

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

Marking guideline

Question 1

Only give two marks if the difference between the two concepts are clear – if not 0.

1.1 Teleological interpretation and purposivism. (2) ^[1]_[SEP]

Teleological interpretation – legislative provisions must be interpreted to give effect to the (objective) purpose (not intent) which it has been designed to achieve in light of constitutional values.

Purposive interpretation - legislative provisions must be interpreted to give effect to the purpose which it has been designed to achieve

1.2 Subsecuta observatio and contemporanea expositio. (2) ^[1]_[SEP]

A contemporanea expositio is an explanation of “the meaning of an Act implicitly offered by public officials more or less simultaneously with or shortly after its commencement”, a subsecuta observatio, on the other hand, “is a custom or continuous practice which emerges after an Act has commenced and which inter alia derives its authority from long duration”.

1.3 Literalism and grammatical interpretation. (2) ^[1]_[SEP]

Literalism – the idea that the meaning of a provision must be deduced from the text and only from the text (do not consider any other information or materials)

Grammatical interpretation – idea that interpretation starts with the text, but does not end there. Cautions the interpreter to take the meaning0generative function of language seriously.

1.4 Intentionalism and literalism-cum-intentionalism. (2) ^[1]_[SEP]

Intentionalism – claims that the paramount rule of statutory interpretation is to discern and give effect to the real (subjective) intention of the legislature/Parliament (not legislation).

Literalism-cum-intentionalism - assumed that the legislature couches or encodes its intention in the language of the statutory provision to be construed. (Not good enough for students to say its a “combination of literalism and intentionalism”).

(Real difference lies in the fact that intentionalism seeks the real/subjective intention of Parliament whilst literalism-cum0intentionalism doesn’t seek the “real intention” as it is believed to be codified in the text 0 actually just literalism).

1.5 Dis-integration and hyper-integration. (2) L SEP

On the one hand, dis-integration turns a blind eye to the systematic interconnectedness of text-components and tries to understand them in splendid isolation from one another. Hyper-integration, on the other hand, links text-components which, according to the scheme of the text, are not inherently coherent.

Question 2

2.1

Students were expected to:

- Describe the presumption.
- Refer to s 7(1) and s 8(1) of the constitution.
- Refer to *Mohamed v President of the Republic of South Africa*.
- Refer to *Kaunda v President of the Republic of South Africa*.
- Refer to *Minister of Home Affairs v Tsebe, Minister of Justice and Constitutional Development v Tsebe*.
- Refer to *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre*.

2.2

Any 5:

- Where a statute expressly states or it is so by necessary implication that the statute applies retrospectively.
- Where a statutory provision confirms the existing law.
- If a statute or amendment of a statute is merely interpretive or declaratory of the existing law without amending it.
- If the statute is intended to operate to a benefit of (all) the persons subject to the provisions of a statute.
- If the statute is procedural in nature.
- Where the law introduces some exception or exemption.

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

Refer To *Goedgelegen case* and describe how ubuntu was utilised in relation to land reform.

How are values utilised in teleological interpretation?

Contextual methodology/

Question 6

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