FEEDBACK TUTORIAL LETTER

2ND SEMESTER 2019

ASSIGNMENT 2

Law for Public Managers 1B

LPM521S
Feedback tutorial for assignment 2. Law for Public Managers.

Thank you all for submitting your assignments on time. Most of you performed fairly well in assignment two. I can only attribute this to your improved abilities to read and understand your assignment questions before attempting to answer them.

Below are my comments and/or observations pertaining to your second assignment.

1. Plagiarism

I have noticed that many of you still struggle to properly refer to your sources of info. Plagiarism is a serious academic offence and may incur some severe penalties. Please acknowledge all your sources of info. You are further requested to acquaint yourself with NUST’s rules and regulations pertaining to plagiarism.

2. Over-reliance on the study guide.

Please use other materials to answer your assignment questions. The study guide as the name implies, is a guide and does not contain all the necessary information for the subject. You are therefore requested to consult as much materials from the library and the internet as possible.

Having said this, I can only wish you the best in your upcoming exams.
Question 1

Give a word matching the phrases/sentences below.

1.1 The right to be heard by the court.  
1.2 _______________ is different from the passing or enactment of legislation 
1.3 The proper understanding of the legislature’s role must lead away from the concept of ‘intention’ in the subjective sense towards ‘intention’ in the objective sense.  
1.4 The Constitution is the supreme law of the land  
1.5 Chapter 3 of the Namibian Constitution is also known as___________________  
1.6 This contains a programme of action or a declaration of intent with regard to the principles contained in the particular statute.  
1.7 ____________ is an indigenous African concept and refers to a practical humanist disposition towards the world, and refers to compassion, tolerance and fairness, which is since time immemorial reflected in the African law. 
1.8 This latin term means “of the same kind”  
1.9 ________________ claims that the meaning of language can be ascertained and pinned down from its grammatical and semantic structure. (linguistic structuralism)  
1.10 This movement emphasizes the use of comprehensible language. It does not mean that the ideas are simplified, but the language used to communicate those ideas. 

Question 2

2.1 “Although courts and judges are primarily involved in the application of the law, they have also a secondary law-making function.” Briefly discuss the accuracy or lack thereof of this statement?  

2.2 The expression “value judgment” features prominently in the interpretation of statutes. What is value judgment and how is it relevant to the Namibian legal system? 

Question 3

(a) In terms of Ordinance 6 of 2006 it is an offence to fish in the Zambezi River during the month of December without the permission from the Ministry of Fisheries and Marine Resources. However, Mr. Jamal Erdogan, the owner of a local fish processing company decided to go fishing in the Zambezi River during the closed season of December and decided to do so by tossing dynamites in the water. Local fisheries inspectors heard the loud explosions and phoned the police in Katima Mulilo and Mr. Erdogan was swiftly arrested for illegal fishing during the closed season. In terms of the said Ordinance, the prescribed penalty at the time of the offence was a
fine of N$ 9000 or failing payment thereof, imprisonment of 12 months. As a result of the fact that illegal fishing had become an endemic problem in the Zambezi Region, the Minister of Fisheries and Marine Resources, before Mr. Erdogan’s trial, amends the said Ordinance by notice in the Government Gazette, increasing the said penalty to N$ 10,000 or failing payment of the said fine, 18 months ‘imprisonment. In your analysis, which penalty will Mr. Erdogan receive should he be found guilty of hunting at night? Please give substantive reasons for your answer. (4)

(b) Would your answer in (a) be different if the said Ordinance is amended before the trial to impose a penalty of N$, 4000 or failing payment of the said fine, 6 months’ imprisonment? (3)

Question 4

4.1 When must the courts modify the legislative text and what type of modification be used under each possibility? (6)

Question 5

5.1 The presumption that legislation does not contain futile or nugatory provisions. Explain the said statement. (6)

5.2 With examples, what do you understand by the Latin term “Cessante ratione legis ipsa lex”? (2)

5.3 Briefly explain what the phrase “Modification of the meaning is necessary” entails. (5)

Total marks (50)
Assignment 2

Question 1

Give a word or phrase (or complete the sentence), in the context of definitions and terms relevant to Law for Public Managers.

1.11 Audi partem rule
1.12 Promulgation
1.13 Hermeneutics
1.14 Constitutional supremacy
1.15 Bill of Rights or Fundamental Rights and freedoms
1.16 Preamble
1.17 Ubuntu
1.18 Eusidem generis
1.19 Linguistic structuralism
1.20 Plain Language Movement

Question 2

2.1 “Although courts and judges are primarily involved in the application of the law, they have also a secondary law-making function.” Briefly discuss the accuracy or lack thereof of this statement? (7)

The foundation of this presumption is an acknowledgement that legislation has a functional purpose and object: Unless the contrary is clear, it is presumed that the legislature does not intend which is futile or nugatory. (1) This presumption forms the basis of the most important principle of interpretation” namely that the court has to determine the purpose of the legislation and give effect to it. (1). The presumption is also applied where a provision is capable of two meanings. (1) Then the meaning which is more consistent with the purpose of the legislation has to be applied. (1). The presumption also applies to sub-ordinate legislation. Thus an interpretation that will not leave sub-ordinate legislation invalid (ultra vires), but rather valid (intra vires), should be used. (1).

In addition the courts should also strive to interpret a legislation in such a way that evasion of its provisions is prevented. Put differently, an omission should be avoided. (1) The presumption is also supported by the principles of constitutional interpretation. Where a provision is unconstitutional because it is conflict with the Constitution and the said provision will stand if interpreted restrictively then such restrictive interpretation shall be used instead of scrapping the provision entirely. (1)
2.2 The expression “value judgment” features prominently in the interpretation of statutes. What is value judgment and how is it relevant to the Namibian legal system?

A value judgment (or value judgement) is a judgment of the rightness or wrongness of something or someone, or of the usefulness of something or someone, based on a comparison or other relativity. (1) As a generalization, a value judgment can refer to a judgment based upon a particular set of values or on a particular value system. (1)

The preamble to the Namibian Constitution wants Namibia to be a constitutional state:

“Whereas the said rights are most effectively maintained and protected in a democratic society, where the government is operating under a sovereign constitution and a free and independent judiciary.” (1)

As the supreme law of the land, the constitution not only deals with the institutional structures of government and formal checks on state power, but is first and foremost a value laden document. (1). It is underpinned by a number of express and implied values and norms. (1). The spirit of the Bill of Rights is a reflection of these fundamental principles. (1). Apart from the Constitution itself, these values are also found in the principles of international human rights law and foreign case law dealing with similar constitutions, the African concept of Ubuntu and the Roman Dutch law heritage. (1)

Question 3

(a) In terms of Ordinance 6 of 2006 it is an offence to fish in the Zambezi River during the month of December without the permission from the Ministry of Fisheries and Marine Resources. However, Mr. Jamal Erdogan, the owner of a local fish processing company decided to go fishing in the Zambezi River during the closed season of December and decided to do so by tossing dynamites in the water. Local fisheries inspectors heard the loud explosions and phoned the police in Katima Mulilo and Mr. Erdogan was swiftly arrested for illegal fishing during the closed season. In terms of the said Ordinance, the prescribed penalty at the time of the offence was a fine of N$ 9000 or failing payment thereof, imprisonment of 12 months. As a result of the fact that illegal fishing had become an endemic problem in the Zambezi Region, the Minister of Fisheries and Marine Resources, before Mr. Erdogan’s trial, amends the said Ordinance by notice in the Government Gazette, increasing the said penalty to N$ 10,000 or failing payment of the said fine, 18 months imprisonment. In your analysis, which penalty will Mr. Erdogan receive should he be found guilty of hunting at night? Please give substantive reasons for your answer.

The penalty in place when the crime was committed i.e N$9000 or 6 months imprisonment. (1). The presumption that legislation applies to future matters only will apply. (1). This is also entrenched in the Namibian Constitution if penalties are involved, namely art. 12 (3). (1) No penalty will be imposed exceeding that which was applicable at the time when the offence was committed. (1)
(b) Would your answer in (a) be different if the said Ordinance is amended before the trial to impose a penalty of N$, 4000 or failing payment of the said fine, 6 months’ imprisonment? As the change is now to the benefit of the accused as the penalty has decreased. (1) The presumption will not apply nor the Constitution. (1). Therefore he will get the reduced penalty of N$3000 or 3 months imprisonment. (1)

Question 4

4.1 When must the courts modify the legislative text and what type of modification be used under each possibility?

The text of the legislation stipulates more than the purpose. (1). Will use restrictive interpretation. (1). The text of the legislation stipulates less than the purpose. (1). Will use extensive interpretation (1). The text is unconstitutional. (1). Will use reading-in, reading-down reading-up or severance. (1)

Question 5

5.1 The presumption that legislation does not contain futile or nugatory provisions. Explain the said statement.

The foundation of this presumption is an acknowledgement that legislation has a functional purpose and object. (1). Unless the contrary is clear, it is presumed that the legislature does not intend which is futile or nugatory. (1) This presumption forms the basis of the most important principle of interpretation; namely that the court has to determine the purpose of legislation and give effect to it. (1). The presumption also applies to sub-ordinate legislation. Thus an interpretation that will not leave a subordinate legislation invalid (ultra vires), but rather valid (intra vires). Should be used. (1) In addition, the courts should also strive to interpret a legislation in such a way that evasion of its provisions is prevented. In other words, an omission should be avoided. (1) This presumption is also supported by the principles of constitutional interpretation. Where a provision is unconstitutional because it is in conflict with the Constitution and the said provision will stand if interpreted restrictively then restrictive interpretation shall be used instead of scrapping the provision entirely. (1)

5.2 What do you understand by the Latin term “Cessante ratione legis ipsa lex”?

"Cessante ratione legis, cessat et ipsa lex - the reason for a law ceasing, the law itself ceases - is one of the most ancient maxims known to our law and it is constantly followed by our courts. (1) This means that no law can survive the reason on which it is founded. It needs no statute to change it; it abrogates itself. (1)

5.3 Briefly explain what the phrase “Modification of the meaning is necessary” entails.
Modification of the meaning is necessary if the text has stipulated either more or less than its purpose, or when the initial meaning of the text is in conflict with the Constitution. (1) Thus the courts may modify the meaning if it appears that the initial ordinary meaning of the text will not give effect to the aim and purpose of the legislation. (1) Ambiguity, vagueness and absurdity are the indicators that the initial textual meaning should be modified. (1). The purpose of the legislation constitutes the qualifier (1) even if the text, context and constitution are compatible with the modified meaning, will the court be entitled to deviate from the initial textual meaning. (1)