

THE OPEN UNIVERSITY OF SRI LANKA

M.Sc IN ENVIRONMENTAL SCIENCE / POSTGRADUATE DIPLOMA
IN ENVIRONMENTAL SCIENCE – LEVEL 6

FINAL EXAMINATION 2012/2013

ENVIRONMENTAL LAW – NEP 1201

DURATION – 3 HOURS



Date: 22nd June 2013

Time: 9.30 am – 12.30 pm

Please make sure that your handwriting is legible.

It is prohibited to have mobile phones or unauthorized documents in your possession in the examination hall.

ANSWER FOUR QUESTIONS ONLY (All questions carry equal marks)

1. At times, some of us, through our limited understanding tend to object to every development project on environmental grounds. Whoever stalls or slows down the economic development process which generates employment, does more injustice than justice to the environment as the unemployed will be compelled to fall back on natural resources for their sustenance. The experience in many countries shows us that poverty is the biggest enemy of the environment.

[K A S Gunsekara, Secretary, Ministry of Forestry and Environment In a message to the National Environmental Action Plan 1998-2001]

Do you agree with this statement? Discuss.

2. Choose THREE of the five conventions given below. Explain (a) the historical context of these Conventions (b) what strategies they use to deal with the particular problem; and (c) how successful they have been in addressing them.
 - (a) Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989 (Wellington Convention)
 - (b) International Convention for the Regulation of Whaling
 - (c) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
 - (d) Convention on the Conservation of Migratory Species of Wild Animals (CMS)
 - (e) United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD)

3. Write short notes on the following:

- (a) Strategic environmental impact assessment
- (b) The precautionary principle
- (c) The polluter pays principle
- (d) The principle of inter-generational equity

4. "A country's cultural and archaeological heritage can be subject to the same dangers of the development process as eco-systems and the natural environment. The destruction of the world's cultural heritage has been recognised as affecting all nations and therefore its protection is the responsibility of the international community as a whole."

While Sri Lanka has taken legal measures to protect its cultural and archaeological heritage, in many instances it has given priority to development and other issues over such protection. Do you agree? Illustrate your answer with examples of both legislation and recent controversies involving cultural heritage sites.

5. Discuss the following issues in the light of the laws that you have studied. You must assume that the countries concerned have signed the relevant international conventions and have the same laws as Sri Lanka.

- (a) Chandrapala is the Member of Parliament for the Pahatha Gama electorate. He has settled several of his political supporters in the Rajawella marshes in the district. He has also promised them money to enable them to fill the land and build houses for themselves. These marshes are a Ramsar designated wetland and home to several species of migratory birds. Chandrapala claims that he is helping to overcome the widespread poverty prevailing in his electorate by giving grants of State land to the landless as part of the government's policy.

Mala and Menaka belong to an environmental protection group. They wish to challenge Chandrapala's actions in distributing this land. They also state that the environmental impacts of filling up the marshes are unknown but could include widespread flooding of the area. They ask you to file legal action on their behalf to stop Chandrapala.

Do you think that Chandrapala is breaking any law? Should the government take action to stop him?

- (b) The town of Puranagala contains an ancient fort of about 600 years old. There are many old houses within the fort which are privately owned and occupied. Due to the increase in land values in the area, many residents have begun to sell their houses to foreigners for high prices. Some residents have started excavating for ancient coins and other items which are known to be buried within the fort. They have also begun to renovate the houses with considerable structural change. Some residents now propose to convert their houses to a hotel within the fort.

Lal and Nalin are members of the Society for the Protection of National 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 as to what they can do to protect the Puranagala fort. Advise them on the following issues:

- (a) Against whom can they take legal action?
- (b) On what legal basis can they take such action?

Note that the fort has been declared a World Heritage Site in 1988 and an archaeological reserve under the Antiquities Ordinance.

- (c) Kimbula Tile Manufacturers Ltd. set up a tile manufacturing factory in the village of Mattigama. There are several such factories in the village as clay is mined close by. Kimbula Tiles obtained an Environmental Protection License (EPL) from the Pradeshiya Sabha and complied with several conditions that the Pradeshiya Sabha laid down when building the factory. In addition it employs over 100 workers from Mattigama.

About six months after the factory was built the occupants of some neighbouring houses complained that the smoke coming out of the factories chimneys was affecting them. In addition, due to the recent power cuts, the factory has installed a diesel generator to continue work. The noise and fumes from the generator are affecting the residents, particularly children who are falling sick.

On the basis of these complaints, the Pradeshiya Sabha suspended the EPL and asked Kimbula Tiles to stop operations until it had constructed higher chimneys. Kimbula Tiles was also ordered to stop using the generator.

Kimbula Tiles complains that the issue of the chimneys had been discussed at the initial stages and it had constructed them in accordance with the conditions laid down. It further complains that it has no funds to re-construct the chimneys and if they cannot continue operations during power cuts it will have to run at a loss. It also points out that the company employs over 100 previously unemployed young people in the village.

Kimbula Tiles has filed action in court seeking to challenge the suspension of its license. You are the judge in the case. Set out your decision.

COPYRIGHT RESERVED