INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.

2. Students must answer all questions in Section A and B. They must answer 1 question from Section C.

3. This paper consists of SIX (6) pages. Please check that you have them all.

4. Please answer Section A, Section B and choose only one question on Section C.

5. All exam question papers must be returned. Please place your exam paper in your answer book and hand it in when you have completed the exam.

6. Please ensure that your seat number and student number are written clearly on your answer book.
SECTION A

QUESTION 1

Please note: Students must write down the correct answers to the following multiple choice questions in their exam answer books. Each question is worth two (2) marks.

1.1 Identify the correct statement:

(i) The Universal Declaration of Human Rights (UDHR) was the first international document describing fundamental human rights however it is not a binding international convention.

(ii) The UDHR was the first binding international convention on human rights.

(iii) The UDHR only deals with civil and political rights.

(iv) The UDHR was the first statement issued by the United Nations (UN) on human rights.

1.2 Equality is both a right and a value in our Constitution. Equality as a value can be used as a tool of interpretation and it sets positive standards that must be met.

True or False

1.3 The nature of the violator in a constitutional matter is a consideration that the courts must take into account when considering an appropriate remedy.

True or False

1.4 Section 35(2)(e) of the Constitution protects the right of detained people to:

(i) Appropriate medical treatment;
(ii) Limited medical treatment;
(iii) Basic medical treatment; or

1.5 Severance can only occur if you can sever the ‘good from the bad’ in the legislation.

True or False
1.6 Section 172 of the Constitution of the Republic of South Africa provides that on making a finding that a law is inconsistent with the Constitution the court may make a declaration of invalidity.

True or False

1.7 Section 9 of the Bill of Rights states ‘discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair’. This section can be termed as an internal limitation on the right.

True or False

1.8 A policy prohibiting prisoners from voting is a law of general application.

True or False

1.9 The Bill of Rights extends beyond South Africa’s borders protecting South African citizens travelling or living elsewhere.

True or False

1.10 Select the incorrect statement.

(i) An organ of state is bound by the Bill of Rights;
(ii) A vertical application of the Bill of Rights refers to when the Bill of Rights binds the state;
(iii) Courts must act in accordance with section 172 of the Constitution when using an indirect application of the Bill of Rights; or
(iv) In a horizontal application of the Bill of Rights the court must consider whether private actors are bound by the Bill of Rights.

[TOTAL FOR SECTION A: 20 MARKS]
The following facts are partially fictitious however it must be assumed that they are true for the purposes of this question.

GI Jane is 19 years old. She wishes to be a fighter pilot. She applies to the air-force for a position at its base in Pretoria. On her application form she notices that it provides detailed information on its policy regarding soldiers or pilots with HIV. This form states that the ‘South African National Defence Force (SANDF) currently has a recruitment policy which provides that there will not be any HIV testing policy when persons are applying to be enlisted in the army. All persons going through the recruitment process will however have to undergo fitness testing at their closest military base. If a person is selected for enlistment they will be required to undergo HIV and CD4 cell count testing at a military hospital. Any recruit with a CD4 cell count of less than 1000 will be prohibited from being deployed in active combat outside of South Africa’s borders’. The form explains further that the reasons for excluding soldiers with HIV from active combat are as follows:

(i) In the field it is very difficult to ensure that soldiers will have access to the high quality of medical care that they need as persons with compromised immune systems;
(ii) Supplying ARV drugs to soldiers in remote places is extremely difficult and it may result in breaks in their treatment which puts them at risk of developing AIDS;
(iii) It is an internationally accepted norm that HIV positive persons are not suited to the extreme physical demands of combat; and
(iv) Soldiers frequently need to donate blood to others who are wounded, HIV positive persons are excluded from donating blood and this creates logistical problems when trying to secure sufficient safe blood for the field.

GI Jane knows that she is HIV positive and that her CD4 cell count is approximately 945. She is very disappointed as she knows that she will not be able to fulfil her dream of defending democracy in other parts of Africa. She wonders if the SANDF is discriminating against persons with HIV. She googles ‘help with HIV and the law’ and finds an NGO called the AIDS Law Project (ALP). You are a candidate attorney working at the ALP. Advise GI Jane on the possibility of using the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 to challenge this policy of the SANDF. Explain to GI Jane:
(a) Why the Promotion of Equality and Prevention of Unfair Discrimination Act could be used to challenge the policy of excluding certain HIV positive persons from active combat.

[10 Marks]

(b) How the test for unfair discrimination works in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act and her prospects of success in this specific instance?

[10 marks]

(c) The possible remedies she could ask the Equality Court to award if she was successful.

[10 marks]

[TOTAL FOR SECTION B: 30 MARKS]

SECTION C

Please answer either question 3 or question 4.

QUESTION 3

With reference to decided cases discuss the right of access to health care services in terms of s 27(1) and (2) of the Constitution of the Republic of South Africa, 1996.

[20 marks]
OR

QUESTION 4

Write a note in which you explain how the court applied section 36 of the Bill of the Rights, the limitations clause, in the *Teddy Bear Clinic for Abused Children, and Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) v Minister Of Justice and Constitutional Development* case 2013 (12) BCLR 1429 (CC).

[20 marks]

[TOTAL SECTION C: 20 MARKS]

TOTAL FOR PAPER: 70 MARKS