

UNISA



IOS101-3

October/November 2005

## 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 two (02) pages

## Question 1

Briefly restate the following statutory and Constitutional provisions in your own words. Then indicate in a short paragraph what the relevance of each provision is for the interpretation of statutes.

- |     |  |             |
|-----|--|-------------|
| (a) | Section 39(2) of the Constitution.                     | (5)         |
| (b) | Section 34 of the Constitution.                        | (3)         |
| (c) | Sections 35(3)(l) and (n) of the Constitution.         | (3)         |
| (d) | Section 123 of the Constitution.                       | (3)         |
| (e) | Section 4 of the Interpretation Act 33 of 1957.        | (3)         |
| (f) | Section 12(2)(b) of the Interpretation Act 33 of 1957. | (3)         |
|     |  | <b>[20]</b> |

## Question 2

Briefly restate the facts and reasons for the judgement in the following cases. Then indicate in a short paragraph what the relevance of each judgement is for the interpretation of statutes.

- |     |   |             |
|-----|---|-------------|
| (a) | <i>Commercial Union Assurance v Clarke</i> 1972 3 SA 508 (A)                  | (4)         |
| (b) | <i>S v Mujee</i> 1981 3 SA 800 (Z)  | (4)         |
| (c) | <i>S v Makhubela</i> 1981 4 SA 210 (B)  | (4)         |
| (d) | <i>Estate Crosby v Wynberg Municipality</i> 1912 CPD 1026                     | (4)         |
| (e) | <i>Maris v Verkiesingsbeampte, Galeshwe Munisipaliteit</i> 1990 2 SA 531 (NC) | (4)         |
|     |   | <b>[20]</b> |

[TURN OVER] SA

**Question 3**

- (a) Write an essay in which you discuss the following statement by Froneman J in *Matiso v Commanding Officer, Port Elizabeth Prison* 1994 4 SA 592 (SE) in light of the debate between textualism and contextualism in statutory interpretation:

"In terms of the Constitution the Courts bear the responsibility of giving specific content to (the values and principles contained in the Constitution) in any given situation. In doing so, judges will invariably 'create law'". (15)

- (b) Write an essay in which you distinguish between the narrow (or orthodox) approach to the intention of the legislature (adopted in *R v Kirk* 1914 CPD 564) and the wider contextual approach to the intention of the legislature (adopted in *Kanhym v Oudtshoorn Munisipaliteit* 1990 3 SA 252 (C)). (15)

**[30]****Question 4**

The Minister of Defence (the Minister) is concerned that most women do not have military skills and would not be able to defend the country in the case of invasion. He wants to issue a proclamation requiring women to undergo military training. The only hurdle is section 1 of the Defence Act which provides that:

"The Minister of Defence may issue a proclamation requiring men who are eighteen years or older to undergo compulsory military training for a period not exceeding six months".

The Minister, relying on the literal reading of the provision, is of the view that this section can only be used to force adult males and not women to render military service. Explain to the Minister:

- (a) the history, nature and criticism of the literal approach to legislative interpretation; and (15)
- (b) whether it is still permissible in our law to use the literal approach (in your answer discuss the influence of the 1996 Constitution on statutory interpretation). (15)

**[30]****{100}**



10S101-3

oktober/November 2005

UITLEG VAN WETTE

100 Punte

Tydsduur : 2 uur

EKSAMINATORE :

EERSTE :

TWEDE :

MNR MF MDUMBE

ME CH PILLAY

PROF WB LE ROUX

### Hierdie vraestel bestaan uit twee (2) bladsye

#### Vraag 1

Gee die volgende statutêre bepalings kortliks in jou eie woorde weer. Toon dan in elke geval in 'n kort paragraaf aan watter relevansie elke bepaling vir die uitleg van wette inhou.

- |     |  |      |
|-----|--|------|
| (a) | Artikel 39(2) van die Grondwet.                        | (5)  |
| (b) | Artikel 34 van die Grondwet.                           | (3)  |
| (c) | Artikels 35(3)(l) en (n) van die Grondwet.             | (3)  |
| (d) | Artikel 123 van die Grondwet.                          | (3)  |
| (e) | Artikel 4 van die Interpretasiewet 33 van 1957.        | (3)  |
| (f) | Artikel 12(2)(b) van die Interpretasiewet 33 van 1957. | [20] |

#### Vraag 2

Gee kortliks die feite en die redes vir die uitspraak in elkeen van die volgende beslissings weer. Dui dan in 'n kort paragraaf aan watter relevansie elke uitspraak vir die uitleg van wette inhou.

- |     |   |      |
|-----|---|------|
| (a) | <i>Commercial Union Assurance v Clarke</i> 1972 3 SA 508 (A)                  | (4)  |
| (b) | <i>S v Mujee</i> 1981 3 SA 800 (Z)  | (4)  |
| (c) | <i>S v Makhubela</i> 1981 4 SA 210 (B)  | (4)  |
| (d) | <i>Estate Crosby v Wynberg Municipality</i> 1912 CPD 1026                     | (4)  |
| (e) | <i>Maris v Verkiesingsbeampte, Galeshwe Munisipaliteit</i> 1990 2 SA 531 (NC) | [20] |

**Vraag 3**

- (a) Skryf 'n opstel waarin U die volgende stelling van Froneman J in *Matiso v Commanding Officer, Port Elizabeth Prison* 1994 4 SA 592 (SE) krities bespreek in die lig van die debat tussen kontekstualisme en tekstualisme in die uitleg van wette:

"In terms of the Constitution the Courts bear the responsibility of giving specific content to [the values and principles contained in the Constitution] in any given situation. In doing so, judges will invariably 'create law'". (15)

- (b) Skryf 'n opstel waarin U onderskei tussen die eng (of ortodokse) benadering tot die bedoeling van die wetgewer (soos dit aanvaar is in *R v Kirk* 1914 CPD 564) en die wyer kontekstuele benadering tot die bedoeling van die wetgewer (soos dit aanvaar is in *Kanhym v Oudtshoorn Munisipaliteit* 1990 3 SA 252 (C)). (15)

[30]

**Vraag 4**

Die Minister van Verdediging (die Minister) is bekommerd daaroor dat vroue nie oor militêre vaardighede beskik nie en dus nie sal kan help om die land te verdedig in 'n tyd van oorlog nie. Hy wil 'n proklamasie uitvaardig wat vroue sal verplig om militêre opleiding te ondergaan. Die enigste struikelblok is artikel 1 van die Verdedigingswet. Die artikel bepaal:

"Die Minister van Verdediging mag 'n proklamasie uitvaardig wat vereis dat alle mans van agtien jaar en ouer militêre opleiding tot 'n maksimum periode van ses maande moet ondergaan".

Die Minister steun op die letterlike interpretasie van die artikel en beweer dat die artikel slegs gebruik kan word om manlike persone, en nie vroulike persone nie, te dwing om diensplig te verrig. Verduidelik aan die Minister:

- (a) die geskiedenis en aard van die letterlike bandering tot wetsuitleg, as ook watter kritiek teen hierdie benadering bestaan; en (15)
- (b) of dit steeds toelaatbaar in ons reg is om die letterlike benadering te gebruik (in u antwoord moet U ook die invloed van die 1996-Grondwet op die uitleg van wette bespreek). (15)

[30]

{100}