

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION (Online), YEAR III– 2021

INTERPRETATION OF STATUTES AND DOCUMENTS

(Three Hours)

Total Number of Questions: **06**

Total Number of Pages: **07**

Answer **THREE (03)** questions and **no more**.

(Candidates will be penalised for illegible handwriting.)

1. “Judges interpret words. And words do not bind the interpreters; rather the interpreters give meaning to the words. The meaning of the words is not the same as the ‘intent’ of the writers. Often writers have no pertinent intent or have several intents. When they have an intent, it does not control because words are mere instruments for conveying thoughts to others. The critical people are the users, not the writers, of words.”

Frank H. Easterbrook, ‘Legal Interpretation and the Power of the Judiciary’ (1987) 7 Harvard Journal of Law and Public Policy 87

Compare and contrast the application of two theories of interpretation with reference to above statement. Your answer must be supported by case law authorities from two other jurisdictions.

(100 marks)

2. Members of Silu, a minor community in Sindhar, gathered in the seashore to celebrate their yearly function. Kishu, who belongs to the majority of Sindhar and lives on the beachside, was watching the function for few hours. He then played a popular song praising the

majority of Sindhar on the radio with high volume and hoisted a large black flag in his garden, visible to the gathering.

Following the complaint lodged by the leader of the Silu community, the police arrested Kishu and produced him before the court under the Public Peace Preservation Act No.25 of 2008. Kishu claims that he did not go out of his premises and he did not use any kind of abusive or insulting words, so he did not commit any offence under the said Act.

The long title of this Act states, “An Act to better provide for the maintenance and/or restoration of public peace in case of emergency and for other purposes.”

Section 10 of the Act provides, “Any person who, in any public place or at any public meeting uses threatening, abusive, or insulting words or behaviour which is intended to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence under this Act.”

Section 3 of the Act defines ‘public meeting’ as “any meeting in a public place and any meeting (irrespective of the place at which it is held) which the public or any section thereof are permitted to attend, whether on payment or otherwise” and ‘public place’ as “any highway, public park or garden, any public bridge, road, lane, footway, square, court, alley or passage, the public or any section thereof have or are permitted to have access, whether on payment or otherwise.”

Write a judgment assuming that the legal system of Sindhar is similar to that of Sri Lanka, and you are a judge hearing this case. Your judgment should highlight the most relevant rules and internal aids of interpretation that you apply in interpreting the relevant statute to the above facts. Support your answer with relevant authorities.

(100 marks)

3. Fundamental rights recognised in a constitution must be construed, not in a constricted sense, but in a liberal manner considering the changing conditions, values and purposes of a democratic society and emerging problems and challenges. In doing so, certain unarticulated rights would be construed to be implicit in the expressed guarantees.

Critically analyse the above statement in light of the Constitutional interpretation approaches taken by the Sri Lankan judges in interpreting the fundamental rights recognized in the Constitution. You should compare the Sri Lankan judicial approaches with another jurisdiction of your choice.

(100 marks)

4. Answer **both** (A) and (B).

(A) If used wisely, the maxims of interpretation help to discover competing interpretative possibilities. However, they can also be 'dangerous masters' leading interpreters to override the lawmaker's intention. Thus, maxims must be approached with caution.

Select a judgment of your choice and analyse, in light of the above statement, the drawbacks and benefits that could have been resulted if a maxim is used or not used in the interpretation.

(50 marks)

(B) 'Rose' public park is controlled and managed by the Kire local authority. Subsequent to a competitive tender process, the Kire local authority decided to lease the premises to Little star Pre-Schools Private Limited Company to operate a nursery at the premises. Dorothy Silva, who had also made a competing tender, challenged the local authority's decision to grant the lease under the Public Lands Act 1971.

Section 7 of the Public Lands Act 1971 empowers local authorities to lease any open space managed and controlled by the authority. It provides as follows:

"A local authority may lease any open space area belonging to the local authority for the use of community-based cultural centres, sports societies or any other organisations whose objects or activities are wholly or mainly of a recreational, social or educational character."

‘Open space’ is defined in section 6 of the Public Lands Act 1971 to include “any public park, pleasure ground, garden, burial ground under the control and management of a local authority.”

Dorathy Silva argues that the powers conferred on the Kire local authority do not warrant the lease of Rose public park to the Little star Pre-Schools Private Limited Company.

Assume that you are the judge in this case. Write your judgement substantiating with maxims of interpretation and relevant case law.

(50 marks)

5. Answer **both** (A) and (B).

(A) Historically, statutory interpretation was considered as a science, finding one meaning by applying a literal approach, and now it is regarded as an art, allowing freedom of choices in the hands of judges. Hence, there is a tendency of using external aids through a contextual approach when courts interpret statutes for the betterment of law and society, despite the criticisms against this.

Select judgments where external aids of interpretation have been used in statutory interpretation ‘for the betterment of law and society’, as mentioned in the above statement, and critically evaluate the outcomes. Your analysis should refer to the use of two external aids.

(50 marks)

(B) After signing the International Convention on Elimination of Corruption and Promotion of Good Governance (ICECPGG), the Government of Utopia enacted the Right to Information (RTI) Act No. 12 of 2020 to give procedural effect to its Freedom of Access to Information that is recognised by Article 14A of the Constitution of Democratic Socialist Republic of Utopia.

The primary purpose of this legislation is to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promoting a society in which the people of Utopia would be able to fully participate in public life through combating corruption and promoting accountability and good governance.

During the parliamentary debate, the Minister in charge of the subject said: “This important legislation will encourage Utopia citizens to question the legality of the government’s decision-making process as taxpayers of the country. At the same time, this legislation will remind public servants that they are accountable for answering the general public in discharging their services. Therefore, I doubt I will hear any incidents of making or getting bribes in the public service once this law is passed.”

The bill is supplemented by a five-member Committee Report of the Ministry of Public Administration, highlighting its need to eliminate corruption and make public service decisions accountable.

Ministry of Health (MoH) of Utopia has paid more than 5\$ per injection called ‘Cureshield’ imported from Saina State to vaccinate the general public of Utopia against the prevailing Covid-19 pandemic. Sarath, a citizen and a journalist of Utopia, revealed that the same injection was given to the neighbouring country called ‘Sundaradesh’ by Saina State for a lower price. He sent several information requests under RTI Act No. 12 of 2020 to the Ministry of Health inquiring about the transaction relating to the importation of ‘Cureshield’ by the MoH. However, the MoH denied the request, stating that disclosing such information would be or is likely to be seriously prejudicial to Utopia’s relations with the Saina State as per the exceptions laid down under the RTI Act.

Sarath wants to challenge this decision of the MoH at the Court of Law. Assume that the legal system of Utopia is similar to that of Sri Lanka. Advise him as to how the

external aids of interpretation could be used to argue the case. Your discussion must be supported with decided cases.

(50 marks)

6. Ragapura is the capital of Sri Land which is very popular amongst tourists for its natural beauty and location. Arun is a farmer who owned one-acre land consisting a two-storied house and coconut estate in Ragapura, since 1990. The market value of the property is seven million. The government of Sri Land has decided to develop the infrastructure of Ragapura in order to attract more tourists. On 10th May 2021, an officer in charge of the 'Beautification Project 2021' of Ragapura visited Arun's Residence and informed his employee at the coconut estate that Arun's whole land would be required for the beautification project. On 10th July 2021, Nimalan, a land acquiring officer of Ragapura placed a notice of acquisition on a coconut tree at Arun's coconut estate. On 15th July, two officers appointed by Nimalan drove a bulldozer into Arun's land and informed him to vacate the place within two hours. Arun obstruct the officers entering the premises. The Ragapura police inspector arrested Arun for stopping the two officers from exercising their duty assigned to them by Nimalan. Two days after Arun's arrest, his family was forcefully removed from the land, and his house was demolished.

Arun argues that he was not aware of the said land acquisition until 10th July 2021. Section 3 of The Land Acquisition Act No. 2 of 1987 of Ragapura provides that, "the notice of acquisition should be exhibited in some conspicuous place in the area before one month from commencing the works intended to carry out in the area, and no officer shall enter any such area which is occupied with building or any enclosed court or garden without informing the owner of such land 10 days prior to the work.'

Arun wants to challenge his arrest as he was not given a chance to explain why he stopped the officers from exercising their duty.

Section 6 of the said Act provides that,

“Where the Minister considers that a particular land is suitable for a public purpose, he shall direct the acquiring officer of the district in which the said land is situated to cause a notice in accordance with section (3) to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land.”

Nimalan states that Arun will get a compensation of fifty thousand rupees in December 2021 for the said acquisition, and the said acquisition is fair and reasonable as it was acquired for ‘Public Benefit’. He also argues that the decision made under the said Act is not questionable as section 4 of the said Act provides that,

“no court shall be competent to enquire into or give judgment on the validity of any notice, regulation or decision made under this Act.”

Arun seeks your advice as to the validity of the said actions of the officers and the possibility of seeking redress through law. Advise Arun with special reference to the use of presumptions in statutory interpretation. Your answer should be supported by relevant case laws.

Assume that the legal system of Sri Land is similar to that of Sri Lanka.

(100 marks)