EXAMINATIONS: NOVEMBER 2010

SUBJECT, COURSE AND CODE: HUMAN RIGHTS (LAWS2HR) (LAWS3HR)

DURATION: 2 HOURS

TOTAL MARKS: 70

STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY.

PLEASE NOTE:

- This paper consists of FOUR (4) pages. Please see that you have them all.
- This paper consists of TWO (2) compulsory problem type questions and THREE (3) essay type questions.
- All students must answer the TWO compulsory problem questions in Sections A and B. You must also answer any TWO essay questions in Section C.
SECTION A

Question One

This is a compulsory question. All students must answer it.

Thandi is a two year old “AIDS orphan” whose biological mother died when she was 5 months old. Thandi is institutionalized after she could not be absorbed into her extended family. Three months later she is adopted by a gay couple Shaun and Tom. Thandi is HIV positive and on anti-retroviral treatment. Her new parents want her to have as normal a life as possible so they apply to enroll her in a Montessori nursery school in Sandton, Johannesburg to enable her to socialize with other children of her age. On the enrolment form they are asked about her health and they disclose that she is “HIV positive”. The school sends Shaun and Tom a letter accepting Thandi into the school. However three weeks later they are sent a second letter stating that the school’s board of governors has decided to withdraw their offer of a place to Thandi following opposition from other parents. It appears that the other parents are concerned that Thandi may expose their children to HIV through biting or bleeding during playground accidents. Shaun and Tom are outraged. They approach you, a prominent Johannesburg attorney and ask for your advice on how to challenge the school. Advise them of whether:

(i) the school has unfairly discriminated against Thandi in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act? (15 marks) and
(ii) if successful, the type of remedies that could be imposed by the Equality Court (5 marks).

TOTAL MARKS FOR THIS SECTION: 20 MARKS
SECTION B

Question Two

This is a compulsory question. All students must answer it.

A radical, militant Islamic group of students on the local campus feel aggrieved and angry at the 'terrible plight of their Muslim brothers and sisters in Iraq and Afghanistan who have been killed, maimed and injured in war and conflict following the 11th September 2001 bombings in the United States of America'. They believe that at the heart of the United States foreign policy is an anti-Islamic Christian ideology. Accordingly, the group wants to burn a copy of the Bible under the Mathma Gandhi statue in the Pietermaritzburg City Centre on the 11 September 2011 to demonstrate how they feel about America’s oppression of people living in Iraq and Afghanistan. The leader of the group approaches you for advice on the following:

(i) the importance and centrality of the Right to Freedom of Expression (s16, of the Constitution of the Republic of South Africa, 1996); (10 marks) and
(ii) whether the proposed militant action by the group will be prohibited by s10 of the Promotion of Equality and the Prevention of Unfair Discrimination Act? (10 marks).

[20 marks]

TOTAL MARKS FOR THIS SECTION: 20 MARKS
SECTION C

Question Three

Answer any two (2) questions from the section below.

(a) Critically discuss the circumstances in which a class action may be used in constitutional litigation. Refer to decided cases.

[15 marks]

(b) With reference to decided cases critically 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.

[15 marks]

(c) Section 8 of the Constitution of the Republic of South Africa, 1996 deals with whether and how the Bill of Rights applies to disputes. Write an essay describing the differences between a direct and indirect application of the Bill of Rights. Refer to decided cases to illustrate your answer.

[15 marks]

TOTAL MARKS FOR THIS SECTION: 30 MARKS