



**PAMIBIA 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: COMMERCIAL LAW 1B	COURSE CODE: CLL 112S
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DURATION: 2 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION QUESTION PAPER	
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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.

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.

QUESTION 1

1.1 The following statement is **false**:

- (A) A *voetstoots* ("as is") – sale means that the thing is sold as good or as bad as it is.
- (B) The seller can never be held liable for any latent defects if a thing is sold *voetstoots*.
- (C) A *voetstoots* ("as is") – sale is never implied, the parties must expressly agree on it.
- (D) Goods sold at a public auction are sold *voetstoots*.
- (E) None of the above (2)

1.2 Things that have no material existence are delivered by means of:

- (A) *Longa manu*
- (B) Symbolic delivery
- (C) Cession
- (D) Actual delivery
- (E) None of the above (2)

1.3 Merchants and manufacturers bear a greater burden in terms of the guarantee against latent defects, because:

- (A) A purchaser is always entitled to institute the remedies of *actio redhibitoria* or *actio quanti minoris*.
- (B) A purchaser is always entitled to claim for consequential damages caused to the latter by means of any latent defects unless s/he has expressly or impliedly contracted out of it.
- (C) Goods they sell or manufacture may not be sold *voetstoots*.
- (D) Goods they sell are always sold at a sale in execution.
- (E) Latent defects in the goods they sell are always not known to the purchaser. (2)

- 1.4 A contract in which the *merx* is sold as a hope or expectation, expected to come into existence in future where the price will only be paid to the extent to which the future expectation will materialize, is known as:
- (A) *Emptio rei speratae*
 - (B) Sale by description
 - (C) Sale by sample
 - (D) *Emptio spei*
 - (E) *Res sua* (2)
- 1.5 Nangula buys and pays for a second-hand motor vehicle from ABC Garage, but leaves it with the garage for repairs. Delivery took place in the form of:
- (A) Actual delivery
 - (B) *Constitutum possessorium*
 - (C) Registration in the name of the purchaser at the Ministry of Transport
 - (D) Delivery with the long hand
 - (E) Symbolical delivery (2)
- 1.6 The Credit Agreements Act will not apply to one of the following transactions:
- (A) Where the Minister declared the goods that are sold or leased to fall within the application of the Act.
 - (B) The purchase price is to be paid in installments at a fixed or determinable date in the future.
 - (C) When the agreement is concluded for less than 3 months.
 - (D) When the goods are not sold or leased with the sole objective of selling or leasing the goods to others.
 - (E) None of the above (2)
- 1.7 With reference to the provisions of the Credit Agreements Act 75 of 1980, the following statement is **true**.
- (A) An oral credit agreement is invalid.
 - (B) An agent can act on behalf of both the credit receiver and credit grantor.
 - (C) The period of a credit agreement can be left undetermined.
 - (D) The initial payment (deposit) must first be paid before the credit agreement will be valid.
 - (E) None of the above. (2)

1.8 Section 11 of the Credit Agreements Act 75 of 1980, as amended, protects the purchaser when:

- (A) The credit grantor summarily cancels the credit agreement.
- (B) The contract is signed at the home of the purchaser as a result of the initiatives of the seller.
- (C) The goods bought in terms of the credit agreement are repossessed without a court order.
- (D) The seller has called the purchaser to come in and view the articles on sale.
- (E) None of the above. (2)

1.9 In terms of the Labour Act 11 of 2007 an employee is entitled to the following number of sick leave days in a 3 year cycle if s/he works 6 days a week:

- (A) 24 consecutive days
- (B) 30 calendar days
- (C) 36 working days
- (D) 40 calendar days
- (E) None of the above (2)

1.10 Sara is employed at Mike's Cuisine since the 3rd of July 2016. On the 31st of July 2017 Sara's doctor advised her that she is two months pregnant and due to deliver the baby on the 27th of February 2018. Sara is entitled to the following period of maternity leave in terms of the Labour Act 11 of 2007:

- (A) 24 working days
- (B) 2 weeks
- (C) 4 weeks before her expected date of confinement and 8 weeks after the actual date of confinement
- (D) 4 months paid leave
- (E) None of the above (2)

1.11 The *essentialia* of a contract of employment are:

- (A) Nature of service, remuneration and safe working conditions.
- (B) Nature of service and remuneration.
- (C) Nature of service, remuneration and subordination to the employer.
- (D) The employer has authority and control over the employee and will prescribe what, how and when the work should be done.
- (E) Nature of service, remuneration and employer will provide the tools to enable the employee to render the service. (2)

1.12 Choose the correct statement:

- (A) An employer is not legally bound to provide work to the employee.
- (B) The employee will be entitled to 15 working days of paid leave per annum.
- (C) The employer is expected to take precautions against accidents that are reasonably foreseeable.
- (D) The employer is vicariously liable for the delicts of the contractor in certain circumstances.
- (E) The employer is vicariously liable for all the delicts of the employee. (2)

1.13 It is important to distinguish between the *locatio conductio operarum* and the *locatio conductio operis*, because:

- (A) The contractor does not work under the authority and control of the employer.
- (B) The labour legislation is only applicable to the *locatio conductio operis*.
- (C) The *locatio conductio operarum* is derived from the common law contract of lease.
- (D) The labour legislation such as the Labour Act is only applicable to the *locatio conductio operarum*.
- (E) The employer has to register his contractor with the Social Security Commission. (2)

1.14 Since an agent merely creates the legal relationship between his principal and the third party, there normally is no legal relationship between the agent and third party. But in certain cases the agent can incur personal liability on the contract to the third party, or the agent can incur personal liability to pay damages to the third party concerned. Indicate the **incorrect** statement.

- (A) The agent incurs personal liability where he expressly warrants that he has the necessary representative capacity to conclude an agreement with the third party, when in fact he does not have such capacity.
- (B) The agent incurs personal liability where he intentionally misrepresents that he has authority to conclude an agreement on behalf of this purported principal, when in fact he does not have such authority.
- (C) The agent incurs personal liability where he acts within his authority and discloses that he acts on behalf of a principal.
- (D) The agent incurs personal liability where he fails to disclose that he acts on behalf of a principal while he is in fact doing so.
- (E) The agent incurs personal liability where his conduct and the circumstances clearly indicate that he tacitly warrants that he has the necessary representative capacity, when in fact he does not have such capacity. (2)

1.15 Which one of the following statements is **false**?

- (A) In the law of agency the general rule is that the principal will incur liability to the third party as long as the agent acts within the scope of his authority.
- (B) A seller who is aware (but fails to inform the purchaser) of a latent defect in goods being sold will be protected by a “voetstoots” clause.
- (C) In order to be registrable, a trademark shall contain or consist of a distinctive mark or at least capable of becoming distinctive through use.
- (D) Trademark rights can arise either by using a particular trademark in the course of trade for a period of time (common law rights) or by means of registration.
- (E) Neither one of the above options. (2)

1.16 When the power to act as agent is embodied in a written document this is known as:

- (A) Power of Attorney
- (B) Ostensible authority
- (C) Tacit authority
- (D) Apparent authority
- (E) Authority implied by law (2)

1.17 The risk, which passes to the buyer when the contract is *perfecta*, is the risk of:

- (A) Negligent damages or losses
- (B) Accidental damages or losses
- (C) Loss or damages caused by the seller
- (D) Loss or damages caused by the purchaser
- (E) None of the above (2)

1.18 Choose the **correct** statement:

- (A) Estate agents have implied power to enter into a contract of sale on behalf of the owner.
- (B) A single director (who is not the managing director) of a company has no implied authority to act in the name and on behalf of the company.
- (C) Not all members of a Close Corporation have implied authority to act as agents of the corporation for the purposes of the corporation's business.
- (D) An agent must dedicate him/herself exclusively to his/her principal's affairs and may not have more than one principal.
- (E) Insolvency of the agent will automatically terminate his/her agency power. (2)

1.19 One of the requirements for the transfer of ownership when a contract of sale has been entered into, is:(indicate the **correct** statement):

- (A) That the *merx* be free from a latent defect.
- (B) That actual delivery must take place.
- (C) That the purchase price must be paid in cash.
- (D) That the seller must give the purchaser a warranty against eviction.
- (E) That the intention exists that ownership should pass. (2)

1.20 The initial term of exclusivity to exploit copyright in a design is:

- (A) 14 (fourteen) years, provided that it is renewed in the 3rd, 7th and 10th year.
- (B) 50 (fifty) years from the death of the author of the design.
- (C) 5 (five) years.
- (D) 10 (ten) years.
- (E) 15 (fifteen) years.

(2)
[40]

QUESTION 2

Decide in each of the following instances whether the statement is true or false and give a reason for your answer.

- 2.1 In our law, the operation of the risk rule and the rule of supervening impossibility of performance are the same, except for the fact that the risk rule applies only to contracts of purchase and sale, while the rule of impossibility of performance applies to all other contracts. (3)
- 2.2 The 5-day period (in terms of Section 13 of the Credit Agreements Act 75 of 1980) is given to any credit receiver to re-think a contract concluded hurriedly. (3)
- 2.3 The employer incurs liability towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer. This is known as the principle of vicarious liability. (1)
- 2.4 In the absence of an express authorisation, every director of a company is an agent of the company for the purposes of the company's business. (3)

[10]

QUESTION 3

You are a farmer and in good faith bought 500 sheep from a person who assured you that he is the owner. You had no reason to disbelieve him and paid him for the sheep. Two weeks later a Mr. Goliath, a dealer in livestock, who is staying about 500 km from your farm, contacts you. He tells you that he is the owner of the sheep you have just bought and that you must immediately hand them back to him or otherwise he will sue you.

What are your legal rights? Consider all the possibilities and explain carefully the principles applicable.

(10)

[10]

QUESTION 4

Virginia bought a mini bus from a dealer in terms of a credit agreement governed by the Credit Agreements Act 75 of 1980, as amended, financed by Commercial Bank of Namibia. In terms of the agreement Virginia had to pay a monthly instalment of N\$ 1 500.00 per month to the bank. Three months after the conclusion of the contract the mini bus was involved in a motor vehicle accident and Virginia was unable to pay the instalment due. Failing to pay two consecutive instalments, the bank immediately cancelled the agreement and repossessed the vehicle. Answer the following questions in relation to the given facts:

4.1 Did the bank lawfully repossess the mini bus? Motivate your answer. (3)

4.2 Does this mean that Virginia has permanently lost the possession of the vehicle? Motivate your answer. (2)

[5]

QUESTION 5

Andrew is working at Texas Farmers' Co-operative as a representative, selling farm implements. His remuneration consists of a commission of 10% of the selling price of any item sold. No office space has been allocated to him; he also does not have to go to the co-operative every day; uses his own car to visit clients and arranges the appointments as it suits him. He only has to submit a monthly report on all sales at the end of each month. His job description gives him a free hand as to the manner in which an item is sold. One Saturday morning Andrew has an appointment with a farmer who is interested to buy irrigation equipment. On his way to the farm, Andrew negligently causes an accident in which a Mr. Jackson's car is damaged and Mr. Jackson is seriously injured.

5.1 Is Andrew an employee in terms of the definition of *locatio conductio operarum*? Explain. (3)

5.2 Assume that Andrew is an employee in terms of the definition above and advise whether Mr. Jackson could sue Texas Farmers' Co-operative for his medical expenses and repair costs. (5)

5.3 Assume that Andrew had gone to the farm for a personal visit (not for business) and the accident took place as described in 5.2 above. Advise Mr. Jackson. (2)

[10]

QUESTION 6

- 6.1 Jerome owns a restaurant and, from time to time, commissions Martin to buy wine for the business. On one occasion, Martin, without authority, buys from Paulus a consignment of wine that he thinks Jerome will like. Once Jerome has heard of Martin's transaction, he tells Paulus that he wants to take the wine. Later, Paulus refuses to deliver the wine when he learns that he can get a better price elsewhere. Advise Paulus. (5)
- 6.2 Carel is the manager of AfriCat CC Game Farm in northern Namibia. It is part of his duties to attend game auctions on a regular basis in order to enlarge the game diversity of AfriCat. Carel is already well known amongst the auctioneers. During a recent auction Carel was expressly authorised to buy a cheetah, however, he decided to buy 50 baby springboks instead. AfriCat CC would like to know whether they could be held bound to this contract concluded by Carel on their behalf. Discuss. (5)
[10]

QUESTION 7

Linda buys a guesthouse from Sally for N\$ 1,5 million. Sally remains in the house until the house is registered in Linda's name. The agreement is subject to Linda obtaining a bond from her bank to pay the purchase price. Discuss the legal position of the parties in the case where the house is struck by lightning and destroyed in the ensuing fire.

- 7.1 Before Linda has obtained the finance. (5)
- 7.2 After Linda obtained the finance, but before the transfer of the property has taken place. (5)
[10]

QUESTION 8

- 8.1 Generally, how long does copyright protection last in Namibia? (2)
- 8.2 How long does patent protection last? (3)
[5]

TOTAL MARKS: 100