



The University of the South Pacific
School of Law
Emalus Campus & Online Students

Final Examination
Semester 2 – 2005

SCHOOL OF LAW

COURSE NAME: **LEGAL SYSTEMS II**

COURSE NO: **LA101**

TIME ALLOWED: **Three (3) Hours**

READING TIME: **Ten (10) Minutes**

NUMBER OF PAGES: **Five (5), including cover page**

NUMBER OF QUESTIONS ON PAPER: **Eight (8)**

NUMBER OF QUESTIONS TO BE ANSWERED: **Five: the compulsory question in section A and any four (4) in section B**

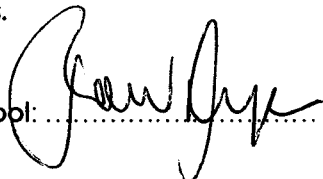
MARK ALLOCATED FOR EACH QUESTION: **The question in section A carries twenty (20) marks and those in section B carry ten (10) marks each.**

TOTAL MARKS: **Sixty (60)**

MATERIALS PERMITTED IN EXAMINATION ROOM: **None; this is a closed-book exam.**

SPECIAL INSTRUCTIONS: **Where appropriate do not forget to cite legal authorities for your answers.**

Approved by Head of School:

 Date: 27/9/2005

Please do not turn over this page until you are told to do so.

SECTION A

This section has only one compulsory question which carries twenty (20) marks. The recommended length of answers to this question is about nine paragraphs or around four pages of the examination answer book.

QUESTION ONE

Jonah and Ishmael are neighbours in a village community in Pacifica, a country in the Pacific Islands region. Since the time they could both remember, there had always been a dispute between Jonah and Ishmael's families about a part of the land between their two houses. In September 2004, Jonah planted some yams on that piece of land and tended them. When the yams were just about ready for harvest, Ishmael dug them all up on the 2nd of July 2005 and used them for a big custom ceremony. The next day Jonah put up a big fence around the piece of disputed land and would not let Ishmael or his animals come near it. Ishmael became very angry and went to see the chief of the village.

The chief held a meeting in early August to which Jonah refused to attend. The chief heard what Ishmael said and then made a judgment that the land belonged to Ishmael and ordered Jonah to remove the fence. When Ishmael went to show the judgment to Jonah, Jonah said that he would take the matter to a "proper" court, and filed an originating motion in the High Court seeking a declaration that the land belonged to him and sought compensation for the loss of his yams. Jonah knew about the Land Court, but he had heard that the judges in that Court always take a long time to reach a decision, and so he decided to go "straight to the top" to the High Court.

When the case came before the High Court, Justice Dimwit said that usually he would not hear the claim, but he understood that Jonah wanted a quick resolution of the matter and so agreed that he would hear it "just this time". When the hearing started, Ishmael told the court that the matter was *res judicata* because the village chief had already made a decision and so the matter had been finally resolved and there was no need for the court case. The judge told Ishmael to sit down and stop wasting his time. Then Jonah started to give evidence, but stopped half-way through giving the evidence and asked if Ishmael could be removed from the court as he found his presence distracting. The judge said that he understood completely and observed that Jonah had a very untrustworthy looking face. He made an order that Ishmael must wait outside for the time Jonah and the other witnesses were giving evidence. While Ishmael was waiting outside, he saw Jonah's aunt bring a freshly baked cake to give to the judge's assistant. At the end of the hearing the judge held that the land belonged to Jonah and that Ishmael had to pay compensation for all the yams he had taken and also give Jonah his next harvest of yams. The judge said that the compensation was particularly high because Ishmael had tried to slow down the proceedings by talking about the chief's decision. While the judge

was handing down his decision he winked at Jonah's aunt who was sitting in the back of the court and she in turn gave him a sweet smile.

Ishmael is outraged at what has happened to him in court and comes to see you for advice.

The main statutory laws applicable to this matter are as follows.

Firstly, section 117 of the *Constitution of Pacifica* says:

- (1) The judicial power of the State vests in the Land Court, the Magistrate's Court, the High Court and the Court of Appeal which shall exercise such powers and jurisdictions as are conferred by this Constitution and other laws from time to time.
- (2) All proceedings in these courts shall be held in open court unless the conduct of the defendant or other factors render this impracticable.

The composition, jurisdictions and functioning of all these courts are prescribed in the *Courts Act*, Chapter 3 of Pacifica. Of the High Court, section 10 of the Act says:

The High Court of Pacifica has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution.

Section 11 of the Act also says:

Notwithstanding the provisions of any law to the contrary, the Land Court shall have exclusive jurisdiction in all matters of a civil nature relating to land and the determination of boundaries of land.

Prepare a memorandum of advice for Ishmael. In the advice you should explain:

- a) Whether or not the decision by the chief is a decision authorised by law; and
- b) Identify **three (3)** possible grounds that he can use to appeal against the decision by the High Court. You should cite one or two cases in support of each ground

(20 marks)

SECTION B

This section contains seven (7) optional questions of which you are required to answer only **four (4)**. Each question in this section carries ten (10) marks so the total number of marks for this section is forty (40).

QUESTION TWO

Think of formal courts that have been set up by states in countries of the USP region and reflect on their source of authority, their main functions and the controlled nature of their operation. Describe these matters and identify and explain any similarities or differences that these facets of the formal courts have with two similar bodies, namely, Commissions of Inquiry and Village Chiefs Councils.

(10 marks)

QUESTION THREE

Identify and briefly describe **three (3)** Royal Courts which evolved in England during the Middle Ages and further explain what became of each as a result of the enactment of the *Judicature Act 1873-75* (UK). Also explain if the decisions made by each of the Royal Courts you referred to and their successors (if any) have any value as precedents in USP countries today.

(10 marks)

QUESTION FOUR

Explain the **four (4)** basic rules of evidence which the courts of common law have developed in order to regulate the way in which evidence should be produced to the courts. In your discussions, provide one or two examples for each of the four basic rules.

(10 marks)

QUESTION FIVE

With reference to decided cases in common law jurisdictions, discuss the main features of the **two (2)** main types or forms of estoppel.

(10 marks)

QUESTION SIX

Explain the meaning and scope of the "contextual approach" to interpretation of a written Constitution as developed by the courts in common law jurisdictions. Refer to relevant cases as illustrations of your discussions.

(10 marks)

QUESTION SEVEN

Statutes in some countries of the USP region and elsewhere contain this or a similar rule:

Each Act shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

Discuss the meaning of this rule and, with reference to decided cases, explain how the rule is applied in practice.

(10 marks)

QUESTION EIGHT

In one or two paragraphs, explain the meanings and, where appropriate, give an example of any five (5) of the following terms as used in the context of the LA101 course:

- (a) Criminal proceedings
- (b) Civil proceedings
- (c) Autrefois acquit
- (d) Identity evidence
- (e) Probative value
- (f) Creditworthiness
- (g) Analogy
- (h) Induction
- (i) Deduction
- (j) Obiter dicta
- (k) Persuasive precedent
- (l) Discretion

(10 marks)

End of Examination Paper
&
Good luck with it!