

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR II (Online) - 2021

Equity and Law of Trusts

(Three Hours)

Total Number of Questions: **06**

Answer **THREE (03)** questions and **no more.**
(Candidates will be penalized for illegible handwriting.)

1. Even today, judges cite various equitable maxims in their judgments. Nevertheless, counter-arguments claim to disregard these maxims since they are used simply as a ‘mantra’ without considering their true meaning. Two main arguments are, judges may conceal their transparent reasoning by substituting a maxim, and sometimes judges forget the differences between different maxims.

Do you agree? Give reasons and justification for your answer with relevant authorities.

(100 Marks)

2. Nishal won the first prize in a lottery and wishes to create charitable trusts. Consider, comparing with English Law, whether a valid charitable trust is created by the following:
- (a) Donation of Rs. One Million to a religious school called Modsha to promote the radical views of a religion called Modshism.
 - (b) Rs. One Million to provide lunch to the poor people in my village on my birthday every year.
 - (c) Rs. 50,000 to the Sports Club in my village to conduct classes in Karate to the youth in the village.
 - (d) My land near the Apeksha Hospital at Maharagama to provide parking facilities free of charge for the benefit of the visitors to the Hospital.

(25x4 = 100 Marks)

3. Answer both (a) and (b).

(a) 'A prohibitory injunction orders the defendant to refrain from doing something, and it is more readily granted than a mandatory injunction.'

Discuss the validity of the above statement. Your answer must be supported by relevant case law.

(b) Nicoline is an upcoming model and placed in runners-up at a Beauty Pageant held in 2020. She entered into an agreement with a popular television channel named STAR Channel in order to act in the main role of its latest tele - drama named "The Mask" in 2021. She agreed not to act for any other channel for two years without the written consent of the STAR Channel. After six months from the agreement, she received an offer from TWINKLE Channel to be the main actress of their new tele-drama. She accepted the offer and accepted an advance payment of one million from the TWINKLE Channel.

STAR Channel seeks your advice as to whether it could take any legal action for the breach of the agreement by Nicoline. Advise them.

(50x2 = 100 Marks)

4. Ragavan, a well-known businessman has two daughters Neela and Mala and a son Rajiv. Ragavan has transferred his properties to his friend Rajan for the following purposes:

(a) to run his automobile business and to utilize the profits from the business for the higher education of Neela or Mala as Rajan wishes;

(b) to look after the needs of his son Rajiv out of the profits from his shotgun business which has not been legally authorized;

(c) to divide the profits from his tea estate equally between the two daughters, if the estate earns profits;

(d) to maintain his coconut estate in Puttalam and to use the profits for the benefit of the children of Ragavan's cousins;

(e) to sell the business complex in Kandy, and to pay the debts to the creditors from the proceeds of the sale.

Discuss, citing relevant provisions of the Trust Ordinance and decided cases, whether a valid trust is created by the above requests.

(20x5 = 100 Marks)

5. Nimalan had a shop and five acres of a coconut estate. Nimalan bought a house in the name of his youngest sister Rani to give it as dowry at her wedding. Rani married a boy against the wish of Nimalan. Nimalan had to travel Australia as he got married to an Australian citizen Divya. Divya insisted Nimalan to stay in Australia for some years and suggested that both of them can return to Sri Lanka and live in Sri Lanka permanently. Before leaving to Australia, Nimalan transferred the shop to Kumaran one of his employees and requested him to look after the business until he returns from Australia. Nimalan told his friend Suresh that he intends to spend a few years in Australia and transferred his coconut estate to Suresh. Nimalan requested Suresh to deposit the income from the estate in the Bank Account of Nimalan's parents. However, Suresh deposited the income in his own account in a Bank. Nimalan sent money from Australia to Vasu and requested him to transfer an apartment at Bambalapitiya in the name of Nimalan's eldest sister Malar. He told Malar that he wanted to buy the apartment as it has a nice view with the sea, and he could live in the apartment and enjoy the nature after he returns from Australia.

After Nimalan returned from Australia, he requested Kumaran to return the shop, and Suresh to return the income from the estate. Also he requested Rani to return the house and Malar to return the apartment. But, they all have refused to accept the request made by Nimalan. Nimalan wishes to know whether constructive trusts have been created in his favour with regard to the properties and the money.

Advise him in the light of the provisions of the Trusts Ordinance and decided cases.

(100 Marks)

6. Answer both (a) and (b).

(a) Vimal appointed Silva and Amal as co-trustees to his tea estate and a hotel in Badulla for the benefit of his daughters Kusum, Mallika and Senuri. Silva and Amal had the knowledge that the trust property was transferred to them by an unregistered document. But, they have

failed to register the document to date. The trust instrument requires Silva and Amal to pay equally the profits from the estate and the hotel to Kusum, Mallika and Senuri monthly for their expenses. Amal had an affair with Senuri and suggested to Silva to pay 60% of the profits to Senuri. Silva agreed with the request made by Amal and they paid 60% of the profits to Senuri. Kusum, Mallika and Senuri are competent to contract. Kusum and Mallika requested the trustees to submit the account details relating to the expenses and profits of the properties. Senuri suggested not to submit the account details, and the trustees have declined to accept the request made by Kusum and Mallika. Kusum and Mallika requested the trustees to transfer the properties in the name of Kusum, Mallika and Senuri. But, the trustees have refused to transfer the properties in their names as Senuri has opposed to the transfer.

Discuss the rights, duties and liabilities of the parties in the light of the issues in the above scenario. Substantiate your answer by citing the relevant provisions of the Trusts Ordinance.

- (b) Harry appointed Ravi and David as trustees for a trust created for the benefit of his children Mino and Jeeva. The trust property was his Rubber Estate. The Trust instrument required the trustees to sell the property within six months' and to invest the proceeds in the stock market for the benefit of the beneficiaries. However, due to the COVID-19 pandemic the sale could not be executed within the time period. The value of the trust property dropped due to the pandemic. The property was sold after a year for a less value. The trustees were requested to sell the property in an auction sale. But, they sold the property in a private sale to their close friend Ajith. The proceedings from the sale were not invested in the stock market. Ravi applied the whole money from the sale in his own business.

Discuss the rights, duties and liabilities of the parties in the light of the issues in the above scenario. Substantiate your answer by citing the relevant provisions of the Trusts Ordinance.

(50x2 = 100 Marks)
