

DIE REPUBLIEK VAN SUID-AFRIKA

NOTARIËLE PRAKTYKEKSAMEN

DATUM: 10 JUNIE 2015
TYD: 09:00-13:15
TOTAAL: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd indie antwoordboek begin skryf nie. Die eksamen van vier uur volg dan.

NOTAS:

1. KANDIDATE moet al die vrae beantwoord.
2. KANDIDATE moet slegs EEN KANT van die papier gebruik.
3. KANDIDATE moet elke vraag op 'n nuwe vel begin en die nommer van die vraag aanstip aan die linkerbokant van die vel en sy of haar eksamennommer aan die regterkant van die vel papier, bv:

NOTARIËLE EKSAMEN	
VRAAG 1	60831/09

Sou u antwoord op enige vraag meer as een vel papier beslaan, moet die volgende velle agtereenvolgend genummer word en ook die nommer van die vraag en u eksamennommer dra, bv:

BLADSY 2	
VRAAG 1	60831/09 (Vervolg)

4. Waar al die besonderhede wat nodig is vir aktekantoor doeleindes nie voorsien word nie, moet KANDIDATE hulle eie verbeelding gebruik om die weggelate inligting te verskaf.
5. Aangesien vier uur toegelaat word, word van kandidate verwag om die aktes en ander dokumente wat gevra word, akkuraat op te stel.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat 'n totaal van tussen 40% en 49% behaal sal hy/sy 'n mondeling moet aflê. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en druipt dus hierdie eksamen.

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 10 JUNE 2015
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:

NOTARIAL EXAMINATION	
QUESTION 1	60831/09

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:

PAGE 2	
QUESTION 1	60831/09 (Continued)

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.

VRAAG 1 [20]

Verduidelik die volgende:

- 1.1 Fideicommissum; (2)
- 1.2 Vruggebruik (usufructus); (2)
- 1.3 Fideicommissum residui; (2)
- 1.4 Modus; (2)
- 1.5 Borgakte; (2)
- 1.6 Ius accrescendi; (2)
- 1.7 Bevoegdheid om 'n testament te maak; (2)
- 1.8 Si sine liberis decesserit; (2)
- 1.9 Adiasie; (2)
- 1.10 Repudiasie. (2)

VRAAG 2 [15]

U klient is die Regspersoon van 'n Deeltitel-skema bekend as SEATIDES, wat op 18 Junie 2000 in Pietermaritzburg geregistreer is onder Deeltitel-skema nr SS74/2000 oor ERF 67 UMDLOTI, REGISTRASIE AFDELING FT, PROVINSIE VAN KWAZULU NATAL, GROOT 6 000 Vierkante Meter, en gehou kragtens Akte van Transport Nr T412/2000 met kaart nr 709/1999 daarby aangeheg.

Die Regspersoon het toegestem tot die registrasie van 'n serwituuat van waterleiding deur middel van 'n ondergrondse waterpyp oor ERF 67 UMDLOTI binne 'n ooreengekome serwituuatgebied, 1 meter wyd en langs die gehele lengte van die noordelike grens van die erf, gemerk a b op die gemelde kaart 709/1999, ten gunste van SUNSHINE PROPERTIES EIENDOMS BEPERK ("die maatskappy") as eienaar van ERF 68 UMDLOTI, REGISTRASIE

QUESTION 1 [20]

Explain the following:

- 1.1 Fideicommissum; (2)
- 1.2 Usufruct; (2)
- 1.3 Fideicommissum residui; (2)
- 1.4 Modus; (2)
- 1.5 Bond of security; (2)
- 1.6 Ius accrescendi; (2)
- 1.7 Capacity to make a will; (2)
- 1.8 Si sine liberis decesserit; (2)
- 1.9 Adiation; (2)
- 1.10 Repudiation. (2)

QUESTION 2 [15]

Your client is the Body Corporate of a Sectional Title Scheme known as SEATIDES which was registered under Sectional Scheme No. SS74/2000 in the Deeds Registry at Pietermaritzburg on 18 June 2000 over ERF 67 UMDLOTI, REGISTRATION DIVISION FT, PROVINCE OF KWAZULU NATAL; IN EXTENT: 6 000 Square Metres; Held by Deed of Transfer No T412/2000 with diagram No 709/1999 annexed hereto.

The Body Corporate has agreed to register in favour of SUNSHINE PROPERTIES PROPRIETARY LIMITED ("the company"), as the owner of ERF 68 UMDLOTI, REGISTRATION DIVISION FT, PROVINCE OF KWAZULU NATAL; IN EXTENT: 5 000 Square Metres; Held by Deed of Transfer No T607/2000; a servitude of aqueduct by means of subterranean water pipe across ERF 67 UMDLOTI along an agreed servitude area 1 metre wide along the entire

AFDELING FT, PROVINSIE VAN KWAZULU NATAL, GROOT 5 000 Vierkante meter, en gehou kragtens Akte van Transport Nr T607/2000.

length of the northern boundary marked a b on the said diagram No 709/1999.

Ten gevolge van hierdie serwituut sal die maatskappy die ewigdurende reg hê om water oor ERF 67 UMDLOTI na ERF 68 UMDLOTI te gelei deur middel van die gemelde waterpyp. Die maatskappy sal 'n vergoeding van R10 000.00 aan die Regspersoon betaal vir verkryging van die regte. Nóg die maatskappy, nóg die Regspersoon is vir BTW geregistreer.

In pursuance of such servitude the said company will enjoy the right in perpetuity to convey and transmit water over ERF 67 UMDLOTI to ERF 68 UMDLOTI by means of the said waterpipe. The consideration payable by the company to the Body Corporate for such rights is R10 000.00. Neither the Body Corporate nor the company is registered for VAT.

2.1 Stel die serwituutakte op waarin onder andere voorsiening gemaak word vir gepaste en aanvullende regte ten gunste van die maatskappy. (10)

2.1 Draft the Deed of Servitude providing, *inter alia*, appropriate and ancillary rights in favour of the Company. (10)

2.2 Meld watter dokumente u:

2.2 Detail the documents you will:

2.2.1 saam met die serwituutakte by die Aktekantoor sal indien;

2.2.1 lodge in the Deeds Office with the servitude; and

2.2.2 in u protokool sal behou. (5)

2.2.2 retain in your Protocol. (5)

VRAAG 3 [16]

QUESTION 3 [16]

Ukliëntis John Farmer, die eienaar van Gedeelte 50 van die plaas Vlakraagte. John is binne gemeenskap van goedere getroud. Hy is afgetree en boer glad nie meer nie. Titus Ramutse, die eienaar van die aanliggende Gedeelte 51 van die plaas, nader hom met die versoek om vir 'n tydperk van 15 jaar 2 hektaar van John se plaas te huur om aartappels te plant en te oes. Titus is in 1994 getroud volgens gewoontereg. Geen verbande is teen die eiendom geregistreer nie.

Your client is John Farmer, the owner of Portion 50 of the farm Vlakraagte. John is married in community of property. He is approached by Titus Ramutse, who owns the adjacent Portion 51 of the farm. Titus was married according to customary law in 1994. As John is retired and no longer farming, Titus wants to rent 2 hectares of John's farm to plant and harvest potatoes for a period of 15 years. No bonds are registered over the property.

1. Stel die huurooreenkoms op vir indiening by die Aktekantoor, met sodanige inligting en bepalinge as wat u reken nodig mag wees vir langtermyn huurkontrakte. Die terme en voorwaardes mag puntsgewys gegee word. (8)

1. Draw the lease agreement for lodgement adding such information as you deem necessary with the essential requirements for long term leases. The terms and conditions may be given in point form only. (8)

2. Welke dokumente sal u saam met die akte indien? (3)

2. Which documents will you lodge with the deed? (3)

Vyf jaar later raadpleeg John u weer. Hy deel u mee dat Titus hom nie die jaarlikse huurgeld betaal het nie, en nadat hy hom aangemaan het vir betaling, hy daama uitgery het plaas toe, waar hy vasgestel het dat Titus Gedeelte 51 verkoop het, alle boerdery bedrywighede gestaak het en na Zimbabwe verhuis het. John het nou ook genoeg gehad en wil sy plaas verkoop, maar is deur die eiendomsagent meegedeel dat dit moeilik sal wees terwyl die huurkontrak teen die eiendom geregistreer staan.

3. Hoosalu John adviseer om die kansellasië van die huurkontrak teweeg te bring?
(5)

RAAG 4

[15]

Tyrone Smith, getroud binne gemeenskap van goedere met Tania Smith, is saam met sy broer Anton Smith, getroud buite gemeenskap van goedere met Petra Smith, die eienaars van Deel 2 in die Deeltitelskema Oldham Place, tesame met uitsluitlike gebruiksgedebied Y2.

Tyrone en Anton wil:

- hulle eenheid uitbrei deur verdere werk- en stoorkamers aan te bou – so 'n uitbreiding sal op die uitsluitlike gebruiksgedebied Y2 oorskry en die grootte daarvan inperk;
- die uitgebreide Deel 2 daarna onderverdeel in Deel 3 en 4, en uitsluitlike gebruiksgedebiede Y3 en Y4 skep;
- hulle eiendomsreg in die bogemelde eiendomme verdeel sodat Tyrone Deel 3 en uitsluitlike gebruiksgedebied Y3 besit, en Anton Deel 4 en uitsluitlike gebruiksgedebied Y4.

Tyrone en Anton het die nodige verdelings- ooreenkoms aangegaan, en alle planne is opgestel en goedgekeur, om Dele 3 en 4 en Y3 en Y4 aan te toon.

Die skema Oldham Place bestaan tans uit 2 Dele en 2 Uitsluitlike Gebruiksgedebiede, Y1 en

Five years later, John again consults you. He tells you that, as he did not receive the annual rent from Titus that year, and after having placed him on terms, he drove out to the farm only to find that Titus had sold Portion 51, moved to Zimbabwe and abandoned all farming operations. John has now also had enough and wants to sell his farm, but has been told by the estate agent that it will be difficult while the lease is still registered.

3. How would you advise John to procure cancellation of the lease? (5)

QUESTION 4

[15]

Tyrone Smith, married in community of property to Tania Smith, and his brother Anton Smith, married out of community of property to Petra Smith, are the owners of Section 2 in the Sectional Scheme Oldham Place together with exclusive use area Yard Y2.

Tyrone and Anton wish to:

- extend their unit by adding on extra work and store rooms - this extension will encroach onto the exclusive use yard area and diminish its area;
- thereafter, subdivide the extended Section 2 into Sections 3 and 4 and establish Exclusive Use Areas Y3 and Y4;
- partition their ownership in the above property so that Tyrone will own Section 3 and EUA Y3 and Anton Section 4 and EUA Y4.

Tyrone and Anton have entered into the requisite Partition Agreement. All the requisite Plans have been drawn and approved, delineating Sections 3 and 4 and EUA's Y3 and Y4.

The scheme Oldham Place presently consists of 2 Units and 2 Exclusive Use Areas, Y1 and Y2.

Y2. Die uitbreiding, daaropvolgende onderverdeling van Deel 2 en verdeling sal nie Deel 1 of Y1 beïnvloed of daarop oorskry nie. Deel 1 en Y1 word besit deur Tom Jones, 'n Switserse burger getroud met Greta Jones, en is verbind by Eerste Nasionale Bank.

The extension, subsequent subdivision of Section 2 and Partition will not affect or infringe Section 1 and EUA Y1. Section 1 and EUA Y1 is owned by Tom Jones, a Swiss national married to Greta Jones, and mortgaged to First National Bank.

Tyrone en Anton nader u met die opdrag om toe te sien tot die bogemelde.

Tyrone and Anton approach you and instruct you to attend to the above.

4.1 Stel die dokument op wat ingedien moet word vir registrasie om die nuutgeskepte Uitsluitlike Gebruiksgebied Y3 in Tyrone se naam te setel. Aanvaar dat geeneen van die betrokke partye persoonlik voor u kan verskyn nie. (10)

4.1 Prepare the document to be lodged for registration to account for the new Exclusive Use Area Y3 in Tyrone's name. Assume that none of the Parties concerned are able to appear before you personally. (10)

4.2 Welke dokumente sal u by die Aktekantoor indien? (2)

4.2 What documents will you lodge in the Deeds Office? (2)

4.3 Welke dokumente sal u in u protokol behou? (3)

4.3 What documents will you retain in your Protocol? (3)

VRAAG 5 [20]

QUESTION 5 [20]

U word geraadpleeg deur Barry Busted, 'n ongerabiliteerde insolvent, en sy toekomstige bruid, Mary Muchlove. Mary is 'n Britse burger maar besit verskeie eiendomme in Suid Afrika, onder andere 'n woonstel in die deeltitelskema Driftwood. As gevolg van Barry se insolvensie, dring Mary daarop aan dat hy geen reg op haar bates moet hê nie, maar wil sy graag 'n halwe aandeel in die Driftwood-eenheid aan hom skenk, sodra hy suksesvol gerehabiliteer is. Die partye sal persoonlik voor u as notaris verskyn.

Barry Busted, an unrehabilitated insolvent, and his bride-to-be, Mary Muchlove, consult you. Mary is a British citizen but the owner of various properties in South Africa, inter alia a flat in the scheme Driftwood. Due to Barry's insolvent status, she insists that he should have no rights to her assets, but wishes to donate to him a half share in the Driftwood unit, valued at R1m, once he has been successfully rehabilitated. The parties will personally appear before you, the Notary.

Van u word verlang om:

You are required to:

1. Die huweliksvoorwaardeskontrak tussen die partye op te stel. (6)
2. 'n Volledige opsomming van u advies met betrekking tot hereregte betaalbaar te verskaf. (3)
3. Barry word binne 'n jaar na datum van die

1. Draw the antenuptial contract between the parties. (6)
2. Provide a full summary of your advice to them relating to transfer duty payable. (3)
3. Within a year after the marriage Barry is

huwelik gerehabiliteer, en Mary dra die eiendom aan hom geskenk in die huweliksvoorwaardeskontrak aan hom oor. Mary se vrese word egter waar en as gevolg van Barry se spandabelrigheid word Mary se boedel 9 maande later finaal gesekwestreer. Haar likwidateur poog om die oordrag van die eiendom soos geskenk in die huweliksvoorwaardeskontrak tersyde te laat stel as 'n vervreemding sonder teenwaarde. Sal die likwidateur slaag? Motiveer. (3)

4. Stel die relevante klousule/s op wat u sou invoeg in 'n huweliksvoorwaardeskontrak sou Barry en Mary u opdrag gegee het dat hulle begerig was om in die huwelik te tree met die toepassing van die aanwasbedeling, maar sou wou seker maak dat enige aanwaseis nie die krediteure van 'n eggenoot wat daarop geregtig sou wees of sy of haar boedel sou toeval nie. (3)

5. Stel slegs die relevante klousule op waar die partye tot 'n voorgestelde huweliksvoorwaardeskontrak u opdrag gee om in die kontrak te bepaal dat, sou die voorgenome huwelik deur egskeiding ontbind word, enige aanwaseis onmiddellik afgelos moet word, maar dat die party wat verplig is om betaling te maak dit kan doen in twee gelyke paaiemente tussen 6 tot 18 maande na datum van egskeiding, renteloos. (3)

6. Indien die partye permanent in Pretoria woonagtig was, en u in Kaapstad waar u praktiseer sou raadpleeg, sou dit in orde wees vir u om as notaris op te tree en die kontrak in Kaapstad te registreer? Gee redes vir u antwoord. (2)

VRAAG 6 [10]

Mary Conwright wat woonagtig is in Kaapstad, het met John Conwright getrou terwyl hulle beide in Skotland gedomisilieerd was.

rehabilitated, and Mary transfers the immovable property to Barry giving effect to the settlement in the antenuptial contract. Mary's fears were however well-founded and, due to Barry's wasteful spending, 9 months later Mary's estate is finally ~~sequestered and her trustee seeks to set~~ aside the settlement as a disposition without value. Would the trustees succeed? Motivate your answer. (3)

4. Draw only the relevant clause/s which you would insert in an antenuptial contract should Barry and Mary 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)

5. 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 two equal installments within 6 to 18 months after the date of the divorce, free of interest. (3)

6. If the parties had been permanently resident in Pretoria, and they consult you in Cape Town where you practise, will it be in order for you to act as notary and register the contract in Cape Town? Give reasons for your answer. (2)

QUESTION 6 [10]

Mary Conwright, who resides in Constantia in Cape Town, married to John Conwright while they were both domiciled in Scotland.

Econobank Limited het 'n lening van R250 000.00 aan Mary toegestaan, onderhewig aan die voorwaarde dat haar besigheidsvennoot, Brett Boston, homself as borg verbind. Brett is ook in Kaapstad woonagtig en is binne gemeenskap van goedere met Lisa Boston getroud.

Mary has been granted a loan by Econobank Limited in the sum of R250 000.00 on condition that her business partner, Brett Boston binds himself as surety. Brett also resides in Cape Town and is married in Community of Property to Lisa Boston.

Brett is bereid om borg te staan, op voorwaarde dat Mary hom vrywaar ten opsigte van enige bedrag wat hy aan die bank mag betaal op sterkte van die borgstelling. Hy is tevrede dat Mary se Mercedes Benz S500 as sekuriteit hiervoor kan dien. Mary kan die motor nie aan Brett lewer nie, aangesien sy dit nodig het om te reis vir doeleindes van haar besigheid.

Brett is agreeable to standing surety, provided that Mary indemnifies him against any amount which he may have to pay the bank in terms of the suretyship. He is happy for Mary's Mercedes Benz S500 to be used as security. Mary cannot deliver the car to Brett as she requires it for travelling as part of her business.

Stel die notariële akte op om gevolg te gee aan die partye se behoeftes, en verskaf u eie besonderhede waar nodig. Aanvullende voorwaardes kan puntsgewys gegee word.

Draft the notarial deed to give effect to the parties requirements, supplying your own particulars where necessary. Ancillary conditions may be given in point form.

VRAAG 7 [4]

QUESTION 7 [4]

Voorsien die korrekte beskrywing van die partye wat in die volgende gevalle voor u verskyn vir doeleindes van die opstel van 'n volmag. Gebruik sulke verdere feite en name soos wat u nodig ag:

Provide the correct description of the parties appearing before you in the following instances for purposes of preparing a power of attorney, using such facts and names as you may deem necessary:

7.1 'n Jong meise van 17 jaar oud wat 'n huwelikskontrak wil sluit; (1)

7.1 A young girl of 17 years of age who wishes to enter into an antenuptial contract; (1)

7.2 Die gewer van 'n serwituut, wat binne gemeenskap van goed getroud is, ten opsigte van 'n eiendom wat hy geërf het kragtens 'n testament in terme waarvan gemeenskap van goedere ten opsigte van erflatings uitgesluit was; (1)

7.2 The grantor of a servitude who is married in community of property in respect of property inherited by him with the will having contained a clause stating that all bequests shall devolve upon the heirs free of the community of property; (1)

7.3 Die gewer van 'n vruggebruik in 'n bestorwe boedel, waar die eiendom 'n bate in 'n gemeenskaplike boedel was en die oorledene se halwe aandeel in die eiendom aan 'n derde persoon bemaak is, en die vruggebruiker die nagelate eggenote is; (1)

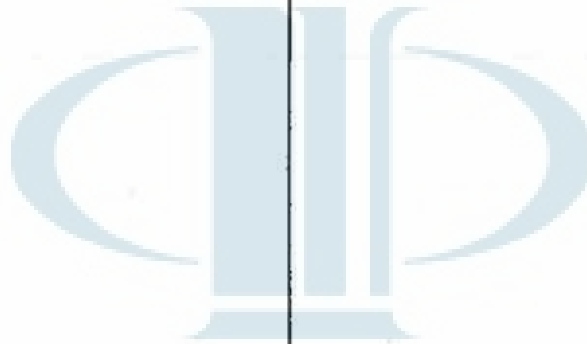
7.3 The grantor of a usufruct in a deceased estate, where the property formed an asset in a joint estate and the deceased's one half share in the property is bequeathed to a third party, and the usufructuary is the surviving spouse; (1)

7.4 Twee vennote (die een binne gemeenskap van goedere getroud en die ander geskei) wat handeldryf as Aye Bee Vennootskap in 'n 60/40 verhouding, wat 'n uitsluitlike gebruiksgedied bekom. (1)

7.4 Twopartners (one married in community of property and the other one divorced) trading as Aye Bee Partnership in a 60/40 partnership who acquire an exclusive use area. (1)

- DIE EINDE -

- THE END -



LAW SOCIETY
OF SOUTH AFRICA