

## SOME ASPECTS OF LAW IN HAWAII

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### Introduction

Hawaii<sup>[1]</sup> -- like certain other Pacific Island jurisdictions -- is often described as being a sort of paradise.<sup>[2]</sup> One definition of paradise could be a place that does not have or need law. Yet, as is true of elsewhere in the Pacific, Hawaii does indeed need law. This need is met by a well-established body of laws.

Although it might not quite be heaven on earth, Hawaii is, in certain respects, a well-known place. People in most parts of the world have heard of Hawaii. Furthermore, each year millions of tourists, mostly from Japan and North America, visit one or more of the Hawaiian Islands. Others come to the islands to conduct business, perform military service, pursue opportunities in higher education, or to receive advanced medical treatment.

While “Hawaii” may be a household word, Hawaii’s laws and legal system are less familiar. However, for lawyers and law students from outside of Hawaii gaining a basic understanding of Hawaii law can be helpful not only for dealing with legal matters that are connected with Hawaii, but also for developing a sense of the wide variety of laws and legal traditions that can be found in Polynesia and in the broader Pacific Basin.

The purpose of this article is to provide a general introduction to the law and legal system of Hawaii from a comparative law perspective. It is not the goal of this article to offer a comprehensive survey of Hawaii law, but rather to discuss certain salient features of law in Hawaii.

By using a comparative law approach, this article is meant primarily for lawyers and law students from jurisdictions other than Hawaii.

### General Background

The Hawaiian Islands are comprised of a volcanic archipelago located in the tropical region of the Central Pacific Ocean.<sup>[3]</sup> The islands are located about 2,400 miles, or roughly 3,840 kilometers, from the West Coast of the continental United States.<sup>[4]</sup>

The island chain stretches from the island of Hawaii<sup>[5]</sup> (often called the “Big Island”)<sup>[6]</sup> in the southeast to tiny Kure Atoll (also known as “Ocean Island”)<sup>[7]</sup> in the northwest. Of the more than one hundred islands in the Hawaiian chain, there are eight major islands.<sup>[8]</sup> Seven of these eight islands currently sustain permanent populations.

Although Hawaii may appear as a mere dot on some maps of the world, the Hawaiian Islands are actually

larger in terms of both land area and population than many people realize. The total land area of the Hawaiian Islands is more than 6,400 square miles or more than 16,000 square kilometers.<sup>[9]</sup> To put that figure into proper perspective, the total land area of the Hawaii is significantly larger than the combined land areas of Brunei, Hong Kong, Singapore, the Maldives, and Macau.<sup>[10]</sup>

The de facto population of the Hawaiian Islands is around 1.3 million people.<sup>[11]</sup> Hence, there are more people living in Hawaii than in most Pacific Island nations or territories.<sup>[12]</sup> Even though it is only the third largest of the Hawaiian Islands in terms of land area, Oahu is home to the vast majority of people in Hawaii. Honolulu, Hawaii's state capital, is located on Oahu. Oahu is where one will find Waikiki.

The main Hawaii Islands other than Oahu are normally referred to locally as being the “Neighbor Islands.” However, one sometimes also hears the term “Outer Islands.”

The original inhabitants of Hawaii are believed to have arrived many centuries ago from other Pacific Islands via special voyaging canoes.<sup>[13]</sup> Their descendants are usually referred to as either “Hawaiian” or “Native Hawaiian.”<sup>[14]</sup>

Today the population of the islands forms a diverse mix of races and cultures with most people ultimately having roots in East Asia, Polynesia or Europe (mostly via North America). Dating and marriage across ethnic as well as racial lines is very common in Hawaii. Hence, some now people have ancestral ties to all three regions.<sup>[15]</sup>

Economically, the people of Hawaii enjoy a standard of living that is higher (at least in dollar terms) than what is found in most of the Pacific.<sup>[16]</sup> Hawaii’s Gross State Product (GSP) is about US\$35 billion.<sup>[17]</sup>

Politically, virtually all of the Hawaiian Islands<sup>[18]</sup> are under the de facto<sup>[19]</sup> control of the government of the State of Hawaii. This, in turn, makes Hawaii one of the states of the United States of America.<sup>[20]</sup> Persons born in Hawaii are thus considered to be U.S. citizens. Since 1959, the people of Hawaii have had the right to participate in U.S. presidential elections. People in Hawaii also elect senators and representatives who are sent to Washington, D.C. to serve in the U.S. Congress.

In addition to the federal layer of government, there is a state government and four county governments.<sup>[21]</sup> Currently, there are no town or village governing bodies.<sup>[22]</sup>

### **A Brief Sketch of Hawaiian Legal History**

In the days before European contact<sup>[23]</sup>, Hawaii was an oral culture.<sup>[24]</sup> In pre-contact Hawaii an important legal concept was the kanawai or edict.<sup>[25]</sup>

The word kanawai is associated with leaves of the ti plant (*Cordyline terminalis*). Ti leaves were used in religious ceremonies. The edicts could have either a divine or a royal origin. In other words, certain kanawai were associated with particular gods while other kanawai were associated with particular chiefs. Edicts dealt with everything from water rights to ceremonial protocol.

A related concept that could have legal, religious, and political overtones was the kapu.<sup>[26]</sup> This is a word found, with slight variation, in various Polynesian languages. It has entered the English language as “taboo.”<sup>[27]</sup> Essentially, a kapu was a prohibition or special privilege.<sup>[28]</sup> These could be of a permanent or a temporary nature. Many limited the actions of women and commoners (makaainana). Breaking a kapu was a serious offense. Offenders could be executed.

Nevertheless, there was room for redemption. The traditional Hawaiian legal system featured places of

refuge namely, the puuhonua.<sup>[29]</sup>

A puuhonua was a special type of temple or heiau. If one safely made it to a puuhonua and underwent the proper rituals, then one was both spiritually and legally rehabilitated and could return to society unmolested. Today visitors to the Kona District of the Big Island can view a well-restored place of refuge at Puuhonua o Hanaunau National Historical Park.<sup>[30]</sup>

As for legal proceedings, certain cases were heard by the local chief (alii) acting as a judge.<sup>[31]</sup> There were no juries. Likewise, there were no lawyers in the modern sense of the term. Trials by ordeal were sometimes employed. A trial by ordeal would be conducted by a priest (kahuna). The makaainana would sometimes take matters into their own hands. Self-help, i.e., retaliation was often the remedy when personal property had been converted. For family matters, Hawaiians used a form of family-based dispute resolution called hooponopono or “setting it right.”<sup>[32]</sup>

In the late 1700s and early 1800s, Hawaiians experienced ever-increasing contact with Westerners.<sup>[33]</sup> The first wave of outsiders consisted of explorers. The explorers were soon followed by the crews of vessels sailing between Asia and North America. Eventually, there were Westerners who moved to Hawaii to live. Some were simply sailors who jumped ship. Others were Christian missionaries or merchants. Such continued Western contact led to a weakening in traditional beliefs and customs. In particular, Christianity was adopted by a significant number of Hawaiians during the 1820s. This led to the decline of the traditional polytheistic religion.<sup>[34]</sup> As the Hawaiian religion declined, so did the religious underpinnings of the old legal system and social order.

The traditional Polynesian legal system of Hawaii, which was based on a rich yet entirely oral heritage, began to be replaced by a Western system of written laws.<sup>[35]</sup> In the early years, these written laws were basically short royal edicts that often displayed the influence of the Calvinist beliefs of the early missionaries. Nevertheless, within a mere two decades from the introduction of a writing system based on the Latin alphabet, Hawaii gained a charter of rights<sup>[36]</sup> and, then, a written constitution.<sup>[37]</sup> Both of these documents were inspired by Anglo-American legal concepts.

During the nineteenth century, the Hawaiian legal system became increasingly westernized.<sup>[38]</sup> Hawaii would go through a series of written constitutions and codes.<sup>[39]</sup> A body of case law developed.<sup>[40]</sup> A legal system based on professional lawyers, lay juries, and a largely independent judiciary was realized. More and more Hawaii came to resemble a common law jurisdiction.<sup>[41]</sup> Then, in what would prove to be the final days of the Hawaiian monarchy,<sup>[42]</sup> the Kingdom of Hawaii formally adopted the common law albeit with certain limitations to preserve Hawaiian customs and precedents.<sup>[43]</sup>

Shortly after officially becoming a common law jurisdiction, Hawaii lived through a coup d’etat that led to the establishment of a pro-American Provisional Government.<sup>[44]</sup> Although essentially an oligarchy by nature, this government later declared itself to be the Republic of Hawaii. Nonetheless, the ultimate goal of the coup leaders was annexation by the United States.<sup>[45]</sup> That was achieved in 1898. Territorial status followed in 1900.

Under the government of the Territory of Hawaii, certain American legal concepts took deeper root, yet political and economic conditions in Hawaii differed somewhat from what generally prevailed in the continental United States.<sup>[46]</sup> The difference in the ethnic and racial composition of the local population was sometimes viewed negatively in the continental United States and even among some local Caucasians. At times, Hawaii must have appeared as a distant, dangerous colonial outpost.<sup>[47]</sup>

The bleakest period of the territorial era came during World War II. Shortly after the December 7, 1941 Japanese attack on Pearl Harbor, martial law was declared in the Hawaiian Islands. Hawaii would remain under martial law until 1943, by which time the tide of the Pacific War had clearly turned in favor of the United States.<sup>[48]</sup> Only after the war was over would the U.S. Supreme Court rule that the declaration of martial law had been unconstitutional.<sup>[49]</sup>

In 1959, after a Referendum was held, the U.S. Congress admitted Hawaii into the union as a state. Upon becoming a state, the entire U.S. Constitution took effect in Hawaii. Since 1959, Hawaii has also come under the entire range of federal statutes, regulations, and relevant case law.

## Hawaii's court system

Hawaii has both state<sup>[50]</sup> and federal<sup>[51]</sup> courts. There are no municipal or county courts in Hawaii at the present time. In fact, the judicial picture in Hawaii is relatively straightforward and thus considerably less complicated than that which is found in certain other states like New York or California.<sup>[52]</sup>

## Hawaii State Courts

In Hawaii, as elsewhere in the United States, the average person is more likely to come in contact with the state court system than the federal court system. Most crimes as well as most civil disputes come within the purview of state courts.<sup>[53]</sup>

Within the Hawaii state court system, there are four judicial circuits.<sup>[54]</sup> Although these are state courts, the circuits happen to correspond with the geographical boundaries of the four counties. The First Circuit covers the City & County of Honolulu, i.e., the island of Oahu. The Second Circuit encompasses the islands of Maui, Molokai, Lanai, and Kahoolawe. The Third Circuit covers the Big Island. (Formerly, the Big Island was divided into the Third and Fourth Circuit. There is currently no Fourth Circuit.) The Fifth Circuit covers Kauai and Niihau.

Each judicial circuit is composed of a circuit court,<sup>[55]</sup> a district court,<sup>[56]</sup> and a family court.<sup>[57]</sup> Each type of court has its own judges. Yet, jury trials are only found in the circuit courts. With the exception of the Fifth Circuit, the circuits use geographical divisions for district court cases.

The court of original jurisdiction in each circuit is the circuit court.<sup>[58]</sup> Circuit courts have joint jurisdiction with district courts to hear civil cases where the amount in controversy exceeds US\$10,000. Civil cases where the amount in controversy exceeds US\$20,000 are heard exclusively by circuit courts. However, probate cases, regardless of size, are heard by the circuit court.<sup>[59]</sup> The tax appeal court<sup>[60]</sup> is actually a part of the circuit court. There is also a land court.<sup>[61]</sup>

As for criminal cases, felony<sup>[62]</sup> cases are mostly heard by the circuit courts while misdemeanor cases are mostly heard by the district courts.<sup>[63]</sup> In other words, smaller civil and less serious criminal cases are handled by the district courts. For example, traffic matters<sup>[64]</sup> and landlord-tenant disputes<sup>[65]</sup> along with shoplifting cases<sup>[66]</sup> are all standard district court fare. The family court is a unified court that hears cases involving divorce, child custody, paternity, adoption, guardianship, or certain criminal matters. Due to the sensitive nature of many of the proceedings, the courtrooms used by the family court tend to be small and effectively closed to the general public.

With a few exceptions, a case heard at the trial level by a circuit, district, or family court can be appealed. Hawaii has two appellate courts viz., the Supreme Court of Hawaii<sup>[67]</sup> and the Intermediate Court of Appeals ("ICA").<sup>[68]</sup> The Supreme Court currently has five justices while the ICA has four judges.<sup>[69]</sup>

The ICA uses panels of three judges for individual cases.

All state judges and justices in Hawaii are appointed rather than elected. Appointments are made by the Governor and then confirmed by the state Senate.<sup>[70]</sup> This is similar to the federal system, but there are no life-long appointments in the Hawaii state judiciary.<sup>[71]</sup>

Both the Supreme Court and the ICA are statewide courts that are based in Honolulu. There are no geographical subdivisions. Hawaii has a somewhat unusual system for handling appeals. All appeals of right are initially filed with the Clerk of the Supreme Court of Hawaii. The Hawaii Supreme Court then decides whether to handle the case itself or else to assign it to the ICA. Typically, appeals that are considered to be of a routine nature are assigned to the ICA whereas the Supreme Court retains cases that have broader implications.<sup>[72]</sup> After the ICA renders an opinion, a party may ask the Supreme Court to review the decision on the basis of a writ of certiorari.

Whether the appeal is handled by the ICA or the Supreme Court, the appeal is not usually “heard” in the literal sense of the term. In recent years, oral arguments have only rarely been employed by either appellate court. A backlog of appeals is presumably to blame for this unfortunate state of affairs.

### **Federal courts**

The entire State of Hawaii along with certain islands that are not officially part of the State of Hawaii come under the original, federal jurisdiction of the United States District Court for the District of Hawaii.<sup>[73]</sup> The U.S. district court hears both civil and criminal cases. Unlike some larger states, Hawaii has only one U.S. district court.

In addition to the U.S. district there is a bankruptcy court and various bodies that handle federal administrative hearings.

At the federal appellate level, Hawaii comes within the jurisdiction of the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit is based in San Francisco. In addition to Hawaii, the Ninth Circuit covers California, Nevada, Arizona, Oregon, Washington, Idaho, Montana, Guam, and the Northern Mariana Islands.<sup>[74]</sup> Three-judge panels from the Ninth Circuit visit Honolulu on a regular basis to hear cases.

The only court above the Ninth Circuit is the Supreme Court of the United States.<sup>[75]</sup> Decisions of the U.S. Supreme Court are binding on all other courts in the United States. Virtually all cases that come to the U.S. Supreme Court do so by means of a writ of certiorari. Although a few cases from Hawaii have made it all the way up to the Supreme Court, it is certainly a rare event. In some years, the Court does not grant certiorari in a single Hawaii case.

However, the US Supreme Court did recently decide a Hawaii case called *Rice v. Cayetano*.<sup>[76]</sup> Although this article is not the place to analyze the *Rice* case in detail, suffice it to say that *Rice* dealt with requirements for voting in state-run elections for Trustees of OHA.<sup>[77]</sup>

At times, the U.S. Supreme Court feels geographically, politically, and even culturally remote from Hawaii. One could view the nine justices in Washington, D.C. as being about as far removed from Hawaii as the Judicial Committee of the Privy Council was from much of the world during the height of the British Empire. Yet, by deciding or, for that matter, not deciding heated constitutional issues, the highest court in the federal system can and does have an impact on the daily lives of people throughout the United States. This reality was made abundantly clear in the Florida election cases wherein the U.S. Supreme Court effectively decided the 2000 Presidential election.<sup>[78]</sup>

## Legal Education and the Legal Profession in Hawaii

Lawyers in Hawaii typically have attended either the William S. Richardson<sup>[79]</sup> School of Law, which is located on the campus of the University of Hawaii at Manoa,<sup>[80]</sup> or else a law school located in another state. In other words, the vast majority lawyers in Hawaii are products of the American system of legal education.<sup>[81]</sup>

Law schools in the United States confer the Juris Doctor (“J.D.”) instead of the traditional Legum Baccalaureus (“LL.B.”).<sup>[82]</sup> The J.D. is a professional degree that is typically earned after three years of full-time study. States typically require that a person hold a J.D. or its equivalent before sitting for the bar.<sup>[83]</sup>

The J.D. is sometimes viewed as being a graduate degree because U.S. law schools normally require that law school applicants first hold a bachelor’s degree (B.A., B.S. or similar degree) before their legal studies can begin.<sup>[84]</sup> These degrees normally require four years of full-time study. Hence, lawyers in Hawaii, like their counterparts in the continental United States, typically have had at least seven years of post-secondary education.

To become a member of the Hawaii Bar, one must, among other things, sit for the Hawaii state bar examination, which is given twice a year in Honolulu. An applicant must hold a J.D. or LL.B. from a law school accredited by the A.B.A., but there are some limited exceptions to that requirement.<sup>[85]</sup>

Unlike the situation still found in many countries, there is no requirement that an applicant to a U.S. bar be an American citizen or even a permanent resident, i.e., holder of a so-called “green card.” Moreover, in Hawaii there is no state residency requirement. Likewise, unlike what prevails in certain other common law jurisdictions, Hawaii has no “articling” or “pupilage” requirement.

After passing the bar exam and the required background check, candidates are sworn in as members of the bar.<sup>[86]</sup> After being admitted to practice law in Hawaii,<sup>[87]</sup> a lawyer is required to join the Hawaii State Bar Association (“HSBA”).<sup>[88]</sup> Like bar associations in other states, HSBA publishes a bar journal, holds an annual convention, sponsors workshops, engages in some lobbying, and organizes public outreach and community service events.

### Local Legal Culture

Overall, the practice of law in Hawaii is quite close to what one would find in many parts of the continental United States. A considerable number of lawyers in Hawaii have lived in the continental United States to attend law school and/or have practiced law there. Indeed, a significant portion of the bar was originally born outside of the islands.<sup>[89]</sup> Other Hawaii lawyers have, at least, traveled outside of the islands on various occasions whether it be to participate in depositions, attend legal seminars, or to simply go on vacation.

Many Hawaii lawyers belong to national legal organizations such as the A.B.A.<sup>[90]</sup> Moreover, a fair number of lawyers in Hawaii are qualified to practice law in other jurisdictions. Accordingly, there is a steady stream of outside influence.

Nevertheless, a careful observer can detect elements of a local legal culture or perhaps a local legal style. There are a number of factors that have helped to form this unique island legal culture.

Even the largest and most sophisticated law firms in Honolulu are nowhere near the sheer size of some of America’s so-called “mega-firms.” Such firms typically have offices in various cities and often employ hundreds of lawyers. By contrast, a local Honolulu firm with, say, a dozen lawyers would still be

considered to be a sizeable entity. Firms on the Neighbor Islands tend to be even smaller. The relatively small average size of law firms in Hawaii enables many associates to gain greater responsibility at an earlier stage in their careers.

While the Hawaii bar is no longer the tiny elite group that it was in the days of the Territory, let alone during the Monarchy, many lawyers in Hawaii today do know each other. A lawyer walking through Downtown Honolulu, where most law firms, courts, and government agencies are located, is likely to run into colleagues from other offices. Likewise, Neighbor Island lawyers frequently interact with colleagues based on the same island. Accordingly, an individual lawyer's reputation, be it good or bad, can still spread through the legal community fairly quickly by word of mouth.

The relatively small size of law firms when combined with the generally casual, tropical island lifestyle favored by many Hawaii residents helps to create a somewhat "laid-back" profession.<sup>[91]</sup> Certainly, however, members of the Hawaii bar can still be zealous advocates of their clients' interests.

Naturally, there are limits to how informal things are allowed to be. For example, even though male lawyers in Hawaii often wear aloha shirts in the office, court appearances are still made in coats and ties.<sup>[92]</sup> Female lawyers enjoy somewhat greater flexibility, but female courtroom attire must still look professional. As is the normal custom in the United States, judges and justices, regardless of gender, wear black robes, but do not wear wigs.

Similarly, although some judges and lawyers have been known to occasionally resort to using the local "pidgin" dialect<sup>[93]</sup> when trying to explain points to parties,<sup>[94]</sup> pleadings and decisions are always written in Standard English.<sup>[95]</sup>

Hawaii has long been a multi-ethnic society. Over the years the Hawaii Bar has evolved from being a largely male, white, Anglo-Saxon, protestant institution into a body that better reflects the diversity of cultures, races, religions, genders, life styles, and physical disabilities found in the islands. In particular, there are now a considerable number of lawyers from various Asian and Pacific Island ethnic groups although certain groups are still underrepresented in the profession.

## **An Overview of Hawaii Law**

### **Procedural Law**

Federal law often serves as a model in procedural matters. For example, the Hawaii Rules of Civil Procedure, issued by the Supreme Court of Hawaii,<sup>[96]</sup> very closely mirror the Federal Rules of Civil Procedure, approved by the Supreme Court of the United States. Where there is a lack of Hawaii case law concerning a certain procedural issue, Hawaii courts will often look to federal decisions interpreting similar court rules.

### **Substantive Law**

Today Hawaii is an Anglo-American common law jurisdiction that is similar in many respects to other U.S. jurisdictions. As in other states, standardized state legislation, as proposed by groups of legal scholars,<sup>[97]</sup> has often been adopted with only minor changes during the legislative process.<sup>[98]</sup> An example of such a law would be the Uniform Probate Code ("UPC").<sup>[99]</sup>

Hawaii has also adopted various Articles of the Uniform Commercial Code ("UCC").<sup>[100]</sup> Moreover, Hawaii sometimes adopts the recommended amendments to the UCC as they are suggested. As a result, commercial law in Hawaii is close to that found in most other states. Of course, there is always some room for differences in judicial interpretation of statutes like the UPC or UCC. Accordingly, these laws are not

quite as “uniform” as some would prefer.

In other areas, the situation is somewhat more complicated. For example, Hawaii has exercised more control over its criminal law.<sup>[101]</sup> Nevertheless, the Hawaii Penal Code<sup>[102]</sup> was clearly inspired by the Model Penal Code.<sup>[103]</sup> However, it should be noted here that Hawaii was one of the first states to abolish the death penalty.

### **Some Special Features of Hawaii Law**

While Hawaii law is often similar to what one finds in other U.S. jurisdictions, there are certain areas where Hawaii law can and does differ. The main differences are to be found in the fields of Native Hawaiian rights and property law.

The existence of special Hawaiian rights has long been recognized.<sup>[104]</sup> The 1892 statute adopting the common law in Hawaii provided certain room for Hawaiian customary practices. The modern descendant of that statute contains a similar provision. This provision has been upheld by case law, but there are limits as to what practices are recognized as being customary and thereby subject to judicial protection.<sup>[105]</sup> The state constitution also recognizes Hawaiian rights to some extent.<sup>[106]</sup>

Customary rights can be divided into gathering rights, fishing rights, water rights, and access to certain lands for traditional religious ceremonies. For Native Hawaiians to practice their culture, it is vital that some areas remain relatively undeveloped. Although their interests sometimes differ, Native Hawaiian activists have often found allies among environmentalists. By necessity, such Hawaiian rights can place restrictions, albeit fairly limited ones, on the rights of certain landowners, whether they be public or private. This has caused a political backlash in recent years.<sup>[107]</sup>

In the area of property law, Hawaii is somewhat unusual in that there are two different systems of land registration in place. Titles are registered under either the land court system or the Torrens title system. Other unusual aspects of Hawaii property law include the public ownership of all shorelines<sup>[108]</sup> and special rules relating to geothermal resources.<sup>[109]</sup> Also, when dealing with Hawaii property law one will sometimes come across special Hawaiian terms such as ahupuaa, which refers to a traditional land division or district.<sup>[110]</sup>

It should also be noted that land ownership in Hawaii has traditionally been concentrated with a considerable percentage of land in the islands being controlled either by governments or a small group of large private landowners. Moreover, much of the land that was once held by Native Hawaiians has passed into non-Hawaiian hands.<sup>[111]</sup>

In other areas of the law, the differences are less evident and certainly not unique to the islands. A few examples will suffice. For better or for worse, state courts in Hawaii are viewed by some as being more favorable to personal injury plaintiffs than courts in certain other states or even the federal district court in Hawaii. Likewise, state courts are sometimes seen as being rather protective of the rights of criminal defendants. Even in certain civil matters, Hawaii courts, on occasion, have been willing to recognize what might be regarded as new rights.

### **The Future of Law in Hawaii**

At the dawn of a new millennium, law in Hawaii will certainly continue to evolve. Hawaii will be confronted with many of the same problems faced by other jurisdictions. Meanwhile, issues special to Hawaii will likely continue to involve property law and Hawaiian rights.

In particular, the eventual realization of some form of Native Hawaiian sovereignty beyond OHA will shape law in Hawaii. The new entity would need its own laws and would have to interact with the federal,



state, and county governments. A future Native Hawaiian government could take any number of possible forms, but, at the time of writing, some sort of “state-within-a-state” entity, which would be recognized by the federal government, seems most likely.<sup>[112]</sup>

In forming such a government, Native Hawaiians could draw upon the experiences of indigenous peoples elsewhere in the Pacific and those of Native Americans (American Indians) who have set up a wide variety of tribal governments in the United States and Canada. Some of these tribal governments enjoy their own court systems.<sup>[113]</sup>

It seems safe to say that the creation of a federally recognized Native Hawaiian government would probably be the single most significant development in Hawaii law during the early part of the new century.

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#### ENDNOTES:

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[1] Due to the introductory nature of this article, I have chosen not to employ diacritical marks (macrons and glottal stops) in the spelling of Hawaiian names and words. Readers who wish to verify the spelling of Hawaiian words, complete with diacritical marks, are encouraged to consult MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY: HAWAIIAN-ENGLISH/ENGLISH-HAWAIIAN (rev. ed. 1986) [hereinafter PUKUI & ELBERT].

[2] The image of Hawaii as an island paradise can be frequently found in tourist literature. Some of the flavor of such literature can be gleaned from the homepage of the Hawaii Visitors and Convention Bureau (“HVCB”). HVCB (last visited April 25, 2001) <http://www.hvcb.org>. The Japanese language version can be found at: <http://www.gohawaii.com/hokeoj>.

[3] A map of the Hawaiian Archipelago can be found on the Internet. University of Texas Library Online, Hawaii (last visited April 25, 2001) [http://www.lib.utexas.edu/Libs/PCL/Map\\_collection/states/Hawaii.gif](http://www.lib.utexas.edu/Libs/PCL/Map_collection/states/Hawaii.gif).

[4] Department of Business, Economic Development, and Tourism, State of Hawaii, Facts and Figures, State of Hawaii (last visited April 25, 2001) <http://www.state.hi.us/dbedt/facts/statefact.html> [hereinafter Facts & Figures].

[5] The geographical name “Hawaii” can refer either to the Big Island alone or to the entire island chain.

[6] The Big Island is, by far, the largest of the Hawaiian Islands in terms of land area.

[7] Kure Atoll is located near the Midway Islands. It is part of the Northwest Hawaiian Islands, a series of

very small islands, reefs, and banks located northwest of Niihau.

[8] The names of the major islands are as follows: Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai, and Niihau. See generally, O. A. BUSHNELL (ed.), *THE ILLUSTRATED ATLAS OF HAWAII* (1970) (1988).

[9] The land area according to the State of Hawaii's website is 6,423.4 square miles. Facts & Figures, *supra* note 4. The total area of the Hawaiian Islands would be significantly larger if various potential maritime boundaries are considered.

[10] Comparisons of populations and areas are based mostly on information contained in *THE NYSTROM DESK ATLAS* 142-143 (1994) [hereinafter *NYSTROM*].

[11] Information on Hawaii's population as well as various social and economic indicators can be obtained from the Census Bureau's website. United States Census Bureau, Hawaii (last visited April 25, 2001) <http://www.census.gov/cgi-bin/datamap/state?15>.

[12] In Oceania, only Australia, New Zealand, and Papua New Guinea have more people than Hawaii. *NYSTROM*, *supra* note 10, at 143-144.

[13] The July 7, 1999 issue of the *HONOLULU STAR-BULLETIN* contained special coverage on the voyages of the Hokulea, perhaps the most famous of the modern-day Polynesian voyaging canoes.

[14] In this article, I will be using the terms "Native Hawaiian" and "Hawaiian" interchangeably to refer to anyone of Hawaiian ancestry regardless of blood quantum. Hence, I am ignoring the technical distinction made in the Hawaiian Homes Commission Act of 1920, 42 Stat. 108, § 201(7). Incidentally, a term for Hawaiians that has gained popularity recently is "kanaka maoli." Kanaka maoli could be translated as "native person" or "indigenous person" although it originally referred to a full-blooded Hawaiian person. PUKUI & ELBERT, *supra* note 1, at 127.

[15] An overview of ethnic groups in Hawaii can be found in a special issue of the journal *SOCIAL PROCESS IN HAWAII*. 29 *SOCIAL PROCESS IN HAWAII* (1982). Hawaii's ethnic diversity has fostered an environment of religious pluralism. See, e.g., *HAWAII ASSOCIATION OF INTERNATIONAL BUDDHISTS, UNITY IN DIVERSITY: HAWAII'S BUDDHIST COMMUNITIES* (1997).

[16] Per capita personal income and median annual income of households are in the range that one would expect for an advanced market economy. However, one should consider that the cost of living in Hawaii is higher than the U.S. average. Facts & Figures, *supra* note 4. *NYSTROM*, *supra* note 10, *passim*.

[17] Facts & Figures, *supra* note 4.

[18] Within the island chain itself, Midway is controlled directly by the federal government. So too are certain small islands that are not technically part of the island chain but which have had some historical connection with Hawaii such as Johnston Island (also known as "Kalama"), Palmyra Island, and Kingman Reef.

[19] Whether the State of Hawaii is also the *de jure* government of Hawaii depends on with whom one talks. There have been legal and political arguments made about whether the State of Hawaii is a legitimate entity and whether the United States has any right to govern Hawaii at the federal level. These arguments are based on history. In a nutshell, Hawaii was recognized as an independent nation by various

ninetieth century world powers. Until 1893, Hawaii was a kingdom. The native monarchy was overthrown by a small band of mostly American-born businessmen in a coup d'état. The coup leaders eventually declared Hawaii to be a republic. However, the main purpose of the coup leaders was to have Hawaii annexed by the United States. This goal was achieved in 1898 under questionable circumstances. See, e.g.,

Jennifer M.L. Chock, "One Hundred Years of Illegitimacy: International Legal Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawaii's Annexation, and Possible Reparations." 17 U. Haw. L. R. 463 (1995); TOM COFFMAN, *NATION WITHIN: THE STORY OF AMERICA'S ANNEXATION OF THE NATION OF HAWAII* (1998) [hereinafter COFFMAN]. .

[20] P.L. 86-3, 73 STAT. 4 [Admission Act, March 18, 1959]. See also, Senate Report No. 80 [March 5, 1959].

[21] The four counties consist of the City and County of Honolulu plus three Neighbor Island counties. The County of Hawaii governs the entire Big Island although in recent decades there has been a movement among some people in the western portion of the Big Island to divide the island into two counties. The County of Maui governs not only the island of Maui but also the islands of Molokai, Lanai, and Kahoolawe. The County of Kauai consists of Kauai and Niihau. The City and County of Honolulu covers all of Oahu plus, for administrative purposes, the Northwest Hawaiian Islands. Finally, a small portion of the island of Molokai is occasionally referred to as "Kalawao County." This area is actually a settlement for patients with Hansen's Disease and is currently run jointly by the Department of Health of the State of Hawaii and the National Park Service as Kalaupapa National Historical Park. P.L. 96-565 (1980). See also, National Parks Service, Kalaupapa National Historical Park (last visited April 25, 2001) <http://www.nps.gov/kala>.

The City & County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai all now maintain Internet sites although the quality is uneven. All sites were last visited on April 25, 2001.

The URLs are as follows:

<http://www.co.honolulu.hi.us>

<http://www.hawaii-county.com>

<http://www.co.maui.hi.us> and

<http://www.kauaigov.org>.

[22] Until recently, Native Hawaiians had exclusive control of a governmental entity called the Office of Hawaiian Affairs ("OHA"). Haw. Const. Art. XII, §§ 5 & 6; Haw. Rev. Stat. ch. 10. See also, OHA (last visited April 25, 2001) <http://www.oha.org>. OHA's future is uncertain at the time of writing due to the U.S. Supreme Court's decision in *Rice v. Cayetano*, --- U.S. ---, 120 S.Ct. 1044 [Case No. 98-818, U.S. Supreme Court] (Decided on Feb. 23, 2000). Cornell Legal Information Institute, Supreme Court Collection, *Rice v. Cayetano* (last visited April 25, 2001) <http://supct.law.cornell.edu/supct/html/98-818.ZS.html>.

In *Rice*, the U.S. Supreme Court held that Hawaii state constitutional requirement that voters in elections for Trustees of OHA have some Hawaiian blood violated the Fifteenth Amendment of the United States Constitution.

A related case from the state supreme court regarding the nature of the OHA Trustees is *OHA v. Cayetano*, 94 Haw. 1, 6 P.3d 799 (Haw. 2000).

In response to the Rice decision, on July 20, 2000, Senator Daniel Akaka of Hawaii and Representative Neil Abercrombie of Hawaii introduced companion measures in the United States Senate and House of Representatives to grant federal recognition to a new governmental entity to be created by Native Hawaiians. S. 2899 & H.R. 4904, 106th Congress. On January 22, 2001, a new bill, S. 81, was introduced in the 107th Congress. More recently, on April 6, 2001, Senator Akaka introduced a further revision in the form of S. 746. For the latest, see the “THOMAS” website. Library of Congress, THOMAS (last visited April 25, 2001) <http://thomas.loc.gov>.

[23] The identity of the first European to reach the islands has been a matter of some debate. The British explorer Captain James Cook is usually credited as being the first European to visit the Hawaii Islands. Cook arrived in 1778. RALPH S. KUYKENDALL & A. GROVE DAY, HAWAII: A HISTORY 13-19 (1948) (reprint ed. 1976) [hereinafter KUKYENDALL & DAY]; GAVAN DAWS, *SCHOAL OF TIME* passim (1968). Nevertheless, certain Hawaiian legends do point to occasional non-Polynesian visitors before the time of Cook. HIS HAWAIIAN MAJESTY KALAKAUA, THE LEGENDS AND MYTHS OF HAWAII 175-205 (Hon. R.M. Daggett, ed.) (1888) (reprint ed. 1972) [hereinafter KALAKAUA].

[24] Some of Hawaii’s oral literature has been made available in written English. A classic source on Hawaiian beliefs is KALAKAUA, *supra* note 23.

[25] PUKUI & ELBERT, *supra* note 1, at 127-128, 434.

[26] PUKUI & ELBERT, *supra* note 1, at 132-133.

[27] See, e.g., RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY 1358 (1991)

[28] For a discussion of certain taboos, see KALAKAUA, *supra* note 23, at 303-305.

[29] PUKUI & ELBERT, *supra* note 1, at 358.

[30] National Park Service, Puuhonua o Hanaunau National Historical Park (last visited April 25, 2001) <http://www.nps.gov/puho>. Until 1978 this park was called “City of Refuge National Historical Park.” 16 USC § 397 (1995).

[31] For a survey of the legal history of pre-modern Hawaii, see Chief Justice William S. Richardson, “The Judicial System in Hawaii,” in 1 HAW. DIG. xvii-xxvii (1967). See also, Associate Justice Walter F. Frear, “The Evolution of the Hawaiian Judiciary.” PAPERS OF THE HAWAIIAN HISTORICAL SOCIETY, NO.7 (1894); Walter F. Frear, “Hawaiian Statute Law.” THIRTEENTH ANNUAL REPORT OF THE HAWAIIAN HISTORICAL SOCIETY 15 (1906); CAROL CHANG, THE LAW OF THE SPLINTERED PADDLE (1994).

[32] Hooponopono has, in fact, been revived in recent years and been recognized as a form of conflict resolution. Act 162, Sessions Laws of Hawaii, Regular Session of 1998 (1998).

See also, E. VICTORIA SHOOK, HOOPONOPONO: CONTEMPORARY USES OF A HAWAIIAN PROBLEM-SOLVING PROCESS (1985); E. VICTORIA SHOOK & LEONARD KEALA KWAN, STRAIGHTENING RELATIONSHIPS AND SETTling DISPUTES IN HAWAII: HOOPONOPONO AND MEDIATION (University of Hawaii at Manoa Program on Conflict Resolution, Working Paper No. 10, 1987); Jacob Kamhis, “Healing with Hawaiian Hooponopono.” ALOHA: THE MAGAZINE OF HAWAII AND THE PACIFIC 44-49 (August 1992).

[33] North Americans and Asians would soon follow the Europeans. During this period, a number of

Hawaiian men became sailors on Western ships and were thus able to travel overseas. Some never returned to the islands. KUKYENDALL & DAY, *supra* note 23, at 30-38.

[34] For an account of the destruction of the Hawaiian temples, see KALAKAUA, *supra* note 23, at 429-446.

[35] A recent study of Hawaiian legal history from an anthropological perspective can be found in SALLY ENGLE MERRY, *COLONIZING HAWAII: THE CULTURAL POWER OF LAW* (2000) [hereinafter MERRY]. Merry's work pays special attention to court records for the town of Hilo on the Big Island.

A visual sense of legal life in nineteenth century Hawaii can be gleaned from JANE L. SILVERMAN, *A PICTORIAL GLIMPSE OF BENCH & BAR IN THE HAWAIIAN MONARCHY* (rev. ed. 1986). See also, Jane L. Silverman, "Imposition of a Western Judicial System in the Hawaiian Monarchy." 16 *THE HAWAIIAN JOURNAL OF HISTORY* 48 (1982). For more on early written laws, see W.D. Westervelt, "Hawaiian Printed Laws Before the Constitution" in, *SIXTEENTH ANNUAL REPORT OF THE HAWAIIAN HISTORICAL SOCIETY AND PAPERS* 39 (1909). Another useful source on Hawaiian legal history is the Centennial Issue of the *HAWAII BAR JOURNAL*, which was published in October 1999. *HAW. BAR J.*, Oct. 1999. [n.s.].

Of related interest is an account of the colorful history of the building that, among other things, houses the Supreme Court of Hawaii. VICTORIA NALANI KNEUBUHL. *ALIOLANI HALE, SENTINLE IN TIME: A HISTORY OF THE EVENTS IN THE LIFE OF HAWAII'S HISTORIC JUDICIARY BUILDING* (2000).

[36] Hawaii's first "Bill of Rights" was proclaimed on June 7, 1839. ROBERT C. KYDECKER, *ROSTER – LEGISLATURES OF HAWAII 1841-1918* 4 (1918).

[37] *HAW CONST. OF 1840*.

The following sources are helpful in studying the constitutional law of the Hawaiian monarchy:

LORRAIN A. THURSTON, *THE FUNDAMENTAL LAW OF HAWAII* (1904); W.R. Castle. "Sketch of Constitutional History in Hawaii." 23RD ANNUAL REPORT OF THE HAWAIIAN HISTORICAL SOCIETY 13-27 (1915); RALPH S. KUYKENDALL, *CONSTITUTIONS OF THE HAWAIIAN KINGDOM* (1940) (reprint ed. 1978).

[38] See, e.g., Wendie Ellen Schneider, "Contentious Business: Merchants and the Creation of a Westernized Judiciary in Hawaii." 108 *YALE L. J.* 1389 (1999); MERRY, *supra* note 35, at 35-114.

[39] See, e.g., BERNICE JUDD, *LAW OF HAWAII, 1839-1939: A CHECKLIST OF THE STATUTE LAWS, COMPILED LAWS AND CONSTITUTIONS, BOTH ENGLISH AND HAWAIIAN ISSUES* (1941) [Mimeograph copy on reserve at the Law Library, University of Hawaii].

[40] Decisions began to be published in a systematic fashion in the mid-1800s in a reporter known alternatively as *HAWAII REPORTS* or *HAWAIIAN REPORTS*. The first case so reported was *Wood v. Stark*, 1 *Haw.* 9 (Court of Oahu, 1847).

[41] Nevertheless, there was clear recognition that Hawaii was not technically a common law jurisdiction. See, e.g., *In Matter of Vida*, 1 *Haw.* 211 (1852).

[42] See generally, HELENA G. ALLEN, *THE BETRAYAL OF LILIUOKALANI: LAST QUEEN OF*

HAWAII 1838-1917 (1982); LYDIA LILIOKALANI, HAWAII'S STORY BY HAWAII'S QUEEN (1898) (reprint ed. 1990).

[43] The formal reception of the common law (subject to certain restrictions) was achieved by means of a statute rather than by means of constitutional amendment. LAWS OF HER MAJESTY LILIOKALANI, QUEEN OF THE HAWAIIAN ISLANDS, PASSED BY THE LEGISLATIVE ASSEMBLY AT ITS SESSION 1892, c. 57, § 5. The modern descendant of this statute is Haw. Rev. Stat. § 1-1. Today Hawaii remains essentially a common law jurisdiction. See, e.g., *In Re Water Use Permits*, 94 Haw. 97, 130, 9 P.3 409, 442 (Haw. 2000).

[44] A little over a century later the United States issued a formal apology for its role in the overthrow. This was done by means of a Joint Resolution of the 103rd Congress. P.L. 103-150, 197 STAT. 1510. See also, Senate Committee on Indian Affairs Report 109-126.

[45] Hawaii was annexed in 1898, but the territorial government was not formally established until 1900. See generally, COFFMAN, *supra* note 19.

[46] A sense of how the territorial government was organized can be gleaned from a work written during the territorial period by a political scientist. ROBERT M.C. LITTLER, THE GOVERNANCE OF HAWAII: A STUDY IN TERRITORIAL ADMINISTRATION (1929).

[47] See, e.g., THEON WRIGHT, RAPE IN PARADISE (1966) (reprint ed. 1990). Wright describes the infamous Massie cases and the impact of those events on Hawaii's chances for statehood.

[48] Harry N. Scheiber and Jane L. Scheiber, "Bayonets in Paradise: A Half-Century Retrospect on Martial Law in Hawaii, 1941-1946." 19 U. HAW. L. R. 477 (1997).

[49] *Duncan v. Kahanamoku*, 327 U.S. 304 (1946).

[50] Hawaii State Judiciary (last visited April 25, 2001) <http://www.state.hi.us/jud>.

[51] United States District Court for the District of Hawaii (last visited April 25, 2001) <http://www.hid.uscourts.gov>.

[52] For an introduction to American court systems, see MERRIAM WEBSTER'S DICTIONARY OF LAW 548-556 (1996).

[53] The question of which cases are properly heard by state courts or federal courts is a complex topic beyond the scope of this article. Suffice it to say that the issue of jurisdiction turns on the provision involved. Some fields, such as bankruptcy and immigration, are exclusively federal. Others, like shipping law and civil rights, are predominately federal. U.S. Const., Art. I, § 8; Art. III, § 2.

[54] Haw. Rev. Stat. § 603-1.

[55] *Id.*

[56] Haw. Rev. Stat. § 604-1.

[57] Haw. Rev. Stat. §§ 571-1 & 571-8.

[58] Haw. Rev. Stat. §§ 603-21.5 & 603-21.9. The circuit courts also hear appeals from state administrative

proceedings. Haw. Rev. Stat. § 603-21.8.

[59] Haw. Rev. Stat. § 603-21.6.

[60] Haw. Rev. Stat. § 232-8.

[61] Haw. Rev. Stat. § 501-1.

[62] Haw. Rev. Stat. § 706-610.

[63] Haw. Rev. Stat. § 604-8.

[64] Haw. Rev. Stat. ch. 291D-1.

[65] Haw. Rev. Stat. § 604-6.1.

[66] Haw. Rev. Stat. § 708-833.5.

[67] Haw. Const. Art. VI, § 3.

[68] Haw. Const. Art. VI, § 3; See also, Haw. Rev. Stat. chs. 602 & 607.

[69] See Chief Justice Ronald T.Y. Moon et al, “Inside The Supreme Court of Hawaii,” HAW. BAR J., June 1999, at 6. [n.s.].

[70] Haw. Const. Art VI, § 3.

[71] Cf., U.S. Const. Art. III, § 1.

[72] The author has not made a systematic study of which sorts of cases go where. Nevertheless, it is easy to get the impression that many criminal and family appeals are assigned to the ICA.

[73] The federal district court’s jurisdiction includes certain small islands outside of the formal boundaries of the State of Hawaii like Midway, Wake, Johnston, Palmyra, etc. 28 USC § 91. In addition, the federal district court exercises some jurisdiction over US citizens and nationals working at US defense sites in the Republic of the Marshall Islands and the Federated States of Micronesia.

48 USC § 1912.

[74] Elizabeth Rogers, “Remedy of Last Resort: A.B.A. Opposes Plan to restructure 9th Circuit Court of Appeals.” A.B.A.J., Nov. 1999, at 101.

Although one might expect American Samoa to be included within the Ninth Circuit, it is not. American Samoa is not part of any federal circuit and it has no federal district court. The High Court of American Samoa mixes the functions of both a state supreme court and a federal court. There is no way to appeal a judgement of the High Court of American Samoa. Presumably, this unusual structure is meant to safeguard traditional Samoan culture and native land ownership. See generally, Jeffrey B. Teichert, “Resisting Temptation in the Garden of Paradise: Preserving the Role of Samoan custom in the Law of American Samoa.” 2 ACROSS BORDERS GONZ. INT’L L. J. 2 (1999).

<http://www.law.gonzaga.edu/borders/somoa.htm> [sic]

[75] A recent and somewhat controversial work on the inner workings of the U.S. Supreme Court is EDWARD LAZARUS, *CLOSED CHAMBERS: THE RISE, FALL, AND FUTURE OF THE MODERN SUPREME COURT* (rev. ed. 1999).

[76] The Rice case is discussed, *supra* note 22.

[77] OHA is discussed, *supra*, note 22.

[78] There is a special section of the U.S. Supreme Court's official website. U.S. Supreme Court, Florida Election Cases (last visited April 25, 2001) <http://www.supremecourtus.gov/florida.html>. The main decision is *Bush v. Gore*, 531 U.S. --- (Case No. 00-949) (Decided on Dec. 12, 2000) (*per curiam*, but with a concurring opinion by Chief Justice Rehnquist and separate dissents by Justices Stevens, Souter, Ginsburg, and Breyer).

[79] The school is named after a former Chief Justice of the Hawaii Supreme Court. For more on Chief Justice Richardson's life and legal career, see CAROL S. DODD, *THE RICHARDSON YEARS:*

1966-1982 (1985).

The Summer 1999 issue of the UNIVERSITY OF HAWAII LAW REVIEW contains several short articles on the history of the law school. "A Silver Celebration: In Honor of the 25th Anniversary of the William S. Richardson School of Law." 21 U. Haw. L. Rev. 2 (1999).

[80] This is the only law school in Hawaii. It is fully accredited by the American Bar Association ("A.B.A."). Also, the school is a member of the Association of American Law Schools ("AALS").

William S. Richardson School of Law (last visited April 25, 2001) <http://www.hawaii.edu/law>.

In addition, to educating students from Hawaii, the William S. Richardson School of Law has students from other parts of the United States as well as from various Pacific Island and Asian jurisdictions. The curriculum features not only courses that one might find at any A.B.A.-approved school, but also has special courses devoted to Asian, Pacific Island, and Hawaiian topics. Several of the faculty members have an active interest in such fields. The law school library has a significant amount of materials in various languages on Asian-Pacific law. This is supplemented by certain law-related materials found in the Asian and Pacific collections at the Hamilton Library, the main library for the University of Hawaii system.

Finally, the law school publishes a traditional law review along with a new web-based journal called the ASIAN-PACIFIC LAW & POLICY JOURNAL ("APLPJ"). The UNIVERSITY OF HAWAII LAW REVIEW tends to focus on local matters whereas APLPJ publishes online articles relating to various Asian and Pacific Island jurisdictions. APLPJ (last visited April 25, 2001) <http://www.hawaii.edu/aplpj>.

[81] A brief description of the American system of legal education can be found in RICHARD S. KEIRSTEAD, *TUTTLE DICTIONARY OF LEGAL TERMS ENGLISH-JAPANESE/JAPANESE-ENGLISH* 527-532 (1993).

[82] The change came about in the late 1960s. *BLACK'S LAW DICTIONARY* 835 (6th ed. 1990).

[83] *MERRIAM WEBSTER'S DICTIONARY OF LAW* 273 (1996).

[84] By contrast, in many countries the LL.B. is clearly an undergraduate degree because the course of



study can be commenced after graduating from secondary school.

Even if the American J.D. is viewed as being a graduate degree, it is not primarily a research degree. Most of the credits in a typical J.D. program are based on taught classes. There is no thesis or dissertation. Nevertheless, law schools often require that J.D. students complete at least one long research paper as part of the curriculum.

[85] Rule 1.3, Rules of the Supreme Court of the State of Hawaii.

[86] Technically, most lawyers in Hawaii are members of at least two different bars namely, the bar of the Supreme Court of the State of Hawaii (covering all state courts) and the bar of the United States District Court of the District of Hawaii (covering the local federal district court including the bankruptcy court). The federal court has its own rules on admission to practice.

[87] Hawaii also has measures for “foreign law consultants.” Qualified lawyers from other countries may be admitted to the Hawaii bar as foreign law consultants. This enables such lawyers to provide legal services related to the laws of the consultant’s home jurisdiction. Rule 14, Rules of the Supreme Court of the State of Hawaii.

[88] HSBA (last visited April 25, 2001) <http://www.hsba.org>. Among other things, the HSBA website has a collection of recent decisions by Hawaii state appellate courts.

[89] See generally, HAWAII STATE BAR ASSOCIATION ANNUAL DIRECTORY 2000-2001 (2000).

[90] Unlike many state bar associations, membership in the A.B.A. is voluntary. The A.B.A. is the largest body of the legal profession in the United States. A.B.A. (last visited April 25, 2001) <http://www.abanet.org>.

[91] Although not primarily about Hawaii, some passing remarks on the practice of law in Hawaii can be found in THANE JOSEF MESSINGER, *THE YOUNG LAWYER’S JUNGLE BOOK: A SURVIVAL GUIDE* passim (1996).

[92] An “aloha shirt” is the type of light, colorful shirt that people outside the islands often referred to as being a “Hawaiian shirt.” See, e.g., *RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY* 614 (1991).

[93] The so-called pidgin of Hawaii should not be confused with Melanesian pidgins or other true pidgins. In fact, linguists often classify Hawaii’s local dialect as being essentially a Creole because it is the native language of many members of its speech community. See, e.g., Ermile Hargrove et al, *Language Varieties Network -- Hawaii Creole English – Background* (last visited April 25, 2001) <http://www.une.edu.au/langnet/hce.htm>.

Be that as it may, any native speaker of English should, with some effort, be able to understand most of what is being said by a speaker of Hawaiian Creole English. However, being able to actually talk like an islander is another matter.

[94] That happened in several cases that the author argued in Honolulu. Other Hawaii lawyers have had similar experiences.

[95] Today English as well as Hawaiian are official languages of the state. However, the English version of any law is held to be binding. Moreover, Hawaiian is not presently required for public acts and

transactions. HAW. CONST. Art. XV, § 4; Haw. Rev. Stat. §§ 1-13, 1-13.5. Consequently, laws are presently only being published in English. Likewise, court proceedings and legislative hearings are normally conducted in English only. Nevertheless, courts in Hawaii have taken judicial notice of the Hawaiian language. *Bishop v. Mahiko*, 35 Haw. 608 (1940); *Hapai v. Brown*, 21 Haw. 499 (1913).

[96] Being court rules rather than statutes, the Hawaii Rules of Civil Procedure have been issued by the Hawaii Supreme Court.

[97] Most of these are “Uniform Acts” proposed by the National Conference of Commissioners on Uniform State Laws. National Conference of Commissioners on Uniform State Laws, Hawaii: List of Uniform & Model Acts Adopted (last visited April 25, 2001) [http://www.nccusl.org/uniformact\\_state/hawaii.htm](http://www.nccusl.org/uniformact_state/hawaii.htm).

[98] Many of these proposed laws deal with topics that are of little interest to the average state legislator. This observation is based on the author’s experience of having once served as a Staff Counsel at the Hawaii State Senate.

[99] Hawaii’s version can be found in Haw. Rev. Stat. ch. 560.

[100] Hawaii’s UCC is codified in Haw. Rev. Stat. ch. 490.

[101] In part, this has been caused by the desire for certain state politicians to “do something” about crime even though Hawaii has less of a crime problem compared to certain U.S. jurisdictions.

[102] Haw. Rev. Stat. chs. 701 to 712.

[103] The American Law Institute originally drafted the Model Penal Code. The American Law Institute, 2000 Catalog of Publications (last visited April 25, 2001) <http://www.ali.org>.

[104] *Oni v. Meek*, 2 Haw. 87 (1858).

[105] *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, 79 Haw. 425, 903 P.2d 1246 (Haw. 1995), cert. denied, 116 S.Ct. 1559 (1996); *Pele Defense Fund v. Paty*, 73 Haw. 578, 837 P.2d 1247 (1992), cert. denied, 507 U.S. 918, 113 S.Ct. 1277, 122 L.Ed. 2d. 671 (1993); *Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 656 P.2d 745 (1982); *Pai Ohana*, 875 F.Supp. 680 (D. Haw. 1995), aff’d 76 F.3d 280 (1996).

[106] HAW. CONST., Art. XII, § 7.

[107] See generally, David M. Forman and Stephen M. Knight, “Native Hawaiian Cultural Practices Under Threat.” 1 HAW. BAR J. 1 (No. 13, 1997) [n.s.]. This article appeared in a special annual issue of the HAWAII BAR JOURNAL featuring longer law-review type articles instead of the shorter articles that appear in the regular monthly issues of the HAWAII BAR JOURNAL. See also, Paul M. Sullivan, “Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawaii.” 20 U. Haw. L. Rev. 99 (1998).

[108] Public ownership of shoreline also includes state ownership of new land created by volcanic activity. *State ex rel. Kobayashi v. Zimring*, 58 Haw. 106, 566 P.2d 725 (1977).

[109] Haw. Rev. Stat. §§ 182-1 & 182-18.

[110] The ahupuaa was (ideally) a relatively self-sufficient district running from the ocean up to the mountains. See, e.g., *In re Ahupuaa of Kioloku*, 25 Haw. 357 (1920); *Palama v. Sheehan*, 50 Haw. 298, 440 P.2d 95, 97 (1968).

[111] GEOGRE COOPER & GAVAN DAWS, *LAND AND POWER IN HAWAII: THE DEMOCRATIC YEARS* (1985); LINDA S. PARKER, *NATIVE AMERICAN ESTATE: THE STRUGGLE OVER INDIAN AND HAWAIIAN LANDS* (1989); LILIKALA KAMEELEIHIWA, *NATIVE LAND AND FOREIGN DESIRES* (1992).

[112] See S. 746, 107th Congress (2001).

[113] See, e.g., STEPHAN L. PEVAR, *THE RIGHTS OF INDIANS AND TRIBES* 96-98 (2nd ed. 1992); John Gilbeaut. "Courting Trouble." *A.B.A.J.*, Mar. 2000, at 68-69.

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