



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF HUMAN SCIENCES**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATIONS :</b> VARIOUS	
<b>QUALIFICATION CODE:</b> VARIOUS	<b>LEVEL:</b> 5
<b>COURSE NAME:</b> COMMERCIAL LAW 1B	<b>COURSE CODE:</b> CML 112 S
<b>SESSION:</b> NOVEMBER 2019	<b>PAPER:</b> THEORY & CASE STUDIES
<b>DURATION:</b> 2 HOURS	<b>MARKS:</b> 100

<b>FIRST OPPORTUNITY EXAMINATION</b>	
<b>EXAMINER(S)</b>	Mr. B Tjatjara/Adv. 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 6 PAGES (Excluding this front page)**

**Question 1**

Choose a **correct answer** from the alternatives provided for each statement by merely indicating the letter with the correct answer.

- 1.1. Which **ONE** of the following contracts of sale is perfecta?
- (a) Albertina buys a horse from Omagano. Albertina may choose a horse from Omagano's 20 horses;
  - (b) Albertina buys Omagano's flock of sheep at N\$ 400 a sheep;
  - (c) Albertina agrees with Omagano to buy her farm provided Albertina obtains a loan from Agribank;
  - (d) None of the above.
- 1.2. Johannes goes to Mopane Worms Café to buy a tin of fish. After taking the money, Ipinge, the shop owner, who is behind the counter takes the tin of fish from the shelf behind him and gives it to Johannes.
- Which form of delivery took place?
- (a) Delivery with the short-hand;
  - (b) Delivery with the long-hand;
  - (c) Symbolic delivery;
  - (d) Actual delivery.
- 1.3. In which **ONE** of the following instances did assignment take place?
- (a) Markus leases his house to Maria. Maria agrees with Markus for Markus to take over the lease of the house.
  - (b) Markus leases his house to Maria. Maria transfers his rights to the house to his friend, Nengo.
  - (c) Markus leases his house to Maria. Maria later leases one room of that house to Nengo.
  - (d) None of the above options.

- 1.4. James rents a farm from Mbambo for N\$ 20 000 per month. Mbambo decides to paint the gate of the farm to another colour of his choice.
- Which **ONE** of the following is the type improvement made by Mbambo to the farm?
- (a) Necessary improvement;
  - (b) Luxurious improvement;
  - (c) Useful improvement;
  - (d) None of the above.
- 1.5. Which **ONE** of the following is an *essentialia* of a contract of insurance?
- (a) An undertaking to pay rent;
  - (b) An undertaking by the insured to pay a premium;
  - (c) An undertaking by the insured to give correct answers in the proposal form.
  - (d) None of the above.
- 1.6. Megan is the owner of a beauty care salon "Glowing Galore". She concludes a contract of employment with Michel, the latter is employed as a cleaner. Which of the following is an *essentialia* of this contract?
- (a) Remuneration;
  - (b) Purchase price;
  - (c) Rent;
  - (d) None of the above options.
- 1.7. Which **ONE** of the following contracts must be in writing and signed by both parties in order to be valid?
- (a) Contract of employment;
  - (b) Contract of purchase and sale;
  - (c) Contract of lease;
  - (d) None of the above.
- 1.8. Which of the following methods are grounds for a valid termination of an agency contract?
- (a) Death of the principal or agent;
  - (b) Revocation by principal;
  - (c) Insolvency of the principal;
  - (d) All of the above.

- 1.9. CarWow sells a G63 Mercedes vehicle to Justin for 1.5 million. They agree that the car will be delivered the next day at Justin's place. The agreement about time and place of delivery is an...
- (a) *Essentialia* of the contract;
  - (b) *Incidental* of the contract;
  - (c) *Naturalia* of the contract;
  - (d) None of the above options.
- 1.10. If the lessor fails to maintain the leased property to ensure that it is fit for the purpose for which it is let, the lessor is
- (a) In breach of contract;
  - (b) Not in breach of contract;
  - (c) Either A or B;
  - (d) None of the above.
- 1.11. The sale of a debtor's goods pursuant to a court judgment against him or her is known as
- (a) Voetstoots sale;
  - (b) Sale in execution;
  - (c) Sale by description;
  - (d) None of the above;
- 1.12. The rule which is unique to a contract of purchase and sale in terms of which once the contract is perfecta the risk of accidental loss or damage to the thing will pass to the purchaser is known as:
- (a) Hire goes before sale rule;
  - (b) Vicarious liability rule;
  - (c) Passing of the risk rule;
  - (d) None of the above.
- 1.13. In an agency relationship, the party who gives authority to another to perform juristic acts (i.e. conclude a contract) on his or her behalf is called?
- (a) The Agent;
  - (b) The Principle;

- (c) The Principal;
- (d) None of the above.

1.14. An employee is entitled to at least one hour after continuous work of five hours to what is regarded as

- (a) Meal interval;
- (b) Overtime;
- (c) Spread over;
- (d) None of the above.
- (e)

1.15. How many days is a cooling off period in terms of section 13 of the Credit Agreements Act 75 of 1980 in which a credit receiver is entitled to return goods delivered to him or her in terms of the credit agreement?

- (a) 5-day period;
- (b) 6-day period;
- (c) 15- day period;
- (d) None of the above options.

*Each correct answer is worth 2 Marks*

**[30]**

## **QUESTION 2**

State whether each of the following statement is true or false. **NO MOTIVATION REQUIRED.**

- 2.1 The registration in respect of a design expires fifteen (15) years after the filing date of the application for its registration.
- 2.2. The registration of a trademark is valid for a period of ten (10) years from the date of the application for registration.
- 2.3. A patent expires twenty (20) years after the filing date of the application for the patent.
- 2.4. Copyright protection lasts for the lifetime of the author plus fifty (50) years from the end of the year in which the author dies, with a few exceptions for different categories of work.
- 2.5. Copyright does not subsist generally in a speech of a political nature or a speech delivered in the course of judicial proceedings.

*Each correct answer is worth 2 Marks*

**[10]**

### **QUESTION 3**

#### **Answer the following short questions**

- 3.1. Name briefly the requirements for the registration of the following in the context of intellectual property law:
- (a) Copyright; (5)
  - (b) Patent; (3)
  - (c) Industrial design; (4)
- 3.2. State the methods of termination of a contract of lease. (5)
- 3.3. What are the three duties of the purchaser when threatened with an eviction of a thing bought in a contract of purchase and sale. (3)
- 3.4. Define a contract of a purchase and sale. (3)
- 3.5. Set out the general requirements applicable to all contracts. (5)
- 3.6. List any two (2) obligations of the employer in an employment contract. (2)
- [30]**

### **QUESTION 4**

Happy entered into a life and disability policy cover with Ultimate Life Insurance. This happened a month after Happy had applied for a discharge as a police officer because she is suffering from major depression and acute anxiety. In a proposal form, which Happy personally completed there was a question whether Happy had at any stage suffered from any kind of depression, Happy answered that question with a simple "No-Never". Happy now wants to claim from Ultimate Life Insurance for acute anxiety and depression. Ultimate Life Insurance has discovered that information provided in the proposal form by Happy was false and Happy did this intentionally.

Discuss the legal position in to Happy's claim. Is Ultimate Life Insurance entitled to pay? **[10]**

**QUESTION 5**

Maria buys a Samsung microwave from Shop-Left, a merchant for N\$ 1, 357.00. Maria grills a chicken for five minutes according to the instructions contained in the manual she received from Shop-Left. It turns out that the grilling button and the microwave itself does not work properly (in that it switches itself off every after 30 seconds). Maria wants to claim for the defective microwave.

Discuss her chances of success.

**[10]**

**QUESTION 6**

Lina lets a 2 bed-room house to Michel for residential purposes. Michel is required to pay rent in the amount of N\$ 5000 per month. Before Michel moved into the premises, she bought a fridge, television and bicycle. She also borrowed her sister's stove and mattress and moved these onto the leased premises when she took occupation on 12 April 2019. Michel paid the rent for the first eight months and thereafter failed to pay the rent for the next three months, having run into financial difficulties. Lina approached Michel to discuss the situation. Michel assured Lina that she will sort everything out and just needs a little time to do so. Lina fears that Michel is going to leave the leased premises at night without paying the rent and approaches you for advice.

Advise Lina on what she can do to secure payment for the rent.

**(10)**

**END OF EXAM PAPER**

**TOTAL (100 MARKS)**