

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

FINAL EXAMINATION PAPER, MAY 2017

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

a) Outline the stages of law-making in Swaziland up till the passage of an Act-of-Parliament. [12]

b) Discuss the functions of courts in interpretation of statutes. [13]

[25 MARKS]

QUESTION 2

Discuss –

a) Whether the courts can declare an Act of Parliament to be invalid; [6]

b) Whether the courts can declare an Act of Parliament to be unconstitutional. Substantiate your answer with local case law; [8]

c) Whether the courts will fill a gap in a statute; [6]

d) Original legislation. [5]

[25 MARKS]

QUESTION 3

a) Critically discuss the statement that the presumption that statutes are not intended to apply retrospectively applies with force in the Constitution of the Kingdom of Swaziland Act No. 001 of 2005 and, also, with exception. [10]

b) Critically discuss the literal rule. [15]

[25 MARKS]

QUESTION 4

The University of Swaziland Act, 1983 (as amended) provides at section 15(1) that the University Council shall be vested with powers to make statutes for "... the government, control and administration of the University". With this provision in mind, answer the following questions –

a) State, without discussing, the kind of legislative power being exercised by the University Council by virtue of this statutory provisions. [3]

b) Discuss the advantages of this kind of legislative power. [10]

- c) Discuss the criticisms against this kind of legislative power. [7]
- d) In the event that a person is aggrieved by the legislative power of the University Council, which institution has the power to review the University Council? [5]
- [25 MARKS]

QUESTION 5

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. [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. [15]
- [25 MARKS]

QUESTION 6

With a local example in mind, critically discuss the Mischief Rule as an approach to statutory interpretation. As part of your discussion state the four considerations that underlie its application.

[25 MARKS]