

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

FINAL EXAMINATION PAPER, DECEMBER 2016

TITLE OF PAPER: INTERPRETATION OF STATUTES

COURSE CODE: LAW207

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]

On the 29th November 1996, the High Court of the Kingdom of Swaziland handed down its ruling in *The King v Duncan Magagula and 10 others*, an unreported criminal case, pursuant to an application being made at the close of the Crown's case. The case is one of many such cases that have come before our courts. The pertinent provision, in terms of which the application was made, and that came under scrutiny was section 174 (4) of the Criminal Procedure and Evidence Act, No. 67/1938 (as amended). The section reads as follows:

If at the close of the case for the prosecution the court considers that there is no evidence that the accused committed the offence charged or any other offence of which he might be convicted thereon, it may acquit and discharge him.

Avoiding, as best as possible, a restating of facts of the case:

- a) Explain what, in the criminal justice system, the significance of the application, as was made in that case, is? **[10 marks]**
- b) Discuss how the learned judge (Dunn, J.) approached and resolved the application in relation to the provisions in terms of which it had been made? **[15 marks]**

[Total marks 25]

Question 2

The new constitutional order in Swaziland, and indeed other countries, has ushered in a shift in the approach to interpreting legislation (statutes). Largely built upon parliamentary sovereignty, the traditional approach has given way to a new methodology, itself built upon constitutional supremacy. Interpretation of statutes now has to be determined in line with the dictates of the 2005 Constitution.

In a meaningful manner, discuss what the justification for this shift is. **[25 marks]**

Question 3

Language, generally, and written words, particularly, bring about their own problems and difficulty once they come into their own/individual existence. Whilst it may be easier to find out what a person means when he/she is present, it is not so once he/she is gone or the written word remains in cold-print.

- a) Considering the literal or plain-meaning rule, you are to interrogate this assertion, and indicate whether you agree or disagree with it. Justify your position. **[10 marks]**

- b) Mindful of the deficiencies/shortcomings of language and words used, and with an eye to the interpretation of statutes, discuss what the golden rule or canon of interpretation seeks to do, and how? Case law is most welcome, in your making the point. [15 marks]

Question 4

Write short explanatory notes on the following:

- a) Authentic interpretation. [5 marks]
b) Anatomy of a statute. [5 marks]
c) The presumption that a statute has perpetual existence. [5 marks]
d) Long title of a statute. [5 marks]
e) The use of the word 'may' in a legislative provision. [5 marks]

[Total marks 25]

Question 5

Giving examples, define the following types of statutes:

- a) Consolidating statute. [12.5 marks]
b) Repealing statute. [12.5 marks]

[Total 25 marks]

Question 6

The common-law presumption that legislation applies only to the future is said to be one of the basic foundations of a legal system based on the rule of law. Case law highlighting the presumption is replete. In an old *English case of Gardner v Lucas (1878) 3 App Cas 582* it was described as a 'general rule of every civilized country'.

Using case law, discuss the rule/presumption and what it aims at achieving. [25 marks]