

# THE REPUBLIC OF SOUTH AFRICA

## NOTARIAL PRACTICE EXAMINATION

**DATE:** 7 SEPTEMBER 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****[14]**

You are a notary practicing in the Northern Cape. Mr and Mrs Adams consult you, a Notary practising in the Northern Cape. They inform you that that they were married in Durban five months ago. A month before their marriage they had signed an antenuptial contract before a Notary in Johannesburg which antenuptial contract was a month after their marriage registered in the Deeds Office in Johannesburg.

As they did not have a lot of time before the wedding, they were not able to determine and agree the commencement value of their respective estates. They have now had a chance to do so and advise you that that the commencement value of Mr Adams estate was R3 000 000. 00 (Three Million Rand) and that of Mrs Adams, R100 000.00 (One Hundred Thousand).

- 1.1 Draw the necessary document to formalise the declaration of agreed values and advise within what period, if any, the said document must be signed. (10)**
- 1.2 What will the implications be if not done timeously? (2)**
- 1.3 Where must the document be filed or lodged? (2)**

**QUESTION 2****[28]**

David Petersen requires capital to finance the launch of his new restaurant business. Timothy du Preez, who is married in community of property to Lynette du Preez, has agreed to lend R6 000 000.00 to David Petersen, repayable in annual instalments of R600 000.00 with interest at prime rate.

David's wife, Michelle, to whom he is married out of community of property, is the sole shareholder and director of Michelle's Flower Wholesalers (Pty) Ltd, a successful export flower business with warehousing and offices at the Cape Town, Durban and Johannesburg International airports and with registered offices in Cape Town. The company owns five Mercedes closed bodied ten-ton trucks, operating from Cape Town branch and a quantity of movable equipment at all its branches.

The company has agreed to bind its movable property as security for the repayment of the loan by David.

- 2.1 Draw the bond required to establish the best possible security. Provide ancillary conditions in summarised form. (20)**
- 2.2 What supporting documents would the notary require and retain in the protocol? (2)**
- 2.3 Will the provisions of Section 112 of the Companies Act find application? Discuss. (4)**

**2.4 At which Deeds Office(s) and within what period(s) must the bond be registered? (2)**

**QUESTION 3**

**[25]**

Anthony Goliath is married out of community of property to Elaine Daphne Goliath. They jointly own Erven 26, 27 and 28 Bonnievale situate in the Caledon Municipality. There is located on erven 27 and 28 a huge reservoir which is depicted on the approved diagrams of the said erven.

Catherine Zeta Jones, a widow, is the registered owner of Erf 29 and Barry Gibb, an American national, married to Bette Midler, is the registered owner of Erf 30.

Each of the aforesaid erven are 50 hectares in extent. Catherine has a borehole on her property which produces sufficient water to meet her needs. Barry does not have a sufficient water supply and decides to approach Anthony and Catherine enquiring whether he could draw water from their respective properties.

Anthony is agreeable to grant Barry the right to draw a limited amount of water from his reservoir provided that a gauge is to be installed on the pump, and against payment by Barry of R40 000.00 per annum for the right to conduct the water over his properties.

Catherine however is not agreeable to grant Barry the right to draw water from her borehole but:

- a) is agreeable to grant Barry the right to conduct water over her property from Anthony's reservoir and against payment of the sum of R30 000.00;
- b) Catherine also requires Barry to grant to her the right to utilise water from the pipeline which will cross her property if her borehole fails for any reason, free of any charges.

Anthony is agreeable to Catherine's request in b) above on condition that any water used by Catherine comes from Barry's quota.

Barry accepts and agrees to all the conditions above and also undertakes to pay for all costs incurred in registration of the rights herein.

The Servitude area is 4 metres wide and is beacons by the letters xy. It stretches from a point against the wall of the reservoir, which is 750 metres from the boundary HJ of Erf 26 and along the boundary of Erf 26 up to the boundary between Erf 26 and Erf 27, then for 200 metres along the boundary of Erf 27, and then along the boundary of Erf 28, across Erf 28 to Erf 29.

The parties have been advised by a surveyor that no diagram is required for the purpose of registering the servitude/s.

**Draw the requisite document that will allow Catherine and Barry to draw water from Anthony's reservoir including those of the conditions set out above which**

**you would include for the protection of all the parties. The parties do not appear before you personally.**

**QUESTION 4**

**[18]**

Your client, John Manifest, property developer and his spouse Annabelle, instructed you to register an Antenuptial Contract, which had the following provision:

“In consideration of the intended marriage, John hereby settles upon Annabelle, who gratefully accepts, the whole of John’s interest in the Sectional title Scheme known as WILD PLAINS, in respect of which Sectional Plan Number SS 689/2022 has been registered at the Deeds office. Carl undertakes to transfer such interest to Annabelle at his own expense.”

John and Annabelle were married last month and have instructed you to implement the above settlement.

The Sectional Title Scheme referred to, registered in your city, comprises 6 (six) units. None of these have been transferred as yet, although an extensive marketing campaign was followed. No exclusive use areas have been delineated on the Sectional Plan. John has however, reserved to himself the right to extend the scheme by the erection of 2 (two) further units. There is no existing bond.

- 4.1 Draw the necessary deed to vest the right to extend to Annabelle. (14)**
- 4.2 Would this transaction attract Donations tax? Motivate your answer briefly. (2)**
- 4.3 Would the transaction attract transfer duty or Vat, and how will it be calculated? (2)**

**QUESTION 5**

**[15]**

Your client is the founder and co-trustee of his family trust. He tells you that he was alerted by his auditor to some important recent amendments to the Trust Property Control Act relating to the appointment and eligibility to hold office of Trustees, as well as their reporting duties. Coupled therewith he was also informed of new reporting requirements issued by SARS. He is very concerned as he was informed that non-compliance could mean a penalty of R10m!

**Discuss these changes briefly. (15)**

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**- THE END -**

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