

**UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
FINAL EXAMINATION PAPER  
YEAR 2007**

**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]**

**(i)** **(10 MARKS)**  
Give a detailed analysis of the role played by the Rule in Heydon's Case (the mischief rule) in statutory construction or interpretation.

**(ii)** **(18 MARKS)**  
Section 119(1) of the Constitution of the Kingdom of Swaziland, 2005, states as follows:

Parliament or any other authority or person has no power to pass any law –

- (a) to alter the decision or judgement of any court as between the parties to that decision or judgement; or
- (b) which operates retroactively,
  - (i) to impose any limitation on any person;
  - (ii) to adversely affect the personal rights and liberties of any person; or
  - (iii) to impose a burden, obligation or liability on any person.

Discuss this section by indicating:

(a) **(9 Marks)**  
whether the protection afforded by the section applies in respect of any other constitutional rights: and

(b) **(9 Marks)**  
whether the section is absolute in its application.

**SECTION B**

**[ANSWER AT LEAST ONE QUESTION FROM THIS SECTION]**

**QUESTION 2:**

**[24 MARKS]**

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

**QUESTION 3:**

**[24 MARKS]**

**(i)**

**(12 MARKS)**

Under what circumstances would a court determine that the provisions of a statute or a piece of legislation are preemptory?

**(ii)**

**(12 MARKS)**

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

- (a)** 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. **(6 Marks)**
- (b)** The voters' list of the student body of the University of Swaziland shall be drawn up before the 21<sup>st</sup> of September in each and every year by the Electoral Board of the Students' Representative Council. **(6 Marks)**

**QUESTION 4:**

**[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.

Answer the following questions in the context of this statement:

**(i)**

**(4 MARKS)**

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

**(ii)**

**(20 MARKS)**

Discuss the requirements for the invocation of the maxim that underpins this statement.

**SECTION C**

**[ANSWER AT LEAST ONE QUESTION FROM THIS SECTION]**

**QUESTION 5:**

**[24 MARKS]**

**(i)**

**(4 MARKS)**

Briefly indicate what is meant by the problem of opacity posed by the language of statutes or legislative enactments?

**(ii)**

**(8 MARKS)**

Briefly discuss any **two** of the factors that account for the problem of opacity posed by the language of statutes or legislative enactments.

**(c)**

**(12 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 shall 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.

Indicate the words that you will, in revising this section, eliminate and what word(s) you will replace the eliminated word with. Give reasons for such elimination and replacement.

**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 **four** of the standard drafting practices as mandated by the objectives of clarity and effective communication.

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**END**

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