



**VA'AOMANŪ PASIFIKA  
PACIFIC STUDIES PROGRAMME**

**PASI 402  
SPECIAL TOPIC: PACIFIC JURISPRUDENCE  
A study of custom and law in the Pacific  
CRN 10429: 30points**

*Trimester dates: 16 July to 17 November 2012*

*Teaching dates: 16 July to 19 October 2012*

*First class PASI 302/402: 16 July 2012*

*Mid trimester break: 27 August to 9 September 2012*

*Examination/Study week: 22 October to 17 November 2012*

**1. Course Organisation**

Coordinator:	Tamasailau Suaalii-Sauni Room 203 – 6 Kelburn Parade Telephone: 463 6867 (Ext 6867) Email: <a href="mailto:sailau.suaalii-sauni@vuw.ac.nz">sailau.suaalii-sauni@vuw.ac.nz</a>
Office Hours:	Tuesdays 3pm - 4pm
Lectures:	MON & WEDS, 11am - 12.50pm 6 Kelburn Parade – Seminar Room 102
For additional information:	Sylvyetta Hanipale, Administrator Room 101 – 6 Kelburn Parade Telephone: 463-5830 (Ext 5830) Email: <a href="mailto:Sylvyetta.hanipale@vuw.ac.nz">Sylvyetta.hanipale@vuw.ac.nz</a>

## **Withdrawal dates**

Information on withdrawals and refunds may be found at <http://www.victoria.ac.nz/home/admisenrol/payments/withdrawlsrefunds.aspx>

## **Course Prescription**

This course explores theories and philosophies of custom and law in the Pacific. It analyses the cultural and historical nuances of Pacific customs (such as "bride price" and the "ifoga") and related case law to reflect on the question of whether there is such a thing as a 'Pacific jurisprudence'.

## **Course Content**

This is a seminar based course. This course builds on undergraduate core courses taught in Pacific Studies at Victoria University of Wellington. However, the focus of the course is specialised and so entails the introduction of new material that may not have been covered by the undergraduate core courses. This course probes the following questions:

- How is law and custom defined in the Pacific?
- Is there a need for a Pacific jurisprudence? And if so, what might it entail?
- Who benefits most from current law and custom structures and policies in the Pacific? And, why?

To address these questions the course first examines theories of jurisprudence, in particular those developed by legal anthropologists and indigenous Pacific writers who focus on customs and laws in the Pacific. Secondly, students will develop deeper critical awareness of the complexities associated with above questions by examining them via the theoretical lenses offered by a selected group of postcolonial, feminist, critical legal and Foucauldian scholars. Individual and group work on specific case studies on a custom and law issue will offer students specific case examples in which to apply their theoretical learnings.

## **Communication of additional information**

This course outline is to be taken as indicative of course activities only; precise details may change, subject to availability of guest lecturers and other materials. During the term, up-to-date communication about the course will be delivered primarily via Blackboard.

## **Class Representative**

A class representative will be elected in the first week of class, and that person's name and contact details will be available to VUWSA, the Course Coordinator and the class. The class representative provides a communication channel to liaise with the Course Coordinator on behalf of students, and will be given opportunities during the term to speak confidentially with the class during class time.

## **Teaching Learning Summary**

Scheduled sessions comprise of 50 minute lectures by the course convenor or a guest lecturer, class discussion time hosted by student groups, group presentations and individual and group written work. Students should allow an average of 16 hours per week for this course for lectures, class discussion sessions, reading, completion of assignments, and other preparation.

## **Learning Objectives**

**By the end of this course, PASI 402 students should be able to:**

1. Evaluate at a high level key concepts, paradigms, goals and activities associated with the development of a Pacific jurisprudence.
2. Analyse the relationship between custom and law in at least one Pacific nation state at different theoretical and practical levels.
3. Compare and contrast similarities and differences between custom and introduced laws of at least four different Pacific nation states.
4. Participate effectively in group and individual work.
5. Demonstrate knowledge of key literatures and debates surrounding the pros and cons of developing a Pacific jurisprudence.

## **PASI BA Graduate Attributes**

Students who pass this course should be able to:

### ***Critical Thinking***

1. Demonstrates knowledge of the geographic, historical, cultural, social, political and economic diversity and complexity of the Pacific as a region.
2. Able to analyze and question assumptions and theories that frame representations of the Pacific.
3. Able to evaluate the quality and origin of sources of information on the Pacific.
4. Able to formulate and evaluate research questions that demonstrate an engagement with the broader context of the Pacific region.
5. Demonstrates an awareness of insider/outsider debates over knowledge in the Pacific and takes care to account for indigenous perspectives when conducting analysis of material.

### ***Creative Thinking***

1. Demonstrates awareness and appreciation of the relevance and value of creative work in enhancing understanding of Pacific societies.
2. Able to apply, synthesize, and interpret ideas and concepts from research and readings in creative academic projects.
3. Demonstrates an understanding of multidisciplinary approaches to studying the Pacific and is able to apply and create an interdisciplinary research project.

### ***Communication***

1. Demonstrates familiarity with a selection of key terms and concepts in Pacific languages.
2. Able to formulate and defend a well-considered point of view on Pacific issues.
3. Able to give and accept generous and diplomatic critique.

### **Leadership**

1. Demonstrates a sense of responsibility towards Pacific communities in the islands, in New Zealand and in the world.
2. Demonstrates confidence and competence in representing Pacific perspectives when contributing to public debates.
3. Demonstrates a commitment to life-long learning about the Pacific.

### **Workload**

The workload for PASI 402 is consistent with other 30 point courses within the Faculty of Humanities and Social Sciences. The course is 100% coursework assessed.

For PASI402 it is recommended that for every contact hour, you spend at least 4 hours of preparation. This means that on average you allow approximately 16 hours per week for this course, which might include: hours attending class sessions (including A/V screenings); hours reading and reviewing material; hours completing assignments; hours engaged in group work outside class hours.

### **Mandatory Course Requirements**

In order to pass this course students must:

- Attend at least 80% of class sessions;
- Submit all written assignments;
- Participate in all required group work.

Students who achieve a passing mark for coursework at the end of the term, but fail to turn in their major essay assignment will get a "K" grade, indicating they have not passed the course due to a failure to meet requirements.

### **Penalties**

Marks will be deducted for grammatical and spelling errors on all written coursework assignments. Therefore, it is recommended that you proofread your written assignments before turning them in.

Late assignments will only be accepted if an extension has been approved by the course convenor or coordinator. Students must seek an extension from the course convenor or coordinator before the due date either by email or in person. Depending on the reason or reasons for the late submission of the assignment and evidence supporting these reasons, marks may or may not be deducted for late assignments.

### **Essential Readings**

Required reading handouts will be posted on Blackboard for students to print and read before seminars.

Key texts will be placed on Closed Reserve and 3-Day Loan in the Central Library for your reference and further reading. There are four key texts placed on Closed Reserve for this course:

1. Benton, Richard (ed). *Yearbook of New Zealand Jurisprudence*. (2010&2011), 13&14 (combined), Hamilton: Faculty of Law, University of Waikato.
2. Danielsen, Dan and Engle, Karen. (eds). *After Identity: A reader in law and culture*. New York and London: Routledge. 1995.
3. Jowitt, Anita and Cain, Tess Newton (eds). *Passage of Change: Law, Society and Governance in the Pacific*. Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University. 2003.
4. Narokobi, Bernard. *Lo Bilong Yumi Yet: Law and Custom in Melanesia*. Crocombe, Ron and Roche, Paul (eds). Suva, Fiji: The Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific. 1989.

A Blackboard (Bb) site will be available for this course. It will be used to post class notices and readings. Hardcopies of all assignments are to be submitted to our administrator, Sylvietta Hanipale by the due date.

Note: as senior Pacific Studies students you need to be keeping up with the latest scholarship in our field. Current issues of scholarly journals like *The Contemporary Pacific*, *Journal of Pacific History*, *The Journal of Polynesian Society*, *Oceania*, and *Asia Pacific Viewpoint* are freely available to you online via our VUW Library website:

<http://gx4ej7nu5f.search.serialssolutions.com/>

## Assessment

<b>PASI 402 Coursework</b>	<b>100%</b>
1. 5 Key Concepts & Questions (KCQ) Papers (1000 words each)	25%
2. Annotated Bibliography (1500 words)	15%
3. Group Hosting & Chair of Class Discussion/Guest Lecture	5%
4. 15 minute Group Presentation	15%
5. 5000 word essay (reference list & footnotes/endnotes included)	40%

The purpose of the seminar format and assessment structure is to provide students with the opportunity to develop familiarity with and understanding of key debates relevant to an understanding of the relationship between Pacific law and custom and Pacific jurisprudence.

As senior PASI students you are encouraged to attend the Pacific Studies fortnightly Seminar Series and the Inter-University Pacific Postgraduate Seminar Series. More information will be provided in class on these seminar series. A key component of postgraduate culture is taking advantage of the rich and diverse intellectual community and research activities that are available at university.

**Key Concept & Questions (KCQ) Papers (25% in total; 5% each: 5 x 1000 words each)**

These are designed to offer students the opportunity to demonstrate comprehension of and/or opinions about: (a) specific readings set for class; and/or (b) debates held in class; and/or (c) debates held at a scholarly seminar attended by the class.

KCQ questions will be distributed in class. See assessment due dates schedule below for outline of when these will be distributed and when they are due for assessment. Marking criteria for KCQs will be posted on Blackboard.

This assignment offers student opportunity to demonstrate comprehension of key high level concepts, paradigms, goals and activities, literatures and debates associated with the development (or not) of a Pacific jurisprudence (learning objectives 1 & 5).

**Annotated Bibliography (15%) (Part 1: 400 words + Part 2: 1100 words = 1500 words in total) Due:** Part 1 due by Monday Aug 13, 4pm (5%); Part 2, due by Wed 17 Oct, 4pm (10%)

The purpose of this assignment is to ensure that students undertake a comprehensive, focused and systematic literature search that is capable of yielding at least 15 sources of relevance to the student's final essay. This assignment is in two parts: (a) an outline of their search methodology (400 words); and (b) a brief annotation for each of the 15 sources decided upon as being of most relevance to the study at hand (1100 words).

The student must meet seek approval from the course lecturer for his or her annotated bibliography and essay topic before they commence working on the bibliography and the essay. Marking criteria for the annotated bibliography will be posted on Blackboard.

This assignment offers students opportunity to demonstrate their knowledge level of key literatures and debates surrounding the pros and cons of developing a Pacific jurisprudence (learning objective 5).

**Group Work (total 15%): Group Hosting/Chairing of Class Discussion (5%) and 15 minute Group Presentation (15 minutes)(10%)**

The class will be divided into four or five small groups (depending on class size) at the outset of the course based on four Pacific areas/countries of interest.

This group work requires effective participation by all in the group (i.e. learning objective 4) and offers students opportunity to learn about different customs and introduced laws of at least four different Pacific nation states (learning objective 3).

### **Group 15minute Presentation (15%)**

Each group will be asked to choose for their 15 minute group presentation an issue of law and custom relevant to their chosen Pacific country of study. All members of the group must participate in the group presentation. The group will receive a group mark which will be moderated by peer review evaluations.

The group will receive a group mark. Individual peer review evaluations will be considered and may moderate this group mark for individuals where necessary. Lecturer will explain in class this moderation process.

A hard copy of the group's presentation notes must be provided for the assessor before the presentation begins. Group presentations will be held between Weeks 10-12. These groups may also operate as study groups for the course.

### **Group Hosting/Chairing of Class Discussion (5%)**

Each group will also host/chair a class discussion on one of the topic areas in the list of lectures outlined below. Each group must organise with the course lecturer the specific lecture topic and readings for their class discussion session. Depending on class size, a group may choose to chair/host the VUW Pacific Talanoa Post-graduate session to be held on Monday, 1 October, 3-5pm, in lieu of their class discussion session.

To host and/or chair a class discussion or guest lecture requires liaising with the course convenor about how best to structure and focus the class discussion, the logistics of facilitating discussion, hospitality issues and about accessing biographical information where necessary. All this is to be done prior to the actual hosting/chairing session. All members of the group must actively participate in the group hosting/chairing session.

Marking criteria for all group work will be posted on Blackboard. Peer evaluations will be conducted for all group work and used to moderate group and/ individual marks where appropriate.

### **Essay (40%)(5000 words in total) Due: Friday October 19, 4.00pm**

One of the major requirements of academic study is the ability to convey in one's own writing one's thoughts about the ideas and arguments presented in academic literature on a specific topic for scholarly debate. Students in this course are to produce an essay within the word limit prescribed on the same topic as their annotated bibliography. The essay must:

- Describe and critically assess at least one clearly defined custom and any attendant law or laws from at least one Pacific country;
- Examine who benefits most from that custom and law and why;
- Evaluate the likely impact of having a Pacific jurisprudence to addressing inequities (if any) implicit or explicit in that custom and law/s.

All students must make a time with the course lecturer to discuss their essay and annotated bibliography topic before the annotated bibliography is due. The course lecturer is to approve the annotated bibliography and essay topic before the student undertakes both.

This assignment offers students opportunity to not only evaluate key concepts, paradigms, goals, literatures, debates and activities associated with the development (or not) of a Pacific jurisprudence, but also to compare and contrast similarities and differences between custom and introduced laws of different nation states in the Pacific (learning objectives 2, 3 and 5).

Marking criteria for essay will be posted on Blackboard.

### **PASI 402: Lecture Topic, Lecturer, Assignments & Due Dates**

<b>Week/Day</b>	<b>Topic &amp; Lecturer</b>	<b>KCQ Paper Distribution Date</b>	<b>Assignment Type &amp; Due Date</b>
<b>PART ONE:</b> <i>How is law and custom defined in the Pacific?</i>			
Week One: Day 1: Mon July 16	Welcome to the course & introduction to course requirements etc & Intro to indigenous knowledge, law & custom in the Pacific (Course convenor)		
Day 2: Wed July 18	Introduction to indigenous knowledge, law & custom in the Pacific cont...(Dr Suaalii-Sauni)		
Week Two: Day 3: Mon July 23	The question of a Pacific jurisprudence (Dr Suaalii-Sauni)		
<b>PART TWO:</b> Theorising law and custom			
Day 4: Wed July 25	The contribution of postcolonial theory to the study of law and custom in the Pacific (Dr Suaalii-Sauni)	KCQ 1 Distributed	
Week Three: Day 5: Mon July 30	The contribution of critical legal studies to the study of law and custom in the Pacific (Dr Suaalii-Sauni)		
Day 6: Wed Aug 1	The contribution of feminist jurisprudence to the study of law and custom in the		



	Pacific (Dr Suaalii-Sauni)		
Week Four: Day 7: Mon Aug 6	The contribution of Foucault to the study of law and custom in the Pacific (Dr Suaalii-Sauni)		KCQ 1 Due by 4.00pm
Day 8: Wed Aug 8	A legal practitioner's and customary law leader's perspective on the idea of a Pacific jurisprudence (guest lecturers)	KCQ 2 Distributed	
<b>PART THREE:</b> <i>Country Case Studies: Who benefits most from current custom and law structures?</i>			
Week Five: Day 9: Mon Aug 13	Marriage customs and laws in PNG (Lecture by Dr Suaalii-Sauni/Guest Lecturer)		Part 1 of Annotated Bibliography Due by 4pm
Day 10: Wed Aug 15	Customary land tenure in Tonga (Lecture by Dr Suaalii-Sauni)		
Week Six: Day 11: Mon Aug 20	Customary marine conservation in Palau (Lecture by Dr Suaalii-Sauni)		
Day 12: Wed Aug 22	Customary dispute resolution models: the ifoga in Samoa (Lecture by Dr Suaalii-Sauni)		KCQ 2 Due by 4.00pm
<b>MID-TRIMESTER BREAK</b>	<b>MID-TRIMESTER BREAK</b>		
Week Seven: Day 13: Mon Sept 10	Traditional Knowledge and Intellectual Property Rights: The case of Aotearoa New Zealand (Guest Lecturer)	KCQ 3 Distributed	
Day 14: Wed Sept 12	Sovereignty in French Polynesia (Guest Lecture: Prof Anthony Angelo)		Annotated Bibliography Part 2 Due by 4.00pm
Week Eight: Day 15: Mon Sept 17	Class Discussion Hosted/Chaired by Group 1: Topics to choose from: <ul style="list-style-type: none"> <li>Who benefits from marriage customs and laws in PNG and why?</li> <li>Who in Tonga benefits most from its customary</li> </ul>		<ul style="list-style-type: none"> <li>KCQ 3 Due by 4.00pm</li> <li>Group 1 Hosting/Chairing</li> </ul>

	land tenure system and why?		
Day 16: Wed Sept 19	Class Discussion Hosted/Chaired by Group 2: Topics to choose from: <ul style="list-style-type: none"> <li>Who in Samoa benefits most from the ifoga?</li> <li>Who benefits most in Palau by its marine conservation customs and laws?</li> </ul>	KCQ 4 Distributed	<ul style="list-style-type: none"> <li>Group 2 Hosting/Chairing</li> </ul>
Week Nine: Day 17: Mon Sept 24	Class Discussion Hosted/Chaired by Group 3: Topic: How can we better protect our traditional Pacific knowledge's and arts?		<ul style="list-style-type: none"> <li>Group 3 Hosting/Chairing</li> </ul>
Day 18: Wed Sept 26	Class Discussion Hosted/Chaired by Group 4: Topic: What are the benefits and detriments of developing a Pacific jurisprudence?		<ul style="list-style-type: none"> <li>KCQ4 Due by 4.00pm</li> <li>Group 4 Hosting/Chairing</li> </ul>
<b>PART FOUR:</b> <i>Group Presentations</i>			
Week Ten: Day 19: Mon Oct 1	Group presentation work	KCQ 5 Distributed In class time	<ul style="list-style-type: none"> <li>Group X Hosting of VUW Pacific Talanoa Session 3-5pm</li> </ul>
Day 20: Wed Oct 3	Group presentation work	In class time	
Week Eleven: Day 21: Mon Oct 8	Mock group presentations	In class time	KCQ5 Due by 4.00pm
Day 22: Wed Oct 10	Actual group presentations		<ul style="list-style-type: none"> <li>Groups 1 &amp; 2 Group presentations</li> </ul>
Week Twelve: Day 23: Mon Oct 15	Actual group presentations		<ul style="list-style-type: none"> <li>Group 3 &amp; 4 Group presentations</li> </ul>
Day 24: Wed Oct 17	Summary overview & course evaluations & shared lunch		Essay Due Friday Oct 19 by 4.00pm
STUDY WEEK & Exam Period Oct 22-Nov 16			

## **Academic Integrity and Plagiarism**

Academic integrity means that university staff and students, in their teaching and learning are expected to treat others honestly, fairly and with respect at all times. It is not acceptable to mistreat academic, intellectual or creative work that has been done by other people by representing it as your own original work.

Academic integrity is important because it is the core value on which the University's learning, teaching and research activities are based. Victoria University's reputation for academic integrity adds value to your qualification.

The University defines plagiarism as presenting someone else's work as if it were your own, whether you mean to or not. 'Someone else's work' means anything that is not your own idea. Even if it is presented in your own style, you must acknowledge your sources fully and appropriately. This includes:

- Material from books, journals or any other printed source
- The work of other students or staff
- Information from the internet
- Software programs and other electronic material
- Designs and ideas
- The organisation or structuring of any such material

Find out more about plagiarism, how to avoid it and penalties, on the University's website: <http://www.victoria.ac.nz/home/study/plagiarism.aspx>

## **Use of Turnitin**

Student work provided for assessment in this course will be checked for academic integrity by the electronic search engine <http://www.turnitin.com>. Turnitin is an online plagiarism prevention tool which identifies material that may have been copied from other sources including the Internet, books, journals, periodicals or the work of other students. Turnitin is used to assist academic staff in detecting misreferencing, misquotation, and the inclusion of unattributed material, which may be forms of cheating or plagiarism. You are strongly advised to check with the course coordinator if you are uncertain about how to use and cite material from other sources. Turnitin will retain a copy of submitted materials on behalf of the University for detection of future plagiarism, but access to the full text of submissions will not be made available to any other party.

## **Where to find more information**

Find key dates, explanations of grades and other useful information at [www.victoria.ac.nz/home/study](http://www.victoria.ac.nz/home/study). Find out how academic progress is monitored and how enrolment can be restricted at [www.victoria.ac.nz/home/study/academic-progress](http://www.victoria.ac.nz/home/study/academic-progress). Most statutes and policies are available at [www.victoria.ac.nz/home/about/policy](http://www.victoria.ac.nz/home/about/policy), except qualification statutes, which are available via the *Calendar* webpage at [www.victoria.ac.nz/home/study/calendar.aspx](http://www.victoria.ac.nz/home/study/calendar.aspx) (See Section C).

Other useful information for students may be found at the website of the Assistant Vice-Chancellor (Academic), at [www.victoria.ac.nz/home/about\\_victoria/avcacademic](http://www.victoria.ac.nz/home/about_victoria/avcacademic).

## List of Required and Recommended Readings:

### **PART ONE: DAYS 1-3**

#### **DAYS 1&2: Introductions & Course Outline & Introduction to the theory of custom and law in the Pacific**

Introductions, Course Outline, Introduction to custom, indigenous knowledge and law in the Pacific

##### **Required Readings:**

Narokobi, Bernard. "The Black Islands – Melanesia: Melanesian Jurisprudence". In *Lo Bilong Yumi Yet: Law and Custom in Melanesia*. Crocombe, Ron and Roche, Paul (eds). Suva, Fiji: The Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific. 1989. Chapter 1, pp.3-16. (Bb copy).

Stephens, Mamari. "Maori Law and Hart: A brief analysis". *VUWLR (Victoria University of Wellington Law Review)*, (2001), 32, pp.853-865. (Bb copy).

Tui Atua, Tupua Tamasese Ta'isi Efi. "Samoa Jurisprudence and the Samoan Lands and Titles Court: The perspective of a litigant". In *Su'esu'e Manogi: In search of fragrance: Tui Atua Tupua Tamasese Ta'isi and the Samoan Indigenous Reference*. Suaalii-Sauni, T et al (eds). Apia: National University of Samoa. 2009. Chapter 14, pp.153-172. (Bb copy).

##### **Recommended Readings:**

Lealofi, Etuale. "'Samoa Jurisprudence': A commentary". In *Su'esu'e Manogi: In search of fragrance: Tui Atua Tupua Tamasese Ta'isi and the Samoan Indigenous Reference*. Suaalii-Sauni, T et al (eds). Apia: National University of Samoa. 2009. Chapter 29, pp.340-346. (Bb copy).

MacKenzie, Melody K. "Hawaiian custom in Hawaii state law". *Yearbook of New Zealand Jurisprudence*. (2010&2011), 13&14 (combined), Benton, Richard (ed). pp.112-151. (Bb copy).

New Zealand Law Commission. *Maori Custom and Values in New Zealand Law*. Study Paper 9. Wellington: New Zealand Law Commission. 2001 (March). (Copy in Closed Reserve/Short Loan).

#### **DAY 3: Introduction to the idea of a Pacific jurisprudence**

What is jurisprudence? How has it been used in the pan-Pacific context? Who talks about a Pacific jurisprudence? How and why?

**Required Readings:**

Hoebel, E. Adamson. "What is Law?" In *The Law of Primitive Man: A study in comparative legal dynamics*. New York: Harvard University Press. 1979. Chapter 2, pp.18-28. (Bb copy).  
New Zealand Law Commission. "A Pacific Jurisprudence". In *Converging Currents: Custom and Human Rights in the Pacific*. Study Paper 17. Wellington: New Zealand Law Commission. 2006. Part 3, pp.148-166. (Bb copy).

Pospisil, Leopold. "Form of Law". In *Anthropology of Law: A comparative theory*. New York et al: Harper & Row Publishers. 1971. Chapter 2, pp.11-37. (Bb copy).

**Recommended Readings:**

Cotterrell, Roger. "Legal philosophy in context". In *The Politics of Jurisprudence: A critical introduction to legal philosophy*. London and Edinburgh: Butterworths. 1989. Chapter 1, pp.1-20. (Bb copy).

Jackson, Moana. "Criminality and the exclusion of Maori". *VUWLR* (1990), 20, pp.23-34. (Bb copy).

Llewellyn, K.N. and Hoebel, E. Adamson. "Part I: The Study of Primitive Law". In *The Cheyenne Way*. Norman, Oklahoma: Oklahoma Press. 1941. pp.3-63. (Copy in Closed Reserve/Short Loan).

**PART TWO: DAYS 4-8****DAY 4: Postcolonial theory and custom and law in the Pacific**

What is postcolonial theory? How might we use postcolonial theory to understand the relationship between custom, indigenous knowledge and law in the Pacific?

**Required Readings:**

Said, Edward W. "Orientalism". In *The Post-Colonial Studies Reader*. Ashcroft, Bill et al. (eds). 2<sup>nd</sup> edition. London and New York: Routledge. 2006. Chapter 3, pp.24-27. (Bb copy).

Spivak, Gayatri, Chakravorty. "Can the subaltern speak?" In *The Post-Colonial Studies Reader*. Ashcroft, Bill et al. (eds). 2<sup>nd</sup> edition. London and New York: Routledge. 2006. Chapter 3, pp.24-27. (Bb copy).

Mclsaac, Elizabeth. "Oral narratives as a site of resistance: Indigenous knowledge, colonialism and Western discourse". In *Indigenous knowledges in global contexts: multiple readings of our world*. Sefa, George J. et al (eds). Toronto: University of Toronto Press. 2000. Chapter 5, pp. 89-101. (Bb copy).

**Recommended Readings:**

Danielsen, Dan and Engle, Karen. "Introduction to Postcolonialism". In *After Identity: A reader in law and culture*. Danielsen, Dan and Engle, Karen (eds). New York and London: Routledge. 1995. pp.187-190. (Bb copy).

Kennedy, David. "An autumn weekend: an essay on law and everyday life". In *After Identity: A reader in law and culture*. Danielsen, Dan and Engle, Karen (eds). New York and London: Routledge. 1995. pp.191-209. (Bb copy).

West-Newman, Catherine Lane. "Anger, Ethnicities and Claiming Rights". *Ethnicities*, (2004), 4, no.1, pp.27-52.

### **DAY 5: Critical legal studies and custom and law in the Pacific**

What is "critical legal studies (CLS)" about? What can it offer the concept, study and/or development of a Pacific jurisprudence?

#### **Required Reading:**

Delgado, Richard. "The Ethereal Scholar: Does Critical Legal Studies have what minorities want?" *Harvard CR-CL LR (Harvard Civil Rights-Civil Liberties Law Review)*, (1987), 22, pp.301-322. (Bb copy).

#### **Recommended Readings:**

Leiter, Brian. "Rethinking Legal Realism: Toward a Naturalized Jurisprudence". In *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy*. Oxford: Oxford University Press. 2007. Chapter 1, pp.15-58. (Bb copy).

Matsuda, Mari J. "Looking at the Bottom: Critical Legal Studies and Reparations". *Harvard CR-CL LR*, (1987), 22, pp.323-399. (Bb copy).

Williams, Patricia J. "Alchemical notes: reconstructing ideals from deconstructed rights". *Harvard CR-CL LR*, (1987), 22, pp.401-433. (Bb copy).

### **DAY 6: Feminist jurisprudence and custom and law in the Pacific**

What is feminist jurisprudence? What does it have to offer the concept, study or development of a Pacific jurisprudence?

#### **Required Readings:**

Bothman, Susan. "Rites, Whites and Might: A critique of the effect of the revival of customary law upon the autonomy of indigenous Women". In *Passage of Change: Law, Society and Governance in the Pacific*. Jowitt, Anita and Cain, Tess Newton (eds). Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University. 2003. Chapter 7, pp143-164.

Slatter, Claire. "Gender and custom in the South Pacific". *Yearbook of New Zealand Jurisprudence*. (2010&2011), v13&14 (combined), pp.89-111.

Zorn, Jean G. "Issues in contemporary customary law: women and the law". In *Passage of Change: Law, Society and Governance in the Pacific*. Jowitt, Anita and Cain, Tess Newton (eds). Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University. 2003. Chapter 6, pp.125-142.

**Recommended Readings:**

Frug, Mary Joe. "A Postmodern Feminist Legal Manifesto". *After Identity: A reader in law and culture*. Danielsén, Dan and Engle, Karen (eds). New York and London: Routledge. 1995. pp.7-23. (Bb copy).

MacKinnon, C. "Feminism, Marxism, Method and the State: toward feminist jurisprudence", In *Feminist Legal Theory: Readings in law and gender*. Bartlett, K and Kennedy, R (eds). Boulder: Westview Press. 1991. pp.181-200.

Mohanty, Chandra Talpade. "Under Western Eyes: Feminist Scholarship and Colonial Discourses". *Feminist Review*. (1988), 30 (Autumn), pp.65-88.

**DAY 7: Foucault, custom and law in the Pacific**

How might Foucauldian ideas about law and governance assist in the development of a Pacific jurisprudence?

**Required Readings:**

Hunt, Alan and Wickham, Gary. *Foucault and Law: Towards a sociology of law as governance*. London et al: Pluto Press. 1994. Chapter 2. (Copy in Closed Reserve/Short Loan).

Foucault, Michel. "Governmentality". In *The Foucault Effect: Studies in Governmentality, with two lectures by and an interview with Michel Foucault*. Burchell, G et al (eds). London: Harvester Wheatsheaf. 1991. pp.87-104. (Bb copy).

Suaalii-Sauni, Tamasailau. "'It's in your bones!': Samoan custom and discourses of certainty". *Yearbook of New Zealand Jurisprudence*. (2010&2011), v13&14 (combined), pp.70-88. (Bb copy).

**Recommended Readings:**

Cain, M. "Foucault, feminism and feeling: what Foucault can and cannot contribute to feminist epistemology". In *Up against Foucault: explorations of some tensions between Foucault and feminism*, Ramazanoglu, C (ed). 1993. London and New York: Routledge Press, pp73-95. (Bb copy).

Young, Robert C. "Foucault, Race and Colonialism". Online at: [www.robertjcyoung.com](http://www.robertjcyoung.com). n.d. (Bb copy).

**DAY 8: Guest Lecture**

No required or recommended reading

**PART THREE: COUNTRY CASE STUDIES: DAYS 9-18****DAY 9: Papua New Guinea: Marriage customs**

**Required Reading:**

Zorn, Jean G. "Custom then and now: the changing Melanesian family". In *Passage of Change: Law, Society and Governance in the Pacific*. Jowitt, Anita and Cain, Tess Newton (eds). Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University. 2003. Chapter 5, pp.95-124. (Bb copy).

**Recommended Readings:**

Jessep, Owen. "Customary Family Law and Gender Discrimination in Papua New Guinea". In *Passage of Change: Law, Society and Governance in the Pacific*. Jowitt, Anita and Cain, Tess Newton (eds). Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University. 2003. pp.215-232. (Bb copy).

Narokobi, Bernard. "Melanesian social order". In *Lo Bilong Yumi Yet: Law and Custom in Melanesia*. Crocombe, Ron and Roche, Paul (eds). Suva, Fiji: The Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific. 1989. Chapter 2, pp.17-33. (Bb copy).

Pulea, Mere. "Women's dignity and rights: situating Pacific experiences". In *Without Prejudice: CEDAW and the determination of women's rights in a legal and cultural context*. Shivdas, Meena and Coleman, Sarah (eds). 2010. Chapter 10, pp107-124. (Bb copy).

**DAY 10: Tonga: Customary Land Tenure****Required Reading:**

Powles, Guy. "The early accommodation of Traditional and English Law in Tonga". In *Tongan culture and history*. Herda, Phyllis et al (eds). Canberra: Research School of Pacific Studies, Australian National University. 1990. (Bb copy).

Tupou, M.I. "The blending of tradition and change in Tonga: the development of its present traditional land tenure system". Unpublished essay in collection of research papers for School of Law, University of South Pacific "Researching customary law" course. Port Vila Campus: USP. n.d. (circa 2007). (Bb copy).

**Recommended Readings:**

Jowitt, A. "Indigenous land grievances, customary land disputes and restorative justice", *Journal of South Pacific Law*, (2004), 8: 2, [available online: <http://www.paclii.org/journals/fJSPL/vol08no2/8.shtml>, accessed 27/11/2006].(Bb copy).

Taufe'ulungaki, Ana. "Cultural rights in the Tongan context: some issues". In *Culture, Rights and Cultural Rights: Perspectives from the South Pacific*. Wilson, Margaret and Hunt, Paul (eds). Wellington: Huia Publishers. 2000. Chapter 8, pp.91-101. (Bb copy).

Taumoepeau, 'Alisi Afeaki. "The Land Court of Tonga". In *Pacific Courts and Legal Systems*. Powles, Guy and Pulea, Mere (eds). Suva, Fiji: University of the South Pacific in association with the Faculty of Law, Monash University. 1988. Chapter 20, pp.133-136. (Bb copy).



Tongan Royal Land Commission. *The Royal Land Commission Final Report*. Nukualofa, Tonga: Royal Land Commission. 2012. Online at: <http://www.tongaroyallandcommission.com>.

## **DAY 11: Palau: Customary Marine Tenure**

### **Required Reading:**

Graham, T. and Idechong, N. "Reconciling customary and constitutional law: managing marine resources in Palau, Micronesia", *Ocean and Coastal Management*. (1998), 40, pp.143-164. (Bb copy).

### **Recommended Readings:**

Cordonnery, Laurence. "Legal Developments in the conservation and management of highly migratory and straddling fish stocks in the Western and Central Pacific Ocean". In *Passage of Change: Law, Society and Governance in the Pacific*. Jowitt, Anita and Cain, Tess Newton (eds). Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University. 2003. Chapter 13, pp251-274. (Copy in Closed Reserve/Short Loan).

Hviding, Edvard and Ruddle, Kenneth. A regional assessment of the potential role of customary marine tenure (CMT) systems in contemporary fisheries management in the South Pacific: Report to the Forum Fisheries Agency (FFA Report 91/71). Honiara, Solomon Islands: PIFFA. 1991. (Bb copy).

Yamase, Dennis K. "Organization of the Unified Judiciary of Palau". In *Pacific Courts and Legal Systems*. Powles, Guy and Pulea, Mere (eds). Suva, Fiji: University of the South Pacific in association with the Faculty of Law, Monash University. 1988. Chapter 49, pp.255-261. (Bb copy).

## **DAY 12: Samoa: The ifoga: Customary Dispute Resolution**

### **Required Reading:**

Macpherson, Cluny and Macpherson, Laavasa. "The nature and limits of traditional dispute resolution processes in contemporary Western Samoa", *Pacific Studies*, (2006), v29, no.1/2 (March-June), pp.128-258. (Bb copy).

### **Recommended Readings:**

Epati, Semi. "Lawyers and the customary law court". In *Pacific Courts and Legal Systems*. Powles, Guy and Pulea, Mere (eds). Suva, Fiji: University of the South Pacific in association with the Faculty of Law, Monash University. 1988. Chapter 28, pp.167-171. (Bb copy).

Tuala-Warren, L. *A study in the ifoga: Samoa's answer to dispute healing*, Hamilton, NZ: Te Matahauariki Institute, University of Waikato. 2002.

Filoiali'i, L and Knowles, L. "The ifoga: the Samoan practice of seeking forgiveness for criminal behaviour", *Oceania*, (1983), 53: 4, pp.384-388.

## **DAY 13: Aotearoa New Zealand and Australia: Traditional Knowledge and Intellectual Property Rights**

### **Required Reading:**

Mead, Aroha. "Emerging Issues in Maori Traditional Knowledge, can these be addressed by UN agencies?" Presentation to the International Workshop on Traditional Knowledge.

United Nations, Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues. Panama City, 21-23 September 2005. PF11/2005/WS.TK/14. Online at:

<http://www.un.org/esa/socdev/unpfii/documents>

### **Recommended Readings:**

Benton, Nena. "Towards a more inclusive jurisprudence for Aotearoa: Te Pu Wananga 1999-2003", In *Conversing with Ancestors: Concepts and Institutions in Polynesian Customary Law*. R Benton (ed). Hamilton: Te Matahauariki Institute, University of Waikato. 2006. Chapter 5, pp.101-1134.

Frame, Alex. "A few simple points about customary law and our legal system". *Yearbook of New Zealand Jurisprudence*. (2010&2011), v13&14 (combined), pp.20-28.

Kavelin, Christopher Jones. *The Protection of Indigenous Medical Knowledge: Towards the transformation of law to engage indigenous spiritual concerns*. PhD Thesis in Law, Macquarie University. 2007. Chapters 2 & 8. (Bb copy).

Ragavan, Srividhya. "Protection of Traditional Knowledge". Paper for the Centre for Intellectual Property Rights Advocacy, National Law School of India University, Bangalore and University of Washington. Texas Instruments Visiting Scholar. n.d. (circa 2002). Online at: <http://hamilton.ou.edu/faculty/facfiles/protection>.

## **DAY 14: New Caledonia: National Sovereignty and Independence**

### **Required Reading:**

Mrgudovic, Nathalie. "The evolving manifestations of sovereignty today in the French Pacific". Paper presented at the International Workshop on "Island Independence Movements in the 21<sup>st</sup> Century", University of Edinburgh, Scotland. 8-10 September 2011. Online at: [http://www.aog.edu.ac.uk/.../nathalie\\_mrgudovic\\_conference\\_paper.doc](http://www.aog.edu.ac.uk/.../nathalie_mrgudovic_conference_paper.doc)

### **Recommended Readings:**

Sage, Yves-Louis Avocat. "The legal system of French Polynesia". In *Pacific Courts and Legal Systems*. Powles, Guy and Pulea, Mere (eds). Suva, Fiji: University of the South Pacific in association with the Faculty of Law, Monash University. 1988. Chapter 48, pp.249-254. (Bb copy).

Moyrand, Alain and Angelo, Tony. "Can the Polynesian languages be used in the proceedings of the assembly of French Polynesia?". NZACL Yearbook (2010), v16, pp.127-134. (Bb copy).

Trolue and Agniel. "Customs and State Laws in New Caledonia". In *Pacific Courts and Legal Systems*. Powles, Guy and Pulea, Mere (eds). Suva, Fiji: University of the South Pacific in association with the Faculty of Law, Monash University. 1988. Chapter 37, pp.207-210. (Bb copy).

**DAYS 15-18: Group hosting/chairing sessions of class discussion on country case studies**

Groups to select relevant readings from any of the readings listed in this outline.

**PART FOUR: GROUP PRESENTATIONS: DAYS 19-24**

No Required or Recommended Readings.