



**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 PAPER

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INSTRUCTIONS

1. Answer ALL the questions.
2. Write clearly and neatly.
3. Number the answers clearly.

**THIS QUESTION PAPER CONSISTS OF EIGHT PAGES (INCLUDING 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.

Only write the chosen letter next to the corresponding question number.

1.1 A contract will only be valid if:

- A The parties have reached agreement and have the necessary capacity to act.
- B Performance is possible at the time the contract is entered into.
- C The conclusion, object and performance of the contract are lawful.
- D Formalities (where required) have been complied with
- E All of the above options. (2)

1.2 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)

1.3 The following statement is true:

- A A *pupillus* is unable to conclude a contract on his/her own.
- B Spouses married in community of property have full contractual capacity for all contracts.
- C All persons who squander their money are prodigals and accordingly have limited contractual capacity.
- D A contract in restraint of trade is valid and enforceable even if it is contrary to public interest.
- E If performance of an obligation is objectively impossible at the time of the conclusion of the contract, the contract is void. (2)

1.4 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 One of the *naturalia* of a contract of purchase and sale in terms of which the seller will pay a penalty should he fail to deliver on time.
- D The performance in terms of the contract is unlawful; this rule would prevent them from instituting a claim based on unjust enrichment.
- E A *pupillus* presented himself as a major when entering into a contract without the assistance of his guardian. (2)

1.5 The following are clauses from a contract; indicate which one of the clauses is a penalty clause:

- A "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".
- B "Should the supplier fail to supply the goods on the dates as indicated in Annexure A, the supplier shall be liable for the payment of N\$ 500.00 (Five Hundred Namibia Dollars) for each day of non-delivery".
- C "The lessor shall be entitled to cancel the contract in the event of the lessee's failure to pay the rental due as stipulated in this Agreement".
- D "The purchaser guarantees that the motor vehicle is a 1990 model."
- E None of the above (2)

1.6 The parol evidence rule applies when:

- A A dispute arises between the parties concerning a written agreement.
- B A dispute arises between the parties concerning an oral agreement.
- C A dispute arises between the parties concerning the obligations of the contract, which the parties decide to replace with new obligations.
- D No dispute exists between the parties but the parties decide to substitute old obligations with new ones.
- E None of the above (2)

1.7 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)

1.8 Namibia Breweries pays the airfare of the Brave Warriors team to Botswana on condition that they win the match.

- A Suspensive Condition
- B Resolutive Time Clause
- C Resolutive Condition
- D Suspensive Time Clause
- E Warranty (2)

1.9 C hires D's car until D's death.

- A Suspensive Condition
- B Resolutive Time Clause
- C Resolutive Condition
- D Suspensive Time Clause
- E Warranty

1.10 X sells B's motorcycle to Z. X can not deliver the bicycle as B refuses to sell the said motorcycle to X.

- A Subjective impossibility of performance
- B Objective impossibility of performance
- C Supervening impossibility of performance
- D Objective possibility of performance
- E Unlawful contract (2)

1.11 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 s/he is not guilty.
- E In civil litigation, the party bearing the proof must prove his/her case beyond reasonable doubt. (2)

1.12 The originating source of Namibian law is:

- A Customary Law
- B Indigenous Law
- C Common Law
- D Case Law
- E None of the above (2)

1.13 The basic principles in terms of which disputes have to be heard are known as:

- A Reasonableness
- B Equality
- C Jurisdiction of the court
- D The rules of natural justice
- E *Pro bono* (2)

1.14 The following combination of criminal cases **can not** be adjudicated by the Magistrate's Court:

- A Murder, rape and high treason
- B Rape, robbery and culpable homicide
- C Rape, high treason and theft
- D All crimes where an accused can be sent for community service
- E Murder, culpable homicide, sedition (2)

1.15 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)

1.16 A mistake will render a contract void if:

- A The mistake is one of fact or legal rule or principle and material to the contract
- B The mistake is reasonable
- C It was not due to the own fault of the mistaken party
- D Neither one of the above
- E (a),(b) and (c) (2)

1.17 A right of pre-emption is:

- A A right one party obtains in order to accept or refuse the purchase of an item first.
- B A right acquired by a person in terms of a testament of another.
- C A right, which comes into existence because you have a certain period to decide to contract at a later date.
- D A right, which comes into existence on a certain future date.
- E None of the above. (2)

1.18 An offeror may freely withdraw his offer provided that it has not been accepted and provided the offeror is not bound to keep the offer open for a specified period. Such a withdrawal of an offer is known as:

- A An option
- B A waiver
- C Revocation
- D Expiry
- E Rejection (2)

1.19 In determining whether a contract has been concluded certain rules of offer and acceptance apply. Which of the following statements is false?

- A An offer may not be revoked before acceptance.
- B An offer is revoked by the death of the offeror or offeree or by a counter-offer.
- C Acceptance must be absolute and unqualified and it must be unequivocally conveyed to the offeror that it is so intended.
- D Acceptance must be in response to an offer.
- E All of the above. (2)

1.20 Which of the following suggests that there is no agreement between the parties?

- A A salesman tells a customer that the car that she is thinking of buying is a 2010 model, but it was actually made in 2009. The customer agrees to buy the car.
- B Fred puts a knife to Zanele's throat and demands that she sells her flat to him. Zanele signs the contract
- C Andile thinks that he might have employed the twin brother of the man he actually wanted to employ.
- D Shortly before an operation, a surgeon persuades one of her patients to sell her his computer at a greatly reduced price.
- E All the agreements are valid. (2)

[40]

QUESTION 2

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

- 2.1 Jack rents a house from Tom. Jack therefore has an obligation to pay rental to Tom. An agreement is entered into between Jack Tom and Peter in terms of which Jack's obligation is transferred to Peter. Tom and Peter enter into a new agreement. (2)
- 2.2 A local business gives Matthias money to pay for his studies provided that he passes all his subjects (2)
- 2.3 Best Banks employs and trains Ben, a computer programmer. In his employment contract a term is included to the effect that he will not work for a competing bank within two years of leaving his job with Best Bank. (2)
- 2.4 The contract stipulates that ABC Building Contractors would be liable to pay Ms. Applegreen N\$ 200 for each day that they are late in the completion of the project. (2)
- 2.5 Those terms of a contract the parties specifically agreed upon over and above those required by law. (2)

[10]

QUESTION 3

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

- 3.1 An *infans* can conclude a contract with the assistance of his/her guardian. (2)
- 3.2 A minor over the age of seven has full contractual capacity for certain types of transactions. (2)
- 3.3 A person who has been declared insane has no contractual capacity at all times. (2)
- 3.4 A voidable contract is neither valid nor void. (2)
- 3.5 Where a minor, after obtaining majority, continues to use an article, which he purported to purchase during his minority, as his own, or indicates otherwise by his actions an intention to be bound, is known as *Estoppel* (2)

[10]

QUESTION 4

Ms Nel posts a letter to BA (Pty) Ltd with an offer to buy 1000 shares in the company. The directors agreed, and a letter informing her that the company would allocate the shares was posted in return. After they posted their letter of acceptance, but before she received their letter, she informs the company telephonically that she revokes the offer. Discuss the legal position of the parties.

[5]

QUESTION 5

Hanri has a contract for one year with "Green Fingers Gardening" service. In June, she is having her house extended, and the garden will be under rubble for the rest of the year. Since she can no longer benefit from the contract, she transfers her rights to her neighbour, Jack, whose garden is similar to hers. Discuss the legal concept. [5]

QUESTION 6

Give a word or phrase for each of the following:

- 6.1 “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)
- 6.2 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)
- 6.3 Those terms of a contract which the law provides as necessary to place a contract in a certain category of contract. (2)
- 6.4 C and D incorporate into their lease agreement a clause that if for whatever reason D is late in paying rent, C is entitled to cancel the contract. (2)
- 6.5 An insurer may agree with the insured to pay the proceeds of the insured’s life policy to the insured’s wife on his death. (2)

[10]

.QUESTION 7

- 7.1 Derek and Meredith are married in community of property since 2 December 2010. Discuss whether Meredith requires Derek’s consent when concluding the following transactions:
- 7.1.1 Buying groceries for their household on credit. (2)
- 7.1.2 Entering into a contract for mortgaging of their house registered in her name. (2)
- 7.13 Selling the six cattle she inherited from her mother in 1988. (1)

[5]

QUESTION 8

X owes Y N\$ 1000. X transfers this obligation to pay this debt to Z. Therefore Z becomes liable for this debt. Discuss this form of transfer. [5]

QUESTION 9

On the 1st of March 2020 “Happy Liquor Store”, Swakopmund, was sold to a new owner, Mr. Hoffmann. The purchase price is N\$ 250 000, inclusive of the fixtures and fittings, liquor licence and goodwill of the business. At the time of sale, the main business of “Happy Liquor Store” was the selling of liquor. In the contract of purchase and sale the following clause was included:

“The SELLER hereby undertakes and guarantees in favour of the PURCHASER that for a period of 3 (three) years after the effective date, neither he nor his present or future spouse shall in any way in the Municipal area of Swakopmund, collectively or individually, either as principal, agent, partner, representative, shareholder, director, employee, consultant, advisor, financier, or in any other capacity, directly or indirectly be associated with or concerned with, interested or engaged in or interest themselves in any firm, business, company undertaking or other association of persons which carries on the business of a Bottle Store or which in any way competes with a business as constituted at the effective date, except insofar as the SELLER may be employed by the PURCHASER and for purposes of such employment only.”

Approximately one year after the effective date of the aforementioned sale, the seller opened a shop called “Jamaican Inn” and started selling imported liquor products in the centre of the town of Swakopmund.

You are approached by Mr. Hoffmann for legal advice. He specifically wants to know whether there is a way to close down “Jamaican Inn”. [10]