

University of Colombo, Sri Lanka

Faculty of Law

Bachelor of Laws Degree Honours, Year I Examination

2nd Semester – End Examination – 2023

LAW 12305 – Equity and Law of Trusts

(2 hours and 15 minutes)

Total Number of Questions: 04

Answer any two (02) questions and no more.

(Candidates will be penalized for illegible handwriting.)

- 1) Discuss, with statutory provisions and case law authorities, whether a valid trust has been created by the following bequeaths:
- Arun appointed Kumar as a trustee for Rs. 5 million and instructed him to buy a house and transfer it to Arun's daughter-in-law if she is from Arun's village;
(7 marks)
 - Saman created a trust to invest his pension fund in smuggling cannabis from India and to use the profit for the benefit of his (Saman's) children.
(7 marks)
 - Visali transferred her restaurant and tea estate to Kannan and directed him to distribute the properties to her brothers' children as Kannan thinks most deserving.
(7 marks)
 - Savithri transferred her shop to her sister Sumana and directed her to transfer the shop to Savithri's daughter Malini once she attains the age of eighteen years. Sumana retains the shop without transferring it to Malini even though Malini has reached the age of eighteen

years. Sumana argues that a trust does not exist as the requirements under section 5(1) of the Trusts Ordinance have not been fulfilled.

(9 marks)

(Total 30 marks)

- 2) Discuss, with relevant case law and statutory provisions, whether the following bequests of Siva create charitable trusts:
- a. Rs.05 million to the warden of St. Clair School's Hostel to provide nutritious breakfast to the poor students in Grade 01;
 - b. Rs.12 million to provide stationaries to facilitate the education of needy children in the Ratnapura District;
 - c. Rs.15 million to carry out a research on the benefits of privatization of State-Owned Businesses in the country; and
 - d. Rs.5 million rupees to my son Paran to conduct a pooja annually in the Sivan Temple in my village for the attainment of salvation of my mother's soul.

(7.5×4=30 marks)

- 3) "...a constructive trust is a trust which the law imposes on the trustee by reason of his unconscionable conduct". (Westdeutsche Landesbank [1996], Lord Browne Wilkinson)

Comment on the above statement with reference to the relevant provisions in Chapter IX of the Trusts Ordinance and case law.

(30 marks)

- 4) Kumar created a trust for his tea estate and holiday bungalow in Nuwara Eliya for the benefit of his two sons Suraj and Viraj. Kumar appointed Sanesh, Mithun, and Rehan as co-trustees for the trust. Kumar has given the power to the trustees to invest the earnings from the tea

estate in the Sri Lankan share market. Suraj came to know about an online foreign currency business involving high profits and high risks. Suraj convinced Sanesh and Mithun to invest the earnings from the tea estate in the online foreign currency business. Suraj requested Sanesh and Mithun not to disclose the investment in the online foreign currency business to Rehan and Viraj. Sanesh and Mithun requested a share from the profit for agreeing with the plan of Suraj. Suraj agreed for the request made by Sanesh and Mithun. They incurred a huge loss in the online foreign currency business. Sanesh and Mithun sold the holiday bungalow to their close friend Nishal who was aware of the trust. The sale was for a value very much below the market value with the consent of Suraj. Subsequently, Sanesh, Mithun and Suraj divided the proceeds from the sale. Rehan neglected his duty as a trustee as he was busy with his own business. Viraj came to know the investments and transactions against the trust instrument and the Trusts Ordinance, and intends to take a legal action against Sanesh, Mithun, Rehan, Suraj and Nishal.

Viraj seeks your advice as to violations of the provisions of the Trusts Ordinance and his rights. Advise Viraj citing the provisions of the Trusts Ordinance.

(30 marks)
