

**UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
MAIN EXAMINATIONS  
YEAR 2007/2008**

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

**COURSE CODE** : **L201**

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

**INSTRUCTIONS:**

- i. ANSWER TWO (2) QUESTIONS FROM SECTION A AND TWO (2) QUESTIONS FROM SECTION B.**
- ii. ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
- iii. EACH QUESTION CARRIES A MARK OF 25.**
- iv. IN ANSWERING ANY QUESTION, NOTE THAT 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**  
**[ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION]**

**QUESTION 1:**

**(i)**

Briefly discuss the essence of the classification of statutes according to the general purpose(s) of these statutes.

**[12 Marks]**

**(ii)**

Critically discuss the significance, in statutory interpretation, of the following statement made by Justice Wessels in the South African case of Seluka v. Saskin & Salkow 1912 TPD 258 at 270: "My function is *jus dicere* not *jus facere*... I have only to interpret what the Legislature enacts and apparently intends..."

**[13 Marks]**

**QUESTION 2:**

A judge made the following statement in a hypothetical case:

It is patently clear that the issues in this case revolve around the word or term 'pleading' as used by Parliament in the passage of the Legal Practitioners' Act. The Act has an interpretation section; however, this section is of no help to the Court as it does not define the crucial word or term 'pleading'. In the absence of such definition and on the basis of the most fundamental or basic rule or principle of statutory interpretation, this Court finds very persuasive the submission of defence counsel that the word or term 'pleading' should be given its most popular meaning. This meaning, as given by Oxford Advanced Learner's Dictionary of Current English (6<sup>th</sup> Ed., 2000), is as follows: "An act of asking for something that you want very much in an emotional way."

The Court is satisfied that this definition accords with the imperatives of justice and will enable it to resolve the issues for adjudication in this case. Hence, the Court will proceed with this case on the basis of this definition of the word or term 'pleading'.

Critically comment on this statement along the following lines:

**(i)**

Briefly discuss the most fundamental or basic rule or principle of statutory interpretation.

**[9 Marks]**

**(ii)**

State any THREE of the terms by which the most fundamental or basic rule or principle of statutory interpretation may be referred to.

**[3 Marks]**

**(iii)**

Do you agree with the reasoning adopted by the judge in this statement? Give reasons for your answer.

**[13 Marks]**

**QUESTION 3:**

**(i)**

The Council of the University of Swaziland has passed a statute whose Section 15 states:

Students of the University entitled to borrow books from the University Library on the first two Saturdays of each month are Second Year Law students and Third Year Law students. All students will be entitled to borrow books from the Library on all other Saturdays of each month.

Thabo, a Fourth Year Law student was, on the basis of this provision, refused permission by the Library authorities to borrow a book from the Library on two occasions, one on Saturday, November 10, 2007 and the other on Saturday, November 24, 2007.

Has any right of Thabo been infringed by the University through its Library authorities? Give reasons for your answer.

**[16 Marks]**

**(ii)**

In order to implement its desire to speed up the disposal of the old fleet of vehicles (i.e., vehicles more than seven years old) of the University of Swaziland, the Council of the University passed a statute whose Section 12 states:

If a person to whom a University vehicle that is more than seven years old has been sold subject to certain conditions does not comply with those conditions, the said vehicle shall revert to the University and be sold by public auction.

Thabo, a motor vehicles spare parts dealer, bought one of these vehicles but did not comply with the conditions attached to the sale of the vehicle. On this account, the University sold the said vehicle to Khumalo through a conditional sale by private treaty.

Is the University's action lawful? Give reasons for your answer.

**[9 Marks]**

**SECTION B**

**[ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION]**

**QUESTION 4:**

Critically comment on the following statement made by the High Court in a hypothetical case:

The task before this Court is very simple; it is to ascertain the intention of the legislature, i.e., the Parliament of Swaziland, in the passage of the statute that forms the basis of the issues in this suit. Having adverted our judicial minds to the demands or imperatives of statutory interpretation, this Court makes the following findings:

**FINDING ONE:** This Court finds that Parliament acted within the bounds of its legislative authority in passing this backdated statute that alters the judgment of the Court *a quo* between the parties before us, who were also parties to that judgment.

**FINDING TWO:** The Court further finds that the section of the said statute that adversely affects the fundamental rights of the appellant is lawful as Parliament can enact such backdated legislation in respect of all matters provided for under the Constitution of the Kingdom of Swaziland, 2005 (Act No. 1 of 2005).

**FINDING THREE:** Finally, this Court does not accept the submission of the appellant that Parliament cannot take away the courts' exercise of jurisdiction over any matter. It can do so whether the taking away of such jurisdiction is apparent or not from the context of the statute in respect of it.

**[25 Marks]**

**QUESTION 5:**

With the view to avoiding the problem of opacity posed by the language of statutes as traditionally drafted, rewrite the following sentences in a different form. State, briefly, why the new form as stated by you, is preferable to the original form.

(i)

Any other person being or having been a law student can apply for the scholarship.

**[8 Marks]**

(ii)

There shall be paid into the Law Students' Society Fund by each law student an amount of E50.00.

**[8 Marks]**

(iii)

Each student of the University of Swaziland shall furnish the Academic Office with a photocopy of his/her birth certificate before the academic year commences.

**[9 Marks]**

**QUESTION 6:**

(i)

Section 16(2) of the Statutes of the University of Swaziland, 1983 (as amended in 2005) states:

No person shall be eligible for the award of a degree or other qualification by the University unless he has paid all fees for tuition and maintenance and any other fee owing to the University.

In terms of statutory interpretation, what is the nature of this provision? Give reasons for your answer.

**[12 Marks]**

(ii)

On the basis of a statute regulating medical practice, every medical practitioner has to be in possession of a licence by the end of the second week of January every year before engaging in medical practice that year. The statute makes it an offence to engage in such practice without first obtaining this licence, for which a fee is payable.

Thabo, a medical practitioner, was charged under the statute with the offence of practising without a licence; from January 1, 2008 to March 31, 2008, he engaged in medical practice without first obtaining a licence for it. The court that tried him found him guilty as charged and as he pleaded. As a sentence, the court fined him an amount of E5,000.00 and, also, barred him from practising medicine for two years.

Thabo has paid the fine but is not happy with being barred by the court from practising medicine. He wants to appeal against this aspect of the sentence. Does he stand any chance of success in the Appeal Court? Give reasons for your answer.

**[13 Marks]**

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**END**

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