



**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 A
DATE: NOVEMBER 2023	MODE: PM
DURATION: 2 HOURS	MARKS: 100

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

INSTRUCTIONS
<ol style="list-style-type: none">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 8 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. [20]

- 1.1 The supreme law of Namibia is:
- A. Common law
 - B. Legislation
 - C. Constitution of the Republic of Namibia
 - D. Judicial precedents
 - E. Ratio decidendi
- 1.2 The jurisdiction of a court is:
- A. The authority it has to hear and decide cases presented before it.
 - B. The power to ensure compliance with the law.
 - C. To maintain peace and order within a specified community.
 - D. Determined by the seniority of the presiding officer.
 - E. None of the above.
- 1.3 The following combination of criminal cases cannot 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, sodomy.
- 1.4 The burden of proof in a criminal case rests on:
- A. The accused
 - B. The State
 - C. The Defendant
 - D. The Prosecutor General
 - E. The legal practitioner
- 1.5 A contract will only be valid if?
- A. The parties have reached agreement and gave the necessary capacity to act.
 - B. Performance is possible at the time the contract is entered into.
 - C. The nature of transaction is lawful.
 - D. Formalities (where required) have been complied with.
 - E. All of the above

- 1.6 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 must come into existence on a certain future date.
 - E. None of the above
- 1.7 The general rule that consensus is reached at the time when, and the place where, the acceptance comes to the knowledge of the offeror is known as:
- A. The information theory.
 - B. The declaration theory.
 - C. The reception theory.
 - D. The expedition theory.
 - E. The communication theory.
- 1.8 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. Locus contractus
 - E. Rejection
- 1.9 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.
 - E. None of the above.
- 1.10 Thomas, aged 16, concludes a contract without the assistance of his guardian. At the time of entering into the contract, he tells the other party that he is 20 years old. He then refused to perform under the contract, saying that he is not bound by it because his guardian didn't assist him at the time of the agreement. Which of the following statements about the rights of the other party is the most correct?
- A. The other party can rely on the contract, because the contract is still binding on him.
 - B. The other party can rely on the non-contractual ground of estoppel, because Thomas was fraudulent in lying about his age.
 - C. The other party has no claim against Thomas based on the contract, because the fact that he lied about his age doesn't change the fact that he is a minor and therefore needs the assistance of his guardian to enter into a binding contract.
 - D. All of the above.

E. None of the above.

1.11 A mistake will render a contract void if:

- A The mistake is one of
- B The mistake is reasonable
- C It was not due to the own fault of mistaken party
- D Neither of the above
- E (a), (b) and (c)

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 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)

1.14 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)

1.15 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)

1.16 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)

- 1.17 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)
- 1.18 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)
- 1.19 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 (2)
- 1.20 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 None of the above

[Two marks each = 40 Marks]

QUESTION 2

Decide whether a valid offer was made in each of the following circumstances with a YES or NO. Provide a reason for your answer.

- 2.1 Helena offered her car for sale to Daniel, but says they can agree on the price at a later stage. (2)
- 2.2 Woolworths advertises as follows "All women's leather jackets available for N\$ 800 while stock lasts". (2)
- 2.3 David writes a letter to Maria containing an offer to buy his bicycle for N\$ 600. The letter never reaches Maria. (2)
- 2.4 Katrina places an advert on Facebook that she offers a reward of N\$ 500 for whoever finds her missing dog. (2)
- 2.5 Mustafa makes an offer to Jason to sell his Golf GTI for only N\$ 80 000. Tom decides to accept the offer. Can Tom rely on the offer made by Mustafa to Jason? (2)

[10 Marks]

QUESTION 3

Answer the following short questions.

- 3.1 When and where are written agreements deemed to have been concluded? [1]
- 3.2 Explain the contractual capacity of a person married in community of property. [2]
- 3.3 List the ways in which a minor can attain full contractual capacity. [3]
- 3.4 What must a mistaken party prove should he wish for the contract he mistakenly entered into to be declared void? [3]
- 3.5 Can an unrehabilitated insolvent person enter into valid a marriage contract without the consent of a trustee? [1]

[10 Marks]

QUESTION 4

Sam intends on opening a small printing shop in Maerua Mall. He approaches John who is known to sell affordable printing machines and asks for a printing machine that can print in colour and scan documents. John informs Sam that he has an EPSON printing machine currently on sale for N\$ 6000, stating that it can print both in colour and scan documents, without verifying this information. Sam decides to buy the printing machine and later realises that the machine can only print in black and white and does not scan documents.

Advise Sam whether he has any legal basis to put in a claim against the seller, John. Discuss this legal basis in detail.

[10]

QUESTION 5

Give a word or phrase for each of the following:

- 5.1 "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)
- 5.2 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)
- 5.3 Those terms of a contract which the law provides as necessary to place a contract in a certain category of contract. (2)
- 5.4 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)
- 5.5 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 6

6.1 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:

- 6.1.1 Buying groceries for their household on credit. (2)
- 6.1.2 Entering into a contract for mortgaging of their house registered in her name. (2)
- 6.1.3 Selling the six cattle she inherited from her mother in 1988. (1)
- [5]

QUESTION 7

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 8

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]