UNIVERSITY EXAMINATIONS

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IOS2601 (491069) October/November 2018

Interpretation of Statutes

Duration 2 Hours

100 Marks

EXAMINERS :

FIRST ADV NC MALATSI

SECOND DR CA HILLS

Closed book examination

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This paper consists of eight (8) pages.

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1. **ANSWER ALL QUESTIONS.**
2. **QUESTION 1 MUST BE ANSWERED ON A SEPARATE MARK-READING SHEET.**
3. **REFER TO RELEVANT CASE LAW OR AUTHORITY TO SUPPORT YOUR ANSWERS.**
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QUESTION 1

1 1 In National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 (2) SA1 (CC) the Constitutional Court laid down a number of principles to be considered and followed *before reading* in or severance is applied One of the principles laid down in the case with regard to reading in or severance is that

(1) the legislature must be able to define with sufficient precision how the legislative meaning ought to be modified to comply with the Constitution
(2) the court should endeavour to be as faithful as possible to the constitutional scheme within the constraints of the relevant legislation
(3) the results of reading in/severance must be inconsistent with the Constitution and its values
(4) the remedy of reading in ought not to be granted where this would result in an unsupportable budgetary intrusion

1 2 In terms of section 172 of the Constitution, the following courts may declare legislation unconstitutional

(1) The High Court, Supreme Court of Appeal or the Magistrate's Court
(2) The High Court, Supreme Court of Appeal or the Constitutional Court
(3) The High Court, Supreme Court of Appeal or the Chief's Court
(4) *The High* Court, Supreme Court of Appeal or the Small Claims Court

1 3 In the three-phase model suggested by Botha in the prescribed textbook, the research phase refers to the interpretative process during which

(1) the legislative text, the purpose and the situation are harmonised to bring the process to a meaningful conclusion
(2) the supreme Constitution, the Bill of Rights, the ascertainment of the purpose of the legislation, the reading of the text, the common-law presumptions and the balance between text and context are all used as a point of departure

(3) the purpose of the legislation is determined by studying all the factors and considerations that may have a bearing on the particular legislation

(4) there is judicial interpretation of similar legislation by foreign courts, as well as international law

1 4 Section 13 of the Interpretation Act 33 of 1957 states that legislation may commence

(1) when it is published in the Government Gazette or on a date specified in the legislation or on an unspecified date still to be proclaimed by the President or the Premier of a province

(2) when it is published in the Government Gazette or on a date specified in the legislation or when it is published in a national newspaper

(3) when it is published in the Government Gazette or on an unspecified date still to be proclaimed by the Minister of Justice and Constitutional Development

(4) when it is published in the Government Gazette or on a date specified in the legislation or at the time when it becomes known throughout the country through mass information campaigns/sessions

1 5 In R v Mazibuko 1958 (4) SA 353 (A)

(1) the appellant appealed against a sentence to life imprisonment imposed for robbery

(2) the appellant relied on the principle that a harsher penalty could only have been imposed in respect of crimes committed before the amendment came into effect

(3) the court found that if the penalty provided for in an Act is increased by an amending Act, the presumption against retrospectivity applies

(4) the court relied on the common-law rule that if there is a difference in penalties between the date of the crime and the date of the trial, the date of the trial will be decisive

1 6 In S v Koopman 1991 (1) SA 474 (NC)

(1) the accused was found guilty of contravening the Internal Security Act 44 of 1950
(2) the accused received a sentence of committal to a psychiatric institution for being insane
(3) the court used section 11 of the Interpretation Act 33 of 1957 to arrive at a just conclusion
(4) the court used the presumption that government bodies are not bound by their own legislation to arrive at a decision

1 7 In the example of an Act given on pages 23 to 26 of the prescribed textbook

(1) the long title of the legislation is the section which appears immediately after the word "ACT" and begins with the words "to establish the Represented Political Parties' Fund "
(2) the English text of the legislation was signed by the President This means that only the English text may be used when the legislation is interpreted
(3) the legislation commenced on the day it was published in the Government Gazette
(4) when interpreting the Public Funding of Represented Political Parties Regulations, a court may consider section 39(2) of the Constitution

1 8 When interpreting a piece of legislation, external aids are used Which of the aids mentioned below is not an external aid of interpretation?

(1) The time factor
(2) The Constitution
(3) Dictionaries and linguistic evidence
(4) The source of a provision

1 9 Botha identifies three false assumptions that textualist make about the law-making function of the courts Which of the following is NOT one of the assumptions?

(1) They confuse the modification of the meaning of legislation with the literal modification of the text or *language* of the legislation
(2) They are willing to accept a literal interpretation of a statute that goes beyond the purpose of the legislation
(3) They rely on the common-law presumption that the legislature does not intend futile, meaningless and nugatory legislation
(4) They rely on the doctrine of parliamentary supremacy which has been replaced by the Constitution

1 10 All of the options below are sections taken from the South African Schools Act 84 of 1996 Which section in the South African Schools Act is an example of a peremptory provision?

(1) After consultation, as contemplated in section 5 of the National Education Policy Act, 1996 (Act No 27 of 1996), the Minister may determine norms and standards by notice in the Gazette regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff
(2) When presenting the annual budget contemplated in section 38, the governing body of a public school must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met
(3) Subject to this Act, the Labour Relations Act, 1995 (Act No 66 of 1995), and any other applicable law, a public school may establish posts for non-educators and employ non- educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No 103 of 1994)

(4) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine which may include the charging of a fee or tariff which accrues to the school

1 11 The Constitution

(1) provides that the spirit and purport of the Bill of Rights must be promoted when interpreting legislation
(2) influenced the interpretation of statutes only in cases of delegated legislation
(3) provides that international law may not be used to choose between different interpretations of the same legislation
(4) provides that legislation must be published at least 10 days before its commencement

1 12 The *eiusdem generis* rule can be applied where

(1) the specific words have already exhausted the genus
(2) there is a common quality or common denominator
(3) the legislature's intention does not support such a restrictive interpretation
(4) the order in which the words appear is of high importance

1 13 Indicate which statement is NOT correct Modificative interpretation occurs when

(1) the text of the legislation stipulates more than its purpose
(2) the text of the legislation stipulates less than its purpose
(3) the initial meaning of the text is in conflict with the Constitution
(4) the text of the legislation is vague, unclear and ambiguous

1 14 Concretisation is the process

(1) through which the interpreter moves from the abstract to the practical reality in order to apply the particular legislation
(2) focussed on the linguistic and grammatical meaning of the words, phrases and sentences in a text
(3) where theaim and purpose of the provision must be ascertained against the values of the Constitution
(4) where the clarification of the meaning of a particular provision in conjunction with the whole takes place

1 15 A number of factors support the law-making discretion of the courts during the interpretation process One of these factors is

(1) the principle of separation of powers
(2) the principle of democracy
(3) the rule-of-law principle
(4) the reading-down principle

[15]

QUESTION 2

In the *Jaga v Donges* decision, which is an example of the text-in-context approach, Schreider JA identified some guidelines for the interpretation of statutes

2 1 BRIEFLY STATE the facts of the *Jaga v Donges* case (5)
2 2 DISCUSS the text-in-context approach and the guidelines that the judge identified (10)
2 3 DISCUSS the textual approach and the criticisms against this approach (10)
2 4 DISCUSS the influence of the Constitution on the interpretation of statutes in terms of section 39(2) Support your discussion with case law (10)

[35]

QUESTION 3

3 1 With the aid of relevant case law, DISTINGUISH BETWEEN directory and peremptory provisions (4)

3 2 STATE whether the judgment of the court in the case of *African Christian Democratic Party v Electoral Commission* 2006 (3) SA 305 (CC) has affected this distinction? GIVE REASONS for your answer (20)

3 3 LIST the documents that, although they are published in the *Government Gazette*, do not constitute legislation (6)

[30]

QUESTION 4

4 1 Explain the mischief rule as it was laid down by Lord Coke in the famous Heydon case (5)

4 2 LIST and BRIEFLY discuss the relevance of five internal aids that may be consulted to determine the objective of a piece of legislation (10)

4 3 Briefly explain the *Cessante Rule*, in terms of case law (5)

[20]

TOTAL: {100}

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STUDIE-EENHEID bv PSY100-X

1

PAPER NUMBER
VRAESTELNOMMER

2

INITIALS AND SURNAME
VOORLETTERS EN VAN

3

DATE OF EXAMINATION
DATUM VAN EKSAMEN

4

EXAMINATION CENTRE (E G PRETORIA)
EKSAMENSENTRUM (BV PRETORIA)

5

STUDENT NUMBER
STUDENTENOMMER

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UNIQUE PAPER NO
UNIEKE VRAESTEL NR

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7 9

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2 MERK AS VOLG ●
3 KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4 VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5 KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
6 KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7 MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8 MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE): DEEL 2

10

1	c1 c2 c3 c4 c5	36	c1 c2 c3 c4 c5	71	c1 c2 c3 c4 c5	106	c1 c2 c3 c4 c5
2	c1 c2 c3 c4 c5	37	c1 c2 c3 c4 c5	72	c1 c2 c3 c4 c5	107	c1 c2 c3 c4 c5
3	c1 c2 c3 c4 c5	38	c1 c2 c3 c4 c5	73	c1 c2 c3 c4 c5	108	c1 c2 c3 c4 c5
4	c1 c2 c3 c4 c5	39	c1 c2 c3 c4 c5	74	c1 c2 c3 c4 c5	109	c1 c2 c3 c4 c5
5	c1 c2 c3 c4 c5	40	c1 c2 c3 c4 c5	75	c1 c2 c3 c4 c5	110	c1 c2 c3 c4 c5
6	c1 c2 c3 c4 c5	41	c1 c2 c3 c4 c5	76	c1 c2 c3 c4 c5	111	c1 c2 c3 c4 c5
7	c1 c2 c3 c4 c5	42	c1 c2 c3 c4 c5	77	c1 c2 c3 c4 c5	112	c1 c2 c3 c4 c5
8	c1 c2 c3 c4 c5	43	c1 c2 c3 c4 c5	78	c1 c2 c3 c4 c5	113	c1 c2 c3 c4 c5
9	c1 c2 c3 c4 c5	44	c1 c2 c3 c4 c5	79	c1 c2 c3 c4 c5	114	c1 c2 c3 c4 c5
10	c1 c2 c3 c4 c5	45	c1 c2 c3 c4 c5	80	c1 c2 c3 c4 c5	115	c1 c2 c3 c4 c5
11	c1 c2 c3 c4 c5	46	c1 c2 c3 c4 c5	81	c1 c2 c3 c4 c5	116	c1 c2 c3 c4 c5
12	c1 c2 c3 c4 c5	47	c1 c2 c3 c4 c5	82	c1 c2 c3 c4 c5	117	c1 c2 c3 c4 c5
13	c1 c2 c3 c4 c5	48	c1 c2 c3 c4 c5	83	c1 c2 c3 c4 c5	118	c1 c2 c3 c4 c5
14	c1 c2 c3 c4 c5	49	c1 c2 c3 c4 c5	84	c1 c2 c3 c4 c5	119	c1 c2 c3 c4 c5
15	c1 c2 c3 c4 c5	50	c1 c2 c3 c4 c5	85	c1 c2 c3 c4 c5	120	c1 c2 c3 c4 c5
16	c1 c2 c3 c4 c5	51	c1 c2 c3 c4 c5	86	c1 c2 c3 c4 c5	121	c1 c2 c3 c4 c5
17	c1 c2 c3 c4 c5	52	c1 c2 c3 c4 c5	87	c1 c2 c3 c4 c5	122	c1 c2 c3 c4 c5
18	c1 c2 c3 c4 c5	53	c1 c2 c3 c4 c5	88	c1 c2 c3 c4 c5	123	c1 c2 c3 c4 c5
19	c1 c2 c3 c4 c5	54	c1 c2 c3 c4 c5	89	c1 c2 c3 c4 c5	124	c1 c2 c3 c4 c5
20	c1 c2 c3 c4 c5	55	c1 c2 c3 c4 c5	90	c1 c2 c3 c4 c5	125	c1 c2 c3 c4 c5
21	c1 c2 c3 c4 c5	56	c1 c2 c3 c4 c5	91	c1 c2 c3 c4 c5	126	c1 c2 c3 c4 c5
22	c1 c2 c3 c4 c5	57	c1 c2 c3 c4 c5	92	c1 c2 c3 c4 c5	127	c1 c2 c3 c4 c5
23	c1 c2 c3 c4 c5	58	c1 c2 c3 c4 c5	93	c1 c2 c3 c4 c5	128	c1 c2 c3 c4 c5
24	c1 c2 c3 c4 c5	59	c1 c2 c3 c4 c5	94	c1 c2 c3 c4 c5	129	c1 c2 c3 c4 c5
25	c1 c2 c3 c4 c5	60	c1 c2 c3 c4 c5	95	c1 c2 c3 c4 c5	130	c1 c2 c3 c4 c5
26	c1 c2 c3 c4 c5	61	c1 c2 c3 c4 c5	96	c1 c2 c3 c4 c5	131	c1 c2 c3 c4 c5
27	c1 c2 c3 c4 c5	62	c1 c2 c3 c4 c5	97	c1 c2 c3 c4 c5	132	c1 c2 c3 c4 c5
28	c1 c2 c3 c4 c5	63	c1 c2 c3 c4 c5	98	c1 c2 c3 c4 c5	133	c1 c2 c3 c4 c5
29	c1 c2 c3 c4 c5	64	c1 c2 c3 c4 c5	99	c1 c2 c3 c4 c5	134	c1 c2 c3 c4 c5
30	c1 c2 c3 c4 c5	65	c1 c2 c3 c4 c5	100	c1 c2 c3 c4 c5	135	c1 c2 c3 c4 c5
31	c1 c2 c3 c4 c5	66	c1 c2 c3 c4 c5	101	c1 c2 c3 c4 c5	136	c1 c2 c3 c4 c5
32	c1 c2 c3 c4 c5	67	c1 c2 c3 c4 c5	102	c1 c2 c3 c4 c5	137	c1 c2 c3 c4 c5
33	c1 c2 c3 c4 c5	68	c1 c2 c3 c4 c5	103	c1 c2 c3 c4 c5	138	c1 c2 c3 c4 c5
34	c1 c2 c3 c4 c5	69	c1 c2 c3 c4 c5	104	c1 c2 c3 c4 c5	139	c1 c2 c3 c4 c5
35	c1 c2 c3 c4 c5	70	c1 c2 c3 c4 c5	105	c1 c2 c3 c4 c5	140	c1 c2 c3 c4 c5

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