QUESTION 1

In Holomisa v Argus Newspapers Ltd 1996 (2) SA 588 (W) the court held:

‘The Constitution has changed the ‘context’ of all legal thought and decision-making in South Africa”

With regard to our new constitutional order and the influence of the supreme Constitution in our interpretation process, discuss what you understand by the concept of a ‘generous and purposive approach’ to constitutional interpretation referring to relevant sections of the Constitution that have influenced constitutional interpretation. Relevant case law must be referred to within your discussion.

(25 marks)
QUESTION 2

In *S v Mhlungu* 1995 (3) SA 867 (CC) at 873D, Mohamed J held:

`South African statutory law, prior to the enactment of the Constitution, is replete with the most disgraceful and offensive legislation which discriminates against South Africans of colour and criminalises, arbitrarily and purely on the grounds of race and colour, perfectly innocuous acts of life and living by such citizens`.

Discuss this passage in the context of the presumption that the Legislature does not intend to be unreasonable or create injustice. Use relevant case law.

(10 marks)

QUESTION 3

Jack Spratt and his friends are out partying one Friday night. After their party at Zoned Out they decide to visit a pub for a night cap. Unbeknown to them they forget to switch off the car lights. When they come out of the pub and try to drive away, the car goes for a little while and then stalls in the middle of the road. Jack who does not have a driver’s licence is told by his friends to sit behind the wheel of the car and steer the car to the side of the road whilst the rest of them will push the car. Jack does so as is requested by his friends. While proceeding in this fashion down the street, an on-duty traffic officer approaches the car, and demands to see Jack’s driver's licence. When Jack indicates that he does not have one, and that he is not technically driving, he is arrested in terms of section 19 of the Traffic Offences and Liabilities Act 13 of 2010, which provides that it is a criminal offence to drive a vehicle without an appropriate driver's licence. Advise Jack, whether or not he has committed an offence if:

(a) the literal theory of interpretation was applied when interpreting section 19 of the Traffic Offences and Liabilities Act 13 of 2010; and whether the outcome would be different if

(b) the mischief rule was used to interpret section 19 of the Traffic Offences and Liabilities Act 13 of 2010, by giving a **brief outline** of how the application of this rule is applied in SA.

(25 marks)