

Interpretation Theory/Interpretation of Statutes
ULL0024/ITH41BO
Interpretation supplementary examination 2020

Marking guideline

Question 1

1.1 Teleological interpretation and purposivism. (2)

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)

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)

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)

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)

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

How were the presumptions used prior to 1994?

How are they used after 1994? How do they relate to teleological interpretation?

Any 5 presumptions.

Question 3

Any five

- 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 4

4.1

Literalism

Intentionalism

Literalism-cum-intentionalism

Purposivism

Contextualism

With reference to constitution/appropriate case law state which theories are workable in SA context and how.

4.2 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)

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.

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.

- 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.