



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF HUMAN SCIENCES
DEPARTMENT OF SOCIAL SCIENCES**

QUALIFICATION: BACHELOR OF ACCOUNTING / BACHELOR OF ENTREPRENEURSHIP	
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COURSE CODE: BLW512S	COURSE NAME: BUSINESS LAW
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DURATION: 3 HOURS	MARKS: 100

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

PERMISSABLE MATERIAL

None

THIS EXAMINATION PAPER CONSISTS OF 9 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. Use **BLOCK CAPITAL LETTERS**.

- 1.1 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 concluded
 - C. The contract is signed
 - D. The condition is fulfilled
 - E. The damage is due to the fault of the seller
- 1.2 Things that have no material existence are delivered by means of:
- A. Symbolic delivery.
 - B. Cession
 - C. Registration in the Office of the Registrar of Deeds
 - D. Constructive delivery
 - E. None of the above
- 1.3 John and Joni enter into a partnership for the packaging and distribution of grapes on a farm owned by Joni. John contributes N\$500 000, with which he then buys a truck to transport the grapes. Unfortunately, because of a devastating drought and because neither of them was smart enough to realise that you cannot farm with grapes in the middle of the Kalahari, the business fails to make any money. Eventually John gets fed up and decides to end the partnership. He claims that the truck belongs to him because he paid for it. Is he correct? **Choose the most correct answer.**
- A. Yes. It was his contribution
 - B. No. A partner's contribution becomes the property of the partnership
 - C. Yes. There was never any formal transfer
 - D. No. Movable property acquired by a partner during the course of the partnership's business will become the joint property of the partners
 - E. That will depend on the intention of the partners.
- 1.4 Which of the following statements regarding partnerships is **incorrect**?
- A. There must be a valid partnership agreement
 - B. The agreement may be concluded between an unlimited number of persons
 - C. Each partner must contribute something or undertake to contribute something to the partnership
 - D. There must be a joint enterprise
 - E. None of the above

- 1.5 Which of the statements below is true?
- A. If a long lease is not registered and the buyer was informed of the lease before buying, the lessee has a right to continue with the lease beyond the ten years.
 - B. If a long lease is not registered and the buyer was not informed, the lessee can only continue the lease until the first ten years has expired.
 - C. If a long lease is not registered and the buyer was not informed, the lessee cannot stay after the property has been bought.
 - D. If a long lease is not registered and the new owner has inherited the property, he can evict the tenant
 - E. If a long lease is registered and the new owner has inherited the property, he can evict the tenant
- 1.6 Hire goes before sale means:
- A. Once the lessor loses or transfers his/her title to the leased property, the lease agreement will terminate
 - B. The successor-in-title has a right to evict the lessee
 - C. It is a security of tenure in the event of the lessor deciding to sell the property before expiry of the lease
 - D. You must first enter into a lease agreement before you can buy the property
 - E. You cannot sell a property if there is an existing lease agreement
- 1.7 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. Things that have no physical existence
 - E. All of these answers.
- 1.8 "Business carried on for the joint benefit" means that ...
- A. All partners must be engaged equally in the business
 - B. All partners have a mutual mandate to represent the partnership in any contracts
 - C. Profits and losses must be shared equally
 - D. All of the above answers
 - E. None of these answers
- 1.9 Which of the following statements is **true** in relation to a contract of purchase and sale?
- A. A seller needs to be the owner of the thing sold.
 - B. An implied warranty against eviction guarantees that a third party with a better title will not deprive the purchaser of his or her possession of the *merx*.
 - C. There can be a valid contract of purchase and sale if the parties concerned do not reach an agreement about the price.
 - D. The purchase price must be paid before ownership can pass to the purchaser.
 - E. All of these answers.

- 1.10 Gero and Susan form a partnership to prospect for and to acquire rights to platinum on a certain farm. They agree that all contracts in excess of N\$500 000 require the consent of both partners. Six months later Gero buys second-hand mining equipment at a price of N\$600 000, without having consulted Susan. **Choose the correct statement:**
- A. The contract is valid because it is in the scope of the business
 - B. The contract is binding because the seller of the mining equipment does not know about the internal restrictions
 - C. The contract is in the scope of the business and the partnership must ratify it
 - D. The partnership is bound because Gero has apparent authority
 - E. None of the statements are correct
- 1.11 A, acting as agent for C, concludes a written contract of sale with P. In terms of the contract of sale, C agrees to buy P's house in Rundu for N\$ 2 million. **Which of the following statements is correct?**
- A. There is a valid contract of sale between A and P
 - B. There is a valid contract of sale between C and A
 - C. There is no valid contract of sale, because one person cannot conclude a contract on behalf of another
 - D. There is a valid contract of sale between C and P
 - E. None of these options
- 1.12 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. None of the above options.
- 1.13 A building contractor builds a wall for Jeremy. Before the wall is completed a river in the vicinity floods and the wall is swept away. The contractor has no control over this flooding. Who will bear the risk?
- A. The Building Contractor
 - B. Jeremy
 - C. Jeremy and Building Contractor will share the damage.
 - D. The person on whose property the river runs.
 - E. None of the parties

- 1.14 Alfred rebuilds a 'Mini' motor car. Due to the difficulty in obtaining a fan-belt for the car, he uses a nylon stocking instead. He then sells it 'as is' ('voetstoots') to Mbambo, a NUST student with no knowledge of cars. On Mbambo's way home the stocking melts, and that causes a serious damage to the engine. **Which one of the following statements is correct?**
- A. Mbambo has a claim against Alfred because Alfred knew about the defect and is therefore not able to rely on the 'as is' ('voetstoots') clause.
 - B. Mbambo has a claim against Alfred, because an implied warranty against latent defects is read into every contract of sale, notwithstanding the inclusion of an 'as is' ('voetstoots') clause.
 - C. Mbambo has no claim against Alfred because the warranty against latent defects was excluded by stating that the 'Mini' is sold 'as is' ('voetstoots').
 - D. Mbambo has no claim against Alfred, because Alfred's concealment of the use of a nylon stocking does not amount to misrepresentation.
 - E. Mbambo has no claim against Alfred, because Alfred's concealment of the use of a nylon stocking is not a serious defect.
- 1.15 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?
- A. Nothing, because the relationship between partners is like that between brothers
 - B. Institute action against him on behalf of the partnership
 - C. Reduce his profit-sharing ratio
 - D. Reduce his share in the partnership fund
 - E. Break his legs
- 1.16 The following are clauses from a contract; indicate which one of these clauses addresses the guarantee against latent defects.
- A. "The parties agree that the vehicle is sold "voetstoots"
 - B. "Should the supplier fail to supply the goods on the dates as indicated in Annexure A, the supplier shall be liable for the payment of N\$ 500.00 (Five Hundred Namibia Dollars) for each day of non-delivery".
 - C. "The purchaser guarantees that the motor vehicle is a 2021 model."
 - D. "Transfer of the property will take place when full payment is made, on which date all risk attached to the property will pass to the seller".
 - E. None of the above
- 1.17 The most important obligation of the purchaser is:
- A. Acceptance of delivery of the thing
 - 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

1.18 Andries is the owner of business premises in the city. He inherited the premises from his grandfather. Andries is still a student and therefore does not use the property himself. In order to ensure that he receives an income from it, he leases the business premises to Jolly Jackson, the owner of a restaurant, for a period of five years. A year later Andries wants to buy a new car and therefore wants to sell the property to Christa. Christa knows about the existence of the lease agreement. Andries approaches you to ask whether the lease agreement with Jolly Jackson will remain in force after he has sold the property. **Which one of the following statements is correct?**

- A. The lease agreement with Jolly Jackson will not remain in force. Ownership is transferred from Andries to Christa and Christa, the new owner, is not bound by the lease agreement with Jolly Jackson
- B. The lease agreement with Jolly Jackson will not necessarily remain in force. Christa, the new owner, has a choice of withdrawing from the lease or continuing with it.
- C. The lease agreement with Jolly Jackson will remain in force after the sale of the business premises to Christa and Christa is not bound by the lease.
- D. The lease agreement with Jolly Jackson will remain in force after the sale of the business premises to Christa and Christa is bound by the lease.
- E. The Formalities in respect of Leases of Land Act 18 of 1969 provides that leases longer than five years shall not be binding on the purchaser of that immovable property.

1.19 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. **Choose the most correct statement.**

- A. The contract of sale is perfecta
- B. The contract of sale is valid provided A pays the purchase price on time
- C. The contract of sale is invalid as the passing of the risk is an essential characteristic of the contract of sale
- D. The contract of sale is subject to a resolutive time clause
- E. None of the above options.

1.20 As a general rule, the Landlord's Tacit Hypothec for arrear rent is applicable to the following:

- A. Movables and immovables
- B. All movables excluding those things bought on credit
- C. All movables brought onto the leased premises
- D. Only the lessee's property
- E. Degree of permanence of the movable property on the premises

Two marks each [40]

QUESTION 2

Briefly answer the following questions.

- 2.1 Briefly explain the concept “agency”. (3)
- 2.2 What are the requirements for the transfer of ownership in a contract of purchase and sale? (3)
- 2.3 In terms of the law of purchase and sale, what is the meaning of the term “delivery”? (2)
- 2.4 Is a partnership a juristic person? (3)
- 2.5 Why must an extra-ordinary partnership always have at least one ordinary partner? (4)
- [15]**

QUESTION 3

Sherry badly wants to sell her house because of rats living in her roof. She therefore plays music when Nadia comes to inspect the house and she assures Nadia that there is nothing wrong with the house. Nadia buys the house, which she would never have done had she known about the rats.

Answer the following questions based on the above facts:

- 3.1 What must Sherry prove to succeed in a claim against Nadia? (6)
- 3.2 When Sherry confronts Nadia, Nadia points out to her that she bought the house *voetstoots* and accordingly does not have a claim. Is Nadia correct? (4)
- 3.3 What will Sherry be able to claim from Nadia? Explain in full. (5)
- [15]**

QUESTION 4 FOLLOWS ON THE NEXT PAGE

QUESTION 4

In each of the following instances indicate whether a valid lease agreement has come into existence. Motivate your answers.

Note: no marks will be awarded for yes/no without a correct motivation.

- 4.1 An agreement whereby Jojo pays Andy N\$500 per month to park his car in Andy's yard. Jojo can park his car wherever he wants.
- 4.2 A verbal agreement whereby Petrus leases his farm to Paulus for 20 years. The agreement is not put in writing.
- 4.3 An agreement whereby the parties agree that the rent will be "between N\$3000 and N\$5000 a month".
- 4.4 An agreement whereby Tusi, who is 16 years old, leases her cellphone to Kaire, who is also 16 years old, for N\$100 per month.
- 4.5 An agreement whereby Suzi allows Mary to use her cellphone forever, provided that she (Mary) pays Suzi N\$100 per month.

Two marks each [10]

QUESTION 5

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 6 FOLLOWS ON THE NEXT PAGE

QUESTION 6

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:

- 6.1 Can ABC Suppliers hold the partnership liable? Discuss in full. (7)
- 6.2 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)
- [10]**

TOTAL: 100 MARKS