



**PAMIBIA 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 512C	COURSE NAME: COMMERCIAL LAW 1 B
DATE: JULY 2025	MODE: PM
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION	
EXAMINER(S)	MRS. E WABOMBA
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ANSWER ALL QUESTIONS.

THIS QUESTION PAPER CONSISTS OF TEN 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. 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.
- 1.2. 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 empty.
 - E. None of the above.
- 1.3. 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.
- 1.4. 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 the extent to which it materialises.
 - D. In a contract of *emptio spei*, the purchaser must pay the price regardless of whether the expectation materialises or the extent to which it materialises, while in a contract of *emptio rei speratae* the price will only be paid to the extent to which the future expectation will materialise.
 - 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*.

- 1.5 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.
- 1.6 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. The merx is pointed out and made available to the purchaser because it is too large and too heavy to be physically handed over.
 - C. X sells her horse to Y. They agree that X will hire the horse from Y. The horse thus remains in X's possession.
 - 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.
- 1.7 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.
- 1.8 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.

- 1.9 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 In terms of Section 13 of the Credit Agreements Act 75 of 1980:
- 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 cooling off period is calculated by excluding the day on which the agreement is signed and any Saturday, Sunday and Public Holiday which falls within the period.
- 1.11 Which of the following pieces of legislation is not a recognized source of labour law in Namibia?
- A. Namibian Constitution, Act 1 of 1990
 - B. Social Security Act 34 of 1994
 - C. Affirmative Action Act 29 of 1998
 - D. Maintenance Act 9 of 2003
 - E. Employees' Compensation Act 30 of 1941 (as amended)
- 1.12 The *essentialia* of a contract of employment are:
- A. Nature of service, remuneration and safe working conditions
 - B. Nature of service and remuneration
 - C. Nature of service, remuneration and subordination to the employer
 - D. The employer has authority and control over the employee and will prescribe what, how and when the work should be done.
 - E. Nature of service, remuneration and employer will provide the tools to enable the employee to render the service.

- 1.13 Some of the general requirements for a valid contract of employment are:
- A. Consensus; Contractual Capacity; Performance must be Possible, and Lawfulness
 - B. Consensus; Parties must be identifiable; Performance must be Possible and Lawful
 - C. Consensus; Contractual Capacity; Performance must be Reasonable.
 - D. Consensus; Contractual Capacity; Services; Remuneration, Formalities.
 - E. Consensus; Contractual Capacity; Parties must identifiable, Services; Remuneration.
- 1.14 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 employer 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.
- 1.15 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/Sister in Law
- 1.16 In terms of Section 30 of the Labour Act 11 of 2007, the period of notice for an employee who worked for a period of 6 (six) months is:
- A. One Working Day
 - B. One month
 - C. One Week
 - D. One day including Saturday and Sunday
 - E. No notice required.

- 1.17 A girl may enter into a contract of employment to work as a prostitute without the consent of her legal guardians once she reaches the age of:
- A. 18 years.
 - B. 21 years
 - C. 30 years
 - D. 14 years.
 - E. None of the above.
- 1.18 The Landlord's Tacit hypothec for rental arrears is applicable to the following:
- A. Movable and Immovables
 - B. All movables excluding those things bought on credit
 - C. All movables brought onto the leased premises.
 - D. Only the lessee's property.
 - E. Degree of performance of the movable property on the premises.
- 1.19 Unless the parties expressly agreed otherwise, the implied duties of the lessor are the following. Choose the incorrect duty:
- A. Delivery of the thing
 - B. Maintenance
 - C. Rates and Taxes
 - D. Undisturbed use and enjoyment of the leased article
 - E. Payment of the utility expenses like water and electricity
- 1.20 The *Huur gaat voor koop* rule provides for:
- A. Security to the lessor if the lessee decides to terminate the lease agreement before the expiry date.
 - B. Security of tenure for lessee if lessor decides to sell property before expiry of the lease.
 - C. Protection to the lessee from latent defects on the property.
 - D. Rights of the lessor to sue the lessee for damaged property on the rented premises.
 - E. None of the above.

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, Mary sells her red Toyota car to Jack for N\$200.
- 2.2 John and Paul agree that John will buy Paul's Iphone 11 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\$2 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. In terms of the contract, Best Buy exempted itself from the guarantee against latent defects.

(Two marks each =10 marks total)

QUESTION 3

Briefly answer the following questions:

3.1 How is delivery of immovable property effected to a purchaser? (1)

3.2 The remedy known as the *actio empti* (claim for damages) is not always available to the purchaser in the event that the *merx* contains a latent defect. Name the instances in which a claim for damages will be allowed.

(3)

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

(2)

[6 Marks]

Question 4

Elizabeth's only source of income is that which is generated from baking cakes from a home bakery. She has an agreement with the owner of "Mugg and Bean" to deliver 50 fresh muffins each day. Elizabeth usually needs to bake the muffins until 04:00 in the morning in order to comply with her agreement.

Elizabeth orders all the eggs she needs for the baking from Tom, a poultry farmer.

One night at 24h00 Elizabeth discovers that all the eggs she bought that day from Tom were rotten and she was therefore unable to deliver her 50 muffins the next day. As a result, she lost the contract with Mugg and Bean.

4.1 Does Elizabeth have any claim against Tom, the poultry farmer? Explain.

(6)

4.2 Suppose the eggs were sold *voetstoots* and reconsider your answer in 4.1.

(3)

[9 Marks]

Question 5

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]

QUESTION 6

Decide whether the following statements are true or false and write either true or false in respect of each statement next to the respective question number. No motivation required.

6.1 Labour legislation is applicable to *locatio conductio operis*. (1)

6.2 A 17-year-old girl is not allowed to do night work. (1)

6.3 The Labour Act 11 of 2007 lays down minimum wages payable to all employees in Namibia. (1)

6.4 In order to qualify for maternity leave, a female employee must at least have completed 12 (twelve) months of continuous service in the employment of an employer. (1)

6.5 Section 26 of the Labour Act 11 of 2007 provides job security to an employee during the period that she is on maternity leave. (1)

[5 marks]

QUESTION 7

Answer the following short questions.

7.1 A contract of lease is distinguished by certain essentialia. Provide these essentialia. (3)

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

7.3 What are the requirements for the lessor's tacit hypothec over a lessee's possessions? (2)

7.4 Under which circumstances does the *Huur gaat voor koop* (Hire goes before sale) rule apply in respect of Short Leases and for how long? (4)

[10 Marks]

QUESTION 8

Tangeni is employed by Eagle Eye Security and is instructed by his employer to guard a house whilst the owners left for vacation. Around 03:00 in the early morning hours of 26 December 2021, Tangeni heard suspicious noises and decided to fire warning shots as he suspected a break in. At the same time, a motor vehicle was passing by the house, and the bullet accidentally hit the motor vehicle and instantly killed the driver. The other passengers were rushed to the hospital for treatment. Will the surviving passengers of the motor vehicle be able to institute an action against Eagle Eye Security for the actions of Tangeni? Motivate your answer.

(5)

[5 Marks]

QUESTION 9

Julio entered into a lease agreement with Esther about 5 years ago. It was agreed that Julio would rent Esther's 2 bedroom apartment in Eros for a rental amount of N\$ 7500 per month. During the 5 years period, Julio installed an alarm system as there were too many theft cases occurring in the neighbourhood. He also had interlocks put in the yard as he did not like the sand. He complained that the sand blew too much dust during the month of August each year. He did all of this without the consent of Esther.

Julio will soon be moving out of Esther's apartment as he recently bought his own house in Windhoek-West. Their rental agreement provided no clause relating to property improvements. He approaches you to advise him on the general rules applicable to a lessee's rights who has caused improvement to the rented property. What does he need to know should he wish to claim for compensation from Esther? (10)

[10 Marks]

TOTAL 100 MARKS