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**SCHOOL OF LAW**

**COURSE NAME:** Property Law II

**COURSE NO:** Law 301

**TIME ALLOWED:** Three Hours

**READING TIME:** Ten Minutes

**NUMBER OF PAGES:** Three

**NUMBER OF QUESTIONS ON PAPER:** Nine

**NUMBER OF QUESTIONS TO BE ANSWERED:** Five

**MARK ALLOCATED FOR EACH QUESTION:** All equal

**TOTAL MARKS:** 100%

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

Dossiers and Research Projects, but no personal notes

**SPECIAL INSTRUCTIONS**

Answer at least two questions in Section A and two questions in Section B

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

## SECTION A

1. "Under customary tenure, the ultimate or allodial rights to land are usually held corporately by a social group". Acquaye B, "Principles and Issues", in Acquaye B and Crocombe R (eds) Land Tenure and Rural Productivity in the Pacific Islands, Suva, USP, 1967, p17.

Describe, in relation to two countries of your choice in the USP region the forms of corporate or collective ownership of customary land that are practised and any exceptions to these forms of ownership.

2. "I ... believe that laws that rigidly defend customary tenure work against increasing effective participation in agriculture beyond the subsistence level": Schoeffel P, "Where are all the Farmers? Agriculture, Land Tenure and Development in the Pacific Island," in Crocombe R and Meleisea M (eds), Land Issues in the Pacific, Christchurch, University of Canterbury and USP, 1996, p42.

Describe the impediments to the development of customary land for commercial purposes which are provided by customary forms of land ownership, and what measures have been taken in countries of the USP region to overcome or reduce these impediments.

3. "Someone must be given the authority to decide who owns what rights [ to customary land]": Crocombe R in "Registration Security and Productivity in the Pacific Islands: Experiences and Potentials", in Acquaye B and Crocombe R (eds), Land Tenure and Rural Productivity in the Pacific Islands, Suva, USP, p23.

Describe what methods have been, and are being, used in two countries of your choice in the USP region to determine ownership of customary land, and the strengths and weaknesses of each.

4. "Many Fijian women ..... believe that discussion and decisions relating to land are a male domain". Bolabola C in "Fiji: Customary constraints and legal progress" in Land Rights of Pacific Women, Suva, USP, 1986, p3.

Describe, in relation to two countries of your choice in the USP region, to what extent women have legal rights to ownership of customary land, and to what extent they effectively exercise these rights.

## SECTION B

5. Your client in a country of your choice in the USP region tells you that he has bought a block of freehold land which is stated in the instrument of title to be bounded on one side by a river, on another side by a road, on the other side by the Pacific Ocean, and on the fourth side by another river.

He asks you:

- (a) where exactly are the boundaries of his land;
- (b) whether he can extract water from the rivers;
- (c) whether he can extract water percolating under the ground.
- (d) whether he must accept water that is draining onto his land from higher land on the other side of the road that borders his land.

How would you advise him with regard to these questions?

6. Ateca, Betha and Carlotta were three female students who graduated from USP in the early 1970's, and, being very good friends, they decided in 1975 to jointly purchase a large block of freehold land in a country of your choice in the USP region, which they registered in their three names as joint owners.

Shortly after the purchase Ateca was tragically killed in a motor car accident, and two years later Bertha married an Australian and went off to live with her husband in Brisbane. Carlotta married and with the assistance of her husband, built a house on part of the land. Both Carlotta and her husband were keen soccer fans so they allowed a soccer club to establish a training ground and sheds on another part of the land.

- (a) Ateca's parents, who are the beneficiaries of her estate, claim that they are entitled to one-third share in the land and house;
- (b) Bertha's husband has died and she wants to come back and claims a share of the land.
- (c) Carlotta has divorced her husband, but the husband claims a share of the land.
- (d) Carlotta, especially since her divorce, is no longer very interested in soccer, and has asked the soccer club to move off the land, but the club has refused.

How would you advise Carlotta with regard to the above issues?

7. Describe what legal arrangements may be made to enable freehold land to be used as security for a commercial loan in countries of the USP region, and what terms of such arrangements the courts will not enforce

8. Your client in a country of your choice in the USP region tells you that she made an oral agreement to occupy an unfurnished flat in a house for 12 months on payment of a licence fee of \$40 per month. She moved in a week ago, and she tells you that:

- (a) the flat is in a very bad state of repair; and
- (b) the owner of the house operates a small bakery in another part of the house and this causes much noise and obstructs her access to the flat; and
- (c) the owner of the house is now demanding that she pay a higher licence fee and has boarded up the windows until she does.

How would you advise your client on the issues involved?

9. Describe the essential features of the various forms of registration of interests in land in countries of the USP region, and the advantages and disadvantages of each.