Answer any THREE (3) questions.

Question 1

Ms Farhana Dlamini is madly in love with her boyfriend Ismail Msaki and they are keen to get married but are cautious about which marital regime is best suited for them. Ismail is very concerned that his future wife is adequately protected in all her rights, including the right to equality.

They are, however, concerned because his parents want them to be married by customary law. Her parents, who are deeply religious in the Islamic faith, want them to marry under Islamic law. They have been informed that there are some proposals for changes in the law in relation to Muslim marriages and are willing to wait to get married if these proposals suggest a better regime for Farhana.

Give full advice on both these marital regimes, with a particular focus on their impact of Farhana’s right to equality. Comment on the proposals for law reform mentioned.

[25 marks]
Question 2

Amber is a commercial sex worker employed by J’etaime Massage Parlour. For the last 5 months, she and her colleagues have been routinely arrested by the local police, and held in cells for a few hours per day. None of them have been prosecuted.
2.1 She wishes to know whether she can challenge the constitutionality of S20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 or at least to stop the police from harassing them. (15 marks)

2.2 She is further traumatized when her employer tells her that she is dismissed because she was absent from work without authorization whilst in the police cells. She wishes to whether she can successfully bring a labour action against her employer for unfair dismissal. (10 marks)

[25 marks]

Question 3

You are approached by Mrs di Buyn who informs you that her husband beats her up regularly, ties her up and keeps her in an attic for lengthy periods of time. On at least three occasions, he has told her that he would kill her if she left him. Her friends tell her that she should hire two guys to kill him in his sleep, and she will be free because she can always rely on the ’battered women’s syndrome’ to escape liability for murder if she is found out. She is unsure about this, and does not know what to do to stop him from beating her again.

Give full advice.

[25 marks]
Mrs Vashnee Perumal has been employed as a reservation clerk by Sundance Bed and Breakfast for 5 years. In January 2011, she discovered that she was 2 months’ pregnant, but was reluctant to tell her employer, Mr Noel van Tonder, because he has told her repeatedly that her job is important and he hopes she never decides to take long leave or to fall ill.

In March 2011, she consults her doctor who informs her that there are potential complications with her pregnancy, and that she would need to attend a medical examination at least once a week for the rest of the term of her pregnancy. Whilst discussing this on the phone with her doctor, Mr van Tonder walks in and hears some of the conversation. He glares at her and she tells him that she is pregnant and that she would need to take one day off a week for the medical consultations.

He is outraged and tells her that she is dismissed because she is dishonest and sickly. He tells her that she knew how he felt about her taking time off, and accused her of lying to him by not disclosing that she was pregnant.

She seeks advice on whether her employer can fairly dismiss her in these circumstances.

[25 marks]