

# THE REPUBLIC OF SOUTH AFRICA

## NOTARIAL PRACTICE EXAMINATION

**DATE:** 13 APRIL 2023 **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****[25]**

Clint September, an unrehabilitated insolvent, and his bride-to-be, Sybil October, consult you in connection with an antenuptial contract. Sybil is a British citizen holding a permanent residency permit and the owner of various properties in South Africa, *inter alia*, a flat in the residential Sectional Scheme Parkwood.

As Clint is an unrehabilitated insolvent, Sybil insists that he should have no rights to her assets. In consideration of her marriage though, she wishes to donate to him a half share in the Parkwood unit, currently valued at R3 million, which donation will only be given effect to once he has become successfully rehabilitated.

The parties will personally appear before you, the Notary.

**You are required to:**

- 1.1 Draw the antenuptial contract between the parties. (8)**
- 1.2 Provide a full summary of your advice to them relating to Transfer Duty or VAT payable. (5)**
- 1.3 Draw only the relevant clause/s which you would insert in an antenuptial contract should Clint and Sybil have instructed you that they wish to marry with the inclusion of the accrual system, but would want to ensure that any possible accrual claim will not benefit the creditors of the spouse entitled to it or the estate of such spouse. (3)**
- 1.4 Draw only the relevant clause where the parties to a proposed antenuptial contract instruct you to provide in the contract that, should the intended marriage end in divorce, any accrual claim then due should be settled at once, but the party obliged to make payment should do so in 2 (two) equal instalments within 6 (six) to 18 (eighteen) months after the date of the divorce, free of interest. (3)**
- 1.5 If the parties had been permanently residing in Pretoria, and they consult you in Cape Town where you practise, will it be possible for you to act as Notary and register the contract in Cape Town? Give reasons for your answer. (2)**
- 1.6 What is a "Civil Union"? (2)**
- 1.7 What, if any, is the impact of the Matrimonial Property Act No. 88 of 1984 on the matrimonial property system of a Civil Union? (2)**

**QUESTION 2****[20]**

Matthew Johns and his twin brother Christopher Johns each inherited a 50% share in:

- (a) Section 1 with exclusive use areas Storeroom S1 and Garage G1
- (b) Section 2 with exclusive use areas Storeroom S2 and Garage G2

in the Sectional Scheme Rondebosch Park from their late father's estate. The Executor of the deceased estate has passed transfer to them.

Matthew and Christopher have agreed that they would prefer that each of them obtains ownership of a dwelling with its attached exclusive use areas. They have agreed that Matthew should be the sole owner of Section 1 and EUAs Storeroom S1 & Garage G1 and Christopher the sole owner of Section 2 and EUAs Storeroom S2 & Garage G2. They have signed the relevant agreement to give effect to this.

The Sectional Scheme Rondebosch Park comprises only the two units with no reservation for the erection of further building or buildings. The units and EUAs are of a similar size and value.

Matthew is unmarried. Christopher was married out of community of property to Serena when he took transfer of the sectional units but unfortunately his wife passed away in a tragic accident 3 (three) months ago, after the agreement had been signed.

**Draw the Deed that will vest the Exclusive Use Areas Storeroom S1 & Garage G1 solely in Matthew's name.**

**The parties are not able to appear personally to sign the documents. (20)**

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

You are consulted by your client, the Body Corporate of a Sectional Title Scheme in Kenilworth, Cape Town known as OAK TREES, which was registered under Sectional Scheme No SS 899/2002 in the Deeds Registry at Cape Town over the following property:

ERF 20326 CAPE TOWN

In the City of Cape Town

Cape Division

Province of the Western Cape

In extent: 2082 square metres

The adjacent property being Erf 20779 is being subdivided and part of the Conditions of Subdivision issued by the Municipality of Cape Town requires a Pipeline servitude 3m in width parallel to and along the entire Northern boundary of your clients' property in favour of the Erf 20779, to enable the sewerage pipes to connect to the midblock sewer which is situated on your clients' property.

The owner of this property, Gillian Ainsworth, a widow, has approached your client to register this servitude. She has agreed to pay all costs associated with the registration of the servitude and the parties have agreed that no compensation will be required by the Body Corporate.

Neither party is registered for VAT.

**Draft the Deed of Servitude providing any additional ancillary rights that you deem appropriate. (15)**

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**QUESTION 4 [10]**

**You are required to in simple terms as you would to a client explain the “conduit principle” insofar as it pertains to the taxation of Trusts. (10)**

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**QUESTION 5 [20]**

ABC (Pty) Ltd enters into a financing arrangement with XYZ Financiers (Pty) Ltd based in Johannesburg in terms whereof the financier loans and advances R2 000 000.00 to ABC for use as working capital in the operation of their warehouses in Cape Town and Durban. Kelly Helpful, a friend of the directors of ABC has agreed to act as surety and guarantee for any indebtedness of ABC to XYZ. After signing all the required documents, Kelly approaches ABC to provide her with comfort in the event that she has to make good under the guarantee. ABC has agreed to this, mentioning that they do not own any immovable property and furthermore do not have specific items to put forward as security, but they are nevertheless in agreement to go ahead with her suggestion.

**You are approached to draft the necessary document that may be lodged and registered at the Deeds Office to formally provide Kelly with the best security.**

**The conditions attached to this document may be provided in point form, but at least 5 (five) conditions as well as the body of the document should be dealt with in full. (20)**

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**QUESTION 6 [10]**

Joe Soap who was married out of community of property died on the 21 January 2023.

In terms of his Will, he bequeathed his immovable property to his surviving spouse subject to a usufruct in favour of his sister, for her lifetime or until her remarriage, whichever event occurs first.

**6.1 Who are the parties to the Notarial Deed of Usufruct and how will they be described in the Notarial Deed? (2)**

**6.2 The sister no longer wishes to reside in the property. Describe the parties to the Notarial Deed of Cancellation of Usufruct. (2)**

- 6.3 What documents are required to be lodged to cancel the usufruct? Is Transfer Duty payable and if so, how is the Transfer Duty calculated? Would the position be different if the usufruct had lapsed? (6)**

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**- THE END -**

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