INSTRUCTIONS:

STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY

1. This paper consists of THREE (3) pages. Please ensure that you have all of the pages.

2. This exam consists of TWO (2) sections, SECTION A and SECTION B. Both sections are compulsory.

3. You must answer ALL questions in BOTH sections. THERE IS NO CHOICE.

4. Answer each section in a SEPARATE answer booklet.

5. When answering questions, refer to any relevant legislation, guidelines, treaties, conventions, codes of good practice, and case law that may be relevant.

6. This is a closed book examination. No reference materials of any kind may be brought into the examination room or consulted during the examination.
SECTION A

Should a medical practitioner have *carte blanche* to determine the social and moral circumstances that would allow him or her to disclose the HIV status of his or her patient to a third party?

Refer to relevant case law and legislation during the course of your answer.

(20 marks)

(TOTAL SECTION A: 20 MARKS)

SECTION B

QUESTION ONE

1.1 With reference to case law, discuss the application of the *res ipsa loquitur* rule in an instance of alleged medical malpractice.

(10 marks)

1.2 Write a short note on the action for wrongful life. In the course of your answer you must explain what the action entails, and provide legal and ethical reasons for the prohibition of this action in South African law.

(15 marks)
QUESTION TWO

A woman, after a bout with uterine cancer, had a hysterectomy (her uterus was surgically removed). Before, its removal, however, she had several of her eggs removed for possible fertilization in the future. Now married, the woman wishes to have a child with her husband. Obviously she cannot bear the child herself, so the couple locates a woman who is willing to be a surrogate mother for them. The husband's sperm is used to fertilize one of the wife's eggs, which is implanted in the surrogate mother. The couple pays all of the woman's pregnancy-related expenses and an extra R20 000 as compensation for her surrogacy. After all expenses are taken into account the couple pays the woman approximately R31 000. Although the couple was satisfied that the surrogate was competent to carry another couple's child, after carrying the pregnancy to term, the surrogate says that she has become too attached to "her" child to give it up to the couple. The couple now approaches you for advice as to what their options are in this scenario. Answer the following questions:

(a) Does the surrogate mother have any legal right to retain a child that is not biologically hers?  
   (10 marks)

(b) Would the couple have any cause of action against the surrogate mother for either return of their child or for damages?  
   (15 marks)

(TOTAL FOR SECTION B: 50 MARKS)

TOTAL FOR PAPER: 70 MARKS