



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW207

TITLE OF PAPER: INTERPRETATION OF STATUTES

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of Section (A) and (B).
2. Section A is compulsory.
3. Answer any three questions from Section B.

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

SECTION (A)

Question 1 (this question is compulsory)

In his book, *Purposive Interpretation in Law*, Aharon Barak tells us that legal interpretation is a rational activity that gives meaning to a legal text.

He continues:

The requirement of rationality is key – a coin toss is not interpretive activity. Interpretation is an intellectual activity, concerned with determining the normative message that arises from the text. ... The question is what meaning to attach to that text. According to my definition, then, interpretation shapes the content of the norm “trapped” inside the text.

Section 5 of the Children’s Protection and Welfare Act of 2012, under the heading “Right to name and nationality”, provides as follows:

A child has a right from birth to a decent name and to acquire nationality.

A Swazi couple christened (which is to say, gave a name to) their first born child, a boy, Humpty-Dumpty. When they sought to have the child’s birth registered with the Registrar of Births, Marriages and Deaths, they were told, in no uncertain terms, that the name given to the child was not a decent name in that it offended against section 5 of the Children’s Protection and Welfare Act (2012). As a result, the officer concerned informed the parents that the child’s registration could not be done, until a decent name was provided.

Assume that you are an attorney who has been approached by the child’s parents for advise on the matter. With what Aharon Barak informs us, in mind, what advise would you give the parents. In going about with this, you are to specifically have regard to: (a) what the long title of the Act indicates the law is aimed at achieving; (b) where the interpretation of the words ‘decent name’ is to be found; and (c) what the words ‘decent name’ mean.

[25 marks]

- (6) Reformatory Act, No. 82 of 1921 is repealed to the extent that it is inconsistent with the provisions of this Act.
- (7) Age of Majority Act, No. 11 of 1853 is repealed.
- (8) Notwithstanding the repeals under subsection (1), (2), and (3), any proceedings before any court under the repealed laws shall be continued as if those laws have not been repealed until they are concluded.

The demise of legislation is very much a part the legislative scheme of things. Considering the section as provided above, and in the context of the following, discuss, in a short manner:

- (a) What subsection (8) is conveying to us and seeks to achieve? [10 marks]
- (b) What subsections (1) and (7) are conveying to us, and what their implications are, on the Acts mentioned, and the Children's Protection and Welfare Act? [7.5 marks]
- (c) What the subsections (2), (3), (4) (5) and (6) are conveying to us, and what their implications are on the Acts mentioned and the Children's Protection Act? [7.5 marks]

[Total marks:25]

Question 5

- (a) Distinguish between 'a repeal' and 'an amendment', as used in the demise of legislation . [12.5 marks]
- (b) Consider section 106 of the Constitution, which gives Parliament the power to make laws, reads:
Subject to the provisions of this Constitution –
 - (a) *the supreme legislative authority of Swaziland vests in the King-in-Parliament;*
 - (b) *the King and Parliament may make laws for the peace, order and good governance of Swaziland.*

Explain what the word 'subject to', as used in the legislative sentence, means, and what would happen if attention was not paid to it.

[12.5 marks]

[Total marks: 25]