DURATION: 2 HOURS

TOTAL MARKS: 75

INTERNAL EXAMINERS : PROF B GRANT

INDEPENDENT MODERATOR : MS D PERUMAL

EXTERNAL EXAMINER : PROF V BRONSTEIN

INSTRUCTIONS:

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

2. This paper consists of THREE (3) pages. Please ensure that you have all of the pages.

3. Answer any THREE (3) questions.
QUESTION 1

Marcus Jones (aged 35) and Jonathan Jones (aged 40) are brothers whose relationship broke down over the running of the family business. Marcus dismissed his brother Jonathan from the family business, after it transpired that Jonathan had been sexually harassing staff and using company money to fund his lavish lifestyle.

Marcus lives in Parktown North and Jonathan lives in Riverclub. Shortly after the dismissal, Jonathan parked his car outside Marcus’s home late at night and via a phone call threatened to kill him. Furthermore, a year ago, Jonathan pushed Marcus in the heat of an argument concerning caring responsibilities required for their mother.

Marcus seeks advice on whether he can successfully apply to the Magistrates’ Court under the Domestic Violence Act 116 of 1998 (‘the Act’), for an interim protection order against Jonathan, preventing him from parking outside his house, threatening him and from any further communication.

He specifically wishes to know whether his relationship with his brother Jonathan qualifies as a ‘domestic relationship’ in terms of the Act, and whether his brother’s conduct towards him constitutes ‘domestic violence’ in term of the Act.

Fully advise Marcus with reference to case law.

[Total Q1: 25 marks]

QUESTION 2

Mohammed Essa wishes to marry Suraya, his childhood sweetheart, in accordance with the tenets of Islamic law. He has recently heard that there are significant amendments being made to the divorce provisions in the Recognition of Muslim Marriages Bill, which is soon to be tabled before Parliament.

He seeks advice on these divorce provisions, particularly whether these provisions are consistent with the right to gender equality as set out in the Constitution of the Republic of South Africa Act, 1996.

[Total Q2: 25 marks]
QUESTION 3

The Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 sets out a range of definitions of sexual offences geared towards improving the legal position of victims of sexual offences. Critically discuss these definitions of sexual offences and evaluate the impact on victims in these circumstances.

[Total Q3: 25 marks]

QUESTION 4

Amber is a commercial sex worker employed by J’etaime Massage Parlour. For the last 5 months, she and her colleagues have been routinely arrested by the local police, and held in cells for a few hours per day. None of them have been prosecuted.

Amber and her colleagues find the conduct of the police to constitute harassment, more so that prosecution does not follow their arrest. She wishes to know whether she can challenge the constitutionality of the law that criminalises sex work or at least to stop the police from harassing them.

[Total Q4: 25 marks]

[TOTAL: 75 MARKS]