



The University of the South Pacific

Emalus Campus

Semester 2 2006

SCHOOL OF LAW

COURSE NAME: **PUBLIC LAW TWO**

COURSE NO: **LA208**

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

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

NUMBER OF PAGES: **Five including title page**

NUMBER OF PARTS ON PAPER: **Three**

NUMBER OF QUESTIONS TO BE ANSWERED: **(As per instructions below)**

MARK ALLOCATED FOR EACH QUESTION: **(As per Instructions below)**

TOTAL MARKS: 50

MATERIALS PERMITTED IN EXAMINATION ROOM:

The exam is Open Book. This means that you can bring in text books, personal notes, course materials, copies of legislation, 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

SPECIAL INSTRUCTIONS

This examination is worth 50 marks

This examination is divided into three 'Parts'

You **MUST** complete all three parts

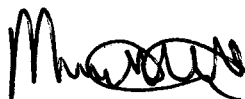
Part One allows internal choice (follow the instructions carefully)

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.

Approved  29/9/06

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) In each answer you should refer to relevant cases where possible

- a) Briefly describe the circumstances in which remedies of judicial review will be applicable to a decision or action taken by a private body
- b) In what circumstances is the remedy of mandamus available? How does this differ from the circumstances in which a mandatory injunction may be available?
- c) In what specific circumstances is a declaration an effective order? In what circumstances would it be inappropriate to seek relief by way of declaration?
- d) What are the three main ways in which an action can be said to have been made without authority? What is the effect of such a finding?
- e) Explain the difference between judicial review and merits review
- f) What are three types of bias identified within the rule against bias?, What tests have the courts used for establishing the existence of apparent bias?
- g) What is meant by the term, "an error of law on the record"? In what circumstances can such an error be proven if no reasons are provided for the decision?
- h) What is an improper purpose? Will an action be invalid if it found to be only partly motivated by an improper purpose?
- i) In what circumstances are the courts likely to exercise their discretion to refuse to grant prerogative relief that would otherwise be available?

PART TWO

Compulsory problem question (20 marks)

Assume that the *Local Government Act 1992* of Oceania provides for the establishment of a Municipal Council to have control of planning and development control in the capital city, Port Powra. The Council is known as the Port Powra Municipal Council

An extract of the relevant provisions appears below:

1. Definitions

In this Act, unless the context otherwise requires-

"Council" means Port Powra Municipal Council;

"Development" means the carrying out of building or other operations in, on, over or under the land or the making of any material change in the use of buildings or land, or the subdivision of any land

"The Act" means the *Local Government Act 1992*

2. Objects

The objects of this Act are to encourage the proper management of development in the Port Powra municipality with respect to:

- i) environmental sustainability
- ii) public health and safety
- iii) preservation of public amenity
- iv) maintaining an acceptable visual environment

7. Powers of the council to deal with applications

Where application is made to the Council for permission to develop, the Council may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission, and in dealing with any such application the Council shall have regard to the Act and any other material considerations.

23. Open standing provision

Any person has legal standing to bring an action to enforce this Act

Alfredo Ltd (Alfredo) wishes to construct a 5 storey tourist resort on the foreshore adjacent to the market house in Port Powra. Alfredo has bought the lease to the site, and has hired a professional engineer to design the building to comply with the relevant cyclone and earthquake specifications. Alfredo applies to the council for permission to construct the resort.

There is however significant community opposition to the construction of the resort. There is a local residents' action group called 'Save Our Foreshores' (SOF) that argues that the site should be public land to ensure continued public access to the foreshore. SOF employs qualified consultants who prepare reports that provide evidence that

- a) the development will adversely affect public access to the foreshore , as the foreshore is steep and inaccessible at other points near the town centre, and this site is the only one that has a gently sloping beach.
- b) that the hotel development will destroy the nesting area of a very rare crab that is endangered throughout the Pacific. The rare crabs actually are considered one of the town's tourist attractions.
- c) That the style of building, will be inconsistent with the custom style of the market house, and will change the skyline of the town
- d) That the development will lead to traffic and parking congestion in the central part of town

These reports are provided to the council as public submissions. Alfredo realises that there is opposition, so it offers to make a substantial financial contribution towards the construction of a new administration building for the municipal council. Alfredo hires public relations consultants who conduct a large advertising campaign in the lead up to the council elections to convince the public that the resort is a good idea. Alfredo also makes contributions to the election costs of two of the councilors who are subsequently re-elected. Following the election a new pro-development council is returned and the council holds a meeting and after considering all submissions decides by a majority of seven to five to approve the development.

The council publishes the following reasons for its decision:

- a) The development will contribute significantly to the local economy and provide significant employment opportunities for local people
- b) The proposed buildings are of a high standard and will contribute to the image of Port Powra as a modern city
- c) The development will bring collateral benefits to the town including the ability to construct a modern and state of the art council administration centre
- d) There has already been extensive debate in the community about the merits of the development and the results of the recent election show that the public support this development

e) The development will not have any detrimental impacts upon the natural environment

SOF wishes to bring an application by way of judicial review to have the council's approval quashed.

Advise SOF of each of the grounds that they may have to argue for an order of certiorari.

In relation to each ground that you suggest, provide an analysis of whether you think SOF would be able to successfully establish that the council had failed to make their decision according to law, referring where possible to relevant cases and tests that the court may apply.

PART THREE

Essay Question: (10 marks)

Answer ONE ONLY of the essay topics below

- a) Common law courts have begun to relax the traditional rules that restrict the range of applicants entitled to bring applications for judicial review. Describe the way that modern judicial attitudes to the laws of standing appear to be changing and explain why the older more restrictive rules are no longer desirable.
- b) Judicial review powerfully enforces the rule of law by insisting that all power must be exercised within its proper lawful limits. Refer to particular grounds of judicial review and to particular cases to explain how this enforcement of the limits of official power is achieved in practice.

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