



**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 CODE: CML 511C	COURSE NAME: COMMERCIAL LAW 1A
SESSION: DECEMBER 2019	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

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

INSTRUCTIONS
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 10 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 supreme law of Namibia is:

- A) Common law
- B) Legislation
- C) Constitution of the Republic of Namibia.
- D) Judicial precedents
- E) *Ratio decidendi* (2)

1.2 The following combination of courts has unlimited jurisdiction.

- (a) Lower Courts and District Labour Court.
- (b) Regional Courts and Labour Courts
- (c) Supreme Court and High Court
- (d) Maintenance Courts, Children's Courts and Community Courts
- (e) None of the above options. (2)

1.3 The most important source of law in Namibia is:

- A) Common law.
- B) Customary law.
- C) Custom.
- D) Legislation.
- E) Case law. (2)

1.4 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)

1.5 If performance becomes impossible as a result of a flood after the conclusion of a contract, the general rule is that such impossibility:

- (A) Renders the contract void.
- (B) Amounts to a breach of contract.
- (C) Renders the contract voidable.
- (D) Terminates the obligations in terms of the contract.
- (E) None of the above. (2)

1.6 The following court has the to hear an appeal from the High Court:

- 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)

1.7 The following serves as an example of a right of pre-emption.

- A) Sara wants to buy Eric's Play station, but Eric is not prepared to sell it at this stage. Eric undertakes to offer it for sale to Sara first as soon as he decides to sell it.
- B) Mr. Angula offers his car for sale to Ms. Barry. The terms of the offer are as follows: No deposit is payable, payment can be made over a period of 6 months, price of the car is N\$ 10 000. Mr. Angula further offers a period of 10 days during which Ms. Barry can think about the offer without the risk that the car can be sold to another party in the said period of 10 days. Ms. Barry accepted this second offer.
- C) Barry offers to buy Angela's car for N\$ 30 000. Angela says that she will consider this offer.
- D) Pat, an insurance broker, sells a life insurance policy to Sam. The lump sum benefit will be paid to Sam's wife upon his death.
- E) None of the above options. (2)

1.8 The following contract is valid:

- A) Sam enters into a contract with Fiona whereby he leases his house to her. Neither one of the parties knows that the house has been destroyed by a flood the previous day.
- B) Eric, working as a teller at NAMBANK, agrees with his colleague to share the N\$ 1 million that they would steal from the safe over the weekend.

- C) Joe sells a car to Jose, a businessman from Nigeria. Jose knows that the car is stolen.
- D) Petra, a woman married in community of property, sells listed shares belonging to the joint estate in order to buy other listed shares on the Johannesburg Stock Exchange without the assistance of her spouse.
- E) Bertha concludes an agreement with her father in terms of which she undertakes to remain in a state of celibacy for the rest of her life. (2)

1.9 Choose the statement that describes the parol evidence rule:

- A) Where parties entered into an unlawful agreement, the contract is void and neither party can institute a claim on the basis of unjust enrichment.
- B) The rule that provides that certain agreements would only be valid once reduced to writing and signed by the respective parties.
- C) When a dispute arises about an agreement that has been reduced to writing in a document, the parol evidence rule prevents both parties to bring evidence from outside the document and the document as such would serve as the final version of the transaction between the parties.
- D) This rule allows the parties to change their contract, provided that there is enough evidence and both agree.
- E) Evidence required in order to prove the existence of an oral contract. (2)

1.10 Indicate the instance in which a valid acceptance of an offer has taken place:

- (a) Andy makes a verbal offer to Ben. Two days later Ben writes a letter of acceptance and mails it to Andy's business address. One week later the letter was received and read by Andy.
- (b) Andy makes an offer to Ben and states that the offer is open for acceptance until the 20th of March 2019. On the 21st of March 2019 Ben telephones Andy in order to accept the offer.
- C) Andy makes an offer to Ben and asks Ben to address a written acceptance, if any, to Andy's postal address. Ben telephones Andy and accepts the offer.
- D) Andy makes an offer to Ben in the presence of Cathy. Two days later Cathy accepts the offer.
- E) None of the above. (2)

1.11 The prescription period for a debt due in terms of an oral contract is:

- A) 1 Year
- B) 3 Years
- C) 6 Years
- D) 30 Years

- E) There is no prescription period for an oral contract. (2)
- 1.12 A contract with a clause stating that should either party breach the contract, the innocent party would be entitled to cancel the contract, is known as:
- A) Warranty
 - B) *Lex commissoria*
 - C) *Stipulatio alteri*
 - D) Penalty clause
 - E) Entrenchment clause (2)
- 1.13 A clause in a contract stating that should either party breach the contract, the innocent party would be entitled to claim the amount of N\$ 5000, is known as:
- A) Warranty
 - B) *Lex commissoria*
 - C) Entrenchment clause
 - D) Penalty clause
 - E) Neither of the above (2)
- 1.14 The acquisition of rights or the discharge of debts after the passing of a certain period of time is known as:
- A) Release
 - B) Set-off
 - C) Prescription
 - D) Merger
 - E) Novation (2)
- 1.15 A woman married out of 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 contracts.
 - C) Has full contractual capacity and may conclude any contract without the consent of her husband.
 - D) Is solely responsible for all debts in respect of the household necessities.
 - E) Must obtain oral consent from her husband for the alienation of her immovable property. (2)

- 1.16 A person who falls into the category of pupillus:
- A) Requires the assistance of his/her guardian for the conclusion of all types of contracts.
 - B) May never enforce a contract against the other party if such a contract was entered into without the assistance of the guardian.
 - C) Is unable to conclude a valid contract.
 - D) Can become a major by getting married.
 - E) Has no contractual capacity. (2)
- 1.17 If performance becomes impossible as a result of a flood after the conclusion thereof, the general rule is that such impossibility:
- A) Renders the contract void
 - B) Amounts to a breach of contract
 - C) Renders the contract voidable
 - D) Terminates the obligations in terms of the contract
 - E) None of the above (2)
- 1.18 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)
- 1.19 Cosby rents a home from Sandra. Sandra therefore has a personal right to the rental money. Sandra transfers her personal right to Casey. This legal concept is known as:
- A) Agency
 - B) Cession
 - C) *Stipulatio alteri*
 - D) Delegation
 - E) Novation (2)
- 1.20 NAMDEB concludes an agreement with the Namibian University of Science and Technology in terms of which the Management of the said University has to identify the most promising student in the field of Engineering to receive a bursary from NAMDEB to study abroad. This legal concept is known as:
- A) Merger
 - B) Cession

- C) Delegation
- D) Novation
- E) *Stipulatio alteri* (2)

1.21 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)

1.22 Andy rents a motor vehicle from Premier Car Rentals CC and it is agreed between the parties that Andy would collect the motor vehicle the following day. That night a fire destroys the rental building and all the motor vehicles inside are destroyed. It is discovered later that one of the members of the close corporation set the premises alight in an attempt to submit a fraudulent insurance claim. This form of breach of contract is known as:

- A) *Mora ex re*
- B) Repudiation
- C) *Mora creditoris*
- D) Defective Performance
- E) *Mora ex persona* (2)

1.23 The following are clauses from a contract. Indicate which one of the clauses is an warranty 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)
- 1.24 Anne hires a costume for the Wika masquerade, but the costumier fails to deliver the costume in time for the ball. This is breach in the form of:
- A) *Mora creditoris*
 B) *Mora ex re*
 C) *Mora ex persona*
 D) Prevention of performance
 E) *Mora debitoris* (2)
- 1.25 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) A 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)
- [50]**

QUESTION 2

Identify the type of termination of a contract in each of the following situations:

- 2.1 Sally, a South African citizen, rents Peter's flat for N\$ 2000 per month for a period of one year. She came to Namibia to get married to Bob subsequent whereto she would have taken up employment as a teacher. A month after she entered into the lease agreement with Peter, Bob is tragically killed in a motor vehicle accident and Sally is forced to return to South Africa, as she is regarded as an illegal immigrant. (2)
- 2.2 Bennie rents a house from Cosy Homes CC with an option to buy the house. Six months thereafter Bennie buys the house. (2)
- 2.3 Emile was driving under the influence of alcohol when he was involved in a collision with Sally. Emile was solely responsible for the collision, as he failed to stop at a red traffic light. Sally's car was damaged beyond repair and the replacement costs are N\$ 120 000. The collision occurred on the 24th of December 2015. In June 2019 Sally has not instituted any legal action yet. (2)

- 2.4 Frank owes Cecilia N\$ 1000; being the outstanding sum of the purchase price of a microwave oven he bought from her on credit. Cecilia owes Frank N\$ 500, being an amount owing for a cellular phone she bought from him. Cecilia's debt is discharged. (2)
- 2.5 A World Idol of 2018, is supposed to perform at Wembley Stadium, London, on the 1st of January 2019. The night before the event, the stadium was destroyed in a fire caused by a pyrotechnic show. (2)
- [10]**

QUESTION 3

- 3.1 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.
- Discuss the consequences of this agreement. (5)
- 3.2 Martin has a written agreement for the lease of Gabby's flat. One of the clauses stipulates that visitors may not stay longer than 10 days. Martin's sister, Tina, needs to undergo medical treatment for a period of 6 months and Martin telephonically informed Gabby that his sister would come and stay with him. Gabby agrees.
- 3 months later Gabby gives Martin a month's notice to vacate the premises stating that Martin acted contrary to their agreement.
- Advise Martin. (3)
- 3.3 Explain whether a valid contract was concluded in the following circumstances:
- 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)
- [10]**

QUESTION 4

On Maxi's potato farm a total of 10 000 bags of potatoes are harvested per day. During the month of June 2019, Maxi experienced extreme problems with lice and she approached her local suppliers of pesticides to provide her with the necessary chemicals to address this problem. The suppliers, Raid Pest Control CC, undertook to provide Maxi with the latest product on the market on or before the end of June 2019. By mid-July

2019 Raid Pest Control CC had not performed as yet and Maxi had lost an approximate amount of N\$ 500 000 profit as a result of the destruction of her crops by the lice.

- 4.1 Decide whether breach of contract was committed and if so, explain the type of breach? (2)
- 4.2 Suppose in 4.1 that Raid Pest Control CC is in breach of contract and advise Maxi as to whether she is entitled to cancel the contract? (4)
- 4.3 Suppose in 4.2 that Maxi had been able to cancel the contract. Explain to her the purpose of damages and how to calculate damages. (4)
- [10]**

QUESTION 5

- 5.1 Mr. Mouton purchased a dwelling, complete with outbuildings and a swimming pool, from Mr. Strauss. Mr. Mouton paid the agreed price, took occupation and received transfer. Thereafter he found that the swimming pool leaked and he had it repaired. During the negotiations Mr. Strauss's duly appointed agent represented that "the swimming pool was structurally sound and in a good condition". Advise Mr. Mouton. (5)
- 5.2 List the three requirements that a mistaken party has to prove in order to claim that the contract is void due to the fact that there had been a mistake and thus no consensus between the parties. (3)
- 5.3 Explain whether the following statement is true:
- "Duress is an unlawful threat of harm or injury made by one contracting party or someone acting for that party and which causes the other party to enter into the contract. It results in no consensus between the parties and a void contract."
- (2)
- [10]**

QUESTION 6

Explain whether valid acceptance was made in each of the following situations:

- 6.1 Frieda makes an offer to John to sell her computer to him for N\$ 3000. Peter accepts the offer. (2)
- 6.2 James offers his car for sale to Ann. She accepts on condition that he must have four new tyres fitted before delivery. (2)

- 6.3 Susan offered her car for sale to Simon for N\$ 10 000. Simon says that he'll buy it for N\$ 8 000. (2)
- 6.4 Jakes specified in his offer that Donald must respond on or before the 15th of March 2019. Donald accepts the offer on the 16th of March 2019. (2)
- 6.5 Eric saw an advertisement in the newspaper about milk that is sold at N\$ 1-00 per liter at Shoprite. He went to Shoprite to accept the offer during lunchtime, but was told that all the milk was sold out. (2)

[10]

TOTAL MARKS: 100