



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

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COURSE CODE: CML 111S	COURSE NAME: COMMERCIAL LAW 1A
SESSION: JUNE 2022	PAPER: PAPER 1
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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 10 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. Negative marking will not be applied, but answers to questions will not be marked where more than one answer has been given.

1.1 The supreme law of Namibia is:

- A Common law
- B Legislation
- C Constitution of the Republic of Namibia of 1990
- D Judicial precedents
- E *Ratio decidendi* (2)

1.2 The jurisdiction of a court is:

- A The authority to punish an accused for a crime.
- B To maintain peace and order within a specified community.
- C The authority it has to decide cases presented before it.
- D Determined by the seniority of the presiding officer.
- E None of the above. (2)

1.3 The following combination of courts have both civil and criminal jurisdiction:

- A Supreme Court of Namibia and the Regional Court
- B Regional Court, Magistrate's Court of Windhoek and the High Court of Namibia
- C High Court of Namibia
- D Magistrate's Court of Windhoek
- E All Magistrate's Courts, High Court and Supreme Court of Namibia (2)

1.4 Customary law principles are:

- A Applied by the courts if the parties to a matter so choose, irrespective of whether the law concerned is contrary to the principles of public policy.
- B Valid to the extent to which such customary law principles do not conflict with the Namibian Constitution or any other statutory law.
- C Not recognised as a competitor of the official law of the State, but applied at the court's discretion as a supplementary law.
- D Both B and C
- E Only B (2)

- 1.5 Which statement is **true** in regard to offer and acceptance in our law?
- A An ordinary revocable offer may in general and in the absence of indications in its terms or in relevant circumstances to the contrary, be accepted only by the person to whom it is made.
- B An offer is revoked by the death of the offeror or offeree or by a counter-offer.
- C Offer and acceptance must be communicated.
- D All of the above.
- E None of the above options. (2)
- 1.6 With regards to revocation and lapsing of offers which statement that follows is **false**:
- A Revocation of an offer can take place once the offeree has accepted the offer.
- B An offer can be revoked at any time by the offeror provided acceptance has not taken place; there is no option and the revocation is communicated to the offeree.
- C In the absence of revocation, and any stated time limit, the offer remains open for a 'reasonable period'.
- D An option is a contract in terms whereof an offer remains irrevocable for a specified period of time.
- E An offer lapses upon the death of either the offeror or offeree. (2)
- 1.7 Mr. Kavari eagerly wants to buy Mr. Louw's car, but Mr. Louw is not interested in selling it at this stage. The parties conclude an agreement in terms of which Mr. Louw will offer his car for sale to Mr. Kavari the moment when he decides to sell it. This legal concept is known as:
- A Option
- B Contract of purchase and sale
- C Right of pre-emption
- D Novation
- E Merger (2)
- 1.8 The expedition theory applies:
- A When a breach of contract has occurred.
- B By the operation of the law.
- C By authorization of the offeror only, either expressly or implied.
- D Unilaterally at the option of the offeree.
- E None of the above. (2)
- 1.9 A mistake regarding motive renders a contract:
- A Valid
- B Void
- C Terminated
- D Breached
- E None of the above (2)

- 1.10 With regards to mistake and representation:
- A Misrepresentation renders a contract voidable whereas a material, reasonable mistake renders a contract void.
 - B Misrepresentation renders a contract void whereas a material, reasonable mistake renders a contract voidable.
 - C Both misrepresentation and a material, reasonable mistake render a contract voidable.
 - D Both misrepresentation and a material, reasonable mistake render a contract void.
 - E None of the above options. (2)
- 1.11 A woman married **out of community** of property:
- A Is subject to the marital power of her husband who has exclusive rights to administer the joint estate as head of the family.
 - B Requires the consent of her spouse to conclude certain contracts.
 - C Has full contractual capacity and may conclude any contract without the consent of her husband.
 - D Is solely responsible for all debts in respect of the household necessities.
 - E Must obtain oral consent from her husband for the alienation of her immovable property. (2)
- 1.12 If a *pupillus* has concluded a contract without parental assistance, but his father later condones the contract, this is known as:
- A Rectification
 - B Renunciation
 - C Ratification
 - D Emancipation
 - E *Estoppel* (2)
- 1.13 If a written contract has as one of its conditions 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 preference over the verbal agreement.
 - D None of the above.
 - E Both B and C (2)

- 1.14 Choose the statement that describes the parol evidence rule:
- A Where parties entered into an unlawful agreement, the contract is void and neither party can institute a claim on the basis of unjust enrichment.
 - B The rule that provides that certain agreements would only be valid once reduced to writing and signed by the respective parties.
 - C When a dispute arises about an agreement that has been reduced to writing in a document, the parol evidence rule prevents both parties to bring evidence from outside the document and the document as such would serve as the final version of the transaction between the parties.
 - D This rule allows the parties to change their contract, provided that there is enough evidence and both agree.
 - E Evidence required in order to prove the existence of an oral contract. (2)
- 1.15 The following agreement is subject to a condition:
- A Sam undertakes to give his old shoes to Martin as soon as the sun rises again.
 - B Roy promises that his eldest son could inherit his farm upon his wife's death.
 - C Harry can borrow Tom's umbrella as soon as it rains again in Windhoek.
 - D 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.
 - E Sally undertakes to rent Joan's business until Joan's death. (2)
- 1.16 A penalty stipulation in a contract can be defined as follows:
- A An express stipulation in a contract in terms whereof the innocent party has an automatic right to cancel the agreement in the event of breach.
 - B An express stipulation in a contract in terms of which a fixed sum of money has to be paid or transferred to the innocent party in the event of breach of contract.
 - C An implied term of a contract of purchase and sale in terms of which the seller can be held liable if he fails to keep the thing in safe custody from the time of the conclusion of the contract until the time of delivery.
 - D One of the *naturalia* of a contract of purchase and sale in terms of which the seller will pay a penalty if he fails to deliver on time.
 - E One of the *essentialia* of a contract of purchase and sale in terms whereof the purchaser will pay interest on the purchase price if he fails to pay on time. (2)
- 1.17 The prescription period for a debt due in terms of a written contract (except a mortgage bond agreement) is:
- A 1 Year
 - B 3 Years
 - C 6 Years
 - D 30 Years
 - E There is no prescription period for a written contract. (2)

- 1.18 A rents a flat from B. After a year, A is retrenched by her employer. She (A) does not want to lose her lease on the flat, and therefore A, B and C agree that C will pay the rent, while A will continue to stay in the flat until she finds employment. This type of agreement is called:
- A Delegation
 - B Cession
 - C Compromise
 - D Agency
 - E Neither one of the above options. (2)
- 1.19 NAMDEB concludes an agreement with the Rector of the Polytechnic of Namibia in terms of which the Management of the Polytechnic of Namibia has to identify the most promising student in the field of Engineering to receive a bursary from NAMDEB to study abroad. This legal concept is known as:
- A Merger
 - B Cession
 - C Delegation
 - D Novation
 - E *Stipulatio alteri* (2)
- 1.20 A and B conclude a contract in terms of which A sells his jet ski to B for R 15 000. The contract states that B must pay the purchase price in full by no later than 10 April 2009. By 11 April 2009 B still hasn't paid. This form of breach is known as:
- A Defective performance
 - B *Mora debitoris*
 - C Prevention of performance
 - D Repudiation
 - E Cancellation (2)
- [40]**

QUESTION 2

Identify the legal concept/contractual term for each of the following:

- 2.1 Moses specified in his offer that John must respond on or before the 15th of March 2006. John accepts the offer on the 17th of March 2006. (2)
- 2.2 Sam has a contract of employment with Ocean Fresh Foods CC. He is employed as the captain of their only fishing vessel "Stormy Seas". On the 10th of May 2009, while they were at sea, a severe storm destroyed "Stormy Seas". Sam is one of the survivors. Sam's contract of employment with Ocean Fresh Foods CC is terminated. (2)

- 2.3 Martinus sells his plot to Julius. When Julius made the offer to purchase the land, he made it clear that he wanted to buy the property to cultivate flowers and that he would need sufficient water for this purpose. Although Martinus knew that this was untrue, he told Julius that there was plenty of underground water, as well as municipal water. When Julius takes possession of the property, he finds out that there is very little water on the property. (2)
- 2.4 Where parties entered into an unlawful agreement, the contract is void and neither party can institute a claim on the basis of unjust enrichment. (2)
- 2.5 "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." (2)
- 2.6 Sally can borrow Mary's umbrella if it rains in Windhoek on Monday. (2)
- 2.7 In law, one who is empowered to enter into a contract with third parties on behalf of a principal. (The principal and third party being as bound by such transaction as if they entered into it themselves directly.) (2)
- 2.8 Bennie rents a house from Cozy Homes CC with an option to buy the house. Six months thereafter Bennie buys the house. (2)
- 2.9 Claire agreed to do Joe's washing for the next two months. Joe claims that the contract was for three months. The parties agree that she would do the washing for two and a half months. (2)
- 2.10 Sally owes Joe N\$ 400. Joe says that Sally no longer needs to repay him. Sally accepts this offer. (2)
- [20]**

QUESTION 3

Decide in each of the following instances whether the statement is true or false and motivate your answer.

- 3.1 The courts shall apply customary law principles. The only requirement is that the parties to the matter must have requested the court to apply these principles. (2)
- 3.2 An advertisement is a valid offer. (2)

- 3.3 A voidable contract is neither valid nor void. (2)
- 3.4 A time clause, in a contract of purchase and sale, is a good example of a *naturalia* of the contract. (2)
- 3.5 *Mora debitoris* gives the creditor an automatic right to cancel or resile from the contract. (2)
- [10]**

QUESTION 4

Answer the following questions:

- 4.1 Gondwe was meeting friends for drinks at a bar. He walked past a computer store on his way there and saw a 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. What is the legal position with regards to the games that he bought? (2)
- 4.2 Corrie decides to sell her guitar for N\$ 500 and places an advertisement on the local notice board at the University of Science and Technology. A few hours later, Corrie receives a telephone call from Steve, who says he wants to buy the guitar. She accepts his offer and arranges to meet him the following day to give him the guitar after he has paid the money. Later the same day Francis phones and tells her she is willing to pay N\$ 700 for the guitar. Must Corrie sell the guitar to Steve? (3)
- [5]**

QUESTION 5

Determine which form of breach of contract was committed in each of the following instances. Identify the type of breach:

- 5.1 Lavinia lets a flat to Robert. In the written lease agreement Robert undertakes not to sublet the flat to someone else and to give a month's notice if he wishes to vacate the flat. Robert, however, unexpectedly receives a good job offer in New York and needs to start working within 48 hours. (2)
- 5.2 Penny entered into an agreement with Hank, a builder, for a second garage to be built at her residence. Two days before the project would have commenced, Hank calls Penny saying that he is very sorry, but do not have time to perform the work. (2)

- 5.3 The wholesaler is supposed to deliver 100 bags cake flour, but delivers 100 bags of self-raising flour instead. (2)
- 5.4 Ruben enters into a contract of purchase and sale with Festus in terms whereof he buys a second-hand refrigerator from Festus for N\$ 1000. The parties have not agreed on a date for payment of the purchase price. The refrigerator is delivered on the 5th of April 2009. Suppose today is the 8th of May 2009 and the purchase price has not been paid as yet. (2)
- 5.5 Simon acquired a job as a salesman at Dial-a-Bed (Pty) Ltd. Two days before he was supposed to assume duty, he departs to London to work as security guard for two years. (2)
- [10]**

QUESTION 6

- 6.1 Emily and Wilbard enter into a written contract in terms whereof she sells her house to him for N\$ 100 000. The contract is valid and binding. The day after the contract was concluded Justin approaches Emily and offers to buy the same house for N\$ 110 000. Emily wants to accept the offer and tells Wilbard that she is not giving him the house. What is Wilbard's legal position? (4)
- 6.2 Ronald is shopping at a bookshop and decides to buy a book. Just as the cashier is about to ring up the sale, Ronald decides that the book is too expensive and he tells the cashier that he has changed his mind. Is Ronald obliged to pay for the book? (2)
- 6.3 Simeon posts a letter in Cape Town on the 20th of May 2018, addressed to Basil in Windhoek, in which Simeon offers to sell to Basil three dozen bottles of a particular vintage wine for N\$ 3 000 cash. Answer the following questions:
- 6..3.1 Basil receives the letter in Windhoek on the 2nd of June 2018, but reads it on Sunday, the 4th of June 2018. Later that same day he calls Simeon to accept the offer. At the time of the call, Simeon was in Johannesburg for business. Decide when and where this contract was concluded and **motivate** your answer. (4)
- 6.3.2 Suppose in (6.3.2) above that Basil responds in writing and mails his letter of acceptance on Monday, 2018 and he reads it the same day. Decide when and where this contract was concluded and **motivate** your answer. (4)

6.3.3 Suppose in (b) above that Simeon dies on the 7th of June 2018, before he receives the letter from Basil and decide whether Basil can enforce the contract against Simeon's estate.

(1)

[15]

Grand Total: 100

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