

Interpretation Theory/Interpretation of Statutes
ULL0024/ITH41BO
Interpretation examination 2021

Marking guideline

Section A

Question 1

Other answers may also be acceptable as the presumptions advance several constitutional values.

1. Accountable government.
2. Equality.
3. Legality.
4. Effective government.
5. Separation of powers.
6. Legality.
7. Respect for the territorial integrity of other countries.
8. Legality.
9. S 39.
10. Equality.
11. S 39.
12. Public interest.
13. Legality.
14. Transformative constitutionalism.

Section B

Question 1

Which constitutional values are advanced by the principle?
How was the presumption treated prior to 1994?
How is the presumption treated after 1994?
How does the presumption relate to teleological interpretation?
When can it be used?
Other conflicting values?

Question 2

Consider the elements of legislation.
Administrative law consideration.
Was the regulation adopted in terms of a founding principle Act? Which Act? Specify provision.

Question 3

- **Universalist interpretation ✓** holds that constitutional guarantees are cut from a universal cloth, and, hence, that all constitutional courts are engaged in

the identification, interpretation, and application of the same set of norms. Those norms are comprehended as transcendent legal principles that are logically prior to positive rules of law and legal doctrines, ✓

- **Genealogical interpretation** ✓ holds that constitutions are often tied together by complicated relationships of descent and history, and that those relationships are sufficient justification to import and apply entire areas of constitutional doctrine. ✓
- **Dialogical interpretation** ✓ holds that courts identify the normative and factual assumptions underlying their own constitutional jurisprudence by engaging with comparable jurisprudence of other jurisdictions. ✓

Question 4

Teleological.

Purpose of provision in light of constitutional values.

1. Establish the central purpose of the provision in question;
2. Establish whether that purpose would be obstructed by a literal interpretation of the provision; if so,
3. Adopt an alternative interpretation of the provision that 'understands' [read promotes] its central purpose; and
4. Ensure that the purposive reading of the legislative provision also promotes the object, purport and spirit of the Bill of Rights.

Question 5

- Skweyiya J: In casu, legislative provisions requires exact compliance. ✓ Because of the wording of the provision, there is no discretion to condone non-compliance in respect of the legislative provision(s). ✓ Deviations from the letter of the law relating to voting procedures would 'have an impact on the fairness of the election' and could not, therefore, be sanctioned. ✓
- Devenish: describes the minority judgment of Skweyiya J in ACDP as 'jurisprudentially superficial', 'dogmatic' and grounded in a 'literal style of interpretation'. ✓
- Le Roux:
 - Devenish is too quick to do so. Both judgments adopt a purposive/teleological reading. ✓
 - What the judgment of Skweyiya J also points out is that the purposive/teleological interpretation of a statutory provision sometimes mandates a narrow reading of its wording. ✓
 - A textual threshold is implied in section 39(2) of the Constitution. ✓
 - This means that the purposive/teleological interpretation of a legislative provision remains subject to what the words of that provision are 'capable of' meaning. ✓
 - The "textual threshold" was read into section 39(2) of the Constitution precisely in order to prevent courts in the absence of a finding of unconstitutionality, to interpretively change or disregard the text of

legislation in the name of the purpose or spirit of the legislation and the Bill of Rights. ✓

Give ✓ if answer is logically cohesive.

Question 6

- 6.1 17 December
- 6.2 20 December
- 6.3 20 December
- 6.4 10 January
- 6.5 21 January