

Approved

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**THE UNIVERSITY OF THE SOUTH PACIFIC
UNIVERSITY EXTENSION**

**EXAMINATION PAPER
SEMESTER 2 2006**

COURSE TITLE: LAC03 - LEGAL INTERPRETATION	
DURATION OF EXAM:	THREE HOURS (3 HRS)
TOTAL NUMBER OF PAGES:	SEVEN (7)
MARK VALUE:	SIXTY (60)
NUMBER OF SECTIONS:	THREE (3)
NUMBER OF QUESTIONS:	THIRTY TWO (32)
NUMBER OF QUESTIONS TO BE ANSWERED	TWENTY SIX (26)
TOTAL MARKS	SIXTY (60)

INSTRUCTIONS

- 1. ANSWER ALL TEN [10] QUESTIONS IN PART I [10 marks]**
- 2. ANSWER ALL TEN [10] QUESTIONS IN PART II [20 marks]**
- 3. ANSWER ONLY SIX (6) QUESTIONS IN PART III [30 marks]**
- 4. CANDIDATES MAY BRING COPIES OF LEGISLATION WITH THEM TO THE EXAM**
- 5. CANDIDATES ARE NOT ALLOWED TO BRING THE COURSE BOOK OR COPIES OF CASES TO THE EXAM.**

PART 1 MULTIPLE CHOICE QUESTIONS [10 MARKS]

Answer all questions in this Part. Each question is worth one [1] mark.

1. Which one of the following is not part of the legislative process?
 - (a) Policy making
 - (b) Rule making
 - (c) Rule using
 - (d) Rule handling

2. The difference between a private statute and a public statute is that;
 - (a) a private statute is tabled in Parliament as a private members bill while a Public statute is tabled in Parliament by a government Minister.

 - (b) A public statute is addressed to the public at large while a private statute is addressed only to a section of the community.

 - (c) There is no difference between a private statute and a public statute.

 - (d). Private statutes can be challenged on constitutional grounds while private statutes cannot.

3. Which of the General rules of statutory interpretation is the first rule to be used to establish the intention of the legislature?
 - (a). The golden rule
 - (b). The mischief rule
 - (c). The standard rule
 - (d). The literal rule

4. How is the concept of “incorporation by reference” useful when it comes to drafting a legislation?
 - (a). It prevents repetition of words or sections;
 - (b). It keeps a statute operational although that statute has been repealed;
 - (c). It prevents the statute from being repealed;
 - (d). It prevents a statute from being amended.

5. Which of the statements below does not apply to presumptions?
 - (a). Presumptions are rules which although not stated in an Act form part of the Act;
 - (b). Presumptions are always present except if their operation is specifically excluded;
 - (c). Presumptions always apply therefore the draftsman need not repeat all the presumptions;
 - (d). If the legislature wants a presumption not to apply, it need not state it clearly in the Act.

6. The maxim "*Eiusdem generis*" is useful in statutory interpretation. It means:
 - (a). "of the same kind"
 - (b). "of the same category"
 - (c). "of a different kind"
 - (d). "list of items"

7. A standard contract has certain common features one of which is "recitals". Recitals in a contract deal with;
 - (a). the various parts of the contract;
 - (b). the background statements about expression of intent, e.g. reasons for the contract;
 - (c). promises and policies;
 - (d). the housekeeping provisions of the contract.

8. A testator is a person;
 - (a). who makes a will;
 - (b). who has died without leaving a will;
 - (c). who witnesses the signing of a will;
 - (d). who is a beneficiary under a will.

9. A deceased's property under a will is usually dealt with under that part of the will called the;
 - (a). Title and introductory clause;
 - (b). Recitals;
 - (c). Bequests or dispositive provisions
 - (d). Administration.

10. In interpreting a will, where two provisions are inconsistent, the courts will regard the latter provision as the true one. The reason behind this is that;
 - (a). it expresses the real intention of the testator;
 - (b). the first provision is not the intention of the testator;
 - (c). the court uses its discretion to select the latter provision;
 - (d). this provision was written at a latter stage than the first provision.

PART II SHORT PROBLEM QUESTIONS [20 marks]

Answer all questions in this part. Each question is worth Two [2] marks.

The Acts of Parliament Act No: 01 of 2000 (the Act) of the Republic of Emalus provides as follows:

Acts of Parliament Act No: 01 of 2000

To provide for the form and commencement of Acts of Parliament, for the procedure following the passing of Bills and for other purposes connected therewith.

“Minister” means the Minister for the time being responsible for justice

1. This Act shall apply with respect to the form of Acts of Parliament and the form of Bills shall correspond therewith.
2. (1) Every Act shall bear at its head a short title which shall include its number and the year in which it is enacted.

(2) The short title shall be followed by a long title describing the main provisions of the Act.

(3) Every Act may be cited by its short title and number without a statement to that effect in the Act.
3. The words of enactment shall extend to all sections of the Act and to any Schedules and other provisions contained therein.
4. (1) The President shall show that he assents to a Bill by signing on each copy prepared a statement to the effect that he assents to the Act.

(2) A Bill shall become an Act of Parliament on the signing by the President of the assent on the first of the copies.
5. Whenever the foregoing procedure purports to have been followed in relation to an Act, the assented copies shall be the original copies of the Act, and shall be conclusive evidence of the terms of the Act, its number and the date of assent.
6. Every Act shall be published as soon as practicable after the President's assent with -
(a) the omission of the statements contained in the original copies by virtue of the provisions of section 4 of this Act;

- (b) a statement of the date on which the President's assent was signified, and the date of commencement contained in the margin thereof.
7. (1) Subject to the provisions of this section, commencement of an Act shall be such date as is provided in or under the Act, or where no date is so provided, the date of its publication as notified in the Gazette.
- (2) Where an Act is made with retrospective effect the commencement of the Act shall be the date from which it is given or considered to be given such effect.
- (3) The provisions of subsection (2) shall not apply to an Act until there is notification in the Gazette as to the date of its publication and until such date is specified the Act shall be without effect.
8. An Act passed in any session of Parliament may be amended or repealed at any time, including in the same session.
9. An Act which has been amended may, with the authority of the Minister, be reprinted with all the necessary omissions, amendments and substitutions effected by the amending Act.

11. Does the Act binds the state? Explain your answer. **(2 marks)**
12. Mr. Nati Erumas is a Member of Parliament of the Republic of Emalus on the government side. With the support of some Members of Parliament he intends to introduce a Private Members bill in Parliament. If Mr. Nati does introduce his Private members bill, will the bill be covered by the Act? Explain your answer. **(2 marks)**
13. A USP law student sought your advice on the commencement date of the *Acts of Parliament Act No: 01 of 2006*, The Act does not expressly provide for a commencement date, when did the Act came into force? **(2 marks)**
14. Does this Act operate retrospectively? Explain your answer. **(2 marks)**
15. Is it possible for a future Act to operate retrospectively? Why or why not? **(2 marks)**
16. The Government of the Republic of Emalus thinks the *Acts of Parliament Act No: 01 of 2006* should be amended. The Government has sought your advice on when the Act could be amended. How would you advise the government. **(2 marks)**

17. Does this Act apply to the Constitution of the Republic of Emalus? Explain your answer. **(2 marks)**
18. Does this Act apply to orders, instruments or any other document made under an Act of Parliament? Explain your answer. **(2 marks)**
19. The *Copra Marketing Act No: 10 of 2006* has recently been passed by Parliament but it does not provide for a specific date of commencement. The signing of the assent of the President on the Act will be done next week. Does the Act commence under section 4 (2) of the *Acts of Parliament Act No: 01 of 2006*? Explain your answer. **(2 marks)**
20. Do you think an Act could be published in the official gazette of the Republic of Emalus without the signing of the assent of the President? If so why, or if not why not? **(2 marks)**

PART III SHORT ANSWER QUESTIONS [30 marks]

Answer any six (6) questions in this part. Each question is worth FIVE [5] marks

21. What is meant by the phrase “*ius dicere non ius facere*” ?
22. Why is it important to find out what the intention of the legislature is?
23. When interpreting a statute, when are words to be given their technical rather than their common meaning?
24. Briefly explain each of the following general rules of statutory interpretation;
 - (i). the literal rule;
 - (ii). the golden rule;
 - (iii). the mischief rule.
25. What do you understand by the phrase “incorporation by reference”?
26. Most or all the statutes passed by Parliament apply prospectively and not retrospectively. Explain what this means and why most statutes are not retrospective. You may support your answer with case law.
27. Presumptions exist in statutory interpretation. Name and explain three (3) presumptions.
28.
 - (i). What does the term extrinsic evidence mean?
 - (ii). Explain two (2) circumstances under which a court will admit extrinsic evidence.
29. What does it mean to say a will speaks from the date of death.
30. Maxims are useful in statutory interpretation. Explain what *statutes in pari materia* means?
31. When interpreting a statute the court may have to be aware of the directory and peremptory provisions. What is the difference between a directory provision and a peremptory provision and how do they affect statutory interpretation?
32. Briefly describe some of the common features found in a standard contract.