

## DIE REPUBLIEK VAN SUID-AFRIKA

### NOTARIËLE PRAKTYKEKSAMEN

DATUM: 20 JUNIE 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 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 eksamenommer aan die regterkant van die vel papier, bv:

<b>NOTARIËLE EKSAMEN</b>	
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 eksamenommer dra, bv:

<b>BLADSY 2</b>	
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% of 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: 20 JUNE 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:

<b>NOTARIAL EXAMINATION</b>	
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:

<b>PAGE 2</b>	
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 [12]**

'n Eiendomsontwikkelaar, Kwik Build BK, het in 2012 'n deeltitelskema genaamd GREENSTONE in Amanzimtoti, Kwazulu Natal geregistreer. Die skema bestaan uit 12 eenhede en word aangedui op Deelplan Nr. SS 692/2012.

Kwik Build BK, wat intussen al 12 eenhede verkoop en oorgedra het, het nie enige uitsluitlike gebruiksgebiede geskep nie, en het in besonder geen parkeerareas gekoppel aan die onderskeie eenhede nie.

In navolging van versoeke van die eienaars en 'n eenparige besluit van die lede van die regspersoon, het die regspersoon:

- a) 'n landmeter aangestel om op die deelplan 'n parkeerarea vir elke eienaar van 'n eenheid in die skema af te baken.
- b) toe besluit om aan elke eienaar in die skema die reg tot die uitsluitlike gebruik van 'n parkeerarea deur middel van 'n aparte titel oor te dra.
- c) onderneem om alle kostes verbonde aan die vermelde afbakening en sessie van regte van die onderskeie parkeerareas aan die verskillende eienaars te dra.

BYRON BROWN, getroud buite gemeenskap van goedere met MARIE BROWN, besit eenheid 9 in die deelskema, en die uitsluitlike gebruiksregte ten opsigte van Parkeerarea PB9 is aan hom toegeken.

- 1.1 Stel die akte op waarkragtens die bogemelde Uitsluitlike Gebruiksgebied wat aan B Brown toegeken is, oorgedra word. Die ondertekenaars van die akte kan nie persoonlik voor u verskyn nie. (8)
- 1.2 Lys die dokumente wat in die aktekantoor ingedien sal word asook afsonderlik die dokumente wat in die notaris se protokol geliaseer moet word. (4)

**QUESTION 1 [12]**

A developer, Kwik Build CC, registered a Sectional Scheme, GREENSTONE, in Amanzimtoti, Kwazulu Natal in 2012. The scheme consists of 12 units and is depicted on Sectional Plan No. SS 692/2012.

Kwik Build CC, who has since sold and transferred all 12 units, did not create any exclusive use areas and in particular did not delineate any parking bays to the respective units.

Following requests by the owners of the units and a unanimous resolution of the members of the body corporate, the body corporate:

- a) instructed a land surveyor to delineate a parking bay for each unit owner in the scheme on the sectional plan;
- b) and then decided to confer on each owner the right to the exclusive use of a parking bay by way of a separate title;
- c) undertook to bear all costs of and incidental to the aforementioned delineation and cession to the individual unit owners of their respective parking bays.

BYRON BROWN, married out of community of property to MARIE BROWN, who owns unit 9 in the scheme has been granted the right to the exclusive use of Parking Bay PB9.

- 1.1 Draw the deed conveying to B BROWN the Exclusive Use Area allocated to him. The signatories to the deed are not able to personally appear before you to sign. (8)
- 1.2 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 2 [20]**

Abraham Adams en Barry Petersen bedryf 'n besigheid in vennootskap onder die naam A&B Builders vanaf Loopstraat 100, Kaapstad. Die vennootskap het ook takke in Pietermaritzburg en Johannesburg. U kliënt, Baroda Bank Beperk, het kredietfasiliteite in die bedrag van R1 000 000.00 aan die vennootskap toegeken en 'n dekkingsverband ten gunste van Baroda Bank Beperk is oor die vennootskap se onroerende eiendom in Loopstraat, Kaapstad, geregistreer.

As gevolg van die verswakking van die vennootskap se finansiële posisie verlang Baroda Bank Beperk aanvullende sekuriteit vir die kredietfasiliteite van R1 000 000.00. Die vennootskap besit twee 5-ton vragmotors, boumateriaal en ander minder waardevolle roerende goedere, en is bereid om hierdie bates te verbind.

Tydens 'n konsultasie met die vennote kom dit aan die lig dat Abraham terwyl hy in Spanje woonagtig was, met Carmelita, op daardie stadium in Amerika woonagtig, getrou het, terwyl sy met vakansie in Spanje was. Die paartjie het intussen immigrer na Suid Afrika. Sy vennoot Barry is 20 jaar oud en buite gemeenskap van goedere getroud met Glynis.

- 2.1 U ontvang opdrag van Baroda Bank Beperk om die nodige verbandakte vir registrasiedoeleindes op te stel en die beste moontlike sekuriteit aan u kliënt te verskaf. (15)
- 2.2 Vermeld in welke aktekantoor(e) die verband geregistreer moet word. (3)
- 2.3 Binne welke tydperk moet die verband geregistreer word? (2)

**VRAAG 3 [15]**

U word geraadpleeg deur Mary Smith, 'n oujongnoui en psigiater, en Dean Martin, 'n geskeide

**QUESTION 2 [20]**

Abraham Adams and Barry Petersen carry on business in partnership under the name of A&B Builders at 100 Loop Street, Cape Town. The partnership also has branches in Pietermaritzburg and Johannesburg. Your client, Baroda Bank Limited, granted credit facilities in the sum of R1 000 000.00 to the partnership as security for which the partners registered a mortgage bond in favour of Baroda Bank Limited over the partnership's immovable property at Loop Street, Cape Town.

Due to the deterioration of the financial position of the business of the partnership, Baroda Bank Limited requires additional security for the said credit facilities of R1 000 000.00. The partnership owns two 5-ton trucks, building material and other movable items of a lesser value and are prepared to bind these assets.

During your consultation with the partners it appears that Abraham, while residing in Spain married Carmelita while she was on holiday in Spain from the United States. The couple since immigrated to South Africa. His partner Barry is 20 years old and married out of community of property to Glynis.

- 2.1 You are instructed by your client Baroda Bank Limited to draw the required bond to be registered and to provide the best possible security for your client. (15)
- 2.2 State the deeds registry(ies) at which the bond must be registered. (3)
- 2.3 Within which time period must the bond be registered? (2)

**QUESTION 3 [15]**

You are consulted by Mary Smith, a spinster and psychiatrist, and Dean Martin, a divorcee,

man. Hulle deel u mee dathulle 'n huwelikskontrak wil aangaan aangesien hulle oor 'n week trou.

advising that they will be getting married in a week's time and intend entering into an antenuptial contract.

U instruksies is dat die netto waarde van Mary se boedel R3 000 000.00 beloop, en die van Dean slegs R500 000.00. Dean is alleeneienaar van sy besigheid, wat finansieël in die knyp is. Nadat u hulle adviseer het oor die verskillende permutasies, kom die partye soos volg ooreen:

You are instructed that the nett value of Mary's estate is R3 000 000.00 and that of Dean is only R500 000.00. Dean is a sole proprietor and his business is in a financially precarious position. After explaining the various permutations available to them, the parties agree as follows:

1. Die aanwasbedeling moet geld.
2. Die aanwasbedeling sal nie van toepassing wees indien enige gade se boedel feitelik insolvent is by beëindiging van die huwelik nie.
3. Mary wil haar vakansiehuis synde Erf 924 Summerstrand, tans gewaardeer teen R1 800 000.00, asook enige voordeel wat haar mag toeval as begunstigde van 'n inter vivos trust opgerig deur haar oorlede moeder gedurende haar lewe, van die aanwasbedeling uitsluit.
4. Na oorweging besluit die partye dat enige erflating, bemaking of skenking wat aan hetsy Mary of Dean toeval in ag geneem sal word by berekening van die aanwas.
5. Die partye versoek u om te bepaal dat Mary onvoorwaardelik en onherroepelik onderneem om Dean se Joodse geloof en godsdiens te aanvaar en te volg.
6. Mary en Dean het besluit om die netto aanvangswaarde van hulle onderskeie boedels in 'n afsonderlike dokument te verklaar.

1. They would like the accrual system to apply to their marriage;
2. The accrual system shall not operate on termination of the marriage if either party's estate is in fact insolvent;
3. Mary wishes to exclude from the operation of the accrual system her holiday cottage being Erf 924 Summerstrand, presently valued at R1 800 000.00, and any benefit that she may derive as a beneficiary in terms of an inter vivos trust created by her late mother during her lifetime.
4. After due consideration the parties agree that any inheritance, legacies and donations which accrue to either Mary or Dean shall be taken into account when calculating their respective accruals;
5. The parties require you to stipulate that Mary unconditionally and irrevocably undertakes to adopt and follow Dean's Jewish faith and religion.
6. Mary and Dean have decided to declare the nett commencement value of their respective estates in a separate document.

Van u word verlang om die voorhuwelikse kontrak vir ondertekening en registrasie op te stel.

You are required to draw the antenuptial contract for signature and registration.

**VRAAG 4 [14]**

**QUESTION 4 [14]**

Harry Styles is die geregistreerde eienaar van 'n plaas met die naam One Direction 627, distrik Bloemfontein, Provinsie Vrystaat, groot 5900,00 (Vyf nege nul nul komma nul nul nul nul) hektaar, gehou kragtens Akte van Transport T200/2012.

Harry Styles is the registered owner of a farm with the name One Direction 627, District Bloemfontein, Province Free State, extent: 5900,00 (Five nine nil nil comma nil nil nil nil) hectares held by Deed of Transfer no T200/2012.

Op 18 September 2014 het Harry 'n vruggebruik oor die plaas aan sy vrou Pink geskenk. Die vruggebruik is slegs geldig vir 'n tydperk van ses jaar vanaf datum van sy dood. Pink het die skenking skriftelik aanvaar op 19 September 2014. Vanweë sekere omstandighede was die vruggebruik nooit geregistreer nie. Harry is oorlede op 2 Januarie 2015. Hy was buite gemeenskap van goedere getroud met Pink.

Volgens die bepalings van sy testament word die plaas bemaak aan sy seun, Ed, getroud binne gemeenskap van goedere met Adelle. Harry se testament bepaal verder dat enige donasies en erflatings uitgesluit sal wees van 'n huwelik binne gemeenskap van goedere.

4.1 Stel die akte op wat gevolg sal gee aan die ongeregisteerde skenking tussen Harry en sy vrou Pink. (8)

4.2 Verduidelik die verskil tussen:

4.2.1 'n Persoonlike serwituut; en (3)

4.2.2 'n Saaklike serwituut. (3)

**VRAAG 5 [6]**

Welke serwitute is uitgesluit van die vereiste van Ministeriële goedkeuring in artikel 6A(1) van die Wet op Onderverdeling van Landbougrond 70 van 1970?

**VRAAG 6 [5]**

6.1 Is die volgende beperking teen vervoering geldig of ongeldig? Motiveer u antwoord.

"Ek bemaak my plaas Hebron Haven aan my seun Mathew wie nie geregtig sal wees om die plaas te vervreem nie maar verplig sal wees om te sorg dat die plaas in die familie bly." (1)

6.2 Verduidelik die volgende:

6.2.1 Na-huwelike registrasie van voor-huwelike kontrakte; (2)

6.2.2 Registrasie van 'n na-huwelike kontrak. (2)

On the 18 September 2014 Harry donated to his wife Pink, a usufruct over the farm. The usufruct is only valid for six years from date of his death. Pink accepted the donation in writing on the 19<sup>th</sup> of September 2014. Because of certain circumstances the usufruct was never registered. Harry died on 2<sup>nd</sup> of January 2015 and he was married out of community of property to Pink.

In terms of his will his farm is bequeathed to his son, Ed, who is married in community of property to Adelle. Harry's will stipulates that any donations and inheritance, are to be excluded from a marriage in community of property.

4.1 Draw the deed to give effect to the unregistered donation between Harry and his wife Pink. (8)

4.2 Explain the difference between a:

4.2.1 Personal servitude; and (3)

4.2.2 Real or praedial servitude. (3)

**QUESTION 5 [6]**

What servitudes are excluded from the requirement of Ministerial approval in section 6A (1) of the subdivision of Agricultural Land Act 70 of 1970?

**QUESTION 6 [5]**

6.1 Is the following restriction against alienation valid or invalid? Motivate your answer.

"I bequeath my farm Hebron Haven to my son Mathew who shall not be entitled to alienate same but shall be obliged to ensure that the farm stays in the family". (1)

6.2 Explain the following:

6.2.1 Postnuptial Registration of antenuptial contracts; (2)

6.2.2 Registration of a postnuptial contract. (2)

**VRAAG 7 [20]**

U klient, John Smith, is 'n jarelange familievriend en klient. U het hom jare gelede bygestaan om sy familietrust, die Smith Familietrust, op te rig. Die oprigter was sy vader, Peter Smith, terwyl John en sy vrou Mary sedert die oprigting die enigste twee trustees was. John, Mary en hulle vier kinders is die inkomste en kapitale begunstigdes van die trust. Die trustakte vereis die aanstelling van slegs twee trustees. Hy deel u mee dat sy makelaar hom adviseer het dat die trust ongeldig mag wees aangesien dit nie voorsiening maak vir die aanstelling van 'n onafhanklike trustee nie, soos (volgens die makelaar) vereis deur die Meester en die howe. Van u word verlang om John skriftelik te adviseer met betrekking tot die noodsaaklikheid van die aanstelling van 'n onafhanklike trustee, met verwysing na die Meester se praktyk sowel as die vereistes soos gestel deur ons howe.

**VRAAG 8 (AANHANSEL) [8]**

U klient, Safrican Investments Eiendoms Beperk, het die toestemming verkry van die Stadsraad van Tshwane om erwe 16250 en 16251 Atteridgeville uitbreiding 45 te ontwikkel deur die oprigting van 'n winkelsentrum. Die Gauteng Department van Openbare Paaie, Vervoer en Werke sal egter slegs toegang tot die eiendom vanaf die provinsiale pad bekend as Maunde straat toelaat, mits 'n skuins toegangsarea ("splay") oor die aanliggende eiendom geskep word, vir meer gemaklike toegang. Die aanliggende eiendom, bekend as die Restant van die plaas Atteridgeville 607 JR, word besit deur die Stadsraad van Tshwane, wat toestemming verleen het tot die gemelde reëling mits 'n serwituuat geskep word ten gunste van die algemene publiek. Van u word verlang om die nodige notariële akte vir indiening by die Atekantoor voor te berei, met verwysing na die aangehegte landmeterkaart.

**QUESTION 7 [20]**


Your client, John Smith, is an old family friend and client. Years ago you assisted him in setting up his family Trust, The Smith Family Trust. His father, Peter Smith, was the founder of the trust with John and his wife Mary being the only two trustees, since inception. John, Mary, and their four children are the income and capital beneficiaries of the trust. The deed of trust only requires two trustees to be in office. He informs you that his broker has now advised him that the trust may be invalid as it does not provide for the appointment of an independent trustee, as (according to the broker) required by the Master and the courts. You are required to advise John in writing of the necessity of appointing an independent trustee, with reference to the Master's practice as well as requirements as stated by our courts.

**QUESTION 8 (ANNEXURE) [8]**

Your client, Safrican Investments Proprietary Limited, has obtained approval from the City Council of Tshwane to develop erven 16250 and 16251 Atteridgeville extension 45, by the erection thereon of a shopping centre. The Gauteng Department of Public Roads, Transport and Works, however, will only allow access to the property from the provincial road known as Maunde Street, provided that a splay (slanted entrance area) is created over the adjacent property, to allow for ease of access. The adjacent property, the remainder of the farm Atteridgeville 607 JR, is owned by the City Council of Tshwane, who has consented to such an arrangement, provided that the servitude is created in favour of the general public. You are required to prepare the required notarial document to be lodged with the Registrar of Deeds, with reference to the attached diagram.

SERVITUDE DIAGRAM

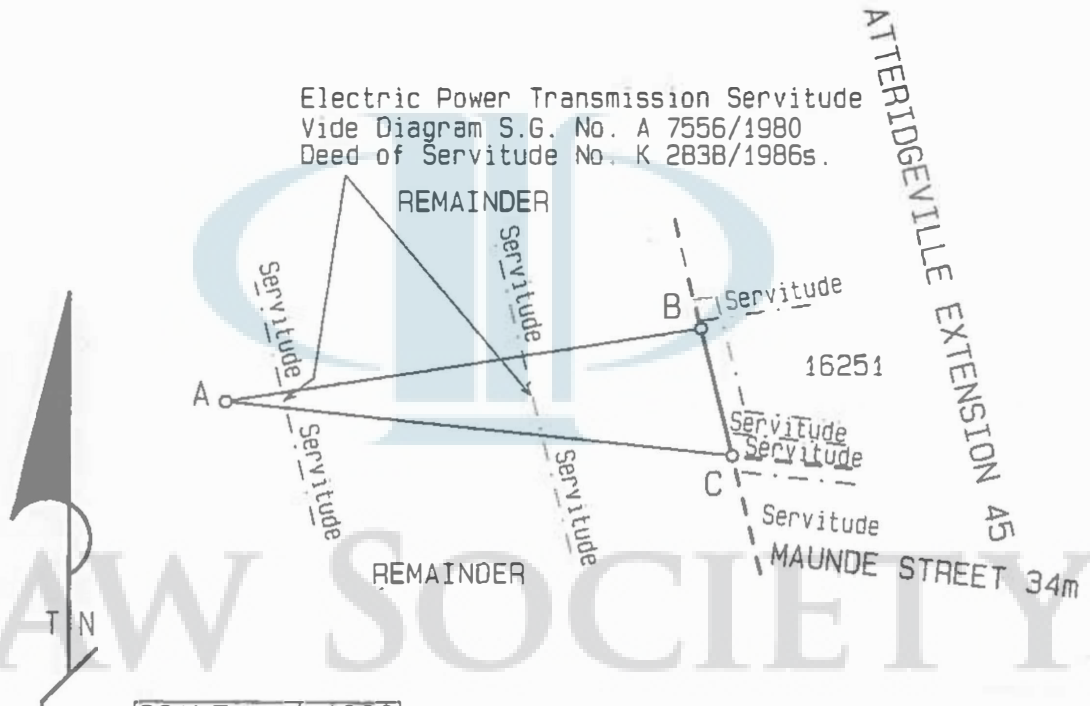
REGISTRATION COPY

SIDES metres		ANGLES of DIRECTION		CO-ORDINATES Y System: WG 29° X		S.G. No. <b>881/2017</b>
		Constants:		0,00 + 2800000,00		Approved
AB	63,42	261.05.50	A	+ 91 255,58	+ 52 177,27	 for SURVEYOR-GENERAL
BC	17,37	346.15.10	B	+ 91 192,93	+ 52 167,46	
CA	67,16	96.02.00	C	+ 91 188,80	+ 52 184,33	
	(150) QUAGGAKOP		△	+ 89 795,74	+ 52 582,97	
	(41B) QUAGGA RES		△	+ 89 740,62	+ 52 553,95	2017-04-06

BEACON DESCRIPTIONS

A B C .... 12mm Iron peg

Electric Power Transmission Servitude  
 Vide Diagram S.G. No. A 7556/1980  
 Deed of Servitude No. K 2838/1986s.



The figure represents **A B C A** of land being **549 square metres** of land over **a Servitude of Right of Way** of the farm **The Remainder** of the farm **ATTERIDGEVILLE No. 607 - JR**

Province of GAUTENG  
 Surveyed in December 2012  
 and December 2016 by me

  
 R J BUCKLEY PLS 0079  
 PROFESSIONAL LAND SURVEYOR

This diagram is annexed to No. d.d. i.f.o. Registrar of Deeds: <b>PRETORIA</b>	The original diagram is S.G. No. A 5416/1986 Transfer T 69319/1987	File: <b>SR-607</b> S.R. No. <b>515/2017</b> G.P. Comp. JRSJL - 3293
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