

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK
PART 3 / DEEL 3**

23 AUGUST / 23 AUGUSTUS 2017

ANSWERS / ANTWOORDE

**PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE A
CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF READING.**

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[25]

1. The letter should state that:
 - 1.1 The couple can choose the matrimonial property law regime that will apply to their marriage. (1)
 - 1.2 There are 3 (three) regimes from which they can choose namely, a marriage in community of property, a marriage out of community of property with the application of the accrual system in terms of the Matrimonial Property Act 88/1984; and a marriage out of community of property with the exclusion of the accrual system. (3)
 - 1.3 All marriages are in community of property, unless community is excluded by an Antenuptial Contract executed before a Notary Public before the date of marriage. (1)
2. In community of property:

In a marriage, in community of property, all property brought into the marriage and all property acquired after the marriage falls into the joint estate unless specifically excluded e.g. gifts and inheritances. All debts incurred before and after the marriage can be recovered from the joint estate. The husband and wife are co-owners of the joint estate. (7)
3. Marriage out of community of property with the exclusion of the accrual system:

The parties may exclude community of property by way of an Antenuptial Contract. When this is done each spouse retains his or her assets and is liable for his or her debts. At the end of the marriage by death or divorce each party will retain his or her assets. It should be pointed out that unless the accrual system is expressly excluded in the Antenuptial Contract it will apply. (6)

4. Marriage out of community of property with the inclusion of the accrual system:

If the parties choose this system they are married out of community of property but they share accruals at the end of the marriage. The nett value of the parties estates are calculated and agreed before the date of marriage. The parties may agree that certain assets and any increase or growth thereon be excluded from the accrual. During the marriage the spouses have separate estates with which they can deal without the consent of the other. At the end of the marriage by way of death or divorce the accruals of each spouse's estate is calculated and equalisation takes place so that the spouses have equal accruals. (7)

QUESTION 2

[13]

1. In order to exercise your option effectively the attached document exercising the option, should be signed and dated in the presence of two witnesses. If the option may be exercised through the post it will be regarded as having been exercised on the date of posting depending on how the wording of the option is interpreted e.g. implying that the exercising must reach the grantor before the expiry date. In all the circumstances you should rather ensure that the attached exercising of the option actually reaches the grantor before expiry date. You should therefore telefax the document to the grantor (if possible) AND then send it by courier to the agreed address to ensure that it is timeously received.

EXERCISE OF OPTION

I, the undersigned, your client, Id, full names and marital status do hereby exercise the option granted to me by Mrs Seller on _____ (date) to purchase stand _____ (full description of property) together with all improvements subject to the terms and conditions set forth in the option.

Signed at Cape Town on this _____ day of _____ 2009.

As Witnesses:

1. _____

2. _____

Grantee/option holder/purchaser

QUESTION 3

[8]

The trust will be registered with the Master of the High Court in the area where Mrs B resides. She must lodge:

- a) Two copies of the deed of trust;
- b) Letter of undertaking from an auditor/accountant to act; (J405)
- c) Acceptance of trusteeship by the trustees. (J417)
- d) Certified copies of the id's of the trustees.
- e) Proof of payment of prescribed fee (R100 currently).
- f) Prescribed Master's Trust Registration and amendment form. (J401)

She must further provide:

- a) the name of the bank where the trust will operate its account;
- b) the name and address of the person who will keep and maintain the records of the trust;
- c) occupation of trustees;
- d) previous experience of trusteeship;

The master also has a number of further requirements should he be requested to waive his right to insist on security by the trustees.

QUESTION 4

[20]

If a trader transfers of a business (or part thereof) belonging to him and

- 4.1
- * he does not publish notice of the intended disposition;
 - * in the Government Gazette; and
 - * two issues of local newspapers (one in English and one in Afrikaans) in the district where the business is conducted;
 - * circulating in the district where the business is conducted;
 - * not less than 30 days; and
 - * not more than 60 days before the date of transfer;
- 4.2
- * the transfer shall be void as against his creditors;
 - * for a period of six months after such transfer; and
 - * and shall be void as against the trustee of his estate if his estate is sequestrated within the six month period.

The section is intended to prevent traders in financial difficulties disposing of their business whereafter the trader can spend the purchase price and the purchaser can liquidate the assets to the detriment of creditors. (10)

- 4.3
- * Accordingly the intending purchaser is concerned that if the sale is not advertised –
 - * the sale may be void and he may not become the owner;
 - * and should you be sequestrated he will have paid (or must pay) the price and receive nothing.

As soon as any of the notices appear all your liquidated liabilities in connection with the business become due forthwith. Creditors are entitled to demand immediate payment subject only to deduction of interest on amounts not yet otherwise due. (10)

QUESTION 5**[15]**

- 5.1 The difference between a suspensive condition and a resolutive condition is that a suspensive condition suspends the operation of the obligations flowing from the contract until the occurrence of a future uncertain event, whereas a resolutive condition terminates the obligations flowing from the contract upon the happening of a future uncertain event. (5)
- 5.2.1 This agreement is conditional upon the purchaser obtaining a bond for 80% of the purchase price from a financial institution, within 30 days from date hereof. If the bond is not obtained this agreement shall be null and void and neither party shall have any claim against the other arising herefrom. (5)
- 5.2.2 Should the purchaser be advised in wiring that his application for a bond for 80% of the purchase price has been unsuccessful or should the purchaser not be successful in obtaining the said bond within 30 days from date of signature hereof this agreement shall terminate and each party shall, insofar as any terms of this agreement have been implemented, be obliged to restore the other into the same position as he would have been had the agreement never been concluded. (5)

QUESTION 6**[10]**

- 6.1 Once your client is under cross examination you may not consult with him at all. The reason for this is obvious namely that you may advise him how to answer questions or how to rectify evidence already given. (3)
- 6.2 The secretary may interview the client to take formal instructions. In all other cases this should not happen because the client is entitled to professional advice and service. (4)
- 6.3 Yes in very limited circumstances, e.g. to the client's executor after his death and to his curator if the client is placed under curatorship. Of course if the client waives his confidentiality the information may be disclosed. (3)

QUESTION 7**[9]**

An attorney may act on a contingency basis, namely that if his client succeeds he will be entitled to a success fee which will not exceed twice his attorney and client fee and shall not be more than 25% of the amount recovered by way of a Court Order or settlement, if the client is not successful the attorney will receive no fees. Before an attorney may act on a contingency basis he must comply with the requirements of the Contingency Fees Act and in particular must enter into a written agreement with the client which must comply with all the requirements of the Act.

TOTAL: [100]