

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME – LEVEL III



FINAL EXAMINATION – 2006

LEGAL METHOD– LWU 1412

DURATION –THREE (03) HOUR

Date: 04th April 2006

Time: 1.30 p.m. – 4.30 p.m.

Answer FIVE questions only, selecting at least TWO questions each from PART A and PART B

Illegible handwriting will be penalized.

PART A - LEGAL METHOD

1. Briefly discuss the importance of legislation, equity, religion and opinions of jurists as sources of law in Sri Lanka. (A detailed explanation of the content of the sources is not expected).

(20 Marks)

2. Kelegama is a remote village in Sri Lanka where a majority of the inhabitants are poor farmers. The Punchirala, Mudalige and Bandara families are rich landowners and the most powerful people in this village. For generations, these families have been employing the villagers of Kelegama, including the children, to work in their houses and lands in various capacities.

Sudu Menka, a 90 year old villager recalls working in the kitchens of the Bandara residence from the age of 7 till she married and set up her own home. She says that her mother too had worked for one of the Bandara's when she was a child. Sudu Menika's grand daughter Ran Menika who is 8 years presently works for Punchirala.

In 1950 a law was passed making 14 years, the minimum age at which a child could be employed. However all 3 families (i.e. the Punchirala, Mudalige and Bandara families) continue to employ children of the village below the age of 10 years as their servants.

Recently a government official visited Kelegama and questioned the families about this practice. The families however argue that the employment of children is a valid custom in the village, which has continued for a long time even after the passing of the statute prohibiting it. They say that though the children they employ do not attend school, they are trained in house work and can secure employment easily once they are older. They mention the names of several people who worked as children with them and who are now working as housemaids in the Middle East.

The Government Official seeks your advice as to the validity of this custom of Kelegama. Advise her.

(20 Marks)

3. (a) "Upon the presumption that the legislature does not intend what is unjust, rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed, unless the retrospective effect is clearly intended"

Maxwell on the Interpretation of Statutes 12th Edition, p.215

Critically examine the above statement with reference to applicable case law.

(10 Marks)

- (b) "Generalia specialibus non derogant is a presumption of interpretation which enables a general statute to effectively invalidate or modify all special laws which existed before the general statute was enacted".

Do you agree with the above statement? Explain your answer illustrating it with relevant case law.

(10 Marks)

4. Perera v Silva is a case, which contained facts a, b, c, d, and e, though the judges only considered facts a, b, and c as material facts of the case. Two judges of the Supreme Court delivered the judgment in 1968.

Discuss the following situations in the light of the doctrine of judicial precedent. (You are expected to clearly explain the basis on which you arrive at your answer).

- (a) Is the Privy Council of 1970 bound to follow *Perera v Silva* in deciding a case based on facts a, b, c, and d all of which are material?

(5 marks)

- (b) Can a single judge of the Court of Appeal of 1973, deciding a case based on facts a, b, and c (all of which are material) overrule *Perera v Silva*?

(5 marks)

- (c) Priyantha is a lawyer appearing for a case containing facts a, b, c, and f, which is being heard in the Court of Appeal today. The case is being heard by 3 judges. Priyantha has received copies of all 3 of the above judgments [i.e. *Perera v Silva* and the two decisions given under question 4 (a) and 4 (b)]. He seeks your advise as to whether he can make use of any of them as judicial precedents for his case. Advise Priyantha.

(10 Marks)

PART B- ROMAN LAW

5. Claudius, the oldest male and head of a wealthy Roman household decides to make a last will. He has three sons named Julius, Casca and Romulus, and two daughters named Cleopatra and Portia. He draws up his will, leaving his property in equal portions to Julius, Casca and his best friend's son Pluto. (Pluto's father has been declared a traitor of Rome and has fled the country leaving Pluto behind). His will also contains provisions that Cleopatra is to receive a gold chain and that his wife Venus is to receive an emerald pendant and earring set. He also includes a statement disinheriting Romulus who is away fighting in the Roman army, as he fears that he will be killed while at war and will not return home alive. Portia is not mentioned in the will. Two Roman citizens who are Claudius' neighbours witness the will.

- (a) Has Claudius created a valid will? Explain your answer in the light of the Roman law of succession.

(10 marks)

- (b) Romulus, Portia and Cleopatra wish to challenge the will, as they feel that they have not been treated fairly in the distribution of property. Discuss what, if any, actions are available to them.

(10 marks)

- 6 'The Roman law of delict, dealt with obligations, which arise due to some wrongdoing. It was a broad concept, which imposed penal, compensatory and - through later extensions of the law – strict liability upon the 'wrongdoer'"

Do you agree with the above statement? Explain your answer with reference to delictual and quasi delictual concepts.

(20 Marks)

7. Brutus and Titius live in houses built on adjoining lands. The land on which Brutus lives does not have water and Brutus has been granted a right to draw water by in jure cessio. Brutus gives Cassius a usufruct over his house and land and moves away to a new house.

Discuss the legal position in the following situations

- (a) Titius refuses to let Cassius draw water from his well
- (b) Cassius converts the house into a sweet shop.
- (c) Cassius picks fruit from some apple trees and makes jam. He believes the trees are on Cassius' land but in fact they are on Titius' land.
- (d) Brutus owns several hens which often wander onto adjoining lands. Cassius who is aware of this waits until the hens came onto the land he is living in, catches them and puts them into a hen house from which they cannot escape. Cassius claims ownership of the hens.

(5 Marks each)

8. Write short notes on **any two** of the following

- (a) The concept of 'Patria Potestas'
- (b) The Roman law of marriage
- (c) A brief history of Roman law
- (d) Contracts consensu:

(10 Marks each)