



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF HUMAN SCIENCES**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATIONS :</b> MARKETING, BUSINESS ADMINISTRATION, OFFICE MANAGEMENT & TECHNOLOGY, PUBLIC ADMINISTRATION, ENGINEERING	
<b>QUALIFICATION CODE:</b> VARIOUS	<b>LEVEL:</b> 5
<b>COURSE NAME:</b> COMMERCIAL LAW 1B	<b>COURSE CODE:</b> CML 112 S
<b>DATE:</b> JANUARY 2019	<b>SESSION:</b> JANUARY 2019
<b>DURATION:</b> 2 HOURS	<b>MARKS:</b> 100

<b>SUPPLEMENTARY / SECOND OPPORTUNITY EXAMINATION QUESTION PAPER</b>	
<b>EXAMINER(S)</b>	Mr. B Tjatjara/Adv. M Saayman/Ms. R Van Zyl/Mrs. H Von Alten
<b>MODERATOR:</b>	Ms. N. Hjarunguru

<b>INSTRUCTIONS</b>
<ol style="list-style-type: none"><li>1. Answer ALL the questions.</li><li>2. Write clearly and neatly.</li><li>3. Number the answers clearly.</li><li>4. Number answers according to the numbering structure in the examination question paper</li><li>5. Candidates will be penalised for incorrect and illegible spelling</li></ol>

**PERMISSIBLE MATERIALS**

[None]

**THIS QUESTION PAPER CONSISTS OF 3 PAGES (Excluding this front page)**

## QUESTION 1

### Identify the legal concepts involved in each of the following

- 1.1. The right of a landlord to attach all movables of his/her tenant to cover rental arrear.
- 1.2. An opportunity given to the credit receiver to re-think a contract concluded hurriedly and to cancel the contract within 5 days and return the goods delivered to him or her in terms of the Credit Agreement Act 75 of 1980.
- 1.3. Things which can never be sold and that can never form a subject matter of a contract of purchase and sale.
- 1.4. A defect in a *merx* that is perceivable by the precise person.
- 1.5. The type of sale where goods sold must be weighed, measured or counted for a contract to be *perfecta*.
- 1.6. Sale of a debtor's assets by public auction because of the court order against the debtor.
- 1.7. When the seller undertakes to give the purchaser undisturbed possession of the thing sold.
- 1.8. The type of sale where a *merx* is sold as good or as bad as it is "as it stands".
- 1.9. When the seller allows the purchaser to take free possession of the thing sold in a contract of sale.
- 1.10. The method in which incorporeal things sold in a contract of purchase and sale are delivered to the purchaser.

Each correct answer is worth 2 Marks  
[20]

## QUESTION 2

### Answer the following short questions

- 2.1. Define the following type of contracts:
  - (a) Contract of insurance. (4)
  - (b) Contract of lease. (3)
  - (c) Contract of purchase and sale. (3)
  - (d) Agency. (3)
- 2.2. Name two typical examples of conditional contracts (one containing a suspensive condition and another a resolutive condition) of purchase and sale. (2)
- 2.3. A party who intends to rely on the **guarantee against latent defects** for a thing bought in a contract of sale should be able to prove all the five requirements in order to succeed with the action. Name these five requirements. (5)

[20]

### **QUESTION 3**

- 3.1 On Monday, Sara sells her motor vehicle to Max for N\$ 20 000. They agree that Max will pay Sara immediately, but that Sara will only deliver the vehicle to Max on Thursday. On Wednesday, a lightning struck the vehicle while parked outside Sara's house. Discuss the legal position of the parties. (8)
- 3.2 Would your answer be any different if Sara failed to deliver the car on Thursday, and the car had been struck by lightning outside her house on Saturday? (2)
- [10]**

### **QUESTION 4**

- 4.1. Name the requirements for vicarious liability within the context of the employment contract. (3)
- 4.2. Give any 7 (seven) examples of works in which copyright can subsist in Namibia. (7)
- [10]**

### **QUESTION 5**

**State whether the following statements are true or false**

- 5.1. In a contract of purchase and sale *voetstoot* is never implied.
- 5.2. No valid contract of purchase and sale can be concluded if the thing sold will materialise only in the future.
- 5.3. Consensus is one of the general requirements for an insurance contract.
- 5.4. Vicarious liability does not apply to an employment contract.
- 5.5. In an agency contract, estoppel is another word for implied authority.
- 5.6. An insurance contract is based on good faith between the insured and the insurer.
- 5.7. A lease contract only places obligations on the lessor.
- 5.8. It is the purchaser's duty in a contract of sale to guarantee against eviction.
- 5.9. If more but not all of the requirements are met for latent defect, a purchaser can successfully sue the seller on the basis of latent defect.
- 5.10. Copyright in works in Namibia does not exist automatically and needs to be registered with BIPA (Business Intellectual Property Authority of Namibia)

Each correct answer is worth 2 marks **[20]**

**QUESTION 6**

Name and briefly explain the general requirements for the formation of a contract of employment. [10]

**QUESTION 7**

- 7.1. Name the obligations of the principal in a contract of agency. (3)
- 7.2. When an agent acted without authority, the basic rule is that the principal is not bound. However, the principal has a choice to reject or to accept and ratify the act at a later stage. Ratification is only possible if the certain requirements have been met. Name the requirements. (7)
- [10]

**END OF EXAM PAPER  
TOTAL (100 MARKS)**