

THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LLB DEGREE PROGRAMME - LEVEL 5
 FINAL EXAMINATION – 2022/2023
 LLU5810/LWU3312 – LAND LAW
 DURATION – 3 HOURS



DATE: 30.03.2024

TIME: 09.30 a.m. – 12.30 p.m.

Answer **FIVE (05)** questions only.

Candidates will be penalized for illegible handwriting.

1. "...In principle, ownership entitles the owner to deal with his or her property as he or she pleases within the limits set by the law..."

Yasoma Champa Nilmini Abeygunawardena v. Sunil Gotabaya Lamabadusuriya

SC Appeal No.169/2011

Discuss.

Support your answer with reference to Sri Lankan statutes and case law.

(20 marks)

2. Sapumal's wife Mala filed maintenance action against him claiming maintenance to her and the child Kelum in the Magistrate's Court of Gampaha in October 2022. The Magistrate ordered Sapumal to pay maintenance to Mala and Kelum from November 2023. However, Sapumal failed to make any payment to Mala or Kelum to date. Sapumal claims that he does not have enough assets to pay maintenance to Mala and Kelum. A week before the maintenance action, Sapumal transferred his only immovable property 'Polwatta' to his mistress, Kanthi.

Discuss.

Support your answer with reference to the relevant principles of the Roman Dutch Law and case law in Sri Lanka.

(20 marks)

3. "The actions recognized by Roman Dutch Law were the *actio confessoria* and the *actio negatoria* or *contraria*, the former being an action to enforce servitude, and the latter to declare a property free from a servitude. The *actio confessoria* embraced (a) the removal of all obstructions or replacement of anything destroyed, through which the servitude is rendered useless (b)...(c)... (Voet, 8.5.3). The *actio negatoria* could be brought by an owner against anyone claiming the right to exercise servitude over his property for the purpose of ascertaining whether the servitude existed."

Matara Kiri Liyanage Mary Agnes Fernando and Others v. Galabodage Thiboshius Silva and Others SC/APPEAL/NO. 129/14

- a) In the light of the above statement, discuss the classifications of servitudes with practical examples.

(08 marks)

- b) Discuss the acquisition of right of way by prescription. Support your answer with case law.

(12 marks)

(08+12 = 20 marks)

4. Leela, Kamala and Mahesh are siblings. In 2010, Mahesh's father gifted a land called 'Kiriwatta' to him. He immediately got his deed of gift duly registered in the same year at the relevant land registry. In 2012, as he faced severe financial difficulties, he sold *Kiriwatta* to Charles. Although Charles purchased the land, he did not enter into the possession of *Kiriwatta*. Kamala; having come to know of the severe financial difficulties of Mahesh, requested him to sell *Kiriwatta* to her as it is situated next to her land. Mahesh sold the land to Kamala in 2015. Kamala immediately registered the deed of transfer in 2015. However, due to a clerical error in the relevant registration office her deed of transfer has been registered in a different folio.

Now Kamala intends to gift *Kiriwatta* to her daughter Kumari on her marriage and she came to know that Mahesh had sold the same land to Charles in 2012.

Kamala seeks your advice.

Advise Kamala whether she can claim priority by registration to her deed of transfer registered in 2015.

Support your answer with relevant statutory provisions and case law.

(20 marks)

5. The Bar Association of Sri Lanka has organized an awareness programme on land law for recently enrolled attorneys. As a new Attorney-at-law you have been invited to deliver a speech on the law relating to possessory action in Sri Lanka. In this speech, you are required to explain the requirements of possessory actions in Sri Lanka.

Prepare an outline of your speech dealing with the following aspects.

- a) The meaning of possessory action

(05 marks)

- b) The basic requirements to be established to claim possessory remedy.

(15 marks)

Support your answer with the relevant statutory provisions and case law.

(05+15 = 20 marks)

6. In 2014, Chinthaka leased a piece of land from Rajith for a period of 10 years. At the time of entering into the lease agreement, the land consisted of an incomplete single-storey building. According to the terms of the lease agreement, Chinthaka planned to operate a Fitness Center on the leased land and a further clause of the lease agreement states that the lessee is entitled to claim compensation for the improvements made during the period of the lease agreement.

Chinthaka improved the leased land in the following manner.

The building-floor was carpeted with expensive rugs imported from Belgium and also, he added windows and doors to the building. An assortment of equipment such as Treadmill, Squat Machine, Strength Rowing Machine and Shoulder Raise Machine were permanently fixed to the ground.

Also, outside of the building, six sitting benches made of concrete were fixed to the ground.

In addition, a water purification device, 03 electric fans and a notice board were fixed inside the gymnasium. Also, he re-wired certain sections of the hall to obtain electricity.

At the end of the period of lease agreement in 2024, Rajith requested Chinthaka to leave the property. Chinthaka demanded compensation for the improvements that he had made on the leased property.

Rajith refuses to pay any compensation except for the windows and doors.

Chinthaka seeks your advice.

Support your answer with relevant case law.

(20 marks)

7. "A co-owner's possession is in law the possession of other co-owners: that every co-owner is presumed to be possessing in such capacity : that it is not possible for such a co-owner to put an end to such possession by a secret intention in his mind: that nothing short of ouster or something equivalent to ouster could bring about that result."

Corea v. Iseris Appuhamy (1911) 15 N.L.R. 65; 1 C.A.C.30.

With reference to the above statement discuss the possibility of claiming prescriptive title to co-owned land.

(20 marks)

8. Write shortnotes on any **TWO (2)** of the following topics.

- I. *Res mobiles and Res immobiles*
- II. Formalities associated with the transfer of ownership of land.
- III. *Exceptio Rei Venditae et Traditae*
- IV. Parenthetical Clause in Section 3 of the Prescription Ordinance No. 22 of 1871

(10x2 = 20 marks)

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