and mining will be with the permission of the owners.
 - (d) The project will be beneficial to the inhabitants as it will provide them with stable employment rather than the uncertain livelihoods of fishing and tourism.
 - (e) The project will be exempted from an EIA through a Gazette as it is critical for the country's economy.

In light of the principles of environmental law, principles of human rights, judicial decisions, and statutes that you have studied, discuss the issues raised in this question. You may assume that the Constitution and all laws of Ravanarata are the same as that of Sri Lanka.

Part 2 - Answer THREE questions from this Part. All questions carry 20 marks

2. *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, environmental cases have resulted in the development of and expansion of human rights.*

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

3. The Ramapura Pradeshiya Sabha has started dumping the rubbish collected from residents, in a disused paddy field on the outskirts of the town. Over a period of time, as the rubbish became greater, various animals including cattle and pigs started coming to the rubbish dump to forage for food. Soon wild elephants too emerged from the jungle to search for food in the dump.

The residents living in the vicinity of the dump were affected in many ways. They could not tolerate the stench of the rubbish and had to keep their doors and windows closed at all times. Three children contracted dengue about a year after the dump was started. The children were unable to play outside their homes for fear of the wild animals. In the last week, two women were killed by a wild elephant that had come to feed off the garbage.

The Pradeshiya Sabha claims that the only other location to dump garbage is close to the shanty town of Sitapura which is home to around 5,000 people. They further claim that they have an Environmental Protection License to operate this garbage dump.

A group of residents have brought an action against the Pradeshiya Sabha for public nuisance. You are the judge hearing the case. Explain how you would resolve the conflicting issues that arise from this situation.

4. The concept of environmental justice originated in the United States in the context of polluting industries that impacted on people who were largely low income and from minority communities. However, in countries such as Sri Lanka the concept has been expanded to include all issues of environment and development and fundamental rights.

Do you agree with this statement? Explain your position in the light of case law in Sri Lanka and other jurisdictions.

5. The provisions on pollution control and environmental impact assessment in the National Environmental Act of 1988 as amended are the sections that are the most important in regulating and managing adverse impacts on the environment as a result of human activities. However, these provisions have failed to fulfil their purpose and are in urgent need of amendment to make them more effective.

Identify the weaknesses in the provisions relating to

- (a) pollution control and
- (b) EIA

and suggest how they can be amended so as to ensure more efficient environmental management and regulation.

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