Question 1

After the case of Pinchin v Santam Insurance Co Ltd 1963 (2) SA 254 (W), several legal academics commented on the judgment. Joubert and Boberg were two of these commentators. Their opinions were also discussed by the court in the Road Accident Fund v Mtati 2005 (6) SA 215 (SCA) judgment. Briefly set out the arguments of BOTH of these commentators vis-à-vis the Pinchin judgment and note finally which of these two arguments the SCA accepted as correct.

Question 2

Annie died suddenly of a stroke. She was only 33: a loving wife and mother of two small children. In her will, the estate is shared between her husband and her mother. The family is not in agreement about her burial. Her mother argues that Annie wanted to be buried in the graveyard next to her father. Her husband argues that Annie wanted to be cremated and her ashes used in a tree-planting ceremony.
Question 2 continues…

2.1 Presume that there is additional evidence of Annie’s verbal instructions to her husband in a letter she wrote to a friend. What are the legal principles that would guide her burial? Explain with reference to case law. (3)

2.2 Ignore 2.1. Presume that there is no additional evidence and that the conflict between the family members remains unresolved. What are the legal principles that would guide her burial? Explain with reference to case law. (3)

Question 3 [10]

There are various types of domicile in the South African Law of Persons. Name them and briefly state the requirements of each of these types of domicile.

Question 4 [15]

The question whether a person can compel another adult and/or a child to undergo scientific parental testing has been fraught with difficulty resulting in a series of judgments. Discuss the legal development of this area with reference to the cases.
5.1 Zama is 17 years old. She decides to buy a second-hand car. She visits Mrs Banda, a dealer in second-hand cars. Without the assistance or consent of her guardian, Zama concludes a contract of sale with Mrs Banda. In terms of the contract, Mrs Banda sells Zama a car at the discount price of R25 000. The actual value of the car at the time of conclusion of the contract is R30 000. During the negotiations Zama tries to represent herself as a major, but it is obvious to Mrs Banda that she is dealing with a minor. On 20 April, two weeks after the car is delivered to Zama, she sells it for R20 000. She spends R15 000 of this money on a luxury lounge suite, and the remaining R5000 she uses to pay her rent. She does not pay any of the debt to Mrs Banda. On 3 May, Mrs Banda institutes action against Zama.

5.1.1 On what basis could Zama be held liable to Mrs Banda?
Explain briefly. (2)

5.1.2 What do you understand by the concept of “undue enrichment”? (2)

5.1.3 At what moment should the extent of the minor’s enrichment be calculated? (1)

5.1.4 In the question, what is the date of that moment? (1)

5.1.5 What is the amount of Zama’s enrichment? (1)

5.2 Nick is 17 years old. He concludes a contract with Andre, who is an adult, to buy Andre’s motorbike for R2000. Nick gives Andre a false impression that he is 18 years old and therefore does not need his guardian’s consent to conclude the contract. Nick pays a deposit of R500 and Andre delivers the bike to him. Now Nick refuses to pay the rest of the purchase price on the ground that he is a minor and therefore cannot be held liable. He also wants to reclaim his deposit. Advise Nick, with reference to authority, on whether Andre can recover the contract price, or any price, from him. Also indicate whether Nick would be able to reclaim his deposit. (5)
Question 6 [10]

Ben has been declared a prodigal in the High Court based on evidence that he is an alcoholic pathological gambler. He is distraught and requests from you a detailed explanation as to how this affects his capacity to act. The following issues are clear from the consultation: he is a born scam artist that would attempt to enter into contracts without the consent of his curator or that he will “forget” to tell 3rd parties that he has been declared a prodigal. He has also recently met the “woman of his dreams” and a marriage is a distinct possibility in the foreseeable future. He wants to marry her out of community of property without the accrual system. Include in your explanation references to judicial precedent.

Question 7 [9]

A legal subject’s status is influenced by various factors or attributes. Name these factors and show briefly how they influence a person’s: (a) capacity to act; (b) capacity to litigate; and (c) capacity to be held accountable for delicts where fault is a requirement. [In your answer exclude the following: birth and adoption, citizenship and insolvency.]