INSTRUCTIONS

1. This paper consists of FOUR (4) pages. Please make sure you have them all.

2. This paper consists of THREE SECTIONS. SECTION A, B AND C must be answered in separate answer booklets.

3. Students are requested, in their own interests, to write legibly

4. Please answer all questions.
SECTION A

QUESTION 1

Answer the following questions

1.1 List any two remedies which a party may invoke where there has been a breach of contract.  
[1 Mark]

1.2. List the requirements that must exist for 'set-off' to apply.  
[2 Marks]

1.3. Contrast (show how they differ from each other) acquisitive prescription and extinctive prescription. 
[2 Marks]

[TOTAL Q1: 5 MARKS]

QUESTION 2

2.1 Lucracia owns Oliphant farm. The farm has been under her ownership for 15 years. She agrees to sell her farm to Sean Lombo and Zenani. During the course of the negotiations he tells Sean and Zenani that the farm has very fertile ground and that within three years of working the farm they will recover the purchase price. Relying on this Sean and Zenani purchase the farm, however it turns out that for five years prior the farm has not been yielding a pleasing produce. Sean and Zenani also learn that there is a graveyard on the farm, existence of which Lucracia has not disclosed. At the time of buying the farm there was a vegetable garden which in turn obliterated all traces of a graveyard. Sean and Zenani seek to set aside the contract. On what grounds, if any, can they do so? In the course of your answer, discuss the relevant case law.

[15 Marks]

[TOTAL Q2: 20 MARKS]
SECTION B

QUESTION 3

3.1 Define the following terms:

(a) Creditor’s rights [1 Mark]

(b) Res extra commercium [1 Mark]

(c) Res Nullis [1 Mark]

3.1.1 Apart from the death of an owner, identify 4 instances when ownership will be terminated. [2 Marks]

3.2 The law of possession is concerned with those relations that exist between a person and a thing in terms of which the person exercises control over the thing. In order to ascertain whether an individual has or had control over a thing both the physical (corpus) and the mental (animus) element have to be satisfied.

Discuss the animus element in and in so doing, fully discuss the elements that courts will consider in order to ascertain whether or not the animus element has been satisfied in any given instance. [15 Marks]

[TOTAL Q3: 20 MARKS]
QUESTION 4

Macho-man and Pretty-face are classmates and they recently started studying together for exams. Two weeks ago, Pretty-face went to Macho-man’s room to go through some tutorial questions. During the course of their study session Macho-man made some sexual advances to Pretty-face and she accepted. That night they became intimate.

Pretty-face’s boyfriend got to know about her escapade in Macho-man’s room that night and in order to save her relationship, Pretty-face lied that Macho-man had raped her. She went with her boyfriend to report the matter to the police and she applies in terms of section 30 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007 for an order requiring Macho-man to be tested for HIV and to have the results disclosed to her.

Macho-man denies the charge and argues that the sex was consensual. You have been contacted by Macho-man for advice on the following:

(i) The requirements that would have to be met in order for a magistrate to grant a compulsory testing order in terms of the Sexual Offences Act in this instance.

[10 Marks]

(ii) Whether, if it was found that he was HIV positive and had been aware of his HIV status for at least 2 years, Pretty-face could charge him with attempted murder? Refer to decided cases.

[15 Marks]

(iii) If Macho-man was actually HIV positive, whether there are any defences to the charge of attempted murder available to him?

[5 Marks]

[TOTAL Q4: 30 MARKS]

TOTAL FOR PAPER: 70 MARKS