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 OF THE QUESTIONS.
4. There are two sections. You must answer both sections.
5. Please answer each section in a separate answer booklet.
6. Please indicate on the outside of your answer booklet which section you have answered in the answer booklet.
7. Calculators may be used.
SECTION A

QUESTION 1

Peter and Mary are married out of community of property with the inclusion of the accrual system. At the time of their marriage they did not know that they are in fact blood brother and sister. Peter and Mary only discovered that they are siblings following a family dispute between Mary and her first husband, David, relating to the paternity of Mary’s first child “Mathew”. To the family’s great surprise, DNA tests on Peter, Mary, David and Mathew showed that Peter and Mary are siblings. It turns out that Peter’s father was a regular supplier to the local sperm bank and that Mary’s mother was a “customer” of the bank. In light of these facts answer the following questions:

1.1 Is the marriage, valid, void or voidable? Explain your answer. [2 marks]

1.2 Is the marriage a putative marriage? Explain your answer. [2 marks]

1.3 Before the DNA test, Peter and Mary gave birth to a baby girl Lilly. Is Lilly a child born of married or unmarried parents? In your answer, explain the need for a High Court ruling in this regard. [2 marks]

1.4 What would the applicable matrimonial property system be? [2 marks]

1.5 Would your answer above have differed had Peter known, prior to the marriage, that he and Mary were siblings? Explain your answer. [2 marks]

[Total Q1: 10 Marks]

QUESTION 2

Tony and Carmela Soprano were married out of community of property on 23 November 2008. They did not expressly exclude the accrual system from their marriage. At the time of the conclusion of the marriage Tony’s liabilities exceeded his assets, while Carmela had R25 000 in cash. After three years of being unhappily married, Tony and Carmela have decided to divorce one another.

Tony’s estate is now worth R700 000 and includes the following:
- R20 000 which he received as satisfaction for pain and suffering after being involved in a motor vehicle accident.
- R500 000 for a house which he inherited from his mother.
- R10 000 which he received as a donation from his mother.
R10 000 which he received as compensation for the loss of income while he was in hospital after the accident.

R30 000 which he received as compensation for the damages caused to his vehicle during the accident.

Carmela’s estate at the time of the divorce is worth R100 000 and includes the following:

- A painting worth R5 000.
- A ring worth R30 000 which Tony gave her for their first wedding anniversary.
- R10 000 which she inherited intestate from her father.
- R40 000 in cash which she received for selling the car that her father left to her as an inheritance.

The couple agreed that value of money today is worth twice as much as it was at the beginning of their marriage. Indicate by doing the necessary calculations whether Carmela has any claim against Tony. Discuss your answer by substantiating your calculations.

[TOTAL Q 2: 15 marks]

QUESTION 3

Answer the following questions:

3.1 Who is liable for household necessaries where the spouses who live together are married out of community of property? (1 mark)

3.2 List the factors in Reloomal v Ramsey 1920 TPD 371 which the court held were decisive in determining whether or not an article constitutes a household necessary? (4 marks)

3.3 Did the court in Reloomal v Ramsey take an objective or subjective approach to the determination of liability for household necessaries? Was this approach considered fair or unfair? Discuss. (5 marks)

[TOTAL Q3: 10 Marks]

[TOTAL FOR SECTION A: 35 MARKS]
SECTION B

QUESTION 4

4.1 As a result of irreconcilable differences, Jill McKenzie decides to institute the necessary legal proceedings to have her marriage to Jack McKenzie dissolved. Discuss the possibility of the said parties obtaining an order for judicial separation. [2 marks]

4.2 Should it happen that the real reason which led Jill to institute divorce proceedings is because of Jack’s mental illness or continuous unconsciousness, would Jill be able to seek an order for forfeiture of patrimonial benefits against Jack? Explain briefly. [2 marks]

4.3 Discuss the implication of Mr Sam McCarthy dying within three (3) months after the finalisation of his divorce from his wife of thirty (30) years. Sam did not change his will (dated 7 October 2003 and it still remains unchanged) in terms of which he bequeathed the whole of his estate to his former wife, Angel McCarthy. [2 marks]

4.4 Mary Khuzwayo and Alex Khuzwayo are in the process of getting a divorce. List the eight (8) factors the court will consider should any one of the divorcing parties seek maintenance from the other. [4 marks]

4.5 Unlike the Marriage Act 25 of 1961 and the Recognition of Customary Marriages Act 120 of 1998 which allow a minor to enter into a civil or customary marriage provided he/she has secured the consent of certain persons or institutions, the Civil Union Act 17 of 2006 only allows a person who has reached or is over 18 years of age to validly conclude a civil union. Write a short note commenting on a possible constitutional challenge to this provision. [5 marks]

4.6 Explain the rationale for a redistribution order and list the prerequisites for the granting of such an order. [5 marks]

[Total Q4: 20 Marks]
QUESTION 5

5.1 Section 9(1) of the Divorce Act 70 of 1979 provides that:

“when a decree of divorce is granted on the ground of the irretrievable breakdown of marriage, the court may make the order that patrimonial benefits be forfeited, either wholly or in part, if the court, having regard to the duration of the marriage, the circumstances which led to the breakdown of the marriage and any substantial misconduct on the part of either spouse, is satisfied that, if the forfeiture order is not made, the one party will be unduly benefited”.

This section gives rise to some complex and difficult issues. One of these is whether all three factors (highlighted in bold) in s 9(1) have to be alleged and considered. This issue was considered by the Appellate Division (now the Supreme Court of Appeal) in Wijker v Wijker 1993 (4) SA 720 (A). Discuss fully the decision in Wijker v Wijker, focusing primarily on the finding of the court on the issue whether all three factors have to be alleged and considered in each and every matter concerning the award of a forfeiture of benefits order. [10 marks]

5.2 Mr and Mrs Botha were married out of community of property with accrual on 12 August 2000. On 15 June 2004, Mr Botha bought a car for Mrs Botha as a gift. The spouses’ antenuptial contract (which was duly entered into on the day of marriage on 12 August 2000) makes no mention of this donation. On 12 May 2015, Mr Botha instituted divorce proceedings against Mrs Botha when he discovered that she had been having an adulterous affair with their neighbour. Mr Botha also requested a forfeiture of benefits order in terms of section 9 of the Divorce Act 70 of 1979 against Mrs Botha.

Discuss fully, with reference to the case of Watt v Watt 1984 (2) SA 455 (W), whether the car received by Mrs Botha as a gift from Mr Botha during the subsistence of their marriage will be regarded as a patrimonial benefit of the marriage which Mrs Botha may have to forfeit upon divorce. [5 marks]

[Total Q 5: 15 Marks]

[TOTAL FOR SECTION B: 35 MARKS]

TOTAL FOR PAPER: 70 MARKS