

# MASTER COPY

The University of the South Pacific

School of Law

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LA110: Law & Society

**Final Examination-Semester 2, 2006**

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Time Allowed 3 hours plus 10 minutes reading

60 marks (60% of final grade)

## INSTRUCTIONS

1. This exam has four parts:
  - (a) Part A: 20 marks
  - (b) Part B :20 marks
  - (c) Part C :10 marks
  - (d) Part D :10 marks
2. Question 1 is compulsory.  
Choose (4) out of the (8) questions in part b  
Choose (1) out of the (2) questions in part c  
Answer all (5) questions in part d.
3. No materials are allowed in the examination room.
4. This exam is worth 60% of your overall mark. The minimum mark is 25/60.

Approved

 28/2/06

## Part A

This question is compulsory. It is worth 20 marks in total.

### Question 1

Domisi and Derin Smart are from Wazobia; both have studied Political Science and International relations at the University of Waikato in New Zealand. They have returned to Wazobia and set up their NGO in No Man's Island. They started educating their people on the human rights, the bill of rights and promoting awareness amongst people of their rights under the Constitution of Wazobia. Soon they have a large group of followers which they turned into a political association by the name of Freedom and Equality Party, which was duly registered under the Wazobia Political Parties Registration Act.

In 2005 by popular demand they decided to field candidates for all the constituencies in the General Elections. They wanted to start their campaign to seek support of people on the Island of Lafia where they both come from. Unfortunately, the Council of Chiefs of Lafia had adopted a resolution in 2004 banning all "new political parties" from campaigning or seeking nominations from the people of Lafia.

On arrival at Lafia Domisi and Derin began to hold open air and house to house campaigns telling people about their political party, their manifestos and that it was time for a change in Wazobia. Soon people were flocking to their open air campaigns and others inviting them to the churches, homes and schools to hear more about their party. People were attracted to their ideas and started joining their party. Before long opposition to the political party by the Council of Chiefs and the Police Force grew. Domisi and Derin were threatened with witchcraft if they did not "stop brain washing the people" One evening while holding a political rally the group was attacked with stones, cane knives and other weapons. Police arrived at the scene and threw teargas to disperse the group. Domisi, Derin and their group fled Lafia; they knew their lives were in danger.

When they arrived back in No Man's Land, Domisi and Derin instituted legal actions against the Council of Chiefs and the Police claiming that their constitutional right to freedom of conscience, political association and belief has been violated.

The relevant sections of the Constitution of Wazobia are:

#### **21. The fundamental human rights and freedoms**

(1) Every person in Wazobia is entitled, whatever his race, place of origin, political opinions, colour, religious beliefs, or sex, to the following fundamental rights and freedom:

- (a) Freedom of belief and political association, except with his consent no-one shall be hindered in the exercise of his freedom of belief and political expression.
- (b) The right to political association, or not to associate, in whatever way the conscience of the individual tells him: and to spread political beliefs:

### **35. Protection of Wazobia values**

(1) This Constitution acknowledges that Wazobia is based on the Rule of Law, Wazobia values, culture and tradition, and respect for human rights and dignity.

(2) Customary law shall have effect as part of the law of Wazobia, except to the extent that it is inconsistent with an act or any other law made by the Parliament of Wazobia.

The relevant section of the Wazobia Council of Chiefs Act is:

### **16. Authority of the Wazobia Council of Chiefs**

(1) The Wazobia Council of Chiefs is by this Act empowered to:

- (a) protect and preserve the traditional culture of the Wazobia area
- (b) assist the police in controlling any act or conduct likely to cause a riot or disturbance and in suppressing any breach of the peace of the community;
- (c) regulate and control by bye-laws public gathering in public places.

### **Questions**

- (a) From a positivist, naturalist, realist and sociological position, is the resolution adopted by the Council of Chiefs a valid law? Why/why not?
- (b) Should the Council of Chiefs be allowed to make such a resolution?
- (c) Should Domisi and Derin's action be allowed to succeed? Why /why not?
- (d) Can the other members of their political party also challenge the actions of the Council of chiefs? Why/why not?

**Each question is worth 5 marks.**

## **PART B**

**You must answer FOUR (4) questions from this part. Each question is worth 5 marks, making a total of 20 marks.**

### **Question 2**

What is law and why is it difficult to define law precisely.

### **Question 3**

What is justice? Is law and justice the same? If your answer is yes why are they the same, and if your answer is No why are they not the same?

### **Question 4**

What is legal tradition and what are the four types of legal systems that we have in the world today?

### **Question 5**

Briefly describe

- a) The Separation of powers,
- b) The Rule of law.

### **Question 6**

What does the doctrine of precedent mean? On which court is precedent binding it binding? Give an example of a case in Fiji.

### **Question 7**

Define human rights. What are positive and negative human rights?

### **Question 8**

Name the three International Instruments that govern Human Rights and explain what they contain.

### Part C

You must answer **ONE (1)** question from this part. Each question is worth **10** marks.

#### Question 9

“Colonialism involved the rule of taking territory of one people by another without their consent” Discuss this statement with particular reference to the Fiji Islands. Set out the advantages and disadvantages of colonialism for Fiji.

You should consider

- (a) What is colonialism?
- (b) Which country colonized Fiji, between what times?
- (c) How did the colonial powers rule Fiji?
- (d) How did they make laws?
- (e) What are the advantages of colonization for Fiji?
- (f) What are the disadvantages of colonization for Fiji?

#### Question 10

Fiji’s constitution protects legal pluralism which provides a space for customary law within the hierarchy of laws. However, constitutional pluralism not only protects but also undermines customary law. Please provide two examples of this undermining process.

You should consider:

- (a) Explain what legal pluralism is
- (b) What position does customary law have in the hierarchy of laws in Fiji?
- (c) In what ways does the constitution of Fiji protect customary law?
- (d) In what ways does the constitution of Fiji undermine customary law?

## PART D

You must answer all the FIVE (5) questions from this part. Each question has only one correct answer. Each question is worth two (2) marks.

### Question 11

- (a) Moral thinking is based upon your own personal beliefs of what is right and wrong.
- (b) Moral thinking is based on all peoples' beliefs of what is right and wrong.
- (c) Moral thinking is based on the Judge's beliefs of what is right and wrong
- (d) Moral thinking is not based on emotional reactions.

### Question 12

- (a) The laws in Fiji before the Europeans came purported to relate to individual communities not whole communities
- (b) The laws in Fiji before the Europeans came were in accordance to the cultures and customs of the South Pacific.
- (c) The laws in Fiji before the Europeans came were well known by all Fijian communities.
- (d) The laws in Fiji before the Europeans came were recorded in writing.

### Question 13

- (a) The concept of sovereignty is one of the recent developments in the world.
- (b) The concept of sovereignty has had a long history of development.
- (c) The term sovereignty has only one meaning.
- (d) The concept of sovereignty is not in any way related to the growth of modern nation-state.

### Question 14

- (a) The Pacific has a regional human rights institution
- (b) African states do not have a regional human rights institution
- (c) The inter-American Commission on Human rights is an international human rights institution.
- (d) The Council of Europe is a regional human rights institution.

### Question 15

- (a) All the countries in the South Pacific have ratified the major international human rights instruments.
- (b) All the nations in the South Pacific have ratified the convention on the rights of the child.
- (c) All nations in the South Pacific have ratified the International covenant on civil and political rights.
- (d) All the nations of the South Pacific have ratified the International covenant on economic, social and cultural rights.

**THE END.**