

## **REVIEW OF INTRODUCTION TO SOUTH PACIFIC LAW (2<sup>ND</sup> EDITION)<sup>†</sup>**

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This second edition of *Introduction to South Pacific Law* is intended by the authors to fulfil the invaluable role played by the previous edition; an introductory text to South Pacific law. Its primary purpose is to serve as a teaching text for students who are enrolled in the various academic programmes that are offered by the School of Law (SOL) of the University of the South Pacific (USP). Nevertheless, the authors emphasise in the 'Preface' that 'the text was always intended to be of use to others, both within and outside the region, including students, practitioners, academics and others, interested in acquiring a foundation in South Pacific law.'<sup>1</sup> As one who has been directly involved in teaching first year law courses at the USP since 1998, I can confirm the immense value of this book's predecessor as an introductory teaching text. Also, the fact that countless books and articles, produced by a variety of authors since the publication of the initial edition of this book, have referred to it clearly indicates that many other people within and outside the region appreciate its value. I welcome the second edition and am confident that it will continue to serve the purposes envisaged by the authors.

This edition is co-authored by Jennifer Corrin and Don Paterson; Tess Newton, the third co-author of the first edition has not participated in the current edition so the previous chapter on criminal law that was written by Tess has been completely re-written. Irrespective, both Jennifer and Don remain eminently qualified to pen this introductory text on the laws and legal systems of Pacific Island countries. When the initial edition was published in 1999 all the authors were members of academic staff at the SOL of USP. Since then, Jennifer Corrin has moved on to serve as Associate Professor and Director of Asia Pacific Law at the Centre for Public, International and Comparative Law of the TC Beirne School of Law at the University of Queensland. Jennifer continues to research and write extensively on legal issues connected with the Pacific Islands generally or in respect of individual countries, especially the Solomon Islands. Emeritus Professor Don Paterson remains an invaluable member of the academic staff of the SOL where, apart from teaching, he continues to publish on a wide variety of topics related to legal issues affecting Pacific Island countries. Don is considered to be the authority on questions of general or historical *lex* South Pacific. Both authors bring particular insight and considerable academic and applied experience of the legal systems of Pacific Island countries into this edition.

This edition, like its predecessor, mainly focuses on the laws of "South Pacific" countries which the Preface explains to be '11 of the 12 member countries of the University of the

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<sup>1</sup> xiv.

South Pacific... [being] Cook Islands, Fiji Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.’<sup>2</sup> This explanation clarifies that the book’s coverage of countries does not extend to all countries or territories that lie within the geographical region that is commonly known as “South Pacific” and which includes other countries such as Papua New Guinea (PNG) or the various French territories. Albeit, some references are made to PNG (‘which has the advantage of extensive published material’<sup>3</sup>) and the Marshall Islands. The latter lies in the “north” instead of “south” Pacific but is an integral part of the “South Pacific” region in terms of membership of regional organisations and, more crucially as the 12<sup>th</sup> member of the USP. Unfortunately, it has not been covered in this or the previous edition to the same extent as other USP member countries and the reason given for this is ‘its legal system is based on the American model and it does not fit well within the parameters of this text.’<sup>4</sup> With respect, this is not a serious excuse, especially if the principal purpose of this book is to serve as an introductory text for students enrolled in USP law programmes – including those who come from the Marshall Islands. I would imagine that Marshallese students and readers would also find this reason trifling and irksome.

There is one other country, the Federated States of Micronesia (FSM), which has not received any references at all in the text, perhaps because its legal system is based on the American model and it is not a member of the USP. Yet in the last few years it has been sending its students to study at the USP SOL and, in fact, more students come from there than from some of the smaller USP member states such as Nauru, Niue and Tokelau. Hopefully, the next edition will see a change in the position of the authors so that both Marshall Islands and FSM will receive more extensive coverage. Besides I honestly don’t think that the challenge of making the coverage of these countries ‘fit well within the parameters of this text’ is a big one given the considerable talents of the two authors.

As an introductory text, the book introduces students and the general reader to some basic aspects of the laws and legal systems of the South Pacific region, as defined above. This edition retains most of the topics which were dealt with in the previous edition. The initial chapters give a general introduction to the legal systems of the countries concerned and of the main types of laws that are recognised and legally enforced in those countries. The chapters that follow provide general discussion of the basic framework and principles concerning the main areas of law in the countries concerned.

The second edition makes the following main changes. First, the contents of the former chapters 2 (Constituent laws), 3 (Local laws) and 4 (Received law) are condensed into two new chapters 2 (State laws) and 3 (Customary law). I think that this is a positive move because it makes the general discussion on the sources of law less complicated and easier to grasp.

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<sup>2</sup> xiii.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

Second, the chapter covering criminal law has been completely re-written although the new chapter canvasses most of the sub-topics or issues that were covered in the relevant chapter of the previous edition.

Third, the previous chapter 12 on civil and criminal procedure is omitted in the new edition and is replaced by a new chapter on family law. As a result, this text is devoted exclusively to substantive law. I am not sure what the practical reason was for this decision but I think that it makes the second edition poorer. I say so because the fundamentals of procedural law are taught in some of the first year law courses and the previous chapter on civil and criminal procedure was invaluable in giving students a concise introduction to this area of law.

Finally, according to the Preface, the contents of many of the chapters have been extensively revised. Considering that the length of the first and second editions do not vary much it can be surmised that most of the revisions have been undertaken either to update the commentary or make them clearer.

The eleven substantive chapters deal with the following topics.

‘Chapter 1 – South Pacific law and jurisprudence’ sets the context of the text by discussing the racial groupings of the indigenous people who inhabit the countries of the South Pacific region, the pre-European governance of the islands, the role of the colonial governments in legal developments and the efforts of governments during the colonial and post-colonial periods to reconcile state laws and customs. The discussion here takes the form of generalisations with references to events from individual countries that furnish illustrations. Therefore, this chapter does not provide details on the legal history of any of the countries covered but is a useful starting point for anyone seeking details on these matters.

‘Chapter 2 – State laws’ outlines the main types of positive laws, namely written constitutions, legislation, subsidiary legislation and common law and equity. Of the first three types, some laws were locally enacted by colonial and post-independence law makers whereas others were introduced from the former metropolitan countries or other foreign countries. In looking at the outline of this chapter, it is clear that the discussion of the written laws in this chapter improves on chapters 2, 3 and 4 of the original edition. The discussion of common law and equity separates developments in pre- and post-independence periods but confines the discussion to principles made by the English courts. Locally made principles of common law (or local case laws) do not warrant a mention and this, I think, is a significant omission given that technically principles of law embodied in cases decided by courts in South Pacific jurisdictions override English principles. Also, they are a distinct source of law from English principles.

‘Chapter 3 – Customary law’ deals with another source of law but this emanates not from the state but the cultural systems of Pacific Islanders. The discussion touches on the definition of customary law, its recognition by the formal legal systems and some issues

that arise from the interface between laws and customs. The chapter concludes with some general comments about customs as applied by leaders in customary communities.

‘Chapter 4 – Constitutional law’ begins the discussion of specific areas of law by looking at the most supreme of all laws; written constitutions. The discussion touches on the historical background to constitution-making within the countries of the South Pacific region then goes on to make general observations about the provisions of the constitutions relating to selected matters such as interpretation rules, government systems, public administration, bills of rights and enforcement of constitutional rights. The chapter ends with some observations about the relationship of written constitutions to other types of laws.

‘Chapter 5 – Administrative law’ concentrates on the review of administrative acts. The substantive discussion begins with a look at the prescriptions of common law on actions subject to review, grounds of judicial review, procedures and proceedings for declarations and injunctions. Then the discussion turns on statutory powers of review through such avenues as appeal, revision, rehearing and ombudsmen. Perhaps the decision to confine the discussion on administrative law to just review does not do justice to this subject because a lot more is involved in it than just reviews.

‘Chapter 6 – Criminal law’ discusses such topics as the statutory basis of criminal law, classification of offences, territorial application of legislation, general principles of criminal responsibility and particular criminal offences. It concludes by making a plea for the need to revise the criminal laws given that the statutes used in South Pacific countries are introduced from abroad and do not always reflect the values and norms of Pacific Islanders. This chapter seems to canvass well most of the basic matters related to that area of law.

‘Chapter 7 – Family law’ focuses on selected matters such as the law related to marriages (both statutory and customary), nullity, dissolution & separation, financial relief and the implications of these on children by way of custody and maintenance.

‘Chapter 8 – Contract law’, when compared to most other chapters, is quite extensive. The introduction to the chapter explains the context and sources of contract law in the South Pacific and then defines some relevant terms. The following subsections go on to discuss the main aspects of the law of contracts including formation, certainty, intention to create legal relations, consideration, promissory estoppel, privity, terms, formalities, vitiating factors, discharge of contracts and remedies. Perhaps this broad sweep is unavoidable given that the law of contract is a broad and detailed area.

‘Chapter 9 – Torts law’ begins with some introductory comments about the term “torts” and the nature of compensable wrongs. Then it goes on to discuss selected common law torts, namely trespass to the person and to property, nuisance, cattle trespass & scienter (this is an ancient tort where damage is caused to another by an animal that is *known* to be dangerous), unsafe premises, negligence, defamation and passing off.

‘Chapter 10 – Land law’ focuses on various interests in land and how these are created, acquired, transferred and terminated. After a general introduction, the substantive discussion divides the field (no pun intended) into customary land tenure and non-customary interests to land as regulated by the formal laws. The discussion of customary land touches on ownership of customary land in South Pacific countries, acquisition and alienation of land from customary tenure, determination of disputes, registration and management of customary land. Then the discussion outlines a long list of non-customary interests in land such as freehold estates, perpetual estates, hereditary estates, occupation rights, leasehold estates, fixed term estates, licences or permits, easements and mortgages. The chapter ends with some comments about registration of estates and interests in non-customary land and land use planning.

‘Chapter 11 – State courts’ basically outlines the structure, composition and jurisdictions of the courts that have been set up in the 11 countries.

The contents of the above chapters provide a very broad sweep of the legal landscape of South Pacific countries. Given the introductory nature of this text, most of the topics for the various chapters select themselves. But from the point of view of teaching and the learning needs of first year students at the SOL, I am disappointed by the decision to omit the chapter on procedure in this edition. Also, there are two other sources of laws that perhaps need some treatment in the text, local judicial decisions and international laws, because in practice these are recognised and applied in South Pacific countries.

Aside from chapter 11, which separately discusses the courts in each of the 11 countries concerned, the common approach in the other chapters is to make general observations or state broad principles or legal rules for the matters under discussion. Where required, exceptions or peculiarities are then explained. In discussing the general propositions or exceptions, references are then made to the laws or practices of countries by way of illustrations. The result is that most of the discussions assume a comparative focus. This is necessary because there are at least 11 countries to cover; however, the “price” for doing so is that the legal situation may not be totally clear or that some important matters of detail may be lacking. Overall, the authors have dealt with this challenge quite well. Also, the written expression style seem to balance well the demands of a legal academic text and the fact that for the average South Pacific national, English is not a first language. Therefore, legalese is kept to a minimum and most of the sentences are relatively easy to read.

I warmly welcome this second edition and will certainly recommend it to my students as a required reading. I do likewise for any other legal or non-legal person who may be interested in acquiring a clear and concise introductory text on the laws of South Pacific countries.