THE OPEN UNIVERSITY OF SRI LANKA

FACULTY OF HUMANITIES AND SOCIAL SCIENCES

DEPARTMENT OF LEGAL STUDIES

LL.B. DEGREE PROGRAMME – LEVEL III

FINAL EXAMINATION 2023/2024

EQUITY AND TRUSTS LAW –LLU3505

DURATION – 03 HOURS

Date: 21.05.2025 **Time: 01.30 p.m.- 04.30 p.m.**

Total number of questions – 08.

Answer FIVE (5) questions, selecting ONE (01) question from Part I and FOUR (04) questions from Part II.

Candidates will be penalized for illegible handwriting.

Part 01- Equity

Answer only one (01) question from this part

01. "Equity developed as a response to the rigidity and limitations of the common law, offering more flexible and conscience-based solutions in certain legal disputes. One of the most significant features of equity is its remedial framework, which aims to ensure fairness where legal remedies such as damages prove insufficient."

Critically evaluate the accuracy of this statement. (20 Marks)

02. "Equity has developed over centuries as a system of justice designed to supplement the rigidity of common law. Central to this system are the equitable maxims—principles that reflect fairness, conscience, and moral integrity, and which continue to shape judicial discretion in a wide range of legal contexts."

Do you agree with the above statement?

Critically examine the continuing relevance and practical application of at least **four equitable maxims** in modern law.

(20 Marks)

Part 02 – Law of Trusts
Answer four (04) questions from this part

03. In his last will, Mr. Upali made several bequests that raise questions about the validity of express trusts under Sri Lankan law. Firstly, he directed that certain gold assets, which he had allegedly brought into the country informally, be given to his friend Sudesh, with instructions to sell them privately and use the proceeds for the benefit of his son, Pahan. Secondly, he directed that the income generated from any two profit-making ventures in the stock market be given to his elder son, Kasun, who is 16 years old, to be used for the benefit of Kasun's grandparents. Finally, without executing a formal notarial deed, Mr. Upali attempted to create a trust over his coconut estate by appointing his wife, Sandareka, as trustee for the benefit of the welfare society in his village, including its future members.

Discuss whether valid trusts have been created in the above circumstances under Sri Lankan law. Support your answer with reference to the relevant statutory provisions of the Trusts Ordinance and case law. (20 Marks)

04. "Charitable trusts occupy a unique place in trust law due to their public benefit requirement and exemption from certain rules applicable to private trusts, such as the rule against perpetuities. In Sri Lanka, the legal framework for charitable trusts is rooted in a combination of statutory provisions and case law, often influenced by English legal principles, but with local adaptations shaped by social and cultural contexts."

Critically compare the concept and legal regulation of charitable trusts under English law and Sri Lankan law. In your answer, discuss the definition of a charitable trust, the requirements for validity, the role of the public benefit principle, and any key differences or challenges in recognizing and enforcing charitable trusts in both jurisdictions. Support your analysis with relevant statutory provisions and case law.

(20 Marks)

05.

a) Sithum and Pethum are very close friends. On one occasion, Sithum gives Pethum a gift of Rs. 100,000 while reserving for himself, with Pethum's consent, the power to revoke Rs. 10,000 of the gift at his discretion. Later, Sithum exercises this power and revokes the Rs. 10,000 portion of the gift. After the revocation of Rs. 10,000 by Sithum, Pethum had already expended the entire sum of Rs. 100,000 in preparation for his birthday celebration.

Advise Sithum.

b) Pawan, a wealthy businessman, formed a business of fabric importing with the partnership of Saman, a well-known Tailor. According to the partnership agreement, Saman's duty was to promote and distribute imported fabrics into the local market. A few months later, Pawan came to know that without his knowledge, Saman had entered a contract with a local company named SL Clothes Pvt. Ltd to provide them some fabrics at a lower price and he earned a huge commission from the above deal.

Advise Pawan.

(10 x 2 = 20 Marks)

06. "A trustee is expected to adhere strictly to their duties and exercise a high standard of care in administering the trust. A breach of trust may occur even where the trustee acted in good faith or believed their actions served the beneficiaries' best interests."

Critically analyze the above statement in the light of statutory provisions and case law.

(20 Marks)

07. Supipi (aged 20), Janani (aged 18), and Thushini (aged 12) are the named beneficiaries under a trust administered by Naveen. The trust property includes a 25-acre rubber estate, and a gold collection valued at Rs. 50 million, which Naveen holds for the collective benefit of the three beneficiaries. Additionally, he holds a 40% shareholding in 'Super Construction (Pvt) Ltd' specifically for the benefit of Thushini. At one point, Janani requests Naveen to liquidate the gold collection and to allocate to her the share to which she is entitled. Without the knowledge of Janani and Thushini, Supipi privately influences Naveen to provide her with Rs. 50,000 from the profits generated by the rubber estate to finance her daughter's birthday celebration.

Subsequently, Naveen proceeds to sell a substantial portion of the gold collection and uses a combination of the sale proceeds and his funds to purchase an apartment in Nawala. Furthermore, he unilaterally sells the entirety of the shares held in 'Super Construction (Pvt) Ltd' to an individual named Sithira, without disclosing the existence of the trust or obtaining appropriate consent. Janani has made repeated requests to Naveen seeking access to the trust accounts and related documentation. However, Naveen has continuously failed to comply, offering various excuses and deliberately evading his obligation to provide the requested information.

In light of the above scenario, critically discuss the rights and liabilities of the beneficiaries under the Trusts Ordinance of Sri Lanka. Your answer should be supported with relevant statutory provisions and case law.

(20 Marks)

08. Write short notes on **<u>any TWO (02)</u>** of the following topics.
   a) The doctrine of *in pari delicto*
   b) Cy-pres doctrine
   c) Section 02 of the Trusts Ordinance in Sri Lanka
   d) Presumption of advancement

(10 x 02 = 20 Marks)