



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION.

DEPARTMENT OF DEPARTMENT OF SOCIAL SCIENCES

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

FIRST OPPORTUNITY EXAMINATION PAPER

MEMORANDUM	
EXAMINER(S)	MS. E .WABOMBA
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INSTRUCTIONS
<ol style="list-style-type: none">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 IN YOUR ANSWERS

Only write the chosen letter next to the corresponding question number.

- 1.1 A contract in which the *merx* is sold as a hope or expectation, expected to come into existence in future, where the purchaser must pay the price regardless of whether the expectation materializes or the extent to which it materialises, is known as:
- (a) *Emptio rei speratae*
 - (b) Sale by description
 - (c) Sale by sample
 - (d) *Emptio spei*
 - (e) *Res sua*
- 1.2 The most important obligation of the purchaser is:
- (a) Acceptance of delivery of the thin
 - (b) Reimbursement of the seller's expenses
 - (c) Payment of the purchase price
 - (d) Payment of VAT in respect of movable things
 - (e) Payment of transfer duty in respect immovable things.
- 1.3 A and B agree that A will buy B's bicycle for N\$ 50. The parties further agree that there is a condition that A will have to get the money from his father.
- (a) Contract of sale is *perfecta*.
 - (b) Is valid provided A pays the purchase price on time.
 - (c) Is invalid as the passing of the risk is an essential characteristic of the contract of sale.
 - (d) The passing of the risk is not one of the *naturalia* of a contract of sale.
 - (e) Neither one of the above options.
- 1.4 Which of the following is an example of transfer of ownership by *constitutum possessorium*?
- (a) A lends a horse to B. While the horse is in B's possession, they agree that she (B) will buy it from A. The horse remains in B's possession.
 - (b) The *merx* is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.
 - (c) A sells her horse to B. They agree that A will hire the horse from B. The horse thus remains in A's possession.

- (d) A sells her horse to B. She delivers the horse by driving it to B's farm in her trailer and allowing B to lead the horse to its stable.
- (e) Neither one of the above options.
- 1.5 When a seller delivers the *merx* sold to the purchaser, the purchaser is protected against disturbance in his possession by virtue of the:
- (a) Guarantee against latent defects.
- (b) Passing of the risk rule.
- (c) *Actio empti*
- (d) Guarantee against eviction.
- (e) None of the above
- 1.6 Which of the following is an example of transfer of ownership by *longa manu*?
- (a) A lends a horse to B. While the horse is in B's possession, they agree that she (B) will buy it from A. The horse remains in B's possession.
- (b) The *merx* is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.
- (c) A sells her horse to B. They agree that A will hire the horse from B. The horse thus remains in A's possession.
- (d) A sells her horse to B. She delivers the horse by driving it to B's farm in her trailer and allowing B to lead the horse to its stable.
- (e) Neither one of the above options.
- 1.7 Merchants and manufacturers bear a greater burden in terms of the guarantee against latent defects, because:
- (a) *Actio empti* is a special action which is available based on a merchant or a manufacturer's expertise and skill.
- (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.

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 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.

1.10 What do you understand by the term spreadover?

- (a) Time reckoned from the time when employee first commences work until he ceases to work for a particular day (period of 24 hours).
- (b) Time reckoned from 7:00 to 17:00 o'clock.
- (c) Time reckoned from the time when employee first commences work until 17:00 o'clock.
- (d) Time reckoned from the time when employee first commences work until he ceases to work for a particular day
- (e) Time reckoned from 20:00 to 07:00 at additional hourly payment of 6% of the basic wage.

(2)

1.11 The general requirements for a valid contract of employment are:

- (a) Consensus; Contractual capacity; Performance must be possible and permissible and formalities.
- (b) Consensus; Identity of parties; Performance must be possible and permissible and formalities.
- (c) Consensus; Contractual capacity; Performance must be reasonable and permissible and formalities.
- (d) Consensus; Contractual capacity; Services; Remuneration; Formalities.
- (e) Consensus; Contractual capacity; Identity of parties; Services; Remuneration.

1.12 Section 24 of 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 during each period of 36 consecutive months for which the employee is employed.
- (e) 2 working days per month.

1.13 In terms of Section 17 of the Labour Act 11 of 2007 overtime means time worked in excess of ordinary hours worked on any ordinary day. Which statement is true?

- (a) maximum allowable overtime is 3 (three) hours per day.
- (b) maximum allowable overtime is 3 (three) hours per day and 15 hours per week.
- (c) the agreement of the employee is not needed for the working of overtime.
- (d) overtime payment is calculated on the full remuneration per hour of the employee.
- (e) the provisions of overtime apply to all employees including urgent workers.

- 1.14 If the parties to a contract of purchase and sale agreed on the *merx* and the price, but the contract is still subject to a resolutive condition, the risks passes to the purchaser when:
- a) The *merx* is delivered to the purchaser
 - b) The contract is immediately concluded.
 - c) The contract is signed.
 - d) The *merx* is not delivered
 - e) The purchaser fails to deliver
- 1.15 The following statement is **not** true:
- a) A *voetstoots* sale means that the thing is sold as good or as bad as it is
 - b) The seller can never be liable for any latent defects if a thing is sold *voetstoots*.
 - c) A *voetstoots* sale is never implied, the parties must expressly agree on it
 - d) It a sale that is applicable only to movables
 - e) None of the above
- 1.16 Which of the following statements is **true** in relation to a contract of sale?
- a) A seller need to be the owner of the thing sold
 - b) An implied warranty against eviction doesn't guarantee that a third party with a better title will deprive the purchaser of his or her possession of the *merx*
 - c) There can be a valid contract of sale if the parties concerned do not reach agreement about the price.
 - d) Every sale comes with a penalty clause
 - e) Possession is not an issue at all
- 1.17 The following *merx* cannot be bought:
- a) *Res aliena* (things that belong to another person)
 - b) *Res sua* (things that already belong to the purchaser)
 - c) Future things
 - d) Goods yet to be manufactured
 - e) Immovable goods
- 1.18 Sally agrees to purchase Joe's motor vehicle, but leaves it with him to repair it, because it has mechanical defects. This form of delivery is known as:
- a) *Brevi manu*
 - b) *Longa manu*
 - c) *Constitutum possessorium*
 - d) Pay now get tomorrow
 - e) Cash and carry

- 1.19 The difference between *emptio spei* and *emptio rei speratae* can be explained as follows:
- a) In a contract of *emptio spei* the price will be paid per unit, while the price is fixed as a global sum in *emptio rei speratae*.
 - b) In a contract of *emptio spei* the price will only be paid to the extent to which the future expectation will materialize, while in a contract of *emptio rei speratae* the purchaser must pay the price regardless of whether the expectation materializes or the extent to which it materialises
 - c) In a contract of *emptio spei*, the purchaser must pay the price regardless of whether the expectation materializes or the extent to which it materializes, while in a contract of *emptio rei speratae* the price will only be paid to the extent to which the future expectation will materialize
 - d) None of the above
 - e) All of above
- 1.20 The following statement is true:
- a) A contract of purchase and sale is not *perfecta* if it is subject to a resolutive condition
 - b) A contract of purchase and sale is *perfecta* if the price is fixed or determinable, the thing is specified and the parties have the intention to conclude a contract of purchase and sale
 - c) After conclusion of a contract of purchase and sale, the purchaser bears the risk for any accidental damage to the thing from the moment the contract is *perfecta*
 - d) None of above
 - e) All of the above

(Each question is two marks)

[40]

QUESTION 2

Decide in each of the following instances whether the statement is true or false. Only write the letters T for True and F for False

- 2.1 Mr. Winkler is buying the contents of a clothes factory (not the building) that closed down, including all the fabric, sewing machines and other paraphernalia. Symbolical delivery by handing the key to the warehouse to Mr. Winkler will be the most practical and sensible form of delivery.
- 2.2 Mr. Energy discovered a way to produce petrol by using a local plant (mahangu). He sells this formula to Engen for N\$ 1 million. This right will be transferred by cession.
- 2.3 To bear the risk for any accidental damage to the thing if the contract of sale is still subject to a suspensive condition remains with the seller.

2.4 When a seller delivers the thing sold to the purchaser, he undertakes to give the purchaser ownership

2.5 The risk, which passes to the buyer when the contract is *perfecta*, is the risk of negligent damages or losses [10]

(Each question is two marks)

QUESTION 3

Mr. Flashy buys a Porsche from Luxury Cars (Pty) Ltd, a dealer in used luxury cars, for a very high price. While travelling from Windhoek to his guest farm near Otjiwarongo, Mr. Flashy had to go through a roadblock set up by the Police between Windhoek and Otjiwarongo. The Police then informed him that this Porsche was reported stolen and that they must confiscate this car. Answer the following questions:

3.1 What are the essential elements required to enter into a valid contract of purchase and sale? (3)

3.2 What steps must Mr. Flashy take to protect himself when threatened by confiscation? (3)

3.3 On what ground can Mr. Flashy claim compensation from the dealer if the Police confiscate the Porsche? (1)

3.4 Define this ground briefly . (2)

3.5 Suppose Mr. Flashy was well aware that the Porsche was stolen, will he have any claim against Luxury Cars (Pty) Ltd? (1)

[10]

QUESTION 4

- 4.1 How is delivery of immovable property effected to a purchaser? (1)
- 4.2 What are the legal requirements for the transfer of ownership of a thing in a contract of purchase and sale? (2)
- 4.3 When will a seller despite a *voetstoots* sale, still be liable for latent defects? (2)
- 4.4 Name the requirements to be proven by the purchaser, before he can institute a claim against the seller based on the guarantee against latent defects. (5)
- [10]**

QUESTION 5

According to John, a poultry farmer, he bought chicken feed from ABC Co-operative, a manufacturer of chicken feed. Approximately two hours after he had fed his chickens, they all died. It was later discovered that the said chicken feed was contaminated.

Advise John as to whether he has any claim against ABC Co-operative and if so, discuss the possible remedies at his disposal. **[10]**

QUESTION 6

Mr. Mulati entered into a contract with ABC Car dealers for the purchase of a vehicle. In terms of the contract, the purchase price was agreed upon and there was no condition attached to the contract. The buyer and the seller agreed on the type of the car to be sold but did not agree on the colour. The purchaser paid the purchase price in full. A day after concluding the contract, a fire broke out at the dealer's premises. (Not due to the fault of the seller). Most of the cars were damaged. The dealer now claims one of the damaged cars was that of Mr. Mulati and that he (Mr Mulati) therefore bears the risk. Do you agree with the dealer's argument? Advise Mr. Mulati.

[10]

QUESTION 7

7.1 What is the difference between a suspensive condition and resolutive condition in the contract of purchase and sale under the Credit Agreement Act? [4]

7.2 Joel is employed at Food Bites to purchase food supplies for his employer's kitchen. After while in that position, he was transferred to a different department. However even after the transfer, Joel continue ordering food supplies but took the food to his own house. At the end of the month, the bill was send to the employer, who has refused to pay ,claiming he is not obliged to pay, since the food was not used in his kitchen. Do you agree with the employer? Discuss.

[6]

[10]