



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

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

<b>QUALIFICATION:</b> BACHELOR OF ACCOUNTING / BACHELOR OF ENTREPRENEURSHIP	
<b>QUALIFICATION CODE:</b> 07BOAC; 07BACC; 07BENT	<b>LEVEL:</b> 5
<b>COURSE CODE:</b> BLW512S	<b>COURSE NAME:</b> BUSINESS LAW
<b>SESSION:</b> JANUARY 2023	<b>PAPER:</b> THEORY AND CASE STUDIES
<b>DURATION:</b> 3 HOURS	<b>MARKS:</b> 100

<b>SECOND OPPORTUNITY EXAMINATION</b>	
<b>EXAMINER(S)</b>	Mariette Hanekom (Chief) Emmy Wabomba / Ester Kuugongelwa
<b>MODERATOR:</b>	Magda Saayman

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

**PERMISSABLE MATERIAL**

**None**

**THIS MEMORANDUM 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 **Choose the correct statement.** One of the requirements for the transfer of ownership when a contract of sale has been entered into, is:
- A. The thing must be free from latent defects
  - B. Actual delivery must take place
  - C. The purchase price must be paid in cash
  - D. The seller must give the purchaser a warranty against eviction
  - E. The intention exists that ownership should pass
- 1.2 A and B enter into a partnership agreement, in terms of which A contributes a warehouse valued at N\$5 million and B contributes 5 trucks worth N\$1 million each. The partnership uses both the warehouse and the trucks as partnership assets; however the warehouse remains registered in the name of A. After an unsuccessful business transaction the partnership owes creditor C N\$6 million. **Which of the following statements is correct?**
- A. Creditor C can attach the warehouse
  - B. Creditor C can attach the trucks
  - C. Creditor C can attach the warehouse and the trucks
  - D. Creditor C has no recourse in law because the partnership is insolvent
  - E. Creditor C can apply for a tacit hypothec
- 1.3 The concept of agency arises when:
- A. A person, known as the agent, performs a juristic act on behalf of another person, known as the principal
  - B. A person, known as the agent, is not bound on the contract, but on the warranty of authority
  - C. A person with the necessary authority, known as the agent, can perform a juristic act on behalf of another person, known as the principal
  - D. A person with the necessary authority, known as the agent, concludes a contract on behalf of another, known as the principal, and the principal ratifies the contract
  - E. All of these answers
- 1.4 What does the term “voetstoots” mean? **Choose the most correct answer.**
- A. An article is sold with a latent defect.
  - B. The article is sold “as is”.
  - C. The contract of sale has a resolutive condition.
  - D. The article is as good or old as it is.
  - E. The article was sold at a sale in execution.

- 1.5 A, B and C are partners in a business providing transport to and from Windhoek International Airport. One evening, on his way home after a drunken party, A is involved in an accident and D is injured. Who will be liable?
- A. Nobody, because it was an accident
  - B. A, because he was driving the vehicle
  - C. The partnership, because of the principle of vicarious liability
  - D. It depends on whether A was doing partnership business or not
  - E. It depends on whether the vehicle belonged to the partnership or not
- 1.6 Benjamin enters into an agreement with John that he (Benjamin) will lease John's farm for a period of 20 years. The lease is not registered. Five years into the agreement the country is hit by a devastating drought; Benjamin gives up farming and moves back into town. The following year John dies, and his son, Johnson, inherits the farm. Good rain has since fallen, and Benjamin wants to resume his farming activities. Advise Johnson:
- A. Benjamin can return to the farm and continue farming for the remainder of the 20-year period.
  - B. Benjamin can return to the farm and continue farming for another 10 years.
  - C. Benjamin can return to the farm and continue farming until the first 10 years of the lease has expired.
  - D. Johnson can evict Benjamin
  - E. The lease is invalid because it was never registered.
- 1.7 In which of the following relationships is the authority of the agent implied by law, and not dependent on the consent of the principal?
- A. Insane person and curator
  - B. Guardian and minor
  - C. Managing director and company
  - D. Close corporation and members of close corporation.
  - E. All of these options
- 1.8 Kapofi leases his house to Nomcebo. Kapofi and Nomcebo agree that their contract of lease will come to an end when Nomcebo's son Daniel returns from Dubai. A year after the conclusion of the agreement, Daniel comes back from Dubai. Which one of the following forms of termination of lease will take place?
- A. The lease agreement will be terminated by notice because the contract is for an indefinite period
  - B. The lease agreement will not be terminated by notice because the parties did not mention in their contract that the contract will be terminated by notice
  - C. The lease agreement will not be terminated by effluxion of time because it was not known when the event will take place
  - D. The lease agreement will be terminated by effluxion of time because its existence depends on the occurrence of a specified event
  - E. None of the given options

- 1.9 Johan steals a car from Benny. He then sells it to Brian for N\$50 000 because it has engine problems. He does not disclose the problems to Brian. A month later, Benny claims the car from Brian. Brian is unhappy about Benny's claim and wants to claim the purchase price back from Johan. On which of the following grounds can Brian rely in order to succeed with a claim against Johan?
- Manufacturer's liability
  - Defective performance
  - Breach of warranty against eviction
  - Misrepresentation
  - Guarantee against latent defects.
- 1.10 Which one of the following is correct?
- The only remedy for a defect which is so material as to render the *merx* useless or less useful for the purpose for which it was bought, is the *actio redhibitoria*.
  - In a contract of sale the seller agrees to deliver the *merx* in exchange for the purchase price.
  - The *merx* is only definite or ascertainable if it is corporeal.
  - In a warranty against eviction the seller undertakes to preserve the *merx* until delivery to the purchaser.
  - Both B and D
- 1.11 Mary wants to buy 20 bags of flour from Namib Mills. Which one of the following will **not** qualify as an acceptable purchase price?
- N\$20 per kilogram
  - An amount to be determined by Markus, a financial advisor.
  - N\$4 000
  - N\$35 per bag of flour
  - 25 bags of wheat worth N\$4 000
- 1.12 A and B enter into an agreement in terms of which B will use A's car for a period of two weeks. After a period of two weeks, B makes an offer to A to buy A's car. They agree on terms of payment and B buys the car. Which one of the following forms of delivery has taken place?
- Delivery with the long hand
  - Symbolic delivery
  - Delivery with the short hand
  - Constitututum possessorium*
  - No delivery took place
- 1.13 Which of the below statements is **not** a duty of the purchaser in a contract of sale?
- To pay the purchase price
  - To accept when a thing is put at his or her disposal to exercise control over it
  - To pay transfer duty as and when it is required
  - To ensure that eviction never takes place
  - All of the above

- 1.14 Which one of the following statements is **correct**?
- A. Movables are transferred by way of registration in the name of the purchaser at the deeds office.
  - B. The risk of accidental damage to the *merx* passes from the seller to the purchaser after the purchaser has become the owner.
  - C. There is no valid contract of sale if the purchaser is already the owner of the thing
  - D. A purchaser who wants to institute a claim because of a latent defect in the *merx* must only prove that he or she was unaware of the defect when the contract was concluded.
  - E. A purchaser will only have a claim based on the guarantee against latent defects if the seller knew about the defect.
- 1.15 Platinum Park Property Partnership (PPPP) does business as property developers. The partnership agreement of PPPP provides that only Peter Pumpkineater is authorised to bind the partnership to contracts. Another partner, Bo Peep, acting without the knowledge of the other partners, proceeds to buy a racehorse on behalf of the partnership. PPPP subsequently denies liability on the basis that Bo Peep was not authorised to bind the partnership. **Which of the following statements is correct?**
- A. The contract will be binding on the partnership because of the principal of the mutual mandate
  - B. The partnership must ratify the contract
  - C. All partners have implied authority to bind the partnership
  - D. The contract will not be binding on the partnership because a partnership may only enter into contracts that fall within the scope of its principal business
  - E. The contract will not be binding on the partnership
- 1.16 A and B are partners in a cattle farm. Their partnership agreement does not contain any provision regarding the authority of the partners. While B is travelling abroad, C offers A a good price for two cows and a bull. Which of the following statements is correct?
- A. A has the authority to sell the animals to C
  - B. A does not have the authority to sell the animals without the co-operation of his partner
  - C. A may sell the animals to C, provided B is informed of the transaction before it takes place.
  - D. A may only sell the animals if he makes a profit in which B will also share
  - E. B must write a letter confirming the sale

- 1.17 One of the essential requirements of a contract of lease is that the use and enjoyment of a thing must be temporary. Consider the following statements:
- (1) Termination by effluxion of time
  - (2) Termination by notice
  - (3) Termination by extinction of lessor's title
  - (4) Termination by death
  - (5) Termination by insolvency
- Which of these statements will **not** necessarily lead to the termination of a contract of lease?
- A. 1, 2 and 3
  - B. 1 and 4
  - C. 1, 3 and 5
  - D. 3, 4 and 5
  - E. Only 3
- 1.18 Which ONE of the following statements about a voetstoets clause is **correct**?
- A. The inclusion of a voetstoets clause in a contract of sale implies that the article is sold brand new.
  - B. A voetstoets clause is a clause in a contract used to exclude the warranty against latent defects.
  - C. The inclusion of a voetstoets clause in a contract of sale will make the contract invalid.
  - D. A voetstoets clause is the opposite of an "as is" clause and must not be included in a contract of sale.
  - E. A voetstoets clause will protect the seller in cases of fraudulent misrepresentation
- 1.19 A, B, C and D are partners. Their partnership agreement is silent as to the mode of division of profits. At the end of the first year they have netted a profit of N\$100 000 which they wish to divide. Given that A and D each contributed N\$200 000, B contributed N\$100 000 and C contributed N\$500 000 (that is N\$1 000 000 in total), their respective share of the profits will be:
- A. A and D N\$20 000 each; B N\$10 000 and C N\$50 000
  - B. A and D N\$40 000 each; B N\$20 000 and C N\$100 000
  - C. N\$25 000 each
  - D. Unable to determine as the partners did not agree on a basis upon which the share profits
  - E. Profits may only be shared upon dissolution of the partnership

- 1.20 Ratification is the validation by a person of a juristic act concluded on his or her behalf by another who did not have the authority to do so. Indicate the **correct** statement.
- A. Ratification can only be express.
  - B. Ratification is not a valid act.
  - C. The effect of ratification is that after ratification a direct juristic tie comes into existence between the third party and the principal.
  - D. The effect of ratification is that after ratification a direct juristic tie comes into existence between the agent and the principal.
  - E. None of these answers

*Two marks each [40]*

## **QUESTION 2**

**Briefly answer the following questions.**

- 2.1 What is the MOST IMPORTANT difference between a contract of purchase and sale and a lease agreement? (2)
- 2.2 It is said that in addition to the essentialia of a partnership agreement, the partners must also have the true intention to enter into a partnership. How will the Courts go about establishing the true intention of the parties? (4)
- 2.3 Why will a change in membership terminate a partnership? (4)
- [10]

## **QUESTION 3**

**Will the following agreements constitute a valid partnership? Motivate your answers.**

- 3.1 A, B and C agree to sell kapana on campus in order to raise money for the NUST hockey club.
- 3.2 A, B and C agree to sell kapana in order to earn some pocket money. Unfortunately for them the meat is really expensive and they end up making a loss.
- 3.3 A, B and C start a business selling shoes. A, who will be running the business, will receive a monthly salary, but only B and C will share in the eventual profits of the business.
- 3.4 A, B and C enter into a partnership agreement to sell dinosaurs.
- 3.5 Thirty people enter into an agreement to practice in partnership as accountants.

**Note: No marks will be awarded for “yes/no” without a correct motivation.**

*Two marks each [10]*

#### **QUESTION 4**

**Identify the following legal concepts:**

- 4.1 The type of sale where the seller is exempted from liability for latent defects.
- 4.2 Cathy borrows Jenny's cellphone. She likes it so much that she decides to buy it. The parties conclude a contract of purchase and sale. The form of delivery that takes place where Cathy gives the money to Jenny and retains the cellphone.
- 4.3 A, B and C agree to start a business together. A and B will manage the business while C contributes N\$500 000 starting capital. In terms of their agreement the full amount contributed by C will be returned to her after 5 years, together with 5% interest on the capital amount. C is a .....
- 4.4 The type of authority in terms of which members of a Close Corporation may conduct the business of the Close Corporation.
- 4.5 The legal rule which intends to provide security of tenure for the lessee in the event of the lessor deciding to sell the property before the expiry of the lease.
- 4.6 The manner in which a lease agreement for an indefinite period of time is terminated.
- 4.7 The rule that states that the seller will be relieved of his/her duty to deliver if performance becomes impossible due to supervening circumstances, while the purchaser will still be liable for the purchase price if the contract is *perfecta*.
- 4.8 The situation where a person allows another person to create the impression that he/she has the authority to represent that first person.
- 4.9 The right of a landlord to attach the movable goods of his/her tenant to cover arrear rental.
- 4.10 The tax paid to the government by the purchaser of immovable property.

*One mark each [10]*

**QUESTION 5 FOLLOWS ON THE NEXT PAGE**



### **QUESTION 5**

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:**

- 5.1 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 hailstorm and the paint work on the car is damaged. (10)
- 5.2 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)
- 5.3 Would your answer to question 5.2 be different if the sale had been 'voetstoots'? (3)
- 5.4 Would your answer to question 5.3 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 6**

Samuel, Peter and Ndeshi are partners. They own a chicken farm. Peter is the managing partner who, in terms of the partnership agreement, is authorised to conclude agreements on behalf of the partnership. Samuel approaches his brother Markus and negotiates, on behalf of the partnership, for Markus to put a new fence around the farm. Peter and Ndeshi are furious, because Markus charged substantially more than the going rate for this fence. They deny liability under the contract based on an alleged lack of authority of Samuel.

**Markus wants to know whether the partners can be held to the contract concluded by Samuel. Give full reasons for your answer.**

[10]

### **QUESTION 7**

Thandi agrees to lease out her flat in Windhoek, in which she previously lived, to Vanessa for N\$5 000 per month rental. They agree to a two-year lease starting on 1 July 2022. After two months Vanessa opens a beauty salon in the flat which causes the neighbours to complain to Thandi because of the noise. When Thandi speaks to Vanessa she tells Thandi that as long as she is paying the rent on time, she can do what she likes. **Is Vanessa correct? Motivate your answer.**

[5]

**TOTAL: 100 MARKS**