



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

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

<b>QUALIFICATION:</b> BACHELOR OF ACCOUNTING (CA) / DIPLOMA IN ACCOUNTING AND FINANCE	
<b>QUALIFICATION CODE:</b> 06DPAF; 07BACP	<b>LEVEL:</b> 5
<b>COURSE CODE:</b> BLW512S	<b>COURSE NAME:</b> BUSINESS LAW
<b>SESSION:</b> NOVEMBER 2023	<b>PAPER:</b> THEORY AND CASE STUDIES
<b>DURATION:</b> 2 HOURS	<b>MARKS:</b> 100

<b>FIRST OPPORTUNITY EXAMINATION</b>	
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<b>MODERATOR:</b>	W. Shakela

<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 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 QUESTION PAPER CONSISTS OF 6 PAGES** excluding this front page)

## 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.

- 1.1 Mary's lease has come to an end. She made several improvements and now she wants to be compensated. Choose the correct statement.
- A) For necessary improvements she is entitled to the whole amount, even if the amount proves to be greater than the expenses incurred by the lessee in effecting these improvements.
  - B) With useful improvements, the lessee is entitled to compensation if there was prior consent or can remove the improvements before the lease expires.
  - C) A lien over the property is allowed where the lessor has failed to pay the lessee if any type of improvement was done on the property.
  - D) None of the above
- 1.2 Jono rents a room from Mija. After the expiry of the lease agreement he continues to stay in the premises and continues to pay rent. This is known as.....
- A) Tacit relocation
  - B) Conventional relocation
  - C) Long lease
  - D) Indefinite lease
- 1.3 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
- 1.4 An extraordinary partner:
- A) Does not contribute to the partnership
  - B) Does not share in the liabilities of the partnership
  - C) Does not participate in the business of the partnership
  - D) All of the above

- 1.5 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
- 1.6 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
- 1.7 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
- 1.8 Below are the rights of a lessee, one of them is NOT correct. Which one?
- A) The lessee has the right to sublet an urban property if is not prohibited by the lease agreement.
  - B) A lessee can sublet a rural tenement that is located in Windhoek municipality with prior consent from the lessor.
  - C) With a rural tenement no prior consent is required if the lessee wants to sublet
  - D) None of the above

- 1.9 The essentialia of a partnership agreement are:
- A) Contribution, a common business, making and sharing a profit
  - B) Contribution, a common business, making and sharing a profit, the intention to enter into a partnership
  - C) Contribution, a common business, sharing of profits and losses
  - D) Contribution, a common business, making and sharing a profit, the business must be legal, the intention to enter into a partnership
- 1.10 "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
  - D) None of these answers

*(Each question 2 marks-total marks 20)*

## **QUESTION 2**

**Indicate whether the following statements are true or false. You need not motivate your answer.**

- 2.1 A partnership comes into existence the moment the partners contribute to the partnership fund.
- 2.2 Assets contributed to the partnership are co-owned by the partnership and the partners.
- 2.3 If a partner fails to pay his contribution to the partnership, the partnership will dissolve through operation of law.
- 2.4 Petrus and his friends wish to start an animal rescue shelter for their suburb. They can form a partnership.
- 2.5 Yvonne, the secretary at Easy Travel CC, has the authority to order a box of 12 bottles of sparkling wine from Tropical Island Liquor Store on a regular basis. At the end of September 2023, Yvonne orders two boxes of sparkling wine for her 21<sup>st</sup> birthday celebrations, without informing the liquor store that the purchase was not for the business. Upon receipt of the invoice, the accountant discovers that Yvonne had no authority to purchase sparkling wine for her birthday on the business's account. Easy Travel CC will be bound to the contract because Yvonne had apparent authority.

- 2.6 Tuna, Mikal, Nauka and Taleni were equal partners in a partnership. Subsequent to the dissolution of their partnership, Nauka pays N\$8 000 to creditor D in full settlement of a partnership debt. Tuna, Mikal and Taleni must refund her the amount of N\$2 000 each.
- 2.7 Joe buys a second-hand motor vehicle from Best Buys Cars, but leaves the car with them for new tyres to be fitted. The form of delivery is known as *constitutum possessorium*.
- 2.8 The fiduciary relationship between partners will come to an end the moment a partnership is dissolved.
- 2.9 When a seller delivers the *merx* sold to the purchaser, the purchaser is protected against disturbance in his possession by virtue of the passing of the risk rule.
- 2.10 Hamata and Utoni enter into a partnership agreement. Hamata agrees to contribute a property valued at N\$200 000. Although the partners use the property as their business premises, it remains registered in Hamata's name. Standard Bank, a creditor of the partnership cannot attach this property, as it is not part of the partnership fund.

*(Two marks each-20 marks)*

### **QUESTION 3**

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 in excess of this amount the consent of Dick and Harry are required.

**In each of the following instances, indicate whether the partnership can be held contractually liable. Motivate your answers:**

- 3.1 Without consulting with his partners, Dick buys furniture for the partnership to the tune of N\$110, 000. (9)
- 3.2 The partners all agree that Tom will enter into a contract on behalf of the partnership to purchase N\$500 000 worth of unlicensed diamonds. (3)

**[12]**

#### QUESTION 4

Daisy owns a shoe shop and, from time to time, commissions Laveenia to buy shoes for the business. On one occasion, Laveenia, without authority, buys imported sandals at a very reasonable price from Tracy. When Daisy finds out about the sandals she is very happy, because she realises that she can sell them at a handsome profit. She contacts Tracy to pay for the shoes, however Tracy has since realised that she can get a better price elsewhere, and refuses to deliver the shoes.

Discuss the legal position of Daisy and Tracy respectively.

[10]

#### QUESTION 5

Briefly answer the following questions:

- 5.1 With specific reference to credit agreements, what is the difference between a suspensive condition and a resolutive condition? (4)
- 5.2 List the *essentialia* for a valid contract of purchase and sale. (3)
- 5.3 Will the purchaser always become the owner of the thing sold? Motivate your answer. (3)
- 5.4 Distinguish between the passing of the risk rule and the rule of impossibility of performance. (5)

[15]

#### QUESTION 6

In each of the following instances, state whether the risk will pass to the purchaser. Motivate your answers.

No marks for yes/no without the correct motivation.

- 6.1 On Monday, Sara sells her motor vehicle to Max for N\$ 20 000. They agree that Max will pay Sara immediately, but that Sara will only deliver the vehicle to Max on Thursday. Wednesday night Sara forgets to lock her front gate and the vehicle is stolen.
- 6.2 Dacey Stores orders 20 TV sets from Dazzle TV Suppliers. The day before the sets are to be delivered, the premises of Dazzle TV Suppliers are flooded during a heavy downpour and the stock in the premises are damaged beyond repair.

- 6.3 Mr. Gurirab buys a heap of used paper for recycling at N\$10 per kilogram. Before the paper has been weighed a sudden windstorm blows all the paper away.
- 6.4 Geraldo badly wants Brendon's old iPhone. They agree that if Geraldo does Brendon's Business Law assignment for him on Friday, he can have the phone. On Thursday robbers break into Brendon's house and the phone is stolen.
- 6.5 Jane sells her car to Itumeleng for R100 000. They agree that Jane will keep the car for a week and deliver on the 10 August 2023. One night on the 8 August 2023 Jane's house burns down due to an electrical short-circuit and the car is destroyed.

*(Two marks each)* [10]

### **QUESTION 7**

Jono leases an apartment in Windhoek North from Hannah. To alleviate his boredom when his friends decide to stop partying and start studying he decides to buy a big screen TV from The Television Shop. He enters into an Instalment Sale Agreement in terms of the Credit Agreement Act 75 of 1980, as amended.

**Discuss the legal position in the following instances:**

- 7.1 The agreement states that The Television Shop will lend the money to pay the deposit to Jono. (2)
- 7.2 Two days after his purchase Jono realises that he cannot afford the TV and decides to return it to the shop in terms of Section 13 of the Credit Agreements Act 75 of 1980. Can he do this? (3)
- 7.3 Eventually Jono can no longer pay his rent, and Hannah attaches his movable goods, including the TV, to recover the arrears. Can Hannah do this? (4)
- 7.4 Susi buys the TV at a sale in execution. A week later she is contacted by a representative of The Television Shop who informs her that the TV was subject to an installment sale agreement and belonged to them, and not to Jono, when it was attached. The representative demands that Susi return the TV. Advise Susi. (4)

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**TOTAL MARKS 100**