

IOS2016

October/November 2008

INTERPRETATION OF STATUTES

Duration: 2 hours

100 marks

EXAMINERS:

FIRST: MRS I SOUTHWOOD

Adv IL NKUNA

SECOND: PROF M BEUKES

This paper consists of three (03) pages, including Annexure "A" (page 03)

SPECIAL INSTRUCTIONS:

- **CAREFULLY READ THE EXTRACTS FROM THE NATIONAL YOUTH COMMISSION ACT 19 OF 1996 (HEREAFTER REFERRED TO AS THE ACT) WHICH ARE INCLUDED IN ANNEXURE "A".**
- **ALL THE QUESTIONS ARE BASED ON THE NATIONAL YOUTH COMMISSION ACT.**

QUESTION 1

- (a) The Act was adopted on 5 April 1996, assented to by the President on 10 April 1996, but it only commenced on 19 June 1996. 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. (8)
- (b) James is appointed by the President as a member of the Commission for a period of six years. The Commission argues that in terms of section 5(1) members of the Commission shall hold office for a period not exceeding five years. Advise the Commission on this argument by explaining how a peremptory provision differs from a directory provision, and whether the appointment complied with the statutory requirements. (Refer to the two leading examples from case law illustrating the difference.) (15)
- (c) Explain the ordinary civil method of the computation of days with reference to the case law. (7)
- (d) Distinguish between the promulgation and adoption of legislation. (5)

[35]**[TURN OVER]**

QUESTION 2

- (a) Do you think the long title and the preamble of the Act were 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. (10)
- (b) How may dictionaries be used as an interpretative aid? Refer to relevant case law. (5)
[15]

QUESTION 3

- (a) Write a note on the way in which the textual and contextual approaches to statutory interpretation have been applied in our law. Refer to case law and the viewpoint of academic writers. (15)
- (b) List five (5) internal aids that can be consulted and give an example of each **from the text of the Act** (where possible). (5)
[20]

QUESTION 4

- (a) Discuss why the judgment in the following case is important for the theory and practice of statutory interpretation:
National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 (2) SA 1 (CC). (10)
- (b) Discuss the Constitutional Court's application of section 39(2) of the Constitution to statutory interpretation. Refer to case law and the view of academic writers. (10)
- (c) Name and discuss the various dimensions of the "practical inclusive method of interpretation" favoured by Botha *Statutory Interpretation : An Introduction for Students*. (10)
[30]

[100 MARKS]

**NATIONAL YOUTH COMMISSION ACT
NO. 19 OF 1996**

[ASSENTED TO 10 APRIL, 1996]

[DATE OF COMMENCEMENT: 19 JUNE, 1996]

(Afrikaans text signed by the President)

This Act has been updated to *Government Gazette* 21294 dated 20 June, 2000.

as amended by

Public Service Laws Amendment Act, No. 47 of 1997

[with effect from 1 July, 1999—see title PUBLIC SERVICE]

National Youth Commission Amendment Act, No. 19 of 2000

ACT

To provide for the establishment, constitution, objects and functions of a National Youth Commission; and to provide for matters connected therewith.

Preamble.—SINCE it is necessary to create a united, non-racial, non-sexist and prosperous society in which the youth of South Africa shall promote national reconciliation and unity, build a new patriotism and foster peace, justice and a human rights culture;

AND SINCE it is imperative that South Africa recognises the role that youth played and will still play in society, and since the youth in South Africa constitutes an energetic, creative and the largest sector of our population, and given the challenges this sector faced and continues to face;

AND SINCE it is necessary to redress the imbalances of the past and to create a national youth policy aimed at empowering the youth and allowing them to realise their full potential through optimal access to opportunities,

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

5. Term of office of members of Commission.—(1) The members of the Commission shall hold office for such fixed term as the President may determine at the time of their appointment, but not exceeding five years: Provided that the President may remove any member from office at any time after consultation with the Commission if, in his or her opinion, there are sound reasons for doing so.

(2) Any person whose term of office as a member of the Commission has expired, may be reappointed.

(3) A member of the Commission may resign from office by submitting at least three months' prior written notice to the President.

9. Vacancies in Commission.—(1) A vacancy in the Commission occurs—

- (a) when a member's term of office expires;
- (b) when a member dies;
- (c) when a member is removed from office in terms of the proviso to section 5 (1);
or
- (d) when a member's resignation, submitted in accordance with section 5 (3), takes effect.

(2) A vacancy in the Commission shall—

- (a) not affect the validity of the proceedings or decisions of the Commission; and
- (b) be filled as soon as practicable in accordance with section 4, and any member so designated shall, where applicable, hold office for the unexpired portion of his or her predecessor's term of office.

IOS201-6

Oktober/November 2008

UITLEG VAN WETTE

Tydsduur: 2 uur

100 Punte

EKSAMINATORE:

EERSTE: MEV I SOUTHWOOD
 ADV IL NKUNA
 TWEEDE: PROF M BEUKES

Hierdie vraestel beslaan drie (03) bladsye, insluitende Aanhangsel "A" (bladsy 03)

SPEZIALE INSTRUKSIES:

- **LEES DIE UITTREKSELS UIT DIE WET OP DIE NASIONALE JEUGKOMMISSIE 19 VAN 1996 (HIERNA "DIE WET" GENOEM) WAT IN BYLAAG "A" INGESLUIT IS, VERSIGTIG DEUR.**
- **AL DIE VRAE IS OP DIE WET GEGROND.**

VRAAG 1

- (a) Die wet is op 5 April 1996 aangeneem, op 10 April 1996 deur die President goedgekeur, maar het eers op 19 Junie 1996 in werking getree. Verduidelik die verskil tussen die datums van goedkeuring en inwerkingtreding met verwysing na die bepalings van artikel 13 van die Interpretasiewet 33 van 1957. (8)
- (b) Jan word deur die President aangestel as lid van die Kommissie vir 'n periode van ses jaar. Die Kommissie redeneer dat kragtens artikel 5(1) hou lede van die Kommissie die amp vir 'n periode wat nie vyf jaar oorskry nie. Adviseer die Kommissie aan die hand van dié argument hoe gebiedende en aanwysende bepalings verskil, en of die aanstelling aan die statutêre vereistes voldoen. (Verwys na die twee leidende sake wat die verskil illustreer). (15)
- (c) Verduidelik die gewone siviele metode van tydsberekening van dae met verwysing na regspraak. (7)
- (d) Onderskei tussen die promulgasie en aanname van wetgewing. (5)

[35]

[BLAAI OM]

VRAAG 2

- (a) Dink u die langtitel en voorrede van die wet is opgestel met die misstandreël (*mischief rule*) in gedagte? Motiveer u antwoord met verwysing na regspraak, wat die misstandreël behels en hoekom dit as die voorloper van die doeldienende benadering tot wetsuitleg beskou word. (10)
- (b) Hoe word woordeboeke as 'n hulpmiddel by wetsuitleg gebruik? Verwys na relevante regspraak. (5)
[15]

VRAAG 3

- (a) Skryf aantekeninge oor die manier waarop die tekstuele en kontekstuele benaderings van wetsuitleg in ons reg toegepas is. Verwys na regspraak en die menings van akademiese skrywers. (15)
- (b) Noem vyf (5) interne hulpmiddels wat mens kan raadpleeg en gee 'n voorbeeld van elk **uit die wetsteks** (waar moontlik). (5)
[20]

VRAAG 4

- (a) Bespreek hoekom die volgende uitspraak van belang is vir die teorie en praktyk van uitleg van wette:
National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 (2) SA 1 (CC) (10)
- (b) Bespreek die Konstitusionele Hof se toepassing van artikel 39(2) van die Grondwet op die uitleg van wette. Verwys na regspraak en die siening van akademiese skrywers. (10)
- (c) Noem en bespreek die verskillende aspekte van die "praktiese en inklusiewe metode van wetsuitleg" wat deur Botha *Wetsuitleg: 'n Inleiding vir studente* voorgestaan word. (10)
[30]

[100 PUNTE]

**WET OP DIE NASIONALE JEUGKOMMISSIE
NO. 19 VAN 1996**

[GOEDGEKEUR OP 10 APRIL 1996]

[DATUM VAN INVOERING: 19 JUNIE 1996]

(Afrikaanse teks deur die President geteken)

Hierdie Wet is opgedateer tot *Staatskoerant* 21294 gedateer 20 Junie 2000.

soos gewysig deur

Wysigingswet op Staatsdienswetgewing, No. 47 van 1997

[met ingang 1 Julie 1999—sien titel STAATSDIENS]

Wysigingswet op die Nasionale Jeugkommissie, No. 19 van 2000

WET

Ten einde voorsiening te maak vir die instelling, samestelling, oogmerke en werksaamhede van 'n Nasionale Jeugkommissie; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

Aanhef.—NADEMAAL dit nodig is om 'n verenigde, nie-rassige, nie-seksistiese en vooruitstrewende gemeenskap te skep waarin die jeug van Suid-Afrika nasionale rekonsiliasie en eenheid bevorder, 'n nuwe patriotisme bou en vrede en 'n menseregtekultuur koester;

EN NADEMAAL dit gebiedend is dat Suid-Afrika die rol erken wat jeug in die gemeenskap gespeel het en steeds speel, en aangesien die jeug in Suid-Afrika 'n energieke en skepende en die grootste sektor van ons bevolking uitmaak, en gegewe die uitdagings wat hierdie sektor die hoof moes bied en steeds bied;

EN NADEMAAL dit nodig is om die wanbalanse van die verlede reg te stel en om 'n nasionale jeugbeleid te skep wat gemik is daarop om middele in die hande van die jeug te plaas en hulle toe te laat om hulle volle potensiaal te bereik deur aan hulle optimale toegang tot geleenthede te verleen,

WORD DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

5. Ampstermyn van lede van Kommissie.—(1) Die lede van die Kommissie beklee hul amp vir die vaste tydperk wat die President bepaal ten tyde van hul aanstelling, maar hoogstens vyf jaar: Met dien verstande dat die President te eniger tyd na oorleg met die Kommissie enige lid van sy of haar amp kan onthef indien daar, na die mening van die President, gegronde redes daarvoor is.

(2) Enige persoon wie se ampstermyn as lid van die Kommissie verstryk het, kan heraan gestel word.

(3) 'n Lid van die Kommissie kan uit sy of haar amp bedank deur ten minste drie maande vooruit skriftelik kennis aan die President te gee.

9. Vakatures in Kommissie.—(1) 'n Vakature in die Kommissie ontstaan—

- (a) wanneer die ampstermyn van 'n lid verstryk;
- (b) wanneer 'n lid te sterwe kom;
- (c) wanneer 'n lid van sy amp onthef word ingevolge die voorbehoudsbepaling by artikel 5 (1); of
- (d) wanneer die bedanking van 'n lid, ingedien in ooreenstemming met artikel 5 (3), van krag word.

(2) 'n Vakature in die Kommissie—

- (a) raak nie die geldigheid van die verrigtinge of besluite van die Kommissie nie; en
- (b) word gevul so gou prakties moontlik in ooreenstemming met artikel 4, en enige lid wat aldus aangewys is, beklee, waar toepaslik, sy of haar amp vir die onverstreke deel van sy of haar voorganger se ampstermyn.