SECTION A (50 MARKS)

ANSWER THIS SECTION IN A SEPARATE BOOK
ANSWER ALL QUESTIONS

QUESTION ONE

1.1 Write a brief note in which you explain what the Doctrine of Precedent is. (10 marks)

1.2 Distinguish between the Magistrates’ Court and the High Court. (5 marks)

1.3 Distinguish between the natural law approach and the positivist approach to law. (10 marks)

QUESTION TWO

2.1 Distinguish between an appeal and a review.
In the following situations should the process of appeal or review be followed? Give reasons for your answer.

2.1.1 Sindy sues John. She loses the case. She later finds out that the magistrate is John’s uncle.

2.1.2 Sam is convicted of theft in the magistrates’ court. He believes that he should not have been convicted.

2.1.3 Jane loses her case for damages against her building contractor. She finds out thereafter that he promised to build the magistrate a holiday home in Ballito. (9 marks)
Question 2… continued

2.2 Given the following citations, supply all the information that you can about each case:

i) *In re Rome* 1991 3 SA 291 (A)
ii) *Ex Parte Davidson* 1981 (3) SA 575 (D)
iii) *Casey NO v The Master and Others* 1992 4 SA 505 (N).

(6 marks)

**QUESTION THREE**

3.1 Act 200 of 2009 has recently been passed. Section 3 of the Act prohibits the ‘production, distribution and possession of sexually explicit material involving children’. A producer of videos of this nature alleges that his right to freedom of expression is infringed by the provisions of section 3.

You are required to explain how a court will go about assessing whether section 3 is constitutional or not, with reference to section 36 of the Constitution.

(10 marks)

TOTAL MARKS FOR SECTION A - 50
SECTION B

Instructions

1. Please answer ALL questions. Questions must be answered IN A SEPARATE ANSWER BOOKLET FROM SECTION A. The front cover of your answer booklet must clearly indicate that it contains SECTION B.

2. THIS SECTION CONSISTS OF FIVE QUESTIONS. PLEASE ENSURE YOU HAVE ANSWERED ALL FIVE QUESTIONS

QUESTION ONE

What are the requirements which must be proved in order to establish a successful claim in terms of the actio de pauperie?

(7 marks)

QUESTION TWO

Set out and briefly discuss the test to determine negligence in delict. In addition, list factors the court will take into account in determining whether the consequence was preventable.

(5 marks)

QUESTION THREE

A six year old and an eight year old child jointly commit a crime. Discuss briefly how their ages will affect their respective criminal liability.

(4 marks)

QUESTION FOUR

4.1 Sizwe and Rob have been friends for the last five years. One day Sizwe decides to play a trick on Rob. He pours Rob a glass of fruit punch in which he, without Rob’s knowledge, includes a fast dissolving drug called Repynol. The side effects of Repynol include hallucination, aggression and feelings of extreme paranoia. The drug is easily dissolved in liquids and is colourless, odourless and tasteless. Rob drinks the fruit punch. The drug makes him aggressive. He slaps his girlfriend Maggie as he believes that she is having an affair with Sizwe. This belief and his aggression are solely due to the side effects of the drug. Rob is then charged with assaulting Maggie. Advise Rob whether he may succeed with the defence that at the time of the act he was under the influence of a drug. Discuss both the statutory and the common law position.

(10 marks)
Question 4…continued

4.2 Assume for the purposes of this question that Sizwe and Maggie really are having an affair. Rob is a very passive person and he decides to take the drug Repynol, with the side effects as described above, in order to become aggressive enough to confront Maggie and Sizwe about the affair. He then assaults Maggie while he is under the influence of the drug. Can he then rely on the defence that at the time of the act he was under the influence of a drug? Explain your answer.

(4 marks)

QUESTION FIVE

Thandi is involved in a major accident which is caused solely by the fault of Riaz. Thandi sustains severe injuries at the scene of the accident and would have died from these injuries had medical help in the form of two paramedics, called Jo and Ant not arrived on the scene within minutes of the accident. Riaz is also injured in the accident and Jo and Ant alternate between both patients at the scene. Thandi is transported to the nearest hospital which is a provincial hospital called Sacred Heart Hospital. On arrival at the hospital she is treated by Dr Ricky Ricardo, a graduate of an obscure medical college in China. Due to the shortage of doctors willing to work at South African government hospitals, Dr Ricky Ricardo is employed as an ICU specialist at the Sacred Heart Hospital even though his knowledge of English is extremely poor. While he is attending to Thandi, he orders the nurse to administer 100 CC’s of Endall instead of the maximum allowed dosage of 10 CC’s. This error occurs because he has confused the English words for ten and one hundred. Due to the overdosage Thandi has a seizure and dies. Thandi’s husband brings an action for damages and loss of support against Riaz. Riaz claims that it is Dr Ricardo and not himself who is the cause of Thandi’s death. Dr Ricardo claims that Thandi would have died from the injuries sustained in the accident regardless of whether he made the mistake or not. As such he claims that it is Riaz and not himself who is the cause of Thandi’s death.

Discuss only the issue of causation in your answer. Your answer must comprehensively deal with all the relevant law including all the theories of causation as well as the factors which the court takes into account in reaching its decision.

(20 marks)

TOTAL MARKS FOR SECTION B - 50