



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF HUMAN SCIENCES

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION: COMMERCIAL ADVANCEMENT TRAINING SCHEME	
QUALIFICATION CODE:	LEVEL: 5
COURSE CODE: CLL112S	COURSE NAME: COMMERCIAL LAW 1B
SESSION: JUNE 2018	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SUPPLEMENTARY / SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	MRS H. von ALTEN
MODERATOR:	MRS E WABOMBA

INSTRUCTIONS

1. Answer ALL the questions.
2. Write clearly and neatly.
3. Number the answers clearly.

PERMISSIBLE MATERIALS

1. Examination paper
2. Examination script

THIS QUESTION PAPER CONSISTS OF 9 PAGES (Excluding this front page)

QUESTION 1

1.1 The risk, which passes to the buyer when the contract is *perfecta*, is the risk of:

- (A) Negligent damages or losses.
- (B) Accidental damages or losses.
- (C) Loss or damages caused by the seller.
- (D) Loss or damages caused by the purchaser.
- (E) None of the above. (2)

1.2 Which of the following statements is false in relation to a contract of sale?

- (A) A seller need not guarantee that he is the owner of the things sold but needs to provide the purchaser with a warranty that he will receive the *merx* free from encumbrances.
- (B) An implied warranty against eviction guarantees that no third party with a better title will deprive the purchaser of his possession of the *merx*.
- (C) Where both the seller and buyer believe a thing to be sold exists but it later transpires that the thing doesn't, a valid contract is nevertheless concluded.
- (D) There cannot be a valid contract of sale if the parties concerned do not reach agreement about the price or a method by which the purchase price can be determined.
- (E) Neither one of the above options. (2)

1.3 Which of the following is an example of transfer of ownership by *longa manu*?

- (A) A lends a horse to B. While the horse is in B's possession, they agree that she (B) will buy it from A. The horse remains in B's possession.
- (B) The *merx* is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.
- (C) A sells her horse to B. They agree that A will hire the horse from B. The horse thus remains in A's possession.
- (D) A sells her horse to B. She delivers the horse by driving it to B's farm in her trailer and allowing B to lead the horse to its stable.
- (E) Neither one of the above options. (2)

1.4 A contract in which the *merx* is sold as a hope or expectation, expected to come into existence in future where the purchaser must pay the price regardless of whether the expectation materializes or the extent to which it materializes, is known as:

- (A) *Emptio rei speratae*
- (B) Sale by description
- (C) Sale by sample
- (D) *Emptio spei*
- (E) *Res sua* (2)

1.5.1 The following is **not** a duty of the purchaser:

- (A) Pay the purchase price.
- (B) Accept delivery of the thing.
- (C) Reimburse the seller for expenses.
- (D) To bear the risk for any accidental damage to the thing if the contract is still subject to a suspensive condition.
- (E) Pay transfer duty in respect of immovable property unless the parties expressly agree otherwise. (2)

1.6 The “cooling-off” period is available to the purchaser when:

- (A) The purchaser has requested the seller to visit him in order to purchase goods from the seller.
- (B) The contract is signed, for example, at the home of the purchaser as a result of the initiatives of the seller.
- (C) The contract is signed at the business premises of the seller and as a result of the initiative of the purchaser.
- (D) The seller has called the purchaser to come in and view the articles on sale.
- (E) None of the above (2)

1.7 With reference to the provisions of the Credit Agreements Act 75 of 1980, the following statement is **true**.

- (A) A person may enter into an agreement in terms of which s/he is bound to enter into a credit agreement at a future date.
- (B) The agreement must be concluded for at least 6 months or longer.
- (C) A credit grantor may lend money to the credit receiver to pay the deposit.

- (D) The credit grantor may not be exempted from liability for *ex lege* guarantees.
- (E) The credit grantor may be exempted from liability for patent defects. (2)

1.8 Section 12 of the Credit Agreements Act 75 of 1980, as amended, protects the purchaser when:

- (A) The credit grantor summarily cancels the credit agreement.
- (B) The contract is signed at the home of the purchaser as a result of the initiatives of the seller.
- (C) The goods bought in terms of the credit agreement are repossessed without a court order.
- (D) The seller has called the purchaser to come in and view the articles on sale.
- (E) None of the above. (2)

1.9 In terms of the Labour Act 11 of 2007 an employee is entitled to the following number of sick leave days in a 3-year cycle if s/he works 5 days a week:

- (A) 24 consecutive days
- (B) 30 calendar days
- (C) 30 working days
- (D) 40 calendar days
- (E) None of the above (2)

1.10 Nangula is employed at Cheapy Clothing Factory since the 3rd of July 2016. On the 31st of July 2017 Nangula's doctor advised her that she is two months pregnant and due to deliver the baby on the 27th of February 2018. Nangula is entitled to the following period of maternity leave in terms of the Labour Act 11 of 2007:

- (A) 24 working days
- (B) 2 weeks
- (C) 4 weeks before her expected date of confinement and 8 weeks after the actual date of confinement
- (D) 4 months paid leave
- (E) Nangula does not qualify for any maternity leave period. (2)

1.11 In the context of a contract of employment, the doctrine of vicarious liability prescribes that:

- (A) The employer is under certain circumstances liable towards third parties for the delicts committed by the employee and the independent contractor.
- (B) The employer is liable to ensure the safety of the employee by taking precautions against accidents that are reasonably foreseeable.
- (C) The employer is liable towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer.
- (D) The employer is liable towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer, except where the employer has expressly forbidden him/her to do so.
- (E) The employer is liable towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer, except where the delict was committed after hours. (2)

1.12 Section 33 of the Labour Act stipulates that dismissals must take place:

- (A) In accordance with Section 47 of the Labour Act 11 of 2007.
- (B) For a fair and valid reason and according to a fair procedure.
- (C) If an employee is caught in the act of stealing from the employer.
- (D) If the illness of an employee takes place for an unreasonably long period.
- (E) Neither one of the above options. (2)

1.13 In terms of the Labour Act 11 of 2007, choose the correct statement:

- (A) The employee will be entitled to at least 4 consecutive weeks annual leave.
- (B) The employee will be entitled to 24 working days of paid leave per annum.
- (C) All female employees are entitled to maternity leave.
- (D) Both (A) and (C)
- (E) Neither one of the above options. (2)

- 1.14 Representative capacity arises by operation of law when:
- (A) One person agrees with another to act as the latter's agent.
 - (B) One person creates the false impression that another has authority to perform a juristic act on his
 - (C) The court appoints a curator for an insane person.
 - (D) One person performs a juristic act on behalf of another, but without the latter's authority, and the latter subsequently ratifies the act.
 - (E) (C) and (D) (2)
- 1.15 Jack purchased John's VW Beetle. John gives Jack the keys to the motor vehicle upon payment of the purchase price of N\$ 30,000.00. This form of delivery is known as:
- (A) Registration
 - (B) Actual delivery
 - (C) Symbolic delivery
 - (D) Cession.
 - (E) Delivery by long hand. (2)
- 1.16 A person representing by words or conduct that another person is his agent, whereby a third person reasonably and bona fide acts on that representation to his prejudice, will be liable to such contract on the grounds of:
- (A) Express authority
 - (B) Power of Attorney
 - (C) Ostensible authority (*estoppel*)
 - (D) Actual authority
 - (E) Tacit authority (2)
- 1.17 A and B agree that A will buy B's bicycle for N\$ 250. The parties further agree that the risk will only pass to A after delivery of the bicycle to A. The arrangement relating to the passing of risk:
- (A) Is invalid as the sale is *perfecta*.
 - (B) Is valid provided A pays the purchase price on time.
 - (C) Is invalid as the passing of the risk is an essential characteristic of the contract of sale.
 - (D) Is valid as the passing of the risk can be arranged by mutual agreement
 - (E) Neither one of the above options. (2)

1.18 Copyright is conferred on qualified persons only. A qualified person is defined in terms of the Copyright and Neighbouring Rights Protection Act 6 of 1994 as:

- (A) Only natural persons who are Namibian citizens.
 - (B) Both natural persons who are either a Namibian Citizen or domiciled or resident in Namibia and a body incorporated under the laws of Namibia.
 - (C) Any person who is the author of the work.
 - (D) Any person who complied with all the formalities for the acquisition of copyright.
 - (E) None of the above.
- (2)

1.19 The registration of a trademark has some advantages. A Namibian trademark registered in Namibia is effective:

- (A) Throughout the world.
- (B) Within the borders of the SADC region.
- (C) Within Africa.
- (D) Only within the borders of Namibia.
- (E) Within the borders of Namibia and South Africa. (2)

1.20 A written instruction from an account holder to the bank to debit his/her account with a fixed amount on a regular basis and pay it over to a specified third party is known as:

- (A) A stop order
- (B) A debit order
- (C) A credit order
- (D) A transfer order
- (E) An electronic fund transfer instruction (2)

[40]

QUESTION 2

Give a word or phrase for each of the following:

2.1 The rule that states that the seller will be relieved of his/her duty to deliver if performance becomes impossible due to supervening circumstances, while the purchaser will still be liable for the purchase price if the contract is *perfecta*. (1)

2.2 The manner of delivery of immovable property to a purchaser. (1)

- 2.3 In law one who is empowered to enter into a contract with third parties on behalf of a principal; the principal and the third party being bound by such a transaction as if they entered into it themselves directly. (1)
- 2.4 The *ex lege* right of a landlord to attach all movable of his/her tenant to cover arrear rental. (1)
- 2.5 Lizelle had worked for Rico's Coffee Shop for the past 2 years and 6 months and intends to resign. What is the minimum period of notice stipulated by Section 30 of the Labour Act 11 of 2007 in Lizelle's situation. (1)
- 2.6 Termination of a contract of employment by an employer without notice. (1)
- 2.7 A "principal" can be held bound to a contract concluded by an "agent" as though he has authorised the agent to act if the "principal" created the false impression that another person has the authority to conclude certain juristic acts and the third party then acts to his detriment on the strength of that impression. (1)
- 2.8 A formal written authority, setting out the scope of the agent's authority and signed by the principal. (1)
- 2.9 The type of sale where the seller is exempted from liability for latent defects. (1)
- 2.10 The 5-day period (in terms of section 13 of the Credit Agreements Act 75 of 1980 given to a credit receiver to rethink a contract concluded hurriedly. (1)
- [10]**

QUESTION 3

Earlier this year, TransNamib Holdings purchased a brand new locomotive from a Chinese train manufacturer. Before the contract had been concluded, experts from the said manufacturer came to inspect the conditions in Namibia in which the train would be operated.

Two months after the train came into operation; it had to be withdrawn from service on the important Walvis Bay-Windhoek route for three weeks due to breakdown caused by the overheating of the engine.

TransNamib Holdings want to know whether they have a claim against the Chinese train manufacturer. They specifically want to know whether they are entitled to claim the repair costs and for business lost during the three-week period. (Please note that you should **not** discuss the legal concept of **misrepresentation**.) **[10]**

QUESTION 4

- 4.1 Josè leases an apartment from Hosè but for the last 2 months have found it impossible to pay the rent as his mother has been extremely ill and Josè has been paying the medical bills. Hosè is aware that Josè has a big screen TV and DVD worth N\$ 10 000.00 in the apartment. Hosè attached the TV and DVD to recover his arrear rental. It is then discovered that the TV and DVD belong to Game Namibia under a credit agreement in terms of the Credit Agreement Act 75 of 1980, as amended.
Is Hosè still able to sell the goods in a sale in execution? Motivate your answer. (5)
- 4.2 In which respect does Section 13 of the Credit Agreements Act 75 of 1980 differ from the general principles of the law of contract? (5)
[10]

QUESTION 5

- 5.1 George is a truck driver for Easy Movers CC. Discuss whether George's employer could be held liable for the damages and/or injuries caused in the following circumstances:
- a. While on the road to deliver furniture in Swakopmund, he stopped at a filling station for fuel. While at the filling station, he lit a cigarette and caused a fire in which a pump attendant was injured. (5)
 - b. On another trip to Oshakati he gave a lift to a hitchhiker just outside Otjiwarongo. Approximately 10 km north, George fell asleep; the truck left the road and bumped into a tree. Could the hitchhiker claim from Easy Movers CC for injuries sustained in the accident? (2)
- 5.2 Name the *essentialia* of a contract of employment. (1)
- 5.3 Name two reasons why it is important to identify the type of contract of service, i.e. to decide whether it is a contract of employment (*locatio conductio operarum*) or work acceptance contract (*locatio conductio operis*). (2)
[10]

QUESTION 6

- 6.1 Elizabeth gives Frank (in the presence of his friend, Grant) an option to purchase her business on credit. The option expires one month later. Frank goes overseas and Grant realises that the option will expire prior to Frank's return. Being unable to contact Frank, and believing that Frank would want to exercise the option, Grant exercises the option on Frank's behalf. Frank returns from overseas a day after the expiry date of the option, and ratifies Grant's actions. Advise Elizabeth, who no longer wishes to sell to Frank. (5)
- 6.2 In the absence of an express agreement regulating the authority and/or power(s) of an agent, such authority and/or power(s) can be implied by operation of law. Compare the implied authority of company directors, the managing director and the members of a close corporation. (5)

[10]

QUESTION 7

- 7.1 Freddy's Florist grows roses, and sells them to the public from a large garden. Emma places an order with Freddy for the purchase of 100 roses for her wedding. The day before the wedding, she visits the rose garden, picks out 100 roses that she likes and pays for them (at N\$ 5 per rose). Freddy marks that part of the garden clearly, so that the roses may be picked and delivered to Emma the next day. However, that night a hailstorm damaged all the roses. Who bears the loss? Discuss in detail. (8)
- 7.2 Suppose the contract between Freddy's Florist and Emma in 3.1 above stated that she would buy the roses only if the morning of the wedding was sunny. Who would bear the loss if it is overcast and raining on the day of her wedding? Motivate your answer briefly. (2)

[10]

TOTAL MARKS: 100