

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 27 FEBRUARY 2020 **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:

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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]

Steel Company South Africa (Pty) Ltd carries on business in all the provinces of South Africa and has offices in Durban, Pietermaritzburg, Johannesburg and Cape Town. Steel Company South Africa (Pty) Ltd entered into a facility agreement with ABC Suppliers (Pty) Ltd in terms of which it provided to ABC Suppliers (Pty) Ltd a line of credit to enable it to carry on its business of crane rigging in South Africa. ABC Suppliers (Pty) Ltd carries on business and has offices in Durban and Johannesburg and has its registered office in Cape Town.

ABC Suppliers (Pty) Ltd, as security for the funds advanced under the credit facility agreement, had agreed to register a Special Notarial Bond in favour of Steel Company South Africa (Pty) Ltd, which bond was duly registered in the Cape Town Deeds Office under BN37948/2019. The assets specifically bonded comprised ten rigging cranes.

Three of the rigging cranes have in the meantime become damaged and constitute a danger to operate and ABC Supplies (Pty) Ltd wants to replace them.

Steel Company South Africa (Pty) Ltd approaches you for advice as to what the best way will be for them to assist ABC Supplies (Pty) Ltd so that they can continue conducting business, but without your client being prejudiced.

1.1 What advice would you give to Steel Company South Africa (Pty) Ltd? (3)

1.2 Draft the document/s which would be required to be submitted to the Deeds Office in support of your advice to Steel Company South Africa (Pty) Ltd. (17)

QUESTION 2

[25]

David Jones, who was married out of community of property to Edna Jones, died on 14 April 2016. His good friend Tom Smith, has been appointed as the executor of his estate.

The deceased is the registered owner of the residential property known as Erf 1460, Cape Town. In his will dated 30 April 2012, which the Master has accepted, the deceased provided as follows:

"I bequeath my immovable property described as Erf 1460, Cape Town to my wife Edna Jones, subject to the condition that on her death it shall devolve upon our son Peter Jones and our daughter Mary Jones-Ford in equal shares or upon the then survivor of them. I bequeath the residue of my estate to our aforesaid two children in equal shares or to the survivor of them.

I direct that all inheritances and benefits accruing to beneficiaries under this will shall not form part of any joint estate of beneficiaries married in community of property."

The residue of the estate consists of substantial investments and cash and is more than sufficient to meet all liabilities and administration expenses.

Edna Jones has a substantial estate of her own. Peter Jones is married out of community of property to Italian born Lisa Minnelli. Mary Jones-Ford is married in community of property to Ryan Ford.

A re-distribution agreement has been entered into and accepted by the Master. In terms thereof, the immovable property mentioned above is to devolve upon the two children, subject to a lifelong usufruct in favour of the surviving spouse of the deceased.

- (a) Draw the notarial deed required to be registered in the Deeds Office to give effect to the terms of the redistribution agreement. (12)
- (b) A few years later Edna re-marries. She and her husband, Andrew Lawrence, to whom she is married out of community of property, decide to emigrate to England. She has reached agreement with her children to cancel the above mentioned notarial deed subject to a payment to her of R50 000.00. Draw the deed to be lodged at the Deeds Office to give effect to the agreement. (8)
- (c) List the documents to be lodged in the Deeds Office respect of:
- (i) question (a) and;
 - (ii) question (b) above and;
 - (iii) further list the documents that you will retain in your protocol. (5)

QUESTION 3

[20]

Sam Botha and his sister, Sally, jointly own a property on which they have constructed two dwellings, which they own in undivided shares. They now wish to own each dwelling separately, and have agreed that each one of them would obtain exclusive ownership of a dwelling and its exclusive garden area, the properties being of similar size and value. Their town planner has, however, advised them that the local authority would not consent to subdivision, but will allow a sectional title scheme.

- 3.1 You are instructed to advise Sam and Sally on the steps that need to be taken to achieve the above with reference also to the payment of transfer duty. (8)
- 3.2 Prepare the Notarial document to vest ownership of the garden areas in each of them separately. (12)

QUESTION 4

[20]

You are consulted by John Macingwa and his wife-to-be, Priscilla Mabola.

Priscilla is 17 years of age and has not been married previously. Two years ago she and her father came to South Africa from Zimbabwe, where her mother remained, and she has since lost all contact with her mother. Her father "is working on the mines", but she has no idea of his whereabouts.

John owns a vacant piece of land in Polokwane which he retained after his divorce from his previous spouse. This he wishes to donate to Priscilla.

John also instructs you to include in the contract an undertaking on his part to cede to Priscilla a life insurance policy taken out on his life, coupled with his undertaking to

pay the premiums on that policy. However, should Priscilla die before him, or should the marriage end in divorce, all settlements given to Priscilla are to revert to him.

- 4.1 How would you describe Priscilla in the antenuptial contract? (2)
- 4.2 Draw the relevant clauses which you would insert in the contract to provide for the specific instructions received from John. (6)
- 4.3 Six months after the marriage John transfers the Polokwane property to Priscilla, giving effect to the settlement in the antenuptial contract. Nine months later John's estate is finally sequestrated, and his trustee seeks to set aside the settlement as a disposition without value. Would the trustee succeed? Motivate your answer. (4)
- 4.4 John and Priscilla further wish the accrual system to be applicable to their marriage and the contract to provide that:
- 4.4.1 any possible accrual claim will not benefit the creditors of the spouse entitled to it or the estate of such spouse. Draw only the relevant clause. (4)
- 4.4.2 should the intended marriage end in divorce, any accrual claim of either party then due, need not be settled at once, but that the party obliged to pay may do so in two equal instalments within six and eighteen months respectively after the date of divorce, free of interest. Is this possible? If so, draw the relevant clause that you would insert. (4)

QUESTION 5

[15]

- 5.1 Who will sign the consent to the cancellation of a notarial bond registered in favour of a minor? (1)
- 5.2 Is it competent for:
- 5.2.1 a widower to marry the sister of his deceased wife?
- 5.2.2 a widow to marry the son of her deceased husband from a previous marriage?
- 5.2.3 a man to marry the mother of a previous spouse, which marriage was dissolved through divorce? (3)
- 5.3 How would you go about recording the lapsing of a *fideicommissum*? (1)
- 5.4 In which instance can a praedial servitude be cancelled unilaterally? (1)
- 5.5 Is it possible for parties to execute an antenuptial contract in counterparts before two different notaries? (1)
- 5.6 You are consulted by a couple who intends to get married in two weeks' time. They advise you that they have a month ago consulted with another notary whom they have instructed to prepare and register a contract in terms of which the accrual system would not apply, but have now discovered that the contract was incorrectly registered with the accrual system applying. What steps would you advise them to take to rectify the situation? (2)

- 5.7 How would you describe parties to a civil partnership in terms of Act 17 of 2006 where no antenuptial contract has been registered in a deed presented for registration? (2)
- 5.8 Your client is the holder of a notarial bond which he has ceded to Company A. he has now been approached by the mortgagor to waive preference of the bond in favour of a bond to be registered by Boss Bank over the same goods and assets. Which party(ies) should sign the waiver of preference? (1)
- 5.9 Your office attended to the opening of a sectional title scheme consisting of 36 units and 72 exclusive use areas. It now appears that both your offices and the Deeds Office inadvertently allowed for one of the exclusive use areas to be ceded to two different persons. What steps must be taken to rectify the situation? Who should act? (3)

- THE END -

LAW SOCIETY
OF SOUTH AFRICA