

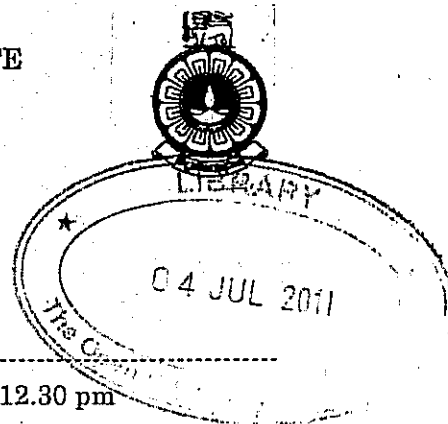
THE OPEN UNIVERSITY OF SRI LANKA

M.Sc IN ENVIRONMENTAL SCIENCE / POSTGRADUATE
DIPLOMA IN ENVIRONMENTAL SCIENCE – LEVEL 6

FINAL EXAMINATION 2010/2011

ENVIRONMENTAL LAW – NEP 1201

DURATION – 3 HOURS



Date: 18th February 2011 Time: 9.30 am – 12.30 pm

Please make sure that your handwriting is legible.

It is prohibited to have mobile phones in your possession in the examination hall.

ANSWER FOUR QUESTIONS ONLY (All questions carry equal marks)

1. Explain the objectives of the following conventions and discuss strategies they use to achieve these objectives. Do you think these strategies have been successful?
 - (a) Vienna Convention for the Protection of the Ozone Layer, entered into force 22 September 1988 and Montreal Protocol on Substances that Deplete the Ozone Layer 1987, entered into force 1 January 1989.
 - (b) United Nations Framework Convention on Climate Change (UNFCCC), entered into force 21 March 1994 and The Kyoto Protocol, entered into force 16th February 2005.
2. The State of Taprobane has several national parks which are protected under its Fauna and Flora Protection Ordinance. The government of Taprobane which wants to develop tourism, has decided that the Mahavillu National Park should be given over to private management in order to be developed for tourism. The Park is home to a huge array of biodiversity including the largest population of leopards in the country.

Peter Walker Ltd, the country's largest tourism company has successfully bid for the management of the park. It intends to develop the roads which run through the park, build several hotels within the park boundaries and two restaurants within the buffer zone.

The Minister of Tourism of Taprobane has informed Peter Walker Ltd. that it would be exempt from the environmental assessment procedure under the National Environmental Act.

A group of environmentalists who are concerned about these developments, has come to you to seek legal advice as to whether they can challenge this project. What advice would you give them? Note that all laws in Taprobane are identical to that of Sri Lanka.

3. Consider the National Environmental Act No. 48 of 1980 as amended by Act No. 56 of 1988 of Sri Lanka and compare it with the framework environmental statutes of other countries of the South Asian region. Critically discuss both its advantages and ways in which it can be improved in the light of this comparison.
4. Explain the following principles of environmental law and cite cases to show how the courts have implemented them.
 - (a) The polluter pays principle
 - (b) The principle of inter-generational equity
 - (c) The principle of common but differentiated responsibilities
 - (d) The precautionary principle
5. Environmental protection laws are an obstacle to countries which are trying to engage in rapid economic development

Do you agree with this statement? Discuss it giving reasons to support your point of view.

6. WalkAid Ltd. is a company which manufactures artificial limbs for export. During the recent power crisis when electricity supplies were cut for more than ten hours a day, the factory continued to operate with diesel powered generators. After a few weeks it was found that the noise, fumes and smell from the generators were seriously affecting the health and well being of the children living in an orphanage close by. The ages of these children ranged from 2 to 16 years. Some children started developing respiratory problems and many could not sleep at night.

The Matron of the orphanage made a complaint to the Police regarding this matter and the Police filed a complaint in the Magistrate's Court under Section 98 of the Criminal Procedure Code. The Magistrate issued a conditional order ordering the factory to cease operations.

WalkAid has made the following objections to the order

- Its products are of great importance to disabled people
- the company earns much needed foreign exchange for the country
- the company possesses an Environment Protection License
- the government has requested all industries to find alternate sources of energy to continue business while the power crisis lasts
- the factory was in operation many years before the orphanage was established although they were earlier operating on a very small scale.

If you were the Magistrate in the case would you confirm the order? Give reasons for your decision.

7. Explain the strategies used by the following conventions to protect biodiversity.

- (a) International Convention for the Regulation of Whaling 1946
- (b) Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989 (Wellington Convention) adopted 24 November 1989; entered into force 17 May 1991
- (c) Convention on Wetlands of International Importance especially as Waterfowl Habitat adopted 2 February 1971; entered into force 21 December 1975
- (d) Convention on the Conservation of Migratory Species of Wild Animals (CMS) adopted 23 June 1979; entered into force 1 November 1983 (CMS or Bonn Convention)

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