INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of FIVE (5) pages. Please ensure that you have them all.
3. All questions are compulsory and must be answered.
4. Please pay attention to the mark allocation, to make sure you apportion your time appropriately.
5. Questions can be answered in any order. However, you must clearly indicate the question number you are answering. A failure to do so may result in a student losing all marks for question which is not clearly marked with the correct question number.
6. Students must write legibly, as any illegible content will be disregarded.
QUESTION ONE

Danny King owns the ‘Shining Star’ building in Pietermaritzburg, in which he rents apartments to various individuals. Jesse Adams is a tenant in the ‘Lotus Flower’ building which is located right next to ‘Shining Star’.

Police have raided the ‘Shining Star’ building several times and arrested suspects engaged in criminal activities. Despite this the police suspect that illegal activities are still taking place in it as the landlord has not evicted any tenants who have been arrested and subsequently released on bail. In addition the landlord has rebuffed any attempts by the police to inform him of criminal activity occurring in his building, as he states that such activity is ‘not his problem’.

In a "Facebook group to advertise the worst slum in Pietermaritzburg", Adams said ‘Shining Star’ was "overcrowded, dirty" and was the "nexus of criminal and antisocial behaviour in Pietermaritzburg".

He said the building was owned by King who "has long been a Pietermaritzburg slumlord".

"The building is a disgrace and Danny King does not give a damn - nor does his son Donny," Adams's Facebook entry reads.

In response to the Facebook post, King's attorney, Fighter Forlucre, contacted and e-mailed Adams, saying King denied all of Adams' allegations and "strongly" objected to the Facebook posting made by Adams.

It said if Adams did not remove the posting, King's attorneys would get a court interdict preventing him from doing so, report the matter to the police and sue him for R1-million "for defaming the good name and reputation of our clients".

The response also said Adams's statement that King was a slumlord was "wrongful and defamatory". They also allege that Donny King has nothing to do with his father's business and is in fact studying to be a veterinarian at the local university.

"As a result - we request that you immediately withdraw the protest note from Facebook and provide our clients with an irrevocable apology on Facebook and by letter by close of business on the next day," it said.

Adams admits that he was mistaken about Donny King being involved in his father's business and based his accusations on the sighting of Donny's car outside the building on two occasions. Donny had in fact been visiting his girlfriend who resided in the flat.
In just over nine weeks, seven ‘Shining Star’ tenants have been arrested on suspicion of possessing drugs.

Last week a bottle was thrown at a local newspaper photographer Michael White while he was taking photographs outside ‘Shining Star’ to illustrate the dirty and crowded conditions prevailing inside the building.

This incident happened a week after Adams was attacked and mugged inside the building while taking photographs for a similar purpose.

Adams approaches you for advice, as he is very worried by the email sent to him by King’s attorneys. Advise him on the prospect of success of any defamation claim which Danny and Donny King may bring against him.

[Total: 30 marks]

In addition, advise him of any defences he may raise against the defamation claim.

[Total: 10 marks]

[Total Q1: 40 marks]

QUESTION TWO

Amy, a qualified attorney, sustains serious head injuries in an accident resulting from the negligent driving of a motor vehicle by Bob. In a subsequent lawsuit against the Road Accident Fund (RAF) on behalf of Amy, who is mentally retarded in consequence of her injuries, it appears that Amy has already received certain amounts from other sources in order to redress the effects of her injuries. It is urged on behalf of the defendant that such amount should be taken into account in reducing the extent of the total amount claimed on Amy’s behalf. Discuss the merits of this contention considering the relevant law, where the respective amounts are as follows:

(a) R12 000 which Amy had received from her former employer subsequent to the termination of her employment as an attorney, after the firm had on the grounds of pure sympathy employed her again as a consultant for a period of one year, in spite of the fact that she was utterly incompetent to perform any constructive work during that period and for the greater part of it remained at home.

[Total Q2 (a): 4 marks]
(b) R30 000 which represents an amount of full pay for a three-month period, to which Amy is entitled as a sick-pay benefit in terms of her contract of employment;

[Total Q2 (b): 2 marks]

(c) R10 000 which Amy received additionally from her employer as a discretionary sick-pay benefit;

[Total Q2 (c): 1 mark]

(d) R200 000 which Amy received from her employer in a single payment as a pension benefit. The law firm did not make it compulsory for all employees to belong to a pension fund and Amy voluntarily chose to contribute to a pension fund.

[Total Q2 (d): 4 marks]

(e) Would your answer to (d) above differ if the firm had made it compulsory for Amy to join the pension fund?

[Total Q2 (e): 2 marks]

(f) In addition the parties are confused about whether taxation on income Amy would have earned should be taken into account when calculating Amy’s lost income. Advice them using appropriate authority.

[Total Q2 (f): 2 marks]

[Total Q2: 15 marks]
QUESTION THREE

YOU MUST ANSWER BOTH PARTS OF THE QUESTION [i.e. BOTH Q 3.1 AND Q 3.2]

3.1 “Our law appears to have developed [if that is an appropriate term] to the stage where even minor emotional twitches and unprovable so-called psychological harm can entail liability in damages for the luxury of being pampered by psychologists. We have moved far beyond the healthy robustness that should reasonably be expected of others so to become a society of whining wimps. Every person who hears or sees some disturbing event can now rush off to claim compensation.”

In light of the above statement discuss the South African law relating to delictual liability for negligently caused psychological harm, referring briefly to its development. Giving reasons indicate whether you agree with the above sentiments.

(Total Q3.1: 15 marks)

3.2 Concisely describe the ambit of the so-called “once and for all rule” and briefly indicate what the practical implications of its application are.

[Total Q3.2: 5 marks]

[Total Q3: 20 marks]

TOTAL FOR PAPER: 75 MARKS