

UNIVERSITY OF SAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

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MAIN EXAMINATION PAPER, NOVEMBER 2013

TITLE OF PAPER : INTERPRETATION OF STATUTES AND LEGAL DRAFTING
COURSE : L 201
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS : 1. ANSWER ANY FOUR (4) QUESTIONS.
2. CAREFULLY READ AND UNDERSTAND THE QUESTIONS.
3. PUT YOUR THOUGHTS IN AN ORGANISED MANNER WITH
YOUR ANSWERS.

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS GIVEN BY THE
INVIGILATOR(S).

QUESTION 1

Critically discuss the Mischief Rule as an approach to statutory interpretation. In your discussion state the four considerations that underlie its application. 100

(Marks: 25)

QUESTION 2

Section 2 (2) of the 2005 Constitution of the Kingdom of Swaziland confers a supremacy status on the Constitution. It further provides that if there is any other law that is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency, be void.

You are to place this position of the Constitution side-by-side with the principle of the Sovereignty of Parliament and then:

- a) Discuss what each of the two principles stands for. (Marks:10)
- b) In the field of statutory interpretation, state whether the power of judicial review of legislation conferred by section 2 (2) is consistent with the judicial function. Support your position. (Marks:15)

QUESTION 3

Section 35 (1) of the 2005 Constitution, a Chapter 3 Bill of Rights provision, provides as follows:

“Where a person alleges that any of the foregoing provisions of this Chapter has been, is being, or is likely to be, contravened in relation to that person or a group of which that person is a member (or, in the case of a person who is detained, where any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.”

Carefully read the legislative provision and answer the following questions:

- a) Give meaning to this provision. You will best be able to give meaning, that is to say interpret it, by breaking it down to its simplest. (Marks: 10)
- b) Identify the instances or scenarios that are meant to be covered by this provision. (Marks: 5)
- c) To whom is standing available or who are the parties or persons eligible to take advantage of this provision? (Marks: 10)

QUESTION 4

Trace the stages of law making in Swaziland till when an Act of Parliament is passed.

(Marks: 25)

QUESTION 5

Section 29 (6) of the 2005 Constitution, dealing generally with the rights of the child, provides that: "Every Swazi child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade."

In the case of *Swaziland National Ex-Miners Worker's Association and Another v The Minister of Education and 3 Others*, High Court Civil Case No. 335/2009, Madam Justice Agyeman gave an interpretation of the provision.

a) What was the interpretation adopted by the learned judge in giving meaning to the provisions of section 29 (6) of the 2005 Constitution?

(Marks: 10)

b) What had the Respondents' attorney/representative argued should be the interpretation to adopt?

(Marks: 10)

c) Do you agree with the interpretation the learned judge arrived at, and why?

(Marks: 5)

QUESTION 6

What do you understand the following maxims to mean?

a) *Generalia specialibus non derogant*

(Marks: 5)

b) *Casus omissus*

(Marks: 5)

c) *Ipsissima verba*

(Marks: 5)

d) *Ejusdem generic*

(Marks: 5)

e) *Expressio unius est exclusion alterius*

(Marks: 5)