

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATIONS
YEAR: 2009**

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

COURSE CODE : **L201**

TIME ALLOWED : **THREE (03) 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; THE TOTAL MARK IS 100.**
- iv. **IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

DO NOT OPEN THIS PAPER UNTIL YOU ARE GRANTED PERMISSION TO DO SO BY THE INVIGILATOR(S).

SECTION A

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

QUESTION 1:

On the basis of the presumptions of statutory interpretation, critically discuss the following hypothetical submissions made in the National Assembly of the Kingdom of Swaziland as Parliamentarians of the 9th Parliament discussed the 2009 Budget presented by the Minister of Finance:

Parliamentarian X:

Mr. Speaker, the Honourable Minister of Finance has made a horrendous mistake in stating in his budget statement that this august House has the power to legitimise, through back-dated legislation, withdrawals made from the Consolidated Fund or Public Fund without the prior approval of this House through an Appropriation Act. In fact, this House has been embarrassed by the said statement and the Honourable Minister must do the honourable thing by withdrawing the statement and apologising to this House.

Parliamentarian Y:

Mr. Speaker, Parliamentarian X has clearly manifested his ignorance of the laws of our country by demanding that the Honourable Minister of Finance should withdraw the said statement and apologise to this House in respect of it; there is no need for this. This House has the power to act in the manner stated by the Minister; there is no need for this House to subject itself to ridicule by debating the existence of this power. Mr. Speaker, I wish to remind my Honourable colleague that this House has a lot of powers in the passage of the type of legislation that the Honourable Minister of Finance referred to in his budget statement. I will cite only two: firstly, the House has the power to pass legislation to change the judgment or decision of a court as between the parties to that judgment or decision; secondly, even where this House does not expressly state in a piece of legislation that it is passing the type of legislation the Minister is referring to, the Courts will imply that that was the House's intention as long as you, our Honourable Speaker, states so in Court.

[25 Marks]

QUESTION 2:

By virtue of Section 15(1)(a) of the University of Swaziland Act, 1983 (Act No. 2 of 1983 as amended), the Council of the University of Swaziland is vested with the power to make statutes for "... the government, control and administration of the University." It is crystal clear from this provision of the Act that the Council has a totally free hand in making statutes for the government, control and administration of the University and should not, therefore, bother itself about the consideration of any requirement(s) in the enactment or passage of such statutes.

Do you agree with this statement? Why?

[25 Marks]

QUESTION 3:

X and Y are citizens of the Kingdom of Swaziland. In December 2008, they visited the Republic of South Africa. While they were there, the National Assembly of the Kingdom of Swaziland passed a legislation that empowered the government to prevent criminals from entering the Kingdom. After the passage of this piece of legislation, X and Y got themselves involved in a brawl at a *shebeen* in Soweto in the Republic of South Africa. They were charged with the crime of assault with intent to cause grievous bodily harm. At their trial, they pleaded not guilty; however, on the basis of the evidence adduced before it, the trial court found them guilty. On appeal, the judgment of the court *a quo* that they pay an amount of R2500/= each and serve a prison term of six months in addition was confirmed. After paying these fines and serving their term of imprisonment, they decided to return to Swaziland. However, at the Ngwane border they were refused entry into Swaziland on account of the decision of the government of Swaziland, which had learnt about their criminal record. After appealing to the Minister of Home Affairs, who issued the banning order on behalf of the government, they were allowed to enter Swaziland for the sole purpose of contesting this banning order in court.

This matter has come before a court over which you are presiding.

Would you give a judgment supporting the government's banning order? Why?

[10 Marks]

Clearly indicate how you would arrive at your judgment in the case?

[15 Marks]

SECTION B

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

QUESTION 4:

i. Critically discuss the following statement:

A Parliamentary Draftsperson should concern himself or herself solely with manifesting the intention of Parliament in the drafting of any statute. In this endeavour, he/she should not bother himself or herself with the issue as to whom the statute will apply.

[17 Marks]

ii. In drafting the Constitution of the Students' Representative Council (SRC) of the University of Swaziland, which of the following sentences would you prefer and why?

(a) An SRC membership card shall not be issued to a student who has not registered with the SRC and who has not fully paid his membership dues. [4 Marks]

(b) An SRC membership card shall be issued to a student who has registered with the SRC and who has fully paid his membership dues. [4 Marks]

[8 Marks]

QUESTION 5:

Plain language principles mandate that the following groups of words should be avoided in the drafting of legislation:

Group 1: "save," "furnish" and "commence".

Group 2: "thereof," "thereto" and "therefrom".

- i. What is the common feature of the words in Group 1?
[7 MARKS]
- ii. What is the common feature of the words in Group 2?
[6 MARKS]
- iii. In the interest of plain language principles, give one word that can be used to replace each word in each group?
[12 MARKS]

QUESTION 6:

Comment on the essence of the following standard drafting practices:

- i. The greater use of the active voice;
[9 MARKS]
- ii. The use of shorter sentences;
[5 MARKS]
- iii. The use of positive rather than negative statements;
[5 MARKS] and
- iv. The replacement of Latin terms with English terms.
[6 MARKS]

END
