

DIE REPUBLIEK VAN SUID-AFRIKA

NOTARIËLE PRAKTYKEKSAMEN

DATUM: 11 APRIL 2019
TYD: 09:00-13:15
TOTAAL: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle beginskryf. 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 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 drui dus hierdie eksamen.

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 11 APRIL 2019
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 [15]

U kry opdrag van High Ridge (Edms) Bpk om toe te sien tot die oopmaak van 'n deeltitelregister ten aansien van 'n nuwe gebou wat opgerig is op dié se eiendom wat onderhewig is aan 'n verband

ERF 128 LA LUCIA
REGISTRASIE AFDELING FT
PROVINSIE KWAZULU NATAL
GROOT: 9 000 (NEGE DUISEND) Vierkante meter

Gehou kragtens Akte van Transport Nr T214/2000.

Die landmeter verskaf die deelplanne en u merk dat die gebou op die aanliggende eiendom (Erf 129 La Lucia) die grenslyn oorskry met 5 (vyf) vierkante meter.

U kliënt en die eienaar van die aanliggende eiendom, Tim Brown (wat getroud is buite gemeenskap van goedere met Sue Brown, 'n Switserse burger) het ooreengekom dat u kliënt die konstruksie kosteloos op sy eiendom sal toelaat.

1.1 Stel die Akte op wat, onder andere, toepaslike en bykomende regte verleen om die belange van die partye te beskerm. U kliënt se direkteur kan nie persoonlik verskyn nie. (10)

1.2 Lys die dokumente wat u:

1.2.1 met die serwitut by die Aktekantoor sal indien; (3)

1.2.2 in u Protokol sal berg. (2)

VRAAG 2 [15]

Luke White, getroud binne gemeenskap van goedere met Tania, is die ontwikkelaar van die Deeltitelskema, Dawnview. Die ontwikkeling is gesoneer vir die oprigting van 50 deeltitel eenhede.

QUESTION 1 [15]

You are instructed by High Ridge (Pty) Ltd to attend to the registration of the opening of a sectional title register in respect of a new building that has been constructed on its mortgaged property described as

ERF 128 LA LUCIA
REGISTRATION DIVISION FT
PROVINCE OF KWAZULU NATAL
IN EXTENT: 9 000 (NINE THOUSAND) Square Metres

Held by Deed of Transfer No T214/2000.

The land surveyor furnishes you with the sectional title plans and you note thereon that a portion of the building constructed on the adjoining property (Erf 129 La Lucia) encroaches the boundary line between the properties by 5 (five) square metres.

Your client and the owner of the adjoining property, Tim Brown, who is married out of community of property to Sue Brown, a Swiss national, have reached an agreement in terms of which your client will continue to allow the structure to remain on its property at no charge.

1.1 Draft the Deed providing, *inter alia*, appropriate and ancillary rights to ensure the interests of the parties are protected. The director of your client is unable to personally appear. (10)

1.2 Detail the documents you will:

1.2.1 lodge in the Deeds Office with the servitude; (3)

1.2.2 retain in your Protocol. (2)

QUESTION 2 [15]

Luke White, married in community of property to Tania, is the developer of the Sectional Scheme, Dawnview. This development is zoned for the erection of 50 sectional units. Luke has erected

Luke het 20 eenhede op die oostelike helfde van die eiendom opgerig en het kragtens Artikel 25(1) van die Deeltitelwet die reg gereserveer om die ander 30 eenhede in fases oor 20 jaar op te rig. Die deel van die gemeenskaplike eiendom waarop die oprigting van die ander 30 eenhede in fases sal geskied, is in 3 gedeeltes verdeel en op die Deelplan gewys as "gereserveerde areas". Tien eenhede sal op elk van die gereserveerde areas gebou word. Quickbuild Construction (Edms) Bpk wat ook 'n ontwikkelaar is wil graag die reg om 10 eenhede op "Gereserveerde Area RA2" op die Deelplan op te rig, aankoop.

2.1 Stel die dokument op vir indiening by die Aktekantoor wat aan Quickbuild Construction (Edms) Bpk die reg sou gee om 10 eenhede op "Gereserveerde Area RA2" te bou. (10)

2.2 Lys die dokumente wat u:

2.2.1 By die Aktekantoor sal indien, en (3)

2.2.2 in u Protokol sal berg. (2)

VRAAG 3 [10]

Alvi Jonas, 'n 60-jarige kunshandelaar en Ted Dansen, 'n 36 jarige binnenshuise versierder, raadpleeg u. Hulle is albei ongetroude mans en woon die laaste sewe jaar saam. Hulle wil hulle verbintenis formaliseer en raadpleeg u om die nodige kontrak op te stel. Hulle families is teen die verbintenis gekant en hulle besluit dus om die aanwasbedeling uit te sluit. Hulle het egter besluit dat indien die verbintenis langer as vyf jaar duur die aanwasbedeling dan wel terugwerkend ten aansien van hulle huweliksgoedere bedeling sal geld vanaf die datum van kontraksluiting. Die donasies wat die partye aan mekaar maak gedurende hulle verhouding moet elk se eksklusiewe eiendombly. Enige ander geskenke, bemakings en donasies wat die partye ontvang, sal ook elk se eksklusiewe eiendom bly.

20 units on the eastern half of the property and in terms of Section 25(1) of the Sectional Titles Act reserved the right to erect the other 30 units in phases within 20 years. The part of the common property on which the erection of the other 30 units in phases is to be carried out has been divided into 3 portions indicated on the Sectional Plan as "reserved areas". Ten units are to be built on each of the "reserved areas". Quickbuild Construction (Pty) Ltd, who is also a Developer, would like to purchase the right to erect 10 units on the "Reserved Area RA2" on the Sectional Plan.

2.1 Draw the document for lodgment in the Deeds Office that would give Quickbuild Construction (Pty) Ltd title to the right to erect 10 units on "Reserved Area RA2". (10)

2.2 Detail the documents you will:

2.2.1 Lodge in the Deeds Office, and (3)

2.2.2 retain in your Protocol. (2)

QUESTION 3 [10]

Alvi Jonas, a 60 year old art dealer and Ted Dansen, a 36 year old interior decorator consults you. Both are bachelors and have been living together for the past seven years. They intend to solemnise their union and have consulted you to draw up the necessary contract. Their families are dead set against the union and the parties have therefore decided to exclude the accrual system from their union. The parties have however agreed that should their union remain in existence for longer than five years; the accrual system will apply to their matrimonial property regime retrospectively from date of execution of the contract. The gifts bequeathed by the parties to each other during their partnership are to remain their exclusive property. Any other gifts, bequests and donations which the parties receive are to also remain their exclusive property.

Alvi Jonas is 'n Trustee en begunstigde van die Alvi Jonas Familietrust en hy wil die Trust van aanwas uitsluit. Ted Dansen is besorg dat Alvi moontlik bates in die Trust sou kon verberg.

Alvi Jonas is a Trustee and beneficiary of the Alvi Jonas Family Trust and wishes to have the Trust excluded from the Accrual. Ted Dansen is concerned that Alvi could potentially hide assets in the Trust.

Stel die nodige kontrak op wat uitvoering gee aan die partye se wense, wat kragtens toepaslike reg geldig sal wees en wat verseker dat Ted Dansen beskerm is.

Draw the necessary contract to give effect to the parties' wishes, ensuring that the contract will be valid under the applicable law and also ensuring that Ted Dansen is protected.

VRAAG 4 [5]

QUESTION 4 [5]

Verduidelik welke stappe u sou doen om 'n Volmag wat buite die Republiek van Suid Afrika verly is te laat waarmerk vir gebruik binne die Republiek van Suid Afrika. Sou dit anders wees as die land waar dit verly is/gewaarmerk word, party is tot die Haagse konvensie?

Explain what steps you would take to have a Power of Attorney executed outside the Republic authenticated for use within the Republic of South Africa. Would it make a difference whether the country where the power of attorney is being authenticated/was executed, is a party to the Hague Convention or not?

VRAAG 5 [20]

QUESTION 5 [20]

5.1 Wat is 'n regseksepsie en wat beteken dit om daarvan afstand te doen? (2)

5.1 What is a legal exception, and what does it mean to renounce it? (2)

5.2 Wat is die verskil tussen die *beneficium excussionis et divisionis*, die *beneficium ordinis seu excussionis* en die *beneficium de duobus vel pluribus reis debendi*? (5)

5.2 What is the difference between the *beneficium excussionis et divisionis*, the *beneficium ordinis seu excussionis* and the *beneficium de duobus vel pluribus reis debendi*? (5)

5.3 Welke dokumente sou u by die Registrateur van Aktes indien om 'n geregistreerde notariële verband wat sedeer is, te kanselleer. Sou dit anders wees as die oorspronklike verbandhouer/sedent intussen gederegistreer is en nie meer bestaan nie? (3)

5.3 What document/s would you lodge with the Registrar of Deeds to cancel a registered notarial bond that has been ceded? Would it make a difference if the initial mortgagee/cedent has since been deregistered and is no longer in existence? (3)

5.4 U moet opstel die skuldoorsaak en die beskrywing van die verbandhouer in 'n notariële verband waar 'n winkelier sy groothandelaar R100 000,00 skuld vir goedere verkoop en gelewer en nou verdere krediet van R100 000,00 verlang vir verdere aankope waartoe die groothandelaar ingestem het mits hy die nodige verband passeer. (4)

5.4 You are required to draft the cause of debt and description of the mortgagee as it will appear in the notarial bond where a merchant owes his wholesaler R100 000,00 for goods supplied and requests further credit of R100 000,00 for further purchases to which the wholesaler agrees provided that he passes the necessary bond. (4)

5.5 U moet opstel die skuldoorsaak en die beskrywing van die verbandhouer in 'n notariële verband waar B oortrokke fasiliteite vra van ABC Bank en die bank toestem mits A 'n notariële verband passeer wat B se oortrekking verseker ten gunste van die bank. (6)

5.5 You are required to draft the cause of debt and description of the mortgagee as it will appear in the notarial bond where B requests ABC Bank for overdraft facilities and the bank agrees provided A passes a notarial bond in favour of the Bank to secure the overdraft of B. (6)

VRAAG 6 [10]

QUESTION 6 [10]

6.1 U word gevra om skriftelik die begrip Boedelbelasting aan u kliënt te verduidelik, hoe dit bereken word op sterfdatum, inaggenome netto en bruto waarde van die boedel, aftrekkings en kortings. U kliënt verlang duidelikheid oor die belasbaarheid van nadoodse inkomste en wie aanspreeklik is vir die betaling van inkomste belasting en boedelbelasting teen die boedel gehef. (8)

6.1 You are requested to in writing explain the concept of Estate Duty to your client, and how it will be calculated on the date of death, considering the nett and gross value of the estate, deductions and rebates. Your client further requires clarity on the taxation of income after death, and who will be responsible for payment of income tax and estate duty taxed against the estate. (8)

6.2 Hoe word skenkings belas? (2)

6.2 How are donations taxed? (2)

VRAAG 7 [10]

QUESTION 7 [10]

Koedoesfontein Boerdery (Edms) Bpk is eienaar van twee aanliggende plase. Die maatskappy boer met beeste op Oude Rust en met mielies op Brandvlei. Die maatskappy leen by Easygo Bank geld vir die insetkoste vir die volgende oes op Brandvlei. Die Bank vereis nie slegs dat Oude Rust ook verbind word nie maar ook dat die plase gekonsolideer word vir beter sekuriteit. Die maatskappy is nie hiertoe bereid nie, nie alleen omdat die plase as aparte kostesentrums bedryf word nie maar ook vanweë probleme om later weer te onderverdeel. Stel die notariële dokument op wat die probleem sou oplos deur die Bank tevrede te stel sonder om te moet konsolideer.

Koedoesfontein Boerdery (Pty) Ltd owns two farms lying adjacent to one another. The company farms with cattle on Oude Rust and mealies on Brandvlei. The company borrows money from Easygo Bank for input costs for its next crop on Brandvlei. The Bank however not only insists upon Oude Rust also being bonded, but also requires the farms to be consolidated to provide better security. The company is unwilling to do this, not only because it operates the farms as two separate cost centres, but also because of the difficulty to in future have to subdivide the farms again. Draft the notarial document that would resolve the issue by providing the bank with comfort without the necessity of consolidation.

VRAAG 8 [5]

QUESTION 8 [5]

Verskaf die korrekte beskrywing van die partye wat voor u verskyn in die volgende gevalle vir die opstel van die volmagte. Versin feite en name soos 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:

8.1 'n Man wat in Spanje getroud is terwyl hy daargedomisilieer was en wat eienaar is van 'n eiendom waarteen 'n servituut geregistreer moet word. (2)

8.1 A man who got married in Spain while he was domiciled there, who owns a property over which a servitude needs to be registered. (2)

8.2 Die persoon wat 'n servituut verleen wat binne gemeenskap van goedere getroud is. Die dienende eiendom het hy geërf kragtens 'n testament wat bepaal dat alle erflatings op die erfgename oorgaan vry van enige gemeenskap van goedere. (1)

8.2 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)

8.3 Twee vennote (een is getroud binne gemeenskap van goedere en die ander is geskei) wat sake doen as Aye Bee Partnership in 'n 60/40 vennootskap wat 'n uitsluitlike gebruiksarea verkry. (2)

8.3. Two partners (one married in community of property and the other divorced) trading as Aye Bee Partnership in a 60/40 partnership who acquires an exclusive use area. (2)

VRAAG 9

[10]

QUESTION 9

[10]

John Gordon is die eienaar van die plaas Doornkop 143 IQ wat hy van sy pa geërf het. John het die plaas verlaat pas na skoolverlating en deur die wêreld gereis. Hy het oorleef deur kort tydperke te werk en het geen begeerte om te boer nie. In Spanje het hy getrou met Conchita sonder om ag te slaan op huweliksgoederegevolge. Na sy uiteindelijke terugkeer na Suid Afrika het hy en Conchita in die stad gewoon en net soms die plaas besoek. Na sy pa se dood het John die plaas gelaat in die sorg van Moses Nkadimeng, sy pa se plaasvoorman op die basis dat Moses die plaas vir eie wins en verlies kan benut. Ter erkenning van Moses se jarelange getrouheid, en in aggenome dat Moses ('n wewenaar) amper 70 is en dat die plaas dalk onteien mag word, wil John die reëling formaliseer en Moses se belange beskerm deur 'n lewenslange vruggebruik ten gunste van Moses te registreer.

John Gordon is the owner of the farm Doornkop 143 IQ which he inherited from his father. John left the farm soon after he finished school, and travelled the world paying his way with short stints of working, as he had no interest in farming. While in Spain, he met and married Conchita, without giving thought to any matrimonial property consequences. Upon his eventual return to South Africa, he and Conchita settled in the city, and only occasionally visited the farm. After his father's death, John left the farm in the care of Moses Nkadimeng, his father's foreman, with the understanding that Moses may utilise the property for his own profit and loss. In recognition of Moses' loyalty over the years, and considering that Moses, a widower, will soon turn 70 and that the farm may well be expropriated, John wishes to formalize the arrangement and protect Moses' interest by the registration of a life-long usufruct in Moses' name.

Hoewel die plaas teen R3 miljoen waardeer is, verlang John nie vergoeding vir sessie van regte nie mits Moses alle fooie en uitgawes betaal.

Although the property has been valued at R3 million, John does not want any compensation for the cession of rights, provided that Moses pays all connected costs and disbursements.

9.1 U moet John en Moses raadgee oor alle
foie en uitgawes, hoe dit bereken word
en wanneer dit betaalbaar is. (5)

9.1 You are required to advise John and
Moses fully of all costs and disbursements,
how it will be calculated, and when it will
be payable. (5)

9.2 Stel die sessie van vruggebruik op.
(5)

9.2 Draft the cession of usufruct.
(5)

- DIE EINDE -

- THE END -



LAW SOCIETY
OF SOUTH AFRICA