



PROGRAM : LLB

MODULE : INTERPRETATION THEORY
INTERPRETATION OF STATUTES

CODE : ULL0024
ITH41B0

DATE : Special Examination

DURATION : 3 hours

TOTAL MARKS : 60

EXAMINER : Dr MJ van Staden

MODERATOR : Dr R Venter

NUMBER OF PAGES : 4 (including this one) + 4 page annexure

INSTRUCTIONS:

1. Answer all questions.
2. Write legibly.
3. You must hand in your answer paper as well as this question paper.
4. All questions must be answered in your answer paper.
5. All rules and regulations of the University of Johannesburg regarding examinations must be complied with.

SECTION A

Indicate if the following statements are true or false and motivate your answer:

- 1 The common-law presumption of interpretation may be regarded as a common-law bill of rights.
- 2 There is no such thing as “clear and unambiguous language”.
- 3 Time-bound words and expressions, as well as archaisms encountered especially in older statutes must be understood in accordance with the usage and linguistic conventions at the time the statute came into existence.
- 4 The English version of the text will always prevail.
- 5 When a statute requires exact compliance failure to comply will leave the ensuing act null and void.
- 6 It may be that the majority judgment of the Constitutional Court in *African Christian Democratic Party v The Electoral Commission* has dealt the distinction between peremptory and directory provisions a blow, since the court raised the question whether a provision can be ever so peremptory that *eo nomine* compliance with it has to be preferred to realising its purpose, and the court itself, in point of fact, answered this question in the negative.
- 7 *Dis-integration* turns a blind eye to the systematic interconnectedness of text-components and tries to understand them in splendid isolation from one another.
- 8 *Hyper-integration* links text-components which, according to the scheme of the text, are not inherently coherent.
- 9 It is never possible to tamper with the *ipsissima verba* of an Act.
- 10 When interpreting the Bill of Rights, a court, tribunal or forum may consider international law.
- 11 The pre-1994 parliament was no “parliament” (because they were not democratically elected).
- 12 The “hermeneutic” or “linguistic turn” describes a situation in which meaning is not discovered in (and retrieved from) a construable text, but is made in dealing with the text.
- 13 Von Savigny advocated 5 methods of statutory interpretation.
- 14 Courts may refer to the similar or related predecessor(s) (and, less often, successors) of a statutory provision in an attempt to attribute to that provision the best possible present-day meaning if the provision is couched in unclear and unambiguous language.
- 15 Courts often use both the literalist and purposive theory of interpretation.

[15]

SECTION B

Question 1

In *S v Okah* 2018 4 BCLR 456 (CC) the Constitutional Court was called upon to determine if the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 has extra-territorial effect. Critically discuss the judgement, with reference to the relevant common-law presumption of interpretation and consider if this decision is compatible with the previous jurisprudence of the Constitutional Court on the matter.

[10]

Question 2

The American authors Scalia and Gardner (*Reading Law: The Interpretation of Legal Texts* (2012) 343-346) claim that it is “a false notion that the spirit of a statute should prevail over its spirit”. Write a note in which you criticise this opinion from the South African perspective. Refer to authority.

[20]

Question 4

Describe five (5) instances where the courts will tend to allow the retrospectivity of legislation.

[5]

Question 5

Is grammatical interpretation a throwback to literalism? Motivate your answer.

[5]

Question 6

Consider the following calendar and answer the following questions:

DECEMBER 2020						
Son	Mon	Tues	Wed	Thurs	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

JANUARY 2021						
Son	Mon	Tues	Wed	Thurs	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Please note that the following days are public holidays:

- 16 December 2020 - Day of Reconciliation
- 25 December 2020 - Christmas Day
- 26 December 2020 - Day Of Goodwill
- 1 January 2021 - New Years Day

Further note that the courts will close at 16h00 on 15 December 2020 and that they will open on the morning of 8 January 2021.

- 6.1 Calculate 10 **days** from 18 December 2020 according to the normal statutory method. (1)
- 6.2 Calculate 14 **days** from 18 December 2020 according to the normal statutory method. (1)
- 6.3 Calculate 10 **court days** from 8 December 2020 according to the normal statutory method. (1)
- 6.4 Calculate 3 **open days** from 22 January 2021 according to the normal statutory method. (1)
- 6.5 At what time does a “day” start? (1)

[5]

Subtotal: Section B [45]
Total: [60]