

**MEMBER**

**CONF**



The University of the South Pacific  
Emalus Campus

Examinations  
Semester 2 2006

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**SCHOOL OF LAW**

**COURSE NAME:** Courts & Dispute Resolution II

**COURSE NO:** LA 113

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

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

**NUMBER OF PAGES:** Four (4) excluding this page

**NUMBER OF QUESTIONS ON PAPER:** Four (4)

**NUMBER OF QUESTIONS TO BE ANSWERED:** Four (4)

**MARK ALLOCATED FOR EACH QUESTION:**  
Question 1: ten (10) marks  
Question 2: ten (10) marks  
Question 3: ten (10) marks  
Question 4: twenty (20) 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 complete four (4) topics from Question Four (4).
  3. You must NOT complete more than four (4) topics from Question Four (4).
  4. The examination is worth fifty (50) marks.
  5. You need to obtain at least twenty (20) marks in the examination to pass the course.
  6. Read the questions and the instructions for each question CAREFULLY.
  7. Do NOT re write the question as part of your answer.
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Approved

*M. M. M. M.*

20/9/06

LA 113 COURTS AND DISPUTE RESOLUTION II

SEMESTER TWO 2006

FINAL EXAMINATION

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YOU MUST ANSWER ALL QUESTIONS ON THIS PAPER.

YOU MUST ANSWER ONLY FOUR (4) TOPICS FROM QUESTION FOUR.

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**Question One**

**[10 marks]**

Mele rides her yellow scooter to USP most days and leaves it parked and unlocked in the university car park. One evening, after a kava fundraising event at the university, she discovers her scooter is not in the car park and reports the situation to Sam, the car park security officer. Sam tells Mele that he saw another student Jack riding a yellow scooter past the front gate of the university at about 5 pm. After walking home at about 7pm, Mele finds her scooter parked outside her flat. In the meantime, Sam has reported the alleged theft to the police who have arrested Jack. He is bailed to appear in the local Magistrates' Court in a week and comes to you for urgent legal advice.

- A. Identify which of these facts might be important / material in assessing whether or not Jack had attempted to steal Mele's scooter.
- B. Do you think the facts you have outlined are enough to support the conclusion that Jack is a thief?
- C. What other explanations for Jack's actions might be possible in the circumstances?
- D. What is the standard of proof that you will be required to meet if Jack's charge proceeds to court?
- E. What additional evidence would you need if the law requires that, to sustain a charge of theft, there has to be an intention on the part of the alleged thief to permanently deprive the owner of the goods?

## Question Two

[10 marks]

You are working as a lawyer in the State Prosecutor's office in Nirvana and you have been instructed to prepare an appeal against a decision of the Chief Magistrate sitting in the Nirvana Magistrates' Court. The appeal will be heard by a single judge of the Supreme Court of Nirvana. The Chief Magistrate made an award of punitive damages against the Ministry of Police. [Punitive damages are awarded where a defendant has been guilty of fraudulent, vindictive or malicious conduct towards a plaintiff.]

Your research reveals that there are several decisions regarding awards of punitive damages that are inconsistent with one another.

- A. In 2002 a majority 2:1 decision of the Court of Appeal of Nirvana held that awards of punitive damages were not appropriate in the Pacific.
- B. In doing so, the Court of Appeal of Nirvana did not refer to its own previous decision of 2000 where, in a unanimous verdict, it awarded punitive damages against the South Seas Shipping Company.
- C. In 2003 the High Court of Nirvana, the ultimate court of appeal, in a 3:2 majority decision overruled the Court of Appeal's decision of 2002 by refusing to award punitive damages.
- D. The two dissenting judges on the High Court (including the Chief Justice of the High Court) expressed strong support for the Court of Appeal's earlier decision in 2000.
- E. There is also a High Court decision in neighbouring Kanabas Islands which accepted the concept of punitive damages but made no award in that particular case.

You are asked to advise the Chief Prosecutor on the prospects of success of the appeal before the Supreme Court.

You should firstly look at the two Court of Appeal decisions and advise which of the decisions the Supreme Court should follow.

Secondly, you should look at the impact of the High Court of Nirvana's decision in 2003 on your advice.

Finally, you ought to consider the significance of the High Court decision of the Kanabas Islands.

Outline reasons for your opinions on each issue and conclude by giving a recommendation as to whether you consider the award for punitive damages will stand against the Ministry of Police.

### Question Three

[10 marks]

You have just been appointed as a Magistrate to the Magistrates' Court in the Republic of Coral Atoll. Bessy Bigfoot appears before you charged with careless and reckless driving. The prosecution's evidence is that Bessy is a taxi driver and, at about 3pm on 24 August 2006, after taking some tourists to the airport, she collected her two children from school. The children were arguing in the back seat and, as Bessy turned around to see what the fuss was about, she hit an elderly man who stepped out into the middle of the road. The weather conditions were good but Bessy was exceeding the local speed limit. The elderly pedestrian was severely injured and transported to hospital by ambulance. No one else was injured.

After you have heard all the evidence, you adjourn the case and reserve your decision until you have had an opportunity to examine the law.

The only relevant case you can find is a 2004 Supreme Court of Coral Atoll decision in *R v Mad Max* which involved a male driver who hit and injured a young female pedestrian who had stepped onto a marked pedestrian crossing without looking. Mad Max was illegally using his mobile phone at the time and was speeding when approaching the crossing. The weather conditions were good. Based on the facts of the case, Judge Judy found Mad Max guilty of careless and reckless driving but, at the end of her judgment, commented that 'if the circumstances were different and, for example, the accident occurred at night or in poor weather conditions, the outcome might change.'

- A. What do you think was the ratio of the Supreme Court judgment in Mad Max's case?
- B. What decision will you hand down? Before doing so, you should take into account the relevant facts of each case, the effect of the existing Supreme Court decision (including the Judge's comments) and under what circumstances you might come to a different decision.
- C. How do you think the ratio of your decision might differ from that in Mad Max's case, even if only slightly? Has your decision broadened the scope of the existing law or restricted it? Explain your answer.

#### Question Four

[20 marks]

You must select and complete four (4) topics from this list.

Do not answer any more than four (4) topics.

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

Each topic is worth five (5) marks.

- A. Explain what you understand by the term 'probative value of evidence' Outline four (4) factors that could affect the probative value of a witness's evidence and give one (1) example of each.
- B. Explain in your own words the general meaning of the principle of *autrefois acquit* or *autrefois convict*. This principle has been extended to apply beyond situations involving the same charge. Name the other situations where this principle applies and give an example of each. What are the essential conditions that must exist before a defence of *autrefois acquit* or *autrefois convict* can operate?
- C. What is the difference between an unreported and a reported case? List at least two (2) factors that would help you to determine whether a case was reported or not and the legal significance of these features.
- D. Explain what the term *obiter dictum* means. List at least four (4) examples of when statements of law may be considered *obiter dicta*?
- E. What does a court do when it 'distinguishes' precedent? Is the court questioning the correctness of the previous decision? How is this different from overruling or reversing an earlier decision? What is a *per incuriam* decision? Which courts can declare a decision *per incuriam*?
- F. What was outlined in the House of Lords Practice Statement of 1966? What has been the approach of countries in the USP region to the principles adopted in this Statement? Illustrate your answer with at least one (1) case from the region.
- G. *'The role of the courts today is more that of adapting and modifying existing statements of principles, rather than creating new principles. Nevertheless, on occasions the courts have found that some existing principles are so inappropriate that they have to be completely abandoned and new principles established to replace them.'* Discuss this statement with reference to at least one (1) case you have studied in this course.
- H. What do you understand by the term logic? Why is it important in a legal context? Outline some of the elements involved in the application of logic to legal decision making.

**THIS IS THE END OF THE PAPER**