
SCHOOL OF LAW

COURSE NAME: **COURTS & DISPUTE RESOLUTION 1**

COURSE NO: **LA111**

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

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

NUMBER OF PAGES: **Seven (7), including cover page**

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

NUMBER OF QUESTIONS TO BE ANSWERED: **Four: the compulsory question in section A and any three (3) 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: **Fifty (50)**

SPECIAL INSTRUCTIONS: **This is an OPEN BOOK exam.**

You are allowed to bring into the examination room and use any book or other written material, including your course materials. However, you must properly acknowledge any other written material that you use or quote from.

Approved by Head of School: *B. Poparku* Date: *19/05/07*

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 around ten paragraphs or five pages of the examination answer book.

QUESTION ONE

Assume that the Republic of Paradiso is a country in the USP region. It has a written *Constitution* which guarantees a broad range of fundamental rights that mirror the fundamental rights provisions of the *Universal Declaration of Human Rights*. Also, section 50 of the *Constitution* of Paradiso reads:

50. The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law.

The *Courts Act* of the Republic of Paradiso establishes the court system for the country. In hierarchical order, these consist of the Court of Appeal, the High Court, the Magistrates' Court and the Island Courts. The *Courts Act* also specifies the jurisdiction of each of these courts.

Of the Magistrates' Court, section 10 of the Act says:

Subject to the other provisions of this Act and to any other law for the time being in force, every Magistrate's Court shall have and exercise jurisdiction in civil causes and matters for the time being set out in schedule 1.

Schedule 1 of the Act contains a list of matters including, "Petitions for Divorce, Custody and Maintenance" and "Appeals from decisions of the Island Courts".

As to the jurisdiction of the Island Courts, section 20 of the Act says:

The civil jurisdiction of the Island Courts shall extend to matters which arise in connection with and are governed by the customs or customary laws of the people in the area where the court is situated.

Furthermore, section 21 of the same Act says:

Notwithstanding the provisions of any other law to the contrary, Island Courts shall have exclusive jurisdiction in all matters of a civil nature arising in connection with customary marriages, their dissolution, and the custody or maintenance of the children of such marriages.

In 2000 Abe married Babe, his island sweet heart, according to the customary laws of the Cee Islanders of the Republic of Paradiso. They had two children. In 2004, Abe left the island to seek salaried employment in Dee, the capital of Paradiso, leaving Babe and the child in the custody of his parents on Cee Island.

In early November 2006, Abe returned to the island for vacation. On arrival he was sporting a necklace with a heart-shaped pendant on it and a similarly shaped ring on his finger. Babe does not recall giving these accessories to Abe so she immediately suspected him of being involved with another woman. A few days after Abe's return, Babe packed up from the matrimonial home and went to live with her parents, taking the children with her. She told her family that she wanted to divorce Abe because of his adultery.

In December 2006, Babe filed a petition for divorce at the Island Court at Cee Island. Her petition was based on the argument that Abe had committed adultery and she was allowed by customary law to divorce him. At the Island Court hearing, Abe satisfied all present that he himself bought the pendant and ring which he was wearing and that there was no truth to the allegation of adultery. Therefore, the Court dismissed Babe's petition and ordered her to take the children and return to her husband and matrimonial home.

However, Babe did not believe Abe's explanation and has refused to follow the Island Court's order. In January 2007, Babe commenced a new petition for divorce before the Magistrates' Court pursuant to section 10 and schedule 1 of the *Courts' Act*. Babe was unable to serve Abe the summons for her petition because she had lost the duplicate copy of the summons. Fortunately, Abe was visiting the court during the morning when his case was called for mention so he was told by the court staff that there was a divorce petition pending against him. When his case was called, he attended and the court advised him to appear the next morning for hearing.

During the hearing, Babe recounted her suspicions about Abe's adultery based on the pendant and ring. These items were then tendered into court as evidence.

When the magistrate examined them, he found the following inscription engraved on both items: “xox”. The court remarked that these were most likely inscribed by a girl friend. Abe explained that he did the inscriptions himself because he wanted to give both items to Babe as a token of his love. However, the magistrate remarked that this was most unlikely and added that based on his personal knowledge of Babe, who was his niece, she was not likely to make up stories out of the blue.

Abe raised two main arguments. Firstly, he asked the Magistrates’ Court to dismiss the divorce proceedings because the Island Court on Cee had already decided on a similar application brought by Babe in December 2006. He also asked the court to adjourn the proceedings so as to give him time to contact his witnesses in the capital and arrange for their attendance. However, the court declined both requests. In the end, the court concluded that it was satisfied of Abe’s adultery based mainly on the inscriptions on the pendant and ring and granted Babe her petition for divorce.

Abe was aggrieved by this decision. He consulted you at your legal practice at Dee and sought your written advice on the following questions:

(a) Was the Magistrates Court legally entitled to hear Babe’s divorce petition by way of a fresh application? Fully explain your answer to this question.

Otherwise, was there another legal course open for Babe to use in order to challenge before the Magistrate Court the earlier decision of the Island Court concerning her divorce petition?

(b) Is it possible lodge an appeal or judicial review against the decision of the Magistrate Court? If so, identify and explain three (3) possible grounds that you could raise in your appeal or application for judicial review.

In your discussion of both questions, refer to relevant statutory provisions from Pacific Island states or cases from common law countries to support your arguments.

(20 marks)

SECTION B

This section contains seven (7) optional questions of which you are required to answer only **three (3)**. Each question in this section carries ten (10) marks so the total number of marks for this section is thirty (30).

QUESTION TWO

Identify and explain **five (5)** aspects where customary systems for dispute settlement in Pacific Island countries today are similar to or different from the dispute settlement processes as used in biblical times or the court of the king in pre-medieval England.

(10 marks)

QUESTION THREE

In relation to medieval England explain:

- (a) What the 'Royal Courts' were and give four (4) examples of such courts;
- (b) What these courts used or referred to in order to resolve cases which were brought before them;
- (c) What the decisions made by these courts were called and how the body of laws embodied in these decisions were legally made part of the laws of one USP country of your choice.

(10 marks)

QUESTION FOUR

Explain the two (2) main rules of natural justice as known at common law, discuss how these rules are given legal effect in the *Constitution* of one Pacific Island state and refer to one or more cases to illustrate the outcome when a court or tribunal fails to follow each of these rules.

(10 marks)

QUESTION FIVE

Refer to the statutory laws of a USP country of your choice to explain the rules relating to appointment and termination of judges and discuss how these rules expressly or impliedly help to assure “independence” of members of the judiciary.

Further, do you think these laws are adequate and have been respected so far in the country of your choice?

(10 marks)

QUESTION SIX

Explain in general terms why the procedure used by the courts in common law countries and the way in which they operate is described as “adversarial”. Also discuss -

- What problems might there be with the adversarial system?
- Whether you think that this system is suited to contemporary Pacific Island jurisdictions?

(10 marks)

QUESTION SEVEN

Refer to one quasi-judicial or administrative tribunal which currently exists in a Pacific Island country of your choice to discuss these questions:

- (a) What is its purpose or function?
- (b) How is its existence or functioning similar to or different from the way that the courts operate?
- (c) What advantages does this tribunal have as compared to courts of law?
- (d) What is the scope of the ‘supervisory’ role of the courts over this tribunal?

(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 LA111 course:

- (a) Applied laws
- (b) Adopted laws
- (c) Supremacy of the Constitution
- (d) Superior court
- (e) Subordinate court
- (f) Concurrent jurisdiction
- (g) Autre fois acquit
- (h) Persuasive precedent
- (i) International court of justice

(10 marks)

*End of Examination Paper
&
Good luck with it!*