

NOTARIAL PRACTICE / NOTARIËLE PRAKTYK

11 APRIL / APRIL 2019

ANSWERS/ANTWOORDE

PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF READING.

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[15]

1.1

Protocol No: 73/2018

NOTARIAL DEED OF SERVITUDE

KNOW ALL MEN WHOM IT MAY CONCERN

That on this the day of in the year Two Thousand and Eighteen (2018) before me,

BRAD PITT

Notary Public a lawful authority, duly sworn and admitted, practising at Umhlanga in the Province of the Kwazulu Natal, and in the presence of the subscribing competent witnesses, personally came and appeared

1. MICHELLE SMITH

She being duly authorized hereto by a Special Power of Attorney granted to her by RYAN BOTHA in his capacity as Director and duly authorized thereto by a resolution of the directors of High Ridge (Pty) Ltd [Registration Number 1999/002836/07] on 18 June 2018 at Durban (hereinafter referred to as "the Grantor").
which Power of Attorney and certified copy of Resolution now remain filed in my Protocol;

2. TIM BROWN

Identity Number: 580226 5218 087
Married out of community of property
(hereinafter referred to as the "the Grantee").

AND THE APPEARERS DECLARED THAT

WHEREAS High Ridge (Pty) Ltd [Registration Number 1999/002836/07]
is the registered owner of

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
(hereinafter referred to as the "Erf 128")

AND WHEREAS TIM BROWN, Identity Number: 580226 5218 087, Married out of
community of property
is the registered owner of

ERF 129 LA LUCIA, REGISTRATION DIVISION FT, PROVINCE OF KWAZULU
NATAL;
IN EXTENT: 3 500 (THREE THOUSAND FIVE HUNDRED) Square Metres;
Held by Deed of Transfer No T3645/2008
(hereinafter referred to as the "Erf 129")

AND WHEREAS the building on Erf 129 encroaches onto Erf 128 and the Grantor has agreed
to grant to the Grantee a Servitude of Use in respect of that portion of Erf 128 on which the
encroachment exists;

NOW THEREFORE THESE PRESENTS WITNESSES:

1. That the Grantor hereby grants to and in favour of the Grantee as owner of the said Erf 129 a 5 (five) square metre Servitude of Use over Erf 128, which servitude is represented by the figure **f1d3AB6** on Diagram No. SG No. 76/2018, (hereinafter referred to as the "encroachment portion")
2. The Grantee may use the existing buildings on the encroachment portion for occupation by himself or his nominee.
3. The said right of use of the encroachment portion shall continue for as long as the buildings which are presently erected on the encroachment portion exists, but will lapse in the event that the said buildings are demolished or are irreparably damaged.
4. That the costs of the drawing and registration of this deed shall be paid and borne by the Grantee.
5. The Parties record that no compensation for the right of use of the encroachment portion has been promised or received by either of them.
6. The Parties declare the value of the servitude to be R100,00.

AND the said Grantee hereby accepts the rights and servitude as set out above and undertakes to comply with all the conditions imposed on him, in terms of this servitude which has been granted to him.

TANIA WHITE
Identity Number 790608 0012 082
Married in community of property to each other
("the Cedent")

2. CAMILLA PARKER
She being duly authorized hereto by a Special Power of Attorney granted to her by virtue of a Resolution of the Directors of Quickbuild Construction (Pty) Ltd [Registration Number 2002/012561/07] on 18 June 2018 at Howick, Kwazulu Natal ("the Cessionary").

which Power of Attorney and certified copy of Resolution now remain filed in my Protocol;

AND the Appearers declared that:

WHEREAS the Cedent did on 5th June 2018 lawfully sell to the Cessionary for the sum of TWO MILLION RAND (R2 000 000,00) the hereinafter described portion of the Right of Extension in the Sectional Scheme, Dawnview;

NOW THEREFORE, the Appearer:

1. on behalf of the Cedent hereby cedes in terms of Section 25(4)(b) of the Sectional Titles Act 95 of 1986, to:

Quickbuild Construction (Pty) Ltd
Registration Number 2002/012561/07
Its Successors in Title or Assigns,

The right to erect and complete from time to time within a period of 20 years reckoned from date of registration of the Certificate of Real Right under Section 12(1)(e) of Act 95 of 1986 for its personal account such further buildings as indicated on the plan referred to in Section 25(2)(a) of Act 95 of 1986 filed in the Office of the Registrar of Deeds at Pietermaritzburg on the specified portion of the common property identified on the block plan as Reserved Area RA 2, measuring TWO THOUSAND (2000) square metres, and to divide such building or buildings into a section or sections and common property and to confer the right to exclusive use over a portion of such common property upon the owner or owners of one or more units in the scheme known as Dawnview in respect of the land and building or buildings situated at Howick, in the Umngeni Municipality and shown on Sectional Plan No SS 214/2017, and the said Right of Extension is held under Certificate of Real Right No. SK 156/2017.

2. On behalf of the Cessionary accepts the cession.

THUS DONE AND EXECUTED at PIETERMARITZBURG on the day, month and year aforewritten in the presence of the subscribing witnesses and of me, the Notary.

AS WITNESSES:

1. _____

_____ L WHITE

2. _____

_____ T WHITE

qq QUICKBUILD CONSTRUCTION
(PTY) LTD

QUOD ATTESTOR

NOTARY PUBLIC

(10)

- 2.2.1 a) Notarial Deed of Cession of Right of Extension
b) Transfer Duty Receipt
c) Certificate of Real Right [under Section 12(1)(e) of Act 95 of 1986] (3)
- 2.2.2 a) Special Power of Attorney
b) Certified Copy of Resolution
c) Notarial Deed of Cession – Minute (2)

QUESTION 3

[10]

ANTENUPTIAL CONTRACT

In terms of the CIVIL UNION ACT, NO 17/2006

(Note to examiner: should the heading not refer to the Civil Union Act, no marks are to be awarded for this question)

Be it hereby made known

That on the 11th September 2018 before me TOM JONES Notary Public, by lawful authority duly admitted and sworn, residing and practising at Cape Town in the Province of the Western Cape appeared;

ALVI JONAS
Identity number:
Unmarried

(Herein called "Alvi")

And

TED DANSEN
Identity Number
Unmarried

(Herein called "Ted")

And the Appearers declared that whereas a Civil Partnership has been agreed upon and is intended to be forthwith had and solemnized between ALVI JONAS and TED DANSEN, they have contracted and agreed as by these Present they do contract and agree, each with the other as follows:

1. That there shall be no community of property between them;
2. That there shall be no community of profit or loss between them;
3. That all inheritances, legacies, gift, bequests or donations which any of the intended partners may receive, shall be their own exclusive property;
4. That the Accrual System provided for in terms of Chapter 1 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984) is applicable to the said intended civil union, retrospectively from date of execution of this contract, provided the parties' union has not been dissolved within a period of 5 years from date of execution hereof.
5. For purposes of calculating the accrual, the parties declare the commencement value of their respective estates as at date thereof to be

**ALVI JONAS
TED DANSEN**

**NIL
NIL**

6. Notwithstanding anything to the contrary, in determining the accrual of each party's estate; the under mentioned assets owned at the date of their intended civil union and all and any accumulations and substitutions in respect thereof shall be specifically excluded from the Accrual and shall not be brought into account, namely:

In respect of the estate of Alvi Jonas: All his right, title and interest at any time from any benefits accrued or to be accrued by him from **The Alvi Jonas Family Trust**, an inter vivos Trust created in the Republic of South Africa and registered by the Master of the High Court under registration number IT 2903/2015.

7. In the event that either of the parties makes a donation, settlement or other disposition of assets which would otherwise have formed part of the accrual ("disposition") to any Trust, the subject matter of the disposition shall be deemed to form part of his estate for the purposes of the calculation of the accrual of his estate, regardless of whether or not the subject matter of the disposition still forms part of the relevant Trusts assets at date of such calculation unless the parties have at any time in writing agreed that the disposition shall be excluded from the Accrual.

THUS DONE AND EXECUTED at Cape Town aforesaid, on the day, month and year first aforewritten in the presence of the undersigned witnesses.

As witnesses:

1. _____

ALVI JONAS

2. _____

TED DANSEN

QUOD ATTESTOR

NOTARY

QUESTION 4

[5]

Where a Power of attorney is executed outside the Republic of South Africa, the signature of the grantor must be duly authenticated in accordance with Rule 63 of the Uniform Rules of court. It is sufficiently authenticated by the signature and seal of office of:

- (a) The head of a SA diplomatic or consular mission.....
- (b) A consul – general etc. of the UK.....
- (c) Any government authority of such foreign country.....
- (d) Any Notary Public, etc. of foreign country.....
- (e) Or a commissioned officer of the South African defence force

See rule 63 for full details.

However if the foreign country is party to the Hague Convention then an Apostille will suffice.

QUESTION 5

[20]

- 5.1 A legal exception (*exceptio*) is a particular plea or defence open to a debtor/mortgagor against a claim by a creditor, thereby placing the onus of proof of a particular allegation on the creditor. By renouncing such exception, the burden of proof of those particular facts is transferred to the debtor/mortgagor should he still wish to raise the particular defence. (2)
- 5.2 The benefit of excussion and division is applicable where the creditor is entitled to sue both a surety and a principal debtor. The creditor may want the debtor to renounce it, to enable the creditor to sue the surety before or without suing the principal debtor, or sue both the surety and principal debtor in the same action. The benefit *ordinis* may be claimed by a surety in order to oblige the creditor first to proceed and levy execution against the principal debtor before any action may proceed against the surety. The benefit *de duobus* is applicable if there are several principal debtors who are responsible jointly but not severally in respect of the same debtor. If one such principal debtor is sued for the whole amount, the defendant can avoid liability by pleading the benefit. (5)
- 5.3 Form MM as contained in the regulations to the Deeds Registries Act should be used. It should be noted that this is a unilateral consent given by the mortgagee only, and does not require the signature of the mortgagor. Where a bond that has been ceded as security is cancelled, the mortgagee and cessionary must both consent to cancellation at the time, or the cessionary must first consent to the cancellation of the cession, and then the mortgagee consents to the cancellation of the bond. Should the initial mortgagee no longer be in existence, application must be made for a court order whereby the Registrar may affect cancellation. (3)

5.4

Covering bond

- a) Whereas the mortgagor is indebted to the undermentioned mortgagee in the sum of R200 000.00 (one hundred thousand rand) for goods supplied to him by the mortgagee

NOW THEREFORE the said Appearer declared the mortgagor to be truly and lawfully held firmly bound to and in favour of

Jim Bush
Identity Number 351212 5012 080
Unmarried
("the mortgagee")

his heirs, executors, administrators and assigns

in the sum of R200 000.00 (two hundred thousand rand) arising from the causes
aforementioned.

(4)

5.5

ii) **Surety bond**

- a) Whereas B requested ABC Bank Limited (mortgagee) for overdraft facilities amounting to R10 000.00 (ten thousand rand) to which request the mortgagee agrees provided that A (mortgagor) passes this notarial bond to secure the overdraft for B

And whereas the mortgagor A has bound himself to and in favour of the mortgagee as surety and co-principal debtor in *solidum* in an agreement of suretyship dated 12 May 2008 for the due and punctual payment by the principal debtor for the amount of R10 000.00 (ten thousand rand)

Now therefore the Appearer on behalf of the mortgagor declared the mortgagor to be truly and lawfully indebted and held and firmly bound to and in favour of

ABC Bank Limited
Registration number 1988/078567/06
(the mortgagee)

its successors in life of assigns in the sum of R10 000.00 (ten thousand rand) arising from the considerations aforementioned.

(6)

QUESTION 6

[10]

- 6.1 Estate duty is a form of tax that is levied on a deceased estate. The purpose of estate duty is to tax the transfer of wealth (assets) from the deceased estate to the beneficiaries. The determination of estate duty can be summarised as follows:

All property of the deceased person at the date of death. Rxxx
Property deemed to be property of the deceased estate at date of death. Rxxx

Gross value of the deceased estate	Rxxx
Less: allowable deductions	R xx
Net value of the deceased estate	Rxxx
Less abatement amount	<u>R3 500 000</u>
Dutiable amount	Rxxx
Estate duty calculated at 20% of the dutiable amount	Rxx
Less: applicable tax rebates	R (xxx)
Less: amount of estate duty to be recovered from beneficiaries (if applicable)	<u>R (xxx)</u>
Estate duty payable by the deceased estate	R xxxx

All income received or accrued before the deceased's death is taxable in the hands of the deceased person up until date of death, and will be administered by the executor or administrator acting as the deceased's representative taxpayer. After the date of death, the deceased estate comes into existence. The assets of the deceased person will be held by the deceased estate until the liquidation and distribution account has lain for inspection without objection and become final under section 35(12) of the Administration of Estates Act, after which the assets will be either handed over to the heirs or delivered to the trustee of a trust estate.

Income, which accrues to the estate after the death of the deceased but before the distribution of the assets to the beneficiaries, is dealt with under section 25 of the Income Tax Act.

The estate of a deceased person is subject to 20% Estate Duty, after taking into account a deduction of R3.5 million against the net value of the estate. So, if the total net value of the estate is R4 million, Estate Duty will be dutiable on 20% of the amount exceeding R3,5 million which amounts to R100 000,00 (20% of R500 00,00). It is normally the responsibility of the Executor to pay the duty as levied on the property of the deceased. However, there are instances where the estate duty is payable directly by the person who is receiving the property. For example, where a policy is payable directly to a beneficiary, the Executor must recover the estate duty attributable to such policy directly from the beneficiary (in other words, this portion of the estate duty will not be paid by the deceased estate). (8)

- 6.2 For resident individuals, donations are subject to a Donations Tax of 20%, with an annual exemption of up to R100 000,00 of the value of all donations made during the tax year. For example, if a once-off donation of R80 000,00 is made by an individual, no tax is payable, but if a donation of R140 000,00 is made, then Donations Tax of R8 000,00 is payable (20% of the amount exceeding R100 000,00, which is R40 000,00.) For companies or trusts, the exemption for casual gifts is up to R10 000,00 per tax year.

Where the donor donates property to a donee, and the donor fails to pay the Donation Tax, the donee and donor will be jointly and severally liable for the tax. There are certain donations that are exempt, for example: donations between spouses and donations made to certain public benefit organisations registered in terms of Section 18A of the Income Tax Act. (2)

PROTOCOL NO. _____

NOTARIAL TIE AGREEMENT

BE IT HEREBY MADE KNOWN

THAT on the _____ day of _____, before me **NONO TARRY**, Notary, practicing at PRETORIA in the Province of Gauteng, and in the presence of the undersigned witnesses there personally appeared:

in her capacity as the duly authorised Agent and acting herein for and on behalf of:

KOEDOESFONTEIN BOERDERY PROPRIETARY LIMITED
Registration Number 2009/012045/07
(hereinafter referred to as "KOEDOESFONTEIN")

she being duly authorised hereto by a virtue of a Special Power of Attorney granted to her at PRETORIA on _____ by _____ in his capacity as Director of KOEDOESFONTEIN, him being duly authorised by virtue of a resolution, which said Special Power of Attorney and a certified copy of which said Resolution have this day been exhibited to me and remains filed of record in my Protocol;

and personally came and appeared

in her capacity as the duly authorised Agent and acting herein for and on behalf of:

EASYGO BANK LIMITED
Registration Number 1989/105678/06
(herein referred to as "EASYGO")

she being duly authorised hereto by a virtue of a Special Power of Attorney granted to her at _____ on _____ by _____ and _____ in their capacity as duly authorised representatives of EASYGO, duly authorised thereto by virtue of a Resolution, which said Special Power of Attorney and certified copy of which said Resolution have this day been exhibited to me and remains filed on record in my Protocol;

AND THE APPEARER IN HER AFORESAID CAPACITY DECLARED THAT:

WHEREAS KOEDOESFONTEIN is the registered owner of the following properties:

1. THE FARM OUDE RUST 234
REGISTRATION DIVISION K.Q.
PROVINCE OF LIMPOPO

MEASURING 422,7209 (FOUR TWO TWO COMMA SEVEN TWO ZERO NINE)
HECTARES
Held by Deed of Transfer Number T13029/2013

AND

2. REMAINING EXTENT OF THE FARM BRANDVLEI 235
REGISTRATION DIVISION K.Q.
PROVINCE OF LIMPOPO
MEASURING 929,4526 (NINE TWO NINE COMMA FOUR FIVE TWO SIX)
HECTARES
Held by Deed of Transfer Number T10632/2011

AND WHEREAS KOEDOESFONTEIN and EASYGO have entered into a Facility Letter on _____ whereby it has specifically been agreed that the abovementioned properties be notarially tied.

NOW THEREFORE:

- A. The following properties, namely:
 1. THE FARM OUDE RUST 234
REGISTRATION DIVISION K.Q.
PROVINCE OF LIMPOPO
MEASURING 422,7209 (FOUR TWO TWO COMMA SEVEN TWO ZERO NINE)
HECTARES
Held by Deed of Transfer Number T13029/2013

AND

2. REMAINING EXTENT OF THE FARM BRANDVLEI 235
REGISTRATION DIVISION K.Q.
PROVINCE OF LIMPOPO
MEASURING 929,4526 (NINE TWO NINE COMMA FOUR FIVE TWO SIX)
HECTARES
Held by Deed of Transfer Number T10632/2011

shall be tied together and regarded as one property for all intents and purposes.

- B. Neither of the aforesaid properties or any portion thereof shall be sold, transferred, alienated or otherwise dealt with separately from each other without the written consent of EASYGO first being obtained and that the said EASYGO shall have an absolute discretion to grant or withhold such consent.
- C. In the event that the bond in favour of EASYGO, which will be simultaneously registered with this Notarial Tie Agreement be cancelled, KOEDOESFONTEIN may cancel this Notarial Tie Agreement without the consent of EASYGO.
- D. This Notarial Tie Agreement shall be registered against the various title deeds.

THUS DONE and SIGNED at PRETORIA on the day, month and year first aforementioned in the presence of the undersigned witnesses and me, the said Notary.

AS WITNESSES:

1. _____
2. _____

QUOD ATTESTOR

NOTARY PUBLIC

QUESTION 8 **[5]**

- 8.1 Luigi Ponti
Identity Number : 740807 5085 082
Married, which marriage is governed by the Laws of Spain, to Maria Ponti and duly assisted by Maria Ponti, Identity Number 730524 0582 082 in so far as need be. (2)
- 8.2 Carlo Ponti
Identity Number : 700826 0826 082
Married in community of property to Liza Ponti, which community of property is excluded by condition of a Will dated 2 February 2012. (1)
- 8.3 Bon Ellis
Identity Number : 700826 0826 082
Married in community of property to Elize Ellis
And
Judy Sinclair
Identity Number 730807 5083 082
Unmarried,
carrying on business in partnership as Aye Bee Partnership (2)

QUESTION 9 **[10]**

- 9.1 Apart from the notary's fees for drafting, execution and registration of the cession of usufruct, and the related deeds office registration fees, it should be remembered that the transaction will be subject to payment of transfer duty. Transfer duty in respect of a usufruct is calculated with reference to the life expectancy tables (which is an appendix to the Estate Duty Act, 45/1955), with the value so determined being capitalised by 12%. The parties should also be cautioned that the transaction will be subject to Donations Tax calculated at 20% of the value of the usufruct.

Transfer duty is payable within 6 months from date of the transaction. Donations tax is payable by the end of the financial year in which the transaction took place. (5)

9.2

CESSION OF USUFRUCT

BE IT HEREBY MADE KNOWN:

That on this 13 September 2018 before me

Sharon Ann de Lange

Notary, practising at Bloemfontein, Province Free State, there personally came and appeared:

John Gordon
Identity Number

And

Concita Gordon
Identity Number

Married in community of property to each other

(hereinafter referred to as the CEDENT)

AND

MOSES NKADIMENG
IDENTITY NUMBER _____
Unmarried
"the usufructuary"

And the Appearers declared that:

WHEREAS: The Cedent is the registered owner of the undermentioned property

AND WHEREAS: The Cedent wishes to grant to the usufructuary a lifelong usufruct over the property

NOW THEREFORE the Cedent hereby cedes to the usufructuary a lifelong usufruct in respect of the following property namely:

THE FARM DOORKOP 143 IQ, DISTRICT BLOEMFONTEIN
PROVINCE FREE STAE
IN EXTENT.....
HELD BY DEED OF TRANSFER T0000.000

Subject to the following conditions:

1. No consideration shall be paid by the USUFRUCTUARY for the life long right of usufruct;

2. The USUFRUCTUARY will be responsible for payment of any costs and disbursements of the registration of this notarial deed.
3. For purposes of the payment of transfer duty the parties calculate the value of the usufruct to be R xxxxx
4. The aforesaid USUFRUCTUARY accepts the cession of the rights of the usufruct.

THUS DONE AND SIGNED ON THE DAY MONTH AND YEAR FIRST AFORE WRITTEN IN THE PRESENCE OF THE SUBSCRIBING WITNESSES

AS WITNESSES:

1. _____

John Gordon
Concita Gordon

2. _____

Moses Nkadameng

QUOD ATTESTOR

NOTARY

(5)

LAW SOCIETY TOTAL: [100]
OF SOUTH AFRICA