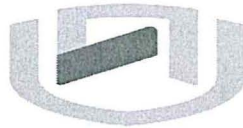




**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

HAROLD PUPKEWITZ GRADUATE SCHOOL OF BUSINESS

QUALIFICATION CODE: 06DBPM	LEVEL: 6
COURSE CODE CML 512C	COURSE NAME: COMMERCIAL LAW 1 B
DATE: JULY 2024	MODE: PM
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION PAPER	
EXAMINER(S)	MRS. E WABOMBA
MODERATOR:	MS. W. SHAKELA

INSTRUCTIONS
<ol style="list-style-type: none">1. Answer ALL the questions.2. Write clearly and neatly.3. Number the answers clearly.

PERMISSIBLE MATERIALS

1. Examination paper
2. Examination script

THIS QUESTION PAPER CONSISTS OF EIGHT PAGES (EXCLUDING 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. (40)

1.1 The difference between the passing of the risk rule and the rule of impossibility of performance can be explained as follows:

- A. The risk rule is an exception to the general principles of the law of contract.
- B. The rule of impossibility of performance states that the contract terminates in the event of supervening impossibility of performance.
- C. The rule of impossibility of performance, i.e. the fact that the contract terminates in the event of supervening impossibility of performance does not apply to a contract of purchase and sale, whilst the risk rule states that the seller will be relieved of his/her duty to deliver if performance becomes impossible, the purchaser will still be liable for the purchase price if the contract is perfecta.
- D. The risk rule states that the seller has a duty to care for the merx from the time of the conclusion of the contract until the time of delivery.
- E. The risk rule will not apply if the parties agree that the risk would not pass to the purchaser.

1.2 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. Guarantee against eviction.
- C. Passing of the risk rule.
- D. Actio empty.
- E. None of the above.

1.3 The following statement is not true:

- A. A voetstoots sale means that the thing is sold as good or as bad as it is.
- B. A voetstoots sale is never implied, the parties must expressly agree on it.
- C. Goods sold at a sale in execution are sold voetstoots.
- D. The seller can never be liable for any latent defects if a thing is sold voetstoots.
- E. None of the above.

1.4 Which of the following statements is false in relation to a contract of sale?

- A. A seller need not guarantee that he is the owner of the things sold but needs to provide the purchaser with a warranty that he will receive the merx free from encumbrances.
- B. An implied warranty against eviction guarantees that no third party with a better title will deprive the purchaser of his possession of the merx.
- C. Where both the seller and buyer believe a thing to be sold exists but it later transpires that the thing doesn't, a valid contract is nevertheless concluded.
- D. There cannot be a valid contract of sale if the parties concerned do not reach agreement about the price.
- E. Neither one of the above options.

1.5 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.

1.6 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. 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. X sells her horse to Y. They agree that X will hire the horse from Y. The horse thus remains in X's possession.
- D. 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.
- E. Neither one of the above options.

1.7 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

1.8 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.

1.9 The Credit Agreements Act 75 of 1980 only applies to: (indicate the correct statement)

- A. Contracts for the sale or lease of movable goods.
- B. Contracts for the sale of immovable goods.
- C. Contracts for the sale or lease of immovable goods.
- D. Contracts for the sale of any item that a purchaser wishes to buy on credit.
- E. Contracts for the sale of movable goods.

1.10 When the buyer enters into a credit transaction, s/he must pay a certain percentage of the purchase price as initial amount at the conclusion of the contract. The transaction will not be binding until this amount is paid. This amount is called:

- A. Lay – by.
- B. Deposit.
- C. Receipt.
- D. Proof of payment.
- E. Proof of debit.

1.11 Section 12 of the Credit Agreements Act 75 of 1980 provides as follows:

- 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 or the credit receiver signed the agreement at a place, which is not the normal place of business of the credit grantor.

1.12 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. Social Security Act 34 of 1994
- C. Affirmative Action Act 29 of 1998
- D. Maintenance Act 3 of 2009
- E. Employees' Compensation Act 30 of 1941 (as amended)

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
- A. 15 consecutive after a period of 12 consecutive months of employment per year
- D. None of the above.

1.14 In terms of Section 30 of the Labour Act 11 of 2007, the period for notice of resignation for an employee who worked for a period of 8 (eight) months is:

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

1.15 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.

1.16 The *essentialia* of a contract of employment are:

- A. Nature of service, remuneration and safe working conditions
- B. Nature of service and remuneration
- C. Nature of service, remuneration and subordination to the employer
- D. The employer has authority and control over the employee and will prescribe what, how and when the work should be done.
- E. Nature of service, remuneration and employer will provide the tools to enable the employee to render the service.

1.17 A person representing by words or conduct that another person is his agent, whereby a third person reasonably and bona fide acts on that representation to his prejudice, will be liable to such contract on the grounds of:

- A. Express authority
- B. Power of Attorney
- C. Ostensible authority (*estoppel*)
- D. Actual authority
- E. Tacit authority

1.18 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.

1.19 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

1.20 Which of the following is not included under the study of intellectual property law?

- A. Trade Marks
- B. Business Management
- C. Unfair Competition
- D. Patents
- E. Rights in Invention

Each correct answer is worth 2 Marks

[40 Marks]

QUESTION 2

In each of the following instances, state whether a valid contract of purchase and sale has been formed. Motivate your answer.

NOTE: No marks will be awarded for yes/no without a proper motivation.

2.1 Thomas steals David's motorbike and sells it to Peter for the amount of N\$ 25 000.00. Peter is unaware of the fact that the motorbike is a stolen one. (2)

2.2 Lizel owns land where she grows flowers and agrees to sell the whole crop of flowers. She agrees to sell the whole crop of flowers she hopes to produce at the end of the season to a flower shop by the name of Flowered Earth for N\$ 20 000. Unfortunately, Lizel did not have a harvest since her flower crops were damaged by the floods. (2)

2.3 Daniel and Jack agree in a WhatsApp message that Daniel will buy Jack's apartment for N\$2 million. (2)

2.4 Mary sells her John Deere Tractor to her neighbour for N\$ 300 000. The neighbour is under the impression that he is merely renting it. (2)

2.5 Saima sells her hand bang to Mary for N\$ 500.00. They agree that, instead of paying her, Mary will do her Mathematics assignment for her. (2)

[10 Marks]

QUESTION 3

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.

3.1 The passing of the risk rule applies to a contract of employment. (1)

3.2 When a seller delivers the merx sold to the purchaser, he undertakes to give the purchaser ownership of the thing sold. (1)

3.3 All contracts in our law must always be in writing to be valid. (1)

3.4 In a sale in execution, the purchaser is not protected by the guarantee against latent defects. (1)

3.5 Labour legislation is applicable to *locatio conductio operis*. (1)

3.6 The duty of the seller to keep the thing in safe custody is the only duty implied in a contract of sale. (1)

3.7 The Credit Agreement Act 75 of 1980 was passed for the protection of credit receivers only. (1)

3.8 There are two essentialia for a contract of employment. (1)

3.9 A 17-year-old girl is allowed to do night work. (1)

3.10 The Labour Act 11 of 2007 lays down minimum wages payable to all employees in Namibia. (1)

Each correct answer is worth 1 Mark
[10 Marks]

QUESTION 4

Answer the following short questions.

4.1 How is delivery of immovable property effected to a purchaser? (1)

4.2 There are five (5) instances where the purchaser will not have a right to use action *redhibitoria* (claim for cancellation and restitution) as a remedy for a latent defect. Provide these five (5) instances. (5)

4.3 Is an oral credit agreement in terms of the Credit Agreements Act 75 of 1980 invalid? (2)

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

4.5 A contract of lease is distinguished by certain essentialia. State these essentialia. (3)

4.6 Which of the two parties in a contract of insurance bears the duty of disclosure? (1)

[15 Marks]

QUESTION 5

Elizabeth's only source of income is that which is generated from baking cakes from a home bakery. She has an agreement with the owner of "Mugg and Bean" to deliver 50 fresh muffins each day. Elizabeth usually needs to bake the muffins until 04:00 in the morning in order to comply with her agreement.

Elizabeth orders all the eggs she needs for the baking from Tom, a poultry farmer.

One night at 23h00 Elizabeth discovers that all the eggs she bought that day from Tom were rotten and she was therefore unable to deliver her 50 muffins the next day. As a result, she lost the contract with Mugg and Bean.

5.1 Does Elizabeth have any claim against Tom, the poultry farmer? Explain. (6)

5.2 Suppose the eggs were sold voetstoots and reconsider your answer in 5.1. (4)

[10 Marks]

QUESTION 6

Peter buys goods from Solomon subject to the Credit Agreements Act. Discuss the legal position in the following instances:

6.1 Peter fails to pay the deposit. (1)

6.2 Solomon lends the money to Peter to pay the deposit. (1)

6.3 Peter fails to make payment of an instalment on time. Can Solomon cancel the contract immediately and take back the goods he sold to Peter? (6)

6.4 What requirements are necessary in terms of Section 13 of the Credit Agreements Act in order for the right of cooling-off to exist? (2)

[10 Marks]

QUESTION 7

Rosalia who works as a waitress at News Cafe is now three months in arrears with the payment of rent to her landlord. Besides the necessary furniture like a bed, she owns a Hi-Fi set. The only other items of value in her flat are a TV, microwave oven and stove, and these items are still subject to a credit agreement in terms of the Credit Agreements Act 75 of 1980. Ownership accordingly remains vested in the seller, which is Hi-Fi Corporation in this instance.

Advise Rosalia whether her landlord is allowed to attach these items in order to sell them in execution.

[5 Marks]

[Total 100 Marks]