



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF HUMAN SCIENCES

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION: COMMERCIAL ADVANCEMENT TRAINING SCHEME (CATS 1)	
QUALIFICATION CODE: 21CABM	LEVEL: 5
COURSE CODE: CML 511C	COURSE NAME: COMMERCIAL LAW 1A
SESSION: NOVEMBER 2019	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

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

INSTRUCTIONS
<ol style="list-style-type: none">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:

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 difference between the Magistrate's Court and the Supreme Court of Namibia is:
- A) That the Magistrate's Court is an appeal court and the Supreme Court a trial court
 - B) That the Magistrate's Court has only civil jurisdiction and the Supreme Court only has criminal jurisdiction
 - C) That the Magistrate's Court is a court of first instance and has limited jurisdiction whilst the Supreme Court is the court of last appeal and has unlimited jurisdiction
 - D) That the Magistrate's Court can hear matters of a constitutional nature and the Supreme Court cannot
 - E) None of the above (2)
- 1.2 A right of pre-emption is:
- A) A right one obtains in order to refuse the purchase of an item first
 - B) A right acquire 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)
- 1.3 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)

- 1.4 A mistake regarding motive renders a contract:
- A) Valid
 - B) Void
 - C) Terminated
 - D) Breached
 - E) None of the above (2)
- 1.5 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 an agent to a contracting party which influenced the threatened party to enter into the contract
 - E) None of the above (2)
- 1.6 A *pupillus* is a person who is:
- A) Not married
 - B) Not emancipated
 - C) Has not yet attained the age of 18
 - D) All of the above
 - E) None of the above (2)
- 1.7 A *pupillus* may enter into the following contract
- A) A purchase and sale contract for the purchase of a cell phone at a purchase price of N\$ 850.00
 - B) A donation contract for the receipt of N\$ 100.00 from his/her teacher for a sports trip to Cape Town
 - C) A donation contract for the donation of his/her kidney at the age of 12
 - D) An insurance contract in terms of which he insures his CD player against theft
 - E) None of the above (2)

- 1.8 A guardian may assist a *pupillus* to enter into a contract by means of:
- A) Repudiation
 - B) Rectification
 - C) Restitution
 - D) Rescission
 - E) Ratification (2)
- 1.9 The following is **not** a ground for immediate cancellation when *mora debitoris* has occurred:
- A) M ordered a fresh cream cake for delivery at 12 noon for a party at 13:00, by 12:15 the baker advised M that he could only deliver the cake the following date
 - B) When there is a clause in the contract allowing M to cancel the contract without any notification
 - C) When M ordered 64 boxes of paper for the use of his office, but failed to give the supplier a date for delivery
 - D) M has a hole in his heart and entered into a contract with his doctor to conduct a heart transplant as soon as a donor heart becomes available. A donor heart becomes available but his doctor is on vacation in the Bahamas for 2 weeks.
 - E) None of the above (2)
- 1.10 The following are clauses from a contract, indicate which one of the clauses is an entrenchment clause:
- A) "The parties hereto consent that there shall be no variation of the terms or conditions of the contract unless such variation is reduced to writing and signed by both parties"
 - B) "Should the supplier fail to supply the goods on the dates as indicated in Annexure A, the supplier shall be liable for the payment of N\$ 500.00 (Five Hundred Namibia Dollars) for each day of non-delivery"
 - C) "The lessor shall be entitled to cancel the contract in the event of the lessee's failure to pay the rental due as stipulated in this Agreement"
 - D) "The purchaser guarantees that the motor vehicle is a 1990 model."
 - E) None of the above (2)
- 1.11 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)
- 1.12 One of the following is **not** a requirement for set-off:
- A) The debts must be due
 B) The debt must be liquidated
 C) The debts must be similar of nature
 D) Parties must be reciprocally indebted to each other
 E) None of the above (2)
- 1.13 The *essentialia* of a contract comes into existence by means of:
- A) The operation of the law
 B) Tacit terms
 C) Express terms
 D) Implied terms
 E) None of the above (2)
- 1.14 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) None of the above (2)
- 1.15 The following combination of courts has **limited** jurisdiction.
- (A) High Court and Supreme Court
 (B) Regional Courts and High Court
 (C) Supreme Court and Magistrate Courts
 (D) Lower Courts, i.e. Magistrate Courts and Regional Courts
 (E) None of the above options. (2)
- 1.16 Choose the **correct** statement:
- (A) Namibian law is recorded in one comprehensive piece of legislation.
 (B) Legal subjects are human beings or legal entities subject to the law.
 (C) All persons can perform juristic acts and litigate.
 (D) In a criminal case the accused has to prove that s/he is not guilty.

- (E) In civil litigation, the party bearing the proof must prove his/her case beyond reasonable doubt. (2)

1.17 The following agreement is **not** subject to a condition:

- A) Peter undertakes to give his wife a brand new Mercedes Benz if she loses a minimum of 5 kg in weight within the next 2 weeks
- B) Peter undertakes to give his old video machine to his friend if he wins a new one in the Game Namibia Competition
- C) Peter can borrow Mary's raincoat if it rains in Windhoek on Monday
- D) Peter undertakes to give his cow's first calf to his son
- E) Peter can borrow Tom's umbrella as soon as it rains again in Windhoek (2)

1.18 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 head of the family
- B) Requires the consent of her spouse to conclude all contracts
- C) May conclude any contract without the consent of her husband
- D) 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
- E) None of the above (2)

1.19 A contract with a clause stating that should either party breach the contract, the innocent party would be entitled to claim the amount of N\$ 20 000.00, this clause is known as a:

- A) Warranty
- B) Cancellation Clause
- C) Entrenchment Clause
- D) Penalty Clause
- E) None of the above (2)

1.20 The jurisdiction of a court is:

- A) The authority it has to decide cases presented before it
- B) The authority to punish an accused for a crime
- C) To maintain peace and order within a specified community
- D) Determined by the seniority of the presiding officer
- E) None of the above (2)

- 1.21 The following combinations are components of Public Law:
- A) Constitutional Law, Labour Law and Family Law
 - B) Criminal Law, Law of Succession and Criminal procedure
 - C) Interpretations of Statutes, Property Law and Customary Law
 - D) Administrative Law, Criminal Law and Law of Persons
 - E) None of the above (2)
- 1.22 The originating source of Namibian law is:
- A) Customary Law
 - B) Indigenous Law
 - C) Common Law
 - D) Case Law
 - E) None of the above (2)
- 1.23 The following court has the right of first instance to hear an appeal from the Regional Courts:
- A) Supreme Court of Namibia
 - B) Magistrate's Courts and the High Court of Namibia
 - C) Magistrate's Courts only
 - D) High Court of Namibia
 - E) None of the above (2)
- 1.24 Mr. Boyce gives his son a Volkswagen Beetle provided that he passes his first year of studies at the Namibian University of Science and Technology. This statement is subject to a:
- A) Suspensive Condition
 - B) Resolutive Condition
 - C) Suspensive Time Clause
 - D) Resolutive Time Clause
 - E) None of the above (2)
- 1.25 Which one of the following contracts is valid:
- A) Zero offers his motor vehicle with registration number N 150 W for sale to John. N 150 W is a Volkswagen Beetle. John accepted the offer under the impression that Zero referred to his other motor vehicle, a Volkswagen Golf
 - B) Peter enters into a contract with Yul whereby he leases his house to Yul. Neither one of the parties is aware of the fact that the house has burnt down the previous day

- C) Allan and Simon agree telephonically that Allan will buy Simon's farm for N\$ 250 000.00
 - D) Josie accepts Maggie's offer to buy her computer for N\$ 7 000.00. 2 weeks after the agreement Josie discovers that Game Namibia is selling the same brand of computer at a discount of N\$ 4 300.00
 - E) None of the above (2)
- [50]**

QUESTION 2

2.1 Freddy and Sylvia entered into a contract for the purchase and sale of pornography, in terms of which Freddy will sell to Sylvia 50 pornography publications at a purchase price of N\$ 60.00 each. Freddy is able to sell these publications as he steals them from his employer David, a licenced dealer in pornography.

Answer the following questions in relation to the contract between the parties:

- a) Is the contract between the parties valid, void or voidable? Motivate your answer. (2)
- b) Assume that the parties decided that the purchase price should be paid upfront by Sylvia, which she does but Freddy fails to deliver the publications. What remedies, if any, are available to Sylvia? (3)

2.2 At a coffee shop on the 30th of April 2019, Freddy, a licenced 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\$ 250 000.00. It is agreed between the parties that Freddy will deliver the 10 diamonds to Sylvia on the 2nd of May 2019.

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. Answer the following questions:

- a) 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.(3)
 - b) Assume that on the day when the parties entered into the contract, Freddy's shop was robbed and all his diamonds were stolen. Is the contract between the parties valid, void or voidable? Motivate your answer. (2)
- [10]**

QUESTION 3

- 3.1 David is a breeder and seller of dogs. On the 14th of October 2018 Anne visited David's farm in order to purchase a puppy for her 5 year old son. Anne asked David whether the dogs he was breeding, were vicious dogs. David told her that the dogs wouldn't hurt a fly while knowing that the dogs have a tendency to bite children. Anne bought the dog for a purchase price of N\$ 5 000.00. However a year thereafter the dog attacked and killed her son. Is the contract between the parties valid, void or voidable? Motivate your answer. (5)
- 3.2 Determine whether in the following circumstances a breach of contract was committed and, if so, name the breach and explain the possible remedies available to the innocent party:
- a) Freddy entered into a contract of purchase and sale with Sylvia in terms of which Freddy sold his second hand motor vehicle to Sylvia for a purchase price of N\$ 25 750.00. The parties decided that Sylvia would pay the purchase price on the 1st of June 2019. Sylvia failed to pay the purchase price as agreed. (4)
 - b) Andy undertakes to marry Betty on the 15th of November 2018 but entered into a contract of marriage with Cathy on the 14th of November 2018. (3)
 - c) Joseph entered into a contract with Ben in terms of which he undertook to repair Ben's leaking water tap. Joseph completed the repairs and charged Ben N\$ 1 000.00. A day after the job was completed the tap still leaked. (4)
- 3.3 What must the Plaintiff prove to claim damages for breach of contract. (4)
[20]

QUESTION 4

- 4.1 What is the distinction between cession and delegation. (8)
- 4.2 What is the main difference between a right of pre-emption and an option. (2)
[10]

QUESTION 5

- 5.1 Daniel has been employed with Radio West Coast for the last 2 years as a presenter of a hip youth programme airing in the afternoons. Radio West Coast broadcasts throughout Namibia and is very popular for both listeners and advertisers alike.

In terms of his employment contract upon termination of the contract Daniel is restricted from being employed in the radio broadcasting industry for a period of 8 months in Namibia. Daniel resigns his job as he had been offered N\$ 5 000.00 per month extra remuneration by Radio Doringboom. Immediately after he completed his employment with Radio West Coast he takes up employment with Radio Doringboom.

The owners of Radio West Coast are very concerned about Daniel's actions and request your advice. Advise the owners accordingly. [10]

TOTAL MARKS: 100