



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF HUMAN SCIENCES**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATION: COMMERCIAL ADVANCEMENT TRAINING SCHEME (CATS 1)</b>	
<b>QUALIFICATION CODE: 21CABM</b>	<b>LEVEL: 5</b>
<b>COURSE: COMMERCIAL LAW 1A</b>	<b>COURSE CODE: CML 511C</b>
<b>DATE: NOVEMBER 2018</b>	<b>SESSION: 1<sup>ST</sup> OPPORTUNITY</b>
<b>DURATION: 2 HOURS</b>	<b>MARKS: 100</b>

<b>FIRST OPPORTUNITY EXAMINATION QUESTION PAPER</b>	
<b>EXAMINER(S)</b>	<b>H. von ALTEN</b>
<b>MODERATOR:</b>	<b>E. WABOMBA</b>

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

**INSTRUCTIONS**

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

**PERMISSIBLE MATERIALS**

1. Examination paper.
2. Examination script.

*Handwritten signature in red ink, possibly reading "10/11/2018" and "H. von ALTEN".*

## QUESTION 1

Choose the correct answer from the given options in each of the following questions. 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.

**ONLY WRITE THE CHOSEN LETTER NEXT TO THE CORRESPONDING QUESTION NUMBER IN YOUR ANSWER BOOK.**

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 Select the option where the required relief could be both of a civil and criminal nature:

- (A) Mrs. X wants to divorce her husband.
- (B) Mrs. X negligently caused a motor vehicle accident as a result whereof the driver of the other vehicle was killed.
- (C) Mrs. X's husband died and she wants to contest his last will and testament on the basis that he was mentally disturbed at the time when he made the said will.
- (D) Mrs. X attempted to present a stolen cheque at Shoprite, but the cashier suspected that there was something wrong, called the manager and Mrs. X was arrested.
- (E) None of the above. (2)

1.3 The following combination of criminal cases can not be adjudicated by the Regional Court:

- (A) Murder, rape and high treason
- (B) Rape, robbery and culpable homicide
- (C) Rape, high treason and theft
- (D) All crimes where an accused can be sent for community service
- (E) None of the above (2)

1.4 The following combinations are components of Public Law:

- (A) Constitutional Law, Labour Law, Administrative Law and Criminal Law
- (B) Criminal Law, Law of Succession and Criminal Procedure Law
- (C) Interpretations of Statutes, Property Law and Customary Law
- (D) Administrative Law, Criminal Law and Law of Persons

- (E) None of the above (2)
- 1.5 In determining whether a contract has been concluded certain rules of offer and acceptance apply. Which of the following statements is false?
- (A) In the absence of an undertaking to keep an offer open, an offer may not be revoked before acceptance.
- (B) An offer falls away by the death of the offeror or offeree or by a counter-offer.
- (C) Acceptance must be absolute and unqualified and it must be unequivocally conveyed to the offeror that it is so intended.
- (D) Acceptance must be in response to an offer.
- (E) All of the above. (2)
- 1.6 The expedition theory applies:
- (A) When a breach of contract has occurred
- (B) By the operation of the law
- (C) By authorization only, either expressly or implied
- (D) Unilaterally at the option of the offeree
- (E) None of the above (2)
- 1.7 Sam sells his apple farm to James. During discussions before the sale, Sam said that there are 50 000 apple trees on the farm. Afterwards, James discovers that there are only 40 000 trees. Although Sam honestly believed that there were 50 000 trees, a reasonable seller would have checked his facts before making this statement. Sam's statement was:
- (A) Negligent misrepresentation
- (B) Fraudulent misrepresentation
- (C) Innocent misrepresentation
- (D) A material mistake
- (E) An innocent mistake (2)
- 1.8 Bruiser, the leader of a gang, threatens to blow up Dina's house, unless Dina pays him N\$ 5000. Dina agrees and pays him the money. This contract is:
- (A) Voidable
- (B) Void
- (C) Void and voidable
- (D) Valid
- (E) None of the above. (2)



- 1.9 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, without the consent of his guardian, 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, without the consent of his guardian, in order to remove his kidney for a donation to an ill friend.
  - (E) Both (B) and (D) (2)
- 1.10 Abel agrees to sell his computer to Otto for N\$ 5000. The day before Otto is to collect it, Abel sells and delivers the same computer to Nelson for N\$ 5 500. Nelson doesn't know about Abel's sale to Otto. The contract between Abel and Otto is:
- (A) Void, because performance is objectively impossible.
  - (B) Valid, because performance is subjectively impossible.
  - (C) Void, because it is illegal to sell the same item to two persons at the same time.
  - (D) Voidable, because Abel made a misrepresentation to Otto by making him believe that he is going to sell the computer to him.
  - (E) None of the above. (2)
- 1.11 Harry concludes a contract with Sally in terms whereof he sells his house in Swakopmund next to the beach for N\$ 400 000. At the time of the signing of the contract, neither one of the parties is aware that the house had been destroyed by a heavy storm at sea the night before. The contract between Harry and Sally is:
- (A) Valid, because Harry has the duty to give the insurance money to Sally so that she can build a new house.
  - (B) Void, because performance is objectively impossible.
  - (C) Void, because the house was not yet registered in Sally's name.
  - (D) Voidable, because Sally has a choice as to whether or not she wants to accept the insurance money.
  - (E) Valid, because Harry should have made sure whether the house still exists before signing the contract. (2)
- 1.12 The parol evidence rule applies when:
- (A) A dispute arises between the parties concerning a written agreement.
  - (B) A dispute arises between the parties concerning an oral agreement.

- (C) A dispute arises between the parties concerning the obligations of the contract, which the parties decide to replace with new obligations.
- (D) No dispute exists between the parties but the parties decide to substitute old obligations with new ones.
- (E) The performance in terms of the contract is unlawful; this rule would prevent them from instituting a claim based on unjust enrichment. (2)

1.13 With regards to formalities, which of the following statements is true?

- (A) The common law does not require a contract to be made in writing.
- (B) No contract of sale of immovable property is valid unless embodied in a written document and signed by the parties.
- (C) Both (A) and (B)
- (D) An antenuptial contract is valid if concluded orally.
- (E) None of the above. (2)

1.14 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 contracts.
- (C) All persons who squander their money are prodigals and accordingly have limited contractual capacity.
- (D) 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)

1.15 A penalty stipulation in a contract can be defined as follows:

- (A) An express stipulation in a contract in terms whereof the innocent party has an automatic right to cancel the agreement in the event of breach.
- (B) An express stipulation in a contract in terms of which a fixed sum of money has to be paid or transferred to the innocent party in the event of breach of contract.
- (C) An implied term of a contract of purchase and sale in terms of which the seller can be held liable if he fails to keep the thing in safe custody from the time of the conclusion of the contract until the time of delivery.
- (D) One of the *naturalia* of a contract of purchase and sale in terms of which the seller will pay a penalty if he fails to deliver on time.
- (E) One of the *essentialia* of a contract of purchase and sale in terms whereof the purchaser will pay interest on the purchase price if he fails to pay on time. (2)

- 1.16 Which of the following statements is true?
- (A) Cession is a transfer agreement in terms of which a right or rights are transferred from the person who holds them to another.
  - (B) Cession is a way of transferring rights and obligations from one party, called the cedent, to another party, called the cessionary.
  - (C) Cession is a surety agreement.
  - (D) Cession is a contract in terms of which only obligations are transferred.
  - (E) None of the above (2)
- 1.17 Sara 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 both her father and landlord whereupon they agree that her father will pay her rent for her. What do we call this type of agreement?
- (A) Delegation
  - (B) Cession
  - (C) *Stipulatio alteri*
  - (D) Merger
  - (E) Both (b) and (c) (2)
- 1.18 Sally owes Joe N\$ 400. Joe says that Sally must iron his clothes for the next 6 months instead of payment of the debt. Sally agrees. This legal concept is known as:
- (A) Breach of contract
  - (B) Cession
  - (C) Delegation
  - (D) Compromise
  - (E) Novation (2)
- 1.19 Susan contracts with Bill, a computer technician, to repair a virus on her computer. Bill arrives at Susan's office at the agreed time, but Susan has gone to the gym and has not left her log-in code for Bill, so he can't carry out the necessary repair. This is breach in the form of:
- (A) Repudiation
  - (B) Prevention of performance
  - (C) *Mora ex persona*
  - (D) *Mora ex re*
  - (E) *Mora creditoris* (2)



1.20 Thandi, a small-scale farmer, contracts with Stephen to supply him with five bags of beans every month. After a bad locust plague, Thandi only produces enough vegetables to feed her family and therefore does not supply Stephen with any beans for three months. Choose the correct statement:

- (A) The contract is void, because performance is objectively impossible.
- (B) Thandi is in breach in the form of repudiation.
- (C) Thandi is not in breach, because the non-performance was beyond her control.
- (D) The contract is voidable, because Thandi made an untrue statement about the amount of beans she could supply.
- (E) None of the above.

(2)  
[40]

## QUESTION 2

Jabu sees a sign in a shop window saying that all items are for sale at only N\$ 75. He walks into the shop and looks around. He finds a beautiful pen hidden at the back of the store and takes it to the cashier. The cashier says that the pen is the last of a batch that they thought was sold out, and it costs N\$ 150. Jabu demands that he be allowed to buy the pen for N\$ 75. He hands the cashier the N\$ 75 and waits for the pen.

2.1 Is there a contract between Jabu and the shop? Explain. (4)

2.2 Does the shop have to sell Jabu the pen at N\$ 75? Motivate your answer. (1)  
[5]

## 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. Uusiku posts a letter to TBA (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**

State whether a valid contract was concluded in the following instances and motivate your answer:

- 5.1 Blacky is employed by Namdeb (Pty) Ltd. and has acquired some uncut diamonds. He enters into a contract with Donna for the sale of these diamonds without the necessary permit. (2)
- 5.2 Otto, the seller of a farm, had taken steps to hide all traces of a graveyard near the house, and had then sold the farm to Mark, without telling him about the graveyard. (2)
- 5.3 Anita concludes a contract telephonically with her good friend Ernst for the selling of her one-bedroom flat in the centre of the city of Windhoek. (2)
- 5.4 Jakes specified in his offer that Donald must respond on or before the 15<sup>th</sup> of March 2018. Donald accepts the offer on the 16<sup>th</sup> of March 2018. (2)
- 5.5 David, married in community of property with Naomi, agreed to sign a surety for his friend, John, who wanted to borrow money from the bank in order to start a business. David signed as surety for the amount of N\$ 10 000 during the time when Naomi spent a period of six months overseas for study purposes. (2)
- [10]**

#### **QUESTION 6**

Penny 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 7**

Mario owns and manages a successful restaurant, "Stormy Wave", on the Lüderitz waterfront. After five years in business, he decides to complete the B.Com degree that he started before taking over the management of the restaurant from his father. In order to finance his studies and to pay for his upcoming wedding, Mario decides to sell "Stormy Wave". The buyer, Nina, agrees to pay N\$ 800 000 for the restaurant, but is worried about the good personal reputation that Mario has in the restaurant business. In the deed of sale there is a clause that will prevent Mario from operating a restaurant in Lüderitz for a period of two years, so that all his old customers will hopefully continue to have their meals at "Stormy Wave" once Nina has taken over. Mario wants your advice as to whether such a clause is valid; as it may happen that he wants to return to the restaurant business once he has completed his studies. Discuss in detail.

(10)

**[10]**

### **QUESTION 8**

8.1 Joe has a written agreement with Naomi in terms whereof he is renting a house from her. After the lease has been running for a few months, they agree orally that, from now on, Naomi (the lessor) shall pay for a gardening service to maintain the garden. In return, Joe (the lessee) will pay an extra N\$ 100 in rent, since he no longer has to take responsibility for looking after the garden. Is this change valid? (3)

8.2 At a coffee shop on the 30<sup>th</sup> of April 2018, Freddy, a licensed diamond dealer, entered into a contract with Sylvia for the purchase and sale of 10 twenty one carat diamonds at a purchase price of N\$ 25 000. It is agreed between the parties that Freddy will deliver the 10 diamonds to Sylvia on the 2<sup>nd</sup> of May 2018.

When Freddy returned to his shop in order to package the diamonds he discovered that he had insufficient stock to meet his obligations in terms of the contract as he only had 2 twenty one carat diamonds in the safe.

On the day of delivery he advised Sylvia that the contract is void because it is impossible for him to perform and as such not liable. Advise Sylvia whether or not Freddy is correct about the status of their contract. (2)

**[5]**

### **QUESTION 9**

Mrs. Lemon went to hospital for the birth of her third child. Her gynaecologist undertook to sterilize her immediately after the birth, but failed to do so. A month thereafter Mrs. Lemon fell pregnant again. Advise Mrs. Lemon as follows:

9.1 Whether the gynaecologist committed breach of contract and, if so, what type of breach? (2)

9.2 Suppose breach was committed, advise Mrs. Lemon whether she could institute the following claims against the gynaecologist as damages:

- (a) An amount of N\$ 500 000 for discomfort, pain and suffering and loss of amenities of life caused by the birth of a child. (2)
- (b) N\$ 2 million for the care of this fourth child. (2)
- (c) N\$ 1 million for the loss of love and support from her husband, as he left her shortly after the birth for his much younger secretary. (2)
- (d) N\$ 1 million for having lost her job as a result of the unexpected pregnancy. (By the time she had to go on maternity leave, she had not yet completed the required 6 months period of uninterrupted employment required in terms of the Labour Act 11 of 2007 and thus did not qualify for any maternity leave.) (2)

[10]

**TOTAL MARKS: 100**