



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

HAROLD PUPKEWITZ GRADUATE SCHOOL OF BUSINESS

QUALIFICATION CODE: 06DBPM	LEVEL: 6
COURSE CODE CML 511C	COURSE NAME: COMMERCIAL LAW 1 B
DATE: JUNE 2024	MODE: PM
DURATION: 2 HOURS	MARKS: 100

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

INSTRUCTIONS
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**.

1.1 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 eviction
- B. Passing of the risk rule
- C. *Actio empti*
- D. Guarantee against latent defects
- E. None of the above

1.2 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.

1.3 If the parties in a contract of purchase and sale agreed on the *merx* and the price, but the contract is still subject to a suspensive condition, the risk passes to the purchaser when:

- A. The *merx* is delivered to the purchaser.
- B. The condition is fulfilled.
- C. The contract is signed.
- D. The *merx* is damaged due to an accident.
- E. None of the above.

1.4 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. X sells her horse to Y. They agree that X will hire the horse from Y. The horse thus remains in X's possession.
- C. The *merx* is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.

- 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.

1.5 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

1.6 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.

1.7 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 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.
- E. 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*.

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

- A. Contracts for the sale of immovable goods.
- B. Contracts for the sale or lease of movable goods, as declared by the Minister of Industrialisation and Trade.
- 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.

1.9 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.

1.10 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 6 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.

1.11 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 empti.
- E. None of the above.

1.12. 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.

- 1.13 The risk, which passes to the buyer when the contract is perfecta, is the risk of:
- A. Loss or damages caused by the seller.
 - B. Loss or damages caused by the purchaser.
 - C. Accidental damages or losses.
 - D. Negligent damages or losses.
 - E. None of the above.
- 1.14 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.
- 1.15 If the parties in a contract of purchase and sale agreed on the merx and the price, but the contract is still subject to a suspensive condition, the risk passes to the purchaser when:
- A. The merx is delivered to the purchaser.
 - B. The condition is fulfilled.
 - C. The contract is signed.
 - D. The merx is damaged due to an accident.
 - E. None of the above.
- 1.16 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.

- 1.17 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.
- 1.18 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.
- 1.19 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.
- 1.20 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.

[Two marks each = 40 Marks]

QUESTION 2

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.

- 2.1 After a heavy night of partying and drinking, while still under the influence of alcohol, Cecilia sells her red Jeep car to Jack for N\$200.
- 2.2 John and Paul agree that John will buy Paul's City Golf for whatever John is prepared to pay for it.
- 2.3 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.
- 2.4 Daniel and Jack agree in a WhatsApp message that Daniel will buy Jack's apartment for N\$1 million.
- 2.5 Best Buy CC (Best Buy) sells a second-hand refrigerator to Toby on credit in terms of the Credit Agreements Act 75 of 1980. Best Buy lends Toby the money to pay for the initial payment.

[Two marks each = 10 Marks]

QUESTION 3

Briefly answer the following questions:

3.1 How is delivery of immovable property affected to a purchaser? [2]

3.3 Is an oral credit agreement in terms of the Credit Agreements Act 75 of 1980 invalid? [2]

3.3 Complete the following sentence by writing down the missing words:

The remedy *actio quanti minoris* (claim for price reduction) is available to the purchaser where the defect is _____. [1]

[5 Marks]

QUESTION 4

Benjamin decided to buy an iPhone 11 from Daniel for N\$ 7500. A week after he purchased it, he noticed that the speaker was faulty. He would have difficulty hearing someone talk to him over the iPhone. Feeling disgruntled, he approaches Daniel for the full refund of his money.

4.1 Does Benjamin have any claim against Daniel? Explain. [6]

4.2 Suppose the iPhone was sold *voetstoots*, would your answer be different in 4.1? [4]

[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 installments for the next 12 months. After having paid instalments for 6 months, Maria loses her job and finds it difficult to keep up with the instalments.

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

[5 Marks]

QUESTION 6

Answer the following short questions.

6.1 How is delivery of immovable property effected to a purchaser? (2)

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

6.3 Who is responsible for paying rent to the lessor where the lessee sublets the property to a sub-lessee? (1)

[5 Marks]

QUESTION 7

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

7.1 The sale of a house for N\$ 2 Million, for which monthly instalments are repayable within 15 years.

(2)

7.2 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)

7.3. X borrows money from ZXX cash loan of N\$ 100 000.00 and must repay it in 6 months

(2)

7.4 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)

7.5 Peter buys a car for N\$ 100 000 and pays the N\$ 100 000 in cash.

(2)

[10 Marks]

QUESTION 8

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]