



PAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

CENTRE FOR ENTERPRISE DEVELOPMENT (CED)

QUALIFICATION CODE: 06DBPM	LEVEL: 6
COURSE CODE CML 512C	COURSE NAME: COMMERCIAL LAW 1 B
DATE: JUNE 2023	MODE: PM
DURATION: 2 HOURS	MARKS: 100

FIRST 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 9 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 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 employee 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.
- (2)
- 1.2 The concept of agency arises when:
- A A person performs a juristic act on behalf of another person.
 - B A person, known as the agent, is not bound on the contract, but on the warranty of authority.
 - C A person, known as the agent, concludes a contract on behalf of another, known as the principal, and the third party has the option to sue either the agent or the principal.
 - D A person (known as the agent) can perform a juristic act, with the necessary authority, on behalf of another person (known as the principal).

E 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.

(2)

1.3 Choose the correct statement:

A Estate agents have authority to enter into a contract of sale on behalf of the owner.

B A single director of a company (unless it is a single director of a private company) has no implied authority to act in the name and on behalf of the company.

C Not all members of a Close Corporation have implied authority to act as agents of the corporation for the purpose of the corporation's business.

D An agent must dedicate him/herself exclusively to his/her principal's affairs and may not have more than one principal.

E Insolvency of the agent will automatically terminate his/her agency power.

(2)

1.4 Section 33 of the Labour Act 11 of 2007 stipulates that dismissal must take place:

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.

(2)

1.5 Section 11 of the Credit Agreements Act 75 of 1980, as amended, protects the purchaser when:

A The credit grantor summarily cancels the credit agreement.

B The contract is signed at the home of the purchaser as a result of the initiatives of the seller.

C The goods bought in terms of the credit agreement are repossessed without a court order.

D The seller has called the purchaser to come in and view the articles on sale.

E None of the above.

(2)

1.6 If a credit agreement is not reduced to writing the contract is:

- A Valid
- B Void
- C Voidable
- D Valid but results in a criminal offence
- E None of the above (2)

1.7 In terms of the Labour Act 11 of 2007 an employee is entitled to five (5) working days compassionate leave during each period of twelve months for the death or serious illness of family. 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 Grandparents
- D Father/Mother in Law
- E Brother in law /Sister in Law (2)

1.8 The Labour Act 11 of 2007 deals with sick leave and provides that an employee who works five days or less in the week is entitled to the following number of sick leave days:

- A 30 consecutive days per year.
- B 30 working days per year.
- C 36 working days every three years.
- D 30 working days in the aggregate on full remuneration during each period of 36 consecutive months for which the employee is employed.
- E 2 working days per month. (2)

1.9 A contract of employment may be terminated by means of notice of termination. The absolute minimum notice period stipulated by Section 47 of the Labour Act 6 of 1992 is:

- A 1 week
 - B 2 weeks
 - C 1 month
 - D 1 day
 - E Neither one of the above
- (2)

1.10 An employee who is required to work on Africa Day will receive the following payment for the hours worked on Africa Day:

- A. Normal Remuneration.
- B. 6% Additional Remuneration on hours worked.
6 % Additional Basic wages on hours worked.
- C. Double his normal basic wage or 1 ½ time his normal basic wage plus time off in succeeding week.
- D. Double his normal remuneration or 1 ½ time his normal remuneration plus time off in succeeding week.

(2)

1.11 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. The seller can never be liable for any latent defects if a thing is sold voetstoots.
- C. A voetstoots sale is never implied, the parties must expressly agree on it.
- D. Goods sold at a sale in execution are sold voetstoots.
- E. All of the above

1.12 Beckham is injured in a soccer game between England and Germany and as a result must undergo surgery. He entered into a contract with a well known surgeon. This contract is called:

- A. Locatio conductio operarum.
- B. Contract of the independent contractor.
- C. Contract for delivery of professional services.
- D. Locatio conductio operis.
- E. Contract of mandate.

(2)

- 1.13 According to Section 23 of the Labour Act 11 of 2007 every employee is entitled to four weeks annual leave on full remuneration in respect of each period of 12 consecutive months for which the employee is employed. Who will determine when an employee can go on annual leave?
- A. Employee
 - B. Employer
 - C. The Trade Union
 - D. Labour Commissioner
 - E. Employers Organisation (2)
- 1.14 With reference to the provisions of the Credit Agreements 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 6 months or longer.
 - C. A 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. (2)
- 1.15 Things that have no material existence are delivered by means of:
- A Long hand
 - B Symbolic delivery
 - C Cession
 - D Actual delivery
 - E None of the above (2)
- 1.16 Section 13 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 and the credit receiver signed the agreement at a place, which is not the normal place of business of the credit grantor. (2)

1.17 Guarantee against eviction is to protect a purchaser a case:

- A where the purchaser knew the thing did not belong to the seller.
- B where the seller is not the true owner of the thing sold
- C where guarantee against eviction does not form part of the contract
- D where the goods were bought on credit in terms of the Credit Agreement Act
- E None of the above. (2)

1.18 Ratification is one way in which the lack of an agent's representative capacity can be cured. Indicate the incorrect statement:

- A Ratification can be express or tacit.
- B Ratification requires the consent of the third party with whom the agent has concluded the agreement concerned.
- C Ratification operates automatically retroactively from the moment the agreement concerned was concluded between the agent and the third party.
- D The effect of ratification is that the parties are treated as though a relationship of principal and agent had existed already at the time when the agreement concerned was concluded – between the agent and the third party.
- E Before ratification the principal acquires no rights and incurs no obligations in terms of the agreement between the agent and the third party. (2)

1.19 The following *merx* cannot be bought:

- A *res aliena*
- B *res sua*
- C future things
- D book debts of a company
- E poison (2)

1.20 The Credit Agreements Act will not apply to one of the following transactions:

- A Where the Minister declared the goods that are sold or leased to fall within the application of the Act.
- B The purchase price is to be paid in instalments at a fixed or determinable date in the future.
- C When the agreement is concluded for less than 3 months.
- D When the goods are not sold or leased with the sole objective of selling or leasing the goods to others.
- E None of the above (2)

QUESTION 2

Give a word or phrase for each of the following:

- 2.1 The period from the time an employee first starts to work in any 24-hour-cycle to the time the employee finally stops working in that cycle. (2)
- 2.2 The total value of ALL payments in money and in kind made or owing to an employee arising from the employment of the employee. (2)
- 2.3 A formal written authority which sets out the scope of the agent's authority in a contract of agency and is signed by the principal. (2)
- 2.4 The authority a guardian has to act as an agent on behalf of a minor (*infans*) by virtue of his /her office. (2)
- 2.5 A situation where accidental damage is transferred to the seller (2)
- Each two marks [10]**

QUESTION 3

INDICATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE OR FALSE.

- 3.1 In the absence of an express agreement regulating the relationship between the members, a member of a Close Corporation is not an agent of the corporation. (2)
- 3.2 A female employee is entitled to at least 12 (twelve) weeks maternity leave after completion of at least 12(twelve) months of continuous service in the employment of an employer. (2)
- 3.3 Section 26 of the Labour Act 11 of 200 7 also provides job security to an employee during the period that she is on maternity leave. (2)
- 23.4 An agent must devote him/herself exclusively to his/ her principal's affairs. (2)
- 3.5 The agent will act in bad faith if he/she makes secret profits. (2)
- Each two marks [10]**

QUESTION 4

- 4.1 Mr. Hunter, owner of "Lion Den"- game/ hunting guest farm, instructs his manager, Mr. Olifant, to purchase ten head of Oryx at a game auction to be held in Otjiwaringo. While attending the auction, Mr. Olifant notices a spectacular lioness with two cubs. This is a once in a life time opportunity. Instead of purchasing the Oryx, Mr. Olifant purchases the lioness and cubs from Mr. Kango (the seller) on Mr. Hunter's account. Mr. Hunter is extremely satisfied with Mr. Olifant's purchase and decides to keep the lioness and her cubs. What consequences does this decision hold for Mr. Olifant, Mr. Hunter and Mr. Kango respectively when Mr. Kango now demands payment? (5)
- 4.2 Jolene is working as a chef at the 'Red Chilli'-restaurant. She is responsible for the buying of the ingredients needed for the various dishes, since 2007. She is also authorised to order cakes and tarts from "Blue Marine"- caterers on a regular basis as need be. At the end of August 2011 Jolene orders a big, extravagant wedding cake for her daughter's upcoming wedding. Upon receipt of the invoice, the owner of "Red Chilli "-restaurant refuses to pay for this cake. Advise 'Blue Marine'-Caterers. (5)

[10]

QUESTION 5

- 5.1. James enters into a contract with John in which he agrees to sell his whole flock of sheep to John. He sells each sheep for N\$600. They are a total of 50. A day after entering into a contract a disease attacks the flock killing 20 of them. Advise John on the payment of the sheep. In your discussion mention and discuss the legal concept in discussion. (5)
- 5.2 Would your answer be different if the price was fixed on the whole flock and not per sheep? (5)

[10]

QUESTION 6

- 6.1 Johnny concludes a contract to purchase town house in Rocky Crest from Donald. The agreement is subject to Johnny obtaining a loan from ABC bank on or before 14 June 2013 to pay for the purchase price. On 17 June 2013 Jonny who is not yet secured a loan from ABC Bank is informed by Donald that the town house was destroyed by fire.
- 6.2 Discuss the legal position of the parties (5)
- Assume that the town house was destroyed by fire a day after Jonny obtained a Loan from the Bank but before transfer takes place. Discuss the legal position of the parties. (5)
- [10]

QUESTION 7

Janet purchases various imported delicacies from a supermarket for N\$ 250-00. Unknown to both Janet and the supermarket, the delicacies are off and Janet contracts food poisoning when she consumes it. This causes her a great deal of pain and suffering, as well as considerable medical expenses. Advise Janet as to whether she has any claim against the supermarket and if so, discuss the possible remedies at her disposal.

[10]