



UNIVERSITY OF ESWATINI

FIRST SEMESTER RESIT EXAMINATION PAPER, JANUARY 2020

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW207

TITLE OF PAPER: INTERPRETATION OF STATUTES

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of Section (A) and (B).
2. Section A is compulsory.
3. Answer any three questions from Section B.

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

SECTION (A)

Question 1 (this question is compulsory)

Often, the expression “notwithstanding” is used (or found) in legislative texts. Consider, as an example, section 151 of the Constitution, dealing with the jurisdiction of the High Court, which follows:

Jurisdiction of the High Court

151. (1) *The High Court has —*

(a) unlimited original jurisdiction in civil and criminal matters as the High Court possesses at the date of commencement of this Constitution;

(b) such appellate jurisdiction as may be prescribed by or under this Constitution or any law for the time being in force in Swaziland;

(c) such revisional jurisdiction as the High Court possesses at the date of commencement of this Constitution; and

(d) such additional revisional jurisdiction as may be prescribed by or under any law for the time being in force in Swaziland.

(2) Without derogating from the generality of subsection (1) the High Court has jurisdiction —

(a) to enforce the fundamental human rights and freedoms guaranteed by this Constitution; and

(b) to hear and determine any matter of a constitutional nature.

(3) Notwithstanding the provisions of subsection (1), the High Court —

(a) has no original or appellate jurisdiction in any matter in which the Industrial Court has exclusive jurisdiction;

(b) has no original but has review and appellate jurisdiction in matters in which a Swazi Court or Court Martial has jurisdiction under any law for the time being in force.

(4) The High Court has no power, in a trial for the offence of treason, to convict any person for an offence other than treason.

(5) A Justice of the High Court may, in accordance with rules of court, exercise in court or in chambers all or any of the jurisdiction vested in the High Court by this Constitution or any other law.

(6) For the purposes of hearing and determining an appeal within its jurisdiction and the enforcement of a judgment or order made on any appeal, the High Court shall have all the powers, authority and jurisdiction vested in the court or tribunal from which the appeal is brought.

(7) In this section any reference to “revisional jurisdiction” shall be construed as including

a reference to jurisdiction to determine reserved questions of law and cases stated.

(8) Notwithstanding subsection (1), the High Court has no original or appellate jurisdiction in matters relating to the office of iNgunyama; the office of Ndlovukazi (the Queen Mother); the authorisation of a person to perform the functions of Regent in terms of section 8; the appointment, revocation and suspension of a Chief; the composition of the Swazi National Council, the appointment and revocation of appointment of the Council and the procedure of the Council; and the Libutfo (regimental) system, which matters shall continue to be governed by Swazi law and custom.

In the context of the section, what do you understand the expression “notwithstanding”, especially as it appears in sub-sections 3 and 8, respectively, to mean? Don’t get yourself overly involved in the actual interpretation and the legalese that the section is.

[25 marks]

SECTION (B)

Question 2

As a source of law, a statute (also called an Act of Parliament) has distinct advantages over the other sources of law, say Roman-Dutch law (which is the common law of the country) and Swazi law and custom.

Discuss this observation, bringing out the advantages that a statute has over the other mentioned sources.

[25 marks]

Question 3

Write concise explanatory notes on the following:

- (a) Amendment. **[5 marks]**
- (b) Consolidation. **[5 marks]**
- (c) Striking down of legislation. **[5 marks]**
- (d) Assent. **[5 marks]**
- (e) Bill. **[5 marks]**

[Total marks: 25]

Question 4

(a) What do you understand “authentic interpretation” by Parliament to mean, and where is it to be found? Discuss.

[10 marks]

(b) Elaborately discuss, in the context of lawmaking and sources of law, what the demise, or death, of legislation means. In the discussion, provide an example, also indicating how it came about and what its effect was.

[15 marks]

[Total marks:25]

Question 5

In a brief and clearly expressed manner, make a discussion of what you understand to be the importance of the interpretation of statutes. In your discussion you have to point out why particularly statutes or legislative texts, as a source of law, require to be interpreted.

[Total marks: 25]