

THE OPEN UNIVERSITY OF SRI LANKA  
LL.B. DEGREE PROGRAM – LEVEL III  
2<sup>nd</sup> CONTINUOUS ASSIGNMENT TEST – 2008 / 2009  
LEGAL METHOD - LWU 1412  
DURATION – FORTY MINUTES



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Date: 25<sup>th</sup> November 2008

Time: 11.00a.m. – 11.40 a.m.

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Answer **ONE** question only.

**Candidates will be penalized for illegible handwriting.**

- 1 “Now if anything be certain it is this, that where there are words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation you are not to hold the earlier and special legislation indirectly repealed altered or derogated from merely by force of such general words ...” Per Lord Selborne L C, *The Vera Cruze* (1884) 10 AC 59

Critically examine the manner in which the maxim described above, has been applied by courts with special emphasis to judgments delivered by Sri Lankan courts.

- 2 Priya a first year law student who is not familiar with the doctrine of binding precedent is studying the case of *Perera v Perera* which is based on facts A, B, C & D and was decided by the Court of Appeal in 2006. He has been told that the current Supreme Court is not bound by any previous decisions of other courts but that lower courts are bound by precedent. However with regard to *Perera v Perera* he has been told that neither the Supreme Court of today hearing a case based on facts P, Q, R & E nor a District Court of today deciding a case based on facts A, B, C & D can overrule *Perera v Perera*. Further he has read another case where the current District Court deciding a case based on facts A, B, E & F has not followed *Perera v Perera*.

Priya has now discovered that the Court of Appeal had failed to consider a 1980 Supreme Court decision based on facts A, B C, & D when deciding *Perera v Perera*, and has given a decision contrary to that case. He is uncertain how this would affect the validity of *Perera v Perera*.

Priya is confused about how the doctrine of judicial precedent has operated in the above instances and approaches you for help. Clarify the above situation for Priya illustrating your answer with suitable examples.