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INDEPENDENT MODERATOR: DR S. GOOSEN

INSTRUCTIONS

1. All questions are compulsory and must be answered.
2. This paper consists of SIX (6) 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.

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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 and this fact is very well known to her 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 in particular has upset Jane again. This response to the posting was from a user called “LawBoy77” who commented “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.

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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? In addition, consider any defences that may be raised.

[Total Q1.1: 20 marks]

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.

[Total Q1.2: 5 marks]

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. Can she do so?

[Total Q1.3: 5 marks]

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?

[Total Q1.4: 5 marks]

[TOTAL Q1: 35 MARKS]
QUESTION 2

Nick is running very late for work. Whilst running to catch a taxi, Nick bumps into Adele, a very attractive young lady. While Adele appears to be a normal, healthy woman she in fact suffers from brittle bone disease which means that her bones are very weak and can be easily broken. When Nick bumps into Adele she falls and breaks a leg. A normal individual would not have broken her leg from such a slight bump. Adele is admitted to hospital and her leg is set in plaster. She is then given a set of crutches and is discharged from the hospital. A week later, while using her crutches, Adele slips on a smooth floor, falls again, and breaks her arm.

Is there a factual and legal causal link between Nicks’ conduct and Adele’s damages? Discuss your answer only in the light of the issue of causation.

[TOTAL Q2: 20 MARKS]

QUESTION 3

Amy, a qualified attorney, sustains serious head injuries in an accident resulting from the negligent driving of a motor vehicle by Bob. In a subsequent lawsuit against the Road Accident Fund (RAF) on behalf of Amy, who is mentally retarded in consequence of her injuries, it appears that Amy has already received certain amounts from other sources in order to redress the effects of her injuries. It is urged on behalf of the defendant that such amount should be taken into account in reducing the extent of the total amount claimed on Amy’s behalf. Discuss the merits of this contention considering the relevant law, where the respective amounts are as follows:
(a) R12 000 which Amy had received from her former employer subsequent to the termination of her employment as an attorney, after the firm had on the grounds of pure sympathy employed her again as a consultant for a period of one year, in spite of the fact that she was utterly incompetent to perform any constructive work during that period and for the greater part of it remained at home.

[Total Q3 (a): 4 marks]

(b) R30 000 which represents an amount of full pay for a three-month period, to which Amy is entitled as a sick-pay benefit in terms of her contract of employment;

[Total Q3 (b): 2 marks]

(c) R10 000 which Amy received additionally from her employer as a discretionary sick-pay benefit;

[Total Q3 (c): 1 mark]

(d) R200 000 which Amy received from her employer in a single payment as a pension benefit. The law firm did not make it compulsory for all employees to belong to a pension fund and Amy voluntarily chose to contribute to a pension fund.

[Total Q3 (d): 4 marks]

(e) Would your answer to (d) above differ if the firm had made it compulsory for Amy to join the pension fund?

[Total 3 (e): 2 marks]
In addition, the parties are confused about whether taxation on income Amy would have earned should be taken into account when calculating Amy’s lost income. Advise them using appropriate authority.

[Total Q3 (f): 2 marks]

[TOTAL Q3: 15 MARKS]