

Marking guideline

1. True
2. True
3. True
4. False
5. True
6. True
7. True
8. True
9. False
10. False
11. False
12. True
13. False
14. True
15. False

- Reading in conformity with the Constitution, specifically “reading down”. ✓
- Cessante ratione legis cessat et ipsa lex A provision ceases to have effect in situations where the reason for its existence falls away in that, for example,

provision has already been made, in some way or another, for that which the legislative measure in question was supposed to cater. ✓

- The *eiusdem-generis* rule, can be applied to the construction of provisions made up of a phrase of general application preceded by a class or genus of words of a limited or particular meaning. The semantic possibilities of the general phrase are then restricted to the narrower, generic semantic possibilities of the preceding words, the interpreter all the while keeping in mind the scheme of the provision in question. The more inclusive linguistic signifier usually, but not invariably, *follows after* (and *relates to*) generic signifiers of a more limited or specific scope. ✓

Extensive interpretation:

- Reading in conformity with the Constitution, specifically “reading up” ✓
- Analogical interpretation is premised on a “for the same reason” argumentation: provisions applicable to an expressly mentioned instance can, *ex identitate rationis*, be extended to other similar instances that have not expressly been mentioned. ✓
- Inclusive interpretation is interpretation by implication, and the implication may follow from one or more of the following considerations:
 - *Other provisions of the legislative instrument as a whole* provided that the implication is a necessary one. ✓
 - *Ex contrariis* Where a provision expressly caters for certain circumstances, it is inferred that, for opposite circumstances, the contrary holds. The same reasoning, in a more restricted sense, is also expressed as *expressio unius est exclusio alterius*– a maxim invoked with circumspection and held to be not a final but only a *prima facie* indicator of meaning and, therefore, no hard and fast rule. ✓
 - *Ex consequentibus* Where a provision proscribes a certain consequence, it proscribes, by implication, everything that may occasion such a consequence. Positively framed: where a provision permits a certain consequence, it permits, by implication, everything reasonably necessary for – and, at the same time, proscribes obstructions to – the achievement of the authorised consequence. ✓
 - *Ex accessorio eius, de quo verba loquuntur* ‘if the principal thing is prohibited or permitted, the accessory thing is likewise prohibited or permitted’. ✓
 - *A natura ipsius rei* An implication a *natura ipsius rei* follows by inherent relationship. The power to make a regulation, for instance, implies the power to withdraw it. ✓
 - *Ex correlativis* An implication *ex correlativis* arises from mutual or reciprocal relationship. A prohibition to purchase includes a prohibition on sale; a prohibition to let implies a prohibition to hire, et cetera. ✓

[Giving of the latin terms is not enough and not always necessary – students must explain the concepts.]

Question 3

Yes.

- Rautenbach and Malherbe: original provincial legislation can be subordinate to delegated national legislation.
- Why? Refer to the definition of provincial and national legislation as contained in the Constitution.
- S 146 of the Constitution also allows that provincial legislation takes precedence over national legislation in certain circumstances –thus delegated provincial legislation can sometimes trump original national legislation!
- Must first be approved by the National Council of Provinces (if they don't approve within 30 days it is assumed that the provision has been approved).
- Municipal by-laws that conflicts with national and provincial legislation is always invalid.

Question 4

4.1

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.

4.2

Merely cautions interpreter to take meaning generation function of language seriously.
Textual threshold? Le Roux.

Question 5

Any five presumption and any possible value.

Question 6

- 6.1 15 December
- 6.2 17 December
- 6.3 20 December
- 6.4 7 January
- 6.5 21 January