UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
EXAMINATIONS: NOVEMBER 2010

SUBJECT, COURSE AND CODE: SALE, LEASE & CREDIT AGREEMENTS
(LAWS4SL)

DURATION: 3 HOURS TOTAL MARKS: 70

External examiner : Professor P Jordi
Internal examiners : Ms CJ Badul
Mr K Zondi

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

PLEASE NOTE: This paper consists of FOUR (4) pages. Ensure that you have ALL of them.

INSTRUCTIONS:

1. ANSWER ALL QUESTIONS.
2. USE A SEPARATE ANSWER BOOK FOR EACH SECTION.
3. STUDENTS MUST REFER TO RELEVANT CASE LAW.

SECTION A TOTAL [40]

Question 1

Jon Ngema is the owner of various commercial, agricultural and residential properties. You have been responsible for drafting the respective lease agreements for him. Jon now consults you for advice regarding certain issues arising from the leases.

1.1 In a lease agreement with Foodies CC clause 5.1 states as follows:
“Provided the lessee shall have faithfully carried out the terms and conditions of this lease and provided the lessee is in no way in default hereunder at the expiration of this lease, the lessee shall have the right to renew this lease for a further period of 3 years.”

Jon advises that during the duration of the lease, which was for a period of 2 years, Foodies CC had paid the monthly rentals after the due date on 7 separate occasions. This severely prejudiced Jon as he relied on the rentals to service the mortgage bond on the property.

Discuss whether Jon is bound by the renewal clause in the lease agreement as Jon wishes to terminate the lease agreement.

1.2 .....
1.2 Jon lets a piece of agricultural land to Vusi for the purposes of grazing his cattle. Vusi refuses to pay the rent after the first month. He states that he is unable to use the property for its purpose because the adjacent portion of land is a rubbish dump which is a health hazard to his cattle. In fact, one of his cows died after ingesting a plastic packet.

Advise Jon whether he has any recourse against Vusi.

1.3 Saras is leasing a residential property from Jon. Saras has indicated to Jon that she wishes to transfer her rights in terms of the lease agreement to Rita. Saras can no longer afford to pay the rent as she was recently retrenched from work. Clause 7.1 of the lease agreement reads as follows: “the lessee may not sublet or assign the premises.”

Advise Jon whether Saras may transfer her rights under the lease agreement to Rita.

1.4 Jon decides to sell one of his commercial properties to Steve. Novel Books is one of the lessees of a small shop in the property. Upon hearing of the sale, Novel Books decides to cancel its lease agreement. Does Steve have any rights in these circumstances? Discuss.

Your answers to 1.1 -1.4 must be supported by relevant case law. [20]

Question 2

Sandy was approached by Lizzy, a sales rep for ABC cookware, at her home. Sandy was highly impressed by the demonstration that Lizzy had given to demonstrate the benefits of ‘oil free cooking.’ Sandy, believing that she could afford the cookware, placed an order with Lizzy to the value of R 7 000,00 and paid a deposit of R 250,00. After reconsidering her financial position Sandy realises that she cannot afford the cookware.

Discuss fully with Sandy what are her rights in terms of the National Credit Act 34 of 2005. [10]

Question 3....
Question 3

Your client, Bond Bank, advises you that Grace Jones has been in arrears with repayments on her mortgage agreement.

Discuss what procedure needs to be followed before Bond Bank can seek an order to enforce the credit agreement. [5]

Question 4

Discuss how the Consumer Protection Act 68 of 2008 aims to promote and advance the social and economic welfare of consumers. [5]

SECTION B TOTAL [30]

Question 1

Indicate whether or not, in the following circumstances, the Convention for the International Sale of Goods (CISG) will apply to the contracts of sale entered into by your client Mr Y.
E.g. The CISG will not apply, since the requirement of internationality has not been satisfied.

1.1 Y, in South Africa, has been granted a tender to erect a new City Hall for the Johannesburg Metro Municipality. Y enters into a contract with a German company for the supply of the material needed for his project of building the City Hall. [2 Marks]

1.2 Y, in KwaZulu-Natal, owns a successful manufacturing concern. He enters into a contract to manufacture all plastic-ware (e.g. plastic glasses and plastic plates) for X who is in Cape Town. Having purchased the goods from Y, X exports them to Z in Mozambique. [2 Marks]

Section B 1.3…..
1.3 Y manages a successful drilling concern based in France, and he enters into a contract with a supplier of building material from South Africa. France is a rectifying nation of the Convention and South Africa has not rectified the Convention. [2 Marks]

1.4 Y is a shareholder in a wine company based in New York, he contracts with farmer X who lives in South Africa. X is contracted to offer his services of tasting wine before packaging. (Assume that both states have rectified the Convention) [2 Marks]

1.5 Y, who lives in France, purchases investment shares from the JSE (Johannesburg Stock Exchange). [2 Marks]

Question 2

Write an essay in which you set out and discuss the aedilitian remedies. In your answer you must indicate when the aedilitian remedies may be used and the effect of a “voetstoots clause” in relation to these remedies. You must also indicate whether they may be used simultaneously or not. [20 Marks]