Seventeen (17) year-old Paul went surfing in Cape Town with his two best friends, sixteen (16) year-old Jojo and eighteen (18) year-old Momo. Whilst swimming in the sea, Paul was attacked by a shark which bit off his right arm. Paul’s friends rushed him to hospital where he decided to make a will. He dictated the will to Momo who wrote it down in his own (Momo’s) handwriting. In this one page will, Paul left his car to Momo, R5 000.00 to Jojo and the residue of his estate to his grandparents who raised him. Paul who was right-handed, made a thumb print with his left hand at the end of the will. Jojo and a nurse signed as witnesses. Paul died a few hours later. He was survived by his father and his grandparents.

Answer the following questions on these facts:

(a) Was Paul old enough to make a will? Explain your answer. (1)
(b) Was Jojo old enough to be a witness to the will? Explain your answer. (1)
(c) Does Paul’s will comply with all the testamentary formalities for a valid will? Explain your answer. (8)
(d) Suppose the will is invalid because it does not comply with the formalities for wills. What advice will you give Paul’s grandparents that will enable them to inherit under the will? (6)
Question 1(e) continued…

(e) Suppose the will is valid. Discuss the capacity of Jojo and Momo to inherit under the will. (4) [20 MARKS]

Question 2

Write a note on undue influence and what effect it has on the validity of a will. In your answer you must refer to and discuss the following two cases: Harlow v Becker 1998 (4) SA 639 (D) and Spies v Smith 1957 (1) SA 539 (A). You must also answer the following questions:

(i) What were the facts of each case?
(ii) What did the court decide in each case?
(iii) How did the court arrive at its decision in each case? [20 MARKS]

Question 3

(a) Mbali and Sibusiso were married in community of property in 2000. They had three children X, Y and Z born in 2000, 2002 and 2004 respectively. Sibusiso’s parents Alice and George were alive in 2000 when Mbali and Sibusiso married. Alice and George made a joint will in 2005 in which they bequeathed their three sugar cane farms and other movable property to X, Y, Z.

In March, 2006 Sibusiso shot and killed both his parents. According to him the killing was accidental. The court did not believe his story and in June 2006, convicted him of murder and sentenced him to life imprisonment. In January 2007, X was killed in a fatal car accident.

Mbali instructed you, her attorney, to make an urgent application to the High Court asking for an order in the following terms:

(i) That she is the sole intestate heir of her deceased child X.
(ii) Alternatively, Y and Z should be declared the intestate heirs of X.
(iii) That Sibusiso is disqualified from inheriting from X.

Question 3(a) …/
Question 3 (a) continued…

What legal advice would you give Mbali? Advise her on the prospects of success of the application. Give reasons for your answer and refer to relevant case law. (10)

(b) Robert and Nancy were married in community of property. They executed a joint will in which the surviving spouse was appointed as heir of the first-dying. One evening Robert took a few drinks and was under the influence of intoxicating liquor, but not to the extent that he did not know what he was doing. When he went to bed he took his pistol with him as he usually did. While handling the pistol it went off and his wife was fatally injured and subsequently died from the injuries.

Is Robert entitled to inherit from his wife in terms of their joint will? Discuss. Give reasons for your answer and refer to relevant case law. (10) [20 MARKS]

Question 4

Identify and discuss the rules of intestate succession applicable in the following scenarios. Draw a supporting diagram and give detailed reasons for your answer.

(i) X died in 2005 without leaving a will. He was survived by the following persons:
    V, his widow
    B, his son
    D and F, granddaughters (A’s children)
    X’s son, A, and his daughter C, predeceased him.

In the light of the above facts divide his estate in the following circumstances:

X and V were married out of community of property and the accrual system was applicable to their marriage. When X got married his estate was R150 000; it accrued from R150 000 to R350 000 during the marriage. V’s estate accrued from R100 000 to R200 000. (6)
(ii) X died intestate in 2005. He was survived by the following persons:
   A, his sister
   B, his brother
   D, his half sister (on the father’s side)
   F and G, the sons of a predeceased half-brother, C, (on the mother’s side)
   M and P, X’s mother and father predeceased him. Both M and P had remarried to
   S and T respectively.

The estate was worth R300 000, how will it be distributed? (6)

(iii) E died in 2004 without leaving a will. He is survived by the following persons:
   W, his wife to whom he was married in community of property. [W was
   previously married to Y. W and Y have a daughter G. E adopted G]
   C and D, their natural children
   Q and P, the children of C
   A, his father
   M, the child of E’s half sister, S, on the mother’s side [S predeceased E]

Divide the joint estate of R400 000 (6)

(iv) What is the law of succession? (2)

[20 MARKS]

Question 5

In this question you are given a number of definitions of principles or concepts from the
law of succession. Write down the name of each particular concept.

(a) Refusing to inherit. (2)
(b) This concept applies when a testator leaves a specific benefit, for example, a
   house or a farm, to a beneficiary. (2)
(c) The legal institution where property is left to a beneficiary subject to the
   condition that as much of it as may be left at the time of his or her death is to
   devolve upon another person. (2)
Question 5(d) continued…

(d) The time when a beneficiary’s right to claim delivery of the bequeathed property becomes enforceable. (2)

(e) If an inheritance is made subject to this concept, vesting of the bequeathed property in the heir only takes place upon the happening of an uncertain future event. (2)

(f) If a bequest is made subject to this concept, the beneficiary loses his vested rights when an uncertain future event takes place. (2)

(g) This takes place when any benefit received by a descendant from the testator during the latter’s lifetime, is taken into account upon division of the estate in order for a fair distribution to take place. (2)

(h) In this account the executor lists all assets and liabilities of the estate and sets out how the estate is to be distributed. (2)

(i) A joint will in which two or more testators mutually benefit each other. (2)

(j) A deceased person who has left a valid will. (2)

[20 MARKS]

SECTION B (20 MARKS) – Ms P Singh

THIS SECTION IS COMPULSORY – ANSWER ALL QUESTIONS

PLEASE ANSWER THIS SECTION IN A SEPARATE ANSWER BOOKLET

You are the executor of an estate in which Joe and Jane Smith have executed a joint will. Joe and Jane are married in Community of Property and Joe dies on the 15th April 2011. Jane approaches you for advice as she is confused about certain content in the will. She is particularly concerned about the following clauses in the will.

Read the clauses of the will and then answer the questions which follow.
Section B continued…

1 Massing
We direct that on the date of death of the first dying of us that the estates of the first dying of us and of the survivor shall be massed and be administered as one estate. It is our wish that this will operate as both the will of the first dying of us and as the will of the survivor.

2 Bequest if testatrix is the first to die
If the testatrix is the first dying of us we bequeath the entire massed estate to the testator.

3 Bequest if testator is the first to die
If the testator is the first dying of us we bequeath the massed estate as follows:

3.1 We bequeath the shareholding in Smith Electronics CC to David Smith.
3.2 We bequeath our beach house in Margate to Susan Smith.
3.3 We bequeath our residence in Finch Terrace to Jane Smith for the duration of her life.
3.4 We bequeath the residue of the massed estate to our grandchildren.

Question 1
(i) Jane is confused what is meant by a massed estate. Explain briefly to her what is meant by a massed estate (2)

(ii) Jane wants to know if she is bound by the joint will and if there are any repercussions if she repudiates the joint will? Advise her in this respect. (5)

(iii) Jane is confused by clause 3.3. She is not sure what sort of right this clause creates. She wants to know whether it is a usufruct or a fiduciary right to the house. How would the courts resolve this problem? (5)
Question 2

Is a pactum successorium allowed in South African law? If so, what are the requirements for such a pactum successorium to be valid?  

[20 MARKS]