

FACULTY OF NATURAL RESOURCES AND SPATIAL SCIENCES

DEPARTMENT OF LAND AND PROPERTY SCIENCES

QUALIFICATION(S): Diploma in Property Studies; Diploma in Land Administration; Bachelor of Land Administration; Bachelor of Property Studies; Bachelor in Property Studies Hons	
QUALIFICATION CODES: 06 DPRS 27DPRS ; 06DLAD; 07BLAD; 27BLAD; 08BPRS; 27BPRS	NQF LEVEL: 5
COURSE CODE: LLA520 S	COURSE NAME: LAW FOR LAND ADMINISTRATION 1
EXAMS SESSION: NOVEMBER 2019	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION QUESTION PAPER

EXAMINER(S)	STEPHNIE DE VILLIERS
MODERATOR:	Adv. MAGDA SAAYMAN

INSTRUCTIONS

1. This paper consists of 5 questions.
2. Answer ALL the questions.
3. Write clearly and neatly.
4. Number the answers clearly.

PERMISSIBLE MATERIALS

None

answers to questions will not be marked where more than one answer has been given.

ONLY WRITE THE LETTER OF THE CHOSEN ANSWER NEXT TO THE CORRESPONDING QUESTION NUMBER IN YOUR ANSWER SCRIPT.

a) Patrimonial loss is

- i) A positive element of a person's estate which is reduced or which cannot be increased.
- ii) Loss of profits, damage to property or pure economic loss;
- iii) Loss of a *pater familias*;
- iv) Loss/ injury to a person's reputation;
- v) Both i) and ii) (2)

b) The law of delict deals with:

- i) Personal rights and obligations between two people which arises as a result of a delict;
- ii) Damaged caused to a person's property as a result of an unlawful act or omission;
- iii) Harm to a person's reputation as a result of a delict;
- iv) Compensation payable to a person for an injury caused by an unlawful act committed by another person.
- v) All of the above. (2)

c) Choose the correct statement:

- i) The general rule is that a landowner may always appropriate underground water;
- ii) The general rule is that a landowner may appropriate underground water

- iv) The general rule is that a landowner may not appropriate underground water, because it belongs to the State;
- v) The general rule is that a landowner may appropriate underground water because it belongs to the public, as long as it does not cause damage to another person or property. (2)

d) A real right

- i) Is an exclusive benefit enjoyed by a person in a thing;
- ii) Allows a person to do something or to prevent something to be done to the land/thing.
- iii) Is absolute.
- iv) All the options in numbers i), ii) and iii)
- v) None of the above. (2)

e) Possession and ownership are similar, because both

- i) Allows for a thing to be protected from interference against all people;
- ii) Requires physical control over a thing;
- iii) Raises the presumption of ownership when there is physical possession of the thing;
- iv) Are protected by the law;
- v) None of the above. (2)

[10]

- a) John and Esau entered into a contract of sale of Erf 200, Cimbebasia, Windhoek for an amount of N\$1 500 000. The right either party obtained on the contract is called (2)
 - b) The seashore is an example of an (2)
 - c) Sarah borrowed money from Sue. Sarah gave her Rolex watch to Sue to keep until Sarah have repaid all the money to Sue. Sue has a (2)
 - d) Compensation in the context of the law of delict. (2)
 - e) An example of public nuisance. (2)
- [10]**

Question 3

Answer the following short questions:

- a) Shortly discuss, in the context of private nuisance, what the obligations of the occupier of a property are from which a nuisance emanates. (2)
- b) Briefly explain what type of damage should be proven to succeed on a claim for damages in the event of trespass. (2)
- c) Who can represent a partnership in the absence of any express documentation granting authority to anyone to act on behalf of the partnership? Briefly explain. (4)

- f) What is meant with 'implied authority'? (2)
- g) Give two examples of business enterprises which do not have perpetual succession. (2)
- h) Mention at least four factors you will consider when deciding on a business enterprise. (4)
- i) Briefly discuss the representation of a company. (4)
- [28]
-

Question 4

- a) Draft your own contract of purchase and sale of land of a house. One of the parties should be presented by an agent. The agreement should further comply with the necessary requirements for validity as well as the essentialia of a contract of purchase and sale of land or a house. (*Do not spend more than 10 minutes on this agreement.*) (11)
- b) Identify the principal, third party and the agent in the contract drafted in Question 4. a). (3)
- c) Briefly discuss who will be bound to the contract you have drafted. (5)
- d) Briefly explain if the contract you drafted is *perfecta*. (8)
- e) Provide a motivated opinion on who should be liable for accidental damage to the property/ land described in the context of the contract drafted in a). (5)
- [32]
-

- b) List the advantages of the type of business enterprise of the estate agent? (6)
 - c) Identify the *essentialia* in the attached lease agreement. (8)
 - d) List the duties of the lessor in the attached lease agreement. (4)
- [20]**
-

ANNEXURE TO FOLLOW

Zelda Binneman,
(Identity number 700910 00139)
Of PO Box 9150, Windhoek, Namibia
Tel: 061-215748
Fax: 061- 210978
e-mail: binnemanz@aol.com.na
(Hereinafter called the "Lessor")

1.2 Deidre Van Wyk
(ID No 7001270000299)
Of PO Box 531, Windhoek, Namibia

Tel: 061 – 234809
Mobile: 081 2385804
Fax: 061-2801233 (work)
e-mail: vanwykd07@mtc.com.na
(Hereinafter called the "Lessee")

In this agreement the lessor intend to rent out and the lessee agree to rent the premises to be used for residential purposes on the conditions as set out hereafter.

2. THE PREMISES

No. 30 Candy Street, Pionierspark, Windhoek which includes all buildings thereon.

3. PERIOD OF LEASE

The parties wish to enter into a new lease agreement for a period of 12 months beginning 1 March 2019 and ending 28 February 2020. Occupation of the

notice may only be given on or before the first day of each calendar month.

4. RENTAL AND CONDITIONS OF PAYMENT

The monthly rental for the leased premises shall be N\$ 6600-00 (Six Thousand Six Hundred Namibian Dollars), Vat excluded. Rental shall be paid monthly in advance on the first day of each month, free of any deduction or set-off, at the address as the lessor may direct.

5. ESTATE AGENT

The lessee hereby acknowledges that he was introduced to the rental property by ELNA REAL ESTATE AGENTS (PTY) Ltd, registration number 1058/2014. The lessee further acknowledges that the property was not shown to him by any other person or estate agent. The lessee indemnifies the estate agent and the lessor against any claim which may arise should another estate agent claim that the lessee was first introduced to the property by such other estate agent.

The lessor will pay to ELNA REAL ESTATE AGENTS (PTY) Ltd, registration number 1058/2014, the amount of N\$6000 (Six Thousand Namibian Dollars), as an introduction fee on day of signature of this agreement.

6. DEPOSIT

The Lessee must pay a deposit of N\$6000 (Six Thousand Namibian Dollars) to the Lessor re the initial lease period, at the signing of the agreement. The Lessor shall continue to keep this deposit in trust or in an interest-bearing savings account with an interest of 5.7% (fluctuating, in tandem with the current interest rates) until the termination of the lease. Interest earned on the deposit while kept in trust or in an interest-bearing savings account as aforesaid, shall accrue to the Lessor. On termination of the lease the deposit (if any) shall be refunded to the Lessee as soon as possible, but not later than 30 (thirty) days after termination of the lease, provided that the Lessor may in his

keys.

7. BREACH

If either party fail to comply with the conditions herein contained in this agreement or any condition implied by law, then either party shall notify the other in writing to correct such breach within 30 days of the date of notice. Failure to rectify the breach shall entitle the prejudiced party to terminate this Agreement of lease forthwith without any further notice and without prejudice to either party's rights to claim for damages for the breach of contract otherwise.

8. VARIATION

This is the whole agreement between the parties. No variation, alteration, addition, insertion and/or amendment to this Agreement shall be of any force and effect or be binding on the parties unless reduced to writing and signed by both parties.

9. JURISDICTION

The parties hereby consent to the jurisdiction of the Magistrate's Court for the district of Windhoek in the event of any action or claim instituted because of a dispute arising from this agreement or any matter related thereto.

10. NOTICES

Any notices or process required to be served or delivered on either party shall be validly delivered at their respective addresses, including fax and e-mail addresses as set out in paragraph 1 hereof, which addresses will serve as each party's *domicilium citandi et executandi*, unless a party has given the other party 30 (thirty) days' notice by registered post of a change of address and thus the relative *domicilium citandi et executandi*.

1.....

2.....

.....

Z.Binneman

THUS DONE AND SIGNED AT THISDAY OF2019.

WITNESSES:

1.....

2.....

.....

LESSEE

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FIRST OPPORTUNITY EXAMINATION MEMORANDUM	
EXAMINER(S)	STEPHIE DE VILLIERS
MODERATOR:	Adv. MAGDA SAAYMAN

THIS MEMORANDUM CONSISTS OF 14 PAGES (Including this front page and annexures)

- The model answers are used as guidelines only.
 - The information presented by the students will be evaluated on merit.
-

answers to questions will not be marked where more than one answer has been given.

ONLY WRITE THE LETTER OF THE CHOSEN ANSWER NEXT TO THE CORRESPONDING QUESTION NUMBER IN YOUR ANSWER SCRIPT.

a) Patrimonial loss is

- i) A positive element of a person's estate which is reduced or which cannot be increased.
- ii) Loss of profits, damage to property or pure economic loss;
- iii) Loss of a *pater familias*;
- iv) Loss/ injury to a person's reputation;
- v) **Both i) and ii)** (2)

b) The law of delict deals with:

- i) Personal rights and obligations between two people which arises as a result of a delict;
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- v) **All of the above.** (2)

c) Choose the correct statement:

- i) The general rule is that a landowner may always appropriate underground water;
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- ii) Requires physical control over a thing;
- iii) Raises the presumption of ownership when there is physical possession of the thing;
- iv) Are protected by the law;**
- v) None of the above. (2)

(Answers are in bold and each count two marks)

[10]

a) John and Esau entered into a contract of sale of Erf 200, Cimbebasia, Windhoek for an amount of N\$1 500 000. The right either party obtained on the contract is called

(2)

- *Personal right*

b) The seashore is an example of an

(2)

- *Unownable thing*

c) Sarah borrowed money from Sue. Sarah gave her Rolex watch to Sue to keep until Sarah have repaid all the money to Sue. Sue has a

(2)

- *Real security/pledge*

d) Compensation in the context of the law of delict.

(2)

- *Monetary award.*

e) An example of public nuisance.

(2)

Loud music after 22h00 in an urban area. (Note to examiner/moderator: Students can use their own relevant examples.)

(Each bullet in all the answers to questions counts 2 marks)

[10]

a) Shortly discuss, in the context of private nuisance, what the obligations of the occupier of a property are from which a nuisance emanates. (2)

- *The occupier should take steps to abate the nuisance,*
- *And should avoid causing a nuisance.*

b) Briefly explain what type of damage should be proven to succeed on a claim for damages in the event of trespass. (2)

- *It can take the form of actual or physical damage/ patrimonial damages;*
- *Or simply the disturbance of peace and quiet/ non-patrimonial damages.*

c) Who can represent a partnership in the absence of any express documentation granting authority to anyone to act on behalf of the partnership? Briefly explain. (4)

- *Each partner*
- *for the partnership business*
- *by way of mutual mandate.*
- *It is a naturalia of the partnership agreement.*

d) How can actual authority be granted? (4)

- *Expressly*
- *(verbally or in writing)*
- *By implication*
- *(through holding an office)*

e) How would you explain 'validating a juristic act retrospectively'? (4)

- *The implication is that the principal will be bound to the contract as if*
- *the agent had the necessary authority from the beginning.*

f) What is meant with 'implied authority'? (2)

- *Someone who acquired authority through his office,*
- *like a director of a company; member of a close corporation; guardian of a minor (any of these examples).*

g) Give two examples of business enterprises which do not have perpetual succession. (2)

- *Sole proprietor*
- *Partnerships*

h) Mention at least four factors you will consider when deciding on a business enterprise. (4)

- *The ease of starting up/ formation;*
- *The liability for the business debts;*
- *Availability of capital;*
- *Sharing of responsibility*

i) Briefly discuss the representation of a company. (4)

- *A board of directors does not need express authority to act on behalf of the company.*
- *The board of directors as organ of the company has implied authority to act on behalf of the company.*
- *A single director does not have automatic authority /Authority needs to be granted to a single director to act on behalf of the company*

Question 4

a) Draft your own contract of purchase and sale of land of a house. One of the parties should be presented by an agent. The agreement should further comply with the necessary requirements for validity as well as the essentialia of a contract of purchase and sale of land or a house. *(Do not spend more than 10 minutes on this agreement.)*

(11)

- *Essentialia: intention – declaration of intent to buy and sell.*
- *Essentialia: thing should be certain- A property should be described by address or title deed.*
- *Essentialia: price must be certain- a formula or a specified amount.*
- *Validity: consensus- signature; declaration of buying and selling;*
- *Validity: legal- property should be properly described; should be in Namibia; reason should be proper.*
- *Validity: possible – description of property, parties and purchase consideration*
- *Validity: writing and signed. It is land, the contract must therefore be signed.*
- *Validity: contractual capacity- consider parties' descriptions.*
- *Agency: Another person other than one of the parties should be shown as an agent.*
- *Agency: duly authorized- shows also agency.*
- *Agency: signature – on behalf of at the end of the contract.*

(Note: Consideration should be given to a student's own contract. The answer is a guideline of descriptions of the elements which need to be contained in the contract drafted by the student.)

b) Identify the principal, third party and the agent in the contract drafted in Question 4. a).

(3)

- *The principal is*
- *The Agent is*
- *The third party is*

c) Briefly discuss who will bound to the contract you have drafted. (5)

Student should:

- *Refer to the principal*
- *And the third party in the contract drafted in a) as the parties being bound.*
- *In explanation, the student needs to give an explanation that when an agent act for one of the parties, the agent does not acquire rights or*
- *Obligations, but*
- *The principal for whom he acts.*

d) Briefly explain if the contract you drafted is *perfecta*. (8)

- *Perfecta implies that the thing is identified;*
- *Which in this contract is*
- *The price is certain,*
- *Which in this contract is*
- *And that the contract is unconditional.*
- *Which in this contract is*
- *The contract drafted complies/ does not comply with all the requirements.*
- *The contract is/ is not perfecta.*

(Note: Consideration should be given to a student's own contract. The answer is a guideline of descriptions of the elements which need to be contained in the contract drafted by the student.)

e) Provide a motivated opinion on who should be liable for accidental damage to the property/ land described in the context of the contract drafted in a). (5)

- *The general rule is that the seller must keep the thing in safe custody from the time of conclusion of the contract to the time of delivery, unless*

- *The implication is that the seller/ buyer will be liable for the accidental damage to the property.*

(Each bullet in all the answers to questions counts 1 mark)

[32]

Question 5

Study the attached lease agreement.

- a) Identify the type of business the Estate agent has? (2)

- *The (Pty) Ltd*
- *Indicates that it is a private company.*

- b) List the advantages of the type of business enterprise of the estate agent? (6)

- The assets of the company and directors are separate from each other, because
- The company has juristic personality.
- The directors/ shareholders are not personally liable for company's debts.
- The company's existence is not bound to the members/ perpetual succession.
- More capital;
- More ideas/ responsibility.

- c) Identify the *essentialia* in the attached lease agreement. (8)

- *Use and enjoyment*
- *Indicated below the description of the parties as residential.*
- *Specified thing*
- *Is described as 30 Candy Street, under premises in paragraph 2 of the contract.*
- *Temporary duration*

d) List the duties of the lessor in the attached lease agreement. (4)

- *The lessor must maintain the property.*
- *The lessor must deliver the property to the lessee*
- *The lessor must pay rates, taxes and other levies due and*
- *The lessor should provide undisturbed use and enjoyment to the lessee.*

(Each bullet in each question of question 5 counts 1 mark)

[20]

ANNEXURE TO FOLLOW

Zelda Binneman,
(Identity number 700910 00139)
Of PO Box 9150, Windhoek, Namibia
Tel: 061-215748
Fax: 061- 210978
e-mail: binnemanz@aol.com.na
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1.2 Deidre Van Wyk
(ID No 7001270000299)
Of PO Box 531, Windhoek, Namibia

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Mobile: 081 2385804
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1.....

2.....

.....

Z.Binneman

THUS DONE AND SIGNED AT THISDAY OF2019.

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1.....

2.....

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LESSEE