



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF HUMAN SCIENCES

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATIONS : VARIOUS	
QUALIFICATION CODE: VARIOUS	LEVEL: 5
COURSE NAME: COMMERCIAL LAW 1A	COURSE CODE: CML 111 S
SESSION: JUNE 2019	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION	
EXAMINER(S)	Mr. B Tjatjara/Adv. Saayman/Ms. R Van Zyl/Mrs. H Von Alten/Mrs. M Hanekom/Mrs. E Wabomba
MODERATOR:	Ms. N Hjarunguru

INSTRUCTIONS
<ol style="list-style-type: none">1. Answer ALL the questions.2. Write clearly and neatly.3. Number the answers clearly.4. Number answers according to the numbering structure in the examination question paper.5. Candidates will be penalised for incorrect and illegible spelling

PERMISSIBLE MATERIALS

[None]

THIS QUESTION PAPER CONSISTS OF 5 PAGES (Excluding this front page)

QUESTION 1

Identify and name the legal concept involved in each of the following situations:

- 1.1. A person who habitually squanders his or her money recklessly and declared as unable to manage his or her own affairs by the High court of Namibia.
- 1.2. The official who presides over cases in the Supreme court of Namibia.
- 1.3. A debtor whose estate is under sequestration as a result of a court order.
- 1.4. A contractual term relating to the absence of defects or the presence of good characteristics in the product or service.
- 1.5. The transfer of a right in a contract from one person to another.
- 1.6. A contract that has no rights and duties.
- 1.7. An unlawful threat of harm or injury which persuades another party to conclude a contract.
- 1.8. A situation where the guardian or parent allows a minor to lead an independently economical life.
- 1.9. The outward, visible form that the agreement must take in order to be a valid, enforceable contract.
- 1.10. A term which has not been expressed in words but is based on the true intention of the parties to a contract.
- 1.11. A method by which contractual and other debts by parties who are reciprocally indebted to each other may be extinguished.
- 1.12. Set of rules and regulations that govern human conduct or societal relations, which are recognised and enforced by the State
- 1.13. The authority which the court has to decide a case before it and take cognisance of matters placed before it.
- 1.14. Performance in terms of a contract which becomes objectively impossible after the conclusion of the contract.
- 1.15. A contract in favour of a third party.
- 1.16. Terms that are automatically incorporated into a contract by operation of the law.
- 1.17. When a debtor or creditor fails to perform, performs late or performs in a wrong manner.
- 1.18. When an offeror withdraws his or her offer before it has not been accepted and there is no option.
- 1.19. When a minor induces another party to enter into a contract with him or her, by falsely creating the impression that he or she is major and is held liable to the impression created in a guilty manner.
- 1.20. The financial loss suffered by a victim of breach of contract.

Each correct answer is worth 2 Marks
(40)

QUESTION 2

Choose the correct answer from the given options, in each of the following statements. Only write down the correct letter next to the corresponding question number. USE BLOCK CAPITAL LETTERS

2.1. Henties Bay is a coastal town situated on a deep bay. Whales migrate to Henties Bay annually to breed. This natural phenomenon has become a major tourist attraction. During the breeding season the whales are very sensitive to light and sound. The Henties community has always taken care to keep the noise level down in the bay area during the breeding season. Max decides to open a night club in the town. The community wants to close down the night club because they are afraid that the night club's pulsating music and flickering lights will discourage the whales from migrating to Henties Bay. Max avers that no legislation exists which restricts "noisy" business activities in the Henties Bay area.

Consider the following:

The court will acknowledge the validity of the Henties community's customs if it can, amongst other things, indicate that the prohibition on noise ...

- i). has existed for a long time.
- ii). has been put in writing.
- iii). will encourage the breeding of whales.
- iv). is certain and clear.

Which of the above is/are CORRECT?

- (A) Only i) and iii) are correct.
- (B) Only i) and iv) are correct.
- (C) Only iii) and iv) are correct.
- (D) None of the above.

2.2. Soon after the death of multimillionaire John Deer, a dispute arises regarding the validity and interpretation of his will.

Which ONE of the following courts should be approached to adjudicate the matter?

- (A) High Court.
- (B) Supreme Court.
- (C) Magistrate's Court.
- (D) None of the above options.

2.3. Indicate the INCORRECT statement:

ONE of the requirements for the conclusion of a valid contract is:

- (A) There must be consensus between the parties.
- (B) The contract must be permitted by law.
- (C) The contract must be in writing and must be signed and dated.
- (D) Each party to the contract must have capacity to act.

2.4. Victoria and Ruth arrange telephonically to meet at the Groove Mall at 10am the next day.

Indicate the CORRECT answer:

- (A) No contract arises as Victoria and Ruth have no intention to be legally bound.
- (B) A contract arises as consensus exists.
- (C) A contract has come about as a common intention exists and it has been made known to each party.
- (D) No contract arises as nothing was put into writing.

2.5. In which ONE of the following instances will the contract be VOID?

- (A) Kertu holds a pistol to Victor's head and persuades him to sell his car to her.
- (B) Kertu does not know whether the contract she has concluded is a contract of sale or a contract of lease.
- (C) Kertu tells the buyer that he is buying a 1990 model motor car, while it is in fact a 1988 model.
- (D) Kertu, a doctor, persuades a very sick patient, Tom, to sell his car cheaply to her.

2.6. Choose ONE of the options below to complete the sentence CORRECTLY.

In terms of the expedition theory, a contract comes into being at the place where, and the time when

- (A) the offeror becomes aware of the offeree's acceptance of the offer.
- (B) the offeree puts his or her acceptance in writing.
- (C) the offeree posts the letter of acceptance.
- (D) the offeror receives the acceptance.

2.7. Indicate which ONE of the following situations complies with the requirements for a valid offer which could lead to the conclusion of a contract.

- (A) John tells Tito that he can buy one of his cars at whatever price they agree upon at a later stage.
- (B) Supermarket Cheap-Cheap advertises the sale of model XTS toaster for N\$ 59,99 in the local newspaper.
- (C) The police offer a reward of N\$ 10 000 for information leading to the apprehension of escaped convict, Kit.
- (D) Lebo leaves a message on Jim's answering machine, stating that Jim may buy his car for N\$ 21 000. Jim's wife inadvertently erases the message before anyone can listen to it.

2.8. Which one of the following methods is not a way of terminating a contractual obligation?

- (A) Cession.
- (B) Release.
- (C) Novation.
- (D) Set-Off.

2.9. The period of prescription for a judgment debt is:

- (A) Three (3) years.
- (B) Six (6) years.
- (C) Fifteen (15) years.
- (D) Thirty (30) years.

2.10. An agreement is prohibited by common law if:

- (A) There is no consensus.
- (B) It is against public policy.
- (C) It is clear.
- (D) Performance is objectively impossible.

Each correct answer is worth 2 Marks
(20)

QUESTION 3

Answer the following short questions

3.1. One party's breach of contract entitles the other party (the victim/innocent party) to a contractual remedy or remedies.

Name FOUR (4) remedies for breach of contract. (4)

3.2. **NAME THE REQUIREMENTS** that a plaintiff should prove to claim damages on the basis of breach of contract. (5)

3.3. **EXPLAIN** what you understand by *mora ex re* as a form of breach of contract by the debtor. (1)

(10)

QUESTION 4

BRIEFLY DISCUSS the following:

4.1. The effect of a spouse married in community of property's unassisted contract. (4)

4.2. The effect of a minor's unassisted contract. (4)

4.3. The contractual capacity of an unrehabilitated insolvent person. (2)

(10)

QUESTION 5

Leo "The B1 City Butcher" Vincent and Bruce Lee, alias "Muscle", Merino are staring at the shaking figure of Mr. Dololo, the owner of the only liquor store in Arandis.

Leo says: "**The Boss wants your liquor store Mr. Dololo, sign the contract, or Bruce Lee and I will have to show you what the bottom of the lake looks like. Is it clear?**"

Mr. Dololo signs the contract and the store is sold. Is the contract valid, void or voidable?

Discuss in detail. (10)

QUESTION 6

Discuss the difference between the following examples:

- 6.1. A rents a car from B. B transfers his personal rights to C;
and
6.2. X owes Y N\$ 1000.00. X transfers this duty to perform to Z.

(10)

END OF PAPER

TOTAL: (100 MARKS)