

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME – LEVEL 5
FINAL EXAMINATION – 2007
ENVIRONMENTAL LAW – LWU 3314
DURATION - 3 HOURS



Date: 22nd March 2007

Time: 1.30 – 4.30 p.m.

Illegible handwriting will be penalized

Answer FIVE questions only.

1. "The function of the judges is not only to just decide, but also to create. The Judiciary must therefore adopt a proactive approach ... in developing environmental law, keeping in mind the balance which has to be achieved within human rights, including the right to development and environmental protection."

(Speech made by Justice Bhagwati, former Chief Justice of India, at the Global Judges Symposium on Sustainable Development and the Role of Law, August 2002.)

Discuss this statement explaining the extent to which the judiciary of the SAARC region has attempted to fulfil this goal? You are required to cite case law in both Sri Lanka and other countries in your answer.

2. Public participation in environmental management has proved to be a failure in Sri Lanka.

Discuss this statement with reference to the laws and regulations which make provision for such participation.

3. The Government of Zeylan has decided to build an international airport within one and a half miles of a natural waterbody known as Yakwila. Yakwila is world famous as a bird habitat. Yakwila is a popular tourist destination, attracting around 1000 tourists per day.

All laws, regulations and case law of Zeylan are the same as those of Sri Lanka. However, the Minister of Environment of Zeylan has recently removed airports from the list of prescribed projects which had been gazetted earlier under the National Environmental Act.

Mithran and Muttiah wish to challenge the construction of the airport. Advise them as to whether there is any legal basis on which they can do so. They have provided you with additional facts as follows:

- a. Yakwila is a wetland declared under the Ramsar Convention
- b. It is home to several endangered species of migrant birds
- c. The Government of Zeylan had proposed to designate it as a natural heritage site under the World Heritage Convention but later withdrew this proposal

- d. The Department of Archaeology has recently discovered the ruins of an ancient dagoba close to the site of the airport and believes that there is an extensive complex of ruins in the area.

4. Aliya 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. Aliya Tiles obtained an Environmental Protection License (EPL) from the Pradeshiya Sabha and complied with several conditions which it laid down when building the factory. In addition it employed 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, a pre-school had been recently established in the vicinity of the factory. On the basis of these complaints, the Pradeshiya Sabha suspended the EPL and asked Aliya Tiles to stop operations until it had constructed higher chimneys.

Aliya 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. It also points out that the company employs over 100 previously unemployed young people in the village.

Aliya 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.

5. "The case of *Bulankulama v. Secretary, Ministry of Industrial Development and Others* (2000) 3 Sri L R 234 (*the Eppawela case*) was a landmark judgement in furthering judicial and public control of development projects."

Discuss this statement, explaining the strategies which were used by both lawyers and judges to further such control.

6. "The requirement of environmental impact assessment as contained in the National Environmental Act does not help to ensure sustainable development since it only requires assessment of specific projects which are evaluated only from an environmental perspective."

Do you agree with this statement? What amendments would you suggest to ensure that EIA laws can be revised or expanded to ensure that development meets the needs of all Sri Lankans?

7. The Kandy Park is a wide strip of open land in the heart of Colombo bordering the sea. Since British times it has been used as a recreational area and park by the inhabitants of the city, particularly families with young children and those wishing to enjoy the open air by the sea. The Park is open and accessible free of charge to everyone. Food vendors and those selling toys, balloons and other merchandise are also permitted to carry on business free of charge. Children can enjoy pony rides and other amusements within the Park.

The Park had been under the jurisdiction of the Colombo Municipal Council for over 50 years but it had been taken over by the Urban Development Authority (UDA). The UDA which had jurisdiction over the Park has decided to lease it to Fun and Games Ltd., a private company which is in the business of operating playgrounds for children. Fun and

Games intends to develop the Park, enclosing it with a fence and setting up their own entertainment equipment. It also intends to build a multi storied car park on a section of the grounds. Thereafter the general public would have to pay for access and street vendors would and others providing entertainment would also be excluded from the area.

- (a) Nihal and Nishani wish to challenge the lease of the Park to a private company in the public interest.
- (b) The vendors who will no longer be permitted to operate within the Park also wish to challenge the new project.

Considering the law you have studied, advise them as to what legal arguments they can make in this regard.

8. "The pollution control provisions in the National Environmental Act are limited and ineffective. Those affected by polluting industries would obtain a more effective remedy under public nuisance laws."

Do you agree with this statement? Discuss, with a critical analysis of the statutory provisions and citing relevant case law.

COPYRIGHT RESERVED