SECTION A: PROF M CARNELLEY  [10 MARKS]

HISTORY OF SOUTH AFRICAN LAW

ANSWER THE QUESTIONS OF EACH SECTION IN A SEPARATE ANSWER BOOK!

1.1 At the time of the Principate, the Roman legal system was regarded as being at the pinnacle of its development. Explain how the role of the jurists during this period contributed to the development of the legal system. (5)

1.2 Explain the influence that the British occupations in the 1800’s had on the Roman Dutch legal system already established in the Cape. Were these changes adopted by the Boer Republics in the 1850’s? (5)

Total Section A  [10]
2.1 Which of the following statements are correct?

(i) In the case of *Ex parte Boedel Steenkamp 1962 (3) SA 954 (O)* the testator bequeathed the residue of his estate in equal shares to his daughter and her children who were alive at the time of the testator’s death.

(ii) In the same case the question that the court had to decide was the capacity of the *nasciturus* to inherit.

(iii) The court in that case held that the unborn child could not inherit because s/he was not a beneficiary in the testator’s will.

(a) statement (i) only  
(b) statement (ii) only  
(c) statement (iii) only  
(d) statement (i) and (ii)  
(e) all the above statements

2.2 Which of the following statements are incorrect?

In *Chisolm v East Rand Property Mines Ltd 1909 TH 297* the court held that:

(i) the plaintiff was not expecting a child when her husband was killed.  
(ii) the plaintiff did not have the right to sue the defendant for damages.  
(iii) the unborn child had an independent right to sue the defendant for maintenance.

(a) statement (i) only  
(b) statement (ii) only  
(c) statement (iii) only  
(d) statement (i) and (ii)  
(e) all the above statements

(1)
2.3 Which of the following statements are incorrect?

(i) In the case of *The Road Accident Fund v Mtati 2005 (6) SA 215 (SCA)* a pregnant woman was seriously injured when a negligent driver collided with her vehicle.
(ii) Subsequently, she gave birth to a child Z who had brain injuries and a mental disability.
(iii) In the same case, the Road Accident Fund contended that an unborn child was not a person and was therefore not entitled to compensation.

(a) statement (i) only
(b) statement (ii) only
(c) statement (iii) only
(d) statement (i) and (ii)
(e) None of the above statements

2.4 Which of the following statements are correct?

(i) A valid antenuptial contract shall not be attested by a notary and shall not be registered in the Deeds Registry within three months after date of execution
(ii) A valid antenuptial contract shall be registered in the Deeds Registry within twelve (12) months after execution
(iii) A valid antenuptial contract shall be attested by a notary and shall be registered in the Deeds Registry within three (3) months after the date of execution.

(a) statement (i) only
(b) statement (ii) only
(c) statement (iii) only
(d) statement (i) and (ii)
(e) None of the above statements
2.5 Which of the following statements are correct?

A High court may authorize postnuptial execution of an antenuptial contract in one of the following circumstances:

(i) the parties must have agreed on the terms of the antenuptial contract after entering into marriage.

(ii) the parties must have agreed on the terms of the antenuptial contract before entering into marriage.

(iii) there must be no reason whatsoever for failure to execute and register the antenuptial contract within the prescribed time.

(a) statement (i) only
(b) statement (ii) only
(c) statement (iii) only
(d) statement (i) and (ii)
(e) None of the above statements

2.6 ANSWER QUESTION 2.6 ON THE SHEET PROVIDED!

Name the legal concept for each of the following definitions.

2.6.1 A document written by a testator in which s/he specifies who his/her beneficiaries will be on his death and what they will each inherit from him.

2.6.2 To place authority, power or property in the control of someone.

2.6.3 Property/money left of the deceased’s estate after funeral expenses, costs of administration, taxes, debts and legacies have been paid.

2.6.4 The devolution of an estate according to a testator’s will.

2.6.5 An agreement entered into by two persons who intend to get married before they marry.
3.1 Distinguish between an employee and an independent contractor. What is the legal significance of this distinction? Include a brief explanation of vicarious liability in your answer. Refer to decided cases, including the facts which the court considered significant.

3.2 In what way does the insolvency of the employer affect the contract of employment? Does the same apply if the employee becomes insolvent?

Total Section C [15]

MULTIPLE CHOICE QUESTIONS (ANSWER ON THE SHEET PROVIDED)

4.1. The ethical rules of the lawyer’s practice provide that:
   A) Attorneys and advocates may be struck off the roll of practitioners if the rules are broken.
   B) Attorneys and advocates may not act where they have a conflict of interest.
   C) Attorneys and advocates may not generally breach a client’s confidentiality.
   D) All of the above.

…./Section D Question 4.2
4.2. Which of the following is true?
A) Although ethical rules are important, they are not enforceable (ie: if an attorney breaks the rules, nothing will happen to him).
B) The ethical rules governing attorneys are best described as a voluntary code of conduct.
C) Ethical rules may be enforced by the High court, as well as the professional society to which the attorney belongs.
D) None of the above.

4.3. Imagine you are an attorney. Your client is a large company. The directors of the company want you to take an advantage of a loophole in tax legislation so they can pay less tax. Which of the options is correct?
A) You cannot help them because this would be contrary to the interests of the state.
B) You cannot help them because it would mean being dishonest.
C) You can assist them because this does not involve breaking the law. There is a loophole in the legislation.
D) You must immediately report your client to the police.

4.4. You are an attorney, and your client has been sued for damages arising out of delict. Your client tells you to do whatever necessary to get him off. He specifically tells you to make up whatever defence you feel is the best. Which is the correct option?
A) You can do it because it will be your client and not you who presents the lie in court.
B) You can do it because your overall obligation as a lawyer is to your client.
C) You cannot do it as this would be dishonest.
D) You can only do it if you are certain your client does not have a real defence.

4.5. Imagine you are an attorney. You have been advising and acting for Mr Sibanthu over the last five years. You drew up his will for him and have assisted him in a great deal of litigation. His wife, Mrs Sibanthu, approaches you to represent her in a divorce action against her husband. Which of the options is correct?
A) You must do all in your power to assist Mrs Sibanthu, but you have an obligation to tell Mr Sibanthu everything because he is your client.
B) As long as you are not currently busy with any work in relation to divorce for Mr Sibanthu, you can take Mrs Sibanthu on as a client.
C) You cannot take Mrs Sibanthu on as a client, because there would be a conflict of interest.
D) You can take Mrs Sibanthu on as a client as long as you make it clear to her that your first duty will be to her husband.

...../Section D Question 4.6
4.6. Imagine you are an attorney. Your client has been charged with murder. He admits he killed the deceased, but says that he will make up an alibi and plead not guilty. He wants you to represent him. Which option is correct?
A) You cannot represent him, because you cannot represent a client who lies to court
B) You can represent him, as long as it is only him and not you who lies to the court.
C) You cannot represent him, and you must testify that he confessed to the crime in court.
D) You cannot represent him, and you must give the information you have to the police.

4.7. You are an attorney. Your client tells you that he intends to commit murder. He tells you who the victim will be and where she lives. Which is the correct course of action to take?
A) You must immediately withdraw as his attorney.
B) You must not tell the authorities because of the requirements of client confidentiality.
C) You must tell the authorities. This is an exception to the general rule protecting client confidentiality.
D) You must tell your client what to do to have the best possible chance of getting away with it, from your experience as a lawyer (e.g., wear gloves).

4.8. Which of the following is true?
A) Only attorneys and advocates who are found to be ‘fit and proper’ will be allowed to practice law.
B) “Fit and Proper” refers to a person’s moral character.
C) Generally, if there is any evidence of dishonesty in a person’s character, they will not be allowed to practice law.
D) All of the above.

4.9. Which of the following are not lawyers in private practice?
A) Attorneys
B) Advocates
C) Prosecutors
D) B and C

4.10. Which of the following bodies does not fall under the authority of the National Prosecuting Authority?
A) The Commission for Gender Equality
B) The Witness Protection Programme
C) The Legal Aid Board
D) The Directorate: Special Operations
ANWER THE NEXT TWO QUESTIONS IN A SEPARATE ANSWER BOOK!

QUESTION 5

Mary Kubheka was raped on the night of 22 April 2009. She escaped from the rapist, and reported the matter at a police station. She gave a description of the rapist, and reported that he had threatened her with a knife. She had a medical examination done by the district surgeon. He prepared a report detailing her injuries and confirming that the injuries were consistent with rape.

Explain the procedures that should be followed by the police, the prosecuting authorities and the criminal court in processing this case. You need not discuss the law relating to search and seizure.

(10)

QUESTION 6

Write a note on the difference between the admissibility of evidence, and its weight. Give an example of when evidence will be inadmissible, and explain when evidence would be given a high weighting by the courts.

(5)

QUESTION 7

Write a note on the requirement which must be met for a police officer to conduct a search of premises, or a person, without a warrant.

(10)

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