

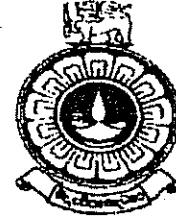
THE OPEN UNIVERSITY OF SRI LANKA

LL.B. DEGREE PROGRAMME - LEVEL 5

FINAL EXAMINATION 2006

LAND LAW – LWU 3312/4332

DURATION : THREE (03) HOURS



DATE : 04th May 2006

TIME : 1.30 p.m. – 4.30 p.m.

ANSWER FIVE QUESTIONS ONLY.

Illegible handwriting will be penalized.

1. (a) “The principle of priorityaffects only the devolution of rights, and leaves an unregistered instrument unaffected for a purpose other than the establishment of a prior claim to one and the same thing. The effect of an unregistered instrument as evidence to establish an independent original right is not, in my opinion, altered by the Ordinance”.

Ennis J in *Mohamed Ali v. Weerasuriya* (1914) 17 NLR 424

Critically evaluate the concept of priority by registration with reference to the above statement. Support your answer with decided cases.

- (b) Piyadasa gifted a land called ‘*Dangolla*’ to Jinadasa in 1991 reserving a life interest for himself. Jinadasa did not register the deed of gift. In 1997, Piyadasa died and subsequently Piyadasa’s son Anura as his only heir inherited all of his property including ‘*Dangolla*’. In 2005 Anura transferred ‘*Dangolla*’ to Nalin and later Nalin registered the transfer deed. Meanwhile Nalin brought a declaratory action against Jinadasa on the basis that he has acquired *Dangolla* by priority of registration. However, Jinadasa argues that he has acquired *Dangolla* by prescription.

Nalin seeks your advice. Advise Nalin.

2. *Suwasevana*, a home for elders is managed by a Board of Trustees. Mr. Fonseka was appointed by the Board of Trustees as manager of the Home. Mr. Fonseka was provided in house accommodation. As the manager Mr. Fonseka was vested with power to maintain the Home, grant leave to its employees, pay salaries and inquire into minor disciplinary matters. His duties were defined by the rules and regulations of the Board.

Mr. Fonseka dismissed two of the Home's employees on grounds of corruption after conducting a domestic inquiry. The two employees appealed to the Board of Trustees against their dismissal. The Board of Trustees terminated the services of Mr. Fonseka without conducting any inquiry. At the time Mr. Fonseka was terminated he had served the home for 15 years.

Mr. Fonseka wishes to get back possession of his accommodation. Advise Mr. Fonseka.

3. "The right to possess implies the right to vindicate, that is, to recover possession from a person who possesses without title to possess, derived from the owner."

R.W. Lee, *Introduction to Roman Dutch Law* p.121.

Critically discuss the scope of the *Rei Vindicatio* action with reference to the above statement and case law.

4. Nihal, who was the owner of *Mahagedara* got an appointment as a lecturer in an Australian university in 1990. Since the appointment was for a long duration, Nihal decided to go to Australia with his wife Sharmini and his only son Charaka. During his absence Nihal requested Anil who was a distant cousin to look after *Mahagedara*.

Anil came into possession of *Mahagedara* in 1990 and continued to maintain *Mahagedara*. When Nihal was on vacation in Sri Lanka he used to stay at '*Mahagedera*'.

In 1995 Nihal died in Australia without leaving a last will. After Nihal's death Sharmini came back to Sri Lanka with her 5 year old son Charaka. When Sharmini decided to move to *Mahagedera* Anil refused to leave *Mahagedara*. By this time Anil had rented out a room in '*Mahagedara*' to a third party.

In 1996 Sharmini instituted a declaratory action against Anil. Due to lack of evidence the declaratory action was set aside in 2005. Anil continued to be in possession of *Mahagedara*.

Discuss.

5. Appuhamy formally sold his ginger plantation to Banda. Banda was given one year from the date of the transaction to pay the sale price. There was a clause in the agreement of sale which said that the land should be used for its normal and natural use only. Banda sold the ginger harvest to a third party.

Later Banda cultivated chillies, orchids and anthuriums and also installed a water sprinkling machine to water the plants. The sale agreement became void as Banda was unable to pay the sale price on the due date.

Then Appuhamy instituted proceedings to expel Banda, Banda claimed compensation for the expenses incurred to produce ginger, to cultivate chillies, orchids and anthuriums, to install the water sprinkling machine and the right to retain the land. Moreover Banda claimed damages for the income that could have been generated by selling chillies, orchids and anthuriums.

Discuss.

6. Consider the following situations.

- a. Ramal and Tikiri are co-owners of a house and property called '*Sunimal*'. Ramal went abroad for higher studies and Tikiri mortgaged the house to Suraj.

Advise Suraj as to whether he could acquire '*Sunimal*' by prescription.

- b. Amodha, who was a co-owner of '*Na Otunna*' tea estate went into possession of the estate with the consent of the other co-owners, namely, Dayani and Anula. Amodha invested a large some of money to build a house for her family and also cleared half an acre of land to cultivate tea.

When the land was partitioned by a partition decree, Amodha claimed compensation for the improvements she had made. However the other co-owners argue that she has no right to claim compensation because she had done the improvements without their consent.

Advise Amodha.

7. a. Bandu's house is situated in a small hamlet surrounded by a reserved forest. Bandu and his family members have access to the main road over a foot path on a land owned by Linton. This foot path runs through a deserted land which is being used as a hiding place by a gang of thieves. On a few occasions Bandu's family members have been threatened by this gang. Moreover the distance to the main road through this foot path is very long and tedious.

However, there was an alternative access route to the main road through a paddy field owned by Linton.

For these reasons Bandu seeks Linton's permission to use the alternative route to access the main road. Linton refuses Bandu's request.

Discuss.

- b. "A servitude is not an interest in land or immovable property until the stage of acquisition or creation, and it cannot be prescribed under the provisions of section 3 of the Prescription Ordinance"

Land Law Block 3 p. 62-63.

Critically evaluate the above statement with reference to decided cases.

8. Write notes on any two of the following.
- a. The scope of the Paulian Action.
 - b. The action for definition of boundaries.
 - c. Enforcement of mortgages.
 - d. Application of the doctrine of '*exceptio rei venditae et traditae*'.

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