INSTRUCTIONS

1. All questions are compulsory and must be answered.
2. This paper consists of **FIVE (5) pages**. Please make sure 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.
6. All answers must be fully supported by the relevant legal authority.
QUESTION 1

In December 2013 the Public Protector of South Africa, Advocate Sbu Vilakazi, released an official report in which he stated that the President of the country, Mohammed Jooma, had inappropriately utilised two hundred million rands of tax-payer funds to effect improvements to his private housing compound. Vilakazi’s report called on President Jooma to repay the money.

By the 31st July 2014 the President had not responded to Vilakazi’s report and Vilakazi asked for an immediate response within the next week, failing which official court action would be taken to compel the President to repay the two hundred million rands. This demand led to many members of the official ruling party, the Azanian Nationalist Party (ANP), of which the President was also a member, to call for Vilakazi’s immediate resignation as Public Protector. On the 4th August 2014, postings were made on a Facebook page belonging to “Minister G.I. Joe”. The Minister of Defence is currently a man called Godfrey Immaculate Joe, and he is a member of the ANP. The postings referred to Vilakazi. Joe has approximately 5 000 friends on Facebook. The bulk of the Facebook friends are supporters of the ANP but also consists partly of reporters and other interested people. The Facebook account shows numerous postings made on various issues and contains hundreds of pictures. Minister G.I Joe is always the central figure in these photos and some of these photos have never been published in any other forum.

The posting on Facebook was as follows:

“If advocate Sbu Vilakazi feels more powerful and above the Constitution, he should tell the country who his handlers are…….We can't allow people to hijack the ANP. We'll fight and defend the Azanian Nationalist Party. ...........They are even using our institutions now...These Chapter Nine institutions were created by the ANP, but are now being used against us, and if you ask why, the reason is the Central Intelligence Agency. Ama (The) Americans want their own CEO in South Africa and we must not allow that. Advocate Vilakazi thinks he is God.......His actions leave us with no choice but to say his actions are that of enemy agents. As loyal citizens of South Africa we must rise up and crush this threat to our country by foreign agents who seek to ruin us.”
Advocate Vilakazi is very upset at being called an agent of the CIA and as a devout Christian he is very offended at being accused of thinking he is God. He wishes to launch a civil defamation action against Deputy Minister G.I Joe and he approaches you for advice on whether such an action will be successful.

1.1 Advise him fully on whether he will be able to launch an action for defamation in the circumstances and what his prospects of success are.

[20 marks]

1.2 Minister GI Joe denies that the Facebook profile of “Minister G.I. Joe” belongs to him. How do our courts deal with disputes in regard to ownership of Facebook pages?

[5 marks]

1.3 Assume that Minister G.I. Joe has been deemed to be the owner of the Facebook profile. Minister G.I. Joe now contends that the use of inflammatory language is allowed in order to promote a cause. Advise Advocate Vilakazi on this assertion in the light of recent case law.

[5 marks]

[Total Q1: 30 marks]
QUESTION 2

Pansy takes her daughter, Rose, to a funfair owned and operated by Thabo. Rose wants a ride on the rollercoaster so Pansy, who does not like high speeds, leaves her in the queue and goes for a ride on the big wheel which is about 50 metres away. While Pansy is watching from the big wheel, the carriage in which Rose is riding flies off the rails of the rollercoaster track, due to a loose bolt in the framework, and plummets 60 feet to the ground. Rose is badly injured, and Pansy is at first hysterical, and later suffers from recurrent feelings of anxiety and from insomnia.

Sage, who is also on the big wheel at the time of the accident, is so shocked at what he sees that he later suffers from catastrophic neurosis and is unable to work for 15 months. Some 10 years earlier Sage had been a voluntary patient at a mental hospital, where he had been treated for a neurotic condition.

Rose’s father, Chrys, hears that Rose had been injured in the rollercoaster accident on the radio news that evening and is so shocked that he suffers from extreme grief and later needs extensive psychiatric counselling to overcome his post-traumatic stress disorder caused by hearing of Rose’s accident.

Advise Thabo whether he is liable in delict for the psychological harm caused to Pansy, Sage and Chrys.

[Total Q2: 20 marks]
QUESTION 3

At 8pm on a Friday night, David, a Scottsville resident, lights an old paraffin lamp as he has no electricity due to scheduled load-shedding of electricity. David leaves the old paraffin lamp burning in his bedroom with the bedroom window open and proceeds to spend the next half hour in the neighbouring bedroom reading his son a bedtime story. A strong draft of wind blows the lamp over. As a result of this a fire starts and spreads rapidly, engulfing his house and spreading to his neighbour’s house. Penny [his neighbour] is holding a party in the garden of her house and when the smoke and flames are spotted a general panic ensues amongst her guests. Richard [her husband] drops a tray containing rare antique glasses, one of which cuts the arm of Lisa, a haemophiliac [A haemophiliac is a person whose blood does not clot, so they bleed badly when cut.], who bleeds to death before hospital treatment can be obtained. Penny’s house is destroyed in the fire. Penny wishes to sue David to recover the damages caused by the destruction of her house and its contents as well as the loss of the tray of antique glasses and Lisa’s husband Rob [a stay-at-home dad] wants to sue David for the loss of support caused by Lisa’s death. While David admits that he was negligent and that this negligence caused the destruction of Penny’s house he denies that he is the cause of the destruction of the glasses or of Lisa’s death.

Advise David on his liability in delict, if any. Limit your answer solely to a discussion as to whether David is the cause of the destruction of the glasses and house and Lisa’s death.

[Total Q3: 20 marks]