



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

CENTRE FOR ENTERPRISE DEVELOPMENT (CED)

QUALIFICATION CODE: 06DBPM	LEVEL: 6
COURSE CODE CML 512C	COURSE NAME: COMMERCIAL LAW 1B
DATE: JUNE 2022	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION PAPER	
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INSTRUCTIONS
1. Answer ALL the questions. 2. Write clearly and neatly. 3. Number the answers clearly.

**PERMISSIBLE MATERIALS
NONE**

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. (USE CAPITAL LETTERS FOR YOUR ANSWERS)

- 1.1 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.
- 1.2 If a credit agreement is not reduced to writing the contract is:
- A Valid
 - B Void
 - C Voidable
 - D Valid but results in a criminal offence
 - E None of the above
- 1.3 In terms of the Labour Act 11 of 2007 an employee is entitled to five (5) working days compassionate leave during each period of twelve months for the death or serious illness of family. Which of the following persons will **not** be considered as family for compassionate leave in terms of the Labour Act?
- A Children including adopted children.
 - B Adopted children.
 - C Grandparents
 - D Father/Mother in Law
 - E Brother in law /Sister in Law

1.4 The Labour Act 11 of 2007 deals with sick leave and provides that an employee who works five days or less in the week is entitled to the following number of sick leave days:

- A 30 consecutive days per year.
- B 30 working days per year.
- C 36 working days every three years.
- D 30 working days in the aggregate on full remuneration during each period of 36 consecutive months for which the employee is employed.
- E 2 working days per month.

1.5 In the context of a contract of employment, the doctrine of vicarious liability prescribes that:

- A The employer is under certain circumstances liable towards third parties for the delicts committed by the employee and the independent contractor.
- B The employer is liable to ensure the safety of the employee by taking precautions against accidents that are reasonably foreseeable.
- C The employer is liable 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.
- D The employer is liable 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, except where the employee has expressly forbidden him/her to do so.
- E The employer is liable 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, except where the delict was committed after hours.

- 1.6 An employee who is required to work on Africa Day will receive the following payment for the hours worked on Africa Day:
- A. Normal Remuneration.
 - B. 6% Additional Remuneration on hours worked.
 - C. 6 % Additional Basic wages on hours worked.
 - D. Double his normal basic wage or 1 ½ time his normal basic wage plus time off in succeeding week.
 - E. Double his normal remuneration or 1 ½ time his normal remuneration plus time off in succeeding week.
- 1.7 Section 33 of the Labour Act 11 of 2007 stipulates that dismissal must take place:
- A In accordance with Section 30 of the Labour Act 11 of 2007;
 - B For a fair and valid reason and according to a fair procedure;
 - C If an employee is caught in the act of stealing from the employer;
 - D If the illness of an employee takes place for an unreasonably long period;
 - E Neither one of the above options.
- 1.8 Beckham is injured in a soccer game between England and Germany and as a result must undergo surgery. He entered into a contract with a well known surgeon. This contract is called:
- A. Locatio conductio operarum.
 - B. Contract of the independent contractor.
 - C. Contract for delivery of professional services.
 - D. Locatio conductio operis.
 - E. Contract of mandate.

1.9 According to Section 23 of the Labour Act 11 of 2007 every employee is entitled to four weeks annual leave on full remuneration in respect of each period of 12 consecutive months for which the employee is employed. Who will determine when an employee can go on annual leave?

- A. Employee
- B. Employer
- C. The Trade Union
- D. Labour Commissioner
- E. Employers Organisation

1.10 With reference to the provisions of the Credit Agreements Act 75 of 1980, the following statement is true.

- A. A person may enter into an agreement in terms of which s/he is bound to enter into a credit agreement at a future date.
- B. The agreement must be concluded for at least 6 months or longer.
- C. A credit grantor may lend money to the credit receiver to pay the deposit.
- D. The credit grantor may not be exempted from liability for *ex lege* guarantees.
- E. The credit grantor may be exempted from liability for patent defects.

[20]

(Each question is two marks)

QUESTION 2

Indicate whether the following statements are true or false. Motivate your answer.

- 2.1 The right of ownership in a thing purchased is passed to the purchaser immediately the contract of purchase and sale is concluded.
- 2.2 The legal meaning of the word deliver in the contract of purchase and sale, means the physical handing over of the thing bought.
- 2.3 All goods can be sold in terms of the Credit Agreement Act, Act 75 of 1980.
- 2.4 Upon completion of a contract of purchase and sale, the risk of accidental loss or damage to thing passes to the purchaser immediately.
- 2.5 In a contract of *emptio rei speratae*, the purchase price must be paid by the purchaser regardless of what materialises.

(Each Question is two marks)

[10]

QUESTION 3

WWW store specialises in selling tinned meat. Tom was a regular customer to the store. On one occasion Tom bought some tinned meat and after consuming it, he developed food poisoning. WWW store claims it was unaware of the damaged meat. Is there any right of recourse accorded to Tom in terms of the law? Discuss fully.

[7]

QUESTION 4

4.1 What is the difference between a suspensive condition and resolutive condition in a contract of purchase and sale under the Credit Agreement Act, Act 75 of 1980? (4)

4.2 Instalment Sale Agreements are typically made subject to a suspensive condition. What is the effect of this condition? (6)

[10]

QUESTION 5

Yusufu is a hawker, he sells his goods from door to door. On the 10 of August 2021, he sold to Jane a modern radio at her place of residence, in terms of the Credit Agreement Act, 75 of 1980. Three (3) days after the transaction, Jane noticed that she was struggling financially. She thought of ways of cutting costs and one of them was, to return the radio to Yusufu. Refer to the appropriate section of the Credit Agreement Act, Act 75 of 1980 and advise Jane on her rights as a credit receiver in terms of the said Act.

[6]

QUESTION 6

Johnny concludes a contract to purchase town house in Rocky Crest from Donald. The agreement is subject to Johnny obtaining a loan from ABC bank on or before 14 June 2021 to pay for the purchase price. On 17 June 2021 Jonny who is not yet secured a loan from ABC Bank is informed by Donald that the town house was destroyed by fire.

6.1. Discuss the legal position of the parties (5)

6.2. Assume that the town house was destroyed by fire a day after Jonny obtained a Loan from the Bank but before transfer takes place. Discuss the legal position of the parties. (5)

[10]

QUESTION 7

Manda and Mandy share a flat they rent from Peter in Windhoek in terms of a lease agreement they concluded with Peter. Manda opened an account at ABC furniture where she bought a T.V and fridge for the flat in terms of the credit agreement 75 of 1980 .Mandy opened an account in her name at DEF furniture where she bought a lounge suite for the flat. After a few month of renting the flat they are unable to pay rent and are three months in arrears.

Discuss Peter's rights and remedies, if any, if he wishes to recover the arrear rental. [10]

QUESTION 8

Give a word or phrase for each of the following:

- 8.1 .Work worked in excess of ordinary working hours. (2)
- 8.2 The total value of ALL payments in money and in kind made or owing to an employee arising from the employment of the employee. (2)
- 8.3 Time off work, that a female employee is entitled to for 12 (weeks) after completion of at least 6 months after being employed. (2)
- 8.4 Termination of a contract of employment by an employer without notice. (2)
- 8.5 The employer's 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. (2)

[10]

QUESTION 9

- 9.1 An employee of Nampower, Lasarus, acting within the course and scope of his duties, negligently allowed gas to escape at a power plant in Ruacana and, as a result, a fire broke out. Mr. Tobias, a visitor to the premises of Nampower at that time, suffered severe burn wounds and died as a result of his wounds a few weeks later.

Discuss whether Mr. Tobias's widow has the right to institute a claim against Nampower.

(5)

9.2 Roger was a driver in the employment of Lightning Couriers CC. While performing his duties, he stopped at a filling station for fuel, lit his pipe, which caused a fire in which a pump attendant was injured. Lightning Couriers CC is successfully held liable by the pump attendant. The manager of Lightning Couriers questioned Roger, the latter admitted guilt and was dismissed without a disciplinary hearing. When Roger objected to his dismissal because of the absence of a hearing, the manager argued that a hearing would have made no difference since he already admitted guilt.

Is Roger's dismissal a fair or an unfair dismissal? Discuss.

(7)

[12]

QUESTION 10

Mr. Handy enters into a contract with Boniface. In terms of the contract, Mr. Handy is responsible to build a patio and entertaining area for Boniface where he wants to entertain his friends. They agree that Boniface will pay him the sum of N\$ 25 000 for the work that he has to conduct. The contract is signed on the 1st of April 2021.

10.1 Identify the type of contract entered into by the parties (1)

10.2 Mr. Handy informed Boniface that he could only start working once Boniface has provided him with the necessary tools and equipment for the work. Advise Boniface of his legal position in respect of Mr. Handy's request. (2)

10.3 One of Mr. Handy's workers drops a steel hammer on his head whilst he inspected the job-site. Mr. Handy wants to claim his medical costs from Boniface. Advise Boniface whether she is liable for this. (2)

[5]

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