INSTRUCTIONS:

1. Students must answer ALL questions.
2. Students are encouraged to write legibly.
3. This paper consists of Section A and Section B.
4. Answer each section in a SEPARATE answer book
5. This paper consists of six (6) pages. Please ensure you have all pages.
SECTION A: MS W. BANOOBHAI

(Please answer Section A in a separate answer booklet)

Students must answer all questions in this section

QUESTION ONE

Frederick bought an antique oak coffee table from Suzie. Soon thereafter he hired a carpenter who cleaned and varnished it for him. Five months later, a guest who was visiting him, recognised the coffee table as her own. She stated that it had disappeared from her home when her house was robbed in June 2013. Frederick is prepared to hand the coffee table over to the guest, but his sister insists on obtaining legal advice. Frederick then approaches you for advice. Advise Frederick with reference to relevant case law.

(10 marks)

QUESTION TWO

Answer the following questions:

2.1 James lets a piece of agricultural land to Adam for the purposes of grazing cattle. Adam refuses to pay the rental after the second month stating that he has been unable to use the property for its intended purpose because the adjacent portion of land contains a rubbish dump which became a health hazard to his cattle. In fact, one of his cows died after ingesting a plastic packet. Advise James whether he has any legal recourse against Adam.

(5 marks)
2.2 The lessee's final duty towards the lessor is to restore the leased property on termination of the lease. In *Brisley v Drotsky* 2002 (4) SA 1 (SCA) the court undertook an analysis of the common law right to evict and the constitutional right “not to be evicted except by an order of court made after consideration of the relevant circumstances.” What are the relevant circumstances which the court will consider if common law principles regarding eviction are to be applied to a lease agreement?

(5 marks)

**QUESTION THREE**

Raeesa Khan lets an outbuilding to Arshad Mohammed for residential purposes. Arshad is required to pay rent in the amount of R5000 per month. Before Arshad moved into the premises, he bought a fridge, bed, television and bicycle. He also borrowed his sister’s stove and couch and moved these onto the leased premises when he took occupation on 12 June 2013. Two months later, Arshad let one of the rooms to Adam Moosa (the lease allows the lessee to sublet the premises). Adam took occupation on 25 August 2013 and brought a bed; a couch, a desk and a chair with him. Arshad paid the rent for the first eight months and thereafter failed to pay the rent for the next six months, having run into financial difficulties. Raeesa approaches Arshad to discuss the situation. Arshad assures her that he will sort everything out and just needs a little time to do so. Raeesa fears that Arshad is going to leave the leased premises without paying the rent and approaches you for legal advice. Raeesa also fears that Arshad’s estate might be sequestrated and is concerned that this may adversely affect her rights. Advise Raeesa on what she can do to secure payment for the rent.

(10 marks)
3.1 Sven is the owner of a property near Cape Town. Thomas hires the property in terms of an oral lease agreement for a period of one year. It is common cause that Thomas has made various useful improvements to the property for which he was not compensated. When the lease expires, Sven requests Thomas to vacate the premises. Thomas refuses, arguing that he had expended an amount of several million rand on necessary and useful improvements to the property for which he had not been compensated and that he was consequently entitled to retain the property under an enrichment lien. Sven alleges that the lien purportedly relied upon by Thomas had been abolished by two Placaten, specifically article 10, promulgated by the Estates of Holland in the 17th Century. Explain the legal position in this instance. (5 marks)

3.2 Write a note explaining the *huur gaat voor koop* rule and its application in our law of lease. (5 marks)

**QUESTION FOUR**

Explain what is meant by the terms “subletting”, “cession” and “assignment” in a contract of lease and state the necessary consent that is needed for a lessee to exercise these rights. (10 marks)

[Total Section A: 50 Marks]
The National Credit Act (Act 34 of 2005) provides for unlawful credit agreements in section 89(2)(d) which states that: ‘Subject to subsections (3) and (4), a credit agreement is unlawful if- (d) at the time the agreement was made, the credit provider was unregistered and this Act requires that credit provider to be registered; ‘

Section 89(5) provides that: ‘If a credit agreement is unlawful in terms of this section, despite any provision of common law, any other legislation or any provision of an agreement to the contrary, a court must order that-

(a) the credit agreement is void as from the date the agreement was entered into;

(b) the credit provider must refund to the consumer any money paid by the consumer under that agreement to the credit provider, with interest calculated-

   (i) at the rate set out in that agreement; and

   (ii) for the period from the date on which the consumer paid the money to the credit provider, until the date the money is refunded to the consumer; and

(c) all the purported rights of the credit provider under that credit agreement to recover any money paid or goods delivered to, or on behalf of, the consumer in terms of that agreement are either-

   (i) cancelled, unless the court concludes that doing so in the circumstances would unjustly enrich the consumer; or

   (ii) forfeit to the State, if the court concludes that cancelling those rights in the circumstances would unjustly enrich the consumer.

Continued/…
Discuss the circumstances contemplated in the National Credit Act (the NCA) which would require a credit provider to be registered in terms of the NCA. In your answer discuss circumstances which do not require registration of the credit provider as well as circumstances where the NCA does not apply to a credit agreement. You must also discuss the consequences of failing to register when required to do so. Refer to case law to support your answer.

(20 marks)

(Total Section B: 20 Marks)

(TOTAL FOR PAPER: 70 MARKS)