DURATION: 3 HOURS                  TOTAL MARKS: 75

INTERNAL EXAMINER : DR S. GOOSEN

INDEPENDENT MODERATOR : MR MC. BUTHELEZI

EXTERNAL EXAMINER : MR RN. SCOTT

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 all of the pages.

3. Answer ALL QUESTIONS.
QUESTION 1

On the 20th January 2008 Justin is involved in a serious car accident resulting from negligent driving of a motor vehicle by Z. Justin also has a heart condition and high blood pressure. As a result of the accident, Justin suffers a stroke. He also sustains brain damage which leads to him suffering from bouts of depression. In a subsequent lawsuit instituted on behalf of Justin by his wife, Sue, it appears that he has already received certain amounts of money from other sources in order to redress the effects of his injuries. It is urged on behalf of Z, that such amounts should be taken into account in reducing the extent of the total amount claimed by Justin's behalf.

1.1 Discuss the merits of this contention by considering relevant case law where the respective amounts are as follows:

(i) R 350 000 received as indemnity insurance.  
[Total Q1. (i): 1 mark]

(ii) R50 000 received from the liability insurer Z.  
[Total Q1. (ii): 1 mark]

(iii) A gift of R 5 000 received from his employer.  
[Total Q1. (iii): 3 marks]

(iv) R 60 000 which represents an amount of full pay for a two-month period, to which Justin is entitled as a sick-pay benefit in terms of his contract of employment with Schneider Electric  
[Total Q1. (iv): 1 mark]

(v) R30 000 which represents an amount of full pay for one month which Schneider Electric has given Justin in addition to the two month sick pay benefit he is entitled to in terms of his contract.  
[Total Q1. (v): 1 mark]
(vi) The defendants are also concerned whether income tax must be taken into account when calculating Justin’s loss of income claim. Advise them
[Total Q1. (vi): 1 mark]

(vii) R20 000 received as solace money
[Total Q1. (vii): 1 mark]

(viii) R40 000 saved on living expenses while Justin was receiving treatment in hospital.
[Total Q1. (viii): 1 mark]

1.2 Will Justin be successful in instituting a claim against Z on 11 March 2013? Discuss with reference to relevant case law.
[Total Q1.2: 3 marks]

1.3 Can Z be the factual and legal cause of Justin’s stroke? Discuss with reference to relevant case law.
[Total Q1.3: 5 marks]

1.4 If Justin commits suicide as a result of his depression, can this be considered a novus actus? Discuss with reference to relevant authority.
[Total Q1.4: 5 marks]

1.5 Should Sue decide to sue for loss of support on her husband’s death, will she be able to have a claim if she is remarried?
[Total Q1.3: 7 marks]

[TOTAL Q1: 30 MARKS]
QUESTION 2

Cash Drainers, a business which manufactures and sell sports clothing and running shoes has operated in Uitenhage for the past 12 months. The logo used on the clothing also has three stripes, although the colours vary depending on the season. The brand name under which they trade is called Adibas. You are approached by Rajesh, the owner of Cash Drainers. He is very worried as he has received a letter from Adidas, a German multinational corporation that designs and manufacture sports clothing and accessories ordering him to stop using the name Adibas for his clothing company. They claim that consumers may believe that Adibas is linked to the Adidas Multinational Corporation. Adidas supports this contention by pointing out that the use of three stripes by Cash Drainers, is almost identical to the logo used by Adidas. Furthermore, the packaging used to sell the products bears a striking resemblance to that of Adidas. In response to these allegations, Rajesh informs you that he has named his brand “Adibas” after his surname as he wants to leave this business to his son one day.

Advise Rajesh whether Adidas may be successful in a claim for passing off in unlawful competition.

[TOTAL Q2: 15 MARKS]

QUESTION 3

Martin decides to go watch a Rihanna concert at Moses Mabida Stadium in Durban. The fans become extremely agitated as it seems as if the performer is lip synching (mouthing the words but not actually singing). They begin to throw missiles (bottles, stones) at the singer. The police are subsequently summoned. However, instead of arresting unruly fans, the police begin to use excessive force by using tear gas and rubber bullets, as well as assaulting members of the public. Martin is assaulted by the police while he is trying to leave the stadium. After he is beaten up, he decides to slap the police officer.

3.1 Can Martin sue the Minister of Police for vicarious liability?

[Total Q3.1: 15 marks]
3.2 Does Martin have any defence at his disposal for slapping the policeman who used excessive force against him? Discuss briefly with reference to relevant law authority.

[Total Q3.2: 5 marks]

[TOTAL Q3: 20 MARKS]

QUESTION 4

4.1 Discuss the doctrine of Sudden Emergency.

[Total Q4.1: 5 marks]

4.2 Define the “once and for all rule”.

[Total Q4.2: 5 marks]

[TOTAL Q4: 10 MARKS]

TOTAL FOR PAPER: 75 MARKS