

UNIVERSITY OF COLOMBO  
FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR II – 2017

EQUITY AND LAW OF TRUSTS

(THREE HOURS)

No. of Questions: 07

Answer **FOUR** questions only and no more.

(Candidates will be penalized for illegible handwriting.)

1. "...it was on the basis of 'conscience' that the Chancellor exercised this royal power to remedy injustice, by ordering individuals to act in accordance with good conscience despite what their legal rights might be."

Critically reflect on the above statement in light of the historical development of equity in English law and the maxims of equity.

2. Advise whether, in equity, specific performance could be granted in the following circumstances:
- Jenkins, a UN official, had a five year lease on an apartment in Surath's apartment complex. According to the lease Surath was 'to employ a resident porter whose duties were to clean the common parts, to look after the air-conditioning and carry rubbish to the dustbins'. Surath failed to provide a porter. Advise Jenkins.
  - Gerald, a senior engineer, entered into a contract with Solar Engineering Company (SEC) to be appointed as its managing director for a period of five years. When he went to assume duties the chairman of SEC informed him that the company had decided to operate without a managing director. Advise Gerald.
  - Kenneth contracted to sell his house to Ramil. Kenneth's bankruptcy caused a long delay in concluding the sale. Towards the end of the sale process Kenneth was diagnosed with a life-threatening disease and had a leg amputated. He relied on help from nearby friends and relatives and now does not want to leave the house and move away. Advise Ramil.
  - Colin, the secretary of the Yamu Idriyata Pakshaya contracted with the Thunmulla Urban Council to occupy its conference hall for two days to hold the annual conference of the Pakshaya. Fearing a breach of the peace and a riot, the council repudiated the contract. Advise Colin.

- 3 Advise Arjun, the trustee, whether the following bequests made in Suren's last will create valid express trusts:
- a) 50% of my fixed deposit in the People's Bank Thimbirigasyaya Branch in the belief that the money will be used for the education of the children of my school's cricket coach;
  - b) Rs.300,000/- to the Faculty of Law to make large size pictures of all the Deans of the Faculty, and frame them with high quality golden colour frames and place them in the Board Room of the Faculty;
  - c) My apartment complex with twenty housing units in Dehiwela for the benefit of my children and their generations;
  - d) Rs.3 million to promote the business of my liquor shop in Nuwara Eliya and use the profit from the business for the benefit of 100 HIV positive persons selected by Arjun according to his discretion.
4. 'The policy in question behind most litigation concerning charitable trusts is an examination of whether the purposes are so useful to the public as to earn the concessions accorded to charitable trusts. Yet the policy must necessarily be affected by changing social and economic conditions.'

Do you agree? Provide reasoned and supported arguments for your answer.

5. a) Siva who was born and later worked in Nallur, has lived in Canada for the last twenty years. After the end of the war in 2009, Siva sent Rs.7 million to Prem who is a real estate businessman, and requested him to transfer a house with garden in Nallur in the name of Kamala, Siva's sister. After the purchase of the house Kamala lived in the house in Nallur. Siva asked Kamala to varnish all the valuable antique furniture in his old house in Kopay and to keep them in the house in Nallur. In the many emails that Siva sent Kamala, he mentioned that he disliked the Canadian lifestyle and climate. In April 2017 Siva returned to Sri Lanka and asked Kamala to re-transfer the house in Nallur to him and to return his furniture. Kamala refused to re-transfer the house and to return the furniture. She stated that they are her properties and Siva has no claim on them.

Siva seeks your advice. Advise him based on the provisions of the Trusts Ordinance.

- b) Mahen, a lawyer in Kandy purchased a valuable land with a house in Kandy from his only sister Ovia, a widow living in Nawalapitiya. Before the purchase, Mahen told Ovia that local people encroach on the land and that the municipal council also intends to acquire the land for a fish market. When the land and house was purchased there were two cars of antique value in the car park of the house. One car belonged to Ovia's deceased husband and the other to his business partner Namal who carried on a car business with Ovia's husband. Mahen told Ovia that her husband's car was not in a road-worthy condition and bought the car. Later Ovia came to know that Mahen had cheated

her and made her agree to an under-estimated value of the land, house and car. When Namal came to take his car Mahen refused to give it to him stating that the abandoned car cannot be claimed now.

Ovia and Namal seek your advice. Advise them based on the provisions of the Trusts Ordinance.

6. 'Living up to expectations' is the onerous principle underlying the office of trustee; after all there is little to be said as to his rights.'

Clarify the above statement using the provisions of the Trusts Ordinance and any relevant case law.

7. a) In 2013, Nihal transferred two properties called Malwatte in Bandarawela and Polwatte in Puttalam to Mahesh in trust for the benefit of Nihal's son, Varuna. Nihal asked Mahesh to divide Malwatte into four plots and sell them within two years and deposit the proceeds in a bank account. In 2017, the land values in the area dropped because of the protests against the Uma Oya project and Mahesh sold the entire land without dividing it into plots. Mahesh deposited the proceeds in a bank account as instructed by Nihal. Nihal asked Mahesh to use the income from Polwatte for the education of Varuna. But Mahesh sold Polwatte to Wimal who bought the land without any knowledge of the trust. Wimal sold the land to Kamal. Mahesh purchased an apartment from the proceeds of the sale.

Varuna seeks your advice as to the nature of the breaches of trust and the remedies available to him. Advise Varuna based on the provisions of the Trusts Ordinance.

- b) Consider 7a) above in the following situations: Mahesh informed Varuna that he was selling Malwatte without dividing it into lots; Varuna affirmed the sale of Polwatte made by Mahesh to Wimal and accepted part of the purchase money paid by Wimal; and Kamal was aware of the trust.