INSTRUCTIONS

1. Please make sure that your writing is legible.
2. There are two (2) sections (Section A and Section B).
3. Answer ALL the questions in both Section A and Section B.
4. Section A and Section B must be answered in separate books.
5. This paper consists of four (4) pages. Please make sure you have them all.

SECTION A – PROF M. CARNELLEY

QUESTION 1

The Hague Convention on the Civil Matters of International Child Abduction, as included into the South African national law, has been found to be constitutional. Discuss briefly with reference to LS v AT 2001 2 BCLR 152 (CC).

[7 marks]
QUESTION 2

Section 18(3) of the Children’s Act 38 of 2005 describes the contents of the concept of “guardianship”, *inter alia* when the consent of all holders of parental responsibilities and rights are required. Name these five instances.

[3 marks]

QUESTION 3

Ben and Ann have been unhappily married for two months, notwithstanding their beautiful and romantic wedding on the beach. Ann is your client. She has just been informed by Ben that he does not want to divorce her for religious and financial reasons, but will attempt to obtain an annulment based on their ceremony. Advise Ann on the likelihood of success of such an application in light of judicial precedent.

[5 marks]

QUESTION 4

You are an attorney and your client is Megan Noah. She seeks advice. She and John Smith got engaged in PMB on her 21st birthday (4 December 2012) and agreed to get married on John’s 30th birthday (27 January 2013). Two weeks before the wedding, at his bachelor’s party, John met Patricia Nel, the ‘best stripper in town’. He was so impressed by her, that they eloped to Johannesburg and got married there. John did not have the heart to tell Megan. He lied and said that he had urgent business to attend to. John knew after a few days that he had made a mistake by marrying Patricia. Three days before the planned wedding with Megan, he sent Megan an e-mail from Mauritius where he was on honeymoon with Patricia: “I made a HUGE mistake. Married Pat, but please forgive me. I will be back soon to see you. So sorry. I love you!!!!!!!” Megan was devastated, hurt and humiliated. She could not forgive him and no longer wished to marry him. John agreed to pay for all the expenses that she incurred, but refuses to give her any money for her hurt feelings. Explain to Megan the possible action that she might have in terms of the law of delict, the requirements for such an action as well as the factors that might influence the final amount. In your answer, refer to relevant case law. IGNORE ANY POSSIBLE CLAIM THAT SHE MAY HAVE FOR CONTRACTUAL DAMAGES.

[10 marks]
QUESTION 5

Note: E, F’s first spouse is deceased. F is now married to G. B was the child born to E & F but is now also deceased. While B was married to A, they adopted D who is not a blood-relation of the family. K is the extra-marital child of G.

Describe the relationship between each of the following persons and explain why they may or may not marry each other in terms of the Marriage Act, 1961:

(a) C and D?  
(b) C and K?  
(c) D and J?  
(d) J and A?  
(e) C and L?  
(f) C and P?  
(g) G and C?  
(h) F and A?  
(i) C and J?  
(j) C and H?

[10 marks]

[TOTAL FOR SECTION A: 35 MARKS]
SECTION B – ADV J. EASTHORPE

QUESTION 6

Derek and Lerato have co-habited together as a couple for 10 years. Lerato has had gynaecological problems for a long time and has had problems conceiving naturally as a result of this. Together the couple consider artificial fertilisation or, if that does not work, adoption. They come to you for advice regarding their legal position as cohabitants.

Advise Derek and Lerato on the law regarding cohabitation and what the legal position is with regard to adoption and artificial fertilisation as a cohabiting couple.

[15 marks]

QUESTION 7

Explain how our courts would interpret an “irretrievable breakdown of the marriage relationship”. Reference to relevant case law is of utmost importance.

[10 marks]

QUESTION 8

Mrs De Vos, your client, is entitled to maintenance in terms of a maintenance order made at the time of her divorce. She is unhappy with the amount of maintenance that she is receiving as she feels it is not sufficient to fulfil her shopping and travel needs. She wants the amount to be increased. Explain to Mrs De Vos what is understood by the concept of “sufficient reason” and what the principles are with respect to varying an existing order.

[10 marks]

[TOTAL FOR SECTION B: 35 MARKS]

[TOTAL MARKS FOR PAPER: 70 MARKS]