

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2013

TITLE OF PAPER : INTERPRETATION OF STATUTES AND LEGAL DRAFTING
COURSE CODE : L201
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS : 1. ANSWER ANY FOUR (4) QUESTIONS
2. CAREFULLY READ AND UNDERSTAND THE QUESTIONS
3. PUT YOUR THOUGHTS IN AN ORGANISED MANNER WITH YOUR
ANSWERS

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE
INVIGILATOR(S).

QUESTION 1

Write short notes on what the following mean:

- a) Eiusdem generis (Marks: 5)
- b) Noscitur a sociis (Marks: 5)
- c) Judices est jus dicere non facere (Marks: 5)
- d) Casus omissus (Marks: 5)
- e) Expressio unius est exclusio alterius (Marks: 5)

QUESTION 2

Section 35 (1) of the 2005 Constitution, a Chapter 3 Bill of Rights provision, provides as follows:

“Where a person alleges that any of the foregoing provisions of this Chapter has been, is being, or is likely to be, contravened in relation to that person or a group of which that person is a member (or, in the case of a person who is detained, where any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.”

Explain what the legislative provision, broken to its simplest, is aimed at achieving. In other words, try to give meaning to this provision. In your explanation, identify the events or scenarios that it targets on as well as the parties (persons) who may seek redress. (Marks: 25)

QUESTION 3

In *The Minister for Labour and The Attorney General v The Labour Advisory Board and Trade Union Congress of Swaziland* (the TUCOSWA case), the learned judge of the Industrial Court was at pains to state that his was not to make the law but to interpret it. Supporting your position with an interpretative aid/interpretative canon, state whether you agree with how the learned judge synthesized his decision of the matter. (Marks: 25)

QUESTION 4

The 2005 Constitution is said to have brought sweeping changes on the length and breadth of the legal scene in Swaziland. Discuss what its impact has been on the interpretation of legislative instruments. (Marks: 25)

QUESTION 5

Discuss the literal rule, as a rule of statutory construction or interpretation. In your discussion bring to light its importance and weaknesses. (Marks: 25)

QUESTION 6

Legislative drafting, which is the essential vehicle of law-making, requires precision and simple use of language.

- a) Discuss what the reason(s) that underlie this requirement are. (Marks: 15)
- b) What are the difficulties that would be encountered if this instruction was not heeded? Discuss. (Marks: 10)