UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG

EXAMINATIONS: NOVEMBER 2011

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

DURATION: 2 HOURS

TOTAL MARKS: 70

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External Examiner: Ms N Dyani
Internal Examiners: Ms A Strode
Ms S Alli
Dr S Krause

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

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PLEASE NOTE: THIS PAPER CONSISTS OF FOUR (4) PAGES. PLEASE SEE THAT
YOU HAVE THEM ALL.

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INSTRUCTIONS

♦ This paper consists of two (2) compulsory problem type questions and two
(2) essay) type questions.

♦ You must answer both compulsory problem questions in Section A, and
you must answer any one essay question in Section B.
SECTION A [50 MARKS]

Answer Question 1 AND Question 2

Question One [30 MARKS]

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 i.e. all relationships where one person is HIV negative and the other positive. 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 (i.e. training, support etc) and (d) the rate of HIV infection in such couples after 1 year. The Minister prohibits any other 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 matter could be brought as a class action if they identified 40 discordant couples wishing to be on Tenofovir? (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).
Question Two [20 MARKS]

Ms S (her name has been with-held as she is a minor) is a grade 11 learner. In her first three years at high school she was very rebellious and constantly flouted school rules. She recently became very religious and has started wearing a head scarf to school with her existing school uniform. She has been warned verbally by her class teacher and the principal that this is in contravention of the school’s strict rules regarding uniforms. On the 1 October 2011 her parents receive a letter from the school stating that she is required to comply with the school uniform rules which provide that only ‘school hats may be worn with school uniforms and designated white sport hats with sports uniforms. No other head gear may be worn by learners’. The letter informs Ms S’s parents that a head scarf is not a school hat and may not therefore be worn at the school. The letter states further that the school’s reasons for its approach are:

(i) The school’s uniform policy serves the purpose of ensuring that learners are neat and tidy for school. It also ensures that all learners wear appropriate clothing including sun hats when they are outside;

(ii) The school is non-denominational and the school does not want to show favouritism towards any one religion; and

(iii) They believe that this is simply another of Ms S’s antics that reflect her defiant attitude towards authority.

Ms S and her parents are very angry at the school’s refusal to accommodate her religious beliefs. Ms S feels that she is being treated like a child and that none of her teachers take her religious beliefs seriously which undermines her dignity. Ms S and her parents approach you for advice on the following issues:

(a) Would the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 apply to this dispute? (2 marks)

(b) Has Ms S been discriminated against in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000? (5 marks)

(c) If there is discrimination, would it be unfair? (8 marks)

(d) If there is a finding of discrimination would the discrimination be unfair in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000? (5 marks)
SECTION B [20 MARKS]

Answer either Question 3 or Question 4

Question Three [20 marks]

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 the direct and indirect application of the Bill of Rights. Refer to decided cases to illustrate your answer.

OR

Question Four [20 marks]

With reference to decided cases, explain the concept of ‘mootness’.