



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATIONS: MARKETING, COMMERCE, BUSINESS ADMINISTRATION, OFFICE MANAGEMENT &amp; TECHNOLOGY, PUBLIC ADMINISTRATION</b>	
<b>QUALIFICATION CODES: VARIOUS</b>	<b>LEVEL: 5</b>
<b>COURSE CODE: CML 112 S</b>	<b>COURSE NAME: COMMERCIAL LAW 1B</b>
<b>SESSION: NOVEMBER 2023</b>	<b>PAPER: THEORY</b>
<b>DURATION: 2 HOURS</b>	<b>MARKS: 100</b>

<b>FIRST OPPORTUNITY EXAMINATION QUESTION PAPER</b>	
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<b>INSTRUCTIONS</b>	
<ol style="list-style-type: none"><li>1. This paper consists of 7 (seven) questions.</li><li>2. All questions are compulsory.</li><li>3. <b><u>All questions must be answered in your Examination Book</u></b></li><li>4. Read all questions carefully before answering.</li><li>5. Incorrect spelling and illegible handwriting may prevent mark allocation.</li></ol>	

**PERMISSIBLE MATERIALS**

None

**THIS QUESTION PAPER CONSISTS OF 10 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 When a seller delivers the merx sold to the purchaser, the purchaser is protected against disturbance in his possession by virtue of the:

- A. Guarantee against latent defects.
- B. Passing of the risk rule.
- C. Actio empty.
- D. Guarantee against eviction.
- E. None of the above.

1.2 If the parties in a contract of purchase and sale agreed on the merx and the price, but the contract is still subject to a suspensive condition, the risk passes to the purchaser when:

- A. The merx is delivered to the purchaser.
- B. The condition is fulfilled.
- C. The contract is signed.
- D. The merx is damaged due to an accident.
- E. None of the above.

1.3 A and B agree that A will buy B's bicycle for N\$ 500. 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:

- A. Is invalid as the sale is perfecta.
- B. Is valid provided A pays the purchase price on time.
- C. Is invalid as the passing of the risk is an essential characteristic of the contract of sale.
- D. Is valid as the passing of the risk can be arranged by mutual agreement.
- E. Neither one of the above options.

1.4 Which of the following is an example of delivery by longa manu?

- A. X lends a horse to Y. While the horse is in Y's possession, they agree that Y will buy it from X. The horse remains in Y's possession.
- B. X sells her horse to Y. They agree that X will hire the horse from Y. The horse thus remains in X's possession.
- C. X sells her horse to Y. She delivers the horse by driving it to Y's farm in her trailer and allowing Y to lead the horse to its stable.
- D. The merx is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.
- E. Neither one of the above options.

1.5 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 the intention exists that ownership should pass
- B. That the merx must be free from latent defects.
- C. The actual delivery must take place.
- D. That the purchase price must be paid in cash.
- E. That the seller must give the purchaser a warranty against eviction.

1.6 Jack purchased John's VW Beetle. John gives Jack the keys to the motor vehicle upon payment of the purchase price of N\$ 10 000.00. This form of delivery is known as:

- A. Registration
- B. Actual delivery
- C. Symbolic delivery
- D. Cession
- E. Delivery by the long hand

1.7 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 whether the expectation materializes or the extent to which it materializes.
- D. In a contract of emptio spei the price is fixed as a global sum, while the purchaser must pay the price regardless of whether the expectation materializes or the extent to which it materializes in a contract of emptio rei speratae.
- E. In a contract of emptio spei, the purchaser must pay the price regardless of whether the expectation materializes or the extent to which it materializes, while in a contract of emptio rei speratae the price will only be paid to the extent to which the future expectation will materialize.



1.8 With reference to the provisions of the Credit Agreement Act 75 of 1980, the following statement is true?

- A. A person may enter into an agreement in terms of which s/he is bound to enter into a credit agreement at a future date.
- B. The agreement must be concluded for at least 6 months or longer.
- C. The credit grantor may lend money to the credit receiver to pay the deposit.
- D. The credit grantor may not be exempted from liability for ex lege guarantees.
- E. The credit grantor may be exempted from liability for patent defects.

1.9 In terms of Section 13 of the Credit Agreements Act 75 of 1980:

- A. The Credit Agreement must contain a clause stating that the contract was signed at the premises of the credit grantor.
- B. The initial payment must first be paid before the credit agreement will be valid.
- C. The credit receiver may not trade in goods as a deposit.
- D. 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.
- E. 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 the credit receiver signed the agreement at a place, which is not the normal place of business of the credit grantor.

1.10 Which of the following pieces of legislation is not a recognized source of labour law in Namibia?

- A. Namibian Constitution, Act 1 of 1990
- B. Maintenance Act 9 of 2003
- C. Social Security Act 34 of 1994
- D. Affirmative Action Act 29 of 1998
- E. Employees' Compensation Act 30 of 1941 (as amended)

1.11 An employee who performs night work between 20h00 and 07h00 is entitled to a 6% additional payment on his:

- A. Hourly basic wage
- B. Basic Daily Wage
- C. Basic Weekly Wage
- D. Full remuneration including overtime
- E. Total value of all payments in money made or owing to an employee

1.12 In terms of Section 33 of the Labour Act 11 of 2007, a dismissal must be substantively and procedurally fair. Which statement is correct?

- A. In accordance with Section 30 of the Labour Act 11 of 2007
- B. For a fair and valid reason and according to a fair procedure.
- C. If an employee is caught in the act of stealing from the employer
- D. If the illness of an employee takes place for an unreasonably long period;
- E. Neither one of the above options.

1.13 Section 25 of the Labour Act 11 of 2007 deals with compensation leave with full remuneration. A worker is entitled to the following number of compensations leave days:

- A. 5 working days per year
- B. 5 working days after a period of 6 consecutive months of employment
- C. 10 working days after a period of 12 consecutive months of employment per year
- D. 5 consecutive after a period of 12 consecutive months of employment per year
- E. None of the above.

1.14 In terms of the Labour Act 11 of 2007 an employee is entitled to five (5) working days compassionate leave during each period of twelve months for the death or serious illness of family. Which of the following persons will not be considered as family for compassionate leave in terms of the Labour Act?

- A. Children including adopted children.
- B. Adopted children.
- C. Brother/Sister in Law
- D. Grandparents
- E. Father/Mother in Law

1.15 The Landlord's Tacit hypothec for rental areas is applicable to the following:

- A. Movable 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 performance of the movable property on the premises.

1.16 In terms of Section 30 of the Labour Act 11 of 2007, the period for notice of resignation for an employee who worked for three (3) weeks is:

- A. One Working Day
- B. One month
- C. One Week
- D. One day including Saturday and Sunday
- E. No notice required.

1.17 In the context of a contract of employment, the doctrine of vicarious liability prescribes that:

- A. The employer is under certain circumstances liable towards third parties for the delicts committed by the employee and the independent contractor.
- B. The employer is liable to ensure the safety of the employee by taking precautions against accidents that are reasonably foreseeable.
- C. The employer is liable towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer.
- D. The employer is liable towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer, except where the employer has expressly forbidden him/her to do so.
- E. The employer is liable towards third parties for the delicts of the employee if such delict was committed in the course and scope of his/her duties and towards the promotion of the interests of the employer, except where the delict was committed after hours.

1.18 The principal is liable to third parties for the misrepresentation of the agent if:

- A. The principal authorised the misrepresentation or if the agent is an employee and the act is done in the course and scope of his/her employment.
- B. The misrepresentation falls within the scope of the authority of the agent.
- C. The misrepresentation falls outside the scope of the authority and is not attached to the business that the agent is transacting.
- D. Both (A) and (B).
- E. Neither one of the above options.



1.19 Choose the correct statement from the following:

- A. Authority of an agent can only appear in the form of actual or apparent authority.
- B. Authority of an agent can come in the form of express or implied authority only.
- C. Once a purported agent intended and professed to act on behalf of another, the purported principal has to ratify the contract, failing which, the so-called agent shall have a right to claim from the principal on the basis of the agency agreement.
- D. If an agent acted with authority, but in his/her own name without disclosing the existence of the principal, the principal can never be held liable on the basis of the contract.
- E. Neither one of the above options.

1.20 The duties of the lessor in a contract of lease are the following. Choose the incorrect duty:

- A. Delivery of the thing
- B. Maintenance
- C. Rates and Taxes
- D. Undisturbed use and enjoyment of the leased article
- E. Payment of the utility expenses like water and electricity

**Each correct answer is worth 2 Marks**

**[40 Marks]**

## **QUESTION 2**

**Decide whether the following statements are true or false and write either true or false in respect of each statement next to the respective question number in your examination book. No motivation required.**

2.1 All contracts in our law must always be in writing to be valid. (2)

2.2 In a sale in execution, the purchaser is not protected by the guarantee against latent defects. (2)

2.3 A female employee is entitled to at least 16 (sixteen) weeks maternity leave after completion of at least 12 (twelve) months of continuous service in the employment of an employer. (2)

2.4 Section 26 of the Labour Act 11 of 2007 does not provide job security to an employee during the period that she is on maternity leave. (2)

2.5 The Credit Agreement Act 75 of 1980 was passed for the protection of credit receivers only. (2)

**[10 Marks]**

### QUESTION 3

Answer the following short questions.

3.1 How is delivery of immovable property effected to a purchaser? (2)

3.2 The remedy known as the *actio empti* (claim for damages) is not always available to the purchaser in the event that the *merx* contains a latent defect. Name the instances in which a claim for damages will be allowed. (3)

3.3 Explain how the “cooling off period” in terms of Section 13 of the Credit Agreements Act 75 of 1980 is calculated. (3)

3.4 Termination by an employer (with or without giving the required period of notice) is known as ‘Dismissal’ and Section 33 of the Labour Act 11 of 2022 provides certain requirements that need to be met in order for it to qualify as fair dismissal. Name these requirements. (2)

3.5 Name the essentialia of a contract of employment. (2)

3.6 A contract of lease is distinguished by certain essentialia. Provide these essentialia. (3)

[15 Marks]

### QUESTION 4

Decide in each of the following instances whether there is a valid contract of employment between the parties with a YES or NO. Briefly motivate your answers.

4.1 David is employed by the Paint CC in order to paint a house. Unknown to either David or Paint CC, the house had burnt to the ground six months before the contract was awarded. (2)

4.2 Steven and Michael enter into a contract. Steven is under the impression that he has contracted to build Michael a house, while Michael believes that Steven has offered him full-time employment as a manager of a building a site. (2)



4.3 Peter aged 14, approaches Burger King. Burger King advertised a post in the local newspaper for a delivery boy during the day. Peter, with the prior approval of his guardian, agrees to the terms and conditions proposed by Burger King. (2)

4.4 Joyce concludes an oral contract of employment as a candidate legal practitioner with ASL Legal Practitioners. (2)

4.5 Stacey who is 28 years old enters into a contract with Ben to work as a prostitute at his brothel. (2)

[10 Marks]

### QUESTION 5

**State whether the Credit Agreements Act 75 of 1980 (as amended) is applicable to the following contracts. Motivate your answers.**

5.1 The sale of a house for N\$ 2 Million, for which monthly instalments are repayable within 15 years. (2)

5.2 The leasing of a vehicle where the price is of N\$ 50 000 is payable in monthly instalments over 54 months and an initial rental amount of 10% of the rental amount is payable upon conclusion of contract. (2)

5.3. X borrows money from ZXX cash loan of N\$ 100 000.00 and must repay it in 6 months. (2)

5.4 The sale of a television set for N\$ 15 000.00 on credit to Peter where he has to pay 10% deposit of the purchase price on conclusion of the contract and the balance to be paid in 24 months, but does not become the owner upon delivery of the television set. (2)

5.5 Peter buys a car for N\$ 100 000 and pays the N\$ 100 000 in cash. (2)

[10 Marks]

## **QUESTION 6**

On Monday, Sarah sells her motor vehicle to Benny for N\$ 5000. They agree that Benny will pay Sarah immediately, but that Sarah will only deliver the vehicle to Benny on Thursday. On Wednesday, lightning destroys the vehicle while parked outside Sarah's house.

6.1 Who bears the risk between the two parties? (6)

6.2 Would your answer in 6.1 be any different if Sarah had failed to deliver the vehicle on Thursday and the car had been struck by lightning outside her house on Saturday? (2)

6.3 Explain the difference between the passing of the risk rule and the rule of impossibility of performance. (2)

**[10 Marks]**

## **QUESTION 7**

7.1 Fill in the missing word:

Apparent authority is also known as ..... authority. (1)

7.2 List the four (4) requirements of apparent authority that need to be proven to estop a principal from denying that he/she culpably created the false impression that another person has the authority to conclude certain juristic acts on his/her behalf. (4)

**[5 Marks]**

**[Total 100 Marks]**