

Problem for Auckland vs USP moot 2010

The moot will be conducted in the Supreme Court of the fictitious jurisdiction of Pacifica, a small island state in the Pacific.

In this court, all authority from common law countries is persuasive, but not binding. The court is especially influenced by the decisions of courts in other Pacific Island nations with a similar constitution and culture.

The moot will be conducted according to the rules of the Mooting Manual of the University of the South Pacific School of Law, with the following modifications:

A. Oral Submissions

1. Each team of 2 speakers has 30 minutes to address the court. Counsel may divide their time between themselves as they wish so long as no counsel is allotted more than 20 minutes.
2. Each team will advise the bench before the commencement of the round how much time each counsel will use.
3. Applicant's counsel will argue first, followed by the respondent's counsel.
4. Applicants' counsel may take up to 5 minutes from the allotted 30 minutes for a Reply. Respondent's counsel has no right of reply.

C. Outlines of argument

1. The outline of argument must be no more than 2 pages in length, and typed in no smaller than 12 point font. A separate list of authorities will be attached.
3. The outline must be headed with the name of the court, the name of the action, and counsels' names. This should be followed by a list of issues and sub issues to be argued. Authorities which counsel will rely on in their submission should be listed with each issue and sub issue.

The undisputed facts that give rise to the dispute that is the subject of the moot are as follows:

A Village Council, acting as a customary body, banished from the village the members of four extended families who had long been resident there, for setting up a new religion (called The New Faithful) within the village, and for continuing to hold their religious meetings after repeated directions from the Village Council to stop.

The meeting of the Village Council at which the banishment order was made was conducted in accordance with custom. All members of the village were present, including the members of the new religion, but it was clear that a majority of the village strongly opposed the spread of the new religion within their village, and that some had previously threatened violence against the new religion's members. The pastor of the new religion was given only a brief opportunity to speak and explain his group's actions before the banishment decision was made.

Banishment by order of the Village Council has long been a customary practice in this village as a means of preventing violence or unrest.

The validly-enacted Constitution of Pacifica contains the following provisions:

The Preamble to the Constitution states:

We, the people of Pacifica, do now, under the guiding hand of God, establish Pacifica and agree and pledge that: our government shall be based on democratic principles; we shall uphold the principles of equality and social justice; we shall respect and enhance human dignity and strengthen and build on our communal solidarity; we shall cherish and promote our cultural traditions; and for these purposes we now give ourselves this Constitution.

The Constitution is declared to be 'the supreme law of Pacifica', and any other laws inconsistent with it are declared void and of no effect. The sources of law in Pacifica include: 'This Constitution, the statutes of Pacifica and laws made under their authority, English common law and equity not inconsistent with the laws of Pacifica, and the customs and usages of Pacifica.'

All citizens are declared to have a set of fundamental rights, including the right to freedom of religion, assembly, association, and movement; the right to reside anywhere in Pacifica; and the right to a fair and public hearing of any issue affecting that person's rights or obligations. These rights may be subject, however, to such reasonable limits as are necessary for the protection of 'public order, safety, health or morals, or for the protection of the rights of others'.

The High Court and Supreme Court of Pacifica have the power to enforce the laws and Constitution of Pacifica and to grant any appropriate remedy.

The proceedings so far:

In the High Court below, the trial judge ruled that the banishment order was lawful and refused to issue a remedy. The case now comes properly before the Supreme Court of Pacifica on appeal.

The issue on appeal is: was the banishment order lawfully made?

The further question, whether a remedy ought to be granted if the banishment order was unlawfully made, is not currently before the court.

Relevant Precedents

Particularly relevant persuasive precedents include: *Teonea v Kaupule* [2005] TVHC 5; *Lafaialii v Attorney General* [2003] WSSC 8; *Taamale v A-G* [1995] WSCA 1; *Mauga v Leituala*, Unreported, CA of Samoa, March 2005, upholding *Leituala v Mauga* [2004] WSSC 9; *Sefo v Attorney-General* [2000] WSSC 18; *Lobo v Limanilove* [2002] SBHC 110;

Other precedents include: *State v Gotama* [2006] PGNC 135; *Public Prosecutor v Kota* [1993] VUSC 8; *Pusi v Leni* [1997] SBHC 100; *Noel v Toto* [1995] VUSC 3; *President of the Republic of Vanuatu v Speaker of Parliament* [2008] VUSC 77