

DIE REPUBLIEK VAN SUID-AFRIKA

NOTARIËLE PRAKTYKEKSAMEN

DATUM: 10 OKTOBER 2018
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 a 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:

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|-----------------|-----------------------|
| 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 drup dus hierdie eksamen.

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 10 OCTOBER 2018
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 [13]

Dave Richie, binne gemeenskap van goedere getroud met Sheila Richie, is die geregistreerde eienaar van Erf 903 Mount Edgecombe, 'n eiendom wat hy van sy pa geërf het. Die titelakte van die eiendom bevat onder andere die volgende twee voorwaardes:

1. Onderworpe aan die voorwaarde opgelê deur en ten gunste en tot voordeel van Mount Edgecombe Estates (Edms) Bpk dat daardie gedeelte van die eiendom (Erf 905 Mount Edgecombe) gemerk ABba op Kaart nommer SG. Nr. 4528/2010 slegs gebruik sal word vir doeleindes van 'n tuin en geen ander doel hoegenaamd nie, soos geskep in Akte van Transport Nr. T9546/2010.
2. Onderworpe aan die voorwaarde vervat in die laaste Testament van Wyle Marcus Richie, gedateer 17 Oktober 2011: "Die bemakings in hierdie testament is tot die alleenlike voordeel van die begunstigdes, en is uitgesluit van enige bestaande of toekomstige huwelik binne gemeenskap van goedere".

Dave is van plan om die geboue op die eiendom uit te brei en die beperkte gedeelte te gebruik deur die bou van 'n swembad en oprigting van 'n onthaal-area.

Mount Edgecombe Estates (Edms) Bpk (die Ontwikkelaar) is bereid om Dave toe te laat om die beperkte gebied vir die doeleindes hierbo vermeld te gebruik, onderhewig daaraan dat hy 'n bedrag van R25 000,00 aan die Ontwikkelaar betaal. Dit is vir Dave aanvaarbaar.

- 1.1 Watter dokument sal u opstel vir indiening en registrasie in die Akte kantoor wat Dave Richie sal toelaat om die beperkte gedeelte van Erf 903 Mount Edgecombe te gebruik soos beplan?

(1)

QUESTION 1 [13]

Dave Richie, married in community of property to Sheila Richie, is the registered owner of Erf 903 Mount Edgecombe, a property he inherited from his late father. The Title Deed of the said property contains, inter alia, the following two conditions:

1. Subject to the condition imposed by and in favour of Mount Edgecombe Estates Proprietary Limited for its benefit that the portion lettered ABba on Diagram SG. No. 4528/2010 of the said property (i.e. Erf 903 Mount Edgecombe) will only be used for gardening purposes and no other purpose whatsoever, as created in Deed of Transfer No. T9546/2010.
2. Subject to the condition contained in the Last Will and Testament of the Late Marcus Richie dated 17 October 2011: "The bequests conferred are for the sole use of the beneficiaries and will be excluded from any present or future marriage in community of property".

Dave plans to extend the buildings on the property and utilise the restricted portion by erecting a swimming pool and the construction of an entertainment area.

Mount Edgecombe Estates Proprietary Limited (i.e. the Developer) is prepared to allow Dave to use the restricted portion of the property for the purposes set out above, on condition he pays the Developer the sum of R25 000,00. Dave is agreeable to this.

- 1.1 What document will you draw for lodgement and registration in the Deeds Office that will allow Dave Richie to use the restricted portion of Erf 903 Mount Edgecombe for the purposes he intends?

(1)

- 1.2 Wie sal die partye wees tot die dokument in 1.1 hierbo? Beskryf soos u sou in die dokument wat u sou indien. (4)
- 1.3 Stel die paragraaf op in die dokument in 1.1 hierbo wat Dave Richie sal toelaat om die beperkte gedeelte van Erf 903 Mount Edgecombe te gebruik vir doeleindes wat hy beplan. (2)
- 1.4 Watter dokumente sal u in die Aktekantoor indien? (2)
- 1.5 Watter dokumente sal u in u protokol behou? (2)
- 1.6 Wat, indien enige, is die fiskale gevolge van die transaksie? (2)

- 1.2 Who will be the Party/Parties to the Document in 1.1 above? Describe as you would in the document to be lodged at the Deeds Office. (4)
- 1.3 Draft the paragraph contained in the Document referred to in 1.1 above that will allow Dave Richie to use the restricted portion of Erf 903 Mount Edgecombe for the purposes he intends. (2)
- 1.4 What documents would you lodge in the Deeds Office? (2)
- 1.5 What documents would you retain in your Protocol? (2)
- 1.6 What, if any, are the fiscal implications of the transaction? (2)

VRAAG 2 [12]

QUESTION 2 [12]

Pippa Townsend, getroud buite gemeenskap van goed met Chad Townsend, is die geregistreerde eienaar van Deel 8, groot 150 vierkante meter, gehou kragtens ST2516/2012, tesame met Uitsluitlike Gebruiksgebiede (EUA/s) Parking P8 en Parking P28, groot 25 vierkante meter elk, kragtens SK786/2012, in die Deeltitel-skema Summersands, soos aangedui op Deelplan Nr. SS198/2010, geleë te Bellair in die Munisipale Gebied van Ethekwini. Die ontwikkelaar van die gemelde skema is Realtime Properties (Edms) Bpk. Pippa het 'n verband geregistreer oor die Deel en EUAs ten gunste van Friendly Bank.

Pippa Townsend, married out of community of property to Chad Townsend, is the registered owner of Section 8, in extent 150 square metres; held under ST2516/2012, together with Exclusive Use Areas (EUA/s) Parking P8 & Parking P28, in extent 25 square metres each, under SK786/2012, in the Sectional Scheme Summersands, as shown on Sectional Plan No. SS198/2010 situate at Bellair in the Ethekwini Municipality Area. The Developer of the above scheme is Realtime Properties Proprietary Limited. Pippa has a Mortgage Bond registered over the aforesaid Sectional Unit & EUAs in favour of Friendly Bank.

Tyrone Smith en sy vrou Angie (Oostenrykse burgers) met wie hy in Oostenryk getroud is het 6 maande gelede vanaf Oostenryk na Suid Afrika verhuis. Tyrone en Angie het Deel 7, 160 vierkante meter groot, en EUA Parking P7, 25 vierkante meter, in die skema Summersands aangekoop van Betty Bright, 'n weduwee. Registrasie van oordrag van die Deel en sessie van die EAU het reeds plaasgevind.

Tyrone Smith and his wife Angie (Austrian Nationals) who he married in Austria moved to South Africa from Austria 6 months ago. Tyrone and Angie have purchased Section 7, 160 square metres in extent, and EUA Parking P7, 25 square metres, in the scheme Summersands from Betty Bright, a widow. Registration of transfer of the Section and cession of the EUA have been completed.

Tyrone en Angie benodig 'n ekstra parkeergebied. Pippa het nie twee parkeerareas nodig nie, het kontant nodig en kom ooreen om Parking P28 aan Tyrone en Angie te verkoop vir 'n bedrag van R75 000,00.

2.1 Watter akte sal u opstel vir indiening by die Aktekantoor om uitvoering te gee aan die verkoping van Parking P28? Verwys asseblief na die toepaslike Wet en Artikel daarvan. (2)

2.2 Wie sal partye wees tot die Akte na verwys in 2.1 hierbo? Siteer die partye soos wat dit in die Akte sal verskyn. (4)

2.3 Indien Tyrone Smith ten tye vansy huwelik met Angie, in Suid Afrika gedomisileerd was, hoe sou u hulle in u notariële akte beskryf het? (2)

2.4 Noem die dokumente wat u in die Aktekantoor sou indien in 2.1 hierbo. (4)

VRAAG 3 [20]

James Adams is binne gemeenskap van goedere getroud met Lyn Adams. Hy het 'n bedrag van R5 000 000,00 aan David Petrus geleen om 'n nuwe advertensieagentskap te finansier. Die bedrag is terugbetaalbaar in jaarlikse paaiemente van R500 000,00 en dra rente teen prima-koers.

David se eggenote, Angela, met wie hy buite gemeenskap van goedere getroud is, is die enigste aandeelhouer en direkteur van Angela Petrus Fruit and Vegetable Wholesalers (Edms) Bpk, 'n suksesvolle besigheid met pakhuis en kantore te Durban en Johannesburg Internasionale lughawens en met geregistreerde kantore in Kaapstad. Die maatskappy besit vyf Mercedes tien ton vasteraam vragmotors, wat vanaf die tak in Kaapstad bedryf word, en 'n aantal los toerusting by al die verskillende takke.

Tyrone and Angie require an extra parking bay. Pippa, who does not require two parking bays, is also in need of cash and agrees to sell Parking P28 to Tyrone and Angie for the sum of R75 000,00.

2.1 What deed will you draft for lodgement in the Deeds Office to give effect to the sale of Parking P28? Please give reference to the applicable Act and Section thereof. (2)

2.2 Who will be the Parties to the Deed referred to in 2.1 above? Please set out the Parties as they will appear in the Deed. (4)

2.3 Should Tyrone Smith have been domiciled in South Africa at the time of his marriage to Angie, how would you have described them in a notarial deed? (2)

2.4 List the documents that you would lodge in the Deeds Office in respect of 2.1 above. (4)

QUESTION 3 [20]

James Adams, who is married in community of property to Lyn Adams, has lent David Petrus R5 000 000,00 to finance the launch of his new advertising business, repayable in annual instalments of R500 000,00 with interest at prime rate.

David's wife, Angela, to whom he is married out of community of property, is the sole shareholder and director of Angela Petrus Fruit and Vegetable Wholesalers (Pty) Ltd, a successful business with warehousing and offices at the 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.

Die maatskappy het aangebied om sy roerende bates te verbind as sekuriteit vir die terugbetaling van die lening deur David.

- 3.1 Stel die vereiste verbandakte op ten einde die beste moontlike sekuriteit te verskaf. Verskaf aanvullende voorwaardes slegs in opsomming. (15)
- 3.2 Watter ondersteunende dokumente sal die notaris benodig en behou in sy protokol? (3)
- 3.3 By welke Aktekantore en in welke tydperk moet die verband geregistreer word? (2)

VRAAG 4 [15]

Jane Deacon is sewentien jaar oud en wil in die huwelik tree met Kenneth Kane, 'n meerderjarige Amerikaanse burger, gedomicilieerd in New York. Jane se pa, Matthew Deacon, versoek u om 'n voorhuwelikse kontrak op te stel met onder andere die volgende bepalings:

- (a) Die partye verlang dat die huweliks-goederereg bedeling van die Republiek van Suid Afrika op hulle huwelik van toepassing is, dat die huwelik buite gemeenskap van goedere is en dat die aanwasbedeling sal geld.
- (b) Die partye sal in die verhouding 60% vir Kenneth en 40% vir Jane in die aanwasdeel. Die aanwas sal verder net van toepassing wees op inkomste verdien uit indiensneming, dienste en besigheid bedryf, en alle ander bates en oorsprong van inkomste moet uitgesluit wees van die aanwasbedeling.
- (c) 'n Skenking deur Matthew Deacon aan die egpaar van 'n Ou-Mutual polis vir die bedrag van R500 000,00 op die lewe van Matthew. Die opbrengs van die polis is betaalbaar by die afsterwe van Matthew. Sou Jane se huwelik vir watter rede ookal tot 'n einde kom voordat die dood van Matthew, sal die polis terugval na Matthew en sy absolute en uitsluitlike eiendom word.

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

- 3.1 Draw the bond required to establish the best possible security. Provide ancillary conditions in summarized form. (15)
- 3.2 What supporting documents would the notary require and retain in the protocol? (3)
- 3.3 At which Deeds Office(s) and within what period(s) must the bond be registered? (2)

QUESTION 4 [15]

Jane Deacon is seventeen years old and intends marrying Kenneth Kane, a major American citizen, domiciled in New York. Jane's father, Matthew Deacon, asks you to draft an antenuptial contract containing inter alia, the following provisions:

- (a) The parties want the matrimonial laws of the Republic of South Africa to apply to their marriage and that the marriage should be out of community of property and the accrual regime shall apply.
- (b) The parties are to share in the accrual in the percentage 60% to Kenneth and 40% to Jane. The accrual is further to only apply to income earned from employment, services and business conducted and all other assets and income sources are to be excluded from the accrual system.
- (c) A donation by Matthew Deacon to the prospective married couple of a policy, taken out with Old Mutual for R500 000,00 on the life of Matthew Deacon. The proceeds of the policy are payable on the death of Matthew Deacon. Should Jane's marriage be ended for any reason whatsoever before the death of Matthew Deacon, the policy will revert to Matthew Deacon and will become his absolute and exclusive property.

(d) Kenneth onderneem om 'n vakansiehuis aan Jane as haar uitsluitlike eiendom te skenk, op voorwaarde dat sy geboorte gee aan nie meer as drie kinders binne 'n tydperk van ses jaarna datum van huwelik.

Stel die voorhuwelikse kontrak op.

VRAAG 5 [15]

Wilbur Right is die enigste trustee van The Flying Trust, die geregistreerde eienaar van die plaas Koekoeksfontein 391 JR. Wilbur het alle toestemmings verkry van die plaaslike owerheid en Burgerlugvaart om 'n private vliegveld op die plaas op te rig. Die plaas is uitgesluit van die bepalings van Wet 70 van 1970. Hy is oorstroom deur versoeke van eienaars van ligte vliegtuie om vliegtuigloodse op die eiendom op te rig en gebruik te maak van sy opstyg- en landings-fasiliteite. Wilbur het die potensiaal in hierdie besigheidsgeleentheid raakgesien, maar besef dat dit net in 'n gereguleerde en georganiseerde omgewing gedoen kan word. Hy wil ook nie betrokke raak by die oprigting van vliegtuigloodse namens derde partye nie. U het hom adviseer dat die mees effektiewe manier om sy doel te bereik sal wees deur middel van 'n struktuur van langtermynhuurkontrakte, terwyl die gemeenskaplike belange van alle partye deur 'n huurderskomitee bestuur kan word. Van u word verwag om 'n generiese huurkontrak voor te berei wat tussendie grondeienaars en die huurders aangegaan kan word, met insluiting van sodanige noodsaaklike voorwaardes as wat u nodig mag ag. Aanvullende voorwaardes kan slegs by wyse van opskrifte na verwys word.

VRAAG 6 [10]

U word geraadpleeg deur die trustees van Awora Trust. Hulle deel u mee dat hulle optree as eiendomsontwikkelaars, en 'n eiendom in Groenpunt, Kaapstad, identifiseer het as geskik vir die ontwikkeling van residensiële eenhede. Hulle benodig egter 'n tydperk van twee jaar om ook met die eienaars van aanliggende eiendomme

(d) Kenneth undertakes to donate to Jane, as her sole property, a holiday house on condition that she gives birth to not more than three children within a period of six years of the date of the marriage.

Draft the antenuptial contract.

QUESTION 5 [15]

Wilbur Right is the sole trustee of The Flying Trust, the registered owner of the farm Koekoeksfontein 391 JR. Wilbur has obtained all approvals from the local authority and Civil Aviation to construct a private airfield on the farm. The farm has also been exempted from the provisions of Act 70 of 1970. He has also been inundated by requests from owners of light aircraft to allow them to erect aircraft hangers on the property and make use of his take-off and landing facilities. Wilbur has seen the potential in this commercial opportunity, but realised that this can only be done in a regulated and organised environment. He also does not want to get involved in any construction of hangars on behalf of third parties. You have advised him that the most effective way to achieve his goals will be through a structure of granting long term leases to third parties, whilst also arranging for the management of communal interests through a lessee committee. You are required to draft the generic lease agreement between the landowner and the various lessees, including therein such further essential conditions as you may deem necessary. Ancillary conditions can be listed by headings only.

QUESTION 6 [10]

You are consulted by the trustees of the Awora Trust. They inform you that they conduct the business of property development, and have identified a property in Green Point, Cape Town which is suitable for development of residential units. They however need a period of two years to also negotiate with the owners of adjacent

te onderhandel met die oog daarop om ook daardie eiendomme te bekom vir insluiting in die ontwikkeling, en om dan die haalbaarheid van die ontwikkeling te bepaal. Die eienaars van die eiendom, twee bejaarde weduwees, is onwillig om 'n voorwaardelike verkoping of opsie-ooreenkoms aan te gaan, aangesien dit die koopsom sal vasmaak terwyl hulle glo dat die waarde van die eiendom heelwaarskynlik sal styg weens vraag en aanbod. Hulle is gewillig om 'n voorkeepsreg aan die Trust te verleen. Van u word verlang om 'n Akte van Voorkeepsreg voor te berei op so 'n basis as om die Trust se belange ten beste te beskerm.

VRAAG 7

[3]

Topstack Properties (Edms) Bpk het die deeltitelskema View from the Top SS 123/2010 ontwikkel. Die eerste fase is uitverkoop en het uit 25 eenhede bestaan wat almal aan die kopers oorgedra is teen 'n gemiddelde prys van R1,8mil. Topstack het ook die reg voorbehou om die skema uit te brei deur die ontwikkeling van nog 10 eenhede. Topstack is nou genader deur 'n ander suksesvolle ontwikkelaar, wat 'n hele aantal soortgelyke ontwikkelings voltooi het, om die reg van uitbreiding te bekom teen 'n vergoeding van R2,8m.

- 7.1 Sou die onderhandelinge suksesvol wees, watter dokument sou u voorberei vir indiening in die Aktekantoor? (1)
- 7.2 Wat sou die fiskale gevolge van die transaksie wees, gedagtig ook aan die moontlikheid om die transaksie as die verkoop van 'n lopende saak te hanteer. (2)

VRAAG 8

[12]

Serena Rampersadh, 'n weduwee, is oorlede op 20 Desember 2017. In haar Laaste Testament gedateer 22 Julie 2010 het sy haar onroerende eiendom aan haar kleinseun Tyrone Moodley

properties with the object of also securing those properties for possible inclusion in the development, and to finally establish the feasibility of the development. The owners of the property, two elderly widows, are however unwilling to enter into a suspensive sale or option agreement, as this would fix the purchase price while the owners believe that the price may well naturally escalate due to supply and demand. They are prepared to provide the trust with a pre-emptive right. You are required to prepare a deed of pre-emption in such a manner as would best protect the trust's interests.

QUESTION 7

[3]

Topstack Properties (Pty) Ltd developed the sectional scheme View from the Top SS 123/2010. The first phase, which has been sold out, consisted of 25 units, all of which have been transferred to purchasers at an average price of R1,8m each. Topstack also reserved for itself the right to extend the scheme by the erection on the common property of a further 10 units. It has now been approached by another successful developer, who has completed a number of similar developments, to acquire the right of extension, for a consideration of R2,8m.

- 7.1 Should the negotiations be successful what document will you draft for lodgement in the Deeds Office? (1)
- 7.2 What would the fiscal implications of the transaction be, also considering the possibility of treating the transaction as the sale of a going concern. (2)

QUESTION 8

[12]

Serena Rampersadh, a widow, died on 20 December 2017. In terms of her Last Will and Testament dated 22 July 2010 she bequeathed her immovable property to her grandson Tyrone

(gebore 10 Januarie 2005) bemaak onderhewig daaraan dat die eiendom in trust gehou moet word totdat hy die ouderdom van 21 jaar bereik. Die bemaking was verder onderhewig aan die voorwaarde dat die oorledene se dogter, Pam Moodley, toegelaat sal word om in die buitegebou aan te bly solank sy mag lewe. Die oorledene het verder bepaal dat alle erflatings uitgesluit sal wees van die gemeenskap van goedere van enige bestaande of toekomstige huwelik van 'n begunstigde. Pam Moodley is geskei.

Serena Rampersadh het haar prokureur, Jason Raath, as die eksekuteur van haar boedel aangestel. Die Meester het 'n Eksekuteursbrief onder Boedel Nommer 5560/2017 uitgereik. Stel die notariële akte op om uitvoering te gee aan die oorledene se wense.

Moodley (born 10 January 2005) subject to the condition that the property is to be held in trust until he attains the age of 21 years. The said bequest is made subject to the further condition that the deceased's daughter, Pam Moodley, is allowed to live in the outbuilding as long as she desires. The deceased has also directed that all bequests are excluded from any marriages in community of property which her heirs have entered into or may in the future enter into. Pam Moodley is divorced.

Serena Rampersadh appointed her attorney, Jason Raath, as the executor of her estate. The Master has issued Letters of Executorship in favour of Jason Raath under Estate Number 5560/2017. Draw the Notarial Deed to give effect to the deceased's wishes.

- DIE EINDE -

- THE END -

LAW SOCIETY
OF SOUTH AFRICA