

UNIVERSITY OF SWAZILAND

128

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION

YEAR : 2012

TITLE OF PAPER	:	INTERPRETATION OF STATUTES AND LEGAL DRAFTING
COURSE CODE	:	L201
TIME ALLOWED	:	THREE (3) HOURS

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**INSTRUCTIONS:**

- i. ANSWER QUESTION 1 (SECTION A), WHICH IS COMPULSORY.
- ii. ANSWER AT LEAST ONE QUESTION FROM SECTION B AND ONE QUESTION FROM SECTION C.
- iii. ANSWER FOUR (4) QUESTIONS IN TOTAL.
- iv. QUESTION 1 CARRIES A MARK OF 28. ALL OTHER QUESTIONS CARRY A MARK OF 24 EACH.
- v. IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.

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

## SECTION A

**[YOU MUST ANSWER THIS QUESTION; IT IS COMPULSORY.]**

### **QUESTION 1:**

**(a)** Critically discuss the statement that the words “statute” and “legislation” are similar but not entirely the same. **[12 MARKS]**

**(b)** Critically comment upon the following judgment in a hypothetical case *In Re Darlington*:

The Constitution of the Kingdom of Swaziland Act No. 001 of 2005 provides in its Section 34(1) as follows: “A surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a will or not and whether the spouses were married by civil or customary rites.” From the material facts of this case, which are undisputed, Mr. Darlington was the husband of the deceased, Mrs. Darlington; the two were married by civil rites. It is also an undisputed material fact that Mrs. Darlington died intestate, i.e., without making a will while alive as to the disposition of her property upon her death. Furthermore, it is a material fact that Mrs. Darlington died as a result of a massive brain haemorrhage that was occasioned by her head being repeatedly hit with a hammer by Mr. Darlington in the course of an altercation that resulted in a fight between the two. In spite of this evidence before this honourable court as to the cause of death of Mrs. Darlington, it is still my very considered view and judgment that Mr. Darlington is perfectly entitled to a reasonable provision out of the estate of Mrs. Darlington. I am fortified in this holding by the literal rule of interpretation by which Mr. Darlington is manifestly a surviving spouse under Section 34(1) of our supreme law, i.e., the Constitution, 2005. In terms of statutory interpretation, whose sole aim is to ascertain the intention of the legislature or law-maker, I find it extremely difficult to agree with the view expressed by the children of Mrs. Darlington that their father, Mr. Darlington, is not such a surviving spouse and is, therefore, not entitled to any provision, reasonable or not, out of the estate of their mother, Mrs. Darlington. Let me emphasise at this point that I am not being insensitive to the children of Mrs. Darlington over the loss of their mother; I do sympathise with them over this sad loss. However, in terms of the judicial oath that I have sworn to do justice to all parties who appear before me without ill-will or affection and, thereby, to ensure that justice is not only done but manifestly seen to be done, all that I can give to these children is my profound sympathy. The law, without which we will live in a state of anarchy, places an obligation on me to go beyond that and order, on account of the literal or cardinal rule of interpretation, that Mr. Darlington be given a reasonable provision out of the estate of his late wife Mrs. Darlington. I, accordingly, do so order. **[16 MARKS]**

## SECTION B

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

### **QUESTION 2:**

The Constitution of the Kingdom of Swaziland Act No. 001 of 2005 provides in Para. 7 of its Preamble as follows:

*Whereas* all the branches of government are the Guardians of the Constitution, it is necessary that the Courts be the ultimate interpreters of the Constitution.

With this in mind, critically discuss the statement that though Parliament is called upon to respect the power of the courts to interpret the Constitution's provisions and, also, the provisions of ordinary legislation when called upon by the exercise of their judicial powers to do so, Parliament also has at its disposal legislative tools by which to play a critical part in such interpretation and has done so even in the case of the Constitution, the supreme law of the land. **[24 MARKS]**

### **QUESTION 3:**

Briefly comment on any **THREE** (3) of the following:

- (a)** Enabling Statute and a Disabling or Restraining Statute; **[8 MARKS]**
- (b)** *Contemporanea exposito* maxim of interpretation; **[8 MARKS]**
- (c)** *Ut res magis valeat quam pereat* principle of interpretation; **[8 MARKS]** and
- (d)** The presumption of constitutionality. **[8 MARKS]**

## SECTION C

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

### **QUESTION 4:**

**(a)** In what ways do any **TWO** (2) of the following contribute to the problem of opacity in the language of statutes or legislative enactments?:

- i.** Verbiage; **[6 MARKS]**

ii. Overuse of negatives; **[6 MARKS]** and

iii. Use of anachronistic and legalistic terms. **[6 MARKS]**

**(b)** The University of Swaziland Act No. 2 of 1983 (as amended in 2005) provides in its Section 16(2) as follows:

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 the context of statutory interpretation, what is the nature of this provision? Give reasons for your answer. **[12 MARKS]**

**QUESTION 5:**

**(a)** In terms of the standard structure of statutes, how should each part of a statute be structured? **[12 MARKS]**

**(b)** Carefully read through the following section of a hypothetical 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 each of the eliminated words with. Give reasons for such elimination and replacement. **[12 MARKS]**

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