

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 2 SEPTEMBER 2021 **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:

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(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 a score from 40% and below 50% 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**[10]**

- 1.1 Jack Fish and Petunia Chips attended at the office of a Notary to execute an antenuptial contract on 12 December 2012. On 4 April 2021 Petunia Chips files for divorce and is advised by her attorney that their antenuptial contract was never registered at the Deeds Office. What is the effect of an unregistered antenuptial contract to their marriage? (2)
- 1.2 If (the said) parties were married out of community of property with the application of the accrual system and have now filed for divorce, what will be the date for determination of any such accrual? (3)
- 1.3 You are approached by Mr and Mrs Zoom who inform you that they are married out of community of property. On performing the deeds search you realise that their surname is spelt incorrectly as Zuma. The parties inform you that they have lost their original copy of the antenuptial contract. Explain how you will assist the Zooms to ensure that their surname is captured correctly in the Deeds Office. (2)
- 1.4 What additional documents (if any) should be lodged with the Deeds Office by the notary when submitting an antenuptial contract for registration in the following cases:
- 1.4.1 Where the contract contains a donation of immovable property.
- 1.4.2 Where the one signatory is a minor assisted by her adoptive parents.
- 1.4.3 Where the contract, executed before date of marriage, is only lodged for registration after date of marriage. (3)

QUESTION 2**[20]**

- 2.1 Peter John, who has entered into a Civil Union and is married to his partner, Robin Scott, together are the registered owners of Portion 33 (a portion of Portion 74) of the Farm Joostenbergvlakte 597.

Mary Jane Smith, aged 17, has inherited the adjacent farm from her late father. Her mother has survived her father. Mary Jane and her mother Christine continue to reside on the farm and are intending to continue with her late father's business of sheep farming. They however require additional grazing fields. Mary Jane and her mother approach Peter John and negotiate the lease of 6 Hectares of Peter John and Robin Scott's farm for a period of 20 years in order to provide additional grazing land for their sheep farming business.

There are no bonds registered over Peter John and Robin Scott's farm.

- 2.1.1 On the assumption that all relevant approvals are in place, draw the lease agreement for lodgement in the Deeds Office. Add such relevant information as is deemed necessary for the essential requirements for the long term lease. You may give the terms and conditions in point form. (13)
- 2.1.2 What documents will you need to lodge in the Deeds Office? (5)

- 2.2 Seven years later, Mary Jane who is now married with five children, approaches Peter John to advise that her mother too has now passed on. She and her husband have decided to sell the farm and move to the city with their five children. Peter John does not want to continue leasing a portion of his farm to the new owners.

What steps would Peter John need to take in order to ensure that he can deal with his farm free of the lease? (2)

QUESTION 3

[27]

- 3.1 Nadia Essa married Enver Parker before a registered imam in 2015 without an antenuptial contract having been registered. Nadia subsequently bound herself as surety and co-principal debtor *in solidum* to Money Talks Limited as security for the repayment of a loan in the amount of R1 000 000 from the Financier to Joan Harris, an attorney married in community of property and operating from Cape Town and Durban.

Nadia requires Joan to compensate her for any loss which may arise in the event of Nadia having to make any payment resulting from her underwriting the debt. The parties agree that Joan will use her motor vehicle and boat, which assets she inherited from her father subject thereto that it be excluded from any community of property, as security for the equivalent of the loan amount.

Draft the notarial deed with ancillary clauses given in point form. (15)

- 3.2 What is the difference between a special notarial bond and a general notarial bond and which of the two provides the better security and why? (3)

- 3.3 Can the following assets be hypothecated under a notarial bond?:

3.3.1 Liquor licence; (1)

3.3.2 Existing crop; (1)

3.3.3 Aircraft; (1)

3.3.4 Registered short-term lease; (1)

3.3.5 Ship. (1)

- 3.4 What are the requirements of a collateral Notarial Bond? (4)

QUESTION 4

[20]

- 4.1 Peter Brown and Hillary Brown who entered into an antenuptial contract before their marriage owns Erf 123 Hout Bay in equal shares. Peter wishes to transfer his share in the property to Hillary without Hillary having to compensate him for receiving his share of the asset on condition that Hillary is liable for any tax that may be levied by SARS. Hillary is in agreement with this. The value of the whole property is R1 900 000.

Draft the deed to give effect to Peter's wishes. (15)

- 4.2 What taxes should the parties consider may be levied by SARS and how would you advise them it would be calculated? (5)

QUESTION 5

[10]

Your client owns a holiday home in Zimbali. His golfing buddy has advised him to sell the property to your client's family trust, with the purchase consideration then being credited to the seller on an interest-free loan account in the books of the trust. The value of the property is R10 million. Discuss the anti-avoidance measures for a transaction of this nature contained in the Income Tax Act 58 of 1962, the reasoning behind the measures, and the practical application thereof. Would it make any difference if he donates the property to his spouse, who is a beneficiary of the trust, and she then makes the interest-free loan? Provide your calculations to illustrate.

QUESTION 6

[13]

Fancysteps (Pty) Ltd owns Erf 1068 Pretoria, upon which it intends constructing and operating an entertainment venue with ice rink. The City of Tshwane Municipality refuses to grant Fancysteps (Pty) Ltd the right to operate the ice rink on the property, as the design of the ice rink and the size of the property would not allow for sufficient parking.

Jonathan Butler, sole director of Fancysteps (Pty) Ltd, owns an undeveloped property diagonally across the road from Erf 1068, registered in his personal name. He is prepared to make this property available for purposes of parking, but does not want to relinquish ownership thereof, as he sees an opportunity to generate income in his personal name. The municipality is prepared to accept this arrangement, as long as the properties are linked to be operated as one, and not merely by way of a servitude, or long-term lease.

Prepare the document that you as notary would have registered to protect all parties' interests.

- THE END -
