QUESTION 1

Mr Sotho was convicted of being in possession of stolen property in the court a quo. He appealed against his conviction on the basis that his constitutional rights to privacy and legal representation were violated when a search of his residential property was undertaken by the police without a search warrant and without his consent. He was not given an opportunity to consult with a lawyer. Once the stolen goods had been located, the arresting officer promised Mr Sotho that they would go easy on him if he told the police the whole story. Mr Sotho then gave the police officer a full confession. The state concedes that it would not have been able to secure the conviction of the accused without the admission into evidence of the stolen goods, and his confession as this was the only evidence linking him to the crime.

Mr Sotho now appeals against his conviction. Discuss whether the High Court should admit or exclude the stolen goods or/and his confession as evidence. Refer to case law.

(70 marks)
QUESTION 2

Indicate whether the following statements are true or false:

1. If an adult, intelligent witness refuses to take the oath or the affirmation before testifying, any evidence given by the witness is inadmissible.
2. Research has shown that the free narrative technique of eliciting evidence is generally more reliable than the question and answer format.
3. Leading questions are not allowed in examination in chief, but are allowed in re-examination.
4. Leading questions are permissible in cross examination.
5. A party's failure to call an available witness to testify may not be used against him/her in civil or criminal cases because of the right to silence.
6. In criminal and civil cases a party's failure to testify will not lead to an adverse inference being drawn because of the constitutional right to silence.
7. Cross examination is restricted to matters raised during evidence in chief.
8. Re-examination is restricted to matters raised during cross examination.
9. A previous inconsistent statement is not admissible.
10. A cross examiner is not entitled to ask questions which do not pertain directly to the issues before the court, unless they are relevant to establishing credibility.

(10 marks)

QUESTION 3

Amy, aged seven, complains to her mother of an indecent assault by an uncle. Her mother is in no doubt that Amy is telling the truth. Horrified, she calls in the police who arrest and duly charge him. The prosecutor wants to proceed with the trial, but Amy’s mother is worried about the effect of the trial on her daughter. What procedure exists in SA law to lessen the negative impact of the trial on Amy?

(20 marks)
Sheela was raped at a party by the accused, a newcomer at her school. As she left the party in tears and visibly upset, she bumped into a friend, Zanele, who offered to take her home. Although Zanele asked Sheela what was wrong, Sheela wouldn’t tell. When Zanele returned home, she told her mother about Sheela’s strange, tearful behaviour. Tragically, Zanele was killed the next day in a car accident.

Sheela went to her doctor the morning after the rape because she was concerned about the possibility of pregnancy, sexually transmitted diseases and HIV/AIDS. Her doctor gave her a thorough examination, and remarked on severe bruising on her upper thighs.

She did not tell anyone of her ordeal until 2 weeks after the event when she confided in her mother. She also confided in her friend, Sharon, who attended the same school as both her and the accused. Sharon told Sheela that she had been raped by the accused in the past, and that he was convicted of the offence. Sheela has a bad reputation at her school as a person who regularly engages in one night stands (casual sexual activity).

4.1 In what circumstances, if any, can the prosecution lead evidence of the accused’s previous conviction? (10 marks)

4.2 In what circumstances, if any, can the defence lead evidence of Sheela’s sexual habits? (10 marks)

4.3 In what circumstances, if any, can the prosecution call Sheela’s mother to testify as to what her daughter told her two weeks after the alleged rape? (10 marks)

4.4 In what circumstances can the doctor who treated Sheela testify in the trial? (10 marks)

4.5 If Zanele’s mother was called to testify about what Zanele had reported to her on the night of the alleged rape, what type of evidence would it be, and in what circumstances would it be admissible? (10 marks)