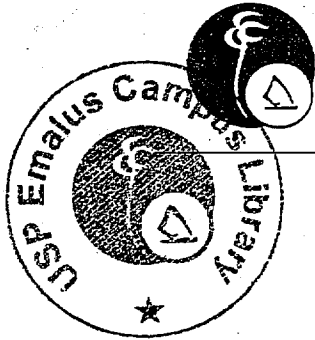


ON RESERVE

The University of the South Pacific
Emalus Campus

Examinations
Semester 2 – 2000



~~NO OVERNIGHT LOAN~~

SCHOOL OF LAW

COURSE NAME: Property Law 2

COURSE NO: LA301

TIME ALLOWED: Three Hours (3)

READING TIME: 15 Minutes

NUMBER OF PAGES: 4

NUMBER OF QUESTIONS ON PAPER: Nine (9)

NUMBER OF QUESTIONS TO BE ANSWERED: Four (4)

MARK ALLOCATED FOR EACH QUESTION: Twenty (20)

TOTAL MARKS: Sixty (60)

MATERIALS PERMITTED IN EXAMINATION ROOM: None

SPECIAL INSTRUCTIONS

STUDENTS ARE REQUIRED TO ANSWER FOUR QUESTIONS, AT LEAST ONE of which must be from Section A.

Section A: Customary Land Law

"Land-ownership patterns and land rights of men and women throughout Fiji (were) so varied that the colonial government adopted a simplified version of the land tenure practices of Tailevu province and made it the standardised Fijian tenure system":

Please do not turn over any page until you are told to do so.

Cema Bolabola, "Fiji: Customary Constraints and Legal Progress" in Land Rights of Pacific Women, IPS, USP, Suva, 1986, p.1.

Describe:

- (a) in what other countries of the USP region serious errors were made during colonial times in identifying the owners of customary land; and
- (b) what bodies have been established in Fiji and other countries of the South Pacific to try to ensure that errors as to ownership rights to customary land are avoided nowadays.

2."Under customary tenure, the ultimate or allodial rights to land are usually held corporately by a social group":

Acquaye E, "Principles and Issues" in Acquaye E and Crocombe RG (eds) Land Tenure and Rural Productivity in the Pacific Islands, Suva, IPS, USP, 1987, p. 17.

Describe:

- (a) what difficulties this form of ownership presents for the effective management and development of customary land; and
- (b) what attempts have been made within the South Pacific to overcome these difficulties.

3. 'Land registration must be kept in perspective. It is a device which may be essential to sound land administration, but it is merely part of the machinery of government. It is not some sort of magical specific which will automatically produce good land use and development":

Simpson S.R., Land Law and Registration, CUP, 1974, p.3.

Describe the systems of registration of customary land that have been undertaken or attempted in the South Pacific, and the problems that they have encountered.

4. "Our first trial towards changes in land tenure": Hon. Albert Henry introducing the Short Term Crop Leases Bill into the Legislative Assembly of Cook Islands: Legislative Assembly Proceedings, 1966: 642.

In what countries of the South Pacific have there been moves to make changes or conversions of customary land tenure, and describe the actions that have been taken.

Section B: Introduced Land Law

5. Sarah occupies a studio room with its own cooking facilities in a large house with five other similar studios. In May Sarah was introduced to Mrs. Twist, who owns the house, by a friend. She offered Sara the studio for one year at

a rent of \$100 a month. She moved in on July 1st. During the first week she was there she received a written document described as a "Licence Agreement". This stated that: *nothing in this agreement shall be construed to create a tenancy*. The document included a prohibition against subletting and assignment; an obligation to deliver up the accommodation at the end of the agreement; a clause prohibiting alteration of the premises; and reserved to the *licensor* the right to move anyone else into the bedsit.

Can you clarify what interest Sarah has in the studio.

6. Although the fee simple and the term of years are the only two estates which are capable of existing as legal estates in English common law since 1925, the range of possible estates in land found in the USP region are wider than this.

Discuss.

7. Paradise Ventures, a corporate leisure group, wish to invest in the tourism industry in the region. They propose to establish a number of holiday resorts. They are aiming for the upper end of the market and want to create holiday chalets which people can rent or purchase for variable lengths of time. They believe that there is potential for developing the retirement home industry in the region as well as the possibility of second or holiday homes for people from outside the region.

You are asked to research and draft a report on the factors which need to be considered for such development and to come up with a list of proposals of how Paradise Ventures should proceed.

8. "Total ownership of land by the state is not the planning ideal it might at first be thought. Nor is a private or customary ownership which is reluctant to develop and thereby satisfy the needs of the community. A balance between the two is obviously the answer":

Floyd "Public Land and the Private Sector" in Land, People and Government USP 1981, p.99.

Consider how this balance is to be achieved and how different countries of the region provide for the public utilisation of land.

9. Arthur is the owner in fee simple of a large plot of land. In 1980 he constructed a second house on his land. Access to this house was across the land surrounding Arthur's house. He financed the development with a loan from the bank secured against the new property. Arthur let the new house to Mr and Mrs Sahli for an agreed period of five years. Rent was paid monthly. In 1985 the rent

ended but Arthur renewed it for another year. In 1996 Mr. Sahli died but Arthur let Mrs Sahli stay on in the house and she continued to pay rent. Arthur now wishes to sell the house occupied by the Sahli's.

He requires advice on the following matters:

- a) The nature of Mrs. Sahli's rights
- b) The position as regards the bank
- c) The question of access to the new house
- d) The best way to alienate the new house.