INSTRUCTIONS

1. This paper consists of FIVE (5) pages. Please make sure you have all of them.
2. Please answer all questions.
3. Section A and Section B must be answered in separate answer booklets and each booklet must be clearly marked with the appropriate section on the outside cover.
4. Students are requested, in their own interests, to write legibly.
5. You must hand in this entire question paper with your answer book(s).
SECTION A

(MS A. BEHARI)

Please answer all questions in this section in a separate booklet

QUESTION 1

Mr Jacob Dlamini goes out to a party one evening with his friends. Jacob has been drinking during the party and goes home with Cyril, who has not had a single drink of alcohol all night. While Cyril is driving, the car stalls and the engine dies because they had left the lights on while at the party. His friends tell Jacob to sit behind the wheel whilst the rest of them push the car. Jacob does so. While proceeding in this fashion down the street, a traffic officer approaches the car, and demands that Jacob take a breathalyser test to prove that he has not been drinking and driving. The breathalyser test indicates that Jacob is highly intoxicated. The traffic officer arrests Jacob on the basis that he has been drinking while driving and as such, has contravened the National Road Traffic Act 93 of 1996. Section 61 of the National Road Traffic Act states that "no person on a public road shall occupy a driver's seat of a motor vehicle, the engine of which is running, while under the influence of intoxicating liquor or a drug having a narcotic effect."

Advise Jacob, whether or not he has committed an offence. Apply the literal and mischief rules of interpretation, with reference to relevant case law.

[10 x 2 = 20 marks]

[TOTAL Q1: 20 MARKS]
QUESTION 2

2.1. Explain how the values of the Constitution of the Republic of South Africa 1996 influenced the process of statutory interpretation in the case of *Dawood v Minister of Home Affairs* 2000 (3) SA 936 (CC).

[Total Q2.1: 10 Marks]

2.2. Explain the corrective technique of interpretation of law known as "reading up." Refer to relevant case law in your answer.

[Total Q2.2: 5 marks]

[TOTAL Q2: 15 MARKS]

[TOTAL SECTION A: 35 MARKS]
QUESTION 3

On 2 July 2002, Joshua and Miranda got married which marriage was solemnised by a minister of the Methodist Church (a duly designated marriage officer) on a private beach in Umhlanga Rocks, Durban. Section 29(2) of the Marriages Act 25 of 1967 states that "[a] marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors and in the presence of the parties themselves and at least two competent witnesses". In breach of the provisions of section 29(2) of the Marriage Act, the entire ceremony took place on the beach in the open, that is to say, it did not take place in a "private dwelling-house". The "marriage" has subsequently turned sour, and Joshua approached the court with an application to have the purported marriage declared null and void from the start (null and void ab initio). He claimed that no marriage came into being as the requirements of the Marriages Act were not complied with. As Joshua’s attorney you need to give him advice on the following:

What role do jurisprudential guidelines play when a court has to determine whether a statutory provision is directory or peremptory. In the course of your answer you must distinguish between a peremptory and a directory provision.

[TOTAL Q3: 15 MARKS]
QUESTION 4

In the *Matiso v Commanding Officer, PE Prison* 1994 (4) SA 592 (SE) the court held that "the judicial interpreters of statutes can no longer deny their own creative role in the process, but neither can they claim an unrestricted power of creative judicial law-making".

If a judge is neither a passive agent for the legislature, nor an active law-maker in his or her own right, how should the relationship between the court and the legislature be described? In light of the above quote fully discuss the law making functions of the courts.

[TOTAL Q4: 10 MARKS]

QUESTION 5

Explain the principle applicable to restrictive interpretation in the case of the "*eiusdum generis rule*" (meaning of the "same kind").

[TOTAL Q5: 10 MARKS]

[TOTAL SECTION B: 35 MARKS]

TOTAL FOR PAPER: 70 MARKS