



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION: VARIOUS	
QUALIFICATION CODE: VARIOUS	LEVEL: 5
COURSE CODE: CML 111S	COURSE NAME: COMMERCIAL LAW 1A
SESSION: JULY 2022	PAPER: PAPER 1
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY / SUPPLEMENTARY EXAMINATION	
EXAMINER(S)	MS M SAAYMAN Ms E KUUGONGELWA Ms R VAN ZYL Ms E WABOMBA
MODERATOR:	MS W SHAKELA

INSTRUCTIONS
<ol style="list-style-type: none">1. This examination paper consists of SEVEN questions2. Answer ALL the questions.3. Read all the questions carefully before answering.4. Number the answers clearly

THIS QUESTION PAPER CONSISTS OF 10 PAGES (Including this front page)

QUESTION 1

Choose the correct answer from the given options in each of the following questions. Write the correct letter in your examination script next to the corresponding question number. There is only one correct answer for each question. Negative marking will not be applied, but answers to questions will not be marked where more than one answer has been given.

- 1.1 The originating source of Namibian Law is:
A Legislation
B Common Law
C Custom
D Judgments of Court
E Indigenous Law (2)
- 1.2 In determining whether a contract has been concluded, certain rules of offer and acceptance apply. Which of the following statements is **false**?
A An offer may not be revoked before acceptance.
B Performance of the conditions of an offer is an acceptance of that offer.
C Acceptance must be absolute and unqualified and it must be unequivocally conveyed to the offeror that it is so intended.
D An offer lapses upon the death of either the offeror or offeree.
E All of the above. (2)
- 1.3 An offeror may freely withdraw his offer provided that it has not been accepted and provided the offeror had not bound him/her to keep the offer open. Such a withdrawal of an offer is known as:
A Option
B Waiver
C Revocation
D Entrenchment
E Right of pre-emption (2)
- 1.4 A right of pre-emption is:
A A right one obtains in order to refuse or accept the purchase of an item first.
B A right acquired by a person in terms of a testament of another
C A right, which comes into existence because you have the choice to decide to contract at a later date.
D A right, which must come into existence on a certain future date
E None of the above (2)

- 1.5 Our courts have authoritatively laid down that where in the ordinary course the Post Office is used as the channel of communication and a written offer is made, the offer becomes a contract at the time when, and the place where, the letter of acceptance is posted. The above principle is known as:
- A The information theory
 - B The declaration theory.
 - C The reception theory.
 - D The expedition theory.
 - E The communication theory. (2)
- 1.6 Undue influence comes about as a result of:
- A A false statement of fact, which is material, but made without intention by the maker thereof.
 - B A mistaken perception concerning the nature or obligations or person to a contract, which influenced a person to enter into a contract.
 - C Parties to a contract being placed in the position they were prior to the conclusion of the contract.
 - D A threat to a person's freedom made by the other contracting party or the duly appointed agent of such contracting party which influenced the threatened party to enter into the contract.
 - E None of the above. (2)
- 1.7 Charles is a 15-year-old *pupillus*. State which of the following contracts would be binding on both contracting parties.
- A He buys a television set for the purchase price of N\$ 2500 on credit without the consent of his guardian.
 - B He buys a motorcycle in terms of the Credit Agreements Act 75 of 1980 without the consent of his parents, but a week later they ratify the agreement.
 - C He takes out a life insurance policy from Prosperity Life Insurance Company for the insurance of his life for N\$ 5 million of which his girlfriend is the beneficiary.
 - D He consents to surgery in order to remove his kidney for a donation to an ill friend.
 - E Both B and D (2)

- 1.8 Where a minor, after obtaining majority, continues to use an article, which he purported to purchase during his minority, as his own, or indicates otherwise by his actions an intention to be bound, this is known:
- A Ramification
 - B Rectification
 - C Ratification
 - D Estoppel
 - E None of the above. (2)
- 1.9 A woman married **in community** of property:
- A Is subject to the marital power of her husband who has exclusive rights to administer the joint estate as the head of the family.
 - B Requires the consent of her husband to conclude all contracts.
 - C Shall have the same rights as her husband to dispose of the assets of the joint estate, to contract debts for which the joint estate is liable and to administer the joint estate.
 - D May conclude any contract without the assistance of her husband
 - E Has full contractual capacity. (2)
- 1.10 The following statement is true:
- A A *pupillus* is unable to conclude a contract on his/her own.
 - B Spouses married in community of property have full contractual capacity for all contract
 - C All persons who squander their money are prodigals and accordingly have limited contractual capacity.
 - D A contract in restraint of trade is valid and enforceable even if it is contrary to public interest.
 - E If performance of an obligation is objectively impossible at the time of the conclusion of the contract, the contract is void. (2)
- 1.11 The *par delictum* rule applies when:
- A There is a dispute about a written agreement.
 - B One of the contracting parties is guilty of misrepresentation.
 - C One of the *naturalia* of a contract of purchase and sale in terms of which the seller will pay a penalty should he fail to deliver on time.
 - D The performance in terms of the contract is unlawful; this rule would prevent them from instituting a claim based on unjust enrichment.
 - E A *pupillus* presented himself as a major when entering into a contract without the assistance of his guardian. (2)

- 1.12 Jonas entered into a contract with Kefas for the unlicensed purchase of 100 AK 47 riffles at a purchase price of N\$ 20 000.00, without the necessary firearm licenses as required by law. This contract is:
- A Valid because it complies with all the requirements of a valid contract of purchase and sale.
 - B Voidable since Jonas was under duress at the time when he entered into the contract of purchase and sale.
 - C Void because the performance of the obligation is illegal.
 - D Void as the formalities in respect of the contract were not complied with.
 - E None of the above. (2)
- 1.13 The following contract is valid:
- A X enters into a contract with Y whereby he leases his house to Y. Neither one of the parties knows that the house has burnt down the previous day.
 - B Druggy agrees to buy N\$ 5000's worth of cannabis ("dagga") from Dealer.
 - C X and Y agree telephonically that X will buy Y's farm for N\$ 20 000.
 - D Jerry sells his brother's (Tommy) bicycle to Mike. Jerry is unable to deliver the bicycle as Tommy refuses to sell the said bicycle to Mike.
 - E Bertha concludes an agreement with her father in terms of which she undertakes to remain in a state of celibacy for the rest of her life. (2)
- 1.14 A contract will only be valid if:
- A The parties have reached agreement and have the necessary capacity to act.
 - B Performance is possible at the time the contract is entered into.
 - C The conclusion, object and performance of the contract are lawful.
 - D Formalities (where required) have been complied with.
 - E All of the above. (2)
- 1.15 Joseph's father undertakes to purchase him a BMW if he passes his first year at the Polytechnic of Namibia. This contract is subject to a:
- A Suspensive time clause
 - B Resolutive time clause
 - C Resolutive condition
 - D Suspensive condition
 - E Penalty clause (2)

- 1.16 The Janine/Suzelle DavinTrust concludes an agreement with Windhoek Harriers Athletic Club in terms of which the club has to identify the most promising athlete to receive a bursary from the trust. This legal concept is known as:
- A Release
 - B Cession
 - C *Stipulatio alteri*
 - D Delegation
 - E Novation
- (2)
- 1.17 Bertha is a student. She lives in a flat in Windhoek, but after a while she finds herself in financial difficulties and cannot afford to pay her rent any more. She speaks to her father and he agrees to pay her rent for her. A new agreement is concluded between Bertha's landlord and her father. What do we call this type of agreement?
- A Delegation
 - B Cession
 - C *Stipulatio alteri*
 - D Agency
 - E None of the above options
- (2)
- 1.18 The prescription period for a debt due in terms of an oral contract is:
- A 1 Year
 - B 3 Years
 - C 6 Years
 - D 30 Years
 - E There is no prescription period for an oral contract.
- (2)
- 1.19 In terms of her modeling contract with AB Agency, Lucy is not allowed to do modeling or photographic work for any other agency or person for a period of two years. Six months after the conclusion of this contract she models for a magazine that has made her a very attractive offer. This form of breach is known as:
- A Defective performance
 - B *Mora debitoris*
 - C Prevention of performance
 - D *Mora creditoris*
 - E None of the above options
- (2)

- 1.20 When a debtor intentionally or negligently does something, which makes performance absolutely impossible, this is known as:
- A Supervening impossibility of performance
 - B Objective impossibility of performance
 - C Subjective impossibility of performance
 - D Prevention of performance
 - E None of the above

(2)

[40]

QUESTION 2

Identify the legal concept/contractual term in each of the following:

- 2.1 Jack rents a house from Tom. Jack therefore has an obligation to pay rental to Tom. An agreement is entered into between Jack Tom and Peter in terms of which Jack's obligation is transferred to Peter. Tom and Peter enter into a new agreement. (2)
- 2.2 Romeo agrees to buy a Toyota RAV4 from Pupkewitz Motors. His wife does not like the car and Romeo decides to buy a Toyota Camry instead. Pupkewitz Motors agrees. (2)
- 2.3 A local business gives Matthias money to pay for his studies provided hat he passes all his subjects. (2)
- 2.4 Sally says she had to iron Joe's clothes for 4 months while Joe says that the agreement was for a period of 6 months. The parties then agree that she must do the ironing for 5 months. (2)
- 2.5 Sally must start working at "Just Fish" fishing company on the 1st of June 2019. On the 20th of May 2019 the business premises of "Just Fish" burnt down as a result of arson and the said fishing company, where Sally was to start working, shut down as a result. (2)
- 2.6 Best Banks employs and trains Ben, a computer programmer. In his employment contract a term is included to the effect that he will not work for a competing bank within two years of leaving his job with Best Bank. (2)
- 2.7 Fonny owes Ellen N\$ 15000, whilst Ellen owes Fonny N\$ 10 000. Fonny is obliged to pay the sum of N\$ 5000. (2)

- 2.8 Pat owes Mike N\$ 2000, repayable on the 1st of January 2009. Mike says that Pat can keep the money as a gift. (2)
- 2.9 The contract stipulates that ABC Building Contractors would be liable to pay Mrs. Applegreen N\$200 for each day that they are late in the completion of the project. (2)
- 2.10 Bennie rents a house from Cozy Homes CC with an option to buy the house. Six months thereafter Bennie buys the house. (2)
- [20]**

QUESTION 3

Decide in each of the following instances whether the statement is true or false and motivate your answer.

- 3.1 An *infans* can conclude a contract with the assistance of his/her guardian. (2)
- 3.2 A minor over the age of seven has full contractual capacity for certain types of transactions. (2)
- 3.3 A person who has been declared insane has no contractual capacity at all times. (2)
- 3.4 A voidable contract is neither valid nor void. (2)
- 3.5 The law allows a creditor a maximum of ten years to claim a debt from a debtor. (2)
- [10]**

QUESTION 4

Ms. Nambili posts a letter to BA (Pty) Ltd with an offer to buy 1000 shares in the company. The directors agreed, and a letter informing her that the company would allocate the shares was posted in return. After they posted their letter of acceptance, but before she received their letter, she informs the company telephonically that she revokes the offer. Discuss the legal position of the parties.

[5]

QUESTION 5

Emmy has a contract for one year with “Green Fingers Gardening” service. In June, she is having her house extended, and the garden will be under rubble for the rest of the year. Since she can no longer benefit from the contract, she transfers her rights to her neighbour, Jack, whose garden is similar to hers. Discuss the legal concept.

[5]

QUESTION 6

Hanri (a pupillus) entered into a contract with Incredible Computers CC for the purchase of a computer at a purchase price of N\$ 5 000. During the negotiations the salesperson of Incredible Computers CC asked Hanri how old she was and what she was doing for a living. Hanri replied that she was 22 years old and employed at NUST as a computer technician. The parties agreed that the computer would be delivered immediately and that Hanri would pay the full purchase price at the end of the month when she receives her bonus. Hanri failed to pay the purchase price as agreed.

6.1 Is there a valid contract between the parties? Motivate your answer. (3)

6.2 Discuss the legal position of Incredible Computers CC. (2)

6.3 Name the four (4) ways in which a minor can obtain majority. (4)

6.4 Complete the following sentence by writing the missing word next to the question number on your answer sheet:

“A minor can give consent to medical treatment of his/her own person if s/he has reached the age of years.”

(1)

[10]

QUESTION 7

Sea Breeze Fashions CC, Swakopmund, ordered the latest fashions in swimwear for the December 2018 season, from the wholesaler in Cape Town, Trendy Fashions (Pty) Ltd., to be dispatched during the month of November 2018. The goods were in fact railed in January 2019.

7.1 Decide whether breach of contract was committed and if so, explain the type of breach? (2)

- 7.2 Suppose in 7.1 that Trendy Fashions (Pty) Ltd. is in breach of contract and advise Sea Breeze Fashions CC as to whether it is entitled to cancel the contract?(3)
- 7.3 Suppose in 7.2 that Sea Breeze Fashions CC had been able to cancel the contract and explain to it the requirements that have to be met in order to be able to claim damages in addition. (5)
[10]

TOTAL:[100]

