UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG

EXAMINATIONS : NOVEMBER 2008

SUBJECT, COURSE AND CODE : FOUNDATIONS OF SOUTH AFRICAN LAW (LAWS1FL)

DURATION: 3 HOURS + 15 minutes extra reading time. TOTAL MARKS: 100

External Examiner : Professor J Lund
Internal Examiners : Ms W Banoobhai
                   : Ms M Mamashela

STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY.

PLEASE NOTE:
This paper consists of ELEVEN (11) pages. Please see that you have them all.

INSTRUCTIONS:

SECTION A (50 MARKS): PLEASE ANSWER THIS SECTION IN ONE ANSWER BOOK.

SECTION B (50 MARKS): ANSWER QUESTION 3 IN A SEPARATE ANSWER BOOK.

Answer the multiple choice questions (Q.4 and Q. 5) on the QUESTION SHEET ITSELF and hand that in with your answer books.
SECTION A  (50 MARKS)

ANSWER ALL QUESTIONS IN THIS SECTION
Refer at all times to relevant case law

QUESTION 1

1.1 Betty takes her car to a local garage for a service. When she arrives the assistant writes down her details and instructions on a printed form which Betty is then asked to sign. Betty, being in a hurry to get to work, simply signs the form without reading any of the small print on the form under the heading ‘Terms’. One of these terms provides that the garage is not liable for any damage caused by its negligence or by the negligence of any of its employees. When Betty returns that afternoon to collect her car, she finds that it has been damaged by the negligent driving of a mechanic employed by the garage.

Is Betty bound by the term excluding the liability of the garage? Explain fully.

(10 marks)

1.2 Cindy and her family live in house which Cindy leases from Mohammed. Cindy is the sole supporter of her family and has recently lost her job. As a result she is unable to pay the rent for 3 months. One day, whilst Cindy and her family are out, Mohammed puts a new lock on the door of the house and boards up the windows. Cindy and her family are unable to enter the house. Mohammed tells Cindy that she only be allowed in if she pays the arrear rent.

Does Cindy have a legal remedy to regain occupation of the house, and if so, is she likely to succeed?

(10 marks)

1.3 John tells his lover Margaret that he will give intimate details of their relationship to her husband if she does not sell her new BMW to him for R50 000. The value of the car is R350 000. Margaret, afraid that he will do so and ruin her life, sells the car to him. Margaret thereafter regrets what she has done and wants to know if she can recover the car from John who refuses to return it on the ground that she sold it to him.

Advise Margaret.

(5 marks)
QUESTION 2

2.1 Jones grows dagga in his backyard. He sells some dagga to Pam for R500. Pam, who requires the dagga urgently, takes immediate delivery and promises to pay the purchase price at the end of the month. Pam fails to pay the purchase price.

Can Jones legally compel Pam to pay the price? (5 marks)

2.2 John is interested in buying a shopping centre from Sam. Sam explains that the centre does good business because it is located on a major road. In addition, it is also close to various suburbs. The shopping centre is serviced by a parking lot on the premises and additional parking is provided by a large tarred area opposite the centre. This land is leased by Sam from the local municipality. Negotiations on the sale continue for four months until the agreement is finally concluded. Shortly thereafter John discovers that the municipality has cancelled the lease agreement in respect of the parking lot opposite the centre, a fact which Sam as the tenant would have to have been aware of. John also discovers that the cancellation of the lease took place one month prior to the conclusion of the sale agreement.

John wishes to have the contract set aside. Advise John whether there is a legal basis upon which he may do so, as well as on his chances of success. (10 marks)

2.3 Explain the requirements that must be met in order to acquire ownership by occupatio.

(10 marks)

[25 MARKS]
QUESTION 3

3.1 The rule that a woman who was subject to her husband’s marital power could not enter into binding contracts or any other legal transactions was subject to various exceptions. In some instances the law allowed her to bind her separate estate or the joint estate.

State and discuss five examples of those instances.

(15 marks)

3.2 De Freitas (among other independent advocates) and IAASA (the Independent Association of Advocates of South Africa) challenged the continued validity of the ‘referral rule’ in the current South African context. The court decisions are reported as:

Society of Advocates of Natal v De Freitas and another 1997 (4) SA 1134 (NPD); De Freitas and another v Society of Advocates of Natal and another 2001 (3) SA 750 (SCA).

Explain what the referral rule is, why and how it was challenged, and what the views of the courts were in this regard.

(15 marks)

[30 Marks]
INSTRUCTIONS:

1. Students are required to fill in their details and answers on the question sheet itself.

2. Student No.______________________________

3. Signature: _________________________________

4. Students must hand in both this question sheet and the answer book at the end of the examination.

5. Answer both question 4 and question 5.

QUESTION 4

4.1 Which of the following statements are correct?

i. Before the commencement of the Matrimonial Property Act 88 of 1984, the husband did not have the marital power in all marriages in community of property and consequently did not administer the joint estate in all such marriages.

ii. The rule that a woman who was married in community of property including the husband’s marital power could not enter into a binding contract or other legal transactions was not subject to any exceptions.

iii. Where a couple was married in community of property including the marital power, if the husband was unable to give consent or unreasonably withheld it, the court could not grant the wife permission to conclude a contract or perform other juristic acts.

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

(2 marks)
4.2 Which of the following statements are correct?

i. According to Section 1 of the Matrimonial Affairs Act 37 of 1953, the husband could not alienate his wife’s immovable property without her written permission.

ii. The General Law Fourth Amendment Act 132 of 1993 did not abolish the marital power of the husband over his wife’s person and property in Black marriages.

iii. The Matrimonial Property Act 88 of 1984 retained the marital power in all marriages in South Africa.

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

(2 marks)

4.3 Which of the following statements are correct?

i. The law allowed a wife who was subject to her husband’s marital power to purchase household necessaries in a reasonable manner without her husband’s permission provided they were married and there was a joint household.

ii. Section 2 of The Matrimonial Affairs Act 37 of 1953 enabled the wife married in community of property to keep her salary, compensation for personal injuries and savings in a bank or building society.

iii. A woman who is married out of community of property excluding the husband’s marital power does not have full legal capacity.

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

(2 marks)
4.4 Which of the following statements are correct?

i. The Age of Majority Act 57 of 1972 gave a married woman financial security in that it allowed her to share in her husband’s pension on divorce.

ii. The Domicile Act 3 of 1992 prohibited the wife to choose her own domicile. It provided that her domicile must follow that of her husband during and after marriage.

iii. The Child Care Act 74 of 1983, granted the wife and husband equal guardianship and custody rights over their legitimate children.

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

(1 mark)

4.5 Which of the following statements are correct?

i. The effect of the abolition of the marital power was to do away with the restrictions which the marital power placed on the capacity of a wife to contract and to litigate.

ii. Section 14 of the Matrimonial Property Act 88 of 1984 introduced the principle of equality between the husband and wife by allowing them to manage the joint estate jointly.

iii. According to the same section, the wife may dispose of the assets of the joint estate, contract debts which lie against the joint estate on her own without consulting her husband.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statement i and ii
(e) Statement ii and iii

(1 mark)
4.6 Which of the following statements are correct?

i. A matrimonial property regime refers to the rules governing a marriage which could be either in or out of community of property with accrual.

ii. An antenuptial contract is an agreement which a couple that plans to marry may enter into, after the marriage, in order to change the consequences of a marriage in community of property by excluding some of the common or statutory law consequences of a marriage.

iii. The accrual system means that the spouse whose estate shows the smaller accrual or no accrual at all has a claim, on dissolution of the marriage by divorce or death, to share in the accrual of the spouse whose estate shows the greater increase.

(a) Statement i only
(b) Statement ii and iii
(c) Statement i and ii
(d) All the above statements
(e) Statement i and iii

(1 mark)

4.7 Which of the following statements are correct?

i. The husband’s marital power came to an end at the death of all the couple’s children.

ii. The marital power embraced four elements namely, the husband’s power as the head of the family, the husband’s power over his wife’s property and person and the husband’s power over his brother’s children.

iii. A woman who was married in community of property including the marital power could carry on a public trade and perform valid juristic acts in the course of her business. The contracts she concluded were binding on the joint estate.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) All the above statements

(1 mark)
QUESTION 5

5.1 Which of the following statements are incorrect?

i. Sec 78 (1) of the Attorneys Act 53 of 1979 obliges every practicing attorney to keep a separate trust bank account in which s/he has to deposit any money held or received by him on account of any person;

ii. Sec 78 (4) of the same Act, obliges an attorney to keep proper books of account containing particulars of any money received, held or paid by him on account of any person;

iii. Sec 78 (5) of the same Act confers on the Council of the Law Society the power to inspect the books of account of an attorney in order to satisfy itself that the provisions of sec 78(1), (2), and (4) are observed;

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) None of the above
(e) All the above

(2 marks)

5.2 Which of the following statements are incorrect?

i. Sec 78(7) of the Attorneys Act 53 of 1979 provides that monies in the trust account are the personal property/asset of the attorney, may be used by him/her as s/he pleases and may be attached for the attorney’s debts.

ii. Sec 78(8) of the same Act does not give the court the power to prohibit an attorney from operating the trust account and to appoint a curator bonis to control and administer the account.

iii. Sec 25 of the same Act, provides for the existence of a Fidelity Fund.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statement ii and iii
(e) Statement i and ii
(f) All the above

(2 marks)
5.3 Which of the following statements are **incorrect**?

i. An advocate is in charge of formal steps which have to be taken in litigation, namely, the delivery of pleadings and notices, the observation of time limits, the acceptance of service of process and other documents, the keeping of records, consultations, attendances, conferences, inspections, drafting of affidavits, discovery, instructions to counsel, correspondence, investigations, tracing and interviewing of witnesses and obtaining the attendance of witnesses.

ii. The purpose of the Fidelity Fund is to compensate attorneys who have suffered loss as a result of theft by their employees of money entrusted to the attorneys in the course of their practice.

iii. An attorney may practice without a Fidelity Fund certificate and is free not to comply with all lawful requirements of the Law Society.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) None of the above
(e) Statement ii and iii
(f) All the above

(2 marks)

5.4 Which of the following statements are **incorrect**?

i. An attorney draws pleadings and an advocate files them. Both are specialists in forensic skills and in giving expert advice on legal matters.

ii. An advocate briefs an attorney because s/he (the advocate) takes instructions directly from clients, hence the referral rule.

iii. Section 45 of Admission of Advocates Act 7 of 1964 allows an advocate to accept instructions direct from a client.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statement i and ii
(e) None of the above
(f) All the above

(2 marks)
5.5 Which of the following statements are incorrect?

i. The difference between advocates and attorneys is that whereas advocates must apply for permission to appear in the High Court attorneys automatically have the right to appear in the High Court.

ii. An attorney is allowed to perform the functions of an advocate and vice versa.

iii. An advocate does not have to make an Ex parte application to the High Court in order to be added to the roll of advocates.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statement iii and ii
(e) Statement i and ii
(f) All the above

(2 marks)