

THE REPUBLIC OF SOUTH AFRICA
NOTARIAL PRACTICE EXAMINATION

12 SEPTEMBER 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.

QUESTION 1**[20]**

You are consulted by Jack Hammer, a French national, who married his wife Joan in France and they now reside in the Newcastle Area, Kwazulu Natal. Jack is the owner of the Farm Franschoek No. 2163.

Jack is accompanied by his neighbour, Donald Smith, who is married out of community of property to Portia and who owns the adjoining farm Florence No. 5786. The Parties advise you that Jack is agreeable to granting an 8 (eight) metres wide right of way servitude over his property in favour of Donald's property to facilitate easier access to and egress from Donald's property to the district road adjoining Jack's property. This right of way cuts across a corner of the property and runs some distance away from Jack's residence and he is agreeable to it being used by vehicles and by horses.

Further, you are advised that on Jack's property there is a "koppie" with an amazing view point and water fall. Donald runs a guesthouse on his property and wants to take his guests to this "koppie". Jack is agreeable to grant Donald a 3 (three) metres wide right of way for this purpose. This "koppie" is relatively close to Jack's residence and he therefore insists that this right be used by pedestrians only.

In addition to the above, Jack advises that he is agreeable to grant Donald a right of pre-emption to purchase his property should it ever be disposed of in any manner or have the right to rent it should Jack wish to let the property for a period of more than one year. This right is to remain operative until Jack's property has been transferred to a third party as a result of the failure or refusal by Donald to exercise this right.

Jack requires consideration for the grant by him of these rights and the Parties do not intend to have either of the servitudes surveyed.

- 1.1 Draw the appropriate deed(s) to give effect to these instructions. The Parties live some distance away from your place of practice and do not wish to make the trip to your office again to sign the deed(s). (16)
- 1.2 Under which circumstances will the Deeds Registry not require a diagram to be annexed to a Deed of Servitude. (4)

QUESTION 2**[10]**

- 2.1 You are consulted by a young couple who intend to get married soon. The husband intends to transfer the common home into the name of his wife, which he will do at no consideration once he has settled the mortgage bond, which should be in five years' time. Prepare the relevant clause in the ANC in such a way to best postpone the applicability of section 1(1) of Act 40/1949. Explain your wording of the clause. (3)
- 2.2 After execution of the contract, but before registration thereof, the parties agree to delete this provision. Is this allowed? How would you attend thereto? Discuss. (3)

- 2.3 What would the position be should the ANC have already been registered, but the marriage not yet solemnised? (2)
- 2.4 What would the position be should the parties only agree to this amendment four years after marriage? (2)

QUESTION 3 [5]

You are consulted by Mrs Albena Marinova Todorov, who has been living in our country with her husband for the past 15 years and who originated from Wakanda, where she and her husband lived before emigrating to South Africa.

She hands you a document which, so she tells you, has been prepared by a legal practitioner in Wakanda, in Wakandese, and is a power of attorney which she grants her brother in Wakanda to enable him to sell a property which she still owns in that country. She asks you to authenticate her signature on that document.

You know no Wakandese at all and as far as you are aware there is no notary in your province who speaks, reads or writes that language. Assume also that it is not practical for your client to visit the diplomatic mission of Wakanda in this country.

Draw the necessary certificate of authentication and then explain what steps are necessary to complete the authentication, bearing in mind that in that context there are more than one possible scenarios.

QUESTION 4 [20]

- 4.1 What facts are required by the Deeds Registries Act to be disclosed in a Notarial bond: Does it make a difference if the mortgagor is a company? (4)
- 4.2 Draft the cause of debt and description of the mortgagee as it will appear in a notarial bond where A signs as surety for B at ABC Bank on condition that B passes a notarial bond in A's favour to secure him in case he is called upon to pay the bank. (5)
- 4.3 A and B who own a repair business, purchase on credit a welding plant for their business. The supplier refuses to deliver the plant unless they pass a notarial bond over the plant as security. Draft the cause of debt, mortgagee's description as well as the clause hypothecating the plant. (7)
- 4.4 What is the difference between a pledge and a Notarial Bond? (2)
- 4.5 What is the difference between a Special Notarial Bond and a General Notarial Bond? (2)

QUESTION 5 [30]

Cyclops Investments (Pty) Ltd has entered into a 45-year lease with the Ingonyama Trust, in terms of which it leases Portion 14 of the farm Jozini, measuring 5,1088 hectares from the Trust. The company has developed a shopping centre on the land, which is fully tenanted.

The company has two directors, Buti Letsoale and Gavin Trescott. The two shareholders of the company are Letsoale Investments (Pty) Ltd and Trescott Family Trust. The company does not own any other assets, and for that matter, neither do the shareholders own anything but their shares in the company.

The company has operated the centre for two years and has now sold the shopping centre business to The Kingdom Trust (a business trust operating a number of shopping centres, with five trustees, each representing the holder of a vested interest) for a consideration of R90 million. The existing bond registered over the lease will be settled with the proceeds of the sale.

You are required:

- 5.1 To draft the clause in the sales agreement to ensure VAT-relief. (4)
- 5.2 To draft all resolutions required to be filed in your protocol. State only by whom the resolution is taken and draft the body of the resolution. (12)
- 5.3 To draft the document required to be lodged at the Deeds Office to transfer all the rights and obligations of Cyclops Investments (Pty) Ltd *vis a vis* the Ingonyama Trust to The Kingdom Trust. (8)
- 5.4 To list the documents that you will lodge in the Deeds Office. (2)
- 5.5 To list four ways in which the lease may be terminated. (4)

QUESTION 6 **[15]**

You are instructed to attend to the transfer of Section 4 WHITEHALL, together with EUA garage G4 from Sam Titus, unmarried, to Brian Molefe, married out of community of property to Bridgette. Sam has since emigrated to Australia and has given his attorney a Power of Attorney.

You conduct a deeds search and you discover that although garage G4 was ceded to Sam under SK 561/1998S, the same garage was also ceded to Dawn Smith a divorcee, under SK 251/2002S. Dawn has subsequently married Chris Peters out of community of property, with the Exclusion of the Accrual System.

On investigation it emerges that the garage was incorrectly ceded to Dawn Smith. The Registrar acknowledges that his office inadvertently allowed a double registration of the cession of the same garage. The Body Corporate has been advised accordingly and have consented to the rectification thereof.

- 6.1 Draw the Deed required to be registered to correct the position before garage G4 can be ceded to the rightful holder thereof. (10)
- 6.2 What documents will you lodge in the Deed's Office? (5)

THE END