



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF HUMAN SCIENCES

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION: COMMERCIAL ADVANCEMENT TRAINING SCHEME	
QUALIFICATION CODE: 21CABM	LEVEL: 5
COURSE CODE: CML511C	COURSE NAME: COMMERCIAL LAW 1A
SESSION: DECEMBER 2018	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SUPPLEMENTARY / SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
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THIS QUESTION PAPER CONSISTS OF 9 PAGES (Excluding this front page)

INSTRUCTIONS

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

PERMISSIBLE MATERIALS

1. Examination paper
2. Examination script

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 Choose the correct statement:

- (A) Namibian law is recorded in one comprehensive piece of legislation.
- (B) Legal subjects are human beings or legal entities subject to the law.
- (C) All persons can perform juristic acts and litigate.
- (D) In a criminal case the accused has to prove that s/he is not guilty.
- (E) In civil litigation, the party bearing the proof must prove his/her case beyond reasonable doubt. (2)

1.2 *Ratio decidendi* is:

- (A) A judge's opinion of the law in general.
- (B) A remark made in passing by a magistrate in the Regional Courts.
- (C) The authority which a court has to decide a case before it and to take cognizance of matters presented for decision.
- (D) The right of being heard in a case.
- (E) The reason for a decision, which has binding force and is the object of the doctrine of *stare decisis*. (2)

1.3 The following combination of courts has limited jurisdiction.

- (A) High Court and Supreme Court
- (B) Regional Courts and High Court
- (C) Supreme Court and Magistrate Courts
- (D) Lower Courts, i.e. Magistrate Courts and Regional Courts
- (E) None of the above options. (2)

1.4 The following court has the right of first instance to hear an appeal from the High Court of Namibia:

- (A) Supreme Court of Namibia
- (B) Magistrate's Court
- (C) Regional Court
- (D) Constitutional Court
- (E) None of the above (2)

1.5 Which court creates judicial precedent?

- (A) Regional Courts
- (B) Magistrate's courts
- (C) Chief's and headmen's courts
- (D) Community courts
- (E) None of the above (2)

1.6 Customary law principles are:

- (A) Applied by the courts if the parties to a matter so choose, irrespective of whether the law concerned is contrary to the principles of public policy.
- (B) Valid to the extent to which such customary law principles do not conflict with the Namibian Constitution or any other statutory law.
- (C) Applied by the courts if the parties to a matter so choose, provided that the law concerned can be ascertained readily and with sufficient certainty and that it is not contrary to the principles of public policy.
- (D) Both (B) and (C)
- (E) Only (B) (2)

1.7 In determining whether a contract has been concluded certain rules of offer and acceptance apply. Which of the following statements is false?

- (A) An offer may not be revoked before acceptance.
- (B) An offer is revoked by the death of the offeror or offeree or by a counter-offer.
- (C) Acceptance must be absolute and unqualified and it must be unequivocally conveyed to the offeror that it is so intended.
- (D) Acceptance must be in response to an offer.
- (E) All of the above. (2)

1.8 A right of pre-emption is:

- (A) A right one obtains in order to accept or refuse the purchase of an item first.
- (B) A right acquired by a person in terms of a testament of another.
- (C) A right which comes into existence because you have time to think about the main offer for a certain period of time.
- (D) A right, which must come into existence on a certain future date.
- (E) None of the above. (2)

1.9 Undue influence comes about as a result of:

- (A) A false statement of fact which is material but made without intention by the maker thereof.
- (B) A mistaken perception concerning the nature or obligations or person to a contract, which influenced a person to enter into a contract.
- (C) Parties to a contract being placed in the position they were prior to the conclusion of the contract.
- (D) A threat to a person's freedom made by the other contracting party or his/her agent which influenced the threatened party to enter into the contract.
- (E) None of the above. (2)

1.10 The following statement is true with regards to mistake and misrepresentation:

- (A) Misrepresentation renders a contract voidable whereas a material, reasonable mistake renders a contract void.
- (B) Misrepresentation renders a contract void whereas a material, reasonable mistake renders a contract voidable.
- (C) Both misrepresentation and a material, reasonable mistake render a contract voidable.
- (D) Both misrepresentation and a material, reasonable mistake render a contract void.
- (E) Neither one of the above options. (2)

1.11 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) Spouses married out of community of property have full contractual capacity for all contracts.
- (E) An *infans* has limited contractual capacity. (2)

1.12 A person who falls under the category of an insolvent:

- (A) Requires the assistance of his/her guardian for the conclusion of all types of contracts.
- (B) Is unable to conclude any contract.
- (C) Have full contractual capacity to contract.
- (D) Requires the assistance / consent of a trustee to conclude a valid contract of purchase and sale in respect of any asset of the insolvent estate.
- (E) All of the above. (2)

1.13 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)

1.14 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, without the assistance of her spouse, listed shares belonging to the joint estate in order to buy other listed shares on the Johannesburg Stock Exchange.
- (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)

1.15 The parol evidence rule applies when:

- (A) A dispute arises between the parties concerning a written agreement.
- (B) A dispute arises between the parties concerning an oral agreement.
- (C) A dispute arises between the parties concerning the obligations of the contract, which the parties decide to replace with new obligations.
- (D) No dispute exists between the parties but the parties decide to substitute old obligations with new ones.
- (E) None of the above. (2)

1.16 Frank entered into a contract with Sue for the rental of his business premises. Frank advised his mother that she may collect the rental monies and keep it as her own as from the 1st of July 2018. This legal concept is known as:

- (A) Release
- (B) Agency
- (C) Cession
- (D) *Stipulatio alteri*
- (E) Delegation (2)

1.17 Which of the following statements is true?

- (A) Cession is a transfer agreement in terms of which a right or rights are transferred from the person who holds them to another.
- (B) Cession is a way of transferring rights and obligations from one party, called the cedent, to another party, called the cessionary.
- (C) Cession is a surety agreement.
- (D) Cession is a contract in terms of which only obligations are transferred.
- (E) None of the above. (2)

1.18 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)

1.19 Unless provided otherwise in terms of legislation, contractual debts are generally subjected to a prescription period of:

- (A) 1 Year
- (B) 3 Years
- (C) 6 Years
- (D) 30 Years
- (E) None of the above. (2)

1.20 The courts exercise a discretion with regards to specific performance for breach of contract in determining whether or not to apply it. In which circumstance(s) will a court be reluctant to order specific performance?

- (A) Where performance has become impossible.
 - (B) The granting of an order will cause a disproportionate loss for the debtor compared with the benefit for the creditor.
 - (C) It would be difficult for the court to supervise the execution of an order for specific performance.
 - (D) An award for damages will adequately compensate the plaintiff.
 - (E) All of the above. (2)
- [40]

QUESTION 2

Decide in each of the following instances whether the statement is true or false and motivate your answer.

- 2.1 A *pupillus* is unable to conclude a contract on his/her own. (2)
- 2.2 An advertisement is a valid offer. (2)
- 2.3 The law allows a creditor a maximum of ten years to claim a debt from a debtor. (2)
- 2.4 A voidable contract is neither valid nor void. (2)
- 2.5 *Mora debitoris* does not necessarily give the creditor an automatic right to cancel or resile from the contract. (2)
- [10]**

QUESTION 3

Consider each of the following examples and state whether the contract is valid, void or voidable and briefly motivate your answer:

- 3.1 Ann, 19 years old, takes out a life insurance policy from Metropolitan. (2)
- 3.2 Dopehead grows “dagga” (cannabis) in his backyard. He sells some “dagga” to Meathead for N\$ 1000. In terms of legislation it is illegal to possess “dagga” or to sell it to anyone. (2)
- 3.3 Harry concludes a contract with Sally in terms whereof he sells his house in Swakopmund next to the beach for N\$ 400 000. At the time of the signing of the contract, neither one of the parties is aware that the house had been destroyed by a heavy storm at sea the night before. (2)
- 3.4 David, married in community of property with Naomi, agreed to sign as surety for his friend, John, who wanted to borrow money from the bank in order to start a business. David signed as surety for the amount of N\$ 10 000 during the time when Naomi spent a period of six months overseas for study purposes. (2)
- 3.5 Hidipo concludes a contract with Sara in terms of which he sells his farm to Sara. While they were negotiating the contract Hidipo declared that there were 30 000 olive trees planted on the farm well knowing that there were only 5 000 trees. (2)
- [10]**

QUESTION 4

- 4.1 Zelda and Nico enter into a written contract in terms whereof she sells her house to him for N\$ 100 000. The contract is valid and binding. The day after the contract was concluded Justin approaches Zelda and offers to buy the same house for N\$ 110 000. Zelda wants to accept the offer and tells Nico that she is not giving him the house. What is Nico's legal position? (3)
- 4.2 Identify and define the following legal concept:

Deon put his house on the market for the purchase price of N\$ 450 000.00. On the 3rd of June 2018 Mary came and had a look at the house and asked Deon not sell it to anybody else until the 12th of June 2018, by which date she will tell him whether or not she will buy the house. Deon agreed. (2)
[5]

QUESTION 5

Ms. Uusiku posts a letter to TBA (Pty) Ltd with an offer to buy 1000 shares in the company. The directors agreed, and a letter informing her that the company would allocate the shares was posted in return. After they posted their letter of acceptance, but before she received their letter, she informs the company telephonically that she revokes the offer. Discuss the legal position of the parties. [5]

QUESTION 6

Wendy married Harry in 1985 in community of property. She wants to open a small store called "Hardware Heaven". She comes to you for advice. Please advise her on the following matters:

- 6.1 Can she enter into a credit agreement in terms of the Credit Agreements Act 75 of 1980 to buy a delivery van for the business without Harry's consent? (3)
- 6.2 Is Harry liable for the debts of the business? (2)
[5]

QUESTION 7

Mario owns and manages a successful restaurant, "Stormy Wave", on the Lüderitz waterfront. After five years in business, he decides to complete the B.Com degree that he started before taking over the management of the restaurant from his father. In order to finance his studies and to pay for his upcoming wedding, Mario decides to sell "Stormy Wave". The buyer, Nina, agrees to pay N\$ 800 000 for the restaurant, but is worried about the good personal reputation that Mario has in the restaurant business. In the deed of sale there is a clause that will prevent Mario from operating a restaurant in Lüderitz for a period of five years, so that all his old customers will hopefully continue to have their meals at "Stormy Wave" once Nina has taken over. Mario wants your advice as to whether such a clause is valid; as it may happen that he wants to return to the restaurant business once he has completed his studies. Discuss in detail. [10]

QUESTION 8

Brendan gives Donovan N\$ 5000 for the issuing of a driver's license without having to undergo the required tests.

- 8.1 Is this contract valid? Explain. (2)
- 8.2 Suppose Donovan never provides the driver's license to Brendan, but he also refuses to return the money. Advise Brendan of his legal position. (3)
- [5]

QUESTION 9

Mark, a tour guide, booked three rooms at Seaview Hotel, Swakopmund for his clients. Upon arrival, he finds that the receptionist failed to make the booking and that the hotel is fully booked for the weekend.

- 9.1 Decide whether breach of contract was committed and if so, state the type of breach? (2)
- 9.2 Suppose in 9.1 that Seaview Hotel is in breach of contract, advise Mark as to whether he is entitled to cancel the contract? (2)
- 9.3 In addition to the remedy of cancellation in the event of breach of contract, the innocent party may claim damages in addition. Suppose in 9.2 above, Mark had been able to cancel the contract, explain to him the following:
- (a) The purpose of a claim for damages. (1)
- (b) The requirements to succeed with a claim for damages. (5)

[10]

TOTAL MARKS: 100