

# THE REPUBLIC OF SOUTH AFRICA

## NOTARIAL PRACTICE EXAMINATION

**DATE:** 8 SEPTEMBER 2022      **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:

<b>NOTARIAL EXAMINATION</b>		
<b>QUESTION 1</b>		<b>60831/22</b>

Should your 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:

	<b>PAGE 2</b>	
<b>QUESTION 1</b>		<b>60831/22 (Continued)</b>

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****[6]**

Your client, Pierre Champagne, is currently working in France as an engineer on contract for six months. He was born in France but immigrated to South Africa as a child together with his parents. He has met a French girl whom he wishes to marry. The marriage will take place in France within the next few weeks. They intend to return to South Africa once his contract has ended.

He would like the marriage to be out of community of property and of profit and loss and to be subject to the accrual system contained in Act No. 88 of 1984. He has sought legal advice in France and has been advised that under French Law, his proposed marriage would in any event be out of community of property and subject to provisions in France which are similar to the accrual system and that it is therefore not necessary for the couple to enter into an antenuptial contract.

How would you advise Pierre? If you think that an antenuptial contract is necessary, what steps should be taken for its execution and registration?

**QUESTION 2****[10]**

Let us assume that an antenuptial contract is required under the facts in Question 1. Draft the antenuptial contract with the application of the accrual. Your client does not have all his investment information at hand and has asked if he can declare his commencement value in a subsequent document.

He belongs to the Church of Scientology and has asked you to put the following provisions in the antenuptial contract:

- The accrual system is applicable on condition that the marriage lasts for a period of three years or until a child is born, whichever event occurs first;
- The accrual system is applicable on condition that his fiancé converts to his religion;

His fiancé, Emily, inherited a large estate comprising a villa in the South of France and a valuable collection of jewellery from her grandmother a year ago. She wishes to exclude this from the operation of the accrual.

**QUESTION 3****[15]**

Your client, Khayamanzi (Pty) Ltd., is the developer of the sectional scheme Seshlahla SS 976/2020. It intended to develop the scheme in phases, and has reserved for itself the Right to Extend SK 2099/2020. The sole shareholder and director of the company is Benjamin Sehloho. The first phase of the development, consisting of 10 units, has been sold out, but for one unit which Benjamin wants to retain as his private residence. The units are all identical and have been selling for R1 368 000 each. Khayamanzi has been able to settle its development bond, and owes Benjamin R570 000 on loan account. Another developer, Khutsong (Pty) Ltd., has now expressed interest in acquiring the right to erect the second phase of 10 units as held by SK 2099/2020. They have indicated that they will be willing to purchase either the real right, or Benjamin's shares in Khayamanzi. Benjamin is considering to first transfer the remaining unit to himself at a consideration equal to and in settlement of his loan account.

- 3.1 Discuss the VAT and/or transfer duty that will be payable in respect of the transfer of the remaining unit from Khayamanzi to Benjamin, who is not a VAT vendor. (5)
- 3.2 Discuss the VAT and/or transfer duty implications should Khutsong and Khayamanzi come to an agreement that the Right to Extend thereafter be sold to Khutsong for a purchase price of R2 million nett. It is further agreed that the purchaser will immediately pay R1,5 million to the attorneys' trust account, to be paid to the seller upon transfer, and R500 000 on the last day of the second month following transfer, directly to the seller. Khayamanzi accounts for VAT on a monthly basis. Would it be possible to and make a difference should the sale be structured as one of a going concern? (5)
- 3.3 Discuss the transfer taxes that would be payable should the parties decide to rather structure the transaction as a sale of Benjamin's shares in Khayamanzi to Khutsong, upon the same terms as in Question 3.2 above. What difference would it make if Benjamin does not first take transfer of the remaining unit and the purchase price is increased by R1 million to R3 million (for shares and loan account, and to effectively include the remaining unit as an asset of the company), with the purchaser then also taking cession of Benjamin's loan account? (5)

#### **QUESTION 4**

**[21]**

You are referred to the facts in Question 3 above. Benjamin has taken transfer of Unit 10 and Khutsong has taken cession of the Right to Extend. Five years have passed, and Khutsong (Pty) Ltd. has completed the second phase of the sectional title scheme Seshlahla. All units in the second phase have been transferred to purchasers and Khutsong has filed a special resolution to be wound up as it has no further assets or liabilities.

Benjamin Sehloho still owns Unit 10, and has now sold it, together with Exclusive Use Area P10, to Maria Mathobela, a widow, for a purchase price of R1 700 000.

Upon examining the deeds records, you establish that EUA P10 was erroneously never transferred to Benjamin, and is in fact still held by Khayamanzi (Pty) Ltd. (the developer of the first phase) by virtue of Certificate of Real Rights SK 2098/2020. Khayamanzi has also been liquidated some years ago.

- 4.1 Describe any steps you would need to take to cede EUA P10 to Maria and the reasons therefor. (6)
- 4.2 List the documents that you would lodge at the Deeds Office to effect cession of P10 to Maria. Indicate in each instance by whom such document should be signed, apart from the preparer/notary, if applicable. (5)
- 4.3 Draw only the required application. (6)
- 4.4 Would it have made any difference to your answer if Khayamanzi was still the registered owner of another unit in the sectional title scheme? What sequence of cessions should be followed? (3)
- 4.5 Who is entitled to receipt of the purchase price? (1)

**QUESTION 5****[23]**

Sibongile Kumalo who resides in Simon's Town in the Western Cape is married to John Mackintosh. At the time of their marriage, they were domiciled in France. Sibongile has embarked on a manufacturing and retail business and requires start-up capital. She has approached the Development Bank of Southern Africa who have agreed to grant to her a loan of R500 000.00. One of the loan conditions is that Sibongile's business partner, Mustapha Brey provides a suretyship as security for the loan. Mustapha resides in Kraaifontein and is married to Suraya by Muslim rites.

Mustapha has agreed to stand surety and for his Kraaifontein property to be mortgaged as a result but requires Sibongile to indemnify him against any claim which the bank may make against him in the event of Sibongile defaulting under the loan. The only asset of value Sibongile has is her Porsche Carrera, but she requires it for travelling for her business.

- 5.1 Draft the appropriate notarial deed in order to best protect Mustapha. Any ancillary conditions that you believe should be included in the document can be given in point form. (15)
- 5.2 Are there any disadvantages to registering a General Notarial Bond as opposed to a bond identifying a specific asset? (5)
- 5.3 Explain what steps are needed to enforce a general notarial bond. (3)

**QUESTION 6****[25]**

Hester Ann Gilfillen is married to Frank Gilfillen, a Dutch citizen and resides with her husband in Holland. Hester owns a holiday home in Onrus in the Western Cape which she and her husband visit once a year. The property was acquired by Hester from her neighbour who had subdivided his property.

The Local Authority when it granted the neighbour approval for the subdivision, had imposed conditions that all the necessary servitudes in respect of pipelines and access thereto must be registered in favour of the Local Authority over the newly created portion. This was erroneously not done at the time of subdivision.

- 6.1 Draft the requisite servitude to give effect to the Local Authority's conditions of subdivision, providing *inter alia* the appropriate and ancillary rights in favour of the Local Authority. (18)
- 6.2 List all the documents you would need to lodge in the Deeds Office. (4)
- 6.3 List all the documents you would need to file in your Protocol. (2)
- 6.4 What additional requirements (if any) would you need to comply with if Hester's property was a farm property? (1)

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- THE END -