



PAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES and EDUCATION
DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION: BACHELOR OF ACCOUNTING / BACHELOR OF ENTREPRENEURSHIP	
QUALIFICATION CODE: 07BOAC; 07BACC; 07BENT	LEVEL: 5
COURSE CODE: BLW512S	COURSE NAME: BUSINESS LAW
SESSION: MARCH 2024	PAPER: THEORY AND CASE STUDIES
DURATION: 3 HOURS	MARKS: 100

SPECIAL / EXIT EXAMINATION	
EXAMINER(S)	Emmy Wabomba
MODERATOR:	Mariette Hanekom

INSTRUCTIONS
<ol style="list-style-type: none">1. The paper has FIVE questions.2. ALL the questions are compulsory.3. Read carefully before answering.4. Write clearly and neatly.5. Number the answers clearly and according the structure in the examination question paper.6. Candidates will be penalised for incorrect spelling and illegible handwriting.

PERMISSABLE MATERIAL

None

THIS QUESTION PAPER CONSISTS OF 6 PAGES (Including this front page)

QUESTION 1

Choose a correct answer from the options given in each of the following statements. Only write down the letter with a correct answer for each statement.

- 1.1. If the parties to a contract of purchase and sale agreed on the *merx* and the price, but the contract is subject to a resolutive condition, the risks passes to the purchaser when:
- a) The *merx* is delivered to the purchaser
 - b) The condition is fulfilled.
 - c) The contract is concluded.
 - d) The *merx* is damaged due to an accident
- 1.2. One of the requirements for the transfer of ownership when a contract of sale has been entered into, is (indicate the **correct**) statement):
- a) That actual delivery must take place
 - b) That the purchase price must be paid in cash
 - c) That the seller must give the purchaser a warranty against eviction
 - d) That the intention exists that ownership should pass
- 1.3 The person who gives an order that money must be drawn on his/her name and who signs the negotiable instrument, is called the:
- a) Indorser
 - b) Indorsee
 - c) Drawer
 - d) Drawee
- 1.4 The Credit Agreements Act will not apply to one of the following transactions:
- a) Where the Minister declared the goods that are sold or leased to fall within the application of the Act
 - b) The purchase price is to be paid in instalments at a fixed or determinable date in the future
 - c) When the agreement is concluded for less than 3 months
 - d) None of the above
- 1.5 If the last indorsement on a bill of exchange is a specific indorsement, the bill of exchange is known as:
- a) A bearer bill
 - b) An order bill
 - c) A bill which cannot be negotiated
 - d) None of the above

- 1.6 Which one of the following is a correct statement of law?
An agent is a person who acts on behalf of another:
- a) To protect a principal's goods or services
 - b) To promote the sales of his principal
 - c) In entering into contracts
 - d) To improve a business's performance
- 1.7 Section 13 of the Credit Agreements Act 75 of 1980 provides as follows:
- a) The credit receiver may cancel within 5 days if the agreement is entered into as a result of the initiative of the credit grantor and signed at an unusual place of business
 - b) The credit receiver may cancel within 5 days if the agreement is entered into because of the initiative of the credit grantor or the credit receiver signed the agreement at a place which is not the normal place of business of the credit grantor
 - c) The credit receiver shall be entitled to recovery of the goods within 30 days in the event where the credit grantor takes matters in his own hands and repossesses goods by any other means than a court order
 - d) The credit receiver may cancel within 5 days if the agreement is entered into because of the initiative of the credit grantor and the credit receiver signed the agreement at a place, which is not the normal place of business of the credit grantor
- 1.8 The difference between *emptio spei* and *emptio rei speratae* can be explained as follows:
- a) In both these types of contracts the *merx* is sold as a hope or expectation, which is expected to come into existence in future
 - b) 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*
 - c) 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 the extent to which it materialises
 - d) In a contract of *emptio spei*, the purchaser must pay the price regardless of whether the expectation materialises or the extent to which it materialises, while in a contract of *emptio rei speratae* the price will only be paid to the extent to which the future expectation will materialise
- 1.9 Martin buys a house from NHE. He wants to know how the house, as immovable property, will be delivered to him:
- a) Actual delivery
 - b) Constructive delivery
 - c) Registration in the name of the purchaser at the Office of the Registrar of Deeds
 - d) *Longa manu*

- 1.10 A contract for the sale of goods is one where:
- A seller gives goods to another by way of a contract, for safe keeping
 - Goods are passed to another to use in his business
 - A seller transfers or agrees to transfer, the property in goods to the buyer for a money consideration called the price
 - Goods are loaned under a contract of hire to a customer
- 1.11 Which one of the following statements is **correct**?
- The partnership relationship is characterised by the highest degree of good faith amongst the partners
 - A partnership may not be formed in order to carry out only a specific project
 - A partner may never be compensated for his contribution to the partnership
 - All of the above
- 1.12 A and B agree that A will buy B's bicycle for N\$ 50. The parties further agree that the risk will only pass to A after delivery of the bicycle to A. The arrangement relating to the passing of risk:
- Is invalid as the sale is perfecta.
 - Is valid provided A pays the purchase price on time.
 - Is invalid as the passing of the risk is an essential characteristic of the contract of sale.
 - Is valid as the passing of the risk can be arranged by mutual agreement.
- 1.13 Which of the following is an example of transfer of ownership by *constitutum possessorium*?
- 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.
 - The merx is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.
 - A sells her horse to B. They agree that A will hire the horse from B. The horse thus remains in A's possession.
- 1.14 A partnership consisting of Amukongo, Van Zijl and Tjiuoro leases a part of the partnership property to Tjiuoro. Tjiuoro does not pay the rental. What can Amukongo and Van Zijl do?
- Nothing, because the relationship between partners is like that between brothers.
 - Institute action against him on behalf of the partnership.
 - Reduce his profit-sharing ratio.
 - Break his legs.

- 1.15 If a partner fails to deliver his agreed contribution:
- a) The other partners can institute action against him to claim the contribution
 - b) No partnership comes into existence, because one of the *essentialia* is missing
 - c) This partner will be liable for all the debts of the partnership until she has delivered her contribution
 - d) The partnership will dissolve through operation of law

Two marks each [30]

QUESTION 2

Briefly answer the following questions.

- 2.1 Explain the difference between the passing of the risk rule and the rule of impossibility of performance. (6)
- 2.2 How is an order bill of exchange negotiated? (2)
- 2.3 Instalment Sale Agreements are typically made subject to a suspensive condition. What is the effect of this condition? (4)
- 2.4 In terms of the law of purchase and sale, what is the meaning of the term “delivery”? (2)
- 2.5 Is a partnership a juristic person? (3)
- 2.6 Why must an extra-ordinary partnership must always have at least one ordinary partner? (4)
- 2.7 Why will a change in membership terminate a partnership? (4)
- [25]

QUESTION 3

Jane sells her motor car to Itumeleng for N\$100 000. To Itumeleng it looks as if the car is in mint condition. Itumeleng pays the full purchase price immediately.

Advise Itumeleng on her legal position in the following separate situations:

- 3.1 They agree that Jane will keep the car for another week while Itumeleng has a garage built for it at his house. One night during the week Jane forgets to lock the car in her garage. That night there is a hail storm and the paint work on the car is damaged. (10)

- 3.2 A week after Itumeleng has taken delivery of the car, it breaks down. It then transpires that the car had leaking radiator, and that it will cost Itumeleng about N\$5 000 to have the engine fixed. (8)
- 3.3 Would your answer to question 3.2 be different if the sale had been 'voetstoots'? (3)
- 3.4 Would your answer to question 3.2 be any different if Jane knew that the car had a leaking radiator, but told Itumeleng that the car was in mint condition? (4)
- [25]

QUESTION 4

Brendon, Malcolm and Julian decide to become entrepreneurs. After reading Brendon's kid sister's JSC manual on Entrepreneurship they do some market research and decide a carwash will be a great idea. The manual also mentioned something about a partnership being a possible type of business that they can use.

Explain the *essentialia* of a partnership to our three budding businessmen.

[10]

QUESTION 5

Tom, Dick and Harry are partners in a fishing business. According to their partnership agreement Tom is the managing partner, with authority to bind the partnership in any agreements to a value of N\$100 000. For contracts more than this amount the consent of Dick and Harry are required.

Without consulting with his partners, Harry buys freezing equipment for fish from ABC Suppliers to the tune of N\$500 000. Tom and Dick believe this is an unnecessary expense and deny liability.

Answer the following questions:

- 5.1 Can ABC Suppliers hold the partnership liable? Discuss in full. (7)
- 5.2 When ABC Suppliers institute legal action against the partnership they learn that the partnership has dissolved. Does this mean they cannot recover their money? Discuss in full. (3)

TOTAL: 100 MARKS