

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

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

COURSE CODE : **L201**

TIME ALLOWED : **THREE (03) HOURS**

INSTRUCTIONS:

- i. **ANSWER TWO 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:

Critically discuss the statement that while it is usual to use the words “statute” and “legislation” interchangeably, it is important in statutory interpretation or construction to recognise that these words are not necessarily the same under all circumstances.

[25 MARKS]

QUESTION 2:

i. Compare and contrast an enabling statute and a disabling or restraining statute.

[10 MARKS]

ii. Critically analyse the following statement made by a judge in a hypothetical case in the High Court:

This Court is definitely persuaded by the argument of counsel for the Government. The Kingdom of Swaziland is a sovereign nation as clearly set out in Section 1(1) of the Constitution of the Kingdom of Swaziland Act, 2005 (Act No. 1 of 2005), which states: “Swaziland is a unitary, sovereign, democratic Kingdom.” On the basis of this sovereignty, Swaziland has the right to pass its own pieces of legislation in respect of all matters of development without looking over its shoulders to find out what other countries think about such legislation. In interpretation such legislation, the Courts should also not be bothered about whatever has transpired or is transpiring outside the borders of the Kingdom. It must be mindful of only the imperatives of this sovereignty and always undertake such interpretation in the context of the pristine laws of the Kingdom only.

[15 MARKS]

QUESTION 3:

In the case of Wray v. Minister of the Interior 1973 (3) SA 554, at 561, Justice Coetzee stated, *inter alia*:

It is trite 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.

i. Name, without discussing, the maxim of statutory interpretation that is being referred to here by the Court.

[4 MARKS]

ii. Discuss any **three** of the requirements for the invocation of this maxim of statutory interpretation.
[21 MARKS]

SECTION B

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION]

QUESTION 4:

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. State any **five** of these rules and show how, in your opinion, they have contributed to good drafting of statutes?
[25 MARKS]

QUESTION 5:

Comment on the following:

i. The standard structure of statutes;
[15 MARKS] and

ii. The general text and schedules of a statute as possible places for the detail of legislation.
[10 MARKS]

QUESTION 6:

i. Discuss the format recommended for statutes in order to enhance the readability of such statutes.
[13 MARKS]

ii. Discuss the role that the following play in the interpretation of statutes: maps, diagrams and formulae.
[12 MARKS]

END
