

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B. DEGREE PROGRAMME – LEVEL 5
FINAL EXAMINATION – 2022/2023
ENVIRONMENTAL LAW – LLU5811/LWU3314
DURATION – 3 HOURS



Date: 27th March 2024

Time: 9.30 – 12.30

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. The government of Serendib has decided to improve the transport system of the country and developed a Transport Master Plan. The Plan proposes system of highways linking the various big cities. In the next five years three highways linking cities in the western, southern and central provinces of the country will be constructed.

These highways have the following environmental and social impacts:

- a) Over one million people throughout the country will be displaced,
- b) Hundreds of hectares of land will be acquired, mostly agricultural and residential land. An estimated 200,000 farmers will be displaced.
- c) Several thousand hectares of forests will be cleared for the highways and also to re-settle those who have been displaced. Among those forests one forest is believed to be the only habitat of a species of frog which had been recently discovered.

- d) Two highways will be built through a wetland declared as a Ramsar site. The wetland is also the breeding grounds for several endemic species of birds. One major highway cuts across an elephant corridor.

The legal system and the environmental impact assessment laws of Serendib are the same as that of Sri Lanka.

An NGO named EIA Watch has submitted its objections to the project when it was open for public review. These objections were overruled by the Project Approving Agency (PAA) which granted approval for the three highways.

EIA Watch wishes to challenge the decision of the PAA approving the three highways and also wishes to challenge the Transport Master Plan.

Discuss whether and on what basis they could do so. Support your answer with relevant legal provisions and with case law from Sri Lanka and other jurisdictions.

Part 2 – Answer THREE questions from this Part (20 marks for each question)

2. The present generations have the responsibility to bequeath to future generations an Earth which will not one day be irreversibly damaged by human activity. Each generation inheriting the Earth temporarily should take care to use natural resources reasonably and ensure that life is not prejudiced by harmful modifications of the ecosystems and that scientific and technological progress in all fields does not harm life on Earth.

[Declaration on the Responsibilities of the Present Generations towards Future Generations – Article 4].

Discuss how courts in Sri Lanka and other jurisdictions have attempted to ensure that the rights of future generations will be safeguarded. You must support your answer with case law.

3. "What is probably most important is that the concept of sustainable development has been incorporated and reflected in major environmental conventions that have been adopted in recent times."

[UNEP's New Way Forward: Environmental Law and Sustainable Development]

Select **three** international environmental conventions that you have studied and discuss how their provisions further the concept of sustainable development, and the effectiveness of these provisions. You should focus in particular on the situation of countries such as Sri Lanka.

4. Factorywatta is a low-income settlement in the town of Mahanagara with a population of about 100,000 people. The Factorywatta developed around a chemical factory, which gives low paying employment to about half the residents. These people built their houses close to the factory and live in the vicinity of the factory in small huts without basic amenities such as sanitation, access to clean drinking water or drainage. In addition, the pollution emanating from the factory is causing respiratory problems among the children living in the surrounding areas. The stream that runs past the factory and which is used by the surrounding people as their source of water for bathing and drinking, is also polluted.

A group of concerned residents wishes to file action against the factory on the ground that it is causing a public nuisance and a health hazard to the surrounding people. The factory points out that it is built in an industrial zone and has obtained all the necessary permits from the Municipal Council of Mahanagara and the environmental authorities, and further, that it has put in place all the available technology to minimise the pollution from its operations. It also notes that the settlement of Factorywatta is illegal as it is not a residential zone. It also notes that the factory gives jobs to several hundred people.

In response to the complaints of the residents, the Municipal Council of Mahanagara points out that it is dependent on the factory for a large part of its revenue in the form of taxes. The Council claims that without this money it will be unable to develop the infrastructure of the town and maintain services such as roads, garbage disposal and sanitation.

In the meantime an explosion in the factory caused a fire which destroyed about half the houses in Factorywatta. Seven children who were trapped in a pre-school at the time died in the fire.

The concerned residents wish to sue the factory authorities and the Municipal Council. Discuss

the environmental and human rights issues which arise in this case and the relevant law and legal principles.

5. "All people have the right to a clean, healthy and sustainable environment. As human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others."

[What is the right to a healthy environment – Information Note – UNDP/UNEP/OHCHR]

Discuss how the courts in Sri Lanka and other jurisdictions have linked the right to a healthy environment with a range of socio-economic rights. You must cite case law in your answer.

6. The town of Mahagalla contains an ancient fort of about 700 years old. The fort was declared a World Heritage Site in 1988 and an archaeological reserve under the Antiquities Ordinance.

The fort has always been occupied by local residents, who built houses within the premises and they have been permitted to reside there. Recently, many residents have begun to sell their houses to foreigners for high prices to be converted into hotels and restaurants. Some residents have started excavating for ancient coins and other items that are known to be buried within the fort. They have also begun to renovate their houses with considerable structural change.

Lal and Nalin are members of the Society for the Protection of Cultural Heritage. They are extremely concerned at the activities taking place within the fort and the fact that the Director General of Archaeology is not taking action to prevent them. They have come to you for advice about the legal situation regarding the activities going on in the fort.

Advise them citing national and international laws to support your answer.

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