

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 12 NOVEMBER 2020 **TIME:** 09:00-13:15

TOTAL: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of four hours then follows.

NOTES:

1. CANDIDATES are required to answer all questions.
2. CANDIDATES must write on ONE SIDE of the paper only.
3. CANDIDATES must commence each question on a fresh sheet of paper, giving the question number on the top left and his or her examination number on the top right hand side of the sheet, e g:

NOTARIAL EXAMINATION QUESTION 1 60831/09
--

Should you answer to any question comprise more than one sheet, subsequent sheets must be numbered consecutively and must also bear the question number and your examination number, e g:

QUESTION 1 PAGE 2 60831/09 (Continued)
--

4. Where all details for deeds office purposes are not provided, CANDIDATES are required to draw on their imagination to provide the missing information.
5. As four hours are being allowed for this paper candidates will be expected to draft the deeds and other documents in so far as is required of them accurately.
6. Except if a special reason exists, a candidate will not be required to do an oral if 50% or more is attained. If a candidate achieves an aggregate of between 40% and 49% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this examination.

QUESTION 1**[8]**

- 1.1 You are consulted by Mary Seller whose husband to whom she is married out of community of property, Mark Seller, is currently working offshore in Chile on an oil rig. He sold his property in Ottery, Cape Town but prior to signing the transfer documents had to leave urgently to Chile. The transfer date is looming and the transfer documents need to be signed. Mark Seller gets leave to the mainland every two weeks. Mary also informs you that she is required to attend to the signing of various other documents on Mark's behalf.
- a) What document/s would be required to enable Mary to attend to the various functions generally and more specifically relating to the property on Mark's behalf? (1)
- b) What procedure would need to be followed to lodge this document at the Deeds Office? There is no South African Embassy in Chile but Chile is a member of the Hague Convention. (4)
- 1.2 Mark left his identity document in South Africa and the Human Resources officer at his employment requires a copy thereof. Mary has the original and asks you to certify a copy thereof for use in Chile. Prepare the certificate. (3)

QUESTION 2**[12]**

You are consulted by Thomas Modise and Jane Simpson who have been in a permanent relationship for 20 years. They jointly own a property being Erf 123 Cape Town which is their home and from which Jane together with their daughter Thandi, run a Doggie Day care business.

They wish to leave the property on the death of the first dying to their daughter, Thandi, on condition that the survivor may continue to reside in the cottage on the property.

The remainder of the estate of the first dying will devolve upon the survivor of them. In addition, Jane wants Thandi to have a usufruct for a period of five years, over her investment of R1 million rand held in a money market account with Investment Bank to assist with the cash flow of the Doggie Day care business.

They have requested you to draft a joint will.

- 2.1 Draft the clauses of the will dealing with the property, the usufruct and the rest and residue. (6)
- 2.2 Discuss the estate duty implications of the bequest by Thomas to Jane of the residue of the estate. (2)
- 2.3 Jane is involved in a serious car accident before signing the will and is unable to write or make a mark while she is in hospital, as she is in a full body cast. She is however conscious and able to verbally communicate her wishes. The parties wish to sign the will immediately. Discuss the manner in which Jane will execute the will. (4)

QUESTION 3**[20]**

James Farmer, who is married to Sharon, which marriage is governed by the laws of the Netherlands, is the lessee of a farm being Farm Weltevreden in Phillipi, in the City of Cape Town, Province of the Western Cape. The lease was entered into for a period of 20 years. The notarial agreement of lease has been registered at the Deeds Office, Cape Town. The farm, which measures 1000 hectares, consists of 600 hectares of arable land on which James is currently farming organic vegetables. The other 400 hectares is suitable for grazing and he has been experimenting with organic milk products. He uses this portion of the farm to graze his cows.

The vegetable farming has been very successful and James is unable to give sufficient attention to his dairy business. John Bull married out of community of property to Anna Bull, a dairy farmer is interested in leasing the portion of the farm suitable for grazing, for the remaining period of the lease (15 years) at a rental of R45 000,00 plus VAT per month, and which rental will escalate at the rate of 8% per annum. John Bull wishes to acquire a real right for the lease period.

- 3.1 Draft the necessary document. (15)
- 3.2 Is it necessary for the lease to be registered in the Deeds Office? If so, list the documents that are required to be lodged. (3)
- 3.3 The original lease has a mortgage bond registered over it in favour of Bigbucks Bank Ltd. What permission, if any, is required from the bank? Set out the procedure to have this noted. (2)

QUESTION 4**[20]**

Freight Forwarding Company (Pty) Limited conducts a freight business throughout South Africa as well as into the neighbouring countries. It owns and uses a fleet of 36 long-haul trucks. Freight Forwarding Company obtained funding from African Bank, which enabled it to purchase the long-haul trucks.

As security for repayment of the said loan a Notarial Bond BN 6876/2020 was registered in the Deeds Office Pretoria, pledging specially the 36 long-haul trucks. Freight Forwarding Company wishes to sell five of the said trucks and has offered to replace the said five trucks with three new Volvo trucks it recently purchased. African Bank has consented to the release from the existing Notarial Bond of the five trucks but requires that they be substituted.

Draft the document(s) necessary to release the existing vehicles and to bring the replacement vehicles into the bank's security (use your own particulars).

QUESTION 5**[10]**

Rachael Johnston, a widow, died on 16th December 2011. In terms of her last will and testament dated 17 May 2003 she bequeathed her immovable property to her grandson Timothy Pause (born 10 January 2004). The said property is to be held in trust until he attains the age of 21 years. The said bequest is made subject to the condition that the deceased's daughter Karen Johnston is allowed to live in the outbuilding as long as she

desires. The deceased has also directed that all bequests are excluded from any marriages in community of property which her heirs have entered into or may in the future enter into. Karen Johnston is divorced. Rachael Johnston appointed her attorney Jack Spratt as the executor of her estate. The nett value of her estate is R150 000, 00. The Master has issued letters of authority in favour of Jack Spratt under estate number 4567/2011.

Draw the notarial deed to give effect to the deceased's wishes.

QUESTION 6 **[10]**

Your client is a trustee of a discretionary family trust, of which his wife and three children are the capital beneficiaries. Having sold a property some years ago, the trust has cash reserves of R2 million. His daughter wishes to further her studies in the USA, and he intends distributing an amount of R1 million to her to see her on her way.

- 6.1 Will such a distribution attract donations tax? (1)
- 6.2 What are the rates of donations tax? (2)
- 6.3 Name five instances where donations tax will be exempted. (5)
- 6.4 Who is liable to pay donations tax? (2)

QUESTION 7 **[10]**

You are consulted by John Smith, who tells you that his minor daughter, Elizabeth, is engaged to be married to Kabelo Mokoena. He needs her to be protected in an Antenuptial Contract, and believes that the Accrual system should apply.

Elizabeth is a beneficiary of the Smith Family Trust, on which John does not want her husband-to-be to have any say. She also owns a share portfolio and a sectional title unit, which she has inherited from her grandmother. Kabelo, for his part, owns a motor vehicle and a house in Rayton.

The parties want to get married next week, before the birth of their child, and you are advised that they are unaware of the value of their respective estates and will only be able to ascertain that after their wedding. They however wish for everything they own to be listed and excluded from the accrual system.

Draft the contract for signature and registration.

QUESTION 8 **[10]**

- 8.1 Can a company pass a surety bond for the purchase of its shares in favour of an institution which has lent the purchaser the funds for the purchase of the shares? (5)
- 8.2 You act for a number of clients including A and B, who have entrusted you with sums of money for investments on their behalf. In the course of your investment mandate you have lent C R100 000, 00 of A's money. As security C has passed

a notarial bond in favour of your client B. You discovered this error on your part after the bond was released to you by the Deeds Office. How would you rectify the error? Give brief reasons for your answer? (2)

8.3 Michael Brown, a bachelor aged seventeen (17) years, is to pass a notarial bond in favour of a client of yours to secure a loan made to him by that client to enable him to purchase a motor car. The bond is being passed over the motor car in question. Describe the Mortgagor in the bond and advise whether any document(s) are required in order to register the notarial bond. (1)

8.4. What would your response, as a Notary, be to the following instructions / requests?

To include provisions in a Notarial Bond in terms of which upon default by the debtor:

- the bonded assets may be taken over by the creditor; and
- the bonded assets may be sold at public auction without attachment by the creditor. (2)



LAW SOCIETY
OF SOUTH AFRICA

- THE END -
