



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATIONS : VARIOUS	
QUALIFICATION CODES: VARIOUS	LEVEL: 5
COURSE CODE: CML 112 S	COURSE NAME: COMMERCIAL LAW 1B
SESSION: JANUARY 2025	PAPER: THEORY
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	Ms Ester Kuugongelwa, Ms Kirby Classen, Ms Emmy Wabomba & Mr Duane Dausab
MODERATOR:	Ms W Shakela

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

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 the correct answer. Use BLOCK CAPITAL LETTERS. (40)

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

- A. A seller need not be the owner of the thing sold
- B. An implied warranty against eviction guarantees that no third party with a better title will deprive the purchaser of his or her possession of the *merx*
- C. There cannot be a valid contract of sale if the parties concerned do not reach agreement about the price
- D. The thing sold must be ascertainable
- E. None of the above options

1.2 The following is not a duty of the purchaser:

- A. Pay the purchase price
- B. Accept delivery of the thing
- C. Reimburse the seller for expenses
- D. Bear the risk for any accidental damage to the thing if the contract is still subject to a suspensive condition
- E. None of the above

1.3 The following statement is true:

- A. A contract of purchase and sale is not *perfecta* if it is subject to a resolutive condition
- B. A contract of purchase and sale is *perfecta* if the price is fixed or determinable, the thing is specified and the parties have the intention to conclude a contract of purchase and sale
- C. After conclusion of a contract of purchase and sale, the purchaser bears the risk for any accidental damage to the thing from the moment the contract is *perfecta* until the time of delivery
- D. The risk doctrine is applicable to all contracts
- E. All of the above

1.4 Things that have no material existence are delivered by means of:

- A. Long hand
- B. Symbolic delivery
- C. Cession
- D. Ratification
- E. None of the above

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. Physical delivery
- 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 3 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 26 of the Labour Act 11 of 2007, the period of employment that a female employee must have completed to qualify for maternity leave is:
- A. 1 month of continuous employment
 - B. 6 months of continuous employment
 - C. 12 months of continuous employment
 - D. 9 months of continuous employment
 - E. 12 weeks of continuous employment
- 1.13 Section 25 of the Labour Act 11 of 2007 deals with compassionate leave with full remuneration. A worker is entitled to the following number of compassionate leave days:
- A. 12 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 working days after a period of 12 consecutive months of employment per year
 - E. None of the above.
- 1.14 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 arrears 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 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 Which of the following is not a duty of the lessor in a contract of lease?
- 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

Identify the following legal concepts/terminologies:

- 2.1 The type of merx which is delivered by way of registration in the Deeds Registry.
- 2.2 Martha buys a jacket for the winter. She agrees with the shop that she will pay half of the purchase price immediately, and the remainder next month. The jacket will remain at the shop until she has paid the final amount.
- 2.3 The type of agency that is conferred upon a person by virtue of his position.
- 2.4 The right of a landlord to attach his tenant's movable goods to cover arrear rental.
- 2.5 The sale of goods that must still come into existence, where the price is fixed as per item that is sold.

**[Each question is worth 2 mark]
10 Marks]**

QUESTION 3

In each of the below instances, indicate whether a valid contract of purchase and sale has come into existence. Motivate your answer.

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

- 3.1. After a heavy night of drinking Kristen sells her car to Ernst for N\$100.
- 3.2. Jon and Peter agree that Jon will buy Peter's car for whatever Jon is prepared to pay for it.
- 3.3. Paul and Holly agree that Paul will buy 100g of cocaine from Holly for N\$1000.
- 3.4. Mbeki's father has passed on. Mbeki does not know that, in terms of his late father's last will and testament, he has inherited his late father's Mercedes Benz. He agrees with the executor of his late father's estate that he will buy the Mercedes Benz for N\$200 000.
- 3.5. Annie owns a plot of land and agrees to sell the whole mahangu crop that she hopes to produce at the end of the season to Beauty for N\$3000. Unfortunately, Annie did not have a harvest since her crops were damaged by the floods.
- 3.6. Natangwe and Oskar agree in a WhatsApp that Oskar will buy Natangwe's house for N\$2 million.
- 3.7. Petrus steals Mario's car and sells it to Josua for N\$20 000.
- 3.8. Jojo and Boniface agree that Jojo will buy Boniface's horse for N\$20 000. Neither Jojo nor Boniface know that the night before the sale the horse was bitten by a snake and died.
- 3.9. Susan and Miriam agree that Susan will buy Miriam's cellphone. They agree that N\$1000 is a reasonable value for the phone. Susan does not have the cash but offers to give Miriam clothes to an equal value. Miriam is happy with this arrangement.
- 3.10. Namushe agrees with Veronica that she (Namushe) will buy Veronica's cellphone for N\$1000 when she gets paid at the end of the month.

Each correct answer is worth 2 Marks

[20 Marks]

QUESTION 4

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

- 4.1 The sale of a house for N\$ 2 Million, for which monthly instalments are repayable within 15 years. (2)
- 4.2 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)
- 4.3 X borrows money from B cash loan of N\$ 100 000.00 and must repay it in 6 months. (2)
- 4.4 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)
- 4.5 Peter buys a car for N\$ 100 000 and pays the N\$ 100 000 in cash. (2)

[5 x 2 = 10 Marks]

QUESTION 5

Maria buys a bed from House & Home subject to the Credit Agreements Act. In terms of the agreement, Maria would have to pay monthly instalments for the next 12 months. After having paid instalments for 6 months, Maria loses her job and fails to pay the monthly instalment.

Can House & Home decide to cancel the contract immediately? Discuss in detail.

[5 Marks]

QUESTION 6

Jason is employed as a driver by Debonairs Pizza Hut. Whilst on his way to deliver three orders of pizza in Windhoek-West, he gets into a car accident with a taxi driver. The taxi driver maintains that Jason failed to stop at the red robots and wants to sue the owners of Debonairs Pizza Hut for repairs of his taxi vehicle.

Will the taxi driver succeed with such a claim? Advise.

[10 marks]

QUESTION 7

Thomas enters into a contract with William. In terms of the contract, Thomas is responsible to build a house for William. They agree that William will pay him the sum of N\$300 000 for the work to be conducted. The contract is signed on the 1st of October 2023.

- 7.1 Identify the type of contract entered into by the parties. (1)
- 7.2 Thomas informed William that he could only start working once William has provided him with the necessary tools and equipment for the work. Advise William of his legal position in respect of Thomas' request. (2)
- 7.3 If one of the workers working for Thomas committed a delict while performing his job, who will be responsible for the damages caused to a third party? Justify your answer. (2)

[5 Marks]

[Total: 100 Marks]