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

INSTRUCTIONS:

1. This paper consists of five (5) pages. Please ensure that you have all of the pages.

2. You are required to answer ALL the questions. Please note the allocation of marks to particular parts of some of the questions. Where no such allocation is indicated, the question or part of the question will be marked as a whole.

3. 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

QUESTION ONE

1.1 With reference to case law, distinguish between a ‘voetstoots’ clause and a *dictum et promissum*.

(5 marks)

1.2 Write a note in which you discuss the *res perit domino* rule in a contract of sale.

(5 marks)

[10 marks]

QUESTION TWO

2.1 Tom sells his farm to Zinziwe. There are 80 old, unmarked human graves on the farm, located on a hillside away from land that will be used for cultivation. Tom was unaware of the existence of the graves at the time of the conclusion of the contract. Zinziwe finds out about the existence of the graves after conclusion of the contract. Zinziwe is unwilling to reside on or take occupation of the farm, because she finds the presence of the graves scary. You may assume that a valid contract of sale is concluded and that the contract complies with the required formalities.

(a) Does Zinziwe have a claim against Tom?

(b) Would it make any difference to your answer to question (a) if Tom knew at the time of conclusion of the contract of the existence of the graves?

(c) Would it make any difference to your answer to question (a) if Tom guaranteed in the contract that there were no graves on the farm?
(d) Would it make any difference to your answers to questions (a) and (b) if there was a voetstoots clause in the contract of sale?

(5 marks)

2.2 Ann sold a car to John. John paid for the car and took delivery on the 15th of August 2015. On the 16th of August John returns home to find Adam, Ann’s husband, waiting outside his home. Adam tells John that he has come for his car, which his wife sold to John because they were having marital issues and she ‘wanted to get back at him’. John approaches you for advice. Advise John on his legal position.

(5 marks)

[10 marks]

QUESTION THREE

Wolfgang buys a house from Annemarie. At the time that the contract is concluded, Annemarie knows that Wolfgang intends to demolish the house and build a block of flats on the premises. After transfer of the property has been effected, Wolfgang discovers that there is a government order in terms of which a part of the house has been declared a national monument, such that the house cannot be demolished. You may assume that a valid contract of sale was concluded. What remedies are (arguably) available to a purchaser in such circumstances and are any of these actually available to him?

(10 marks)

(TOTAL SECTION A: 30 MARKS)
SECTION B

QUESTION FOUR

In terms of an oral agreement, B hired a room from D in a residential building in which a number of other tenants also occupied rooms. A bathroom was provided in the building for the common use of the tenants. B took liberties with the communal bathroom by putting her personal belongings there; used the bathroom as a laundry and hung wet washing in it; she also washed dishes in the bathroom and emptied all waste into a drain which was opposite the door of a neighbouring flat resulting in unpleasant odours. Would B’s use of the property qualify as use “in a proper manner” (even though nothing was said in this regard at the time of the oral agreements) and what (if any) would D’s remedies be against B?

(10 marks)

QUESTION FIVE

X leases a farm. During the lease period and with the lessor's consent, X effects the following improvements to the leased property:

(a) erected security fences;

(b) raised a dam wall;

(c) planted trees to provide shelter from the wind; and

(d) cleared and ploughed a piece of ground and planted mealies.

When the term of the lease expires, X leaves the farm as is and institutes a claim against the lessor for compensation for each of the aforementioned improvements.

(1) Discuss whether X would be successful in respect of compensation for each of the aforesaid improvements to the property and substantiate your answers with reference to legal principles or case law.
(2) Would X have been in a stronger position to make such claims if the improvements had been effected on urban land rather than on farming land?

(10 marks)

QUESTION SIX

With reference to case law, discuss the lessor’s common law duty to maintain the leased property in a proper condition.

(10 marks)

(TOTAL SECTION B: 30 MARKS)

(TOTAL FOR PAPER: 60 MARKS)