



PAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

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FIRST OPPORTUNITY EXAMINATION	
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INSTRUCTIONS
<ol style="list-style-type: none">1. This examination paper consists of SIX questions2. Answer ALL the questions.3. Read all the questions carefully before answering.4. Number the answers clearly

THIS QUESTION PAPER CONSISTS OF 9 PAGES (Including this front page)

QUESTION 1

Choose the correct answer from the given options in each of the following questions. Write the correct letter in your examination script next to the corresponding question number. There is only one correct answer for each question.

- 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. Fortunately, Robert's body accepted the new kidney and he survived the operation.
 - 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.
- 1.2 Choose the statement that describes the doctrine of *stare decisis*:
- A. All courts are free to formulate its own principles and make its own judgments based on the facts presented to the court.
 - B. Each court is bound to its own previous decisions even though it is convinced that the previous decision is wrong.
 - C. It is the method by means of which the court evaluates all the evidence presented to it, in order to ascertain which party is liable in a civil case.
 - D. Every court is bound by its own previous decisions as well as to that of a higher court unless it is convinced that such a decision is wrong, however, decisions of the Lower Courts are not binding.
- 1.3 Choose the correct statement:
- A. Namibian law is recorded in one comprehensive piece of legislation.
 - B. Legal subjects are human beings or legal entities subject to the law.
 - C. All persons can perform juristic acts and litigate.
 - D. In a criminal case the accused has to prove that he is not guilty.
- 1.4 The following court has the right of first instance to hear an appeal from the Regional Courts:
- A. Supreme Court of Namibia
 - B. Magistrate's Courts and the High Court of Namibia
 - C. Magistrate's Courts only
 - D. High Court of Namibia

QUESTION 1 CONTINUES ON THE NEXT PAGE

- 1.5 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. None of the above.
- 1.6 Which of the following courts create judicial precedent?
- A. Regional Courts
 - B. Magistrate's courts
 - C. Community courts
 - D. None of the above
- 1.7 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. Revocation
 - D. Rejection
- 1.8 Where a minor, after obtaining majority, continues to use an item which he purported to purchase during his minority or indicates otherwise by his actions an intention to be bound this is known as:
- A. Ramification
 - B. Rectification
 - C. Ratification
 - D. Estoppel
- 1.9 The expedition theory applies:
- A. When a breach of contract occurred.
 - B. By authorisation only, either expressly or implied.
 - C. Unilaterally at the option of the offeree.
 - A. None of the above.
- 1.10 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.

QUESTION 1 CONTINUES ON THE NEXT PAGE

- 1.11 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. The performance in terms of the contract is unlawful; this rule would prevent them from instituting a claim based on unjust enrichment.
 - D. A *pupillus* presented himself as a major when entering into a contract without the assistance of his guardian.
- 1.12 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.
- 1.13 With regards to formalities, which of the following statements is **true**?
- A. The common law does not require a contract to be made in writing.
 - B. No contract of sale of immovable property is valid unless embodied in a written document and signed by the parties.
 - C. Both (A) and (B)
 - D. None of the above.
- 1.14 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. Both (B) and (C)
- 1.15 The following agreement is subject to a condition:
- A. Roy promises that his eldest son could inherit his farm upon his wife's death.
 - B. Harry can borrow Tom's umbrella as soon as it rains again in Windhoek.
 - C. Peter undertakes to give his wife a brand new BMW if she loses a minimum of 10 kg in weight within the next six months.
 - D. Sally undertakes to rent Joan's business until Joan's death.

QUESTION 1 CONTINUES ON THE NEXT PAGE

- 1.16 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. A penalty clause
- 1.17 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. Cession
 - B. Delegation
 - C. Compromise
 - D. Novation
- 1.18 Where parties to a contract are in dispute about the nature and extent of obligations in terms of the contract and subsequently decide to settle the matter by replacing the existing obligation with another obligation, the original contract between the parties is:
- A. Void
 - B. Voidable
 - C. Terminated by the operation of law.
 - D. Terminated by agreement between the parties.
- 1.19 Supermarket A orders 100kg of vegetables from farmer B. They agree that the vegetables must be delivered at A's premises on Friday at 19:00. At 19:00 on that particular Friday B arrives with 100 kg of vegetables at A's premises; only to find the premises locked. B cannot find anybody to open the premises or to accept the delivery. Identify the form of breach of contract:
- A. *Mora creditoris*
 - B. Prevention of performance
 - C. *Mora debitoris*
 - D. Defective performance
- 1.20 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

Two marks each [40]

QUESTION 2

Identify the legal concepts described below.

- 2.1 A wrongful act or omission that causes harm to the person, property or personality of another.
- 2.2 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 he wants to approach the court for assistance.
- 2.3 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.
- 2.4 Fonny owes Ellen N\$ 15000, whilst Ellen owes Fonny N\$ 10 000. Fonny is obliged to pay the sum of N\$ 5000.
- 2.5 A contract that is binding on both parties, but one of the parties has the option to set it aside (cancel), but, until she does so, it remains valid and enforceable.
- 2.6 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.
- 2.7 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.
- 2.8 A situation where the guardian allows the *pupillus* to lead an economically separate life.
- 2.9 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.
- 2.10 The marital regime (according to Namibian law) where the joint estate acquires the profits and bears the losses.

Two marks each [20]

QUESTION 3 follows on the next page

QUESTION 3

Explain whether consensus was reached in each of the following situations. Motivate your answers:

- 3.1 Susan offered her car for sale to Simon for N\$ 10 000. Simon says that he'll buy it for N\$ 8 000.
- 3.2 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.
- 3.3 A traditional healer tells his patient, Sammy, that he should give him all his cattle in order to be cured of AIDS. Sammy agrees.
- 3.4 Linda makes an offer to sell her MP3 Player to Brenda, but she does not fix a price. Brenda accepts the offer.
- 3.5 George inspects several motor vehicles that are for sale. All the vehicles belong to Festus. George decides to buy the 2015 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 2014 model in mind.

Two marks each [10]

QUESTION 4

Kevin is the owner of a very popular cocktail bar on the beach at Swakopmund. He employs Jenny on a five-year contract as a specialist cocktail waitress. Shortly after her appointment, Jenny was sent on a three-months training course in the Bahamas to learn how to mix different tropical cocktails, fully paid by Kevin. A clause in Jenny's contract of employment provides that, after the termination of her contract, she may for a period of one year not participate in any way in the liquor trade anywhere in the district of Swakopmund. Six months after Jenny's resignation, Louis, a bar owner doing business in Swakopmund, offers Jenny employment. Jenny accepts the offer. **Advise Kevin of his legal position.**

[10]

QUESTION 3 follows on the next page

QUESTION 5

- 5.1 Blacky is employed by Namdeb (Pty) Ltd. and has acquired some uncut diamonds. He enters into a contract with Donna for the sale of these diamonds without the necessary permit.

Discuss the consequences of this agreement. (5)

- 5.2 Martin has a written agreement for the lease of Gabby's flat. One of the clauses stipulates that visitors may not stay longer than 10 days. Martin's sister, Tina, needs to undergo medical treatment for a period of 6 months and Martin telephonically informed Gabby that his sister would come and stay with him. Gabby agrees. 3 months later Gabby gives Martin a month's notice to vacate the premises stating that Martin acted contrary to their agreement.

Advise Martin on his legal position with regard to the parol evidence rule. (3)

- 5.3 **Explain whether a valid contract was concluded in the following circumstances:**

Anita concludes a contract telephonically with her good friend, Ernst, for the sale of her one-bedroom flat in the centre of the city of Windhoek. (2)

[10]

QUESTION 6

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

- 6.1 Andy undertakes to marry Betty on 15 November 2024 but married Cathy on 10 November 2024.
- 6.2 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.
- 6.3 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.

QUESTION 6 continues on the next page

- 6.4 ABC & Co. 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.
- 6.5 On 1 June 2024 Claudia bought a brand new Toyota from Tip Top Car Dealers. The parties have not agreed on a date for delivery of the vehicle, however, by 10 of June 2024 the vehicle had not yet been delivered.

Two marks each [10]

Grand Total: 100