

# THE REPUBLIC OF SOUTH AFRICA

## NOTARIAL PRACTICE EXAMINATION

**DATE:** 7 APRIL 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>60831/09</b>

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:

	<b>PAGE 2</b>	
<b>QUESTION 1</b>		<b>60831/09 (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****[15]**

You are consulted by Jonathan Fourie and Jennifer Swart. They have for some years now been living together in a permanent, stable and intimate committed romantic relationship. They support one another financially and their partnership has the characteristics of and is analogous to a marriage. They however have no intention to get married and place a high premium on a person's freedom of choice in all aspects of life. They have read an article discussing the Constitutional Court's judgment in the matter of Jane Bwanya vs The Master of the High Court, Cape Town and others, as handed down on 31 December 2021, with which they do not agree, as, according to them, it interferes with a party's freedom of choice when it comes to testation and maintenance. (As you know, the Court not only expanded the definition of "spouse" in the Maintenance of Surviving Spouses Act 27 of 1990, but also ruled that the definition of "survivor" in section 1(1) of the Intestate Succession Act 81 of 1987 was constitutionally invalid, and gave Parliament 18 months in which to rectify this constitutional defect).

They therefore require of you to prepare a Cohabitation agreement to arrange their affairs in their domestic partnership during both the existence and termination thereof.

Draw the agreement to be entered into by the parties to give effect to their wishes.

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

Bradley Jones and Ann Jones, married out of community of property to each other, own Section 22 in the Sectional Scheme known as Sea Breeze, Sea Point. Their neighbour, Lionel Mess, the owner of Section 24 together with Parking Bays P2 and P4, who is recently divorced wishes to sell one of his parking bays for the sum of R400 000,00. He offers the Parking bay to the Jones' who wish to proceed with the purchase thereof.

Lionel instructs you to draft the necessary documents. The parties enter into the agreement of sale and the Jones's have paid the purchase price to you, together with your fees.

Prior to signing the transfer documents, Ann Jones meets with a fatal car accident.

Draft the document required for registration of Parking bay P4 into the name of the purchaser.

**QUESTION 3****[10]**

Urban Building Development Proprietary Limited, a developer of property in Claremont, wishes to register a sectional title scheme over two properties which are opposite each other and are separated by a road and as such are not capable of consolidation. The City of Cape Town have made it a condition of the sectional title approval that the properties are notarially tied.

There is a mortgage bond registered over the one property in favour of Nedbank Ltd.

3.1 Draft the Notarial Tie Agreement; (8)

3.2 How must the bond be dealt with? (2)

**QUESTION 4****[20]**

Jeremy Clarkson, who resides in Camps Bay, Cape Town, recently purchased a farm in Swellendam, in the Province of the Western Cape for the sum of R25 million. He obtained funding from the Land Bank who required a bond to be registered over the property as security for the sum of R25 million. The immovable property is valued at R22 million and the bank requires additional security.

He intends farming canola and wheat and the purchase price included the following:

- Crops of both wheat and canola which are due to be harvested in about two months' time;
  - Three tractors. The one tractor is in a state of disrepair and will have to be replaced in the short term, but he does not have the funds to do so right now;
  - One combine harvester;
  - A light Cessna aircraft for spraying crops;
  - 50 sheep;
  - Miscellaneous tools, pesticide and feed for the sheep;
  - Office furniture and effects;
- 4.1 Draft the necessary document/s to provide the bank with the best possible security; (15)
- 4.2 What are the timelines for registration? (2)
- 4.3 What is the effect on the security if Jeremy Clarkson is declared insolvent within a year of the registration of the security? Discuss. (3)

**QUESTION 5****[10]**

5.1 Styles Mabuza and Claire Johnson entered into an antenuptial contract with the accrual system. Although they stipulated that they would sign a separate document before the notary to declare the commencement value of their separate estates, they have neglected to do so. Three years after his marriage to Claire, Styles inherits a property in Polokwane with value of R800 000 from his father. Styles is a jazz musician plying his trade in Johannesburg, and sells the property to enable him to buy another property for the same value in Johannesburg.

Two years later the marriage is dissolved. Styles' estate is valued at R1 500 000, which includes the Johannesburg property now valued at R1 000 000. Claire has an estate of R300 000.

What accrual claim exists in terms of Act 88 of 1984? At whose instance and for how much? Motivate your answer. (6)

- 5.2 Explain the term "accrual" in three sentences, as you would to two prospective spouses. (3)
- 5.3 Who can consent to, and assist in, the entering into of an antenuptial contract by a minor who has no guardian? (1)

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

Billy O’Nilly and his spouse Silly who are married in community of property are the owners of two farms as well as a property in town. They instruct you to draft a joint Will in terms of which their joint estate and effects are consolidated and massed. Their children are appointed as heirs, subject to a usufruct over all their assets in favour of the survivor of Billy and Silly.

They have two children: Vollie is a spinster of 47 years old. Bollie (50) is married in community of property to Bert who is a spendthrift. They are childless and it is clear there will not be any grandchildren.

- 6.1 Draft the Will. (10)
- 6.2 What would, in terms of the provisions of the Subdivision of Agricultural Land Act 70 of 1970 have to be done on the death of the first dying of Billy and Silly in order to implement the Will drafted as per your instructions. (2)
- 6.3 Taking into consideration the provisions of Act 70 of 1970 what alternative construction of the Will could you have suggested. (2)
- 6.4 Billy and Silly are registered as VAT vendors with farms of the value of R10 000 000.00 (ten million rand) registered in their names. Explain the VAT consequences of the Will drafted by you as per your instructions. What alternative construction of the Will would you suggest in order to alleviate those consequences? (4)
- 6.5 If Vollie had been an adopted daughter, what extra steps should the testators have taken to ensure her inheriting her equal share? (2)
- 6.6 What is a living Will? Give an example of an appropriate clause. (3)
- 6.7 What is the *ius accrescendi*? (2)

**QUESTION 7****[10]**

- 7.1 Trusts are increasingly coming under scrutiny by the Courts, and there have been a number of decisions that have resulted in many so-called “trusts” being ignored, found to be the front or alter ego of the founder or a sham trust, opening up the “trust” to claims from creditors and ex-spouses. You are required to list five essential elements for the creation of a trust to protect it from such attacks. (5)
- 7.2 List five important clauses that you would insert in a deed of trust to provide for the smooth and legal operation of the trust way beyond the lifetime of the founder. (5)

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- THE END -

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