



UNIVERSITY OF THE WESTERN CAPE

SUPPLEMENTARY EXAMINATION AND
SPECIAL EXAMINATION

NOVEMBER 2013: MEMORANDUM

MODULE NAME : LEGAL INTERPRETATION

MODULE CODE : LEG221

DURATION : 2 HOURS

MARKS : 40

LECTURER(S) INSTRUCTIONS TO STUDENTS:

- (1) Answer all the questions
- (2) Refer in detail to the provisions of the Constitution, 1996 and the Interpretation Act, 157
- (3) Refer to case law where relevant

QUESTION 1

Write a case note of between one and one and a half pages in which you discuss the judgment(s) in *Jaga v Donges* as an example of the difference between textual (grammatical) and contextual (purposive) interpretation under the common law. (8)

This is a suggested answer only: Mr Donges (the Minister of the Interior) ordered the deportation of Jaga and Bhana from South Africa in terms of a provision which allows the deportation of any person "who has been sentenced to imprisonment". Mr Jaga and Mr Bhana were convicted and sentenced to three months imprisonment *suspended for three years*. Did the phrase "sentence to imprisonment" include a suspended sentence like this? The TPD answered the question in the affirmative and confirmed the deportation. The majority of the AD dismissed an appeal against this decision and confirmed the deportation. The minority upheld the appeal. The majority applied what they called the ordinary meaning of the term "imprisonment" and concluded that this included suspended sentences. The majority analysed the linguistic formulation and semantic meaning of "sentenced to" and "imprisonment" and based most of its reasoning on the grammatical meaning of the sentence or phrase. Schreiner JA (the minority) did not think that it was helpful to try and determine the validity of the deportation by arguing about the dictionary or grammatical meaning of the language used in the section. According to Schreiner JA the phrase "sentence to imprisonment" was ambiguous and did not have a

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