



**SCHOOL OF LAW**

**COURSE NAME:** Law and Society

**COURSE NO:** LA 110

**TIME ALLOWED:** 3 hours

**READING TIME:** 10 minutes

**NUMBER OF PAGES:** 6

**NUMBER OF QUESTIONS ON PAPER:** 16

**NUMBER OF QUESTIONS TO BE ANSWERED:** 13

**MARK ALLOCATED FOR EACH QUESTION:** Part A: 20 marks;  
Part B 10 marks;  
Part C 20 marks;  
Part D 10 marks

**TOTAL MARKS:** 60

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

The exam is closed book. No material is permitted into the exam room.

**SPECIAL INSTRUCTIONS**

- Answer all questions from Part A (questions 1 and 2)
  - Answer all questions from Part B (question 3)
  - Answer any 5 questions from Part C (questions 4 – 11)
  - Answer all 5 questions from Part D (Questions 12 – 16)
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**Please do not turn over any page until you are told to do so.**

**Part A: Compulsory. Answer all questions in this section. This section is worth 20 marks.**

**Question 1 (8 marks)**

The Government of Pacifica was concerned about the increase in the number of attacks on women. These attacks mainly happened at night time. The government passed a law which states:

All women over the age of 15 must remain in their houses or places of ordinary residence between the hours of 8 p.m. to 6 a.m. Women who are found breaking this law will be subject, on conviction to a maximum \$500 fine and/or 3 months imprisonment.

Many of the citizens of Pacifica think this is a ridiculous law. Most women are refusing to obey the law, and most police officers are refusing to arrest women who are outside after 8 p.m. Since the law was passed 3 month ago, only two cases have gone to court. In these cases the judge has decided that there has been a breach of the law and have fined the women 1 cent. (\$0.01)

1. Would a legal positivist say that this is a valid law? Why/why not? (2 marks)
2. Would a natural law theorist say that this is a valid law? Why/why not? (2 marks)
3. What is the law in Pacifica from the point of view of a legal realist? Why? (2 marks)
4. What is the law in Pacifica from the sociological point of view? Why? (2 marks)

**Question 2 (12 marks)**

The Lovono Council of Chiefs is a body made up of local chiefs that has been established under the Area Council of Chiefs Act 2000. This body is also concerned about the attacks on women in Pacifica, and so has made a resolution that provides that women are not to go out of the central village area unless they are accompanied by at least one male relative. In traditional custom women were not allowed to go out without a male relative, however in recent years this custom has not been strictly followed. Some chiefs feel that women have been acting too independently recently and that this is causing problems and increasing attacks on them.

Mina is a strong minded young women who was educated in town but is now back living in the village. She thinks the law is too restrictive, as it means that she cannot even go to her gardens or to the beach with her friends.

She has asked you to see whether the resolution by the Lovono Area Council of Chiefs is unconstitutional.

The relevant sections of the *Pacifica Constitution* are:

**Human rights**

5. (1) The Republic of Pacifica recognizes that all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination

on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health-

(i) freedom of movement;

**Protection of Pacifica values**

s 29(1) The Constitution acknowledges that Pacifica is based on the rule of law; Pacifica values, culture and tradition; and respect for human dignity.

The relevant sections of the *Area Council of Chiefs Act* are:

s2: Area Councils of Chiefs may be established under this Act.

s3: Any Council of Chiefs established under this Act is empowered to make regulations to:

- a) Protect and preserve traditional culture;
- b) Assist police in controlling any conduct that this likely to create a disturbance in the community.

1. Does the Lovono Council of Chiefs have the power to make the resolution that it did? (2 marks)
2. In your opinion can Mina successfully challenge the resolution on the grounds that it is unconstitutional? In your answer you should refer to both s 5 and s 29 of the Constitution. (10 marks)

**Part B: Compulsory. Answer all questions in this section. This section is worth 10 marks.**

**Question 3**

On the night of 20 February 2007 Willie went to The Sunrise Bar. He got drunk. Once he was drunk he wanted to keep on drinking, but did not have enough money to pay for his drinks, so he opened an account with The Sunrise Bar. On leaving he signed a contract with the bar to pay his account. The contract states "I, the undersigned, agree that I owe the Sunrise Bar \$436 for drinks on 20/2/2007". The next day Willie found a copy of this agreement in his pocket. He does not remember signing it.

Willie has come to see you to find out if he has to pay this \$436. He says that there is no way that he could have drunk that much in one night, so the account must be wrong.

You have done some legal research and found the following rule about contracts entered into by drunk people:

At common law such people can be held liable for contracts for necessities, (food, clothing, housing et cetera) but all other contracts made by them whilst they were incapable can be cancelled by them. The other party has no right to set aside the contract, however.

For this to apply, at the time the contract is made

- ⇒ the person must be incapable of understanding what they were doing
- ⇒ the other party must know, or should have known of the incapacity

1. From a legal point of view should Willie be held liable to pay the \$436? (5 marks)
2. From a justice point of view should Willie be held liable to pay the \$436? (5 marks)

**Part C: Answer any 5 questions from this section. This section is worth 20 marks. Each question is worth 4 marks.**

**Question 4**

Explain the difference between law and justice.

**Question 5**

What are the sources of law in your country?

**Question 6**

What different sorts of legislation exist in your country and where does each type of legislation come from?

**Question 7**

Explain what the common law system is and why it is particularly relevant to the Pacific.

**Question 8**

Explain three different meanings that can be given to the term "common law".

**Question 9**

Define legal pluralism and explain why the concept of legal pluralism is so important in the Pacific Islands region.

**Question 10**

Explain the history of colonialism in your country, indicating dates for all key events. How does this history of colonialism affect your country's current laws?

**Question 11**

What is the difference between colonialism, colonisation and imperialism?

**Part D: Answer all questions. This section is worth 10 marks. Each question is worth 2 marks. In your answer booklet just write the question number and correct letter.**

**Question 12**

Which perspective on the law does this statement best represent: "Parliament has passed a law against littering. It is not enforced by the police so it is not really a law."

- a) The positivist view
- b) The sociological view
- c) The realist view
- d) The Marxist view
- e) Natural law theory

**Question 13**

What is subsidiary legislation?

- a) Legislation that was adopted from other sources at Independence
- b) Legislation that is made by Parliament without following the normal process of readings
- c) Legislation that is made by Parliament but that does not need Presidential assent
- d) Legislation that is made by another authority under the delegated power of Parliament

**Question 14**

What is the role of courts in law making?

- a) Courts do not make law, but only resolve disputes
- b) Courts apply the law that Parliament has made
- c) Courts can make whatever rules they want to when they resolve disputes
- d) Courts can make laws only if no other laws apply to the dispute

**Question 15**

What is the main source of laws on human rights in Pacific island countries?

- a) The country's Constitution
- b) The Universal Declaration of Human Rights
- c) The International Covenant on Civil and Political Rights
- d) The International Covenant on Economic, Social and Cultural Rights

**Question 16**

What is meant by sovereignty of a nation?

- a) That the nation is ruled by a King or Queen
- b) That the nation can exercise control over its own affairs
- c) That the nation is under control of another country
- d) That the nation is a democracy