

# MASTER COPY



The University of the South Pacific  
Emalus Campus

Examinations  
Semester 2 2006

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## SCHOOL OF LAW

**COURSE NAME:** Legislation

**COURSE NO:** LA 112

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

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

**NUMBER OF PAGES:** Five (5) excluding this page

**NUMBER OF QUESTIONS ON PAPER:** Five (5)

**NUMBER OF QUESTIONS TO BE ANSWERED:** Five (5)

**MARK ALLOCATED FOR EACH QUESTION:** Question 1: five (5) marks  
Question 2: ten (10) marks  
Question 3: ten (10) marks  
Question 4: ten (10) marks  
Question 5: fifteen (15) marks

**TOTAL MARKS:** Fifty percent (50%) of final result.

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### MATERIALS PERMITTED IN EXAMINATION ROOM:

None

### SPECIAL INSTRUCTIONS

1. You must complete ALL questions on the paper.
  2. You must answer Part A AND either Part B or Part C from Question Four (4).
  3. You must complete three (3) topics from Question Five (5).
  4. You must NOT complete more than three (3) topics from Question Five (5).
  5. The examination is worth fifty (50) marks.
  6. You need to obtain at least twenty (20) marks in the examination to pass the course.
  7. Read the questions and the instructions for each question CAREFULLY.
  8. Do NOT re write the question as part of your answer.
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Approved

*(Signature)*

20/9/06

**LA 112 LEGISLATION**  
**SEMESTER TWO 2006**  
**FINAL EXAMINATION**

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YOU MUST ANSWER ALL QUESTIONS ON THIS PAPER.

YOU MUST ANSWER PART A AND EITHER PART B or PART C FROM QUESTION FOUR.

YOU MUST ANSWER ONLY THREE (3) TOPICS FROM QUESTION FIVE.

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**Question One**

**[5 marks]**

Read the following piece of legislation carefully and then answer the questions below.

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**FIJI ISLANDS**

**FISHERIES ACT**  
(CAP 158)

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**FISHERIES (PROTECTION OF TURTLES) (AMENDMENT)**  
**REGULATIONS 2004**

IN exercise of the powers conferred on me by section 9(g) of the Fisheries Act, I make these Regulations –

*Citation*

1. These Regulations may be cited as the Fisheries (Protection of Turtles) (Amendments) Regulations 2004.

*Fisheries Regulations are amended*

2. The Fisheries Regulations are amended by inserting the following regulations immediately after regulation 20 -

*'Moratorium on molesting, taking or killing of turtles*

20.A. – (1) Notwithstanding regulation 20, no person shall –  
(a) in any way molest, or take or kill turtles of any species;  
(b) sell, offer, or expose for sale or export any turtle shell or flesh; or  
(c) dig up, use, take or destroy turtle eggs of any species.

(2) The Minister may, upon a written request by any person, exempt that person by writing under his hand, from sub regulation (1).

(3) This regulation expires on 31<sup>st</sup> December 2008.

(  
4) Subject to sub regulation (2), any person who contravenes sub regulation (1) commits an offence and is liable on conviction to the penalty set out in section 10(2)(c) of the Act.'

Made this 1st day of February 2004.

K. T. YABAKI

Ministers for Fisheries and Forests

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- A. What type of legislation is this?
- B. Where did the power to make this legislation come from?
- C. Who made this legislation and when?
- D. What is the purpose of this legislation?
- E. What is the 'Act' referred to in section 2(4)? Has this Act been subject to a consolidation? Explain your answer.
- F. What powers, if any, are granted under this legislation?

## **Question 2**

**[10 marks]**

Read the following fact scenario carefully and answer the questions below.

Following a publicity campaign and several public meetings, 50 employees of Blooshoos Ltd, a footwear factory, joined the Footwear Workers' Union. Two workers, who had organised the membership drive, were dismissed by the company. As a result, 35 of their co workers went on strike seeking their reinstatement. All the striking workers were threatened with dismissal if they did not return to work. Five employees who had taken part in the strike, after threat of dismissal, decided to return to work. The remaining 30 strikers, who did not return to work, were sacked.

The relevant section of the *Labour Relations Act* states that:

*'If the principal reason for the dismissal was that an employee took part in the strike the dismissal shall not be regarded as unfair unless one or more employees who also took part in that strike, were not dismissed for taking part in it...'*

[In effect, all those taking part in the strike had to be treated equally.]

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- A. Using the literal rule of statutory interpretation, what do you think the words 'employees ... who also took part in that strike' mean? Do they mean:
  - a. all the employees who originally took part in the strike, or
  - b. only those who were still taking part in the strike when the others went back to work?

Explain your answer including what is meant by the literal rule of statutory interpretation.

- B. What are the consequences for the workers if you adopt the meaning in option a.?
- C. What are the consequences for the workers if you adopt the meaning in option b.?
- D. What other rule of statutory interpretation could you apply to this problem? In doing so, what factors would you need to take into account?

### Question 3

[10 marks]

Following a highly successful International Convention on Terrorism in Palm Islands, in the Western Pacific, the government of Palm Islands, after signing the Pacific Anti Terrorism Treaty, and under pressure from its Polynesian neighbours, has just introduced new legislation titled the *Aircraft Hijacking Act 2006*. The Convention released a report which, amongst other things, recommended the creation of offences relating to the national and international hijacking of aircraft. The Act reads as follows:

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Aircraft Hijacking Act 2006  
No 24 of 2006

ENACTED by the National Congress of Palm Islands on 24 day of August 2006.

An Act to deal with national and international hijacking of aircraft.

Short Title

1. This Act is called the *Aircraft Hijacking Act 2006*.

Possession of weapons on aircraft

2. Any person (other than a crew member or an aircraft guard) who possesses on board any aeroplane, airship, glider or other transport any firearm or other weapon, shall be guilty of an offence punishable by five years' imprisonment.

Diversion of aircraft

3. Any person who causes to be diverted or attempts to cause to be diverted an aircraft from its scheduled course shall be guilty of an offence punishable by life imprisonment.

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On 4 September 2006, Johnny Jepp, an amateur spear fisher, is a passenger on a tourist bus which is stopped by the police on the way from the Palm Islands International Airport to the capital city, Los Palmos. He is found with a spear gun in his possession, is arrested and charged with an offence under section 2 of the Act. Johnny is later released on bail to appear in court in 48 hours. He comes to you for urgent legal advice.

Outline all the legal issues you would take into account when considering the application of the new legislation. Advise Johnny whether you think the charges against him will be successful and explain to him the reasons for your opinion.

#### **Question 4**

**[10 marks]**

You have just graduated with a law degree from USP and have been appointed as a legal draftsman to the Attorney General's department in Tonga. The Attorney General is embarking on a review of all consolidated legislation and wants to redraft old legislation into plain language. You achieved A+ for Legislation and Legal Drafting at USP and the Attorney General has decided you are the perfect person for the job! Your first task is to redraft the *Birds and Fish Preservation Act* (Tonga) which was enacted in 1915 and has been amended on several occasions but never rewritten. You are to start with section 5.

*Birds and Fish Preservation Act* (Tonga)

*Offences under Part I.*

*5. If any person within the periods mentioned in the said First and Second Schedules shall catch or buy or sell or offer or expose for sale or knowingly have in his possession or under his control any protected bird or fish he shall be liable to a fine not exceeding \$50 and in default of payment to imprisonment for a period not exceeding 6 months and the bird or fish, and any boat, net, spear - gun, gear and equipment used in connection with the catching of the bird or fish, may be forfeited to the Crown and shall be disposed of in such manner as the Prime Minister thinks fit.*

- A. Describe the staged process of drafting you would go through to completely redraft this legislation. **[5 marks]**

**Then answer EITHER section B OR section C**

- B. Read the above section 5 of the Act carefully until you are sure you know what it means. Then using all the legal drafting skills you learnt at USP firstly redraft the section by reorganising and punctuating the text so it is easier to read and understand. [Do NOT change the meaning of the section or add or delete any words except for grammatical purposes.] **[5 marks]**

**OR**

- C. Highlight or underline words / phrases in the above section 5 of the Act that do not comply with the rules of plain language. Indicate how and why you would change the words / phrases you have highlighted or underlined. You do not need to completely redraft the section, just indicate what changes you would make and why. **[5 marks]**

## **Question Five**

**[15 marks]**

**You must select and complete three (3) topics from this list.**

**Do not answer any more than three (3) topics.**

**Each answer should be no more than one (1) page in length.**

**Each topic is worth five (5) marks.**

- A. Describe in your own words the differences between constituent laws, legislation and subsidiary legislation? Outline briefly how each is created and from where each derives its power.
  
- B. What do you understand is the meaning, in the Pacific region, of the phrase 'statutes of general application in force in England'? Has this phrase been the subject of any court rulings in the Pacific? If so, in which case/s and what have the court/s said about the meaning and application of this phrase?
  
- C. What is the name of the Act used to interpret legislation in your country? What is the purpose of this legislation? What happens if a definition in the general interpretation legislation conflicts with the meaning of a word in a specific statute? What is the general rule for the interpretation of statutes that is to be found in some Interpretation Acts?
  
- D. What are some of the main reasons why, traditionally, courts were reluctant to take into account Hansard reports or parliamentary debates as a way of indicating the intention of the legislators? What was the landmark English decision that changed the way courts used Hansard reports to interpret statutes? Now that the courts have altered their stance on the issue, what are some of the possible consequences that might flow from this decision?
  
- E. What is the rule that applies when a general provision in one statute is in conflict with a specific provision in another statute? Is the rule the same if the specific provision is in an earlier statute than the general provision? What is the rule if two (2) specific provisions in separate statutes are inconsistent with one another?
  
- F. What is the Government Gazette? What is its function? Name two (2) different types of document you might expect to find in the Gazette. Where would you expect to find a copy of this publication in your country?

**THIS IS THE END OF THE PAPER**