



**CEM7106 – The Law and the Construction Industry**  
**FINAL EXAMINATION - 2012**

Time Allowed : Three Hours

Date: 2013 - 08 - 04 (Sunday)

Time: 0930 - 1230 hrs

Answer any Five (05) questions.

**Q1.**

- i.) "Tesawalamai applies to Tamils who can establish an inhabitancy or settlement in the Northern Province". Discuss.

(10 marks)

- ii.) Briefly explain the shortcomings in law enforcement and access to justice in Sri Lanka.

(10 marks)

**Q2.**

- i.) Herath posted a letter on 1<sup>st</sup> January addressed to Jayadeva offering to sell him two 'Honda' motorcycles for Rs. 50,000/- each. The letter reached Jayadeva on 3<sup>rd</sup> January, and he replied on the same day as follows: "I accept your offer for one 'Honda' motorcycle at the stated price of Rs. 50,000/-. On 7<sup>th</sup> January Herath wrote to Jayadeva as follows: "Thank you for your letter of 3<sup>rd</sup> January. My offer was for two 'Honda' motorcycles at the special price of Rs. 50,000/- each. The price for a single motorcycle is Rs. 55,000/-. I will be pleased to dispatch one or two motorcycles as offered as soon as I have a definite acceptance". On 23<sup>rd</sup> January, Herath, not having heard from Jayadeva, wrote to him as follows: "I have not still received your reply to my letter of 7<sup>th</sup> January. To oblige you, I accept your offer for one 'Honda' motorcycle at the special price of Rs. 50,000/-. Please let me know when you would like to have the delivery of the motorcycle". On 2<sup>nd</sup> February Jayadeva replied that he no longer required a motor cycle. What remedies, if any, has Herath against Jayadeva?

(12 Marks)

- ii.) What are the different ways in which an 'offer' can be terminated? Explain briefly.

(08 marks)

**Q3.**

- i.) X drove his car into Y's new automatic car parking garage. He had not used this car park before. A notice on the outside gave the charges for parking and stated that all cars were "parked at owner's risk". A traffic light at the entrance showed red and a machine produced a ticket when the car was drawn up beside it. X took the ticket and, the light having turned green, he drove on into the garage where his car was parked by mechanical means. On X's return to collect the car there was an accident and he was severely injured. X claimed damages from the garage. Y contended that the ticket incorporated a condition exempting them from liability. The ticket stated the time of arrival of the car and that it was to be presented when collecting the car back. In the bottom left hand corner of the ticket, in small print, it was stated that the ticket was issued subject to conditions displayed on the premises. On a pillar opposite the ticket machine a set of printed conditions was displayed in a panel. One of the conditions stated that the garage would not be liable for any injury to the customer occurring when his car was on the premises.

X seeks your advice. How would you advise?

(10 Marks)

- ii.) "A contract is discharged when it ceases to be operative so that all rights and obligations which had existed under it become extinguished".

Explain the manner in which a contract can be discharged.

(10 Marks)



Q4.

i.) Explain the following terms giving examples

(a) Mutual mistake.

(04 Marks)

(b) Unilateral mistake.

(04 Marks)

(c) Common mistake.

(04 Marks)

ii.) Discuss the remedies for breach of contract where the breach does not discharge the contract.  
(08 Marks)

Q5.

i.) Nimal, an employee of Iron Company Ltd., was late for work and in an effort to 'clock' in time, he drove his car on to the premises of the company, too fast and negligently injured Sarath, a fellow employee of the company. Answer the following questions giving reasons.

a.) Is the Company (employer of Nimal) liable for this act?

(06 Marks)

b.) What if Nimal had been early for work by 30 minutes because he wanted to play cards before the shift started.

(04 Marks)

ii.) Explain the liability based on negligence in the following instances with reference to decided cases.

a.) Negligent professional advice.

(05 Marks)

b.) Defectively constructed buildings.

(05 Marks)

Q6.

i.) "Courts have developed certain tests to distinguish independent contractors from employees". What are these tests? Explain.

(10 Marks)

ii.) Write a brief note on the common employment categories existing in Sri Lanka.

(10 Marks)

Q7.

i.) State and briefly explain the specific methods by which conflicts could be resolved in terms of the Industrial Dispute Act.

(10 Marks)

ii.) "There are certain circumstances under which an employer is not liable to pay compensation in terms of Workmen's Compensation Ordinance". Explain.

(10 Marks)

Q8.

Write short notes on any four of the following.

i.) Voluntary assumption of risk.

(05 Marks)

ii.) Defences to the rule in *Rylands v Fletcher*.

(05 Marks)

iii.) Wages Boards Ordinance.

(05 Marks)

iv.) Employees Provident Fund Act.

(05 Marks)

v.) Shop and Office Employees Act.

(05 Marks)

