

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LLB (HONOURS) DEGREE PROGRAMME – LEVEL 3  
FINAL EXAMINATION -2022/2023  
EQUITY AND TRUSTS LAW – LLU 3505  
DURATION – 03 HOURS



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Date: 06.03.2024

Time: 9.30 a.m.-12.30 p.m.

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Total No. of Questions: 08

Answer five (05) questions selecting two questions from Part 01 and three questions from part 02.

Candidates will be penalized for illegible handwriting.

**PART 01 – Equity**

**Answer two (02) questions from this part**

01. “Equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness, and the edge of the law, and is a universal truth; it does also assist the law where it is defective and weak...”

~*Dudley V. Dudley* (1705) Perc Ch 241;24 ER 118.~

Critically examine the above statement in the light of the nature and growth of equity in English Law.

**(20 Marks)**

02.

- (a) Padma had inherited several gold – plated brass items of antique value descended from generation. As the brass items were slightly tarnished, they were given to a gilder named Juanis for re- gilding. He had initially agreed to return re-gilded brass items to Padma within two weeks. But, now Juanis is avoiding Padma and she is afraid of that he will not return the brass items to her.

Advise Padma in the light of equitable remedies available to her.

- (b) “*Raymond Industries (PVT) Ltd*” is a famous Garment factory located in Galle. It provides employment opportunities to around 2500 employees and brings huge foreign exchange to Sri Lanka every year. The land adjacent to the factory is about 5 acres of land rich in black stones. It has been bought by Peter with the intention of starting a black stone quarrying in the land. Piyal the owner of *Raymond Industries (PVT) Ltd*, came to know about it. Piyal is afraid of that if Peter starts quarrying black stone in the land it would cause intolerable nuisance and health hazard to the employees in the factory.

Advise Piyal in the light of equitable remedies available to him.

(10 x 2 = 20 Marks)

03. Explain the following **maxims** with their key features and their usage in modern judicial process. Support your answer with relevant case law.

- (a) He who comes to equity must come with clean hands
- (b) Equity will not suffer a wrong to be without remedy

(10 x 2 = 20 Marks)

## **PART 02 – Law of Trusts**

### **Answer three (03) questions from this part**

04. Discuss whether a valid trust has been created in the following circumstances. Support your answer with relevant statutory provisions and decided cases.

- (a) Matilda appoints her 15 years old son Kavindu as trustee of the trust created by Matilda for the benefit of her 10 years old daughter Priya.
- (b) Sudath transfers company shares and a tea estate situated in Nuwara Eliya to his best friend Saman for the benefit of Sudath’s close relatives.
- (c) Rani intends to create an express trust without a notarial execution, appointing her husband Cyril as trustee for the benefit of her brother’s children Amali and Nimal.
- (d) Neela is the owner of the land which is located near the Apeksha Hospital at Maharagama. She transfers her land to “*Manusuwa Association*” to provide free of charge parking facilities for the visitors of the hospital.

(5 x 4 = 20 Marks)

05. "A Constructive trust, is in some respects, the polar opposite of an express trust; an express trust gives effect to an owner's intend to transfer a beneficial interest in his property, whereas a constructive trust may be imposed directly contrary to the owners intentions."

~Lord Browne – *Wilkinson, Westdeutsche Landesbank Girozentrale V. Islington LBC* (1996) AC 669 at 705 D~

Examine the validity of the above statement with reference to the provisions of the Trusts Ordinance and decided cases.

**(20 Marks)**

06.

Julias has established an express trust appointing Philip as trustee for the benefit of David and Nithya. David seeks your legal advice regarding the following activities of Philip. Advise him with the support of relevant statutory provisions and case laws relating to duties, powers and liabilities of trustees and beneficiaries.

- a) A tea estate which is located in Kandy has been also included to trust property. Therefore, Philip happens to travel Kandy every month in his own car for securing the estate. Now, he wishes to recover his traveling cost from the income of the trust property.
- b) Every month Philip allocates a portion of the income received from the trust property for education of Nithya, a minor daughter of Julias without asking David.
- c) The instrument of trust states that the proceeds of the trust property are to be shared equally among the two children of Julias. As Nithya is more closer to Philip than David, Philip allocates more portion of the proceeds of the trust property to Nithya.
- d) Philip expects to obtain a salary from the income of the trust property for his services and troubles.

**(5 x 4 = 20 Marks)**

07. “Although the legal concept of charity in Sri Lankan law and English law is essentially the same, it is crucial to observe the differences in the terminology used. Our legislation is generally more expansive in some areas than English law.”

Examine the validity of the above statement in the light of the requirements of valid charitable trust in Sri Lankan Law and English Law.

**(20 Marks)**

08. Write short notes on the following four (04) topics:

- (a) Cy – press doctrine
- (b) Recession as an equitable remedy
- (c) Differences between trust and *Fideicommissum*
- (d) Salient features of the Trusts (Amendment) Act, No.6 of 2018

**(5 x 4 = 20 Marks)**

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