

# Tutorial Letter 101/3/2016

## Interpretation of Statutes

# IOS2601

## Semesters 1 and 2

### DEPARTMENT OF PUBLIC, CONSTITUTIONAL AND INTERNATIONAL LAW

**IMPORTANT INFORMATION**

This tutorial letter contains important information about  
your module.

BAR CODE

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## 1 INTRODUCTION

Dear Student

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We shall do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

You will receive a number of tutorial letters during the year. A tutorial letter is our way of communicating with you about teaching, learning and assessment. This tutorial letter contains important information for this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter (101), you will find the assignments and assessment criteria as well as instructions on the preparation and submission of the assignments. It also provides all the information that you need with regard to the prescribed study material and how to obtain them. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully. Right from the start we would like to point out that **you must read all the tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information. Please note that some of the study material may not have been available when you registered. This study material will be posted to you as soon as possible, but is also available on *myUnisa*.

We hope that you will enjoy this module and wish you all the best!

## 2 PURPOSE AND OUTCOMES FOR THE MODULE

### 2.1 Purpose

Interpretation of Statutes is one of the most important legal subjects in the LLB degree. You will use the skills that you acquire in this module in many other modules as well. In view of the increasing volume of specialised legislation, a thorough knowledge of the interpretation of statutes is very important. The aim of the module is to teach you how to interpret legislation. We also give some attention to the interpretation of the Constitution. In this module you will study different methods that are (or can be) used to interpret legislation. You must master these methods and familiarise yourself with the many rules and principles that apply to each.

### 2.2 Outcomes

To master a new method of doing something is not the same as memorising the content of a new set of rules. Many students often make the mistake of thinking that this module (like most other legal modules) merely involves the rote learning of new legal rules. Much more is at stake. Just as a soccer player cannot learn how to play soccer by learning or memorising the rules of soccer, so a lawyer cannot learn how to interpret legislation by only learning or memorising a set of rules. Please do not be caught off-guard by the unique nature of this course.

Of course, this does not mean that there is no memory work involved; you still have to master the basics, and this requires more than merely reading through the material to ensure that you understand it. You have to be familiar with it, not merely acquainted. (The assignments will assist you to work through the study material in good time.) Essentially, then, this is a practical module which is based on certain theoretical principles.

What we require of you is reading and comprehension skills; logical thought; accurate written expression. All students should concentrate on improving their language skills; the better your use of language, the more easily you will master the interpretation of legislation. Specific study objectives are supplied in the study guide.

### 3 LECTURERS AND CONTACT DETAILS

#### 3.1 Lecturers

The lecturers responsible for this module are:

**Lecturer's name:** Ms R Mienie  
**Building and office no:** Cas van Vuuren Building 7-24  
**E-mail address:** [mienica@unisa.ac.za](mailto:mienica@unisa.ac.za)  
**Telephone number:** 012 429 8381

**Lecturer's name:** Ms NC Malatsi  
**Building and office no:** Cas van Vuuren Building 7-84  
**E-mail address:** [malatnc@unisa.ac.za](mailto:malatnc@unisa.ac.za)  
**Telephone number:** 012 429 2496

All queries that are not of a purely administrative nature **but** are **about the content of this module** should be directed to us. Please have your study material with you when you contact us. If nobody is available when you call (e.g. during meetings), please leave your name and a message on our answering machines so that we can respond to your call. You are welcome to visit us to discuss any queries or problems; however, **please make an appointment beforehand**. If you are sending us a query via email, please direct your email to only one lecturer and **NOT** to all three of us. If you send a query to all three lecturers it will result in unnecessary delays in responding to your email.

#### 3.2 Department

You may contact the Department of Public, Constitutional and International Law directly on 012 429 8339. E-mail and telephone numbers for all lecturing staff are included above, but you might also want to write to us. Letters should be sent to:

The Module Leader (IOS2601)  
Department of Public, Constitutional & International Law  
P O Box 392  
Unisa  
0003

**PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.**

### 3.3 University

You can find general Unisa contact details in the *My Studies @ Unisa* brochure. Please use your student number when contacting the University

## 4 MODULE RELATED RESOURCES

### 4.1 Prescribed books

The prescribed textbook for this module is:

First Author	Year	Title	Edition	Publisher	ISBN
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Botha CJ 2012 Statutory interpretation: an introduction for students 5 ed Juta 9780702198588

You may not use any of the previous editions of the textbook. Prescribed books can be obtained from the University's official booksellers. Please refer to the list of official booksellers and their addresses in the *My Studies @ Unisa* brochure. If you have difficulty in locating your book at these booksellers, please contact the Prescribed Books Section at Tel: 012 429-4152 or e-mail vospresc@unisa.ac.za.

### 4.2 Recommended books

There are no recommended books for this module.

### 4.3 Electronic reserves (e-reserves)

There are no e-reserves for this module.

## 5 STUDENT SUPPORT SERVICES FOR THE MODULE

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes and language support) please consult the brochure *My Studies @ Unisa* which you received with your study material.

### 5.1 Discussion classes

There are no discussion classes for this module.

### 5.2 Video conferences

There are no video conferences for this module.

## 6 MODULE SPECIFIC STUDY PLAN

Use your *My Studies @ Unisa* brochure for general time management and planning skills.

## 7 MODULE PRACTICAL WORK AND WORK INTEGRATED LEARNING

There are no practicals for this module.

## 8 ASSESSMENT

### 8.1 Assessment plan

Assignments are seen as part of the learning material for this module. As you do the assignment, study the texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning.

There are three assignments for this module:

- Assignment 01 is a written assignment which consists of one (1) question only.
- Assignment 02 is a multiple-choice assignment which consists of ten (10) questions.
- Assignment 03 is a self-evaluation assignment which consists of three (3) questions.

**PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Assignments Section of the University and not to lecturers.**

The compulsory assignments will count 20% towards your final mark for the module; 10% for the first assignment (Assignment 01) and 10% for the second assignment (Assignment 02).

Your final mark for the module will be a combination of your marks for the assignments and your examination mark. However, before your assignment marks will be taken into account in calculating your final mark, you have to obtain at least 40% in the examination. A student, who obtains 38% or 39% in the examination and has a combined assignment mark of 15, will therefore not pass the module because his or her mark is below the 40% subminimum, and his or her assignment marks will not be taken into account.

Both assignments count towards your final mark and must be submitted for evaluation. Students who submit the compulsory assignments in time (that is, before or on the closing dates for submission) will be admitted to the examination regardless of the marks they obtain for the assignment. In other words, a student who submits the compulsory assignments but obtained 0% will be allowed to sit for the examination. Such a student will, however, not have a year mark. Students who do not submit the compulsory assignments before or on the closing dates will not be admitted to write the examination. Please start and complete your assignments well in time. Do not let unexpected illness or other personal traumas stand between you and admission to the examination.

### 8.2. Due dates of assignments

The due dates for the submission of the assignments are as follows:

**First semester:**

Assignment 01: 7 March 2016 (**unique number: 785606**) Assignment 02: 29 March 2016 (**unique number: 711913**)

**Second semester:**

Assignment 01: 8 August 2016 (**unique number: 872730**) Assignment 02: 29 August 2016 (**unique number: 641867**)

**8.3 Submission of assignments**

Assignments may be submitted either by post **or** Mobile MCQ **or** electronically via *myUnisa*. Assignments may not be submitted by fax or e-mail. **IF YOU INTEND TO SUBMIT ASSIGNMENT 01 FOR THIS MODULE ELECTRONICALLY, PLEASE ENSURE THAT THE ASSIGNMENT IS SUBMITTED IN PDF FORMAT.**

For detailed information on assignments, please refer to the *My Studies @ Unisa* brochure, which you received with your study package.

To submit an assignment via *myUnisa*:

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the menu on the left-hand side of the screen.
- Click on the assignment number you wish to submit.
- Follow the instructions.

When submitting assignments electronically, please ensure that you submit the correct assignment for the correct module. Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

**8.4 Feedback on assignments**

You will receive the correct answers automatically for multiple-choice questions. For written assignments, markers will comment constructively on your work. However, feedback on compulsory assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments. The tutorial letters will be numbered 201, 202, etc.

As soon as you have received the feedback, please check your answers. The assignments and the feedback on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination.

**The feedback on the self-assessment assignment is included in this tutorial letter.** This will enable you to mark your assignment as soon as you have completed it.

## 8.5 Assignments

Assignments prescribed for the semester you have registered for are available at the end of this tutorial letter, namely:

Annexure A: First semester compulsory assignments.....	pages 11-15
Annexure B: Second semester compulsory assignments.....	pages 16-20
Annexure C: Self-evaluation assignment.....	pages 21-25

## 8.6 Plagiarism and referencing

Plagiarism is a serious offence and is harshly dealt with in most circumstances. Briefly stated, plagiarism is committed when you take someone else's ideas, thoughts, words, insights or information and present them as your own. Therefore, in any research, if you use someone else's ideas and so forth and you fail to acknowledge that person's work, you are committing plagiarism. Not giving credit to someone is as bad as pretending that the relevant ideas are your own.

It does not matter where you find the information. Whether you find it on a website, in a court case, legislation, articles or your study guide – you must ALWAYS give a reference to the relevant source. Failure to do so will be penalised and disciplinary action might be taken against you.

### 8.6.1 Forms of plagiarism

- The simplest form of plagiarism is where you literally cut and paste information from a source into your assignment. Usually this is taken from the internet, but you can also copy or write things word-for-word from a book or article. This is the easiest form of plagiarism to detect. If you want to use someone else's words directly, you need to quote them in the prescribed manner and indicate where you found the quote.
- Linked to the previous it is important to point out that too many quotes in your work is also a form of plagiarism. If more than about 15% of your work consists of quotes, you are not really indicating that you understood the material well enough to put it in your own words.
- Sometimes individuals try to hide the fact that they are copying word for word by changing a word here and there. This is still plagiarism and most plagiarism detecting software packages will pick it up.
- Another form of plagiarism is referencing a source used in someone else's work and pretending that you have read the original source. If you have not read the original source, your reference should be to the source you actually read. As a general rule, nothing should be in your footnotes that you have not personally read.
- Additionally, every source in your footnotes should be in your bibliography and every source in the bibliography should feature somewhere in your footnotes. It is dishonest to try to make the list of your sources more comprehensive than it really is.
- As a general rule, an essay, article, dissertation or thesis that contains NO footnotes is *prima facie* a case of plagiarism. By not adding any references, the author is claiming that he or she alone thought of EVERYTHING in that paper. This is highly unlikely! The original part of such an essay will in all likelihood be minimal. In legal research, we rely heavily on what the courts say (case law), what parliament decided (legislation), what the rules are/were in common law, what is done in other jurisdictions and so forth. ALL of these need to be properly referenced.
- Finally, handing in the same assignment or portfolio as another student will be regarded in a serious light. Even if students work together in a study group, they must hand in individual assignments or portfolios, showing that they have personally mastered the work.



As you can see, plagiarism is a very serious matter that impacts on the academic integrity of your work. It is as important in legal studies as it is in legal practice. In the next section, we provide a short version of the prescribed referencing style used by the College of Law.

### 8.6.2 Prescribed style of referencing

As we have said in the previous section, referencing is extremely important in order for work to have academic integrity. In the College of Law there is a prescribed manner for referencing sources. This format MUST be used for Assignment 02. This section is a summary of that prescribed reference style.

Note that there are two ways in which you can reference. The first option is to use the shortened version of a source throughout in your footnotes. In this case, you MUST attach a bibliography containing both the shortened and the full reference. The second option is to give the full reference the first time you refer to that source and thereafter the shortened version. The advantage of this option is that you need not add a bibliography, but the disadvantage is that you need to update your references if you change your footnotes.

The rule of thumb is that you must provide all the information necessary so that whoever needs to find that source, will be able to do so. Below is a summary of how you should refer to the various sources. We give both the long and the short versions – from this it should be clear why the short version is insufficient and that a bibliography should be added. The bibliography is always in the full version.

Examples:

SOURCE	FULL REFERENCE	SHORT VERSION
Books	Rowlands M <i>The philosopher at the end</i>	Rowlands <i>The philosopher at the end of the universe</i> 33
Chapter in book	Cover R “ Violence and the word” in Minow M, Ryan M and Sarat A (eds) <i>Narrative, violence and the law: The essays of Robert Cover</i> (1992) University of Michigan Press, Ann Arbor 203-238	Cover “Violence and the word” 204
Articles	Schlag P “ Law as the continuation of God by other means” (1997) <i>California Law Review</i> 427-440	Schlag 1997 <i>California LR</i> 434
Legislation	National Health Act 61 of 2003	None. Please see bullet 3 below.
Constitution	Constitution of the Republic of South Africa, 1996	None. Same applies as to legislation
Case law	<i>Hoffmann v South African Airways</i> 2001 (1) SA 1 (CC)	None. See bullet 4 below.
Internet	Mamoepa B “The Act on Higher Education” <a href="http://www.star.hsrb.ac.za/nche.html">http://www.star.hsrb.ac.za/nche.html</a> (Date of use: 16 November 1997)	Mamoepa <a href="http://www.star.hsrb.ac.za/nche.html">http://www.star.hsrb.ac.za/nche.html</a> (Date of use: 16 November 1997)

Please note:

- Your study guide is regarded as a book and should be referenced as such: Le Roux WB, Moodley I & Nkuna IL *Study guide for interpretation of statutes (IOS2601)* (2009) Unisa Press, Pretoria. Shortened version: Le Roux, Moodley & Nkuna Interpretation of statutes 43.
- There is no standard shortened form for legislation. If you need to refer more than once to legislation, quote the full reference the first time and add “hereinafter referred to as the Act/the Interpretation Act” between brackets.
- As with legislation there is no standard shortened form for case law. You should use the full reference the first time and then add “hereinafter referred to as the *Jaga* case” between brackets.
- If there is no prescribed style of reference for your source, you can choose how you will refer to it, but then use that style consistently throughout.

## 9 EXAMINATION

### 9.1 Examination period

This module is offered in a semester period of 15 weeks. This means that if you are registered for the first semester, you will write the examination in May/June 2016 and the supplementary examination will be written in October/November 2016. If you are registered for the second semester you will write the examination in October/November 2016 and the supplementary examination will be written in May/June 2017. During the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

### 9.2 Examination paper

At the end of each semester you will write **one two-hour paper** in Interpretation of Statutes (IOS2601). Further information about the format of the examination paper will be supplied in a later tutorial letter.

### 9.3 Previous examination papers

Previous examination papers are available to students on *myUnisa*. Please note however, that memorandums for previous examination papers **are not available** to students. You are encouraged not to rely too extensively on previous examination papers in your preparation as the format of the examination paper changes regularly.

## 10 OTHER ASSESSMENT METHODS

There are no other assessment methods for this module.

## 11 FREQUENTLY ASKED QUESTIONS

Please refer to the *MyStudies @ Unisa* brochure which contains an A-Z guide of the most relevant study information.

## **12 CONCLUSION**

Please contact us if you experience any problems with the module. We wish you success in your studies and trust that you find this course stimulating and useful.

Your lecturers

## **ANNEXURE A: FIRST SEMESTER COMPULSORY ASSIGNMENTS**

### **ASSIGNMENT 01 DUE DATE: 7 MARCH 2016**

#### **THE UNIQUE NUMBER FOR ASSIGNMENT 01 IS: 785606**

Assignment 01 will count 10% towards your final mark. You will receive individual comments on your work and a mark for the assignment. Your essay will be marked out of a total of 50 marks, which will then be calculated as a percentage (for example, 25 out of 50 = 50%). If you do not submit the assignment, you will **NOT** be admitted to the examination.

In *Matiso v Commanding Officer, Port Elizabeth Prison* 1994 (4) SA 592 (SE) at 597F, Froneman J points out the following.

“The interpretive notion of ascertaining ‘the intention of the Legislature’ does not apply in a system of judicial review based on the supremacy of the Constitution, for the simple reason that the Constitution is sovereign and not the Legislature. This means that both the purpose and method of statutory interpretation should be different from what it was before the commencement of the Constitution on 27 April 1994”.

Write an essay of between four (4) and (5) pages in which you discuss whether the statement of Froneman J reflects the interpretative trend in South Africa post 1994.

#### **Special instructions:**

- (a) Make use of headings and include at least the following :(1) Introduction; (2) The interpretative approach adopted by South African courts pre-1994 and the criticisms thereof; (3) The interpretative approach adopted by South African courts post 1994; (4) The impact of the Constitution (specifically section 39(2)) on statutory interpretation post 1994; (5) Critical evaluation and conclusion.
- (b) Make use of the model introduction supplied below to get your essay started.

#### **Model Introduction**

The promulgation of a supreme Constitution changed the approach of South African courts to statutory interpretation. In this essay I argue that the statement made by Froneman J at 597F in the case of *Matiso v Commanding Officer, Port Elizabeth Prison* 1994 (4) SA 592 (SE), as it applies to statutory interpretation is correct/incorrect(choose one option) post 1994.

**[50]**

**ASSIGNMENT 02****DUE DATE: 29 MARCH 2016****THE UNIQUE NUMBER FOR ASSIGNMENT 02 IS: 711913**

Assignment 02 will count 10% towards your final mark. If you do not submit the assignment, you will **NOT** be admitted to the examination.

**Instructions:**

1. Your answers must be completed on a Unisa mark-reading sheet.
2. The unique number must appear on the Unisa mark-reading sheet.
3. Only one of the statements is correct. You must therefore mark only one of the squares for each question. If you mark more than one square for a specific question, you will receive no mark for that answer.
4. Also bear in mind that some of the statements in a given question might be partially correct. However, you must select the one which is most accurate.

**Marking of the assignment:**

1. Each answer carries one mark.
2. No mark will be awarded for an incorrect answer.
3. No mark will be awarded for an unanswered question.
4. The assignment is not marked negatively, that is, marks will not be deducted for incorrect answers.

**Question 1**

Indicate which statement is **NOT** correct: The Constitution ...

- (1) is the supreme law of the Republic, any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.
- (2) was not adopted by Parliament but drafted by the Constitutional Assembly and certified by the Constitutional Court.
- (3) provides that a fundamental right in the Bill of Rights may be limited in terms of the law of general application.
- (4) defines old order legislation as any legislation enacted after the final Constitution took effect.

**Question 2**

The following are guidelines to constitutional interpretation. Please state which guideline is incorrect.

- (1) A supreme Constitution must be given a generous and purposive interpretation.
- (2) The spirit and tenor of the Constitution must be adhered to during interpretation.
- (3) The context of the Constitution is anchored by the values in the Constitution.
- (4) The principles of international human rights law must be applied during interpretation.

### Question 3

The judicial act of cutting out the offending part of a provision in a piece of legislation in order to rescue it from the fate of unconstitutionality is known as:

- (1) severance
- (2) reading in
- (3) substitution
- (4) reading down

### Question 4

In *Nourse v Van Heerden* 1999 (2) SACR 198 (W) the court found that ...

- (1) legislation can be abrogated by disuse.
- (2) legislation must be repealed by a competent legislature.
- (3) the case had to be decided in terms of the Choice of Termination of Pregnancy Act 92 of 1996.
- (4) the Abortion and Sterilisation Act 2 of 1975 was unconstitutional.

### Question 5

In terms of section 172 of the Constitution, the following courts may declare legislation unconstitutional:

- (1) The High Court, Supreme Court of Appeal or the Magistrate's Court.
- (2) The High Court, Supreme Court of Appeal or the Constitutional Court.
- (3) The High Court, Supreme Court of Appeal or the Chief's Court.
- (4) The High Court, Supreme Court of Appeal or the Small Claims Court.

### Question 6

Section 13 of the Interpretation Act 33 of 1957 states that legislation may commence ...

- (1) when it is published in the *Government Gazette* or on a date specified in the legislation or on an unspecified date still to be proclaimed by the President or the Premier of a province.
- (2) when it is published in the *Government Gazette* or on a date specified in the legislation or when it is published in a national newspaper.
- (3) when it is published in the *Government Gazette* or on an unspecified date still to be proclaimed by the Minister of Justice and Constitutional Development.
- (4) when it is published in the *Government Gazette* or on a date specified in the legislation or at the time when it becomes known throughout the country through mass information campaigns/sessions.

### Question 7

In terms of one of the five interrelated dimensions of interpretation, the initial meaning of the text entails that ...

- (1) words with a technical meaning must be given that specialised meaning.
- (2) an extraordinary meaning must be attached to the words.
- (3) the interpretation process ends with the reading of the legislation concerned.
- (4) words must be given their ordinary, inaccurate meaning.

**Question 8**

**According to the textualist viewpoint, courts will only use the secondary and tertiary aids to interpretation ...**

- (1) to determine the intention of the parliament
- (2) when the words in the legislation seem unclear and ambiguous
- (3) to determine the abstract purpose of the text
- (4) to determine the purpose of the parliament.

**Question 9**

**The presumption that legislation applies only to the future, is based on....**

- (1) the prevention of fair and reasonable results.
- (2) predictability and illegality.
- (3) unpredictability and legality.
- (4) the prevention of unfair and unreasonable results.

**Question 10**

**A directory statutory provision requires**

**r**

- (1) Exact compliance
- (2) Direct compliance
- (3) Must be strictly adhered to
- (4) Substantial compliance

## **ANNEXURE B: SECOND SEMESTER COMPULSORY ASSIGNMENTS**

### **ASSIGNMENT 01 DUE DATE: 8 AUGUST 2016**

#### **THE UNIQUE NUMBER FOR ASSIGNMENT 01 IS: 872730**

Assignment 01 will count 10% towards your final mark. You will receive individual comments on your work and a mark for the assignment. Your essay will be marked out of a total of 50 marks, which will then be calculated as a percentage (for example, 25 out of 50 = 50%). If you do not submit the assignment, you will **NOT** be admitted to the examination.

Write an essay of between four (4) and five (5) pages in which you discuss the following statement:

“Statutory interpretation as a discipline lacked a single theoretical starting point before 1994. As a result a hotchpotch of conflicting rules, principles and methods were applied. The case of *Public Carriers Association v Toll Road Concessionaries Pty (Ltd)* 1990 (1) SA 925 (AD), is an example of the application of such conflicting rules, principles and methods of statutory interpretation. However, the Constitution has now laid the theoretical debate to rest by prescribing a single theoretical starting point and methodology for the discipline as a whole” (see generally Botha CJ “Statutory Interpretation: An introduction for students” (2005) 47).

#### **Special instructions:**

(a) Make use of headings and include at least the following: (1) Introduction; (2) The facts of the *Public Carriers Association* case; (3) The orthodox text-based (literal) approach as followed by the court in *Public Carriers Association*; (4) The purposive (text-in-context) approach as alluded to by the court in *Public Carriers Association* (5) Section 39(2) and the purposive approach; (6) Critical evaluation and conclusion.

(b) Make use of the model introduction supplied below to get your essay started.

#### **Model Introduction**

In the *Public Carriers Association* judgment, the Appellate Division employed two different theories of statutory interpretation in order to arrive at a just conclusion. From the court’s judgment, it is evident that the orthodox text-based (literal) approach to statutory interpretation was more influential in assisting the court to reach a decision. However, post 1994 it has become apparent that the purposive approach to statutory interpretation (which is alluded to by the court in the *Public Carriers Association* judgment) has become more influential in the judgments of courts. In the following essay, I argue that in South Africa, the Constitution now prescribes the purposive (text-in-context) approach as the theoretical starting point for the interpretation of all statutes.

**[50]**



**ASSIGNMENT 02                    DUE DATE: 29 AUGUST 2016****THE UNIQUE NUMBER FOR ASSIGNMENT 02 IS:                    641867**

Assignment 02 will count 10% towards your final mark. If you do not submit the assignment, you will **NOT** be admitted to the examination.

**Instructions:**

1. Your answers must be completed on a Unisa mark-reading sheet.
2. The unique number must appear on the Unisa mark-reading sheet.
3. Only one of the statements is correct. You must therefore mark only one of the squares for each question. If you mark more than one square for a specific question, you will receive no mark for that answer.
4. Also bear in mind that some of the statements in a given question might be partially correct. However, you must select the one which is most accurate.

**Marking of the assignment:**

1. Each answer carries one mark.
2. No mark will be awarded for an incorrect answer.
3. No mark will be awarded for an unanswered question.
4. The assignment is not marked negatively, that is, marks will not be deducted for incorrect answers.

**Question 1****Promulgation refers to ...**

- (1) the different stages, readings and processes through which legislation has to pass before it is accepted and issued by the relevant legislative body.
- (2) the process by which the judiciary may modify or adapt the ordinary meaning of a legislative provision in such a way that it conforms to the purpose or aim of the legislation.
- (3) the process by which legislation commences and is formally put into operation.
- (4) the process whereby legislation which is alleged to be in conflict with the Constitution is reviewed or tested by the court.

**Question 2**

**The following court case is an example in which restrictive interpretation was applied:**

- (1) *Skinner v Palmer* 1919 WLD 39.
- (2) *Minister van Polisie v De Beer* 1970 (2) SA 712 T.
- (3) *Jaga v Donges* 1950 (4) SA 653 (A).
- (4) *Tefu v Minister of Justice* 1953 (2) SA 61 (T).

### Question 3

**When interpreting a piece of legislation, internal aids are used. Which of the aids mentioned below is not an internal aid of interpretation?**

- (1) The long title.
- (2) The definitions clause.
- (3) Commission reports.
- (4) The preamble.

### Question 4

**The following are semantic guidelines determining that a provision is directory. Identify the incorrect guideline.**

- (1) Permissive words such as “may” indicate discretion and will be interpreted as being directory, unless the purpose of the provision indicates otherwise.
- (2) Positive language suggests that the word is merely directory.
- (3) A word or words with an imperative character indicate a directory provision.
- (4) If the provision is formulated in flexible and vague terms, it is an indication that it is directory.

### Question 5

**Indicate which statement is NOT correct.**

**Followers of the contextual school claim the following:**

- (1) The court has a creative law-making function during statutory interpretation.
- (2) It is the task of the court to ensure that the legislative process has a just end.
- (3) Only when the court applies legislation does it become a real and complete, functional statute.
- (4) The court should interpret legislation only within the framework of the words in the legislation.

### Question 6

**Although they are published in the *Government Gazette*, the following documents do not constitute legislation:**

- (1) Legal notices, reports, draft Bills, discussion papers and proclamations.
- (2) Legal notices, reports, draft Bills, discussion papers and advertisements.
- (3) Legal notices, reports, draft Bills, discussion papers and the Constitution.
- (4) Legal notices, reports, draft Bills, discussion papers and regulations.

**Question 7**

In *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) the Constitutional Court stressed that a court is obliged to.....

- (1) develop the common law in view of the Constitution.
- (2) allow legislation to trump common law as it is usually the practice.
- (3) allow common law and legislation to operate side-by-side.
- (4) develop common law in view of applicable legislation.

**Question 8**

If an act was tabled on 13 January, agreed to by the parliament on 14 January, signed by the president on 21 February and published in the Government Gazette on 2 March, what would the date of promulgation be?

- (1) 21 February.
- (2) 2 March.
- (3) 13 January.
- (4) 14 January.

**Question 9**

The following are guidelines to constitutional interpretation. Please state which guideline is incorrect.

- (1) A supreme Constitution must be given a generous and purposive interpretation.
- (2) The spirit and tenor of the Constitution must be adhered to during interpretation.
- (3) The context of the Constitution is anchored by the values in the Constitution.
- (4) The principles of international human rights law must be applied during interpretation.

**Question 10**

**Comparative interpretation entails:**

- (1) That the travaux preparatoires of the constitution may be consulted as an external aid, but they cannot be the deciding factor.
- (2) A process during which the court examines international law and the constitutional decisions of foreign courts.
- (3) An acknowledgement of the importance of the role of the language of the constitutional text.
- (4) That the values and moral standards underpinning the Constitution must be taken into account throughout.

## ANNEXURE C: SELF-EVALUATION ASSIGNMENT ASSIGNMENT 03

**Please Note:** This assignment must not be submitted since it is a self-assessment assignment which does not count towards your final mark for this module.

### Question 1

- (a) LIST the main grounds (at least five) on which the textualist approach to interpretation may be criticised. (5)
  - (b) DEFINE what “interpretation by implication” means, and then BRIEFLY describe the five main grounds of extension by implication. (7)
  - (c) NAME five generally accepted methods of constitutional interpretation. (5) (d) DEFINE what the term “law” means as it is used in the Interpretation Act 33 of 1957. (5) (e) LIST six (6) factors that support judicial law-making. (6)
- [28]**

### 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 differences 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. (10)
- (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 had, the law as it was when

David committed his offence should be applied to the case. Provide a legal opinion on 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 20 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)
- [37]**  
**{100}**

### FEEDBACK ON ASSIGNMENT 03

You should mark your answers yourself for the self-assessment assignment. Do this by comparing your answer to the model answers supplied below. Make adjustments where necessary. Please contact us immediately if you experience any problems. The assignment was based on the May/June 2004 examination paper.

#### Question 1

- (a) Common law presumptions 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 depends on how clear the text may seem to a particular interpreter. The view that legislative texts are clear and unambiguous must be questioned in view of the existence of disciplines such as statutory interpretation. This approach leaves little room for the judicial law making function of the courts.
- (b) Interpretation by implication involves extending the textual meaning on the ground of a reasonable and essential implication, which is evident from the legislation. The five main grounds are *ex contrariis*, *ex consequentibus*, *ex accessorio eius de quo loquuntur*, *anatura ipsius rei*, and *ex correlativis*.
- (c) Grammatical interpretation; systematic (or contextual) interpretation; teleological (value-based) interpretation; historical interpretation; and comparative interpretation.
- (d) "Law" means any law, proclamation, ordinance, Act of parliament or other enactment having the force of law.
- (e) The reading-down principle; section 39(2) of the Constitution; the Bill of Rights; the Constitution is the supreme law of the land; the common-law presumption that the legislature does not intend futile, meaningless and nugatory legislation; and the independence of the judiciary.

#### 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* 1884 SAR 137, *Mathiba v Moschke* 1920 AD 354 the use of these debates was rejected by the courts.

However, in *Case v Minister of Safety and Security; Curtis v Minister of Safety and Security* 1996 (3) SA 617 (CC) a ministerial speech was used by the court as an aid to interpretation.

As regards commission reports, the courts seem amenable to accept them as an aid to interpretation, although these have 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 maxim *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 legislation 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 law-making function of the court does not mean that it takes over the legislature's function; that the legislature and the courts are partners in the law-making function; and 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 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 down 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 and an attempt should be made to reconcile the earlier and the subsequent statute. If such reconciliation is impossible, it is presumed that the latter 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.
- (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.

(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 indicates that the provision is directory; negative language on the other hand indicates 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 can 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.

(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 *R v Silas* 1959(4) SA 305 (A) 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 *R v Mazibuko* 1958 (4) SA 353 (A). 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 (in section 35(3)(n)) that the accused person has the right to the benefit of the least severe punishment if the prescribed punishment had 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 a worse 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 a 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 the *S v Kohler* 1979 (1) SA 861 (T). 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”. The 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 them. 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 a profit out of his club (it is also not open to all members of the public).