

THE OPEN UNIVERSITY OF SRI LANKA

LL.B DEGREE PROGRAMME - LEVEL III

FINAL EXAMINATION – 2008 / 2009

PRINCIPLES OF EQUITY – LWU 1202

DURATION – 3 HOURS



Date: 2009. 03. 22

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

Answer **FIVE** questions only

Candidate will be penalized for illegible handwriting

PART 1

ANSWER ONLY ONE QUESTION FROM THIS PART

01. In the early period equity stood in sharp contrast to the common law in many respects. However, from about the fifteenth century onwards, the nature of equity changed due to the absorption of many common law elements. This led to the decline of equity.

Analyze this statement with reference to relevant cases and statutes.

02. Though cases such as *Errington v Errington* [1952] 1 KB 290 and *Bendall v McWhirter* [1952] 2QB 466 suggested that equity was not past the age of childbearing, this was further qualified by Bagnall J to the effect that it's progeny must be legitimate by precedent out of principle.

Do you agree with Bagnall J's opinion? Give reasons for your answer illustrating it with relevant statutes and cases.

PART 2

ANSWER FOUR QUESTIONS FROM THIS PART

03. Discuss the legal position of the parties in the situations given below.

- (i) Balasooriya wished to gift his pastry shop 'Rasa Boojana' to his son Nimal. But he made the transfer in the name of Nayana who is Nimal's sister because Nimal himself was in debt.

- (ii) Malini bought a land in Kiribathgoda and registered the deed in the name of Kusumaratne. At the time Malini had a debt recovery action against her pending in court. Kusumaratne agreed that once the action was concluded he would transfer the land back to Malini. 6 months after the registration Kusumaratne claimed absolute ownership of the land, alleging that the conveyance was for an illegal purpose.
04. (a) In order to constitute a valid charitable trust in Sri Lanka, two conditions must be satisfied, and these conditions relate to the purpose of the trust. Firstly, it must conform to the legal definition of charity, and secondly it must satisfy the test of public benefit. The second requirement is crucial to the constitution of a valid charitable trust, since even if it falls within the legal definition of charity, it will not be valid if the test of public benefit is not satisfied.

Critically evaluate the above statement. You are expected to compare and contrast your answer with the law of another jurisdiction.

- (b) Briefly explain the Cy-Pres Doctrine. Support your answer with relevant statutory provisions and cases, if any.
05. Sumanapala ran a hotel in Karuwelagaswawe until his death in 2005. In 1952 he had bought a land in Puttalam, but the conveyance was made in the name of his son Sunil. Until his death Sumanapala enjoyed possession of that property. He cultivated the plot of land and utilized the harvest to run the hotel. Part of that land was leased out to Kamal and the lease money was used for the renovation of the hotel. By a document written in 1990 Sumanapala expressed his desire that the Puttalam land should belong to his two adopted daughters namely Udeni and Shalini.

In 2005 after the death of Sumanapala, Udeni and Shalini claimed ownership of the land in Puttalam.

Advise Sunil.

06. In 1998 Ramani a spinster gifted her land that is situated in Homagama to her brother Priyantha. The gift was irrevocable. Priyantha's wife Nimalee and his son Suman lived on that land from 2000 as Ramani invited them to live there. However they did not know that Ramani had gifted the land to Priyantha. Part of that land was given to Manjula to take care of it. After Priyantha's death in 2002 Ramani donated the same land to Prabath, her cousin. Prabath and Ramani are now trying to eject Nimalee and Suman. Nimalee and Suman came to know about the irrevocable gift which was made in 1998. In meantime Manjula sold a part of the land which was given to him in order to take care of it.
- (a) Advise Nimalee and Suman.
- (b) What is the legal position in relation to the land which was sold by Manjula?

07. (a) Though trustees are expected to observe the highest standard of business acumen in the performance of their duties, that cannot be considered as an absolute requirement by law.

Critically examine the above statement in the light of duties and powers of trustees.

- (b) Briefly explain the right of a beneficiary to follow the trust property, which is considered to be one of the most important rights conferred on the beneficiary.

08. Write short notes on any **TWO** of the following.

(a) Classification of Trusts.

(b) Capacity of the parties to create a trust.

(c) Identity of Beneficiary.

(d) *Valliyammai v Majeed* (1944) 45 NLR 169.