



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

HAROLD PUPKEWITZ GRADUATE SCHOOL OF BUSINESS

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DURATION: 2 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION QUESTION PAPER	
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INSTRUCTIONS
1. This paper consists of 7 (seven) questions. 2. All questions are compulsory. 3. <u>All questions must be answered in your Examination Book</u> 4. Read all questions carefully before answering. 5. Incorrect spelling and illegible handwriting may prevent mark allocation.

PERMISSIBLE MATERIALS

None

THIS QUESTION PAPER CONSISTS OF 9 PAGES (Including 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 x 2 = 40 marks]

1.1 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.

1.2 The originating source of the Law in Namibia which is mainly Roman-Dutch and English Law is called:

- A. Custom Law
- B. Customary Law
- C. Old Authorities
- D. Common Law
- E. Formal Source

1.3 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, however, decisions of the Lower Courts are not binding.
- E. A system whereby a magistrate will refer the matter to a higher court if the matter involves more than one plaintiff.

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
- E. None of the above

1.5 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.

1.6 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

1.7 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

1.8 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.

1.9 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

1.10 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 this is known as:

- A. Ramification
- B. Rectification
- C. Ratification
- D. Estoppel
- E. None of the above.

1.11 Which of the following would make a contract voidable?

- A. Mistake, illegality and duress
- B. Duress, misrepresentation and undue influence
- C. Misrepresentation, mistake and duress
- D. Illegality, duress and undue influence
- E. None of the above.

1.12 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. An antenuptial contract is valid if concluded orally.
- E. None of the above.

1.13 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.

1.14 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. None of the above.

1.15 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

1.16 X sells B's motorcycle to Z. X cannot 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

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. Breach of contract
- B. Cession
- C. Delegation
- D. Compromise
- E. 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.
- E. None of the above.

1.19 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

1.20 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

[20 x 2 = 40 Marks]

QUESTION 2

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 in your examination book. No motivation required. (10 Marks)

- 2.1 All contracts in our law must always be in writing to be valid. (2)
- 2.2 An original offer will not lapse when an offeree makes a counter-offer. (2)
- 2.3 A contract that was induced by a false statement made negligently is innocent misrepresentation. (2)
- 2.4 An advertisement is a valid offer. (2)
- 2.5 Eric buys a new vehicle because of his mistaken belief that his old vehicle has broken down. This type of mistake excludes consensus. (2)

[5 x 2= 10 Marks]

QUESTION 3

Identify the contractual term applicable to the following scenarios:

- 3.1 “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)
- 3.2 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)
- 3.3 Those terms of a contract which the law provides as necessary to place a contract in a certain category of contract. (2)
- 3.4 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)
- 3.5 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)

[5 x 2 =10 Marks]

QUESTION 4

Answer the following short questions:

4.1 What must a mistaken party prove should he wish for the contract he mistakenly entered into to be declared void? (3)

4.2 What does a jurisdiction clause provide for in a contract? (2)

4.3 What are the duties of the agent in an agency agreement? (4)

4.4. What is the period of prescription in respect of any debt secured by a mortgage bond? (1)

[10 Marks]

QUESTION 5

Maria (a single *pupillus*) entered into a contract with Hi-Fi Corp for the purchase of a laptop worth N\$ 6000. She was 17 years old. During the negotiations, the salesperson of H-Fi Corp asked Maria how old she was and what she was doing for a living. Maria replied that she was 22 years old and employed at the University of Science and Technology as an IT technician.

The parties agreed that the laptop would be delivered immediately and that Maria would pay the full purchase price at the end of the month when she receives her bonus. Maria failed to pay the purchase price as agreed.

5.1 Is there a valid contract between the parties? Motivate your answer. (2)

5.2 Discuss the legal position of HI-Fi Corp. (3)

5.3 Name the three (3) ways in which a minor can obtain majority. (3)

5.4 Explain the contractual capacity of Maria if she was married in community of property. (2)

[10 Marks]

QUESTION 6

Distinguish Cession from Delegation.

[10 Marks]

QUESTION 7

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

7.1 Andy undertakes to marry Betty on 15 November 2022 but married Cathy on 10 November 2022. (2)

7.2 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. (2)

7.3 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. (2)

7.4 ABC Company 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. (2)

7.5 On 1 June 2022 Claudia bought a brand new Toyota Yaris from Tip Top Car Dealers. The parties have not agreed on a date for delivery of the vehicle, however, by 10 June 2022 the vehicle had not yet been delivered. (2)

[5 x 2 = 10 Marks]

[Total 100 Marks]