



## FACULTY OF HUMANITIES AND SOCIAL SCIENCES

### VA'AOMANŪ PASIFIKA

#### PACIFIC STUDIES

#### PASI 402

***Special Topic: Pacific Jurisprudence: a study of custom and law in the Pacific.***

**30 POINTS**

**TRIMESTER 2 2013**

### Important dates

**Trimester dates:** 15 July - 17 November 2013

**Teaching dates:** 15 July - 18 October 2013

**Mid-trimester break:** 26 August - 8 September 2013

**Study period:** 21–25 October 2013

**Examination/Assessment Period:** 25 October - 16 November 2013

Note: students who enrol in courses with examinations must be able to attend an examination at the University at any time during the scheduled examination period.

**Withdrawal dates:** Refer to [www.victoria.ac.nz/home/admisenrol/payments/withdrawalsrefunds](http://www.victoria.ac.nz/home/admisenrol/payments/withdrawalsrefunds)

If you cannot complete an assignment or sit a test or examination (aegrotats), refer to [www.victoria.ac.nz/home/study/exams-and-assessments/aegrotat](http://www.victoria.ac.nz/home/study/exams-and-assessments/aegrotat)

### Class times and locations

Tues & Thurs: 9am – 10.50am

Room 102, 6 Kelburn Parade

### Names and contact details

Sailau Suaalii-Sauni – Course co-ordinator

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### Communication of additional information

Any changes to the above information will be posted on Blackboard and/or sent through to students via email. You will automatically receive all Blackboard announcements as an email sent to your @myvuw.ac.nz email address. If you are not going to use this Victoria email address set up

for you, we strongly encourage you to set a forward from the Victoria email system to the email address you do use.

## 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 lecture and seminar based course. This means that some topic areas will be taught in a lecture format while others expect students to be prepared to engage in open and respectful class discussion chaired either by the course convenor or the students themselves. The focus of the course is specialised and so entails the introduction of new material that may not have been covered by PASI undergraduate core courses. This course probes the following questions:

- What is law and how does it usually work in the Pacific?
- What is custom and how does it usually work in the Pacific?
- What is the relationship between law and custom in the Pacific?
- What is jurisprudence?
- Is there a common jurisprudence for the Pacific? If so, what does it look like? If not, why not?

To address these questions the course examines in class the law, custom and jurisprudence of four Pacific countries as case studies: (1) Aotearoa New Zealand, (2) Papua New Guinea, (3) Samoa, and (4) Palau – and reflects on the relationship between the three key concepts of law, custom and jurisprudence within and across each of these four country case studies, noting similarities and differences. To develop a critical awareness of the issues within and across the different jurisprudential situations of Pacific countries the course teaches students about postcolonial, feminist, Marxist, critical legal and Foucauldian theoretical tools and how they could help towards gaining an understanding of the complex relationship between law, custom and jurisprudence in the Pacific.

## Course learning objectives (CLOs)

Students who pass this course should be able to:	
1	Evaluate 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 the custom and introduced laws of at least four different Pacific nation states.
4	Participate effectively in group and individual work.
5	Demonstrate basic knowledge of key literatures and debates surrounding the pros and cons of developing a Pacific jurisprudence.

## Teaching format

The teaching format for the course is based on a combined lecture and seminar approach. This means that students are strongly encouraged to actively participate in and, where necessary lead, class discussions but that there are topic areas that will require the lecture format. Students are expected to read all the main readings. A recommended reading list is provided to help build student awareness of further thinking in key subject areas. The class hosting/chairing exercise is expected to offer students the ability to develop personal confidence and gain experience in leading group intellectual discussion on a key topic in this course. Guest lectures are designed to give students the opportunity to engage with an expert from one of the country case studies.

A week by week schedule of topic areas for coverage in the course is provided in appendix 1, together with list of readings per day per week. PASI402 students have a heavier workload than PASI302 students in line with the requirements of a 30 point BA Hons course.

## Mandatory course requirements

In addition to achieving an overall pass mark of 50%, students must, unless there is a legitimate reason for their absence or late submission, attend 80% of all scheduled classes and submit or participate in all required work for assessment by or on the due date. Students who achieve a passing mark for coursework at the end of the term, but fail to turn in a major assignment will not get a "C" but will get a "K" grade (indicating that they have not passed the course due to a failure to meet requirements).

Please note that all your marked coursework for PASI402 will need to be presented in a portfolio at the end of your Honours degree, for assessment by an external examiner. We recommend you keep copies of all your assignments for this purpose. All grades received for courses taken as part of the Honours programme, cannot be assumed to predict the final grade for the degree. The external examiner will make the final recommendation for overall grades for the Honours degree, e.g. First Class Honours (1 or 2), Second Class Honours (1 or 2), etc. At Honours level we expect our students to be producing work at B+ standards and above. Students who achieve First Class Honours (straight As) become eligible for direct entry into the PhD in Pacific Studies.

## Workload

The workload for PASI 402 is consistent with other 30 point courses within the Faculty of Humanities and Social Sciences. It is recommend that for every contact hour you spend at least 2-3 hours of preparation. Every course point equals 10 hours of work.

## Assessment

This course is 100% internally assessed.

Assessment items	Length	%	CLO(s)	Due Date
1 5 Key Concepts & Questions (KCQ) Papers	900 words each	25%	1,2,3,4,5	July 22, July 29, Sept 23, Sept 30, Oct 7
2 Hosting of a Guest Lecture (2%) and Chairing of a Class Discussion Session (8%)	N/A	10%	2, 4	Hosting: Aug 8, 15 & 22, Sept 12 Chairing: Sept 17 & 19

3	1 Annotated Bibliography	1500 words	10%	1,2,3,4,5	Aug 26
4	Oral Presentation on Essay Topic	Depends on size of the class	15%	1, 2, 3, 4	Oct 8 & 10
5	1 Essay	4000 words	40%	1,2,3,4,5	Oct 28

**1. KCQs (25%; 900 words max per KCQ, references included / 5 KCQs in total = 5% each)**

These Key Concepts and Questions sheets (KCQs) offer students opportunity to provide written evidence of their understanding of the main concepts covered in the course. The KCQ sheets will be distributed in class and posted on Blackboard at least one week before it is due. See Blackboard for the KCQ marking criteria.

**2. Hosting a Guest Lecture and Chairing a Class Discussion Session (10%)**

The chairing of a class discussion session is geared to assist students to develop confidence in leading and engaging their peers in respectful intellectual discussion and the opportunity to demonstrate intellectual rigour. The hosting of a guest lecture session offers students opportunity to interact directly with Pacific experts in the field. Format for chairing and hosting will be discussed in class and posted on Blackboard. The specific marking criteria for this assignment will be posted on Blackboard.

**3. Annotated Bibliography (10%; 1500 words max, references included)**

The purpose of this assignment is to ensure that students undertake a focused and systematic literature search capable of yielding at least 6 sources relevant to their essay topic. (All students must choose a different country case study to focus on for their essay, see essay explanation below). These sources are to be annotated. This means that each source must be referenced appropriately (i.e. according to usual academic referencing styles) and that the description for each source is to include a brief and concise comment on the relevance of the source to the essay topic at hand. This assignment is designed to assist students in the preparation of their final essay. A paragraph at the beginning of the assignment explaining the search methodology used to find the sources cited is required. The assignment format will be discussed in class. See Blackboard for the specific marking criteria for this assignment.

**4. Oral Presentation on Essay Topic (15%; 20-30 minutes)**

Students must choose one of the countries listed in the essay section below for their final essay topic. All oral presentations are to be based on student essay topics. At least two weeks before this assignment is 'due', i.e. before they give their oral presentation, students are to meet with the course convenor to confirm their essay focus and the format for their oral presentation. See Blackboard for specific marking criteria for this assignment.

**5. Essay (40%; 4000 words max, references included)**

Students are to craft a topic that focuses on the law, custom and/or jurisprudence of one or two (*no more than two*) of the following countries for their final essay. These countries are: Aotearoa/New Zealand, Papua New Guinea, Solomon Islands, Vanuatu, Samoa, Tonga, Cook Islands, Fiji, Niue, Tokelau, Tuvalu, Palau, Federated States of Micronesia (FSM) and French Polynesia. Students are to meet with the course convenor during office hours to discuss and confirm their essay topic before they do their oral presentation assignment. Specific marking criteria for this assignment will be posted on Blackboard.

## Submission and return of work

All written assignments must be submitted as hard-copies with the cover sheet and placed in the assignment box just outside Room 101. All assignments will be marked by the course co-ordinator and returned to students within two weeks of receipt where reasonably possible.

## 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. Marks will be deducted for assignments turned in after the due date at 0.5 per day.

## Set text

Textbooks can be purchased from VicBooks. For more information you can check their website: [www.vicbooks.co.nz](http://www.vicbooks.co.nz). The key text you will need for PASI 402 is:

- PASI 402 student notes (available for purchase from VicBooks)

## Recommended reading

A recommended reading list will be posted on Blackboard in Week 1 file. Book sources will be placed in course reserve in the Central Library. Articles or book chapters will be posted on Blackboard in a file named "PDF copies of recommended readings".

## Student feedback

Student feedback will be sought on the teaching and learning outcomes at the end of the course. Student feedback on University courses may be found at [www.cad.vuw.ac.nz/feedback/feedback\\_display.php](http://www.cad.vuw.ac.nz/feedback/feedback_display.php).

## Other important information

The information above is specific to this course. There is other important information that students must familiarise themselves with, including:

- Academic Integrity and Plagiarism: [www.victoria.ac.nz/home/study/plagiarism](http://www.victoria.ac.nz/home/study/plagiarism)
- Aegrotats: [www.victoria.ac.nz/home/study/exams-and-assessments/aegrotat](http://www.victoria.ac.nz/home/study/exams-and-assessments/aegrotat)
- Academic Progress: [www.victoria.ac.nz/home/study/academic-progress](http://www.victoria.ac.nz/home/study/academic-progress) (including restrictions and non-engagement)
- Dates and deadlines: [www.victoria.ac.nz/home/study/dates](http://www.victoria.ac.nz/home/study/dates)
- FHSS Student and Academic Services Office: [www.victoria.ac.nz/fhss/student-admin](http://www.victoria.ac.nz/fhss/student-admin)
- Grades: [www.victoria.ac.nz/home/study/exams-and-assessments/grades](http://www.victoria.ac.nz/home/study/exams-and-assessments/grades)
- Resolving academic issues: [www.victoria.ac.nz/home/about/avcacademic/publications2#grievances](http://www.victoria.ac.nz/home/about/avcacademic/publications2#grievances)
- Special passes: [www.victoria.ac.nz/home/about/avcacademic/publications2#specialpass](http://www.victoria.ac.nz/home/about/avcacademic/publications2#specialpass)
- Statutes and policies including the Student Conduct Statute: [www.victoria.ac.nz/home/about/policy](http://www.victoria.ac.nz/home/about/policy)
- Student support: [www.victoria.ac.nz/home/viclife/student-service](http://www.victoria.ac.nz/home/viclife/student-service)
- Students with disabilities: [www.victoria.ac.nz/st\\_services/disability](http://www.victoria.ac.nz/st_services/disability)
- Student Charter: [www.victoria.ac.nz/home/viclife/student-charter](http://www.victoria.ac.nz/home/viclife/student-charter)
- Student Contract: [www.victoria.ac.nz/home/admisenrol/enrol/studentcontract](http://www.victoria.ac.nz/home/admisenrol/enrol/studentcontract)
- Turnitin: [www.cad.vuw.ac.nz/wiki/index.php/Turnitin](http://www.cad.vuw.ac.nz/wiki/index.php/Turnitin)
- University structure: [www.victoria.ac.nz/home/about](http://www.victoria.ac.nz/home/about)
- VUWSA: [www.vuwsa.org.nz](http://www.vuwsa.org.nz)
- Va'aomanu Website: [www.victoria.ac.nz/pasifika](http://www.victoria.ac.nz/pasifika)

WEEK BY WEEK TIMETABLE

<b>Wk/Day</b>	<b>Topic &amp; Reading</b>
<b>Week One:</b>	<b>What is law and custom?</b>
Day 1: Tues, July 16	<b><i>What is law?</i></b> Main readings: 1). Harris, P. "Law and Society", in An Introduction to Law, 6th edition, 2002, Halsbury House, London: Butterworths Tolley, LexisNexis Group. Chapter 1, pp. 1-27. 2). Harris, P. "The Making of Legal Rules", in An Introduction to Law, 6th edition, 2002, Halsbury House, London: Butterworths Tolley, LexisNexis Group. Chapter 7, pp. 196-222.
Day 2: Thurs, July 18	<b><i>What is custom?</i></b> Main reading: 3). New Zealand Law Commission, "Understanding Custom Law", in Converging Currents: Custom and Human Rights in the Pacific, Study Paper 17, 2006, Wellington: NZ Law Commission, Chapter 4, pp.41-59.
<b>Week Two:</b>	<b>What is jurisprudence?</b>
Day 3: Tues, July 23	<b><i>What does jurisprudence mean in theory?</i></b> Main readings: 4). Simmonds, N.E., "Introduction", in Central Issues in Jurisprudence, 3rd edition, 2008, London: Sweet & Maxwell, pp.1-8. 5). Narokobi, B., "The Black Islands – Melanesia: Melanesian Jurisprudence". In Lo Bilong Yumi Yet: Law and Custom in Melanesia. Crocombe, Ron and Roche, Paul (eds)., 1989, Suva, Fiji: The Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, Chapters 1&4, pp.3-16, 50-74. 6). Tui Atua, T.T. T.E., "Samoan 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)., 2009, Apia: National University of Samoa, Chapter 14, pp.153-172. 7). Lealofi, E., " Samoan 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)., 2009, Apia: National University of Samoa, Chapter 29, pp.340-346.
Day 4: Thurs, July 25	<b><i>What are some examples of the theory of jurisprudence in practice in the Pacific?</i></b> Main reading: 8). New Zealand Law Commission, "A Pacific Jurisprudence", in Converging Currents: Custom and Human Rights in the Pacific, Study Paper 17, 2006, Wellington: NZ Law Commission, Part 3, pp.147-166.  (Class reflective feedback session in last hour of this class on what has been learnt about what is the theory of jurisprudence and how it might work – or not – in the Pacific)
<b>Week Three</b>	<b>What are the theoretical tensions between law and custom in the Pacific? How might these tensions manifest themselves within a Pacific jurisprudence?</b>

Day 5: Tues, July 30	<b><i>What are the theoretical tensions between law and custom in the Pacific?</i></b> Refer to readings from Weeks 1&2.
Day 6: Thurs, Aug 1	<b><i>How can a common jurisprudence for the Pacific cope, if at all, with these theoretical tensions?</i></b> Refer to readings from Weeks 1&2.  (Class reflective feedback session in last hour of this class on what has been learnt about the theoretical tensions inherent in a Pacific jurisprudence)
<b>Week Four</b>	<b>Country Case-Studies: 1. Aotearoa/New Zealand</b>
Day 7: Tues, Aug 6	<b><i>What is the relationship between Tikanga Maori (Maori custom or lore) and New Zealand law? How is this relationship reflected in current New Zealand jurisprudence?</i></b>  9). New Zealand Law Commission., “Māori custom law”, in Māori Custom and Values in New Zealand Law, 2001, Wellington: NZ Law Commission, Chapter 3, pp.15-59. 10). Mead, A.T.P., “Sacred Balance”. Unpublished paper for Global Biodiversity Assessment, Cultural and Spiritual Values of Biodiversity, United Nations Environment Programme (UNEP), Online at: <a href="http://www.ubcic.bc.ca/files/PDF/sacred.pdf">http://www.ubcic.bc.ca/files/PDF/sacred.pdf</a> . [Accessed 25 June 2013]. 11). Frame, A., “A few simple points about customary law and our legal system”. Yearbook of New Zealand Jurisprudence, Benton, R., (ed), 2010&2011, v13&14 (combined), Hamilton: University of Waikato, pp.20-28.
Day 8: Thurs, Aug 8	<b><i>Guest Lecture: Aroha Mead (TBC)</i></b> No readings set for this class:
<b>Week Five</b>	<b>Country Case-Studies: 2. PNG</b>
Day 9: Tues, Aug 13	<b><i>What is the relationship between PNG custom and PNG law? How is this relationship reflected in the jurisprudence of PNG today?</i></b> Main readings: 12). Revisit Narokobi reading (set for Week 2). 13). Muganaua, T., “Mambe Area, East Sepik Province”, in Customary Law in Papua New Guinea: A Melanesian view, Scaglione, R. (ed), 1983, PNG: Law Reform Commission of Papua New Guinea, Monograph No. 2, pp.24-35.
Day 10: Thurs, Aug 15	<b><i>Guest Lecture: Virgil Narokobi (TBC)</i></b> No readings set for this class
<b>Week Six</b>	<b>Country Case-Studies: 3. Samoa</b>
Day 11: Tues, Aug 20	<b><i>What is the relationship between Fa’asamoa (Samoan custom or lore) and Samoa law? How is this relationship reflected in the jurisprudence of Samoa today?</i></b> Main readings: 14). Revisit Tui Atua reading (set for Week 2). 15). Suaalii-Sauni, T. “It’s in your bones!’: Samoan custom and discourses of certainty”, in Yearbook of New Zealand Jurisprudence. Benton, R. (ed), 2010&2011, v13&14 (combined), Hamilton: University of Waikato, pp.70-88. 16). Patu, F.S., et al. “Law and Custom”, in Samoa’s Journey 1962-2012: Aspects of history, Leasiolagi, M.M. et al (eds), 2012, Wellington: Victoria University Press, pp.18-43.

Day 12: Thurs, Aug 22	<b>Guest Lecture: Fanaafi Aiono Le Tagaloa (TBC)</b> No readings set for this class
AUG 26-8 SEPT	MID-TRIMESTER BREAK
<b>Week Seven</b>	<b>Country Case-Studies: 4. Palau</b>
Day 13: Tues, Sept 10	<b><i>What is the relationship between the customs or lore of Palau and Palau law? How is this relationship reflected in the jurisprudence of Palau today?</i></b> Main readings: 17). Yamase, Dennis K., "Organization of the Unified Judiciary of Palau", in Pacific Courts and Legal Systems. Powles, Guy and Pulea, Mere (eds)., 1988, Suva, Fiji: University of the South Pacific in association with the Faculty of Law, Monash University. 1988. Chapter 49, pp.255-261. 18). 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.
Day 14: Thurs, Sept 12	<b>Guest Lecture: TBC</b> No set readings for this class.
<b>Week Eight</b>	<b>Reflective Class Discussion on Country Case Studies</b>
Day 15: Tues, Sept 17	<b><i>Reflecting on the New Zealand/Aotearoa and PNG cases: Student hosted/chaired sessions</i></b> Discussion hosted/chaired by students who hosted/chaired the guest lecture. Reflections to focus on key issues/themes raised in guest lecture and readings. Format to be explained in class and posted on Blackboard. No set readings for this class.
Day 16: Thurs, Sept 19	<b><i>Reflecting on the Samoa and Palau cases: Student hosted/chaired sessions</i></b> Discussion hosted/chaired by students who hosted/chaired the guest lecture. Reflections to focus on key issues/themes raised in guest lecture and readings. Format to be explained in class and posted on Blackboard. No set readings for this class
<b>Week Nine</b>	<b>Critical reflections on the tensions between law and custom in the Pacific: Applying theory</b>
Day 17: Tues, Sept 24	<b><i>What might a Feminist and Marxist reading of the relationship between law and custom in the Pacific look like?</i></b> Main readings: 19). 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)., 1991, Boulder: Westview Press., pp.181-200. 20). Zorn, J.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)., 2003, Canberra: Pandanus Books, Research School of Pacific and Asian Studies, The Australian National University, Chapter 6, pp.125-142.
Day 18: Thurs, Sept 26	<b><i>What might a Foucauldian and 'Postcolonial' reading of the relationship between law and custom in the Pacific look like?</i></b> 21). Mohanty, C.T., "Under Western Eyes: Feminist Scholarship and Colonial



	Discourses". Feminist Review, 1988, 30 (Autumn), pp.65-88. 22). Foucault, M. "Governmentality". In The Foucault Effect: Studies in Governmentality, with two lectures by and an interview with Michel Foucault. Burchell, G et al (eds)., 1991, London: Harvester Wheatsheaf, pp.87-104.
<b>Week Ten</b>	<b>Critical reflections cont.</b>
Day 19: Tues, Oct 1	<b><i>How has critical legal studies (CLS) explained the relationship between law and custom in the Pacific?</i></b> Main reading: 23). Matsuda, M.J., "Looking at the Bottom: Critical Legal Studies and Reparations", Harvard CR-CL LR, 1987, 22, pp.323-399.
Day 20: Thurs, Oct 3	<b><i>Summary Discussion on Feminist, Marxist, Foucauldian, Postcolonial and CLS contributions to an understanding of the relationship between law and custom in the jurisprudence of Pacific countries</i></b> No readings set for this class
<b>Week Eleven</b>	<b>Student Essay Topic-based Oral Presentations</b>
Day 21: Tues, Oct 8	Student oral presentations on essay topic & class feedback
Day 22: Thurs, Oct 10	Student oral presentations on essay topic & class feedback
<b>Week Twelve</b>	<b>Course summation, Formal Student Evaluation Feedback &amp; Shared Lunch</b>
Day 23: Tues, Oct 15	Course Summation
Day 24: Thurs, Oct 17	Student Formal Evaluation Feedback & Shared Lunch
	Study week & exam period: Oct 21 - Nov 16 2013