

Course Code: L201 (M) 2005

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **INTERPRETATION OF STATUTES AND LEGAL DRAFTING**

COURSE CODE : **L201**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :

- (1) ANSWER ANY FOUR (4) QUESTIONS.**
- (2) ANSWER AT LEAST ONE (1) QUESTION FROM EACH SECTION.**
- (3) ALL QUESTIONS CARRY EQUAL MARKS.**
- (4) REFER TO DECIDED CASES WHERE APPROPRIATE.**

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

SECTION A

QUESTION 1

Discuss -

- (a) Whether the courts can declare an Act of Parliament to be invalid; [9]
 - (b) Whether the courts can declare an Act of Parliament to be obsolete; [7]
 - (c) Whether the courts will fill a gap in a statute [9]
- [25 MARKS]

QUESTION 2

- (a) What do you understand by the expression “authentic interpretation”? [5]
 - (b) Discuss the various forms of the “authentic interpretation”. [20]
- [25 MARKS]

QUESTION 3

“To assist it in deciding on the true intention of the legislature, the court may have regard to the mischief that the Act was designed to remedy”. Discuss.

[25 MARKS]

QUESTION 4

Discuss the following presumptions to show you understand what they mean and how they are applied -

- (a) The presumption against construing a statute so as to oust the jurisdiction of the superior courts. [13]
 - (b) The presumption against interpreting a statute in such a way as to make it apply retrospectively. [12]
- [25 MARKS]

SECTION B**QUESTION 5**

Redraft so as to make the following provisions reader friendly:

- (a) “32(7). An environmental impact statement shall include a full description of the project and the aim(s) it is intended to achieve, and an identification, description and assessment of the likely environmental effects of the project; alternative means of carrying out the project, including the preferred means; alternatives to the project that would achieve the same aim as the project was intended to achieve, and all relevant measures that could be undertaken to avoid, remedy or mitigate any adverse effects that could be caused by the project and any other information prescribed by the Minister”.

[13]

- (b) “200(3). No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed by an Act of Parliament, and a deposit with a bank of any moneys forming part of the Consolidated Fund, the investment of any moneys forming part of the Consolidated Fund, in the securities in which ... trustees are authorised to invest or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as withdrawal of those moneys from the fund for the purposes of this section.

[12]

[25 MARKS]**QUESTION 6**

Redraft so as to make the following provisions reader - friendly:

- (a) “81(2). An Inkhundla is established by the King on the recommendation of the Elections and Boundaries Commission, consists of one or more Chiefdoms which act as nomination areas for the elected members of the House (the primary level elections), and is, among other things, also used as a constituency for the election of the elected members of the House (the secondary level elections).

[9]

- (b) “25(3). Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required in the interests of defence, public safety, public order, public morality or public health, or that is reasonably required for the purposes of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical operation of telephony, posts, wireless broadcasting or television or any other medium of communication, or that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society”.

[15]

[25 MARKS]

QUESTION 7

Redraft as may be necessary.

- (a) “180(3). If a report of the Committee has been tabled as provided in paragraph (2), or that Committee has not recommended that the expenditure or any item thereof be approved, or a Member has indicated that he opposes any item of expenditure the supplementary estimates or the item of expenditure which has not been approved or is opposed as the case may be, shall stand referred to the Committee of Supply without a motion to that effect ...: Provided that the Minister shall, in any event, table the estimates at least one clear sitting day before the consideration thereof in Committee of Supply.”

[13]

- (b) “192. In cases where the Senate disagrees to amendments made by this House, or agrees to amendments made by this House (with amendments) this House may as to the disagreement insist or not insist on its amendment ..., and as to the agreement agree to the Senate’s amendments on its own amendments ... and a message shall be sent to the Senate to such effect as this House has determined”.

[12]

[25 MARKS]