

THE OPEN UNIVERSITY OF SRI LANKA

LL.B. DEGREE PROGRAMME – LEVEL 5

FINAL EXAMINATION – 2007

LAND LAW – LWU 3312 / 4332

DURATION - THREE HOURS



Date: 20th March 2007

Time 1.30 p.m. – 4.30 p.m.

Illegible handwriting will be penalized

Answer Five Questions only

1. Rani, the only sister of Saman was deserted by her husband in 1990. Since she had no income of her own and had been totally dependent on her husband, Saman decided to provide for her. Saman therefore allowed her to stay in his fully furnished house, maintained Rani and invested some money for her to start a sewing business in the house. In 1995 with Saman's consent Rani started cultivating vegetables on the property in order to generate an income. The sewing business flourished and in 1997 Rani hired two assistants. She provided accommodation for them in the house in spite of Saman's objections. In the year 1998 Saman asked Rani to vacate the house. When she refused to do so, Saman's eldest son destroyed Rani's vegetable cultivation and her sewing room. Rani was therefore compelled to leave the house but she returned two days later. In 1999 Saman gifted the house to his minor son reserving a life interest. Rani continued in possession of the house.

- (a) Can Rani acquire the house by prescription?
(b) Would your answer be different if Saman dies in 1999?

Illustrate your answer with relevant statutory provisions and case law.

2. "On a survey of the case law up to 1911, it is evident that the consensus of judicial opinion in Ceylon was in favour of the view that *civiles possessio* or *ut dominus* possession was indispensable as the foundation of relief under possessory action. However a significant change in the development of the law is effected by the opinion of the Privy Council in *Abdul Azees v. Abdul Raniman*. This position had a considerable impact on the moulding of contemporary judicial attitudes in Sri Lanka with regard to possessory action" – Prof. G.L. Pieris *The Law of Property in Sri Lanka* Volume 1 pp.223 -224.

Critically evaluate the above statement under the following headings

- (a) Requirements of a possessory action
(b) Exclusive possession of property by the plaintiff.

Support your answer with relevant case law.

3. Benette was the owner of the land called 'Nugaduwa'. He executed a usufructory mortgage in favour of Kevin in 1970. The mortgage deed M1 was not registered but Kevin went into possession of 'Nugaduwa' in the same year. Benette died in 1990 and his only son Mavan inherited 'Nugaduwa'.

In 1992 Mavan made two sales transactions with regard to 'Nugaduwa'. The first transfer (Deed No: T1) was to Pathum and the second transfer (Deed No: T2) was to Gihan. At the time Gihan purchased the property, he was aware that Pathum had already purchased the same property but had not yet completed the process of registration. Gihan bribed an official attached to the Land Registry to delay Pathum's registration. Gihan then registered his deed T2 on the 22nd September 1992 and Pathum's registration took place on the 5th October 1992. It was later found that Pathum's deed No: T1 had been registered in the wrong folio due to the negligence of the officials at the Land Registry. The mortgage to Kevin came to an end in 2000 and Kevin died in 2002. Pathum went into possession of 'Nugaduwa' immediately after Kevin's death.

Gihan instituted a declaratory action against Pathum claiming priority by registration. Meanwhile Pathum argues that he had acquired 'Nugaduwa' by prescription.

Discuss.

4. (a) Tikiri and Dasa are adjoining land owners. Tikiri decided to build a boundary wall around his land and removed the existing fence in order to do so. Dasa objected to the wall being built stating that Tikiri had changed the original boundary line. Tikiri denies Dasa's allegations.

What action can Dasa take to prove his claim? Support your answer with case law and relevant statutory provisions.

- (b) Bandu leased his bare land to Pala for a period of two years to cultivate vegetables. When Pala had completed one year of the lease, Bala a thug in the area forcibly took possession of the land. Bandu now wishes to bring an action against Bala to regain possession of the land.

Advise Bandu

5. Mahil was the owner of a house and property called 'Nakumbura'. He went abroad for five years. Before leaving he entered into an agreement with Cyril to look after his house and property during his absence.

During Mahil's absence Cyril decided to commence a mineral water business. In order to build the mineral water plant he cleared the land, installed a tank to store water and erected a building as a warehouse. He also dug a well and got electricity and telephone connections. Cyril repaired the roof of the house which was in bad condition. He re-furnished and re-decorated the house and converted it into the reception area of the water plant. He landscaped the garden and erected a fancy gate at the entrance. When Mahil returned to Sri Lanka, he asked Cyril to vacate the place. Cyril refused to leave

till Mahil paid compensation for the improvements he had made to the land.

Discuss whether Cyril is entitled to claim compensation. Support your answer with case law.

6. (a) Daya and Maya are co-owners of a rubber plantation. Since Maya worked in Colombo, Daya looked after the land. Without consulting Maya, Daya decided to convert a part of the rubber plantation into a vegetable plot. He therefore uprooted a part of the rubber and planted some vegetables. He also built a small room on the land to store the harvest. He kept the entire profits from the sale of vegetables and rubber for his own use

Maya seeks your advice regarding the relief available to her. Advise Maya.

- (b) " The possession of one co-owner is the possession of other co-owners and cannot be ended by any secret intention in the mind of the possessing co-owner. The possession of one co-owner does not become possession by a title adverse to or independent of that of the others, till ouster or something equivalent to ouster takes place" – *Gunawardene v. Samarakoon* (1958) 60 N.L.R. 481 at 485

Based on the above statement critically evaluate the doctrine of counter presumption of ouster among co-owners.

7. (a) Discuss the various methods by which servitudes can be acquired.
- (b) Athula is a sculptor by profession. Daily he carries his sculptures to a showroom in the town with the help of his brother using a footpath which crosses Martin's land. Athula now wishes to expand his business and has opened a small sales outlet of his own in the town. He has also hired two assistants and purchased a three wheeler to take his sculptures to town. Athula requested Martin to grant him path way of necessity over the same road which he is currently using as a foot path. However Martin refused Athula's request.

Discuss.

8. Write notes on any two of the following.

- (a) Statutory provisions which limit the owner's right to possess land
(b) Formalities associated with acquisition of ownership and transfer of land.
(c) The legal position regarding the sea and the sea shore
(d) The *paulian* action