SECTION A: LEGAL PROFESSION – [50 MARKS]

Question 1

What distinguishes a profession from other forms of employment, with specific reference to the legal profession? (25)

Question 2

It is said that in order to practice law a person must possess and display certain qualities, most of which cannot be acquired through learning. An appropriate academic training may, however, play a vital part in improving these qualities. Indeed, if an attorney is not regarded as a ‘fit and proper’ person she may be struck from the roll of attorneys.

Discuss the qualities of a good attorney, as well as the requirement of ‘fit and properness’ referring to case law where appropriate. (25)
SECTION B: HIV and AIDS – [50 MARKS]

Question 3

Paul and Mary work together. They start dating after lots of flirting during tea breaks. After a month of causally dating, Paul and Mary start sleeping together. They practice safe sex (use condoms) as Mary is afraid of becoming pregnant. However sometimes when they have been drinking or don’t have access to condoms they have unprotected sex. Three months before they met Paul applied for life insurance and had a routine HIV test. The results indicated that he was HIV positive. Paul did not disclose his HIV status to Mary because he did not think she would go out with him if she was aware of his status. Six months later Mary volunteers to be tested at a company HIV awareness day. She tests HIV positive. In a state of shock and extreme anger she confronts Paul. He denies that he infected her and says it must have been a previous boyfriend. Determined to make him pay Mary goes to her lawyer for advice. As her attorney, discuss the following questions for her.

(a) Can she institute any criminal charges against Paul? Refer to relevant cases

(b) Would Paul be able to raise any defences to any possible criminal charges? Refer to relevant case law.

(c) Can Mary apply to have Paul tested for HIV without his consent in order to establish whether he was the source of her infection?

Question 4

Answer ONE question from this section:

(a) Write a short note on the facts, judgment and outcome in Hoffmann v South African Airways 2001 (1) SA 1 (CC).

(b) Write a note on the circumstances in which a medical doctor may breach the confidential doctor-patient relationship and disclose his or her patient’s HIV status to a third party at risk of HIV infection. Refer to decided cases.
SECTION C – CONTRACT AND PROPERTY [50 MARKS]

Question 5

In each of the scenarios set out below, indicate whether there is a contract. Make sure you discuss fully, referring to relevant case law (where applicable).

(a) Thuli offers to sell Lerato her brand new Louis Vuitton handbag for R800. Lerato replies that she will buy the bag for R600.

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(b) Hennie approaches Gert and asks Gert if he is interested in selling his 1965 John Deere tractor. Gert says that he will think about it. Two days later, Gert telephones Hennie and says, “I’ll sell you the tractor for R57 000. You must let me know before Saturday morning because there’s someone else who is interested”. On the Wednesday of that week, Phil phones Gert and offers R78 000 for the tractor. Gert decides to revoke his offer to Hennie and telephones him in order to do so. Hennie answers and tells Gert that he has already accepted. Hennie sent Gert an e-mail accepting the offer one hour before Gert’s phone call. Evidence indicates that the e-mail entered Gert’s e-mail system 58 minutes before the phone call. After the phone call, Gert opens and reads the e-mail accepting the offer. Indicate in this case, in addition to whether there is a contract, where and when the contract (if there is one) entered into existence.

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(c) Julia, who lives in Hilton, makes Reshma a written offer to sell her 2009 Subaru motor car for R125 000. She e-mails the offer to Reshma, indicating in the offer that acceptance must take place by close of business on 28 November 2011. Reshma, who lives in Johannesburg, writes her letter of acceptance and posts the letter in Johannesburg on 27 November 2011. Julia receives and reads the letter on 2 December 2011. If there is a contract, indicate also where and when the contract (if there is one) enters into existence.

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Section C continued…

(d) Siza is negotiating with Asanda to purchase his house. Siza knows that the house is very close to a big river. He also knows that there was major flooding in the area two years before. He asks Asanda if the house was affected by the floods and Asanda replies, pointing at the edge of the property about twenty metres from the house itself, “The waters were close but they stopped over there at the edge of the property”. Siza is satisfied with the answer and, because he likes the house, makes an offer that Asanda accepts. Before Siza moves in, he meets with one of his prospective neighbours, Busi who says to him, “You are very brave to buy that house – every time there is a big rain the house gets flooded”. Advise Siza on what he can do in this situation – is he bound by the contract? (5)

(e) Set out and describe each of the five forms of constructive delivery. Provide an example of each. (15)

(f) Peter is pursuing a swarm of bees that he intends to capture in order to establish a hive. He loses sight of the bees as they fly into a wooded area. A few hours later, on the other side of the woodland, he comes across Wayne, who is wearing a beekeeping suit, putting a swarm of bees into a bag. Peter argues that the bees are his but Wayne insists that they are his because they were flying free and he was entitled to become the owner of them. Who is correct? Explain fully, referring to any applicable case law. Assume for purposes of the question that the swarm of bees is the same swarm throughout. (8)

(g) Mandla sells his pick-up truck (bakkie) to Themba. The bakkie needs a new exhaust, so he purchases an exhaust from New Exhauster (Pty) Ltd, and the exhaust is fitted to the bakkie by the company. Both contracts are revoked due to non-payment by Themba. Mandla takes the bakkie back and New Exhauster demands that Mandla return the exhaust. Mandla refuses, saying that the exhaust has become part of the bakkie. Is he correct? Discuss fully, referring to decided cases where applicable. (7)