INSTRUCTIONS:

1. All questions are compulsory and must be answered.

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

3. Please pay attention to the mark allocation to make sure you apportion your time appropriately.

4. 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 the question which is not clearly marked with the correct question number.

5. Students must write legibly as any illegible content will be disregarded.
QUESTION 1

Jane Watson is a first year law student at the University of Sidland located on the North Coast of KwaZulu-Natal. She is an avid social networker and visits her Facebook profile several times a day. Jane recently went through a very nasty breakup with her boyfriend of five years, James. James is now dating a fellow first year law student Londiwe. Jane has been very vocal of her dislike of both James and Londiwe. This fact is very well known to Jane’s circle of friends, many of whom are also friends with James and Londiwe.

Two weeks ago Jane made the following comments and/or postings on her Facebook page:

(a) “Londiwe is such a slut.”
(b) “What would you think of a boyfriend who cheats on you with a classmate and then gives you a sexually transmitted disease?”

Jane has also seen the following posting on Londiwe’s wall:

“I love you James, forever and ever….don’t let that skanky, disease ridden whore get you down.”

Londiwe also tagged James in the above post she made on her wall. This post upsets Jane tremendously as she believes that this post refers to her even though she is not named in this post. Londiwe’s posting attracted many comments on Facebook but one comment in particular upset Jane again. The comment was from a user called “LawBoy77” who commented as follows in response to Londiwe’s post: “You said it Londi.......Jane gave me chlamydia when I shagged her in the toilets in the Law School and that was way before she started dating James.” Jane believes that this statement portrays her as someone who is promiscuous and who transmits sexual diseases to others through unprotected sexual intercourse.

Jane approaches you as she is very upset as she feels that Londiwe has defamed her. In addition she is worried that should she sue Londiwe for damages for defamation, that Londiwe and/or James may counter sue her also for defamation. Advise Jane on the following issues:

1.1 Have Jane and Londiwe met the requirements for a defamatory action arising from their comments and/or postings on Facebook?

1.2 Jane claims that she cannot be held liable for comment (b) above as it was not framed in the form of a statement but rather a question and that she was merely asking people what they would think of someone who did that. In addition she states that James was not mentioned by name so she cannot have defamed him. Advise Jane on this issue.

1.3 In regard to the posting that Londiwe made on her Facebook page in which she tagged James, Jane also wishes to sue James for this posting. Is she entitled to do so?
1.4 Jane is unable to discover the identity of LawBoy77. Can Jane hold Londiwe responsible for the comments made by him on her Facebook wall?

[5 marks]

[TOTAL Q 1: 45 MARKS]

QUESTION 2

Will the following types of damages be deductible from the total amount of damages in terms of the collateral source rule? Your answer must be supported by relevant legal authority.

1. Gifts and Donations [5 marks]
2. State Foster Care Payments [4 marks]
3. Sick Pay [2 Marks]
4. Insurance [2 Marks]
5. Income Tax [2 Marks]

[TOTAL Q2. 15 MARKS]

QUESTION 3

Cyclist X collides with Y in a reckless, negligent manner. The latter falls onto the road surface and breaks an arm. Y is immediately taken to hospital where he receives treatment by doctor Z. Z administers a tranquiliser called Rest-Ezy to Y, as Y is quite upset about the accident. Unfortunately Y responds with a violent allergic reaction which ultimately culminates in his dying of suffocation. (This is the first recorded case in which death results from treatment with Rest-Ezy.)

Discuss only the question of whether X’s and/or Z’s conduct can be regarded factually and legally as the cause of Y’s death.

[TOTAL Q3: 15 MARKS]

TOTAL FOR PAPER: 75 MARKS