

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2015

TITLE OF PAPER: INTERPRETATION OF STATUTES AND LEGAL DRAFTING

COURSE CODE: L201

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

ANSWER QUESTION 1, (WHICH IS COMPULSORY), AND ANY
THREE (3) OTHER QUESTIONS OF YOUR CHOICE.

TOTAL NUMBER OF QUESTIONS TO BE ANSWERED ARE FOUR
(4).

DO NOT BE OPEN THE QUESTION PAPER UNTIL PERMISSION HAS BEEN GIVEN BY
THE CHIEF INVIGILATOR.

QUESTION 1 [COMPULSORY]

The case of *Mary Dlamini v The King*, High Court Review Case No. 126/91 brings home the importance, in a very telling manner, of the presumption that **the legislature does not intend to alter the existing law unduly or that there is a presumption against an alteration of the existing law**. Using that case as a tool, discuss how the learned judge (Rooney, J) went about in upholding the presumption.

(25 marks)

QUESTION 2

As a primary source of law, a statute is touted as the most important modern source of law. Comparing it, for example, with the common law (Roman-Dutch Common Law) or customary law (Swazi law and custom), indicate whether you agree with the assertion that it is an important source of law in modern times: giving your reasons.

(25 marks)

QUESTION 3

In a characteristic exchange of wits, Humpty-Dumpty mockingly tells Alice: "*When I use a word, it means just what I choose it to mean-neither more nor less.*" To which Alice responds: "*The question is whether you can make words mean so many different things.*" Humpty-Dumpty retorts: "*The question is which is to be the master-that's all.*"

It is a known fact that at the centre of the interpretation of statutes is the use of words and language, in a written format. Critically discuss what the problem is that brings us to close terms with the study of the course statutory interpretation and legal drafting.

(25 marks)

QUESTION 4

In the decided case of *Venter v R, 1907 TS 910*, Innes, C.J. laid down or suggested two approaches that would permit the departure or deviation, by an interpreter, from the literal rule of interpretation. State these two approaches.

(25 marks)

QUESTION 5

Write short explanatory notes on the following:

- a) The mischief rule; (5 marks)
- b) Presumption against retrospective interpretation; (5 marks)
- c) The significance of Royal Assent; (5 marks)
- d) Commencement of legislative enactments; and (5 marks)
- e) King's-Order-in-Council. (5 marks)

(Total marks: 25)

QUESTION 6

Section 29 (6) of the Kingdom of Swaziland Constitution reads:

“Every Swazi child shall within 3 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.”

Your community leaders, who are keen to improve the lot of their needy members, are trying to make sense of this constitutional provision. Assume that you have been approached to help them understand the promise of the Constitution.

With the guidance of decided case authority in Swaziland, state how would you go about helping them out.

(25 marks)