INSTRUCTIONS

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

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

3. This paper consists of ten (10) compulsory multiple choice questions, one (1) compulsory problem type questions and two short answer questions of which students will answer only one (1).
SECTION A

Answer ALL of the questions in this section. Each question counts 2 marks.

Question One

1. Is the following statement True or False?
   A juristic person can invoke the right to freedom of expression.
   TRUE      FALSE

2. Is the following statement True or False?
   Franco Filo is a French soccer player who has a three year contract to play for Kaiser Chiefs in South Africa. Local government elections are planned for 2015 (the final year of his contract). He plans to register as a voter in preparation for the elections as he has been very involved in community issues in his suburb. Franco has the right to vote in a South African election as he is a permanent resident.
   TRUE      FALSE

3. Is the following statement True or False?
   A horizontal application of the Bill of Rights occurs when the Bill of Rights binds the state.
   TRUE      FALSE

4. Is the following statement True or False?
   Section 172 of the Constitution of the Republic of South Africa provides that following a finding of law or conduct being inconsistent with the Constitution a court may make a declaration of invalidity.
   TRUE      FALSE
5. Is the following statement True or False?

Formal equality means to treat people differently in order to achieve an equal outcome

TRUE  FALSE

6. Select the incorrect statement:

(i) There is a constructional right to basic health care services in section 27 of the Constitution of the Republic of South Africa, 1996

(ii) There is a constructional right to access health care services in section 27 of the Constitution of the Republic of South Africa, 1996

(iii) Children have a constitutional right to basic health care services in terms of section 28 of the Constitution of the Republic of South Africa, 1996

(iv) Everyone has the right to emergency medical treatment in terms of section 27 of the Constitution of the Republic of South Africa, 1996

7. Select the correct answer:

The following are procedural issues in constitutional litigation:

(i) Justiciability and locus standi.

(ii) Application of the Bill of Rights, justiciability and remedies.

(iii) Jurisdiction, application of the Bill of Rights and justiciability.

(iv) Application of the Bill of Rights and justiciability.

8. Select the correct answer:

A direct application of the Bill of Rights occurs when:

(i) A court is asked to determine whether the ordinary rules of law (ie legislation, common law and customary law) are consistent with the Bill of Rights;

(ii) A court is asked to determine whether the ordinary rules of law (ie legislation, common law and customary law) can be developed so they become are consistent with the Bill of Rights;

(iii) A court is asked to determine whether the state is bound by the Bill of Rights; or

(iv) A court is asked to determine whether the Bill of Rights applies horizontally

Continued/…
9. Select the correct statement(s):

In section 9 of the Constitution of the Republic of South Africa, 1996:

(i) HIV is a listed ground;
(ii) HIV is an unlisted ground;
(iii) HIV and disability are listed grounds; or
(iv) HIV and disability are both unlisted grounds.

10. Select the correct statement(s):

In our constitutional framework:

(i) A court will first interpret the right the scope of the right and established whether it has been violated before inquiring as to whether a limitation of the right is justifiable;
(ii) A court will consider the scope and any possible limitation of the right together;
(iii) A right may only be limited by a law of general application; or
(iv) Any limitation on a right must be found to be justifiable in an open and democratic society.

[Total Q1: 20 marks]

TOTAL SECTION A: 20 MARKS
SECTION B

Answer ALL of the questions in this section.

Question Two

This scenario is partially fictitious. Tenofovir is an anti-retroviral drug registered with the Medicines Control Council for use in treating HIV. A recent study has shown that a single dose of the drug taken every day is 94% effective in protecting persons from HIV infection even if they have a sexual relationship with an HIV positive partner. An NGO, the Treatment Access Campaign is lobbying government to offer Tenofovir to all discordant couples (couples where one partner is HIV positive and the other is HIV negative). The Minister of Health has announced that they will undertake research into the effectiveness of offering Tenofovir to all discordant couples. Two research sites will be set up in every province to test (a) whether couples will take up this opportunity (b) their adherence to the daily pill taking regime (c) the needs of staff at each site (ie training, support etc) and (d) the rate of HIV infection in such couples after 1 year. The Minister of Health also prohibits any other state health facility from offering Tenofovir until the end of the 12-month research and evaluation process.

The Treatment Access Campaign is dismayed by the Minister’s approach. They argue that a further 500 000 infections will occur during the year if the programme is not rolled out to all health facilities in the country. They submit that these would all be preventable infections as the scientific evidence is available to show that Tenofovir can prevent HIV infection despite prolonged exposure to the HIV virus. They approach you, as a prominent member of the legal profession for advice on:

(i) Whether the Minister’s actions infringe any constitutional rights?

[10 marks];

(ii) Whether the Bill of Rights would apply to this dispute and if so in what way?

[10 marks]

(iii) The remedies they could request the court to impose, if they were successful in challenging the Minister’s decisions in court

[10 marks]

TOTAL SECTION B: 30 MARKS
SECTION C

Answer any ONE question in this section.

Question Three

With reference to the legislative framework and decided cases critically discuss the extent to which the rights of People Living with HIV or AIDS are protected in our law.

[Total Sec C Q3: 20 marks]

Or:

Question Four

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).

[Total Sec C Q4: 20 marks]

TOTAL SECTION C: 20 MARKS

TOTAL FOR PAPER: 70 MARKS