

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR III – 2018/2019

ADMINISTRATIVE LAW

(Three Hours)

Total Number of Questions: 07

Answer **FOUR** questions only

(Candidates will be penalised for illegible handwriting.)

1. Although there are many newly emerged grounds to challenge administrative actions taken outside the jurisdiction, it is the doctrine of *ultra vires* that still plays a key role in reviewing such actions. Although *ultra vires* is arguably a complex but rich doctrine, the judiciary continues to apply the doctrine broadly to review disputed administrative actions.

Does the above statement correctly reflect the nature and the scope of the doctrine of *ultra vires*? Citing relevant case law authorities discuss the current legal position in Sri Lanka. Give reasons for your answer.

2. As per the National Environmental Act, no construction project, which has an impact on the environment, can be initiated without obtaining an Environmental Impact License (EIL) issued by the Central Environmental Authority (CEA). According to the Act, the Director General (DG) of the CEA has the exclusive powers to grant or reject EIL and the DG's such decision on EIL shall not be challenged in any court of law. Sumana, the current DG of CEA has delegated her powers on this matter to Perera, the subject clerk of the CEA. When Akash, an entrepreneur submitted an EIL

application to the CEA seeking license to commence a construction project, Perera rejected Akash's application. Around the same time, two other EIL applications were approved by the CEA. Fernando, another clerk in the same branch granted an EIL to Bhashana, a building contractor known to the former personally. The Ministry of Housing also submitted an EIL application for a government-initiated project, and Sumana immediately granted the license to the Ministry without perusing the details of the project.

Discuss the legality of the above decisions of the CEA with reference to relevant principles and case law.

3. The principle of proportionality sets out new rules to review administrative actions more progressively, in a broader sense. Some scholars argue that with the introduction of the principle of proportionality, the importance of the principles of irrationality and unreasonableness has been substantially diminished.

Evaluate the above statement by referring to the recent developments in the sphere of administrative law. Support your answer with case law authorities.

4. Appuhami has been cultivating Sinnakkarawaththa, a land leased from the Government. The head priest of Subadrarama temple, which is located on the boundary of Sinnakkarawaththa wanted to annex Sinnakkarawaththa with his temple land. At the end of the ten-year-lease, Appuhami submitted an application to the Divisional Secretary (DS) for the renewal of it but he passed away before getting the renewed lease agreement. When Jayantha, Appuhami's son approached the DS

requesting that his father's lease be transferred to himself, the DS granted the lease to him by cutting off Appuhami's name and scribing Jayantha's name on the lease agreement. Due to the influence of the head priest, the Provincial Minister ordered the Provincial Land Commissioner that Sinnakkarawaththa should be handed over to Subadrarama temple. The Provincial Land Commissioner then instructed the DS to cancel the lease agreement with Jayantha. The DS subsequently cancelled the lease agreement and informed Jayantha that a lease agreement originally entered into with a person is not renewable subsequent to his demise.

Jayantha wishes to challenge the decision of the authorities. Advise him in light of the relevant legal principles and case law.

5. Bhanuka, a member of a Buddhist minority group from Bangladesh arrived in Colombo with his pregnant wife and two children in March 2010 to claim political asylum. Exercising his powers under the relevant enactment, the Minister in charge issued a temporary residence visa for five years to Bhanuka's family until a final decision on his refugee application be taken by the UNHCR. Meanwhile, Bhanuka was blessed with a baby in Sri Lanka. Pending Bhanuka's refugee application to the UNHCR, his visa was renewed in 2015 for another five years. In 2016, it was reported that the Minister had taken a decision to grant permanent residency in Sri Lanka to 500 Bangladeshi Buddhist refugees and their children born in Sri Lanka could apply for Sri Lankan citizenship. Later, with a cabinet reshuffle, a new Minister was appointed. On 30 June 2019, the new Minister announced that the Bangladeshi refugees would not be granted residency or citizenship in the country because of the cost involved and the risk of 'terrorists' hiding amongst the refugees. Bhanuka's family received a notice of deportation.

Discuss the administrative law principles and relevant cases to demonstrate your understanding of the grounds on which Bhanuka's family could seek remedies.

6. More recently courts have begun to assert that administrative actions must not contravene fundamental rights and specifically Article 12(1) of the Constitution. The Supreme Court has observed that power must be exercised fairly and without discrimination and so as not to infringe the fundamental right to equality guaranteed in the Constitution. As a result of this interpretation, fundamental rights and specifically the right to equality and equal protection, with all its ambiguities, is emerging as an additional ground of review in a writ application.

Discuss in light of the above statement how breach of fundamental rights has become a ground of reviewing administrative actions. Support your answer with your understanding in relevant concepts and case law.

7. 'The Constitution declares that sovereignty is in the People and is inalienable. Being a representative democracy, the powers of the People are exercised through persons who are for the time being entrusted with certain functions.' - *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others* ([2000] 3 Sri LR. 243 at p.245).

Comment on the above statement by demonstrating how public trust doctrine has evolved as a tool to protect public interests in the judicial landscape of Sri Lanka.
