SECTION A  (20 MARKS)

PLEASE NOTE THAT THIS SECTION IS COMPULSORY AND THAT ALL QUESTIONS IN THIS SECTION MUST BE ANSWERED

Question 1

Jane sells her motor car to Itumeleng for R100 000. To Itumeleng it looks as if the car is in mint condition. Itumeleng pays the full purchase price immediately. Advise Itumeleng on her legal position in the following separate situations:

1.1 They agree that Jane will keep the car for another week while Itumeleng has a garage built for it at his house. One night during the week Jane forgets to lock the car in her garage. That night there is a hail storm and the paint work on the car is damaged.

1.2 A week after Itumeleng has taken delivery of the car, it breaks down. It then transpires that the car had been damaged in an accident before, and that it had not been repaired properly. It will cost Itumeleng about R 25 000 to have the engine fixed.

1.3 Would your answer be different in question 1.2 if the sale had been ‘voetstoots’?
4. Would your answer in question 1.2 be any different if Jane had told Itumeleng that the car was in mint condition and that it had never been involved in an accident, when she knew that it had been in an accident and that it had not been properly repaired?

5. Would your answer in question 1.2 be any different if Jane had expressly warranted (guaranteed) to Itumeleng that the car had never been involved in an accident?

SECTION B (30 MARKS)

PLEASE NOTE THAT QUESTION ONE IS COMPULSORY. YOU DO, HOWEVER, HAVE A CHOICE BETWEEN QUESTION TWO AND QUESTION THREE.

QUESTION ONE (30 MARKS)

PLEASE ANSWER QUESTION 1.1, QUESTION 1.2 AND QUESTION 1.3

Question 1.1 (10 marks)

Akash Singh lets an outbuilding to Steven Naidoo for residential purposes. Steven is required to pay rent in the amount of R 5 000 per month. Before Steven moved into the premises he bought a bed, a fridge and a wardrobe. He also borrowed his sister's stove and lounge suite and he brought all of these items with him to the leased premises when took occupation on 12 June 2010. Two months later, Steven sublet one of the rooms in the outbuilding to Reesha Govender (the lease entitles the lessee to sublet the premises). Reesha took occupation on 26 August 2010 and she brought a bed, a wardrobe and microwave with her. Steven paid the rent for the first eight months of the lease but subsequently ran into financial trouble and failed to pay the rent for the next six months. Akash goes to the leased premises to discuss the situation with Steven but Steven tells him that he will sort everything out and that he just needs more time. Akash fears that Steven is going to leave the premises without paying the rent and he approaches you for legal advice. Akash also fears that Steven’s estate might be sequestrated and is concerned that this might adversely affect his rights. Advise Akash on what he can do in order to secure payment of the arrear rental taking into account the concerns that he raises.
Question 1.2 (15 marks)

Explain what you understand by the maxim ‘huur gaat voor koop’ and explain the effect of this rule on long leases and short leases of land. Thereafter, briefly comment on the legal position in each of the following separate instances.

1.2.1 Tholani Xaba lets a property to Siza Mkhize. The lease is for a duration of 5 years and Siza is required to pay rent in the amount of R 2 000 per month. Siza takes occupation on 10 January 2009. On 14 June 2011, Tholani sells the property to Bongani Zuma. Bongani is not aware that Siza was occupying the property. Would Bongani be bound by the lease when he takes transfer of the property? Explain.

1.2.2 Same facts as 1.2.1 except that the lease provides that the lessee has the option to purchase the property upon expiration of the lease. Explain whether Bongani is bound by this clause in the lease.

1.2.3 John Smith lets certain property to Pieter Van Wyk. The lease is for a duration of 15 years but the lease was not registered in the Deeds Registry. Pieter took occupation of the property on 13 June 2004 and he remains in occupation of the property. On 12 June 2010, John sells the property to Dirk Kuyt and the property is subsequently transferred to him. Explain whether Dirk would be bound by the lease for its full term? Would your answer be different if Dirk did not purchase the property from John Smith but instead inherited the property from him? Explain.

Question 1.3 (5 marks)

Bruno Mars lets a property situated in Hayfields, Pietermaritzburg to John Legend for residential purposes. John is required to pay rent in the sum of R 2 500 per month. Clause 8 of the written agreement of lease contains the following clause:

‘The lessee shall not have the right to cede, transfer or assign the premises without the written consent of the lessor, which consent shall not be unreasonably withheld. Should the lessee act in breach of this provision the lessor will be entitled to cancel this lease and retake possession of the premises without prejudice to any claim which the lessor may have against the lessee for rent already due or for any damage which he may suffer by reason of the termination of the lease.’

John sublets the property to Steven Tyler without first obtaining the written consent of Bruno. When Bruno discovers this he sends a letter to John telling him that he is cancelling the lease as he was not entitled to sublet the property without his consent. Bruno approaches you for legal advice. Advise him on the legal position in the above instance.
Question 2 (10 marks) Please answer both 2.1 and 2.2

2.1 Jacobus Lombard hires an outbuilding from Duncan Fletcher for residential purposes. The lease is for a duration of 1 year and the rent is R 2 500 per month. For the first eight months of the lease, there are no problems and Jacobus and Duncan get along well together. However, on 3 June 2011, after some heavy rain, the roof in the outbuilding starts leaking. The situation deteriorates rapidly and Duncan is worried that extensive damage will be caused to the property unless the roof is repaired immediately. Duncan tells Jacobus that he must vacate the premises within two weeks so that the necessary repairs can be carried out. Duncan also tells Jacobus that he will require one week to attend to the necessary repairs and to replace all of the carpets that have been damaged by the rain. Explain whether Duncan can require Jacobus to vacate the premises so that he can carry out the necessary repairs. If so, explain whether Jacobus will be entitled to a remission of rent in these circumstances. (5)

2.2 Property Holdings (Pty) Ltd is the owner of certain property in Johannesburg. Rent-a-lot (Pty) Ltd hires the property from Property Holdings (Pty) Ltd for a period of one year in terms of an oral agreement of lease. It is common cause that Rent-a-lot (Pty) Ltd made various useful improvements to the leased premises for which they were not compensated. When the lease expires, Property Holdings (Pty) Ltd requests Rent-a-lot (Pty) Ltd to vacate the premises immediately. However, Rent-a-lot (Pty) Ltd, refuses to vacate the premises until they have been properly compensated for the improvements that they made. Property Holdings (Pty) Ltd argue that the lien purportedly relied upon by Rent-a-lot (Pty) Ltd had been abolished by two Placaeten that were promulgated by the Estates of Holland in the 17th Century. Property Holdings (Pty) Ltd approaches you for legal advice. Explain the legal position in the above instance. (5)

OR

Question 3 (10 marks)


TOTAL FOR SECTION B: 40 marks x ¾ = 30 marks
SECTION C (20 MARKS)

PLEASE NOTE THAT THIS SECTION IS COMPULSORY AND THAT ALL QUESTIONS IN THIS SECTION MUST BE ANSWERED

Question 1 (5 marks)

Mary is a 24 year old primary school teacher in Scottsville. She earns a gross salary of R 7 500 per month. During the period January 2011 to June 2011 Mary concluded a number of agreements:

(a) On the 1\textsuperscript{st} January she concluded a contract of lease in terms of which she rents a one bedroom flat in Pelham from the owner, Sipho Ngubane for R 1500 per month.

(b) On the 28\textsuperscript{th} February Big Bank approved her application for a credit card. She has an overdraft facility of R 3500-00 per month on her current account with Big Bank to which the credit card is linked.

(c) On the 15\textsuperscript{th} March she bought a television set from Incredible Rip-Off. The price of the television set was R 3000. Mary paid a deposit of R 500 and undertakes to pay the balance in 12 monthly installments of R 208,33. Incredible Rip-Off remains the owner of the television set until Mary pays the last of the installments.

(d) On the 1\textsuperscript{st} April she borrows an amount of R 1000 from Shifty Pawn Brokers. As security for the repayment of the loan she offers to keep the television set on behalf of Shifty Pawn Brokers. She further undertakes not to sell it to any third party while she still owes the R 1000 to Shifty Pawn Brokers.

Discuss whether the National Credit Act applies to the above credit agreements. Give reasons for your answer.

Question 2 (10 marks)

On Thursday evening 18\textsuperscript{th} March 2011, and totally out of the blue, Mary receives two visitors at her Pelham flat. The first visitor is an employee of New Horizon (which is a registered micro-lending organization). This employee, who is the brother of one of Mary’s colleagues at the school where she teaches, has heard through the grapevine that Mary has run into financial difficulties because of Easy Bank’s refusal to lend her money that she applied for. New Horizon is prepared to lend Mary R 10 000 at an interest rate of 20\% per month. Mary eagerly accepts this offer.

The second visitor is a salesman from the neighbourhood furniture store. After showing Mary the store’s full colour brochure, she decides that she wants to buy a wall unit for her television set. However the wall unit costs R 2200-00 and Mary informs the salesman that she does not have money to buy it and he suggests that she concludes a credit agreement in terms of which she pays a deposit and the balance of the purchase price plus interest in 24 monthly installments. In terms of the standard contract form used by the furniture store, a credit agreement will come into force between it and a prospective client (such as Mary) if the standard contract form is delivered to the client and the client fails to decline the offer within 3 days after the credit agreement has been delivered.
Six days after she concludes the agreement with New Horizon Mary sees an advertisement in the newspaper about New Bank’s offer of low interest loans to young professionals like herself. She wants to repudiate the contract with New Horizon and instead conclude an agreement with New Bank, but she first wants to check with you what her rights and obligations are. She also mentions to you that she does not really have the money to pay for the wall unit, but since more than 3 days have lapsed since the salesman handed her the credit agreement, she believes that she is bound by it. Advise Mary.

**Question 3 (5 marks)**

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