

<b>3 OCT/NOV 2007 EXAMINATION PAPER</b>
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The questions are all based on an extract from the Civil Unions Act 17 of 2006 which is attached.

**Question 1**

pg 19

*Promulgation, Publication, Commencement*

- (a) **The Act was adopted on 28 November 2006, assented to (signed) by the President on 29 November 2006, but it only commenced on 30 November 2006. Explain the difference between the dates of assent and commencement with reference to the provisions of section 13 of the Interpretation Act 33 of 1957. (6)**

See Botha par 3.1 – 3.3. The date of assent is when the legislative text is signed by the President after it was adopted by the legislature. In terms of section 13(1) of the Interpretation Act "commencement" means the day upon which that Act came into operation. Unless another day is set for the commencement of the legislation, the legislation commences on the day that it is published in the Government Gazette. In terms of section 13(2) of the Interpretation Act, an Act comes into operation at midnight of the day on which it is published or midnight of the day fixed for its commencement. One must therefore distinguish between the adoption (passage) and the promulgation (or publication) of legislation. An Act is adopted by Parliament and then signed by the President (assented to by the President). Once signed, an Act becomes law. However, although such an Act is now legally enacted legislation, it is not yet in operation. For legislation to commence it first needs to be promulgated or published. The requirement of publication is also entrenched in the Constitution (see s 80, 123 and 162).

- (b) **Identify and distinguish between the long and the short title of the Act, and explain whether, and if so how, the long title can be used to interpret other sections of the Act. (6)**

pg 13-14  
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See Botha par 7.2.3. The long title appears directly under the short title (students need not quote it in full). It is one of the internal aids to statutory interpretation. The long title provides a short description of the subject matter of the legislation. It forms part of the statute that is considered by the legislature during the legislative process. According to textualists, internal aids like the long title can only be used where the specific section of the Act is absurd or ambiguous. However, contextualists regard the long title as an important clue to the purpose of the legislation which can be consulted right from the start of the interpretive process. The role played by the long title in helping to ascertain the purpose of the legislation will in each case depend on the information it contains. As early as 1932 the court approved the use of the long title to establish the purpose of legislation (see *Bhayat v Commissioner for Immigration*).

- (c) **In terms of section 1 of the Act, the term "prescribed" includes prescriptions by regulation under the Act. Will the rule of statutory interpretation be applicable to the interpretation of those prescriptions? In your answer you must discuss sections 1 and 2 of the Interpretation Act and the hierarchical classification of legislation in our law (with at least two examples of each type of legislation). (6)**

pg 9

See Botha par 2.1 – 2.2. Section 2 of the Interpretation Act includes Acts of Parliament under the definition of "law". Section 1 of the Interpretation Act makes the Interpretation Act applicable to all laws (eg Acts of Parliament) and to all regulations enacted under the authority of such law (Act of Parliament). The Interpretation Act and the other rules of statutory interpretation are thus applicable both to the Act and the regulations made under the Act. Legislation is hierarchically divided into original (or enabling) and subordinate (or delegated) legislation. The Act is regarded as original legislation because it is derived from the legislative capacity of an elected legislative body established by the Constitution. Other examples include provincial acts, municipal by-laws (since 1996), the legislation of the former homelands and old provincial ordinances (1961-1986). The regulations are subordinate or delegated legislation because they are derived from an executive organ to whom or which the legislature has delegated some of its legislative capacity. The legislative capacity is in these cases derived from an Act and not from the Constitution. Other examples include provincial proclamations and regulations (1986-1994); new provincial proclamations and regulations; presidential proclamations; ordinary regulations.

- (d) **Section 4 of the Act read with the definition of "civil union" in section 1 allows for same sex unions in our law. According to the religious sect "Our Master's Servants" this section is unconstitutional. The sect claims that section 4 violates the right of freedom to religion. You appear as lawyer for the sect. Explain in detail what the "comprehensive and inclusive" method of constitutional interpretation entails (seeing that the Court will follow this method when deciding the case). (5)**

See Botha par 5.2.4 and 10.3.2. The comprehensive method consists of five reading strategies or methods of interpretation: (i) grammatical interpretation; (ii) systematic interpretation; (iii) teleological interpretation; (iv) historical interpretation and (v) comparative interpretation. It is a comprehensive and inclusive method because all five these aspects must be taken into account in every interpretation of the constitution. None of the methods can be used in isolation. The task of the court is to integrate the various elements and make a practical judgement about the meaning of the constitution.

Grammatical interpretation – this aspect acknowledges the importance of the role of the language of the constitutional text. It focuses on the linguistic and grammatical meaning of the words, phrase, sentences and other structural components of the text, and the rules of syntax. However, this does not imply a return to literalism and the orthodox text-based interpretation. It merely acknowledges the importance of the constitutional text in the complex process of interpretation.

Systematic Interpretation – this method is concerned with the clarification of the meaning of a particular constitutional provision in relation to the structure of the constitutional text as a whole. Words, phrases and provisions cannot be read in isolation. The emphasis falls on the other provisions and parts of the legislation, most importantly the founding provisions and preamble of the Constitution.

Teleological interpretation – this method of interpretation emphasises fundamental values and value-coherent interpretation. The interpreter must identify the purpose of the Constitution against the background of the fundamental values in the Constitution (*ie* the Bill of Rights must be interpreted against the founding values of an open and democratic society).

Historical interpretation – this method of interpretation emphasises the historical context of the text, including the surrounding circumstances in which it was adopted and the drafting history of the text.

Comparative interpretation – this method of interpretation concentrates on other interpretations of similar constitutional provisions by foreign states and international organs.

- (e) **Regulations were made under the Act. In terms of these regulations: “Any marriage officer who inquired into the ground of an objection to any proposed civil union under section 9(2) of the Act may not solemnise the civil union within 14 days of receiving the objection”. John lodged an objection on 3 March 2007. What would the earliest date be that the union may be solemnised? Explain in detail with reference to section 4 of the Interpretation Act.** p 58 (5)

See Botha par 7.4.2. Section 4 of the Interpretation Act states that when any number of **days** is prescribed the period in question is calculated “exclusively of the first and inclusively of the last day”. However, when the last day falls on a Sunday or public holiday the period must be calculated exclusively of such Sunday or public holiday. The Act prescribes that 14 days must elapse after 3 March 2007. The period will start excluding the first day (3 March 2007) and will thus end on 17 March 2007 (unless this date falls on a Sunday or public holiday in which case it will end on 18 March 2007).

- (f) **The English text was signed by the President. Explain the relevance, if any, of this fact for the interpretation of the Act. Refer to the way legislative texts in other official languages may be used in the interpretive process.** (6)

See Botha par 7.2.1. The legislative text in the official language which was signed has in the past served as one of the recognised internal aids of statutory interpretation. However, the Constitution now states that the signed text provides conclusive evidence of the provisions of the Act in all cases. Even so, the signed version of the text is conclusive only where there is an irreconcilable conflict between the versions. The signed version is only used as a last resort to avoid a stalemate. In other cases the texts must be read together to establish the common denominator. An attempt must be made to reconcile the texts with reference to the context and purpose of the legislation. Only if that turns out to be impossible will the signed text, in this Act the English text, be the final word.

- (g) **Can the common law presumption that the legislature did not intend to change the law more than necessary be applied to the interpretation of the Act? Explain the presumption and whether it is applicable in light of section 13 of the Act.** pg 25-26 (6)

See Botha par 4.6. The legislature is free to change the common law whenever it sees fit, provided it does so in a way that leaves no doubt that the new legislation has replaced the old common law. If it is not clear whether the legislation changed the existing common law, then the presumption applies and the legislation must be interpreted in the light of the common law rules which apply to the same issue (it is thus assumed that the legislation did not repeal the common law). Botha states that existing legislation is usually expressly repealed. Many Acts contain a separate schedule in which all the sections and Acts that have been repealed are listed. The Constitution, for example, contains such a list in “Schedule 7: Laws repealed”. However, sometimes an Act does not expressly repeal or amend existing legislation. In such cases the working presumption is that the new Act has not changed the existing legislation on the topic more than is absolutely necessary.

The question is whether section 13 makes it clear that the common law and existing legislative law have been changed. If it does, then the presumption will not apply. Reference can also be made to the following case *Government of the Republic of South Africa v Government of Kwazulu* 1983 (1) SA 164 (A). The issue can be argued either way by the student.

[40]

## Question 2

- (a) "Rainbow nation" is a non-governmental organisation (NGO) which provides a variety of counselling services for gay and lesbian persons. It approaches you as lawyer in order to find out whether it can apply to the Minister to be designated as a religious organisation for the purposes of section 5(1) of the Act. The NGO argues that the Act speaks of "religious denominations" and other "organisations" and that they qualify as an organisation for the purposes of the section. You apply in writing to the minister but receive the following letter: "On the basis of the principles of restrictive interpretation (*eiusdem generis*) the NGO in question does not qualify for designation as requested". Explain to the NGO what the Minister means by restrictive interpretation, what the requirements of the *eiusdem generis* rule are, and indicate, with reference to an example from case law, whether the Minister's interpretation of the Act has any merit. (10)

See Botha p 102-105. Restrictive interpretation is the process whereby the initial meaning of the text is given a restricted meaning in order to bring it into line with the purpose of the legislation. Restrictive interpretation is applied when the words of the particular legislation embrace more than its purpose. The meaning of the text is then modified to reflect the true purpose. Restrictive interpretation is of particular importance in the context of section 39(2) of the Constitution which implicitly prescribes reading down (a form of restrictive interpretation) as a strategy to save the constitutionality of legislation.

The *eiusdem generis* rule regulates the application of restrictive interpretation. The rule states that where a general word in legislation is accompanied by a series of specific words, the meaning of the general word must be restricted to the genus of the specific words. However, before the rule can be applied a number of requirements must be met: (i) the specific words must belong to the same genus or category of things or have a common quality; (ii) the specific words must not exhaust the category; (iii) at least one specific word must accompany the general word; (iv) the order in which the words appear is irrelevant; and (v) the intention of the legislature or the purpose of the legislation must be clear and require the restricted interpretation.

The rule was applied in *S v Kohler*. The general words "any other bird" was interpreted restrictively to mean "any other poultry-like bird". This was done because the phrase "any other bird" was used in conjunction with specific words which all belonged to the genus or category of poultry (those words included "fowl, duck, goose, turkey and pheasant" etc).

How the students applied the rule to section 5(1) (or whether it can be so applied) is not the important issue. The practical application of the principle does not overshadow the allocation of marks. Students must rather show a clear understanding of what restrictive interpretation entails and requires, as well as what principles or rules regulate the process.

Preamble, long title

**Question 3**

- (a) How should the purpose of the Act be determined? Make a list of at least seven internal aids that can be consulted and give an example of each from the text of the Act (where possible). Pg 41 - 51 (7)

See Botha par 7.1 – 7.2. The purpose must be determined during the research phase by consulting all the recognised internal and external aids. The internal aids include: (1) The preamble; (2) the long title; (3) the definition clause; (4) the expressly stated legislative purpose and interpretation guidelines; (5) headings of chapters and sections; (6) paragraphing and punctuation; (7) schedules. Students should have given examples of each where possible.

- (b) Do you think that the preamble of the Act (especially the last paragraph) was drafted with the application of the classic “mischief rule” in mind? Motivate your answer with reference to case law, what the mischief rule entails, and why it is regarded as a precursor of the purposive approach to statutory interpretation. Pg 53 (8)

The “mischief rule” was formulated by Lord Coke in the famous Heydon’s case and forms the cornerstone of the contextual approach to interpretation. It poses four questions that must be answered to establish the meaning of legislation:

- What was the legal position before the legislation was adopted?
- What was the mischief (or defect) not provided for by existing legislation or the common law?
- What remedy (solution) was provided by the legislature to solve this problem?
- What was the true reason for the remedy?

The object of the rule is to examine the surrounding circumstances leading to the measure in question. The mischief rule has been applied on numerous occasions by the courts and is regarded as a precursor of the purposive approach because it tries to establish the reason behind or purpose of the legislation in the historical context surrounding the adoption of the legislation.

In this case the preamble makes clear what the “mischief” or defect is that the Civil Union Act sets out to remedy, therefore it must certainly have been drafted with this rule in mind.

[15]

**Question 4**

- (a) John and James got “married” in the front garden of their riverside estate on 2 January. According to him no legally valid civil union came into being as the peremptory provisions of section 19(2) of the Act were not complied with (the civil union was not solemnised and registered in a public office or private house). You appear for James. Explain to him how a peremptory provision differs from a directory provisions, and whether a valid civil union came into being in spite of the fact that the statutory requirements were not strictly complied with (refer to at least two examples from case law). (15)

Pg 71

See Botha par 9.2 but especially the Study Guide par 9.2. Peremptory provisions require exact compliance and failure to comply with a peremptory provision will leave the ensuing act null and void, while on the other hand directory provisions require substantial compliance, non-compliance with a directory provision will not result in ensuing acts being null and void. There are a number of semantic and jurisprudential guidelines that assist to determine what degree of compliance would be sufficient in each case. However, none of these guidelines are decisive. The overriding question is what would be just, equitable (fair) and practical in the light of the aim and purpose of the legislative provision. The facts are similar to the *Ex parte Dow* case (although the case is not discussed as such in the Guide, students should get credit if they refer to the case).

In *Weenen v Van Dyk* the court had to decide whether the failure of a municipality to publish three separate notices in a newspaper meant that the rates and taxes in question were not due and payable. The municipality published only one notice. The Court held that the failure to comply with the procedure was fatal and that the taxes were accordingly not due. The Act used imperative language "shall publish" and the object or purpose of the three notices was to establish a democratic system of checks and balances and accountability. That object could not be met if only one notice was published. The provision was peremptory and had to be strictly complied with.

In *Commercial Union v Clarke* the court had to decide whether the failure of a road user to send his claim by registered post meant that the road user could not claim. The road user sent the claim by ordinary post. The court held that the failure to comply with the procedure was not fatal and that the claim could still be instituted. The court took the imperative nature of the Act ("shall be sent") into consideration but held that it must still decide what is just, fair and practical given the object of the provision. The purpose of the provision was to protect the insured driver by providing definite proof of the date at which the claim was lodged. The road user took the risk upon himself when he sent the claim by ordinary mail but this did not prejudice the insurance company in any way. It would thus be just, fair and practical to allow the claim to proceed.

The same would apply in the case of John and James. In spite of the imperative language one must look at the purpose of the provision and determine what is just, fair and practical. Students can present an argument to the contrary as well, provided they apply the correct test.

- (b) **Explain why the judgment in *Jaga v Donges* 1950 (4) SA 653 (A), which was delivered at the height of apartheid, remains important for the interpretation of statutes after the democratic transformation. In your answer you must (i) refer to the facts of the case, (ii) set out the approach followed by the majority of the court, (iii) set out the approach followed by the minority of the court, and (iv) discuss the *Bato Star* case in which the *Jaga*-judgment was used to clarify the implications of section 39(2) of the Constitution.** (20)

See Botha 5.2.3 and the corresponding sections in the Study Guide. The facts and the two judgments and the principles laid down in each are summarised there. The case remains important because, although it was decided under apartheid at a time when the textual approach to interpretation dominated the scene, it contains a minority judgment by Schreiner JA in which the contextual approach was followed. This minority judgment remains the *locus classicus* of the contextual approach in our law. In *Bato Star* the Constitutional Court referred to this minority judgment in order to clarify the contextual approach that is now prescribed under section 39(2) of the Constitution.

Although it does not state the fact explicitly, section 39(2) constitutionally entrenches the contextual approach (or also the purposive approach) to statutory interpretation in our law. It is a peremptory provision that compels every court, tribunal and forum to "promote to object, spirit and purport of the Bill of Rights" whenever legislation is interpreted. This means that the values underlying the Bill of Rights and the Constitutional order (see the preamble and the founding provisions) should be promoted when the legislative text is interpreted. The question can no longer be "what is the ordinary meaning of the text" but "how can the text be interpreted (within the reasonable bounds of its language) so as to promote the spirit of the Bill of Rights".

**Annexure A**

**LOCAL GOVERNMENT: MUNICIPAL ELECTORAL ACT 27 OF 2000** *Structure*

[ASSENTED TO 6 JULY 2000] [DATE OF COMMENCEMENT: 11 JULY 2000] *→ Enacting Provision*

(English text signed by the President)

To regulate municipal elections; to amend certain laws; and to provide for matters connected therewith.

CHAPTER 1  
INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT (ss 1-4)

1 Definitions

2 Interpretation of this Act - Purpose and interpretation

- Any person interpreting or applying this Act must-
- (a) do so in a manner that gives effect to the constitutional declarations, guarantees and responsibilities contained in the Constitution; and
  - (b) take into account any applicable Code.

CHAPTER 3  
PREPARATIONS FOR ELECTION (ss 11-40)

14 Requirements for parties contesting election by way of party lists

(1) A party may contest an election in terms of section 13 (1) (a) or (c) only if the party by not later than a date stated in the timetable for the election has submitted to the office of the Commission's local representative-

- (a) in the prescribed format-
  - (i) a notice of its intention to contest the election; and
  - (ii) a party list; and
- (b) a deposit equal to a prescribed amount, if any, payable by means of a bank guaranteed cheque in favour of the Commission.

CHAPTER 7  
GENERAL PROVISIONS (ss 66-96)

72 Prohibitions concerning placards and billboards during election

- (1) No person may deface or unlawfully remove any billboard, placard or poster published by a party or candidate for the purpose of an election.
- (2) On the voting day, no party or candidate or supporter of a party or candidate may within the boundaries of a voting station put up, display or distribute any billboard, placard, pamphlet or poster or any other item intended to affect the outcome of the election.

89 Regulations

- (1) The Commission must make regulations regarding any matter that must be prescribed in terms of this Act.
- (2) The Commission may make regulations regarding any matter-
  - (a) that may be prescribed under this Act, or
  - (b) that it considers necessary or expedient in order to achieve the objects of this Act.

96 Short title

This Act is called the Local Government: Municipal Electoral Act, 2000. *Short title and commencement*

## IOS101-3

May/June 2006

### INTERPRETATION OF STATUTES

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

MR MF MDUMBE

PROF WB LE ROUX

SECOND :

MS CN PILLAY

**This paper consists of four (4) pages**

#### Special instructions

- (1) Students who are registered for the 2006 academic year must answer **Section A**.
- (2) Students who were registered for the 2005 academic year and who qualify for an aegrotat, special or supplementary examination must answer **Section B**.

#### SECTION A

**(MUST ONLY BE ANSWERED BY STUDENTS WHO ARE REGISTERED FOR THE 2006 ACADEMIC YEAR)**

#### Question 1

Briefly discuss whether the text of legislation can be amended or repealed in each of the followings ways: (provide an example in each case of case law where the possibility arose)

- 22 (a) through many years of disuse; (2)
- (b) through another act which deals with the same subject but which does not explicitly state that the existing act is amended or repealed; (6)
- 23 (c) through a judgment by a court to the effect that new words should be read into the legislation; (6)
- (d) through the judgment of a court to the effect that the existing wording of legislation should be interpreted extensively. (6)

[20]

[TURN OVER]



**Question 2**

Write a note in which you explain the difference between the textual and the contextual approaches to statutory interpretation (indicate specifically how the two approaches resulted in two different judgments in the famous case of *Jaga v Dönges* 1950 (4) SA 653 (A)).

(28-30) (p31-33) p38(c)

[20]

**Question 3**

Write a note in which you explain which influence the Constitution has on the interpretation of legislation (also indicate in detail why the Constitutional Court criticised the Supreme Court of Appeal's approach to statutory interpretation in *Bato Star Fishing Company v Minister of Environmental Affairs* 2004 (4) SA 490 (CC)).

p32-34 p38(e)

[20]

**Question 4**

Write a note in which you explain how a reader of legislation should go about during the so-called "research phase" to determine the purpose of the legislation (list and briefly discuss all the internal and external aids which the reader would be able to consult).

p47-60  
(list)

[20]

**Question 5**

- (a) Section 11 of the Motor Vehicle Insurance Act 12 of 2005 reads as follows: "(1) Every claim for damages against an Insurer shall be sent by registered post or by hand to the Insurer; (2) No claim may be instituted in a court against an Insurer within sixty days from the date upon which the claim was sent to the Insurer". Mrs Gumede was involved in a motor vehicle accident on 1 January 2006. On 1 February her claim for damages was sent to the relevant Insurer by ordinary post from Pretoria to Johannesburg. The claim was received by the Insurer on 7 February 2006. On 7 May 2006 Mrs Gumede instituted an action against the Insurer in court. The Insurer now claims that Mrs Gumede failed to comply with the requirements of section 11(1) and that it is therefore not liable to compensate her damages.

p77-72  
p73(a)

You appear on behalf of Mrs Gumede. How would you reply to the argument of the Insurer. In your argument to court you must explain what the difference is between directory and peremptory provisions; what the implications of the non-compliance of each are; and whether section 11(1) is a directory or peremptory provision. (10)

- (b) A sign at the entrance to a popular part at the centre of town contains the following extract from the Local Ordinance on Public Parks 22 of 2005: "No motorcars, scooters or any other vehicles are allowed in the park". George is a keen cyclist who regards the winding paths of the park as the perfect place to train. One day, while he is training in the park, he is arrested by the police and charged with a contravention of the said Ordinance. During his trial he argues that he is not guilty because the Ordinance is not applicable to cyclists. You are the Magistrate. Give judgment in the case and supply the detailed reasons for your judgment

p68 F 70(a)

(10)

[20]

[100]

# QUESTIONS (2006)

3

- (a) What are the three phases of the interpretive process in the model that is suggested by Botha in the textbook? Explain each phase BRIEFLY. (6)
- (b) LIST the main grounds (at least five) on which the intentionalist approach to interpretation may be criticised. (5)
- (c) DEFINE what "interpretation by implication" means, and then BRIEFLY describe the three main grounds of extension by implication. (5)
- (d) BRIEFLY set out what the approach of the courts should be to the interpretation of a statute that has been taken verbatim from, say, an English statute? (4)
- (e) NAME five generally accepted methods of constitutional interpretation. (5)
- (f) DEFINE what the term "law" means as it is used in the Interpretation Act 33 of 1957. (5)

[30]

## QUESTION 2

- (a) DISCUSS the use of preceding discussions as an extra-textual aid to statutory interpretation. (10)
- (b) DISCUSS whether the courts may exercise a lawmaking function when they interpret legislation. In your answer you must refer to the position prior to the advent of the new constitutional order (1994) and thereafter. (10)
- (c) DISCUSS the presumption that the legislature does not intend to change the existing law more than necessary. In your discussion you must also address the influence of the new constitutional order on this presumption. (15)

[35]

## QUESTION 3

- (a) Section 29 of the Marriage Act 25 of 1961 reads as follows: "A marriage officer shall solemnize any marriage in a church or other building used for religious purposes, or in a public office or private dwelling-house, with open doors". Jasmine recently concluded a wedding ceremony with Joseph in the front garden of her mother's riverside home. A friend later told her that she is, for this reason, not legally married. She wants to know from you whether her friend is correct. In your answer to her explain
  - (i) what the difference is between a peremptory and directory statutory provision; (1)
  - (ii) what the effect is of non-compliance with each type of provision; (1)
  - (iii) which semantic and jurisprudential guidelines are usually used to distinguish between the two types of statutory provisions. (8)
- (b) David killed Moses during a fit of road rage on 31 January 2003. He was convicted of murder on 31 March 2004. The case was then postponed to 31 May 2004 for sentencing. On 1 February 2004 a new Road Traffic Act was adopted by Parliament. The Act includes new sentencing options for people convicted of road rage. The Act was published in the official Gazette on 31 May 2004. On the same day (the day earlier set aside for sentencing), the question arose whether the sentencing provisions of the new Road Traffic Act could be applied to David's case. The State argued that the new law had not yet come into operation, and even if it has, the law as it was when David committed his offence should be applied to the case. Provide a legal opinion about the matter, dealing, inter alia, with the following:

7

- (i) the commencement of legislation, and (4)
- (ii) the presumption that legislation only applies to future matters. (6)

(c) Section 10 of the Transport Act 1 of 2000 provides that

'every person who operates a taxi, bus, rickshaw, or any other vehicle as a means of transporting members of the public must have a licence to do so'.

Unisa employees have a lift club. Mr X who is a member of the lift club uses his minibus to bring colleagues to work. He is eager to find out whether the Transport Act applies to him. Advise Mr X, with reference to the rules of restrictive statutory interpretation, whether the Act applies to his lift club or not.

(15)

**[35]**

**{100}**

- (a) The three phases are "the initial phase"; "the research phase" and "the concretisation phase".

(p7-8)

In the initial phase ✓ a number of basic principles are used as a point of departure namely the Constitution, the text of the legislation, common law presumptions, the balance between the text and context. ✓ In the research phase ✓ the legislation intra-textual and extra-textual factors are studied to ascertain the purpose of the legislation. ✓ During the concretisation phase ✓ the legislative text, the purpose and the facts of the case are brought together to reach a conclusion. ✓

- (b) Common law presumption are reduced to tertiary aids to be consulted only if the primary and secondary aids have failed. ✓ Words are regarded as the primary index to legislative intention. ✓

(p29-30)

The literal approach is inherently subjective. The intention of the legislature is depends on how clear the text may seem to a particular interpreter. ✓ The view that legislative texts are clear and unambiguous must be question in view of the existence of disciplines such as statutory interpretation. ✓ This approach leaves little room for judicial law making function of the courts. ✓

- (c) Interpretation by implication involves extending the textual meaning on the ground of a reasonable and essential implication, which is evident from the legislation. ✓✓ The three main grounds are *ex contrariis*, ✓ *ex consequentibus* ✓ and *ex accessorio eius* ✓

(p69)

- (d) Initially the courts subscribed to the view that the legislation concerned should be interpreted in accordance with the interpretation of the English courts if the language is clear. ✓ If not, the courts had unfettered discretion. ✓ The prevailing view now is that the approach of the foreign court would be used only as a guideline. ✓ The courts will always interpret legislation in the light of the South African common law. ✓

(p78)

- (e) Grammatical interpretation; ✓ systematic interpretation; ✓ teleological interpretation; ✓ historical interpretation; ✓ and comparative interpretation. ✓

- (f) "Law" means any law, proclamation, ordinance, Act of parliament or other enactment having the force of law. ✓

p87

## QUESTION 2

- (a) First we need to ask ourselves: what constitutes preceding discussions? Debates about a specific bill before Parliament; ✓explanatory memoranda, ✓ the debates and reports of commissions of inquiry that gave rise to the adoption of the legislation in question; ✓ and the reports of the various committees, ✓ all constitute preceding discussion. The courts are very reluctant to accept the debates during the legislative process as an aid to interpretation. ✓ In fact in cases such as *Bok v Allen*, *Mathiba v Moschke* and *More v Minister of Co-operation* the use of these debates was rejected by the courts. ✓ However, in *Mpangele* a ministerial speech was used by the court as an aid to interpretation. ✓

As regards commissions reports the courts seem amenable to accept them as an aid to interpretation. ✓ Although these have only been considered only if the provision is ambiguous. ✓ However, the court has refused to accept the report of a single member of the committee on the basis that it represented his own subjective opinion. ✓

- (b) Prior to 1994, the literalists argued on the bases of the maxims *iudicis est ius dicere sed non dare* ✓ that the function of the court was to interpret and not to make the law; ✓ and the *casus omissus* rule ✓ that the courts could not supply an omission in legislative as this was considered to be the function of the legislature. ✓ Contextualists, on the other hand, argued that the courts could modify the initial meaning of the text to harmonise it with the purpose. ✓ However, this discretion was qualified by the requirement that such modification was only permissible if the purpose of the legislation was clear. ✓ Labuschagne and Du Plessis have tried to show that the lawmaking function of the court does not mean that they take over the legislative function; that the legislature and the courts are partners in the law making function; that legislation only becomes a real and a complete functional statute when it is applied by the court.

The debate has been influenced by the new constitutional order. The primary rule of interpretation is now to ascertain the purpose of legislation in the light of the Bill of Rights and to give effect to it. ✓ This means that the court must first ascertain the purpose of legislation. ✓ If the literal meaning of legislation does not give effect to the purpose, for example where the text of the legislation has stipulated either more or less than the purpose ✓ or where it is in conflict with the Constitution, ✓ the courts may modify the legislation concerned. ✓ The modification may either be restrictive or extensive. ✓

- (c) First, this presumption means that legislation must be interpreted in a way that is in accordance with existing law in its widest sense. ✓ As far as the common law is concerned, this presumption shows respect for our common law heritage. ✓ This is evident in the principle that was laid by the courts that legislation must be interpreted in conformity with the common law and not against it. ✓ However, in a number of cases the courts also emphasised that an express provision in a statute that the common law (in respect of a particular point) had been altered, would rebut this presumption. ✓ In respect of legislation, the presumption means that in interpreting subsequent legislation, it is assumed that the legislature did not intend to repeal or modify earlier legislation. ✓ Any repeal or amendment must be effected expressly or by necessary implication. ✓ An attempt should be made to reconcile the earlier and the subsequent statute. If such reconciliation is impossible it is presumed that the later of the two prevails. ✓ resulting either in amendment or repeal of the earlier one.

The influence of the Constitution: the principle of constitutional interpretation that the court must interpret legislation in such a way that it is consistent with the Constitution ✓ and section 233 which requires that legislation must be interpreted in a way that it is not in conflict with international law, support this presumption. ✓

### QUESTION 3

PH (a) (i) Peremptory provisions require exact compliance whereas directory provision require substantial compliance. ✓

(a) (ii) Non-compliance with a peremptory provision renders the ensuing act null and void, whereas failure to comply with a directory provision may be condoned by the court. In other words, non-compliance does not result in the nullity of the act. ✓

PT2 (a) (iii) Semantic guidelines: words with imperative character such as "shall" indicate that the provision is peremptory; ✓ permissive words like "may" indicate that one is dealing with a directory provision; ✓ positive language indicate that the provision is directory; ✓ negative language on the other hand indicate that the provision is peremptory; ✓ flexible and vague terms indicate that the provision is directory. ✓ Jurisprudential guidelines: If the provision does not include a penal provision, it is directory; ✓ if strict compliance would lead to injustice; ✓ sometimes historical context could give an indication whether the provision is directory or peremptory; ✓ adding a penalty is a strong indication that the provision is peremptory; if the validity of the act would defeat the purpose of legislation, there is a presumption in favour of nullity. ✓

(b) (i) In terms of section 13(1) read with subsection (2) legislation commences on the day of its publication in the Gazette unless another day is specified in the legislation concerned and the day begins immediately on the expiry of the previous day. The reason why legislation must be published is to make people aware of such legislation. If the government Printer is, for some reason, unable to print the Gazette, the President may prescribe alternative procedure for the promulgation of the legislation concerned. The Constitution also requires legislation to be published before it commences.

Applied to the facts at hand, the Road Traffic Act came into operation on the 31 May 2004. Whether the Act applies to David's case depends on whether it is retrospective. This is dealt with fully below.

(b) (ii) It is presumed, unless the contrary appears either expressly or by necessary implication, that legislation applies to future matters only. ✓ If the enactment deals with procedure, the presumption does not apply. ✓ However, if the retroactive application of an enactment would benefit the individual, the presumption also does not apply. ✓ For example in *Silas* case the amending Act reduced the existing penalty after the accused had committed the offence, ✓ but before sentence was passed. ✓ The court held that the presumption against retrospectivity had in this case been rebutted by other considerations. ✓ The amendment was applied retrospectively ✓ and the new more lenient penalty was imposed. ✓ On the other hand, if the amendment places the individual in a worse position than before, the presumption will apply. This is in fact what was held by the court in *Mazibuka*. ✓ In this case, the court found that if the penalty provided for in an Act is increased by an amending Act, the presumption against retrospectivity applies.

In addition, the Constitution expressly provides (section 35(3)(n)) that the accused person has the right to the benefit of the least severe punishment if the prescribed punishment been changed between the time that the offence was committed and the time of sentencing. ✓

Therefore, whether the presumption and the constitutional provision will apply in this case depends on whether the new Act places the accused in the worst or better position. ✓

(c) The *eiusdem generis* rule applies here. ✓ The term literally means "of the same kind". ✓ This means that the meaning of words in legislation is qualified by their relationship to other words. ✓ The rule stipulates that the meaning of general words is determined when they are used together with specific words. ✓ The requirements for the application of this rule are that:

- the specific words must refer to definite genus or category ✓
- the specific words must not have exhausted the genus ✓
- the order in which the words appear is not important ✓
- the rule applies even when the specific words precede the general ✓
- the rule applies only if it is clear that the intention points to such restrictive interpretation. ✓

The rule was applied by the court in *Kohler* case. ✓ In this case the accused was convicted because he kept poultry without a licence. He kept a peacock. The municipal regulations did not specifically refer to peacocks but defined "poultry" as "any fowl, duck, goose, partridge, pigeon or chickens thereof or any other bird". Die question was thus whether the regulations also prohibited the keeping of peacocks. On the face of it the answer should be in the affirmative as a peacock is a type of bird and the regulations also applies to "any (other) bird". However, the question is whether the term "bird" should not be interpreted restrictively? The general term is the phrase "any other bird" and the specific words are "fowl, duck, goose" etc. The meaning of the general word must be restricted to the genus or category constituted by the specific words, namely poultry. Even if the word "bird" is interpreted restrictively, the accused should still be convicted because a peacock is a type of poultry.

Applied to the facts before us: the general words "any other vehicle" must be restricted to the genus of the specific words "taxi, bus, rickshaw" preceding it. The genus of the specific words can be described as public transport aimed at making a profit. For this reason the Act does not apply to the lift club because, unlike the other specified categories, Mr X does not intend to make profit out of his club (it is also not open to all members of the public). ✓

**SELF-ASSESSMENT ASSIGNMENT 2 (3 APRIL 2007)**

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**QUESTION 1**

- (a) What are the three phases of the interpretive process in the model that is suggested by Botha in the textbook? Explain each phase BRIEFLY. (6)
  - (b) LIST the main grounds (at least five) on which the textualist approach to interpretation may be criticised. 29-35 (7) (5)
  - (c) DEFINE what "interpretation by implication" means, and then BRIEFLY describe the three main grounds of extension by implication. (5)
  - (d) BRIEFLY set out what the approach of the courts should be to the interpretation of a statute that has been taken verbatim from, say, an English statute? (4)
  - (e) NAME five generally accepted methods of constitutional interpretation. (5)
  - (f) DEFINE what the term "law" means as it is used in the Interpretation Act 33 of 1957. (5)
- [30]

**QUESTION 2**

- (a) DISCUSS the use of preceding discussions as an extra-textual aid to statutory interpretation. (10)
- (b) DISCUSS whether the courts may exercise a lawmaking function when they interpret legislation. In your answer you must refer to the position prior to the advent of the new constitutional order (1994) and thereafter. (10)



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- (c) DISCUSS the presumption that the legislature does not intend to change the existing law more than necessary. In your discussion you must also address the influence of the new constitutional order on this presumption. (15)  
[35]

**QUESTION 3**

- (a) Section 29 of the Marriage Act 25 of 1961 reads as follows: "A marriage officer shall solemnize any marriage in a church or other building used for religious purposes, or in a public office or private dwelling-house, with open doors". Jasmine recently concluded a wedding ceremony with Joseph in the front garden of her mother's riverside home. A friend later told her that she is, for this reason, not legally married. She wants to know from you whether her friend is correct. In your answer to her explain
- (i) what the difference is between a peremptory and directory statutory provision; (1)
  - (ii) what the effect is of non-compliance with each type of provision; (1)
  - (iii) which semantic and jurisprudential guidelines are usually used to distinguish between the two types of statutory provisions. (8)
- (b) David killed Moses during a fit of road rage on 31 January 2003. He was convicted of murder on 31 March 2004. The case was then postponed to 31 May 2004 for sentencing. On 1 February 2004 a new Road Traffic Act was adopted by Parliament. The Act includes new sentencing options for people convicted of road rage. The Act was published in the official *Gazette* on 31 May 2004. On the same day (the day earlier set aside for sentencing), the question arose whether the sentencing provisions of the new Road Traffic Act could be applied to David's case. The State argued that the new law had not yet come into operation, and even if it has, the law as it was when David committed his offence should be applied to the case. Provide a legal opinion about the matter, dealing, inter alia, with the following:
- (i) the commencement of legislation, and (4)
  - (ii) the presumption that legislation only applies to future matters. (6)
- (c) Section 10 of the Transport Act 1 of 2000 provides that
- 'every person who operates a taxi, bus, rickshaw, or any other vehicle as a means of transporting members of the public must have a licence to do so'.
- Unisa employees have a lift club. Mr X who is a member of the lift club uses his minibus to bring colleagues to work. He is eager to find out whether the Transport Act applies to him. Advise Mr X, with reference to the rules of restrictive statutory interpretation, whether the Act applies to his lift club or not. (15)  
[35]  
{100}

**SEMESTER 2: COMPULSORY ASSIGNMENT 1 (15 AUGUST 2007)**

Write a note (of no less than two and no more than three pages) in which you critically discuss any two judgements before 1994 (from those mentioned in the textbook and study guide) in order to illustrate the status of the contextual or purposive approach in our law before 1994.

**Please note:**

- (1) You must supply the complete reference to a case or author in the text of your note, directly after you have made reference to the case or author for the first time. You must not make use of footnotes (eg: In *S v Makwanyane* 1995 (3) SA 391 (CC) the court held that the death sentence was unconstitutional; or Christo Botha *Statutory interpretation: an introduction for students* (2005) 58 suggests a practical and inclusive method of interpretation).
- (2) You are not allowed to quote directly from the textbook, the judgements or the study guide. Although you must make use of these sources, you have to summarise and restate the law in your own words.
- (3) You do not need to obtain the text of any of the judgments. Rely on the discussion of cases which appear in the textbook and study guide.
- (4) Although students are allowed (and encouraged) to work together on assignments and to discuss the assignment topic, each student must submit his or her own assignments. Assignments which are identical or substantially the same will not be accepted. In such a case both students will fail to gain admission to the examination and a disciplinary hearing into plagiarism will be launched.

## **SEMESTER 2: ASSIGNMENT 2 (4 SEPTEMBER 2007)**

### **QUESTION 1**

- (a) What are the three phases of the interpretive process in the model that is suggested by Botha in the textbook? Explain each phase BRIEFLY. (6)
  - (b) LIST the main grounds (at least five) on which the textualist approach to interpretation may be criticised. (5)
  - (c) DEFINE what "interpretation by implication" means, and then BRIEFLY describe the three main grounds of extension by implication. (5)
  - (d) BRIEFLY set out what the approach of the courts should be to the interpretation of a statute that has been taken verbatim from, say, an English statute? (4)
  - (e) NAME five generally accepted methods of constitutional interpretation. (5)
  - (f) DEFINE what the term "law" means as it is used in the Interpretation Act 33 of 1957. (5)
- [30]**

### **QUESTION 2**

- (a) DISCUSS the use of preceding discussions as an extra-textual aid to statutory interpretation. (10)
- (b) DISCUSS whether the courts may exercise a lawmaking function when they interpret legislation. In your answer you must refer to the position prior to the advent of the new constitutional order (1994) and thereafter. (10)

- (c) DISCUSS the presumption that the legislature does not intend to change the existing law more than necessary. In your discussion you must also address the influence of the new constitutional order on this presumption. (15)  
[35]

**QUESTION 3**

- (a) Section 29 of the Marriage Act 25 of 1961 reads as follows: "A marriage officer shall solemnize any marriage in a church or other building used for religious purposes or in a public office or private dwelling-house, with open doors". Jasmine recently concluded a wedding ceremony with Joseph in the front garden of her mother's riverside home. A friend later told her that she is, for this reason, not legally married. She wants to know from you whether her friend is correct. In your answer to her explain
- (i) what the difference is between a peremptory and directory statutory provision; (1)
  - (ii) what the effect is of non-compliance with each type of provision; (1)
  - (iii) which semantic and jurisprudential guidelines are usually used to distinguish between the two types of statutory provisions. (8)
- (b) David killed Moses during a fit of road rage on 31 January 2003. He was convicted of murder on 31 March 2004. The case was then postponed to 31 May 2004 for sentencing. On 1 February 2004 a new Road Traffic Act was adopted by Parliament. The Act includes new sentencing options for people convicted of road rage. The Act was published in the official *Gazette* on 31 May 2004. On the same day (the day earlier set aside for sentencing), the question arose whether the sentencing provisions of the new Road Traffic Act could be applied to David's case. The State argued that the new law had not yet come into operation, and even if it has, the law as it was when David committed his offence should be applied to the case. Provide a legal opinion about the matter, dealing, inter alia, with the following:
- (i) the commencement of legislation, and (4)
  - (ii) the presumption that legislation only applies to future matters. (6)
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- 'every person who operates a taxi, bus, rickshaw, or any other vehicle as a means of transporting members of the public must have a licence to do so'.
- Unisa employees have a lift club. Mr X who is a member of the lift club uses his minibus to bring colleagues to work. He is eager to find out whether the Transport Act applies to him. Advise Mr X, with reference to the rules of restrictive statutory interpretation, whether the Act applies to his lift club or not. (15)  
[35]  
{100}

Please feel free to contact your lecture team with any questions or comments about the academic side of the course.

All the best with your studies!  
**Wessel le Roux**  
**LEBOGANG NKUNA**

**PRETORIA**

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**Durban**

Unisa, Regional Office, Stanger Street (look for the venue on the notice board)  
3 March 2007 from 09h00 - 13h00

**Cape Town**

Unisa, Regional Office, Jean Simmonis Street, Parrow (look for the venue on the notice board)  
3 March 2007 from 09h00 - 13h00

**Semester 2**

**Pretoria**

Unisa, Main campus, Samuel Pauw (library) building, SP 1  
18 August 2007 from 09h00 - 13h00.

**Durban**

Unisa, Regional Office, Stanger Street (look for the venue on the notice board)  
4 August 2007 from 09h00 - 13h00

**Cape Town**

Unisa, Regional Office, Jean Simmonis Street, Parrow (look for the venue on the notice board)  
4 August 2007 from 09h00 - 13h00

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**FEEDBACK ON ASSIGNMENT 2**

Assignment 2 is a self-assessment assignment. It is based on a previous examination paper. Please answer the questions in detail as you would in an examination and then compare your answers to the answers which are provided below. You will get a good idea whether you understood the questions and whether you understand the work. Contact us immediately if you encounter any problems. Note that feedback on Assignment 1 can only be supplied after the semester marks have been finalised.

**QUESTION 1**

(a) The three phases are "the initial phase"; "the research phase" and "the concretisation phase". In the initial phase a number of basic principles are used as a point of departure namely the Constitution, the text of the legislation, common law presumptions, the balance between the text and context. In the research phase the legislation intra-textual and extra-textual factors are studied to ascertain the purpose of the legislation. During the concretisation phase the legislative text, the purpose and the facts of the case are (e) brought together to reach a conclusion.

(b) Common law presumption are reduced to tertiary aids to be consulted only if the primary and secondary aids have failed. Words are regarded as the primary index to legislative intention. The literal approach is inherently subjective. The intention of the legislature is depends on how clear the text may seem to a particular interpreter. The view that legislative texts are clear and unambiguous must be question in view of the existence of disciplines such as statutory interpretation. This approach leaves little room for judicial law making function of the courts.

(c) Interpretation by implication involves extending the textual meaning on the ground of a reasonable and essential implication, which is evident from the legislation. The three main grounds are *ex contrariis*, *ex consequentibus* and *ex accessorio eius*.

(d) Initially the courts subscribed to the view that the legislation concerned should be interpreted in accordance with the interpretation of the English courts if the language is clear. If not, the courts had unfettered discretion. The prevailing view now is that the approach of the foreign court would be used only as a guideline. The courts will always interpret legislation in the light of the South African common law.

(e) Grammatical interpretation; systematic interpretation; teleological interpretation; historical interpretation; and comparative interpretation.

(f) "Law" means any law, proclamation, ordinance, Act of parliament or other enactment having the force of law.

## QUESTION 2

(a) First we need to ask ourselves: what constitutes preceding discussions? Debates about a specific bill before Parliament; explanatory memoranda, the debates and reports of commissions of inquiry that gave rise to the adoption of the legislation in question; and the reports of the various committees, all constitute preceding discussion. The courts are very reluctant to accept the debates during the legislative process as an aid to interpretation. In fact in cases such as *Bok v Allen*, *Mathiba v Moschke* and *More v Minister of Co-operation* the use of these debates was rejected by the courts. However, in *Mpangele* a ministerial speech was used by the court as an aid to interpretation. As regards commissions reports the courts seem amenable to accept them as an aid to interpretation. Although these have only been considered only if the provision is ambiguous. However, the court has refused to accept the report of a single member of the committee on the basis that it represented his own subjective opinion.

(b) Prior to 1994, the literalists argued on the bases of the maxims *iudicis est ius dicere sed non dare* that the function of the court was to interpret and not to take the law; and the *casus omissus* rule that the courts could not supply an omission in legislative as this was considered to be the function of the legislature. Contextualists, on the other hand, argued that the courts could modify the initial meaning of the text to harmonise it with the purpose. However, this discretion was qualified by the requirement that such modification was only permissible if the purpose of the legislation was clear. Labuschagne and Du Plessis have tried to show that the lawmaking function of the court does not mean that they take over the legislative function; that the legislature and the courts are partners in the law making function; that legislation only becomes a real and a complete functional statute when it is applied by the court. The debate has been influenced by the new constitutional order. The primary rule of interpretation is now to ascertain the purpose of legislation in the light of the Bill of Rights and to give effect to it. This means that the court must first ascertain the purpose of legislation. If the literal meaning of legislation does not give effect to the purpose, for example where the text of the legislation has stipulated either more or less than the purpose or where it is in conflict with the Constitution, the courts may modify the legislation concerned. The modification may either be restrictive or extensive.

(c) First, this presumption means that legislation must be interpreted in a way that is in accordance with existing law in its widest sense. As far as the common law is concerned, this

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presumption shows respect for our common law heritage. This is evident in the principle that was laid by the courts that legislation must be interpreted in conformity with the common law and not against it. However, in a number of cases the courts also emphasised that an express provision in a statute that the common law (in respect of a particular point) had been altered, would rebut this presumption. In respect of legislation, the presumption means that in interpreting subsequent legislation, it is assumed that the legislature did not intend to repeal or modify earlier legislation. Any repeal or amendment must be effected expressly or by necessary implication. An attempt should be made to reconcile the earlier and the subsequent statute. If such reconciliation is impossible, it is presumed that the later of the two prevails, resulting either in amendment or repeal of the earlier one. The influence of the Constitution: the principle of constitutional interpretation that the court must interpret legislation in such a way that it is consistent with the Constitution and section 233 which requires that legislation must be interpreted in a way that it is not in conflict with international law, support this presumption.

### QUESTION 3

(a) (i) Peremptory provisions require exact compliance whereas directory provisions require substantial compliance.

(a) (ii) Non-compliance with a peremptory provision renders the ensuing act null and void, whereas failure to comply with a directory provision may be condoned by the court. In other words, non-compliance does not result in the nullity of the act.

(a) (iii) Semantic guidelines: words with imperative character such as "shall" indicate that the provision is peremptory; permissive words like "may" indicate that one is dealing with a directory provision; positive language indicate that the provision is directory; negative language on the other hand indicate that the provision is peremptory; flexible and vague terms indicate that the provision is directory. Jurisprudential guidelines: If the provision does not include a penal provision, it is directory; if strict compliance would lead to injustice; sometimes historical context could give an indication whether the provision is directory or peremptory; adding a penalty is a strong indication that the provision is peremptory; if the validity of the act would defeat the purpose of legislation, there is a presumption in favour of nullity.

(b) (i) In terms of section 13(1) read with subsection (2) legislation commences on the day of its publication in the Gazette unless another day is specified in the legislation concerned and the day begins immediately on the expiry of the previous day. The reason why legislation must be published is to make people aware of such legislation. If the government Printer is, for some reason, unable to print the Gazette, the President may prescribe alternative procedure for the promulgation of the legislation concerned. The Constitution also requires legislation to be published before it commences. Applied to the facts at hand, the Road Traffic Act came into operation on the 31 May 2004. Whether the Act applies to David's case depends on whether it is retrospective. This is dealt with fully below.

(b) (ii) It is presumed, unless the contrary appears either expressly or by necessary implication, that legislation applies to future matters only. If the enactment deals with procedure, the presumption does not apply. However, if the retroactive application of an enactment would benefit the individual, the presumption also does not apply. For example in *Silas* case the amending Act reduced the existing penalty after the accused had committed the offence, but before sentence was passed. The court held that the presumption against retrospectivity had in this case been rebutted by other considerations. The amendment was applied retrospectively and the new more lenient penalty was imposed. On the other hand, if the amendment places the individual in a worse position than before, the presumption will apply. This is in fact what was

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held by the court in *Mazibuko*. In this case, the court found that if the penalty provided for in an Act is increased by an amending Act, the presumption against retrospectivity applies. In addition, the Constitution expressly provides (section 35(3)(n) that the accused person has the right to the benefit of the least severe punishment if the prescribed punishment been changed between the time that the offence was committed and the time of sentencing. Therefore, whether the presumption and the constitutional provision will apply in this case depends on whether the new Act places the accused in the worst or better position.

(c) The *eiusdem generis* rule applies here. The term literally means "of the same kind". This means that the meaning of words in legislation is qualified by their relationship to other words. The rule stipulates that the meaning of general words is determined when they are used together with specific words. The requirements for the application of this rule are that:

- the specific words must refer to definite genus or category
- the specific words must not have exhausted the genus
- the order in which the words appear is not important
- the rule applies even when the specific words precede the general
- the rule applies only if it is clear that the intention points to such restrictive

interpretation. The rule was applied by the court in *Kohler* case. In this case the accused was convicted because he kept poultry without a licence. He kept a peacock. The municipal regulations did not specifically refer to peacocks but defined "poultry" as "any fowl, duck, goose, partridge, pigeon or chickens thereof or any other bird". Die question was thus whether the regulations also prohibited the keeping of peacocks. On the face of it the answer should be in the affirmative as a peacock is a type of bird and the regulations also applies to "any (other) bird". However, the question is whether the term "bird" should not be interpreted restrictively? The general term is the phrase "any other bird" and the specific words are "fowl, duck, goose" etc. The meaning of the general word must be restricted to the genus or category constituted by the specific words, namely poultry. Even if the word "bird" is interpreted restrictively, the accused should still be convicted because a peacock is a type of poultry. Applied to the facts before us: the general words "any other vehicle" must be restricted to the genus of the specific words "taxi, bus, rickshaw" preceding it. The genus of the specific words can be described as public transport aimed at making a profit. For this reason the Act does not apply to the lift club because, unlike the other specified categories, Mr X does not intend to make profit out of his club (it is also not open to all members of the public).

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## WHAT IS TO FOLLOW?

You will in due course receive a final tutorial letter in which you will receive (i) feedback on the group discussions; (ii) feedback on Assignment 1; and (iii) comments about the format and preparation for the examination. In the mean time feel free to contact us with any problems regarding the academic side of your studies.

Kind regards

Wessel le Roux  
Lebogang Nkuna

PRETORIA