INSTRUCTIONS FOR SECTION A AND B

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of FIVE (5) pages. Please make sure you have them all.
3. Answer ONE question from each section, TWO questions in total.
4. Please use SEPARATE BOOKLETS for each section.
SECTION A - MS V. BALOGUN

QUESTION 1

(a) Mohammed is a 36 year-old military officer from Damascus (Syria) who is seeking asylum in South Africa. Syria is in the midst of civil war and it is estimated that 19 percent of its population has been internally displaced. The UN High Commission for refugees and the Human Rights Commission, has warned the United Nations Security Council that without an end to the war soon, over 22.8 million Syrians could be in need of humanitarian help by the end of 2014.

In an interview, Mohammed described being in charge of a first battalion which launched a bombardment attack on a neighbourhood in Aleppo 6 months ago, because he had received intelligence that armed rebels were hiding out in the houses and had been instructed to ‘attack the people into giving them up’. Most of the civilian housing was destroyed and over 30 civilians, including 18 children and a new-born baby were brutally killed. Those who survived were forced to leave the area without any provision for water, food, sanitation, medicine, or shelter, and the dam which provided drinking water was destroyed by cluster bombs. This was the last straw for Mohammed. He claims that he suffered a moral crisis at the injustice and escaped the day after the action, and reached rebel-held areas in the North of the country. He immediately volunteered for a group affiliated with the Syrian Islamic Front (SIF) and was given a task of securing access to humanitarian agencies including the South African Adventist and Relief Development Agency (ARDA) delivering food, water and medicines to the areas under the control of the SIF. He spent 5 months with foreign aid agencies operating from across the border. As the violence spiralled out of control, the SIF encouraged him to seek asylum in South Africa. “You will be safe in South Africa, and you will be in a better position to assist and gather better support abroad, besides they will not look in Africa for you!” He claims to be afraid of being targeted as a deserter and a traitor - “I cannot go back now - they will surely torture and kill me” he said. Mohammed states that he believes in the right of the Syrian people to resist oppression - that they are engaged in a legitimate struggle against authoritarian rule and that his assistance seeks to support their human rights. He is worried that without humanitarian aid, the people will be massacred by Syrian forces, the Hizbullah elite troops, and the Iraqi Shiite militias to name a few. He seeks to inform the world about the atrocities committed against civilians through a public campaign and to help foreign humanitarian agencies in planning the delivery of humanitarian aid to the region.
The Syrian government has sent a memo to the South African government explaining that Mohammed is a threat to South Africa and therefore a terrorist. The letter explained that Mohammed was lying and he is in fact a member of the notorious Jabhat al-Nusra. They request that Mohammed be extradited back to Syria immediately. They expressly warned ARDA that foreign aid given through Mohammed is being diverted to strengthen terrorism and extremist actions against Syria and its civilian population and the network stretches beyond Syria to neighbouring countries such as Turkey, Jordan and Egypt.

The Syrian government strongly discourage South Africa against granting Mohammed asylum, and they warn that granting him such protection is tantamount to intervention in Syria’s sovereign affairs and may bring the conflict to South Africa even though it is approximately 6665km away from Syria. South African intelligence states that although Mohammed assisted humanitarian aid agencies on the ground, there was no evidence linking Mohammed to Jabha al-Nusra as alleged by Syria. It would however continue to conduct further investigation should Mohammed be granted asylum. A few days later, there were reports that more deserters have been caught and shot in the head (execution style) and buried in a mass grave in Syria. Mohammed is more troubled than ever and he wants his asylum application to be processed by the Home Affairs Office in Pretoria urgently.

You work as a pro bono legal adviser based in one of the Legal Aid advice centres in Pretoria. With reference to relevant authority (case law, legislation (e.g. law on the implementation of the 1951 Convention) or relevant treaty (e.g. the 1951 Convention), draft a memo addressing the following questions:

1. Is Mohammed a refugee according to the 1951 Convention on the Status of Refugees? 
[6 marks]

2. Can South Africa grant Mohammed asylum and would he qualify as a refugee in South African law? 
[12 marks]

3. Can South Africa send Mohammed back to Syria based on the allegations made by the Syrian government? 
[7 marks]
QUESTION 2

Discuss the opportunities and the challenges of using a judicare model or referral system to secure access to justice for South Africans.

In your answer, highlight the role(s) played by Legal Aid, Centre for Community Justice and Development, and Campus Law Clinics.

[25 marks]

[TOTAL SECTION A: 25 MARKS]
SECTION B - PROF SV HOCTOR

QUESTION 3
In the context of a discussion of the legal framework underlying the office of the Public Protector, explain the role of this office in ensuring access to justice.

[25 marks]

OR

QUESTION 4
Discuss the protection of socio-economic rights in South Africa, in the context of access to justice. Make reference to decided case law where appropriate.

[25 marks]

[TOTAL SECTION B: 25 MARKS]

[TOTAL FOR PAPER: 50 MARKS]