NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

HAROLD PUPKEWITZ GRADUATE SCHOOL OF BUSINESS

QUALIFICATION : DIPLOMA IN BUSINESS PROCESS MANAGEMENT	
QUALIFICATION CODE: 06DBPM	LEVEL: 6
COURSE CODE: CML511C	COURSE NAME: COMMERCIAL LAW 1A 1A
SESSION: OCTOBER 2025/ NOVEMBER 2025	PAPER: THEORY (PAPER 2)
DURATION: 3 HOURS	MARKS: 100

SECOND / SUPPLEMENTARY OPPORTUNITY EXAMINATION PAPER	
EXAMINER(S)	Mrs. E. WABOMBA
MODERATOR:	Mrs. W. SHAKELA

INSTRUCTIONS
1. Answer ALL the questions. 2. Read all the questions carefully before answering. 3. Number the answers clearly

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 Select the option where the relief is of a civil nature only.

A. Madonna's boyfriend is extremely jealous and often abuses her physically.
B. Robert needs to undergo a kidney transplant. The surgeon negligently removes his healthy kidney ad now Robert wants to take action against the surgeon.
C. Harry negligently caused a motor vehicle collision in which the driver and all the passengers were killed.
D. Joan attempted to present a stolen cheque at Pick 'n Pay, but the cashier suspected that there was something wrong, called the manager and Joan was arrested.
E. None of the above options.

1.2 Choose the correct statement:

A. Namibian law is recorded in one comprehensive piece of legislation.
B. All persons can perform juristic acts and litigate
C. Legal subjects are human beings or legal entities subject to the law.
D. In a criminal case, the accused has to prove that s/he is not guilty.
E. In civil litigation, the party bearing the proof must prove his/her case beyond reasonable doubt.

1.3 The jurisdiction of a court is:

A. The authority it has to decide cases presented before it.
B. The authority to apply the rules of natural justice.
C. To maintain peace and order within a specified community.
D. Determined by the seniority of the presiding officer.
E. None of the above.

1.4 Which of the following courts create judicial precedent?

A. Regional Courts
B. Magistrate's courts
C. Chief's and headmen's courts

D. Community courts
E. None of the above

1.5 The burden of proof in a civil case rests on:

A. The accused
B. The Defendant
C. The State
D. The Plaintiff
E. The legal practitioner

1.6 The expedition theory applies:

A. When a breach of contract has occurred.
B. By the operation of the law.
C. By authorization only, either expressly or implied.
D. Unilaterally at the option of the offeree.
E. None of the above.

1.7 A contract will only be valid if?

A. The parties have reached agreement and have the necessary capacity to act.
B. Performance is possible at the time the contract is entered into.
C. The nature of transaction is lawful.
D. Formalities (where required) have been complied with.
E. All of the above.

1.8 The following contract is valid:

A. X enters into a contract with Y whereby he leases his house to Y. Neither one of the parties knows that the house has burnt down the previous day.
B. Druggy agrees to buy N$ 5000's worth of cannabis ("dagga") from Dealer.
C. X and Y agree telephonically that X will buy Y's farm for N$ 200 000.
D. Jerry sells his brother's (Tommy) bicycle to Mike. Jerry is unable to deliver the bicycle as Tommy refuses to sell the said bicycle to Mike.
E. Bertha concludes an agreement with her father in terms of which she undertakes to remain in a state of celibacy for the rest of her life.

1.9 The following statement is true:

A. A *pupillus* is unable to conclude a contract on his/her own.
B. Spouses married in community of property have full contractual capacity for all contracts.
C. All persons who squander their money are prodigals and accordingly have limited contractual capacity.
D. A contract in restraint of trade is valid and enforceable even if it is contrary to public interest.
E. If performance of an obligation is objectively impossible at the time of the conclusion of the contract, the contract is void.

1.10 An offeror may freely withdraw his offer provided that it has not been accepted and provided the offeror had not bound him to keep the offer open. Such a withdrawal of an offer is known as:

A. An option
B. A waiver
C. Locus contractus
D. Rejection
E. Revocation

1.11 Which type of mistake does not affect the validity of a contract?

A. Mistake in motive.
B. Material mistake regarding performance.
C. Material mistake regarding nature of the contract.
D. Material mistake regarding the identity of the other contracting party.
E. None of the above.

1.12 The par delictum rule applies when:

A. There is a dispute about a written agreement.
B. One of the contracting parties is guilty of misrepresentation.
C. One of the naturalia of a contract of purchase and sale in terms of which the seller will pay a penalty should he fail to deliver on time.
D. The performance in terms of the contract is unlawful; this rule would prevent them from instituting a claim based on unjust enrichment.
E. A *pupillus* presented himself as a major when entering into a contract without the assistance of his guardian.

1.13 If a written contract has as one of its provisions that any subsequent variation of its terms is to be in writing and that an oral variation will be of no force and effect, then:

A. Such a provision would be invalid as non-variation clauses are not a feature of our legal system.
B. Such a provision is valid and any purported oral variation will be void.
C. Such a provision is known as an entrenchment clause.
D. None of the above.
E. Both (b) and (c)

1.14 A contract with a clause stating that should either party breach the contract, the innocent party would be entitled to cancel the contract, is known as:

A. A warranty
B. A lex commissoria
C. A stipulatio alteri
D. Agency
E. An entrenchment clause

1.15 X sells B's motorcycle to Z. X cannot deliver the bicycle as B refuses to sell the said motorcycle to X.

A. Subjective impossibility of performance
B. Objective impossibility of performance
C. Supervening impossibility of performance
D. Objective possibility of performance
E. Unlawful contract

1.16 Sally owes Joe N$ 400. Joe says that Sally must iron his clothes for the next 6 months instead of payment of the debt. Sally agrees. This legal concept is known as:

A. Breach of contract
B. Cession
C. Set-off
D. Compromise
E. Novation

1.17 When time is of the essence and the debtor fails to perform on time, the following remedy is available to the creditor:

A. Cancellation
B. Simultaneous performance
C. Repudiation
D. Merger
E. None of the above

1.18 The following are clauses from a contract; indicate which one of the clauses is a penalty clause:

A. "The parties hereto consent that there shall be no variation of the terms or conditions of the contract unless such variation is reduced to writing and signed by both parties".
B. "Should the supplier fail to supply the goods on the dates as indicated in Annexure A, the supplier shall be liable for the payment of N$ 500.00 (Five Hundred Namibia Dollars) for each day of non-delivery".
C. "The lessor shall be entitled to cancel the contract in the event of the lessee's failure to pay the rental due as stipulated in this Agreement".
D. "The purchaser guarantees that the motor vehicle is a 1990 model."
E. None of the above

1.19 The acquisition of rights or the discharge of debts after the passing of a certain period of time is known as:

A. Set-off
B. Cession
C. Acquisition
D. Extinctive prescription
E. None of the above

1.20 The courts exercise discretion with regards to the remedy of specific performance for breach of contract in determining whether or not to apply it. In which circumstance(s) will a court be reluctant to order specific performance?

A. Performance has become impossible.
B. The granting of an order will cause a disproportionate loss for the debtor compared with the benefit for the creditor.
C. It would be difficult for the court to supervise the execution of an order for specific performance.
D. An award for damages will adequately compensate the plaintiff.
E. All of the above.

[20 x 2 = 40 Marks]

QUESTION 2

Explain whether consensus was reached in each of the following situations:

2.1 Delilah offered her car for sale to Jack for N$ 10 000. Jack says that he'll buy it for N$ 8 000. (2)

2.2 Julius enters into a contract with Petrus for the purchase of Petrus's cow. During the negotiations Petrus stated to Julius that the cow produces 35 litres of milk per day while knowing that the cow only produces 35 litres of milk per month. (2)

2.3 Theo specified in his offer that Tim must respond on or before 10 March 2023. Tim accepted the offer on 15 March 2023. (2)

2.4 Linda makes an offer to sell her Iphone 11 to Brenda, but she does not fix a price. Brenda accepts the offer. (2)

2.5 George inspects several motor vehicles that are for sale. All the vehicles belong to Festus. George decides to buy the 2005 Ford that he has test-driven. He says to Festus, 'I offer to pay N$ 10 000 for the Ford.' He is not aware that Festus has five Fords for sale. Festus accepts the offer, but he has the 2011 model in mind. (2)

[5 x 2 = 10 Marks]

QUESTION 3

Give a legal terminology for each of the following:

3.1 An unlawful act or omission that causes harm to the person, property or personality of another. (2)

3.2 Where there is a difference of opinion between two or more individuals concerning a matter that affects only themselves and the aggrieved party has a choice whether or not s/he wants to approach the court for assistance. (2)

3.3 In the event of a dispute about the terms of a written agreement, this rule excludes all evidence extrinsic to the document that is at variance with its terms. (2)

3.4 Fonny owes Ellen N$ 15000, whilst Ellen owes Fonny N$ 10 000. Fonny is obliged to pay the sum of N$ 5000. (2)

3.5 A contract that is binding on both parties, but one of the parties has the option to set it aside (cancel), but, until s/he does so, it remains valid and enforceable. (2)

3.6 A right which one party obtains when concluding an agreement with another (grantor) in terms of which the grantor, in the event that he decides to sell a specific thing, must first offer it to the holder of the said right. (2)

3.7 Improper, unfair conduct by one contracting party that weakened the powers of resistance of the other contracting party and persuaded the latter to conclude the contract. (2)

3.8 A situation where the guardian allows the pupillus to lead an economically separate life. (2)

3.9 In a matter where the High Court of Namibia has declared a person as a prodigal, a ... will be appointed to assist the prodigal with the conclusion of contracts. (2)

3.10 The marital regime (according to Namibian law) where the joint estate acquires the profits and bears the losses. (2)

[10 x 2 = 20 Marks]

QUESTION 4

Sam intends on opening a small printing shop in Maerua Mall. He approaches John who is known to sell affordable printing machines and asks for a printing machine that can print in colour and scan documents. John informs Sam that he has an EPSON printing machine currently on sale for N$ 6000, stating that it can print both in colour and scan documents, knowing very well it does not print in colour. Sam decides to buy the printing machine and later realises that the machine can only print in black and white and does not scan documents.

Advise Sam whether he has any legal basis to put in a claim against the seller, John. Discuss this legal basis in detail.

[10 Marks]

QUESTION 5

Gondwe was meeting friends for drinks at a bar. He walked past a computer store on his way there and saw a really fantastic computer game in the window. While getting quite drunk at the bar, he kept thinking about the game. The next day, he woke up and saw that he had spent N$ 2000 on computer games, but he couldn't remember buying them.

5.1 What is the legal position with regards to the games that he bought? (3)

5.2 Explain the contractual capacity of a person who has been declared mentally insane.

(2)

[5 Marks]

QUESTION 6

X owes Y N$ 1000. X transfers this obligation to pay this debt to Z. Therefore Z becomes liable for this debt. Discuss this form of transfer.

[5 Marks]

QUESTION 7

Determine whether breach of contract was committed in each of the following instances and, if so, identify the type of breach:

7.1 Andy undertakes to marry Betty on 15 November 2022 but married Cathy on 10 November 2022. (2)

7.2 Spotless Car Washers undertook to clean the interior of Joseph's car. They washed the seats with a detergent containing a bleach ingredient, causing the black seats to turn green.

(2)

7.3 Danny hires Freddy to paint his house. In terms of their agreement, Danny undertook to provide the paint and all the tools for the paint job. When Freddy arrives on Monday morning to perform in terms of the contract, Danny failed to provide the necessary tools for the job.

(2)

7.4 ABC Company concludes a contract with XYZ Engineers CC, in terms of which XYZ has to erect a 20-storey building for ABC, to be completed on 1 May. ABC hands over the approved plans to XYZ. On 1 May XYZ completes the building. When ABC inspects the building, it is discovered that the staircase for the fire escape has been built in the wrong place. (2)

7.5 On 1 June 2022 Claudia bought a brand new Toyota Yaris from Frans Indongo Toyota. The parties have not agreed on a date for delivery of the vehicle, however, by 10 June 2022 the vehicle had not yet been delivered. (2)

[5 x 2 = 10 Marks]

[Total 100 Marks]