



The University of the South Pacific

Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu

To: Student Academic Services

Subject: EXAMINATION INFORMATION FORM

1. School: School of Law
2. Course No: LA 110
3. Semester/Year: I / 2006
4. Title: Law and Society
5. Time allowed: three (3) hours plus ten (10) minutes reading time
6. Number of questions on paper: twenty-one (21)
7. Number of questions to be answered: seventeen (17)
8. Mark values

PART A: All students must answer ONE question (4 sub-questions a-d). Each sub-question is worth 5 marks (20 marks in total)

PART B: Students must answer SIX questions from this part. Each question is worth 4 Marks (24 marks in total)

PART C: Students must choose ONE question from this part to answer. Each question is worth 10 marks (10 marks in total)

PART D: Students must answer SIX multiple choice questions. Each question is worth 1 mark (6 marks in total).

9. Number of candidates expected: 204 (including 44 Emalus Campus students)
10. Materials required: (log tables, graph paper, etc): answer sheets
11. Number of extra paper required for Departmental records, etc:
12. Other details of instructions: no additional materials allowed
13. We, the lecturer in charge of the course and the head of department, confirm that the attached examination paper for course LA110 (Law and Society) was moderated by the School of Law Department at its meeting on _____

Lecturer

(Signature)

Date 26/4/06

HOD:

(Signature)

Date 26/4/06

Note: The examination paper will be returned to the lecturer if the lecturer and the Head of Department have not certified that the paper has been moderated, as required by clause 2 of the Assessment Regulations.

[Please attach this form to your examination paper].



The University of the South Pacific

Serving the Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, and Vanuatu.

School of Law

LA110: Law & Society

FINAL EXAMINATION – SEMESTER 1, 2006

Time Allowed: 3 hours plus 10 minutes reading

60 marks (60% of final grade)

INSTRUCTIONS

1. This exam has four sections:
 - a. Section A: 20 marks
 - b. Section B: 24 marks
 - c. Section C: 10 marks
 - d. Section D: 6 marks
2. Answer all questions in section A (4 in total).
Choose six (6) out of nine (9) questions in section B.
Choose one (1) out of two (2) questions in section C
Answer all questions in section D (6 in total).
3. No other materials are allowed in the examination room.
4. This exam is worth 60% of your overall mark. The minimum exam mark is 25/60.

Approved 20/4/06
[Signature]

PART A

This question is **COMPULSORY**. It is worth 20 marks in total.

Question 1

Mabo Kalabasa and his wife Teresa Kalabasa were of Pacifica origin but Atlantis passport holders. Both being very religious people, they started a Bible Study Group in Pacifica in 2003. The Bible Study Group soon attracted so many people that by the same year it turned into a church by the name New Light, which was duly registered under the *Pacifica Religious Bodies Registration Act*.

In 2005, Mabo and Teresa decided to expand their missionary activities; they wanted to go to the Pagoo atoll (outer islands of Pacifica), where both originally came from. Unfortunately, the Council of Elders of Pagoo had adopted a resolution in 2004 banning all “new religions” other than Simon’s Witnesses and the Reincarnation Church – both very powerful communal institutions.

On arrival, Mabo and Teresa nevertheless started to spread the good news of the New Light Church among Pagoo community members, who seemed not uninterested to hear about it. Some of them even felt very much attracted to Mabo’s and Teresa’s ideas. However, the opposition to the church – supported by the Council of Elders and the Police Force – grew. Mabo and Teresa were threatened with voodoo should they not “stop advocating their church”. When the New Light Church and its members were stoned one evening, Mabo, Teresa and other New Light members fled Pagoo as they feared for their lives.

Once back in the capital of Pacifica, Ateate, Mabo and Teresa instituted an action against the Council of Elders of Pagoo, claiming that their constitutional right to worship and the freedom of belief had been violated.

The relevant sections of the *Pacifica Constitution* are:

11. The fundamental human rights and freedoms

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

- (a) freedom of belief; except with his consent no-one shall be hindered in the exercise of his freedom of belief.
- (b) the right to worship, or not to worship, in whatever way the conscience of the individual tells him; and to spread beliefs;

29. Protection of Pacifica values

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

(2) Customary law shall have effect as part of the law of Pacifica, except to the extent that it is inconsistent with an Act or an applied law published under section 11(1) and subsidiary legislation made thereunder and so published.

The relevant section of the *Pagoo Council of Elders Act* is:

14. Authority of the Pagoo Council of Elders

1. The Pagoo Council of Elders is by this Act empowered to:

- (a) to protect and preserve the traditional culture of the Pagoo area
- (b) to 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) to regulate and control by bye-laws public collections in public places

Subquestions:

- a. From a positivist, naturalist, realist and sociologist position – is the resolution adopted by the Council of Elders of Pagoo a valid law? Why / why not? (5 marks)
- b. Should the Council of Elders of Pagoo be allowed to make such a resolution? Why / why not? (5 marks)
- c. Should Mabo's and Teresa's action be allowed to succeed? Why / why not? (5marks)
- d. Imagine the Court had made its decision dependent on citizenship, saying that the fundamental rights granted by the Constitution of Pacifica would only apply to Pacifica nationals. According to the Court Mabo and Teresa cannot invoke them. In your opinion, is this a wise judgment? Why / why not? (5 marks)

PART B

You must answer SIX (6) questions from this part. Each question is worth 4 marks, making a total of 24 marks.

Question 2

- ✓ What is the lawyer's definition of law and what difficulties do you think does it constitute? (4 marks)

Question 3

- ✓ What reasons did imperial European countries have for not wishing to apply customary laws existing in their respective dependencies at the time they assumed political control? (4 marks)

Question 4

- ✓ What is meant by the term 'sovereignty'? (4 marks)

Question 5

- ✓ What is the trias politica? (4 marks)

Question 6

What categories of human rights do you know? Describe briefly and give examples. (4 marks)

Question 7

In what way(s) are international documents only of limited value when it comes to the protection of human rights? (4 marks)

Question 8

What policy changes occurred during the time of the second (informal) British Empire? (4 marks)

Question 9

- ✓ Briefly describe four (4) forms of political control exercised by colonisers in the South Pacific. (4 marks)

Question 10

- ✓ What makes the suspension or repeal of a written Constitution valid? (4 marks)

PART C

You must answer ONE question from this part. Each question is worth 10 marks. Keywords are not allowed.

Question 11

Discuss the following quotation:

"Existing constitutions often contain certain aspects foreign to the Pacific experience and do not take account of the circumstances and values of Pacific societies. Pacific constitutions should reflect the aspirations of, and be owned by, the people."

Samoa Observer August 25, 2002

You should consider:

- (a) How come that Pacific constitutions contain these foreign aspects?
- (b) What foreign aspects do Pacific constitutions contain?
- (c) What consequences (advantages / disadvantages) do these foreign aspects have on Pacific societies?
- (d) Do you agree or disagree with the above statement?

(10 marks)

Question 12

All Pacific constitutions protect 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?
- (c) In what ways do constitutions protect customary law?
- (d) In what ways do constitutions undermine customary law?

(10 marks)