Question 1

1.1 Which of the following statements are correct?

i. In the case of Hassam v Jacobs NO and others 2008 JOL 22098 the deceased, Ebrahim Hassam, was married to two wives, one according to Muslim private law rites and the other according to civil law.

ii. In the same case the applicant instituted proceedings in which she asked the court to declare that she was, in terms of the Intestate Succession Act 81, 1987 (ISA) ‘a spouse’ of the deceased and that the surviving spouses of polygynous Muslim marriages should be accorded the same protection as those of monogamous marriages under the ISA and the Maintenance of Surviving Spouses Act 27, 1990 (MSSA).

iii. In the same case, the court held that only the third respondent, Miriam Hassam was the ‘spouse’ and ‘survivor’ of the deceased.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statements i, ii and iii
(e) None of the above

(2 marks)
1.2 Which of the following statements are incorrect?

i. In the case of *Bhe v Magistrate, Khayelitsha 2005 (1) SA (CC) 580, and others*, the father of the deceased was appointed a representative and sole heir of the deceased’s estate in accordance with s 23 of the Black Administration Act 38 of 1927.

ii. In the same case the court held that the deceased’s partner was entitled to inherit the whole estate and both children of the deceased could not inherit their father’s estate because they were born out of wedlock.

iii. In *Shibi v Sithole and others*, Ms Mshibi was in terms of s 23 of the Black Administration Act 38, 1927 precluded from inheriting from her deceased brother’s intestate estate, a customary rule that the court confirmed.

(a) Statement i only  
(b) Statement ii only  
(c) Statement iii only  
(d) Statements i, ii and iii  
(e) None of the above  

(2 marks)

1.3 Which of the following statements are correct?

i. A marriage in traditional customary law was a creation of a lifelong bond between the bride and the groom only; their respective families did not take any part in the marriage negotiations and celebrations.

ii. A marriage in other cultures for instance, African and Islam is potentially polygynous in that a woman may contract a second or third marriage during the subsistence of the first one.

iii. A woman who is married out of community of property excluding the husband’s marital power does not have full legal capacity.

(a) Statement i only  
(b) Statement ii only  
(c) Statements i and ii  
(d) Statements i, ii and iii  
(e) None of the above  

(2 marks)
1.4 Which of the following statements are correct?

i. In *Amod v Multilateral Motor Vehicle Accident Fund 1999 (4) SA 1319*, the plaintiff sued the defendant for the dependant’s action. She had to prove that the deceased had a duty to support her; the duty was legally enforceable and that her right to support was worth of protection by the law.

ii. In the same case, the widow’s dependant’s action failed because according to the judge, the widow’s marriage to the deceased was not recognised by law.

iii. The same case held that *Ismail v Ismail 1983 (1) SA 1006 (A)* was still law in South Africa as there was no statute recognizing marriages contracted according to Muslim private law rites.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) None of the above
(e) Statements i and ii

(2 marks)

1.5 Which of the following statements are correct?

i. In the case of *Zondi v President of the RSA 2000 (2) SA 392*, the applicant Ntombizetha Zondi and the fifth respondent Violet Dlalisa were the legitimate children of the deceased, Simon Ngidi and Beauty Ngidi.

ii. In the same case, the court stated that the principle of primogeniture meant that illegitimate children could not inherit from their biological parents.

iii. The court further pointed out that the fact that the illegitimate children of a man married in community of property were entitled to inherit from his estate and those of a man married out of community of property could not was grossly discriminatory.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statements i and ii
(e) Statements ii and iii

(2 marks)

1.6 State and discuss four similarities between a Hindu Joint family and an African extended family. State and discuss one difference between the two respective families.

(10 marks)

[20 MARKS]
Question 2

2.1 Which of the following statements are incorrect?

i. In the case of *Daniels v Campbell NO and others 2004 (5) SA 331*, the Cape High Court decided that the applicant, Mrs Daniels was neither a ‘spouse’ nor a ‘survivor’ for the purposes of the Intestate Succession Act 87, 1987 and the Maintenance of Surviving Spouses Act 27, 1990 respectively, because her marriage to the deceased was invalid.

ii. On appeal to the Constitutional Court, the CC confirmed the above decision on the grounds that the law did not discriminate against the applicant because she could have solemnised her marriage before an Imam recognised as a marriage officer in terms of the Marriage Act 25, 1961.

iii. Consequently, the CC held that the Intestate Succession Act 87, 1987 and the Maintenance of Surviving Spouses Act 27, 1990 were to be interpreted so as to exclude a party to a monogamous Muslim marriage as a spouse and survivor respectively.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statements ii and iii
(e) Statements i and ii
(f) All the above statements
(g) None of the above statements

(2 mark)

2.2 Which of the following statements are incorrect?

i. In the case of *Wormald NO and others v Kambule 2006 (3) SA 562 SCA* the appellants unsuccessfully appealed the decision of the High Court dismissing their application to evict the respondent from certain residential property under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19, 1998 (PIE).

ii. The SCA further held that the respondent was in dire need of accommodation and belonged to the vulnerable and poor for which the PIE was primarily enacted.

iii. Regarding her marriage to the deceased, the court held that according to s 36 of the Transkei Marriage Act, her customary marriage was valid because it was registered in terms of the Act.

(a) Statement iii only
(b) Statement i only
(c) Statement ii only
(d) Statements i and ii
(e) Statements ii and iii
(f) All the above statements

(2 marks)
2.3 Which of the following statements is incorrect?

i. The Recognition of Customary Marriages Act 120 of 1998 (RCMA) recognises marriages of all cultures, namely African, Hindu and Muslim marriages that were contracted before and after it was passed.

ii. The requirements for a valid marriage according to the (RCMA) are that it must be polygynous, the elders of the respective families of the groom and the bride should agree on the marriage; the parties must consent to the marriage and must be 20 years old or above.

iii. The RCMA further provides that failure to register a marriage affects its validity; an unregistered marriage will be treated as null and void.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statements i and ii
(e) Statements ii and iii
(f) None of the above
(g) All the above

(2 marks)

2.4 Which of the following statements is incorrect?

i. The RCMA provides that parties that got married after it came into effect shall be married in community of property including the husband’s marital power over his wife, the children and the family property.

ii. The RCMA provides that a man who is married according to customary law may marry another wife during the subsistence of the first marriage and does not have to make an application to the High Court to indicate how the property of the two houses will be regulated.

iii. Dowry means the transfer of property, usually livestock or money and jewellery by the groom’s father to the bride’s father or guardian as part of the process of constituting a marriage.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) Statements ii and iii
(e) Statements i and ii
(f) All the above

(2 marks)
2.5 Which of the following statements are incorrect?

1. According to section 4 of the RCMA either spouse may apply to the registering officer in the prescribed form for the registration of his or her customary marriage and failure to do so will invalidate their marriage.
2. A registering officer must, if satisfied that the spouses concluded a valid customary marriage, register the marriage by recording the identity of the spouses, the date of the marriage, any lobolo agreed to and any other particulars prescribed.
3. According to section 8 (1) of the RCMA a customary marriage may only be dissolved by the High Court on the ground that one of the parties has committed a matrimonial offence, namely, adultery or malicious desertion.

(a) Statement i only
(b) Statement ii only
(c) Statement iii only
(d) None of the above
(e) Statements i and iii
(f) All the above

(2 marks)

2.6 State and discuss five criticisms that Professor Dlamini levelled against the ‘current’ functions/purpose of ilobolo or bride wealth.

(10 marks)

20 marks

Question 3

Thanda and Nkosi Sibiya married according to customary rites in 1995. Both contributed towards the accumulation of the estate. They ran two spaza shops and later bought two minibuses to transport passengers. As they became more prosperous they left the village home and built a ‘modern’ or brick house in a peri-urban area. Affluence and money caused problems of a different kind. Nkosi started to have extra-marital relationships and became physically and emotionally abusive to Thanda. They have three children, one boy and two girls.

In May 2007, Nkosi secretly briefed an attorney to institute divorce proceedings against his wife. In the founding summons the attorney asked the court to give all the assets in the couple’s estate to Nkosi as the wife has no property rights in customary law.
Question 3… continued

Thanda made an urgent application to the High Court asking for an order in the following terms:

(i) That according to The KwaZulu Act on the Code of Zulu Law, 1981 which governs her marriage, her marriage is in community of property which means that she is entitled to half of the estate and maintenance from her husband’s half;

(ii) Section 7(1) of the Recognition of Customary Marriages Act 120, 1998 which provides that traditional customary law applies to customary marriages contracted before 1998, is unconstitutional and should be struck down.

Thanda has come to you for legal advice. She would like to know if her application will be successful. Advise her on the prospects of success of her application, give reasons for your answer and cite relevant case law.

[20 marks]

Question 4

In 1982 Shariff Mahomed, a Muslim man married Fatima according to Muslim rites. They have two daughters Sasha and Ayesha. Shariff runs a very successful business and is very rich. He owns and administers the family business. Fatima works in the family business although she does not get a monthly salary. She has access to the money generated in the business and uses it to buy household necessaries and whatever she and the children need.

In 1990 Shariff married a second wife Suhayfa according to Muslim private law. They were blessed with two boys X and Z. Shariff is killed in a car accident. The family elders immediately convened to appoint the person/s who should continue to run the family business. The elders agreed that the two boys, X and Z should step into their father’s shoes and should run and manage the business. Fatima thinks that as she has been involved in running the business from its inception, she should take over its management. Besides, Fatima argues, X and Z are too young and do not have business acumen. Consequently, she suspects the business will soon be bankrupt under their management.

Fatima is also of the view that if she is not allowed to manage the business she and her daughters should get their share of the estate and maintenance. She thinks that her husband’s second marriage was invalid. Consequently, only she and her two daughters are entitled to the deceased’s entire estate. She has come to you for legal advice and would like to get answers to the following questions: Give reasons for your answer and support it with relevant case law.

Are she and her daughters legally entitled to inherit the entire estate? Are Suhayfa and her two boys entitled to inherit any portion of the deceased’s estate? Who is responsible for the maintenance of the two widows and their children?

[20 marks]