INSTRUCTIONS

1. This paper consists of SEVEN (7) pages. Please make sure you have all the pages.
2. All questions are compulsory.
3. Students are requested, in their own interests, to write legibly.
4. This paper consists of TEN (10) multiple choice questions, ONE (1) short answer question and TWO (2) problem type questions.
SECTION A.
Multiple-Choice Questions

Students must answer all the MCQ questions in their answer books. Each answer is worth two (2) marks. There is no negative marking. Read the instructions for each individual question carefully.

1. Choose the correct answer or answers:

The SABC wishes to come onto campus to film student protests at UKZN. However, campus security do not want to allow them to do so. Consequently, they force the film crew to leave and state that they can only film the protests from public spaces such as the roads running past campus. Has the SABC’s human right to freedom of expression been violated?

(i) Yes. Everyone has human rights.
(ii) No. The SABC is not a human and, consequently, it is not entitled to human rights.
(iii) Yes. The SABC is an organ of state and organs of state are protected by human rights.
(iv) No. Only the camera crew in their individual or collective capacity are protected by human rights.

2. Is the following statement true or false?

The right to emergency treatment guaranteed in section 27(3) of the Constitution of the Republic of South Africa, 1996, is a right that must be progressively realised.

TRUE or FALSE

3. Choose the correct answer or answers:

The protection of human rights through international law is important as it:

(i) Accepts that every human has certain universal and fundamental rights which transcend culture and religion and domestic legal systems.
(ii) Ensures that action can be taken against states which are not protecting human rights in domestic law.
(iii) Enables states to promote their autonomy and set their own human rights norms.

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(iv) Means that military action can be taken against states not complying with human rights norms.

4. **Choose the incorrect statement or statements:**

In terms of section 9 of the Constitution of the Republic of South Africa, 1996, the listed ground of sex discrimination can be used when there is an allegation that:

(i) Two gay men are being discriminated against.
(ii) Women are being treated unfairly because of social and cultural stereotypes.
(iii) Women are being treated unfairly because they may be away from the workplace at inconvenient times when they take maternity leave.
(iv) A transgender person is dismissed from their job.

5. **Is the following statement true or false?**

The constitutional remedy of ‘reading-in’ occurs when a judge re-writes the entire provision in the offending legislation to ensure that it becomes consistent with the Constitution.

TRUE or FALSE

6. **Is the following statement true or false?**

Section 8 of the Constitution of the Republic of South Africa, 1996, always applies to relationships between private individuals.

TRUE or FALSE

7. **Identify the incorrect statement or statements:**

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as: ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, where such pain or suffering is inflicted by or at the instigation of or with the acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering from, inherent in or incidental to lawful sanctions’.

In terms of this definition:

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(i) Forcing hunger strikers to eat is a form of torture.
(ii) Using emotional blackmail is a form of torture.
(iii) A whipping, lawfully imposed by a court, is a form of torture.
(iv) The death penalty, lawfully imposed by a court, is a form of torture.

8. **Is the following statement true or false?**

   The right to a clean environment is a civil and political right.

   TRUE or FALSE

9. **Is the following statement true or false?**

   The direct application of Bill of Rights refers to the principle that the state is always bound by the Bill of Rights.

   TRUE or FALSE

10. **Identify the incorrect statement or statements:**

    (i) The rights in section 27(1) and (2) of the Constitution of the Republic of South Africa, 1996, can be applied horizontally against private hospitals.

    (ii) Arrested, accused and detained persons have the right to basic health care services in terms of section 35 of the Constitution of the Republic of South Africa, 1996.

    (iii) Arrested, accused and detained persons have the right to adequate health care services in terms of section 35 of the Constitution of the Republic of South Africa, 1996.

    (iv) Children have the right to basic health care services in terms of section 28(1) of the Constitution of the Republic of South Africa, 1996.

   **[TOTAL SECTION A: 20 MARKS]**
SECTION B

Short Answer Question

Provide a comprehensive definition of human rights and describe the key characteristics of human rights.

[TOTAL SECTION B: 10 MARKS]

SECTION C

Problem Type Question on the Promotion of Equality and Prevention of Unfair Discrimination Act

Jane and Thandi are in a long term relationship, but are not married. After working hard all year they decided that they would like to spend a part of their December vacation in Sodwana Bay, which is on the north coast of KwaZulu-Natal. Thandi then phoned the Sodwana Lodge and booked a double room for 10 days. To confirm her booking she also paid a deposit of R 10 000. A few weeks later Thandi called the Lodge again to up-grade their room to the honeymoon suite. She had just had been told that her application for promotion to the position of partner at her law firm had been successful. During the telephone conversation the owner of the Lodge became cold and disapproving after realising that Thandi’s partner was another woman. A day later Thandi received an e-mail informing her that her booking had been cancelled and her deposit would be returned. In the email, the owners of the Lodge explained that they were members of the Christian faith and that as a part of their faith they believed that same sex relations were sinful. This meant, the owners explained further, that it would be against their religious beliefs to allow a same sex couple to stay in their Lodge. Thandi and Jane are outraged. They approach you, a prominent human rights lawyer in Pietermaritzburg, to represent them. They want to know whether the Sodwana Lodge has unfairly discriminated against them on the grounds of sexual orientation in terms of PEPUDA. Advise them. In your answer you must discuss (a) whether discrimination has occurred in this instance and (b) whether this discrimination is unfair.

[TOTAL SECTION C: 20 MARKS]
Mr Cough Continuously is a 37 year old male who has been diagnosed with what is known as XDR-TB, a highly infectious and dangerous disease with a high mortality (death) rate. He is married with four children and is the sole breadwinner for his family. On 12 July 2016 the Minister of Health applied to the High Court for a directive pursuant to the provisions of 7A of the National Health Act 61 of 2003 (this is a fictitious provision, but you must presume it exists for the purposes of this question) ordering Mr Cough Continuously to be admitted to and remain in isolation at the Brooklyn Chest Hospital in Cape Town and to undergo any medical examination and mandatory treatment that may be necessary. Section 7A provides that:

‘Any user of health care services may, without their informed consent, be:

(a) Compelled to undertake a medical examination;
(b) Involuntarily committed to any health facility; and
(c) Subjected to mandatory treatment or placed in isolation’.

Such actions, however, may only be authorised by the Minister of Health who is required in terms of section 7B to issue a notice of such compulsory treatment if ‘a user of the health service poses a health risk to themselves or others’.

The Brooklyn Chest Hospital specialises in the treatment of tuberculosis and is staffed by specialist medical practitioners skilled in the treatment of XDR-TB. It is also the only dedicated public-health facility in Cape Town that treats XDR-TB patients. The treatment lasts for between 18 and 24 months at a total cost of approximately R 63 000 per patient.

Mr Cough Continuously initially submitted himself voluntarily for treatment at the Hospital for the more than nine months. During this time, he spent numerous days away from his family and spent almost all of his life savings on his medical costs. However, as his condition deteriorated and his medical costs escalated, Mr Cough Continuously began to realise that the end might be drawing closer and he soon began to abscond from the facility to spend time with his family as he feared that in his absence his wife may be having an affair with their neighbour.

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Furthermore, given the loss of family income, his 16 year old daughter has dropped out of school and taken up a waitressing position at a local restaurant. Mr Cough Continuously feels strongly that she ought to return to school, however, this can only happen if he returns home and starts work. Mr Cough Continuously approaches the UCT Campus Law Clinic for assistance. The Campus Law Clinic writes to the Department of Health which replies as follows:

‘Involuntary detention in these circumstances is necessary as patients with XDR-TB pose a risk not only to themselves, and their families, but the community at large. To allow them to return home before they have finished their treatment creates more resistant strains of TB and could result in a public health disaster’.

Mr Cough Continuously would like to take legal action against the Department and has turned to you for advice. He wants you to answer the following questions:

(i) First, Mr Cough Continuously wants to know whether any of his constitutional rights have been violated by his involuntary detention.

[2 marks]

(ii) Second, Mr Cough Continuously wants to know whether this matter requires the direct or indirect application of the Bill of Rights. Refer to case law.

[5 marks]

(iii) Third, if any of his rights have been violated, Mr Cough Continuously wants to know whether such a violation may be justified in terms of section 36 of the Constitution.

[10 marks]

(iv) Finally, if any of his rights have been unjustifiably violated, Mr Cough Continuously wants to know whether reading-in would be an appropriate remedy in this matter. Justify your answer.

[3 marks]

[TOTAL SECTION D: 20 MARKS]