



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION.

DEPARTMENT OF DEPARTMENT OF SOCIAL SCIENCES

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| QUALIFICATION: DIPLOMA IN BUSINESS PROCESS MANAGEMENT | |
| QUALIFICATION CODE: 06DBPM | LEVEL: 5 |
| COURSE CODE: CML 512C | COURSE NAME: COMMERCIAL LAW 1B |
| SESSION: JUNE 2022 | PAPER: THEORY |
| DURATION: 2 HOURS | MARKS: 100 |

SECOND OPPORTUNITY MEMORANDUM

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|-----------------------|--|
| EXAMINER(S) | |
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| MODERATOR: | |
| MS. W. Shakela | |

INSTRUCTIONS

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

**PERMISSIBLE MATERIALS
NONE**

QUESTION 1

- 1.1 A
- 1.2 D
- 1.3 E
- 1.4 D
- 1.5 E
- 1.6 D
- 1.7 B
- 1.8 E
- 1.9 B
- 1.10 D**

[20 MARKS]

QUESTION 2

- 2.1 False, only if there is intention to pass ownership and seller is owner
- 2.2 False, putting the seller in possession of the thing
- 2.3 False, only movable as determined by the Minister
- 2.4 False, only if the contract is perfecta
- 2.5 False, only to the extent to which the thing materializes

[10 MARKS]

QUESTION 3

- Latent defect
- Naturalia in a contract of purchase and sale

REQUIREMENT:

Requirements must be there as follows:

- Existed at the time of conclusion of the contract
- Renders the thing less useless or Completely useless
- Was not known to the purchaser at the time of conclusion of the contract
- It is not visible or perceivable
- The purchaser would not have bought the thing at the same price had he/she known of the defect.

[7 MARKS]

QUESTION 4

4.1

- Suspensive- contract suspended until the happening of
- The uncertain future event
- Resolutive- contract commences immediately but
- Continuation of the contract is depended on uncertain future event (4)

4.2

- Contract depends on an certain future event
 - Which might happen or not happen
 - Rights and duties are suspended
 - The contract is therefore suspended
 - Until the happening/not happening
 - Of such an uncertain future event (6)
- [10 MARKS]

QUESTION 5

- Section 13 of the Credit Agreement Act of 1980 is applicable
- It is called a cooling off period
- The purchaser is given have days to re-think about the contract

REQUIREMENTS:

- It was initiated by the credit grantor
- Takes place at the place which is a usual place of business of the credit grantor
- Credit grantor has 10 days to refund the money [6MARKS]

QUESTION 6

6.1

- Risk rule applicable, accidental damages pass to the purchaser once the contract is perfecta
- If there is the price
- Thing
- No condition
- Therefore the risk remains with the seller because of the condition (5)

6.2

- If the loan is obtained
 - The condition is fulfilled
 - The contract becomes perfecta
 - The purchaser pays the purchase price
 - Even if the thing is not delivered. (5)
- [10 MARKS]

QUESTION 7

- Tacit hypothec
- Naturally included in a lease agreement
- It operates if the lessee in in arears
- Can attach the goods of the lessee on the rented property
- It is only movable properties
- The properties belonging to the third parties may be included
- If there is no notice given
- Goods bought in terms of the credit agreement also included
- To be excluded the credit grantor must give notice to the lessor that the goods are still on terms.
- Peter may claim.

[10MARKS]

QUESTION 8

- 8.1 Overtime
- 8.2 Net payment
- 8.3 Maternity leave
- 8.4 Summary dismissal
- 8.5 Vicarious liability

[10MARKS]

QUESTION 9

9.1

- Vicarious liability
- Employer held liable for the delicts of the employee
- There must be employer-employee relationship
- In the course /scope of the business
- Promoting the employers interest

9.2 ✖

- Summary dismissal
- Where there is a serious offence
- Section 33 of the Labour Act applicable
- There must be a valid reason
- Substantive fairness
- Procedural fairness
- Follow fair procedures

[12MARKS]

QUESTION 10

10.1

- Independent Contractor

10.2

- In the relationship of independent contractor
- The independent contractor must provide his own tools

10.3

- The independent contractor is not an employee, there to just to complete a certain task.
- Therefore, the independent contractor is liable.

[5 MARKS]

END