

IOS201-6

May/June 2007

INTERPRETATION OF STATUTES

Duration: 2 hours

100 marks

EXAMINERS:FIRST: PROF WB LE ROUX
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SECOND: MRS I SOUTHWOOD

This paper consists of four (04) pages, including Annexure "A" (page 04)

SPECIAL INSTRUCTIONS:

- **CAREFULLY READ THE EXTRACTS FROM THE LOCAL GOVERNMENT: MUNICIPAL ELECTORAL ACT 27 OF 2000 (HEREAFTER REFERRED TO AS THE ELECTORAL ACT) WHICH ARE INCLUDED IN ANNEXURE "A".**
- **ALL THE QUESTIONS ARE BASED ON THE ELECTORAL ACT.**

Question 1

- (a) The Electoral Act was adopted on 5 July 2000, assented to (signed) by the President on 6 July 2000, and published in the Government Gazette on 11 July 2000. Yet it is said that the Electoral Act commenced on 11 July 2000. Is this not a printing error? In your answer you must refer to the provisions of section 13 of the Interpretation Act 33 of 1957. (6)
- (b) Identify the long title of the Electoral Act and explain if and how it can be used to interpret other sections of the Electoral Act. (6)

[TURN OVER]

- (c) In terms of section 89 of the Electoral Act, the Commission may make regulations. Will the rules of statutory interpretation be applicable to the interpretation of those regulations? In your answer you should also mention the difference between original and subordinate legislation and give two examples of each. (6)
- (d) A political party does not have the funds to pay the deposit which is required in terms of section 14(1) (b) of the Electoral Act. It claims that section 14(1) (b) is unconstitutional because it violates the right of parties to participate in elections (section 19 of the Constitution). You appear for the Commission. List and explain the five methods of constitutional interpretation that must be applied in this matter. (5)
- (e) You convince the Commission that the current deposit requirement is unconstitutional. However, the Commission argues that section 14(1) (b) of the Electoral Act can be saved by the principle of reading-in. (It has the following clause in mind: "provided that the Commission can waive the deposit requirement in deserving cases"). What is the principle of "reading-in"? Can it be applied under these circumstances as the Commission argues? Refer to an example from case law. (6)
- (f) The English text was signed by the President. Explain the relevance, if any, of this fact for the interpretation of the Electoral Act. Refer to the way legislative texts in other official languages may be used in the interpretive process. (6)
- (g) The Electoral Act repealed the Voting Act of 1987. John was appointed as voting officer under the Voting Act for a period of five years (ending 31 December 2002). What effect does the Electoral Act have on his position as voting officer? (There is no mention of existing officers in the Electoral Act.) Explain the provisions of the Interpretation Act 33 of 1957 which regulate the position. (5)

[40]

Question 2

Half-way through the voting day, the RAT party begins to distribute plastic water-bottles within the boundaries of the voting station. The opposition objects that this violates section 72(2) of the Electoral Act. The RAT party argues that the items mentioned in the section do not include waterbottles, as the section should be restrictively applied on the basis of the *eiusdem generis* rule. You are called in to make a decision in the matter. Explain the requirements of the *eiusdem generis* rule and indicate, with reference to an example from case law, how it will be applied under the circumstances (if at all).

[10]

[TURN OVER]

Question 3

The ACDP wants to contest the elections, but they paid their prescribed deposit in terms of section 14(1) (b) of the Electoral Act two days after the deadline. The Commission refuses to register them as a party for the elections. The Commission argues that the provisions of section 14(1) (b) are peremptory.

- (a) What is a peremptory provision and how does it differ from a directory provision; (4)
- (b) How should the legislative purpose behind the deposit requirement be determined? Can the Report of the Presidential Commission which was responsible for the new legislation be submitted as evidence to establish why parties are expected to pay a deposit? Can the Minister's response to the same question during the debate in parliament be submitted as evidence? (8)
- (c) Is the Commission correct that section 14(1) (b) of the Electoral Act is a peremptory provision? (Refer in your answer to at least two cases to illustrate how the distinction between the two types of provisions is drawn in practice.) (13)

[25]

Question 4

During the dispute with the ACDP the Commission refers to *Marais v Election Officer* (a case from 1934) in which the court held that the "golden rule" of statutory interpretation requires that all election requirements should be literally applied. The magistrate wants to know from you whether the cited case is still relevant in light of section 39(2) of the Constitution. Please explain:

- (a) what "the golden rule" is and what other rules apply under the textual approach; (5)
- (b) what the most important points of critique are against the "golden rule"; (5)
- (c) what effect section 39(2) has on the interpretation of statutes (refer also to the facts, the legal question and the ratio of the *Bato Star* case). (15)

[25]

[100 MARKS]

ANNEXURE A / AANHANGSEL A

LOCAL GOVERNMENT: MUNICIPAL ELECTORAL ACT
NO. 27 OF 2000

[ASSENTED TO 6 JULY, 2000]

[DATE OF COMMENCEMENT: 11 JULY, 2000]

(English text signed by the President)

This Act was published in *Government Gazette* 21369 dated 11 July, 2000.

ACT

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

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Part 2: Parties contesting election and submission of party lists

13. Parties contesting elections.—(1) Only registered parties may contest an election, and may contest the election either by—

- (a) submitting a party list containing the names of candidates to stand as its representatives for the election of members of the council to proportionally represent parties in the council;
- (b) nominating a ward candidate to stand as a representative of the party in a ward; or
- (c) doing both.

(2) A party intending to contest an election in terms of—

- (a) subsection (1) (a), must comply with the requirements for the nomination of party candidates as set out in this Part;
- (b) subsection (1) (b), must comply with the requirements for the nomination of ward candidates as set out in Part 3; and
- (c) subsection (1) (c), must comply with the requirements for the nomination of both party and ward candidates as set out in this Part and Part 3.

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.

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.