

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
LL.B. EXAMINATIONS**

L201: INTERPRETATION OF STATUTES AND LEGAL DRAFTING

MAY 2006

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

- (i) ANSWER QUESTION 1 (SECTION A), WHICH IS COMPULSORY.
- (ii) ANSWER AT LEAST ONE QUESTION FROM SECTION B AND ONE QUESTION FROM SECTION C.
- (iii) ANSWER FOUR (4) QUESTIONS IN TOTAL. ANY ANSWER OVER AND ABOVE THIS TOTAL WILL NOT BE MARKED.
- (iv) QUESTION 1, THE COMPULSORY QUESTION, CARRIES A MARK OF 28. ALL OTHER QUESTIONS CARRY A MARK OF 24 EACH.
- (v) IN ANSWERING ANY QUESTION, NOTE THAT QUALITY, NOT UNDUE QUANTITY, IS REQUIRED.
- (vi) CLARITY OF EXPRESSION AND LEGIBILITY OF WRITING ARE ABSOLUTELY ESSENTIAL.
- (vii) ABBREVIATIONS AND SHORTHAND WRITING ARE PROHIBITED UNLESS THEY ARE ACCEPTED IN FORMAL WRITING.
- (viii) DO NOT WRITE IN THE MARGINS OF ANY PAGE OF ANY ANSWER SHEET. ANY SUCH WRITING WILL BE DEEMED AS NOT BEING PART OF ANY ANSWER.

SECTION A

[COMPULSORY QUESTION; YOU MUST ANSWER IT.]

QUESTION 1: [28 MARKS]

Critically comment upon the following statement made in a hypothetical case by a court of law in Swaziland:

The task of statutory interpretation or construction is clearly one that belongs to the judicial arm of government, which, in spite of constant denials by courts of law, makes law and, at the same time, interprets such law. This is a task that it must perform in order to properly fulfil its judicial functions. In interpreting any statute or statutes, the courts are very mindful of the fact that they must be guided by the intention of the legislature in the passage or enactment of such statute or statutes. Any departure from this basic premise of statutory interpretation would surely result in what one might want, for lack of a proper description, to label as statutory mutilation. To avoid such an unsavoury state of affairs, any court of law engaged in statutory interpretation must pay more attention to the punctuation marks of a statute than the schedules thereof, if any. Furthermore, it must always be borne in mind by all courts in Swaziland that by Section 1 of the new Constitution of the Kingdom of Swaziland Act, 2005 (Act No. 001 of 2005), Swaziland is a sovereign country. On the basis of this sovereignty, the interpretation of our statutes must take account of only what transpires within the borders of Swaziland; the international community can never be of any relevance in this regard.

SECTION B

[ANSWER AT LEAST ONE QUESTION FROM THIS SECTION.]

QUESTION 2: [24 MARKS]

(a) [12 Marks]

Give a brief but critical exposition of the literal rule of statutory interpretation.

(b) [12 Marks]

Critically comment upon the following judgment in a hypothetical case *Re Khumalo*:

Section 34(1) of the Constitution of Swaziland Act, 2005, clearly states: "A surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a will or not and whether the spouses were married by civil or customary rites".

It is not in dispute that Mr. Khumalo was the husband of the deceased, Mrs. Khumalo; they married under Swazi law and custom, which falls under the said section of the Constitution. Mrs. Khumalo died without making a will. In spite of the evidence that Mrs. Khumalo died from massive brain haemorrhage resulting from her head being repeatedly hit against a brick wall by Mr. Khumalo, it is my very well considered judgment that Mr. Khumalo is perfectly entitled to a reasonable provision out of Mrs. Khumalo's estate. This is because by the literal rule of interpretation, Mr. Khumalo is manifestly a surviving spouse under Section 34(1) of the Constitution. I cannot agree with Mrs. Khumalo's children and extended family members that Mr. Khumalo is not such a surviving spouse. This is not to suggest that I do not sympathize with them over the loss of their mother and relative. However, all that I can give them is my deepest sympathy. The law obliges me to go beyond that and order that Mr. Khumalo be given a reasonable provision out of Mrs. Khumalo's estate. I, accordingly, so order.

QUESTION 3: [24 MARKS]

Briefly comment on any three (3) of the following:

- i. Consolidating statute; [8 Marks]
- ii. *Expressio unius est exclusio alterius*; [8 Marks]
- iii. The presumption against retrospectivity or retroactivity of legislation in Swaziland; ... [8 Marks]
- iv. *Noscitur a sociis*. [8 Marks]

QUESTION 4: [24 MARKS]

The problems caused by complex drafting of statutes have been addressed in the context of European law. An European Union Council Resolution of 8 June 1993 on the quality of drafting in Community legislation set out a series of rules of drafting that are deemed to be good in dealing with the said problems. What are these rules and how, in your opinion, have they contributed to good drafting of statutes?

SECTION C

[ANSWER AT LEAST ONE QUESTION FROM THIS SECTION]

QUESTION 5: [24 MARKS]

(a) [12 Marks]

In what way do the following plain language principles contribute to the improvement of legislative drafting:

- i. Consistency in the use of language throughout a statute (6 marks); and
- ii. Omission of needless language in the drafting of a statute (6 marks)?

(b) [12 Marks]

On the basis of effective communication, rewrite the following segments of Section 34 of the Irish Sea Pollution Act, 1991:

Every document purporting to be a record kept in pursuance of this Act ... or to be a true copy, certified as such by the person required to keep the record, of any entry therein shall, unless the contrary is shown, be presumed to be such and be admissible as evidence of the facts therein without further proof.

QUESTION 6: [24 MARKS]

(a) [12 Marks]

Briefly state, without discussing, six standard drafting practices.

(b) [12 Marks]

Choose from each of the following pairs of sentences the sentence that, in your opinion, can be deemed to be evidence of standard drafting practice. Give reasons for choosing one sentence over the other.

- i. Sentence "X": A person who has attained the age of 18 years and who is ordinarily resident in Swaziland qualifies to be given a driver's licence after passing the prescribed driving tests.
Sentence "Y": A person who has not attained the age of 18 years and who is not ordinarily resident in Swaziland shall not qualify to be given a driver's licence after not passing the prescribed driving tests. (6 marks)
- ii. Sentence "X": Where a research grant is applied for by, or is granted to, two or more persons, each of them shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in common, in the research grant application or research grant, as the case may be.
Sentence "Y": Where two or more persons apply for, or are granted a research grant, each of them shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in common, in the research grant application or research grant, as the case may be. (6marks)

=====**END**=====