INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of SIX (6) pages. Please make sure that you have them all.
3. Answer each section in a separate book.
4. Allocation of time is 1 hour per section.
5. Answer either question 1 OR question 2 in Section 1.
6. Answer all questions in Section 2 and in Section 3.
SECTION 1: THE LEGAL PROFESSION

Answer either question 1 or question 2.

Question one

Discuss the concept of “fit and properness” as it applies to attorneys and advocates in South Africa.

(Your answer should include an explanation of the meaning of ‘fit and properness’ and a discussion of how it is assessed by the court. You should consider the relevance of a person’s private life and personal morality to the question; as well as whether a criminal conviction will automatically show that the person is not fit and proper. You should also indicate the consequences of being found not ‘fit and proper’. You should refer to relevant case law.)

[50 Marks]

OR

Question two

The legal profession plays an important role in ensuring access to justice for citizens. Explain the concept of ‘access to justice,’ and the role the legal profession plays in ensuring access to justice for citizens. Pay particular attention to explaining and discussing the means that currently exist in South Africa to ensure that the poor, the vulnerable, the elderly and unemployed have access to justice, including those measures introduced by government. Include in your answer your own views on how access to justice could be improved in South Africa.

[50 Marks]
TOTAL SECTION 1: 50 MARKS

SECTION 2: HIV/AIDS

Question three:

Angela is a woman from Pietermaritzburg who tested positive for HIV in 2002. She subsequently had sexual relationships with two male persons. She did not disclose her HIV status to them, nor did she ask them to use condoms. Neither partner requested information on her HIV status or offered to use a condom during sex. The first relationship ended in 2005 and the second in 2011.

Both men later learned of Angela’s HIV status, when she disclosed this information on the popular talk show Free Talk. Being work colleagues they discussed the matter and decided to lay criminal charges against her to ‘stop predatory women like that infecting nice guys’. She was subsequently charged with Assault GBH and Attempted Murder even though both men tested HIV-negative.

You are a junior prosecutor at the court. The matter is already receiving national attention in the media and the senior prosecutor is nervous about the prospects of success. She has asked you to prepare a legal opinion on the following questions.

3.1 Are the charges of Assault GBH and Attempted Murder appropriate in the circumstances?  
[20 marks]

3.2 Is there any relevant South African case law on point and if so, what are the key principles that have emerged from such case law?  
[10 marks]
3.3 Are there any defences that could be raised by Angela? List them.  

[5 marks]

3.4 Can the prosecutor make an application to court to have Angela tested for HIV?  

[15 marks]

[Total for section 2: 50 marks]

SECTION 3: CONTRACT/PROPERTY LAW

Question four

4.1 Woody is a 16 year old minor who inherits R150 000 from his deceased grandmother. Woody is keen to use the money to purchase a motor vehicle which he hopes to drive as soon as he gets his licence. Woody’s father, Allen, subsequently uses a portion the money to purchase a second hand motor vehicle on Woody’s behalf from his friend, Derrick, for R 80 000. It transpires that the true market value of the motor vehicle is R 40 000 and that the motor vehicle itself requires several expensive repairs. Woody wants to know if he is bound by the contract that his father concluded on his behalf. If so, can he subsequently set the contract aside? Advise him on the legal position.  

[10 marks]

4.2 Todd has recently found employment in Scottsville, Pietermaritzburg and he is looking to purchase an inexpensive house that is situated close to work. Todd sees an advert in the newspaper that shows that a particular house on Ridge Road, Scottsville is for sale for the price of R 800 000. Todd is happy about the fact that the house is close to his workplace and that it is also situated in close proximity to the local mall. Moreover, the house is also within his price range. Todd goes to meet the owner, Jordaan, and asks him whether the house is situated in a good area. Jordaan is aware that there have been a number of burglaries in the area but, as he is keen to sell the house, he replies ‘Yes, the area is a good one’. Todd subsequently agrees to purchase the house from Jordaan. Two weeks later, Todd receives an offer to purchase another
house in the same area for the price of R 600 000. Todd subsequently tells Jordaan that he is rescinding their contract on the basis of the misrepresentation.

Can Todd rescind the contract on this basis? Explain fully with reference to applicable case law.

[10 marks]

[Total Q4: 20 marks]

Question Five

Explain whether a valid contract has come into existence between Edward and Mangi in the cases that follow. Give reasons for your answers by referring to the requirements for a valid offer and acceptance:

5.1 Mangi telephones Edward and makes an offer to Edward in terms of which Edward is requested to build a house for Mangi. Edward rejects the offer since he is too busy to take on any more contracts. Two days later Edward telephones Mangi and informs him that he has reconsidered the offer and is willing to build a house for Mangi.

[5 marks]

5.2 Mangi telephones Edward and makes an offer to Edward in terms of which Edward is requested to build a house for Mangi. Edward informs Mangi that he will phone him once he has had a chance to consider it. Two days later Edward telephones Mangi and accepts the offer. While speaking to Mangi, there is so much noise on the telephone line that Mangi is unable to hear what Edward says in response.

[5 marks]
Question six

Discuss the following terms with reference to relevant legal authority.

6.1 occupatio [5 marks]
6.2 accessio [5 marks]
6.3 prescription [5 marks]
6.4 possession [5 marks]

[Total Q6: 20 marks]

[TOTAL SECTION 3: 50 MARKS]

TOTAL FOR PAPER: 150 MARKS