



**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

SECOND 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 7 PAGES (EXCLUDING 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 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 Namibian law is:

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

1.3 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

1.4 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

- 1.5 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
- 1.6 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)
- 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 comes into existence on a certain future date.
 - (E) None of the above.
- 1.8 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

- 1.9 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.
- 1.10 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.
- 1.11 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.
- 1.12 Which of the following courts create judicial precedent?
- (A) Regional Courts
 - (B) Magistrate's courts
 - (C) Chief's and headmen's courts
 - (D) Community courts
 - (E) None of the above
- 1.13 The burden of proof in a civil case rests on:
- (A) The accused
 - (B) The Defendant
 - (C) The State
 - (D) The Plaintiff
 - (E) The legal practitioner

- 1.14 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.
- 1.15 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.
- 1.16 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
- 1.17 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.
- 1.18 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.
- 1.19 A contract with a clause stating that should either party breach the contract, the innocent party would be entitled to cancel the contract, is known as:
- (A) A warranty
 - (B) A lex commissoria
 - (C) A stipulatio alteri
 - (D) Agency
 - (E) An entrenchment clause
- 1.20 Emma owes Ben N\$ 400. Ben says that Emma must wash his clothes for the next 6 months instead of payment of the debt. Emma agrees. This legal concept is known as:
- (A) Breach of contract
 - (B) Cession
 - (C) Set-off
 - (D) Compromise
 - (E) Novation

(TWO MARKS EACH =40)

[40]

QUESTION 2

Decide whether consensus was reached in each of the following situations **and** briefly motivate your answer.

- 2.1 Desmond wants to buy Ella's TV set. Although Ella knows that the TV is 20 years old and does not function properly, she tells Desmond that it is practically new and that it performs excellently. Based on what she tells him, Desmond buys the TV. (2)
- 2.2 A traditional healer tells his patient, Sammy, that he should give him all his cattle in order to be cured of AIDS. Sammy agrees. (2)
- 2.3 Patsy offered her car for sale to Simon for N\$ 10 000. Simon says that he'll buy it for N\$ 8 000. (2)
- 2.4 S agrees to sell a racehorse to P for N\$200 000, both parties believing the horse to be a racehorse, whereas it is, in fact, a carthorse. (2)
- 2.5 Jakes specified in his offer that Donald must respond on or before the 12th of February 2022. Donald accepts the offer on the 14th of February 2022. (2)

[5 x 2 = 10 Marks]

QUESTION 3

- 3.1 Name the two elements of consensus. (2)
- 3.2 Neville, a seller of semi-precious stones enters into a contract for the selling of stones worth N\$ 20 000 with a buyer in South Africa, a certain Mr. Louw. The buyer accepted the offer telephonically on the 1st of March 2022, phoning from Cape Town, South Africa, while the seller had been in Namibia at the time. The selling of semi-precious stones was illegal in terms of South African law, but legal in terms of Namibian law. Discuss the legality of this contract. (4)
- 3.2 Suppose in 3.1 above that the parties have agreed that the agreement would only be binding once it is reduced to writing and signed by the respective parties. Neville signs the agreement in Windhoek on 1 March 2022 and sends it by courier to Mr. Louw who signs it on 11 March 2022 in Cape Town. Reconsider your answer. (4)

[10]

QUESTION 4

Fred is the owner of a farm in the Outjo district in Namibia for the last 20 years. He decided to retire and to sell the farm. There is a large graveyard on the property near the house. Thinking that this would scare potential buyers off, he took extreme steps to hide all traces of a graveyard. He sold the farm to John. After two months, John ploughed up the ground to make a vegetable garden for his wife and he found the graveyard.

Advise John whether he has any claim against the seller, Fred.

[10]

QUESTION 5

Give a legal terminology for each of the following:

- 5.1 An unlawful act or omission that causes harm to the person, property or personality of another. (2)
- 5.2 A contract that is binding on both parties, but one of the parties has the option to set it aside (cancel), but, until s/he does so, it remains valid and enforceable. (2)
- 5.3 A right which one party obtains when concluding an agreement with another (grantor) in terms of which the grantor, in the event that he decides to sell a specific thing, must first offer it to the holder of the said right. (2)
- 5.4 Improper, unfair conduct by one contracting party that weakened the powers of resistance of the other contracting party and persuaded the latter to conclude the contract. (2)
- 5.5 A situation where the guardian allows the *pupillus* to lead an economically separate life. (2)

[5 x 2 = 10 Marks]

QUESTION 6

Decide whether the following contracts are subject to a condition or time clause. Also indicate whether it has a suspensive or resolutive effect.

- 6.1. A (father) gives a motor vehicle to B (his son) on condition that he passes his first year at NUST. (2)
- 6.2. A (father) and B (son) agree that A will purchase a motor vehicle for B if he passes his first year at NUST. (2)
- 6.3. C hires D's car until D's death. (2)
- 6.4. E can work as a waiter in F's restaurant until the end of June 2023. (2)
- 6.5. Harry can borrow Tom's umbrella as soon as it rains again in Windhoek. (2)

[5 x 2 = 10 marks]

QUESTION 7

Daniel and Sara are married in community of property and own a farm in the Grootfontein area. Whilst visiting Otjiwarongo, Daniel decides to purchase a ploughing tractor from John Deere Tractors for N\$ 85 000, without consulting his wife, Sara. A few weeks later, Daniel starts regretting his decision. He decided to take the tractor back to John Deere and demands his N\$ 85 000 back claiming that the contract entered into is void because he never consulted his wife.

In your opinion, is the contract indeed void? Please motivate your answer. **[5 Marks]**

QUESTION 8

X owes Y N\$ 850. X transfers this obligation to pay this debt to Z. Therefore Z becomes liable for this debt. Discuss this form of transfer.

[5 Marks]

TOTAL MARKS 100