

The University of the South Pacific


TO : Campus Secretary

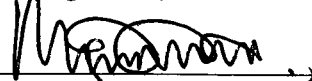
SUBJECT: EXAMINATION INFORMATION FORM

1. School: Law _____ 2. Semester/Year: sem 1 2006 _____
3. Course No: LA207 _____ 4. Title: Public Law 1 _____
5. Time allowed: Three hours _____
6. Number of questions on paper: three _____
7. Number of questions to be answered: three _____
8. Mark values 20/ 20/ 10 respectively
9. Number of candidates expected: 140 _____
10. Materials required: (log tables, graph paper, etc): Open book
11. Number of extra paper required for Departmental records, etc: _____
12. Other details of instructions: **Open book** :

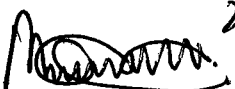
“This means that you can bring in text books, personal notes, course materials, copies of legislation, constitutions and judicial decisions whether annotated or not. You are not permitted to bring into the examination room personal computers or books belonging to the USP library”

- 13 We, the lecturer in charge of the course and the head of department, confirm that the attached examination paper for course LA 207 _____
Was moderated by the Law Department at its meeting on _____

Lecturer  Date 26/4/06
(Signature)

HOD:  Date 26/4/06
(Signature)

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.

Approved
26/4/01


Final Examination

LA207 Public Law 1

Topics to be covered

The examination will cover all units included in the easol materials for this course.

Materials permitted in exam rooms.

The exam is Open Book. This means that you can bring in text books, personal notes, course materials, copies of legislation, constitutions and judicial decisions whether annotated or not. You are not permitted to bring into the examination room personal computers or books belonging to the USP library

This examination is worth 50 marks

This examination is divided into three 'Parts'

You MUST complete all three parts

Part One allows internal choice (follow the instructions carefully)

Part Two provides no internal choice. The question is compulsory

Part Three allows internal choice (follow the instructions carefully)

Ensure you manage your time so that you at least attempt to answer each part.

It is recommended that you allocate time to each question according to the marks allocated.

PART ONE: Short answer questions (20 marks total)

In this part you must answer FOUR QUESTIONS ONLY chosen from the following list, (each question will count for 5 marks)

- a) What is meant by the term 'the separation of powers'?, how is this concept important within Westminster-style constitutions in the Pacific?
- b) What key features characterise the judicial branch of government, how does this differ from the legislative branch?
- c) In what specific circumstances is it possible for a superior court to invalidate all or parts of an Act of Parliament? (refer to a USP country of your choice)
- d) What is the difference between a 'presidential executive' and a 'prime ministerial executive'? (give examples from relevant Pacific constitutions)
- e) Why do written constitutions contain special procedures that make change more difficult than for ordinary legislation? Briefly describe two different kinds of constitutional change procedures found in the constitutions of USP countries of your choice
- f) Under what circumstances is it possible for laws to be made that breach protected rights and freedoms under Pacific constitutions? (refer to a USP country of your choice)

- g) What is the difference between "strict legalism" and a 'generous' approach to constitutional interpretation? Does a generous approach mean that a wide meaning will always be given to the provisions of a constitution?

Part 2 Compulsory problem question (20 marks)

The Constitution of 'Oceana' provides:

Protection of freedom of expression

12.-(1) No person shall be hindered in the enjoyment of his freedom of expression except to the extent that the law in question is made in the interests of defence, public safety or public order, and provided that the law in question can be shown to be reasonably justifiable in a democratic society.

Under laws supposedly designed to fight terrorism the government of Oceana enacts *The War on Terror Act (Oceana) 2006*

The Act includes the following sections:

S 4 Definitions

"terrorist act" means an action or threat of action made with the intention of advancing a political, religious or ideological cause; where the act or threat

(a) causes serious harm to a person; or

(b) causes serious damage to property; or

(c) endangers a person's life, other than the life of the person taking the action; or

(d) creates a serious risk to the health or safety of the public or a section of the public; or

(e) seriously interferes with, seriously disrupts, or destroys, an electronic or telecommunication system

"terrorist organisation" means an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs)

-s56 Training a terrorist organisation

A person commits an offence if:

(a) the person intentionally provides training to an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

Charlie is a journalist and is passionate about human rights. He is particularly concerned about the plight of the people of West Papua who have been under Indonesian control since the 1960s. Charlie has made contact with people in the OPM (Free West Papua) movement. All of the people he has met have told him terrible stories of violence against their people at the hands of soldiers and government sponsored militias. Charlie is also aware that the Indonesian government claims that the OPM is involved in violent forms of resistance.

Charlie is opposed to violence in any form, and deeply respectful of human rights. Charlie develops training packages for the OPM to teach its members how to better conduct international media campaigns and use the internet to get its message out to the world in a peaceful way.

Oceana is keen to maintain a friendly relationship with Indonesia, particularly as they are currently negotiating a valuable trade agreement. The Indonesian government makes it very clear that they want the government of Oceana to clamp down on pro-OPM activities inside its country. The Indonesian government convinces the Oceana government that the OPM is a terrorist organisation because of a series of violent incidents that it attributes to the OPM in which several people have been killed.

Charlie is secretly disappeared from his home in Port Powa (the capital of Oceana) one night and charged with offences under s56 (extracted above)

Charlie's lawyer advises him that given the very wide definition of a 'terrorist act' and 'terrorist organisation' under the legislation, his best defence will be a constitutional challenge to the validity of s 56.

Question:

Referring to relevant cases where possible, advise Charlie

a) What general interpretative approach the courts take in constitutional cases involving fundamental rights

- b) Does s56 infringe Charlie's constitutionally protected right to freedom of expression?
- c) Is Charlie's constitutional challenge to s56 ~~is~~ likely to succeed?

Part 3 Essay Question: (10 marks)

Answer ONE ONLY of the essay topics below

a) Referring to cases discussed during the course explain the principles and considerations that guide the common law courts in determining the legitimacy of a government that has seized power by unconstitutional means?

OR

b) Explain what is meant by the doctrine of 'responsible government' and give examples of the operation of this doctrine drawn from Pacific constitutions of your choice.

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