

DIE REPUBLIEK VAN SUID-AFRIKA

NOTARIËLE PRAKTYKEKSAMEN

DATUM: 11 OKTOBER 2017
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 in die 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 eksamennummer 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 eksamennummer dra, bv:

BLADSY 2	
VRAAG 1	60831/09 (Vervolg)

4. Waar al die besonderhede wat nodig is vir aktekantoordoeleindes 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 drup dus hierdie eksamen.

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 11 OCTOBER 2017
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 (SIEN AANHANGSEL) [20]

Anthony Smith, buite gemeenskap van goedere getroud met Elaine Smith, is die geregistreerde eienaar van Erwe 17, 18 en 19 Merrivale (soos aangedui op die aangehegte sketsplan), geleë in die Howick gebied (Umngeni Munisipaliteit). Anthony het 'n groot dam op Erwe 18 en 19 opgerig (aangedui deur die verdonkerde gedeelte op die sketsplan), en hierdie dam word ook aangedui op die goedgekeurde diagramme van die eiendomme.

Brett Jones is 'n wewenaar en die geregistreerde eienaar van Erf 20, terwyl Carl Drummond, 'n Franse immigrant, getroud met Petra Drummond, die geregistreerde eienaar van Erf 21 is.

Elkeen van die eiendomme is 50 hektaar groot.

Brett het 'n boorgat op sy eiendom wat genoegsame water vir sy behoeftes voorsien.

Carl ondervind waterprobleme en het Anthony en Brett genader met die versoek om water van hulle onderskeie eiendomme te onttrek.

Anthony is gewillig om aan Carl die reg te verleen om beperkte hoeveelhede water, wat met 'n meter wat by die pomp installeer sal word, gemeet kan word, uit sy dam te onttrek, teen betaling van 'n bedrag van R10 000,00 per jaar vir die onttrekking en waterleiding oor sy eiendomme.

Brett is nie gewillig om Carl toe te laat om water uit sy boorgat te onttrek nie, maar:

- a) is gewillig om aan Carl die reg te verleen om water vanaf Anthony se dam oor sy eiendom te gelei teen betaling van 'n bedrag van R25 000,00;
- b) verlang die reg om gratis water van die pypleiding wat oor sy eiendom aangelê sal word, te gebruik indien sy boorgat vir water rede ookal faal.

QUESTION 1 (SEE ANNEXURE) [20]

Anthony Smith, married out of community of property to Elaine Smith, is the registered owner of Erven 17, 18 and 19 Merrivale (as indicated on the attached sketch plan) situate in the Howick area (Umngeni Municipality). Anthony has erected a huge dam on Erven 18 and 19 (indicated by the shaded portion on these erven) and this dam is depicted on the approved diagrams of the said erven.

Brett Jones, a widower, is the registered owner of Erf 20 and Carl Drummond, a French immigrant married to Petra Drummond, is the registered owner of Erf 21.

Each of the aforesaid erven are 50 hectares in extent.

Brett has a borehole on his property with sufficient water to meet his needs.

Carl is experiencing water difficulties and approaches Anthony and Brett enquiring whether he could draw water from their respective properties.

Anthony is agreeable to grant Carl the right to draw water from his dam in a limited quantity, a gauge to be installed on the pump, against payment by him of R10 000,00 per annum for the right to conduct water over his properties.

Brett is not agreeable to grant Carl the right to draw water from his borehole but:

- a) is agreeable to grant Carl the right to conduct water over his property from Anthony's dam against payment of the sum of R25 000,00;
- b) requires the right to utilise water from the pipeline which will cross his property if his borehole fails for any reason, free of any charges.

Anthony het toegestem tot Brett se vereiste in b) hierbo op voorwaarde dat enige water wat deur Brett gebruik word van Carl se kwota sal kom.

Carl aanvaar al die voorwaardes hierbo en onderneem ook om alle koste verbonde aan die registrasie van die regte te betaal.

Die servituutarea is 4 meter wyd en word aangedui deur die letters xy. Dit strek vanaf 'n punt teenaan die damwal, wat 750 meter van Erf 18 se grensgemerke HJ is, al langs die grens van Erf 18 tot by die grens tussen Erf 18 en Erf 17, dan vir 200 meter al langs die grens van Erf 17, endan al langs die grens van Erf 20, oor Erf 20 tot Erf 21.

Die partye is deur 'n Landmeter adviseer dat geen diagram benodig word vir die registrasie van die servituut/e nie.

Stel die dokument op wat benodig word om Brett en Carl toe te laat om water uit Anthony se dam te onttrek en wat die bogemelde voorwaardes insluit wat u nodig ag om al die partye se belange te beskerm. Die partye verskyn nie persoonlik voor u nie.

VRAAG 2 [16]

Clive Black en sy suster Samantha Williams het gesamentlik oordrag geneem van die volgende bates soos uit die boedel van hulle oorlede moeder geërf:

- a) Deel 1 met Uitsluitlike Gebruiksgebiede Yard Y1 en Garage G1,
- b) Deel 2 met Uitsluitlike Gebruiksgebiede Yard Y2 en Garage G2

in die Moondrops deeltitelskema.

Clive en Samantha het besluit dat elkeen van hulle die uitsluitlike eienaarskap van 'n deelen sy toegedeelde uitsluitlike gebruiksgebiede moet verkry. Hulle het ooreengestem dat Clive volle eiendomsreg van Deel 1 en EGG Yard Y1 en

Anthony is agreeable to Brett's request in b) above on condition that any water used by Brett will be from Carl's quota.

Carl 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 beaconsed by the letters xy. It stretches from a point against the wall of the dam, which is 750 metres from the boundary HJ of Erf 18, along the boundary of Erf 18 up to the boundary between Erf 18 and Erf 17, then for 200 metres along the boundary of Erf 17, and then along the boundary of Erf 20, across Erf 20 to Erf 21.

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 Brett and Carl to draw water from Anthony's dam 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 2 [16]

Clive Black and his sister Samantha Williams jointly inherited:

- a) Section 1 with Exclusive Use Areas Yard Y1 & Garage G1,
- b) Section 2 with Exclusive Use Areas Yard Y2 & Garage G2

in the Sectional Scheme Moondrops from the estate of their late mom and have taken transfer from the executor of her deceased estate.

Clive and Samantha have decided that each one of them would obtain exclusive ownership of a dwelling with its attached exclusive use areas. They have agreed that Clive would receive full ownership of Section 1 and EUAs Yard Y1 &

Garage G1 sal verkry, en Samantha volle eiendomsreg van Deel 2 en EGG Yard Y2 en Garage G2, en het 'n verdelingsooreenkoms aangegaan in die verband.

Garage G1 and Samantha would receive full ownership of Section 2 and EUAs Yard Y2 & Garage G2 and have concluded the requisite Partition agreement.

Daar is slegs 2 eenhede in die Moondrops deeltitelskema, en geen reg van uitbreiding is voorbehou nie. Die dele en die Uitsluitlike Gebruiksgebiede het gelyksoortige afmetings en waardes. Clive is ongetroud. Samantha was op die stadium toe sy oordrag geneem het buite gemeenskap van goedere getroud met Prince Williams, maar ongelukkig het haar man 'n maand gelede 'n noodlottige ongeluk gehad.

There are only 2 units in the Sectional Scheme, Moondrops, with no reservation for the erection of further building or buildings. The units and EUAs are of a similar size and value. Clive is unmarried. Samantha was married out of community of property to Prince Williams when she took transfer of the sectional units but unfortunately her husband had a fatal accident a month ago.

2.1 Stel die akte op waarkragtens Uitsluitlike Gebruiksgebiede Y1 en Garage G1 in Clive se naam alleen sal vestig. Die partye kan nie persoonlik voor u verskyn nie. (12)

2.1 Draw the deed that will vest the Exclusive Use Areas Yard Y1 & Garage G1 solely in Clive's name. The parties are not able to appear personally to sign the documents. (12)

2.2 Lys die dokumente wat by die Aktekantoor ingedien sal word, asook (apart) die dokumente wat in die notariese protokol behou sal word. (4)

2.2 List the documents that will be lodged in the deeds office and (separately) the documents that are to be retained in the Notary's Protocol (4)

VRAAG 3 [10]

QUESTION 3 [10]

U is 'n notaris wat in Kaapstad praktiseer. U word geraadpleeg deur mnr en mev Jones wie u meedeel dat hulle vyf maande gelede in Johannesburg getroud is, en dat hulle voor hulle huwelik 'n voorhuwelikse kontrak voor 'n notaris in Johannesburg geteken het. Vanweë tydsebeperkings kon hulle egternie op daardie stadium die waardes van hulle onderskeie boedels bepaal nie. Dit het hulle nou gedoen en die aanvangswaarde van mnr Jones se boedel was R3 000 000.00 (Drie miljoen rand) en dié van mev Jones, R100 000.00 (Eenhonderd duisend rand).

You are a notary practicing in Cape Town. You are consulted by Mr and Mrs Jones who inform you that they were married in Johannesburg 5 months ago and that prior to their marriage they had signed an antenuptial contract before a Notary in Johannesburg. The antenuptial contract has since been registered in the deeds office in Johannesburg. However, because of time constraints they had not been able to establish the commencement value of their respective estates. They have now determined that the commencement value of Mr Jones' estate was R3 000 000.00 (Three Million Rand) and that of Mrs Jones, R100 000.00 (One Hundred Thousand).

3.1 Stel die dokument op wat benodig word en meld binne watter tydperk, indien enige, die dokument geteken moet word. (6)

3.1 Draw the necessary document and advise within what period, if any, the said document must be signed. (6)

NOTARIËLE PRAKTYK [100]	NOTARIAL PRACTICE [100]
3.2 Wat sal die gevolge wees indien die dokument nie tydig geteken sou word nie? (2)	3.2 What will the implications be if not done timeously? (2)
3.3 Waar moet die dokument geliasseer of ingedien word? (2)	3.3 Where must the document be filed or lodged? (2)
VRAAG 4 [4]	QUESTION 4 [4]
4.1 Wat is 'n "Civil Union"? (2)	4.1 What is a "Civil Union"? (2)
4.2 Wat, indien enigiets, is die impak van die Wet op Huweliksgoedere Wet 88 van 1984 op die huweliksgoederebedeling van 'n "Civil Union"? (2)	4.2 What, if any, is the impact of the Matrimonial Property Act 88 of 1984 on the matrimonial property system of a Civil Union? (2)
VRAAG 5 [20]	QUESTION 5 [20]
5.1 Wat word bedoel met die verlening van diemag van assumpsie aan 'n eksekuteur in 'n testament? (2)	5.1 What is meant by conferring the power of assumption on an executor in a will? (2)
5.2 Watter dokumente moet by die Meester ingedien word om hierdie reg uit te oefen? (2)	5.2 What documents are required to be lodged with the Master to exercise this right? (2)
5.3 Op watter vergoeding is 'n eksekuteur geregtig? (2)	5.3 What compensation is an executor entitled to? (2)
5.4 Wat is die algemene toepaslike boedelbelastingkoers? (1)	5.4 What is the general applicable rate of estate duty? (1)
5.5 Wat is die algemene korting op boedelbelasting, en hoe beïnvloed dit getroude persone? (2)	5.5 What is the general rebate on estate duty, and how does this affect married couples? (2)
5.6 Wat is die skenkingsbelastingkoers, en watter bedrag van 'n skenking deur 'n natuurlike persoon geniet vrystelling? (2)	5.6 What is the rate of donations tax, and what amount of a donation by a natural person is exempted? (2)
5.7 U kliënt het sy primêre woning in 1996 teen 'n alles-insluitende bedrag van R1m verkry en, op advies van sy ouditeure, die eiendom in sy familietrust se naam geregistreer. Hy het 'n verdere bedrag van R1m by die bank geleen om	5.7 Your client acquired his primary residence in 1996 for an all-inclusive purchase consideration of R1m and, on the advice of his auditors, registered the home in the name of his family trust. He borrowed a further R1m from the bank to make

verbeteringsaan te bring, en die eiendom is in 2016 verkoop teen 'n koopsom van R4m. Hy skuld die bank steeds R1m. Hoe sal u sy kapitaalwinst aanspreeklikheidsbereken? (4)

alterations, and the property was sold in 2016 for a purchase price of R4m. He still owes the bank R1m. How would you calculate the capital gains tax liability? (4)

5.8 Wyle George Mathos was die eienaar van Zenos Catering, 'n besigheid wat geregistreer is vir BTW. Hy het 'n afleweringvoertuig (enkelkajuit bakkie) wat in sy besigheid gebruik was, aan sy seun, 'n student, nagelaat. Die balans van die besigheidsbates is nagelaat aan die werknemers van Zenos Catering wat geen familie verwantskap met hom gehad het nie. Al sy persoonlike bates is nagelaat aan sy eggenote. Die markwaarde van die bates was soos volg:

5.8 The late George Mathos, was the owner of Zenos Catering, a VATable enterprise. He bequeathed a delivery vehicle (single cab bakkie) which was used in his business to his son (a student). The rest of the business assets were bequeathed to Zenos Catering's employees who are not related to George. All George's private assets were bequeathed to his spouse. The open market value of the assets were as follows:

- Bakkie R25 000.00
- Ander besigheidsbates R50 000.00
- Persoonlike bates R1,5m

- Bakkie R25 000.00
- Other business assets R50 000.00
- Private assets R1,5m

Wat is die BTW gevolge op George se boedel? (5)

What is the VAT effect on George's estate? (5)

VRAAG 6 [20]

QUESTION 6 [20]

John Madiba, 'n beesboer en wewenaar, is die eienaar van Gedeelte 15 van die plaas Welbekend. Hy het twee seuns, Joseph en Moses. Joseph staan op die punt om kragtens tradisionele gebruike in die huwelik te tree met Lerato. Moses is binne gemeenskap van goedere getroud met Mary, en hulle is nog kinderloos.

John Madiba, a cattle farmer and widower, is the owner of Portion 15 of the Farm Welbekend. He has two sons, Joseph and Moses. Joseph is about to get married to Lerato (which marriage will be according to traditional laws). Moses is married to Mary, in community of property, and they have yet to have children.

Alhoewel John sy kinders ewe lief het, en hulle op gelyke basis wil laat bevoordeel by sy afsterwe, is hy baie bekommerd oor Moses, wat 'n dwelmprobleem het, en sy erflating mag verkwis. Hy is ook nie te geheg aan Mary nie, en blameer haar vir Moses se probleme.

Although John loves his children equally, and wishes to provide for them equally upon his death, he is very concerned about Moses, who has a drug problem, and may squander his inheritance. He is also not too fond of Mary and blames her for Moses' problems.

Hy gee aan u opdrag om sy testament voor te berei:

He therefore instructs you to draft his will:

1. Om sy kinders op gelyke basis te bevoordeel, sonder enige inmenging van hulle eggenotes.
2. Om te verseker dat Moses geen direkte beheer oor enige bates het nie.
3. Om te verseker dat, by Moses se afsterwe, geen bates na Mary sal vererf nie, tensy hulle dan kinders het, in welke geval Moses se erflating (of wat ookal daarvan oor is) na die kleinkinder/s moet vererf.
4. Om te bepaal dat, indien enige van sy seuns voor hom te sterwe kom, daardie seun se afstammeling daardie seun se erfdeel moet ontvang, en indien daar geen afstammeling is nie, sy broer.
5. Om sy seun Joseph as Eksekuteur en Administrateur van sy boedel aan te stel.

1. To provide for his children equally, without any interference from their spouses;
2. To ensure that Moses has no direct control over any assets;
3. To ensure that, upon Moses' demise, nothing goes to Mary, unless they have children. The grandchildren should then inherit Moses' portion (or what is left thereof) and
4. To provide therefore that, should any son predecease him, such son's inheritance would go to the son's children, and failing descendants, to his brother;
5. To appoint his son Joseph as Executor and Administrator of his estate.

Hy het 'n lewenspolis wat genoegsame dekking sal verskaf vir die administrasiekoste van sy boedel, aangesien hy nie wil hê dat sy plaas verkoop moet word nie, maar beskerm moet word tot voordeel van sy kleinkinders.

He has a life policy sufficient to cover the administration costs of the estate, as he does not wish for the farm to be sold but to be preserved for his grandchildren.

Stel die testament op.

You are required to draft the Will.

VRAAG 7 [10]

QUESTION 7 [10]

- 7.1 Verduidelik die gevolge van die afstanddoening van die volgende in 'n notariële verband en dui aan wanneer sodanige afstanddoening toepaslik sal wees:
 - 7.1.1 *Non causa debiti*: (2)
 - 7.1.2 *Beneficium ordinis seu excussionis*: (2)
 - 7.1.3 *Beneficium divisionis*: (2)
- 7.2 Watsal u reaksie as notaris wees tot die volgende instruksies/versoeke? Om bepalinge in 'n notariële verband in te sluit ingevolge waarvan dit ooreengekom word dat:

- 7.1 Explain the implications of the renunciation in a notarial surety bond of the following and indicate when such renunciation would be appropriate?
 - 7.1.1 *Non causa debiti*: (2)
 - 7.1.2 *Beneficium ordinis seu excussionis*: (2)
 - 7.1.3 *Beneficium divisionis*: (2)
- 7.2 What would your response be, as a Notary, to the following instructions/requests? To include provisions in a notarial bond in terms of which, it is agreed that:

7.2.1 die beswaarde bates by wanbetaling deur die krediteur oorgeneem word;
(2)

7.2.1 the bonded assets may upon default be taken over by the creditor;
(2)

7.2.2 die beswaarde bates by wyse van openbare veiling sonder beslaglegging deur die krediteur verkoop mag word, en die opbrengs aangewend kan word ter aflossing van die debiteur se verpligtinge.
(2)

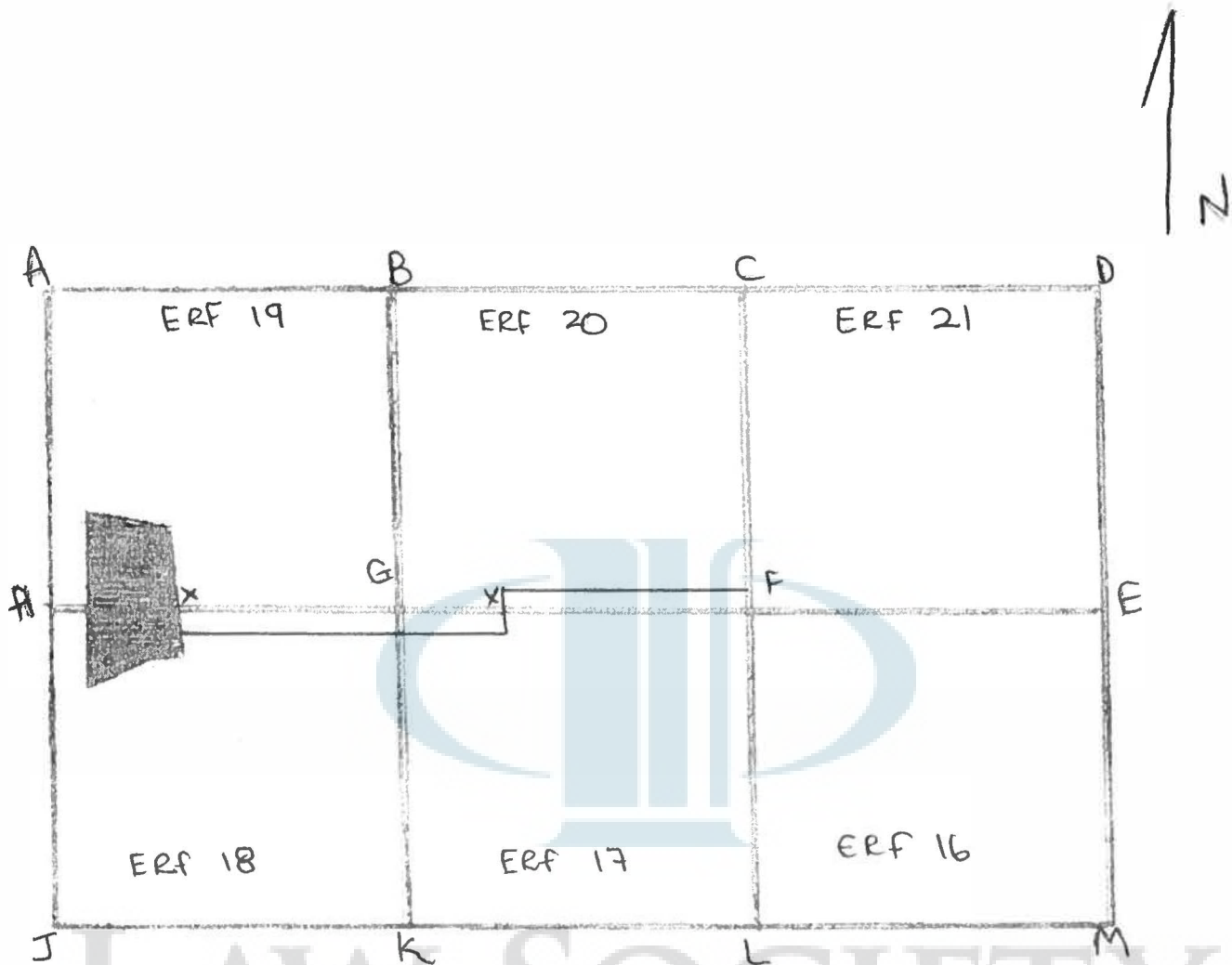
7.2.2 the bonded assets may be sold on public auction without attachment by the creditor and the proceeds applied towards the debtors liabilities.
(2)

- DIE EINDE -

- THE END -



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