

THE OPEN UNIVERSITY OF SRI LANKA

LL.B. DEGREE PROGRAMME - LEVEL 5

FINAL EXAMINATION 2006

ENVIRONMENTAL LAW – LWU 3314

DURATION : THREE (03) HOURS



DATE : 21st April 2006

TIME : 1.30 p.m. – 4.30 p.m.

ANSWER FIVE QUESTIONS ONLY.

Illegible handwriting will be penalized.

1. Explain how judicial decisions have developed the following concepts as effective instruments of environmental protection:
 - a) The Public Trust Doctrine
 - b) Inter-generational equity

2. A government industry located in an area close to Ampara town manufactures agro-chemicals, mainly fertilizers and pesticides. It has been found that a number of people particularly children, have been admitted to the Ampara hospital with respiratory and kidney problems. This has been attributed to the toxic waste being discharged into the atmosphere and into water resources in the area. People have started leaving the area and abandoning their farms as they are no longer able to cultivate their fields which have also become polluted.

A non-governmental organization based in Colombo has decided to take up this issue and file a fundamental rights case in the Supreme Court. They seek your advice as to, (a) the procedural issues involved and (b) the substance of their petition.

Advise this organization.

3. Critically analyze Sri Lanka's legal responses to sustainable development citing examples from legislation and decided cases.

4. Parisalaysia is a State with Ciambo as its capital. The Municipal Council of Ciambo was sued by a group of citizens for maintaining garbage dumps throughout the city which cause a public nuisance to the residents. The court which heard the case issued an injunction against the Municipal Council ordering it to close the dumps and find an alternative method of disposing of garbage.

The Municipal Council has now stopped collecting garbage on the grounds that it does not have any means of disposing of it. The same group of citizens wish to bring another action against the Council to compel it to dispose of garbage in an environmentally suitable manner.

Assuming that the laws and legal system of Parisalaysia are the same as Sri Lanka, discuss what arguments the citizens could make in their case.

5. "Environmental law in the South Asian region has developed due to judicial activism rather than to the enactment of statutes"

Do you agree with this statement? Discuss, citing suitable examples.

6. A multi national company wishes to build a 125 room hotel on the Casuarine Beach, a coastal area of Jaffna. An environmental impact assessment report was prepared in this regard. Alternatives to the project, including the location, were not discussed as the report stated that one of the reasons for the chosen location was to enhance the tourist industry in the Jaffna area as a component of developing the Northern province. The report further stated that although the hotel would require the relocation of fishing families living in the area, this would not be a negative impact as the fishing activities of the people were restricted anyway for security reasons. The fisher families are however, opposed to the plan.

The report was kept in two locations for a period of 30 days for public review. However, due to some clashes between the military and armed groups, a curfew was imposed for several hours a day during most of that period.

Kandiah who is concerned about the project seeks your advice on the following.

- (a) The adequacy of the substance of the report
- (b) Whether the procedural provisions regarding EIA reports have been complied with.

7. Discuss what legal measures Sri Lanka has taken to comply with its obligations under the Convention on Biological Diversity.
8. Discuss the following issues on the assumption that all the countries concerned have signed the relevant international conventions.
 - (a) State A and State B are neighbouring countries separated by a strip of sea about 18 miles wide. Bird flu has spread in some areas of State A. Since it is believed that bird flu is spread by wild birds, a committee has suggested that State B captures and kills wild species which migrate from State A to State B. It has been argued that this will protect the indigenous bird species of State B. What are the international obligations of State B in this regard?
 - (b) State C has a world famous wetland near its capital. An international development bank has proposed that to get the maximum financial benefit from the wetland it should be filled up and developed. The bank has agreed to finance the project as a component of its plan to develop the capital city. Would this project conflict with State C's international obligations?

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