QUESTION 1

John and Jamie have been married since 1979: out of community of property and without the accrual system. They met as students two year earlier. Since then they have built up their take-away business which they eventually sold for R4 million six months ago. The money was placed in shares under John’s name. For the first 15 years they both worked equally hard in the business. After 1995, when Jamie finally fell pregnant, they decided that she should become a housewife whilst the children were in the house. They specifically sold the business so that John could also spend more time with their three children: Jack (14), Julie and Jolene (twin girls of 12). It has now transpired that Jamie has been having an affair with her gym teacher. John consults you about instituting divorce proceedings. Both parents want custody of the children and Jamie also wants to share in John’s pension that he built up over the past 15 years and that was paid for by the business. Jamie inherited a house from her father after his death valued at R1 million.

Advise John in detail about the following issues pertaining to their marriage, with specific reference to case law, setting out the applicable legal principles, any discretion the court may have as well as the factors and/or requirements the court would take into consideration with each [in each case the applicable rules must be applied to their factual situation as far as possible]:

1.1 the possible grounds for a divorce as well as the possibility of using one of the guidelines in the Divorce Act;
1.2 the division of the assets in terms of the matrimonial property system;
1.3 the applicability of the legal rules relating to pension sharing and inheritances;
1.4 the possibility of a forfeiture of benefits order;
1.5 the possibility of a redistribution order;
1.6 the possibility for a spousal maintenance order; and
1.7 the issue of guardianship, care and contact of the children and the possible orders that could be made in this regard.
1.8 How would your answer in 1.2 – 1.5 differ if they had been married in community of property?

(35 MARKS)
QUESTION 2

H and W have been married for ten years. They are married out of community of property and with the accrual system. At the time the marriage was concluded, H owned a car worth R20 000, but owed the bank R10 000 towards a study loan. At the same time, W owned furniture worth R20 000, but also owed the bank R10 000 towards a study loan. In addition, W also owed her sister R5000. W had borrowed this money from her sister.

H and W now want to get divorced. H currently owns a house worth R800 000 and a car worth R200 000. During the course of the marriage, H also bought all the furniture in the house. The furniture is valued at R100 000. In addition, H also received an amount of R50 000 for pain and suffering after a car accident and an amount of R50 000 for defamation. H, however, owes his brother R100 000 for a business scheme that ‘went wrong’.

W currently owns a flat worth R350 000 and a car worth R150 000. She also owns a collection of rare and valuable coins. These coins are worth R50 000. During the course of the marriage, H donated R50 000 to W. In addition, W also received R50 000 as an inheritance from her father. She invested her inheritance in shares listed on the Johannesburg Stock Exchange.

Please note that according to the consumer price index, money was worth twice as much at the commencement of the marriage, as it was at its dissolution.

Determine the amount of the accrual and identify who must pay the accrual. In your answer you must set out your calculations.

(10 MARKS)

QUESTION 3

In Johncom Media Investments Limited v Mandel and others [2009] ZACC 5, the Constitutional Court considered the constitutional validity of s 12 of the Divorce Act 70 of 1979. Write an essay in which you set out and critically discuss the Constitutional Court’s judgment.

(10 MARKS)
QUESTION 4
Statement A: “Where an engagement is entered into on condition that the parties must have sexual Relations with one another, the engagement is valid, but the condition is pro non scripto”.
Statement B: “In Guggenheim v Rosenbaum 1961 4 SA 21 (W), the court found that both actual monetary loss and prospective monetary loss can be awarded under damages for breach of promise”.

QUESTION 5
Statement A: “X may marry the mother of his ex-wife”.
Statement B: “X may marry the child of his mother’s brother”.

QUESTION 6
Statement A: “Where both parties to a putative marriage were bona fide and no antenuptial contract was entered into prior to the marriage, the parties will be treated as if they were married in community of property”.
Statement B: “Pension money may be attached to defray arrear maintenance”.

QUESTION 7
Statement A: “The maintenance court, as a lower court, may not vary a maintenance order issued by the High Court”.
Statement B: “A reversion clause in an antenuptial contract is unenforceable as it is regarded as contra bonos mores”.

QUESTION 8
Statement A: “The Maintenance of Surviving Spouses Act, 1990, applies to spouses married in terms of Muslim law”.
Statement B: “In Odgers v De Gersigny 2007 (2) SA 305 (SCA), the Supreme Court of Appeal held that an ex-wife may continue to receive maintenance from her first husband notwithstanding her marriage to another (second) husband”.

QUESTION 9
Statement B: “In LS v AT 2001 (2) BCLR 152 (CC), the Constitutional Court ordered the return of the child notwithstanding the fact that such an order might not be in the child’s short term interests”.

OPTIONS:
A: Only Statement A is correct
B: Only Statement B is correct
C: Both Statements A and B are correct
D: Both Statements A and B are incorrect
QUESTION 10
Statement A: “An application for edictal citation may be used where the respondent is in a foreign country”.
Statement B: “An application for substituted service may be used where the respondent is in a foreign country”.

QUESTION 11
Nick and Nolene are married in community of property.
Statement A: “Nick borrowed money from ABSA, with Nolene’s permission, during the course of their marriage to finance the purchase of his car. The loan was still outstanding at the time of the divorce. If he now pays the amount in full, he legally has a right of recourse against Nolene for half the amount.”
Statement B: “Nick was found guilty for drunken driving during the course of their marriage and fined R10 000. The fine was still outstanding at the time of their divorce. If now he pays the amount in full, he legally has a right of recourse against Nolene for half the amount.”

QUESTION 12
Nick and Nolene are married in community of property.
Statement A: “If Nick wants to sell a coin collection he and Nolene accumulated over the course of their marriage he needs her written consent, attested to by two competent witnesses.”
Statement B: “If Nolene wants to receive a cash prize awarded to Nick for excellent service, she needs his written consent.”

QUESTION 13
Statement A: “In Du Plessis v Pienaar 2003 (1) SA 671 (SCA), the wife’s separate property, which she had inherited from her father, was used to settle her husband’s debt, to whom she was married in community of property”.
Statement B: “Where a husband has relocated from the family home in Durban to Cape Town and his wife, who still lives in Durban, wants to sue him for a divorce, both the Durban and Cape Town courts have jurisdiction to hear the divorce matter”.

QUESTION 14
Statement A: “A reversion clause in an antenuptial contract is enforceable”.
Statement B: “In Hay v B 2003 (3) SA 492 (W), the court overruled the decision of the parents not to consent to a blood transfusion for their child on religious grounds”.

QUESTION 15
Statement A: “A woman who gave birth to a child, using her own gametes, is considered to be the legal mother of that child, even if she agreed to carry the child as a surrogate mother but subsequently changed her mind and decided to keep the child”.
Statement B: “An emancipated minor does not need the permission of his parents or his guardian to get married”.
QUESTION 16
Statement A: “A spouse who is married in community of property requires the mere written consent (without witnesses) of the other spouse when instituting legal proceedings that relate to his profession as an accountant”.
Statement B: “A spouse who is married in community of property requires the written consent of the other spouse, attested by two witnesses, when selling a coin collection than the spouses accumulated over years and held as an investment”.

QUESTION 17
Statement A: “Sue was born as a result of the artificial insemination of Anne. Anne used a donor ovum from Matilda and a donor sperm from John. Anne is married to Pete and he consented to the artificial insemination. John is legally regarded as the father of Sue”.
Statement B: “In Robinson v Volks 2005 (5) BCLR 466 (CC), the Constitutional Court held that the different legal consequences between married and unmarried persons was unconstitutional”.

QUESTION 18
Statement A: “An interim protection order, issued in terms of the Domestic Violence Act, 1998, may not be granted without the respondent being given an opportunity to be heard”.
Statement B: “An interim protection order, issued in terms of the Domestic Violence Act, 1998, is accompanied by a suspended warrant of arrest for the respondent”.

(15 MARKS)

TOTAL: [70 MARKS]
MARK THE CORRECT OPTION:

A: Only Statement A is correct  
B: Only Statement B is correct  
C: Both Statements A and B are correct  
D: Both Statements A and B are incorrect

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ANSWER SHEET  
Student number: ________________________________

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