

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME – LEVEL 5
FINAL EXAMINATION 2008/2009



LAND LAW – LWU 3312

DURATION - 3 HOURS

Date: 30th March 2009

Time: 9.30 a. m. – 12.30 p.m.

Students will be penalized for illegible handwriting

Answer FIVE (05) questions only.

1. Consider the following situations:

- (a) Kusum was appointed as the sole heiress and executrix of her father's estate by his last will. On the death of her father, she has inherited 4 acres of tea land under the will. As she is not interested in keeping the property, she has decided to sell it. However, she does not know the formalities to be followed when transferring the title in the land to another person.

She wishes to seek legal advice from you.

With reference to statutory provisions, advise Kusum as to the formalities that she should follow in transferring the title in the land.

- (b) "The execution of the deed has no legal significance if the further step of delivery of the deed is not taken. Consequently no title passes if the vendor retains the deed."

Critically discuss this statement.

2. Premila leased her five bed - roomed house and one and a half acres of land to Subash for a period of 5 years. In terms of the lease agreement, Premila permitted Subash to use the house as a residence for his family. No subletting was allowed without Premila's written consent. Also, Subash was liable under the lease agreement to maintain the house and property by attending to routine repairs. Meanwhile, Premila went abroad two years after the execution of the lease agreement.

A few months after Premila left Sri Lanka, Nirmala, Premila's sister claimed that she was also entitled to a half share of this property and requested Subash to vacate the house and property immediately. As Subash did not accede to her

request, Nirmala employed a gang of thugs to evict Subash from the house. One day, a gang of five persons armed with clubs forcibly entered the house and threatened Subash with death unless he vacated the premises within a week.

Subash now seeks your advice as to the most appropriate legal remedy available to him under the land law of Sri Lanka to safeguard his possessory rights.

Advise Subash in the light of the relevant authorities.

3. Silva was the owner of a 1/5th share of an undivided land called "Keselwatta," which was bounded on the north by a public road, east by a river, south by a gravel road and west by Lot 3 of another land called "Nugadeniya." The other co-owners were his two sisters namely; Amitha and Premitha and two younger brothers Kalana and Mewan.

On 8th January 2008, Silva sold his undivided share with the consent of the other co-owners to Nimal, for a valuable consideration of Rs. one million. Nimal's notary who executed and attested this deed bearing No D-1234 did not register it due to his negligence. Silva, who came to know of this fact, later sold the same land to Piyal on 10th February 2008 for Rs. 1.5 million. However, Piyal registered his deed bearing No. D-12345 on 11th February 2008. Nimal who came to know of this second sale from a friend of Silva, immediately contacted his notary who in turn sent a copy of the deed bearing No D-1234 for registration on 12th February 2008. However, due to the negligence on the part of the day- book clerk in the registry, this deed was entered in a wrong folio which bears no cross reference to the correct folio.

Nimal wishes to know whether he could claim priority by registration.

Write a legal opinion for Nimal with reference to the relevant statutory provisions and the case law.

4. "If one were to accept the argument that a right of way of necessity can accrue after such a vesting order, it is essential for the plaintiff to establish the necessity of the cart-way he is seeking, and it becomes necessary to examine the facts and whether those facts would give rise to a requisition of a right of way of necessity, this the plaintiff had failed to establish."

Ceylon Petroleum Corporation v. Mashood (2004) 2 SLR 55

Discuss the following aspects of law relating to servitudes in the light of the above statement.

- (a) The meaning of "right of way of necessity."
- (b) The specific grounds on which a right of way of necessity would be granted by the courts.

Support your answer with decided cases.

5. Discuss briefly the following aspects of law relating to co-ownership with reference to case law.
- (a) The different modes of creation of co-ownership
 - (b) Modes of termination of co-ownership
 - (c) The basic principles governing the rights of co-owners
 - (d) Claims for prescriptive title by one co-owner against another co-owner.
6. "There is abundant authority that a party claiming a declaration of title must have title himself. To bring an action *rei vindicatio* the plaintiff must have ownership actually vested in him. The authorities unite in holding that the plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie."

Mansil v. Devaya (1985) 2 SLR. 46

Discuss the above statement with reference to the nature, scope, objectives and the effect of the vindicatory action, supporting your answer with relevant authorities.

7. Critically evaluate how the fundamental attributes and rights of ownership have been significantly curtailed by the intervention of the State in balancing conflicts between individual interests and the wider interests of society.

Support your answer with the relevant statutory provisions.

8. Write short notes on **any two** of the following topics.
- (a) The importance of the parenthetical clause in section 3 of the Prescription Ordinance No. 22 of 1871 to establish prescriptive title.
 - (b) *ius retentionis* and *ius tollendi*
 - (c) The rights of a mortgagee.
 - (d) Non-owners' right to claim compensation for improvements

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