INTERNAL EXAMINER       : MS S SONI
INTERNAL MODERATOR     : PROF R WILLIAMS
EXTERNAL MODERATOR     : DR NJB CLAASSEN

INSTRUCTIONS:

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

1. This paper consists of SIX (6) 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.
QUESTION ONE

Answer all of the following sub-questions:

1.1 With reference to case law, discuss the common law principles applicable to the sale of a res sua.

(5 marks)

1.2 How does the Consumer Protection Act 68 of 2008 regulate the passing of benefit and risk in a contract of sale?

(5 marks)

1.3 Michael has leased certain premises from the lessor for the purpose of conducting a licensed hotel business. He alleges that his lessor has failed in his duty to deliver the leased premises in a condition reasonably fit for the purpose for which it was let, because the floor of the kitchen is constructed of defective materials, as a result of which it has worn away in parts, and there are cracks in the floors, ceilings, walls, roofs and parapets of the building. The roof also leaks and this has had an adverse effect on the hotel business as some of the rooms are uninhabitable during the rainy season. In fact, the situation has become embarrassing as in some cases guests have had to cut short their stay because of the poor condition of the bedrooms.

Advise Michael.

(5 marks)

Continued/...
1.4 Explain what is meant by the ‘parol evidence rule’ and list four instances where the rule does not apply.

(5 marks)

1.5 With reference to case law, discuss what is meant by the words “accessories” and “appurtenances” in a contract of sale.

(5 marks)

1.6 What must a purchaser do, to protect his legal interests, if his possession of the thing which he has bought is threatened by a third party who alleges a superior right to it?

(5 marks)

(TOTAL FOR Q1: 30 MARKS)
2.1 Sue has leased a flat from Morris for a period of two years. Clause 9 of the lease between them reads as follows:

'The lessee shall not have the right to sub-let the premises hereby hired by her or any portion thereof without the written consent of the lessor, first being had and obtained, which consent shall not be unreasonably withheld.'

Sue would like to sub-let the premises to another person, but Morris refuses to allow this unless Sue accepts an increase of R500 in rental. Sue finds this unreasonable and approaches you for advice. With reference to case law, write a note in which you explain to Sue:

a) What is meant by a contract of sub-letting; and

b) Whether Morris is entitled to refuse to consent to sub-letting of the premises.

(10 marks)
2.2 John sells his farm to Betty. There are 80 old, unmarked human graves on the farm, located on land that will be used for cultivation. John was aware of the existence of the graves at the time of the conclusion of the contract, but had removed the headstones to conceal their presence. When Betty ploughs the farm to plant crops, she is horrified to find human remains in the fields. She is now unwilling to reside on the farm, because she finds the presence of the graves scary. With reference to case law advise Betty on her rights against John.

(10 marks)

(TOTAL FOR Q2: 20 MARKS)
QUESTION THREE

3.1 Explain what is meant by the doctrine of *huur gaat voor koop*, and how it applies in relation to the Formalities in Respect of the Leases of Land Act 18 of 1969.

(10 marks)

3.2 If a lessee fails to comply with the duty to return the property in a proper condition at the termination of the lease, the lessor is entitled to an order for specific performance and to claim damages for financial loss suffered. Furthermore, if the lessee completely fails to return the property when the lease has terminated, the lessor may claim an order for ejectment and any damages occasioned by the lessee’s ‘holding over of the property’. Write a note in which you discuss the lessor’s statutory rights in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Prevention of Illegal Eviction and Unlawful Occupation Act 19 of 1998 (PIE) where a lessee refuses to vacate immovable property which he had been previously leasing.

(10 marks)

(TOTAL FOR Q3: 20 MARKS)

(TOTAL FOR PAPER: 70 MARKS)