



PROGRAM : LLB

MODULE : INTERPRETATION THEORY
INTERPRETATION OF STATUTES

CODE : ULL0024
ITH41B0

DATE : Examination

DURATION : 3 hours

TOTAL MARKS : 60

EXAMINER : Dr MJ van Staden

MODERATOR : Dr R Venter

NUMBER OF PAGES : 4 (including this one)

INSTRUCTIONS:

1. If you experience any problems regarding the exam, you must inform the lecturer thereof as soon as possible (**mvanstaden@uj.ac.za**).
2. Your answers must be typed and saved in a Word document/PDF or handwritten, photographed and saved as PDF. Photographed papers must be clear and legible. All pages must be clearly numbered.
3. Save your document as either your surname or student number. **Do not** save the exam as "Interpretation" or "Exam" or anything similar.
4. Email the exam to **mvanstaden@uj.ac.za** and make sure that you receive a response stating that the exam has been received. Double check to make sure that you have entered the email address correctly.
5. Students must answer all questions.
6. All questions must be clearly numbered, but may be done in any order.
7. Regarding longer questions, the use of footnotes is not required. However, wherever appropriate you must refer to authority.
8. Students may use all study materials in their possession when answering the exam paper, including consulting case law and legislation online.
9. By submitting their test script students agree to adhere to UJ's policy on plagiarism and rules related to the writing of tests and exams. Students may under no circumstances contact any other person for assistance in answering the test paper. Any academic transgressions will be followed by disciplinary action by the University.
10. Students who transgress any of these instructions will be penalised.

Question 1

Explain the difference between the following concepts:

- 1.1 Teleological interpretation and purposivism. (2)
 - 1.2 Subsecuta observatio and contemporanea expositio. (2)
 - 1.3 Literalism and grammatical interpretation. (2)
 - 1.4 Intentionalism and literalism-cum-intentionalism. (2)
 - 1.5 Dis-integration and hyper-integration. (2)
- [10]**

Question 2

On 1 July 2019, an amended version of Rule 32 of the Uniform Rules of Court came into effect. This altered the procedure in relation to summary judgment applications. Under the previous Rule, a plaintiff was permitted to initiate summary judgment proceedings after the defendant delivered a notice of intention to defend. The new Rule changed this procedure, in that a plaintiff may only bring a summary judgment application after the delivery of the defendant's plea. Write a considered opinion in which you consider if the amended Rule could apply retrospectively to pending summary judgment applications that were instituted prior to the commencement of the new Rule. Motivate your answer with reference to authority.

[10]

Question 3

Read the following extract from *DBT Technologies (Pty) Limited t/a DB Thermal v Garnevska* (JS581/15) [2018] ZALCJHB 447 (8 June 2018) and critically analyse the interpretive approach of the Court with reference to authority. What theory of statutory interpretation did the court utilise? Motivate your answer.

“During argument, we were referred to the decision of the Labour Court in *Mackay v Absa Group and another (Mackay)* holding that the exercise of a right to lodge a grievance conferred by a private agreement between the employer and the employee falls within the ambit of section 187(1)(d) of the LRA. The Labour Court, in that case, accepted that the LRA does not make explicit provision protecting an employee who lodges a grievance against his employer in terms of an internally agreed document such as a grievance procedure or code. It held however, that one of the main objects of the LRA is to give effect to and regulate the fundamental rights conferred by the Constitution of the Republic of South Africa, 1996 (Constitution) including the right to fair labour practices. The LRA, the judge reasoned, is intended to regulate and govern the relationship between employee and employer. In keeping with the LRA’s main objects, all disputes arising from the employer-employee relationship must be effectively resolved. Therefore, in keeping with the main object of the Act i.e. of resolving all labour disputes effectively, and with the constitutional guaranteed right to fair labour practices, the Labour Court held it must follow that a purposive interpretation of section 187(1)(d) of the LRA would mean that the exercise of a right conferred by a private agreement binding on the employer and employee as well as participation in any proceeding provided for by such agreement was also contemplated in that section.”

[5]

Question 4

In terms of the doctrine of separation of powers, it is rarely (if ever) acceptable to alter the *ipsissima verba* (very words) of a legislative provision. Describe the circumstance under which a court can alter the *ipsissima verba* and how the courts could/should go about to do so.

[15]

Question 5

5.1 According to Le Roux, the theory of statutory interpretation favoured by the Constitutional Court in *African Christian Democratic Party v The Electoral Commission and Others* 2006 3 SA 305 (CC) includes 4 distinct steps. List these steps.

(4)

5.2 There exists a difference of opinion between the writers Le Roux and Devenish as to the interpretive approach utilised by the minority of the court (dissenting judgment) in *African Christian Democratic Party v The Electoral Commission and Others* 2006 3 SA 305 (CC). Discuss. In your answer you must consider the importance of text within the interpretive approach favoured by the Constitutional Court.

(10)

[14]

Question 6

List and explain the three modes of comparative interpretation.

[6]

Total: [60]