INSTRUCTIONS

1. Answer any three (3) questions.
2. This paper contains four (4) pages.
3. You are requested, in your own interests, to write legibly.
QUESTION ONE

“When a woman comes to court to argue her status, she does not dislodge herself from her culture. She does not transcend her culture and find herself in the realm of western values. Her identity is not suddenly transformed. The fight is no longer between culture and equality. It is an intra-cultural conflict, between two different interest groups battling to change power relations within their very culture (which, by the precedent of practice, is not shown to be immutable)”

V Bronstein (1998: 403)

With reference to the decision in Shilubana & Others v Nwamitwa 2008 (9) BCLR 914 (CC), critically examine how the Constitutional Court attempted to harmonise male primogeniture with gender equality in the context of a chieftaincy succession dispute.

[25 marks]

QUESTION TWO

Mrs Sparks is employed by Comfy Shoes as an administrative assistant. Her manager, Mr Flaky, constantly tells her she is beautiful, and regularly expects her to work late. When she works late, Mr Flaky leers at her, tries to stand so close to her he almost touches her. He offers to take her out for a quiet romantic dinner which he thinks she would enjoy because she is a woman who needs special love and care. He tells her that if she keeps him happy by having sex with him, he will make sure that her workload is lessened, that she gets preferential treatment over the other ladies in the office and promises her a promotion to senior administrative assistant over anybody else in the office.

Mrs Sparks is uncomfortable and unhappy about Mr Flaky’s advances and suggestions, and tells the Managing Director, Mr Snaky about the situation. With a broad smile and a wink, Mr Snaky tells her to get on with what she is paid for, to ‘service the company’.

Continued/…
After three months of repeated, similar incidents from Mr Flaky, and little or no support from Mr Snaky, Mrs Sparks resigns from her job because she finds her work environment intolerable due to Mr Flaky’s persistent advances. She has no intention of returning to Comfy Shoes, and seeks advice on an appropriate action and relief she is entitled to should she succeed.

Advise Mrs Sparks fully.

[25 marks]

QUESTION THREE

You are approached by Mrs De Buyn, an intelligent, independent career woman who confides in you that she is physically abused by her husband on a regular basis. She says that he ties her up and keeps her in an attic for lengthy periods of time without food or water. She also tells you that he has raped her on at least five occasions when he has come home drunk. On three if not more occasions, he has told her that he will kill her if she leaves him or does not do what he tells her to do.

Her friends have told her that she should hire two ‘guys’ to kill him in his sleep, and she will be free because she can always rely on the ‘battered women’s syndrome’ to escape liability for murder if she is found out.

Mrs De Bruyn claims that she still loves her husband very much and will not even consider her friends advice even though she is now afraid of him. She believes that it is her fault that he treats her the way that he does. She asks you how she can stop him beating her up.

Advise Mrs De Bruyn **fully** on this issue referring to relevant case law where applicable.

[25 marks]
QUESTION FOUR

“South Africa has a multitude of family formations that are evolving rapidly as our society develops, so it is inappropriate to entrench any particular form as the only socially and legally acceptable one.”

(Sachs J at para 59 in Minister of Home Affairs and Another v Fourie and Another 2006 (3) BCLR 355 (CC)).

Discuss this statement in view of the key changes in the law relating to marriage and the gender issues relating to homosexuality and the attitude of society towards this minority group. Include in your answer the response of Government to the issue of gender violence.

[25 marks]