

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION (SUPPLEMENTARY) PAPER
YEAR 2006**

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

COURSE CODE : L201

TIME ALLOWED: : THREE (3) HOURS

INSTRUCTIONS:

- i. ANSWER QUESTION 1, SECTION A, WHICH IS COMPULSORY, AND AT LEAST ONE QUESTION FROM SECTION B AND ONE QUESTION FROM SECTION C.
- ii. ANSWER FOUR (4) QUESTIONS IN TOTAL.
- iii. QUESTION 1 CARRIES 28 MARKS. ALL OTHER QUESTIONS CARRY 24 MARKS EACH.
- iv. IN ANSWERING ANY QUESTION, THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.

THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR(S).

SECTION A

[COMPULSORY QUESTION; YOU MUST ANSWER IT.]

QUESTION 1: [28 MARKS]

(a) [14 Marks]

Of what relevance is the Rule in Heydon's Case to statutory interpretation?

(b) [14 Marks]

The Republic of XYLO has a statute on the basis of which any person convicted of any criminal offence (apart from traffic offences) in any country is prohibited from ever entering the Republic. DAN and JOE, residents of XYLO, went on a holiday to the Republic of MANDY, which borders the Republic of XYLO. While there, they were convicted of various criminal offences. DAN was convicted of negligent driving and sentenced to a fine of US\$100.00, which he readily paid. JOE, on the other hand, was convicted of assault with grievous bodily harm after he had a violent fight with a security guard at a popular hotel. He was sentenced to a fine of US\$2000.00, which he, also, readily paid.

The troubles of DAN and JOE did not end in the Republic of MANDY. When they reached the border of the Republic of XYLO on their return journey, they were refused entry into XYLO by immigration officials who had been officially notified by their MANDY counterparts of their convictions. These officials explained to them that their convictions in MANDY made it impossible for them to re-enter XYLO as provided by the said statute.

Imagine yourself as the lawyer of DAN and JOE. Advise them as to whether they can legally challenge this decision of the immigration officials. Give reasons for your advice.

SECTION B

[ANSWER AT LEAST ONE QUESTION FROM THIS SECTION.]

QUESTION 2: [24 MARKS]

Critically discuss the statement that a legislative authority can go beyond the making of statutes or legislative enactments, which is its basic task and, also, interpret such statute or legislative enactment, a task usually the preserve of the judiciary.

QUESTION 3: [24 MARKS]

In the South African case of *Wray v. Minister of the Interior* 1973 (3) SA 554 (W) at 561, Coetzee, J., stated:

It is trite law that when the words of an older statute are either incorporated in or made part of a later statute, this is understood to be done with the object of adopting any legal interpretation which has been put on them by the courts.

In the context of this statement, answer the following questions:

(a) [4 Marks]

State, without discussing, the maxim of statutory interpretation that underpins this statement.

(b) [20 Marks]

Critically discuss the requirements for the invocation of the maxim that underpins this statement.

QUESTION 4: [24 MARKS]

(a) [9 Marks]

State, without discussing, the grounds for determining the intention of the legislature as to whether the provisions of a statute are peremptory or directory.

(b) [15 Marks]

Indicate, in each of the following sentences, whether the stated requirement is peremptory or directory. Give reasons for your answer.

- i. Any student of the University of Swaziland who wishes to appeal against his or her examination results must do so within fourteen days of such results being published by the University; **(8 marks)**
- ii. The voters' list of the student body of the University of Swaziland shall be drawn up before the 21st of September in each and every year by the Electoral Board of the Students' Representative Council. **(7 marks)**

SECTION C

[ANSWER AT LEAST ONE QUESTION FROM THIS SECTION.]

QUESTION 5: [24 MARKS]

(a) [4 Marks]

What is meant by the problem of opacity posed by the language of statutes?

(b) [20 Marks]

Carefully read the following section of an imagined statute and answer the question following it:

Save as otherwise provided for in this statute, each local council shall, at the end of each financial year, furnish the Public Accounts Committee of Parliament with a statement of its audited account for that financial year. This statement must commence with a summary of the Budget of the council for that financial year and end with a statement that each averment contained in the statement is a true reflection thereof.

In considering the problem of opacity posed by the language of statutes, indicate the words you will eliminate from this statement and what word(s) you will replace each such eliminated word with. Give reasons for eliminating any word and the word you have chosen as a substitute of the eliminated word.

QUESTION 6: [24 MARKS]

(a) [12 Marks]

In terms of the standard structure of statutes, how should each part of a statute be arranged?

(b) [12 Marks]

Briefly discuss six of the essentials of good bill drafting as advocated by supporters of plain language principles.

END
