

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2010

- TITLE OF PAPER** : **INTERPRETATION OF STATUTES AND LEGAL DRAFTING**
- COURSE CODE** : **L201**
- TIME ALLOWED** : **THREE HOURS**
- INSTRUCTIONS** :
- 1. ANSWER TO (2) QUESTIONS FROM SECTION A AND TWO (2) QUESTIONS FROM SECTION B.**
 - 2. ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - 3. EACH QUESTION CARRIES A MARK OF 25**
 - 4. IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OR EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

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SECTION A

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

QUESTION 1

In the matter between Malungisa Mahlalela vs. The Prime Minister and Others, Supreme Court of Appeal of Swaziland Civil Appeal No. 34/34/2006 (unreported) Banda JA stated that:

“It is trite law that in interpreting any statute the first point to focus on is to discover the intention of the legislature and in order to do that regard must be had to the language used and in the context in which it is used and must also look at the whole enactment; words must be given their ordinary meaning in the context in which they are used”.

With reference to decided cases, critically discuss the above statement and assess, stating your reasons, whether it accords with established rules of interpreting statutes.

[25 MARKS]

QUESTION 2

(i) What legal status do presumptions hold in statutory interpretation? [5 marks]

(ii) Discuss any TWO presumptions of your choice, detailing what they entail and how they have been applied by the courts of Swaziland. [20 marks]

[25 MARKS]

QUESTION 3

Briefly explain intrinsic (internal) and extrinsic (external) aids to statutory interpretation. [10 marks]

Consider how useful they are in assisting judges to interpret Acts of Parliament. [15 marks]

[25 MARKS]

SECTION B

[Answer any TWO (2) Questions from this Section]

QUESTION 4

The drafter of legislation should omit unnecessary words, write plainly and to the point. Comment on the essence of the following standard drafting practices and give three examples in each case:

- | | | |
|-------|-------------------------|-----------|
| (i) | compound constructions; | [5 marks] |
| (ii) | wordiness; | [5 marks] |
| (iii) | hackneyed expressions; | [5 marks] |
| (iv) | shotgunning; | [5 marks] |
| (v) | legal phrases | [5 marks] |

[25 MARKS]

QUESTION 5

“Customarily, punctuation was not considered to be part of legislation. However, it is a grammatical fact that punctuation can affect the meaning of the text”.

Discuss this statement with specific reference to the use of the comma and hyphen.

[25 MARKS]

QUESTION 6

Comment on the following:

- | | | |
|------|---|------------|
| (i) | The standard structure of statutes; | [15 marks] |
| (ii) | The General text and schedules of a statute as possible places for the detail of legislation. | [10 marks] |

[25 MARKS]