INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of SEVEN (7) pages. Please ensure that you have all of the pages.
3. Please answer ALL questions.
4. Each Section must be answered in a different answer booklet.
5. Please note that marks allocated for each question and apportion your time accordingly.
6. Please note that you must refer to relevant case law in answering the questions.
SECTION A

QUESTION ONE
Discuss the *aedilitian* remedies available to a purchaser in a contract of sale.

[Total Q1: 15 marks]

AND

QUESTION TWO
Samantha bought an antique oak bench from Cameron. Soon thereafter she hired a carpenter who cleaned and varnished it for her. Five months later, a guest, who was visiting her, recognised the bench as her own. She stated that it had disappeared from her home when her house was robbed in November 2011. Samantha is prepared to hand the coffee table over to the guest, but her sister insists on obtaining legal advice. Samantha approaches you for advice. Advise her on the legal position with reference to any applicable case law.

[Total Q2: 15 marks]

TOTAL SECTION A: 30 MARKS
SECTION B

QUESTION ONE

Critically discuss the rule that the goods of a third party may be subject to the landlord’s tacit hypothec. In the course of your answer you must explain what the rationale for this rule is and whether this rule is still justifiable in modern South African law. Your answer must also contain a discussion of when the goods of a third party are subject to the landlord’s hypothec. Please refer to any relevant case law when answering this question.

[Total Q1: 15 marks]

AND

QUESTION TWO

Melissa Lewis, the sole proprietor of ‘Beauty Spa’, is looking for premises from which she can conduct her business. She reads an advertisement in the newspaper and contacts the owner of a property situated in Scottsville, a certain Monde Zondi. Monde agrees to let the premises to Melissa for 13 years. A written agreement of lease is concluded between the parties but this lease is not registered in the Deeds Office. In terms of this agreement, the lease is for a duration of 13 years and Melissa is required to pay rent in the amount of R 4 000 per month. The lease expressly prohibits Melissa from ceding any of her rights in terms of the lease but it does not say anything about subletting. The lease gives the lessor the right to cancel the lease in the event that the lessee commits any breach of the lease. The agreement also stipulates that the lease will terminate if either party dies or becomes insolvent.

In light of the above facts, explain the legal position in each of the following separate instances:
2.1 Three months after taking occupation of the premises, Melissa subsequently discovers that there is a small hole in the roof. She informs Monde of this immediately but he does not do anything about it. After heavy rain, the roof starts leaking and the carpet that is situated below the roof is badly damaged. Monde tells Melissa that when she returns the property to him she must ensure that the carpet is replaced and he sends a copy of a receipt for R 1 000 representing the amount that he paid for the carpet in the leased premises. Melissa requires advice on whether she can force Monde to repair the roof, or alternatively, whether she can get someone to repair the roof and then recover these costs from Monde. At present, Melissa does not want to leave the premises as her business is prospering in Scottsville. Melissa also wants to know whether she is liable for the replacement of the carpet (which was only damaged by the rain). Advise Melissa fully on all of the above issues, assuming for the purposes of this question that the lease agreement does not address these issues.

[Total Q 2.1: 10 marks]

2.2 Melissa reads an article in a magazine which states that the National Credit Act 34 of 2005 applies to certain lease agreements. Melissa wants to know whether the National Credit Act applies to the lease agreement that she concluded with Monde. Advise her.

[Total Q 2.2: 1 mark]

2.3 Melissa hears about the Rental Housing Tribunal and she wants to know whether she can lodge any grievances that she may have with Monde with the Tribunal. Advise her.

[Total Q 2.3: 1 mark]

2.4 Melissa sublets a portion of the premises to her friend, Carla Leon, to enable her to run a small hairdressing salon. It is common cause that Melissa did not obtain Monde’s consent before subletting the premises. Monde finds out about this and he threatens to cancel the lease and to evict Melissa from the premises. Melissa requires advice on whether she was entitled to sublet the premises without Monde’s consent. Advise her fully.

[Total Q 2.4: 5 marks]
2.5 It transpires that Monde has run into significant financial trouble and Melissa is concerned that his estate might be sequestrated. Melissa is concerned about what will happen to the lease under these circumstances. In particular, she is concerned that the property might subsequently be sold and that the new purchaser might not continue with the lease. Advise her fully on the legal position in this instance, assuming that the property is subject to a mortgage bond in favour of Absa Bank.

[Total Q 2.5: 8 marks]

[Total Q 2: 25 marks]

TOTAL SECTION B: 40 MARKS
SECTION C

QUESTION ONE

John and Tim attended the 2011 COP 17 summit, where they learned of new innovative green business ideas. They wish to acquire funding to start a partnership and they have drafted a business proposal setting out that they will need to borrow R280 000. They approach Micro Bank, and the consultant requires the following documentation:

• Green bar-coded identity document
• Proof of residence
• 3 months bank statements
• Proof of income (pay-slip)
• Business proposal.

1.1 What type of credit agreement is envisaged by John and Tim? Explain.  
[Total Q1.1: 2 marks]

1.2 One of the forms handed to John and Tim by Micro Bank is titled ‘Pre-Agreement disclosure’. Briefly explain to them what a ‘pre-agreement disclosure’ is.  
[Total Q1.2: 3 marks]

1.3 Explain to John and Tim the circumstances under which credit is said to be granted ‘recklessly’ in terms of the National Credit Act 34 of 2005.  
[Total Q1.3: 10 marks]

1.4 What are the consequences of ‘reckless’ granting of credit in terms of the National Credit Act 34 of 2005? Explain fully.  
[Total Q 1.4: 5 marks]

[Total Q 1: 20 marks]
QUESTION TWO

Explain whether the Consumer Protection Act will be applicable in each of the following separate instances:

2.1 Smith Bros (Pty) Ltd purchases varnish and paint removers from a local supplier. Smith Bros (Pty) Ltd is a small family business which sells antique African furniture. In the past three years, it has experienced tremendous financial success. In 2009 it had a turnover of R2 million; in 2010 it had a turnover of R2.8 million and in 2011 it had a turnover of R3 million.

[Total Q 2.1: 2 marks]

2.2 Nathan buys books on credit from the local book store.

[Total Q 2.2: 2 marks]

2.3 Nelly has been awarded a contract to supply stationery to the KZN office of the premier.

[Total Q 2.3: 2 marks]

2.4 Sindy takes a taxi from her home to varsity and pays a fare of R 10.

[Total Q 2.4: 2 marks]

2.5 Nancy buys a couch from a local furniture supplier. In terms of the agreement concluded with the supplier, Nancy will pay the purchase price in five monthly installments and the goods will remain in the possession of the supplier until fully paid for.

[Total Q 2.5: 2 marks]

[Total Q 2: 10 marks]

TOTAL SECTION C: 30 MARKS

TOTAL FOR PAPER: 100 MARKS