

THE OPEN UNIVERSITY OF SRI LANKA

LLB DEGREE PROGRAMME - LEVEL III

FINAL EXAMINATION - 2008 / 2009

LEGAL METHOD - LWU 1412

DURATION - 3 HOURS



Date: 2009. 03. 26

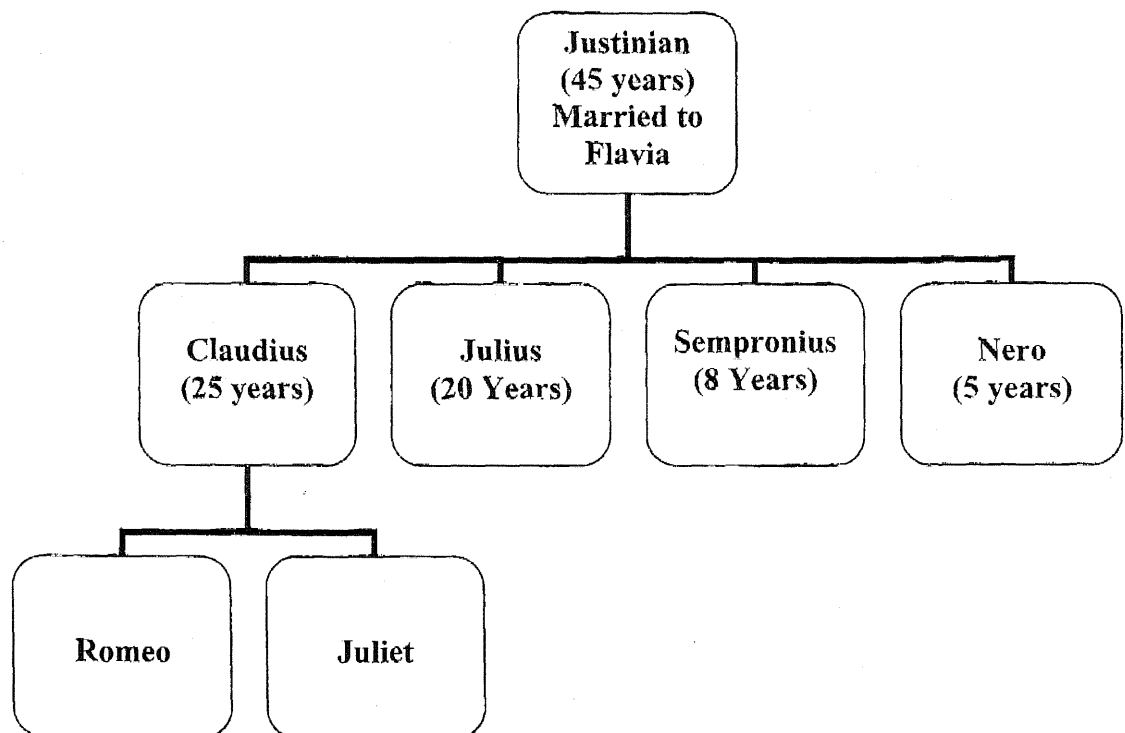
Time: 9.30 a.m. - 12.30 p.m.

Answer 5 questions only with at least two questions each from parts 1 and 2

Candidate will be penalized for illegible handwriting

**PART ONE - ROMAN LAW**

1 Consider the diagram and facts given below and answer the questions.



Justinian makes a last will instituting Sempronius as his sole heir. He disinherits Claudius from his will stating that Claudius had stabbed him and he had been seriously injured as a result. Justinian also leaves his house in Rome to his wife Flavia. Nero has been left about 25% of the property belonging to Justinian but Julius has not been mentioned at all in the will. A slave, a minor and 5 others witness the will.

Later by a codicil Justinian makes an alteration to the will instituting Grotius and his slave Brutus as successive substitute heirs to the will. Claudius dies when he is 25 years old and Justinian dies one year later.

- i. Discuss the validity of Justinian's will. (10 marks)
  - ii. Explain whether Julius can successfully challenge the validity of the will. (5 marks)
  - iii. Explain how the property will devolve (be distributed) in the event of the failure of the will. (5 marks)
- 2 Explain any **TWO** of the following statements. Use examples to illustrate your answer
- i. Roman law provided remedies for damage to reputation or property.
  - ii. Servitudes limited the rights of the owner to deal freely with his property.
  - iii. Sources of law in Roman law and modern law are very similar.
  - iv. *Jus gentium* contained very simple methods to transfer ownership of property.

3 Juliet a Roman citizen entered into an engagement to marry Lothario. She borrowed a beautiful white bridal gown and a diamond necklace for the wedding from her best friend Cleopatra. Cleopatra owned a bridal shop but lent her the items free of charge as she was Juliet's bride's maid. Juliet also borrowed some fine lace from Venus her sister to make her veil. On the day of her wedding, her father gifted her with a house in Rome as a wedding present and her mother gifted her with a pair of diamond ear rings. Juliet wore the diamond earrings, necklace and also a diamond bracelet which matched the other jewellery and had been left with her for safe keeping by Diana, (who was away from Rome), with her wedding dress.

At the wedding reception Juliet publicly gifted the house in Rome to her husband Lothario. During the dinner she spilt a glass of red wine on the wedding dress which left a permanent stain. While changing into her going away clothes, Juliet removed the diamond earrings and left them on the changing room table from where they were stolen. During her honeymoon Juliet left the diamond bracelet and necklace locked up in the safe in their hotel room. However the safe was broken into and the jewellery stolen.

Discuss the legal consequences of the above incidents, focussing on the various transactions Juliet entered into and the consequences of the events which occurred on those transactions.

- 4 'An *alieni juris* member of the Roman *familia* was subjected to severe restrictions in all aspects of his or her life'.

Do you agree with the above statement? Explain your answer illustrating it with suitable examples.

### PART TWO - LEGAL METHOD

- 5 'Little Sudan' is a village located in a remote area whose residents are descendants of ancient settlers from Sudan. Although marriages throughout the country are celebrated with a church or poruwa ceremony, the villagers of 'Little Sudan' follow different marriage rituals. The bride groom is welcomed with garlands of flowers and followed by a procession of ladies with candles who pray for the couple. The couple then sit under an umbrella in front of a fountain for a blessing from their parents. They then approach their home, and an egg breaking ceremony and broomstick burning ceremony (as a symbol of discarding bad habits) follows. The husband then requests permission to enter the home where they share a barbequed spiced chicken. Finally, the couple is showered with flowers, coins, rice and sweets.

Recently, government officials have visited the village and informed all the couples that they are not legally married since they have not followed the church or poruwa ceremonies. Mary, an eighty five year old woman, states that her marriage was performed using the same ceremony, and that she remembers similar marriages when she was young. Ninety year old Peter states that he too married according to these ceremonies, which his father had told him were the traditional ceremonies handed down from their ancestors who came from Sudan, where the marriage ceremony is the same even today. Simon another village elder says that though he had a church ceremony he also followed the traditional marriage ceremony as he felt the marriage would not be recognised by the rest of the village or he himself feel properly married unless these customs were followed.

The villagers of 'Little Sudan' seek your advice as to whether they can prove that their marriages are valid as they are in accordance with local custom.

Advise them.

- 6 'A judge has no guidelines to follow when deciding a case. He has complete freedom to decide the case using his own discretion'.

Discuss the validity of the above statement.

- 7 In recent years an increase in the level of violence has been noted during big school matches, school sports meets and similar activities, some of it leading to serious injury and death. It has also been noted that most of the school children involved in these incidents have been under the influence of alcohol at the time of engaging in these activities. Therefore a law was passed by parliament stating that 'sale of whiskey, brandy, arrack or other drinks in any bar, shop, supermarket or other place to anyone below the age of 18 shall be a punishable offence under the Act'.

During 'The Battle of the Bulls" a big match between two prominent schools in the country, Panda and Co. set up a tent in the grounds where the match was being held and started selling beer to those attending the game. Green and White Co stopped a van near the grounds and started selling iced coffee flavoured with artificial brandy and orange. A group of kasippu sellers also started selling kasippu, out of a barrel hidden among some trees.

The police raided the area and discovered Panda and Co, Green and White Co, and the kasippu sellers. They seek your assistance regarding which of them can be charged under the above law. Advise the police using applicable principles of statutory interpretation.

- 8 Discuss the validity of any **TWO** of the following statements
- i. Laws become applicable only to incidents which occur after the passing of the law.
  - ii. The judge in Sri Lanka is bound to follow the law no matter how harsh or unjust the consequences.
  - iii. There is no significant difference between the concepts of overruling and distinguishing a previous case.
  - iv. Writings of jurists form an important part of the Muslim law.

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