

University of Colombo, Sri Lanka

Faculty of Law

Bachelor of Laws Degree (Honours), Year II Examination

1st Semester – End Examination – 2025

LAW21403 – Law of Property

(2 ¼ Hours)

Total Number of Questions: 04

Answer only two (02) questions and no more.

(Candidates will be penalized for illegible handwriting.)

1. Answer both A and B parts.

(A) A co-owner is entitled to an undivided share of the entire soil and cannot seek a declaration of title to a specific portion of common property.

Analyse the validity of this statement. Support your answer with relevant legal principles and decided cases. **(10 marks)**

(B) Saman, Kaveesha, and Tharindu are co-owners of a 10-acre property inherited from their grandmother under intestate succession. The property includes fertile agricultural land, a tea plantation and a small house but no formal partition has occurred, and the title remains jointly held.

Following the inheritance, Saman took the initiative to manage the tea plantation, claiming it was in disrepair and at risk of losing value. He hired laborers for cultivation, financed improvements to the irrigation system and entered into an informal supply contract with a local tea processing company without consulting Kaveesha and Tharindu. He also installed a lock on the house and began using it as a weekend retreat, preventing access for the other co-owners

Kaveesha, who lives in the city and does not actively participate in the cultivation, has recently discovered the improvements made by Saman. She asserts her right to a share of the profits from the plantation and requests access to the house for her occasional visits. Kaveesha also insists that she should be consulted before any decisions regarding

the land are made. Tharindu, who has been cultivating a portion of the unused land for seasonal crops for several years, faces objections from Saman, who argues that Tharindu's actions interfere with his management of the estate and that Tharindu contributes nothing to the plantation.

Advise Kaveesha and Tharindu with reference to decided cases. (20 marks)

2. "Traditionally, *civilis possessio* and *bona fides* have been treated as elements of the necessary animus in the improver. Representative of this approach are the statements that 'Our law compels the owner of land to compensate a bona fide possessor who has improved it under the belief that the land was his own'."

- *Willoughby's Consolidated Co Ltd v. Copthall Stores Ltd 1918 AD 1* cited in GL Pieris, *The Law of Property in Sri Lanka Volume One* (first published 1976, 2nd edn., Stamford Lake Publication 2017) 31.

Based on the above statements, answer the following questions:

- a) Define and explain the concept of *civilis possessio* under Roman Dutch law. (4 marks)
- b) Discuss the traditional view on *civilis possessio* citing relevant case law. (6 marks)
- c) Analyse whether contemporary Sri Lankan courts have deviated from this classical requirement of *civilis possessio* when determining compensation to improvers. Support your answer with relevant case law.

(20 marks)

3. Answer **part A or B**.

(A) Ruwan owns a large plot of land on the outskirts of Colombo, which has been in his family for generations. Recently, he received a notice from a government authority indicating that a portion of his land will be acquired for a public infrastructure project. The notice asserts that the acquisition is being made under statutory authority and Ruwan is instructed to vacate the specified area within two months. He is concerned that the acquisition is unfair and that the compensation offered is inadequate.

Ruwan seeks legal advice regarding the legality of the State's intervention in his property and whether his legal rights have been violated. Advise Ruwan by critically

analyzing the extent to which modern legislation permits State intervention in private property rights in Sri Lanka in light of the above scenario.

(30 marks)

(B) Maya is the registered owner of a two-acre residential property with a large garden. Without her knowledge, her distant relative Anil took possession of half an acre of the garden and planted mature fruit trees and a vegetable patch. Anil claims that Maya granted him an oral license to use this portion of the garden, which Maya denies.

Subsequently, Anil sold the rights to the fruit trees and vegetable patch to Rajan, a third party who purchased them in good faith without knowledge of Maya's ownership. Anil also constructed a small tool shed on the property without Maya's consent and uses it exclusively.

Advise Maya on her ability to recover possession of the garden area, the produce and the shed citing relevant legal authorities.

(30 marks)

4. Ratnayake, a wealthy businessman in Colombo, executed a deed of gift on February 5, 2004, transferring a coconut estate called 'Galpoththa' to his only son, Nalin. The deed included a *fidei commissum* in favour of Nalin's daughter, Nirosha, which would take effect upon Nalin's death, prohibited Nalin from selling or mortgaging the property. However, this deed was never registered. On June 24, 2007, Ratnayake made a last will, leaving the same estate to his granddaughter, Nirosha. Following Ratnayake's death, the will was proved on December 5, 2009, and probate was granted to Sumedha, Nirosha's grandmother and Ratnayake's widow, although the will was not registered. On April 23, 2012, Nalin, asserting his inheritance rights, sold Galpoththa to Fernando, a real estate developer, for Rs. 1,000,000/-. The deed of this transaction was duly registered on October 15, 2012. On March 27, 2016, Fernando mortgaged the land to ABC Finance and began construction on a condominium. However, on July 12, 2022, Nirosha filed an action to evict Fernando, asserting her claim to the land based on the unregistered will and deed of gift. In response, Fernando argued that his registered deed takes priority and that unregistered instruments cannot supersede it. During the trial, the District Judge of Colombo found that Fernando had acted fraudulently. His finding

was based on evidence of Fernando's previous conviction for a pyramid scheme and a history of business fraud. As a result, the Judge ruled that Fernando forfeited his priority under the Registration of Documents Ordinance due to his conduct.

Based on the above scenario, answer the following:

- a) What documents are eligible for registration under the Registration of Documents Ordinance?

(5 marks)

- b) Assume you are the Judge of the Court of Appeal hearing Fernando's appeal. Write a judgment analyzing whether the District Judge's decision should be upheld. Support your answer with relevant case law.

Your judgment should discuss the following points.

- The relevance of section 7 of the Registration of Documents Ordinance to Fernando's claim.

(20 marks)

- The relevance of section 10 of the Registration of Documents Ordinance to Fernando's claim.

(5 marks)
