

**NOTARIAL PRACTICE**

**8 APRIL 2021**

**MEMORANDUM**

**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**

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PROTOCOL NO. 567/2021

**NOTARIAL DEED OF CESSION OF RIGHT TO EXTEND IN TERMS OF SECTION 25(4)(b)  
of ACT 95 OF 1986**

BE IT HEREBY MADE KNOWN THAT:

On this 27<sup>th</sup> day of MARCH 2021 Before me, LINDA GOODWORD, NOTARY, practising in CAPE TOWN, PROVINCE OF THE WESTERN CAPE, and in the presence of the undersigned witnesses came and appeared:

1. JACK BLUNT  
IDENTITY NUMBER 900725 0005 087  
MARRIED OUT OF COMMUNITY OF PROPERTY  
(hereinafter called the 'developer')

and

2. JASMINE SHAW  
IDENTITY NUMBER 960811 2134 083  
MARRIED OUT OF COMMUNITY OF PROPERTY  
(hereinafter called the 'cessionary')

AND THE APPEARERS DECLARED THAT:

WHEREAS the developer has in terms of Section 11 of Act no.95 of 1986 (“the Act”) registered at the Deeds Office Cape Town, the Sectional Plan No, SS234/2018, and the Opening of the Sectional Title Register, in respect of the land and buildings known as **RIVER SONG**, situated on:

**ERF 6685** CAPE TOWN  
IN THE CITY OF CAPE TOWN  
PROVINCE OF THE WESTERN CAPE  
In Extent: 1200 (One Thousand Two Hundred) square metres

AND WHEREAS the developer has reserved to himself the right to extend the said sectional scheme in terms of section 25(1) of the Act, to enable the developer or his successor in title to erect further buildings on the specified part of the common property as indicated on the building plan contemplated in section 25(2)(a) of the Act and filed in the aforesaid Deeds Registry and to divide such building or buildings into two sections., within a period of 10 (TEN) years for the developers personal account;

AND WHEREAS a Certificate of Real Right SK 369/2018S was issued to the developer in terms of Section 12(1)(e) of the Act;

AND WHEREAS the developer did in terms of antenuptial contract H2060/2021, which is registered in the Cape Town Deeds Registry, donate to the cessionary the whole of the developer’s interest in the abovementioned sectional title scheme, including the Right to Extend, and had thereafter on the 7 March 2021 married the cessionary;

NOW THEREFORE, in accordance with the provisions of section 25(4)(b) of the Act, the developer hereby cedes and assigns to the cessionary, her heirs, executors or assigns, the Right to Extend referred to above;

AND the cessionary, hereby accepts the benefit of such cession and assignment;

AND the parties declare that the deed shall be registered in Deeds Office, Cape Town and that all costs of and incidental to its negotiation, preparation, execution and registration and payment of any transfer duty, shall be paid by the developer.

AND the value of the Right to Extend is declared to be the sum of R200 000 (Two Hundred Thousand Rand);

SIGNED at CAPE TOWN ON THE DATE AFORESAID in the presence of the undersigned witnesses.

AS WITNESSES :

1. \_\_\_\_\_

\_\_\_\_\_  
DEVELOPER

2. \_\_\_\_\_

AS WITNESSES :

1. \_\_\_\_\_  
\_\_\_\_\_

CESSIONARY

2. \_\_\_\_\_

**QUOD ATTESTOR**

**NOTARY**

(11)

1.2 No donations tax is payable. Donations between spouse or in contemplation of marriage is exempt from donations tax (section 56 (1)(a) of the Income Tax Act. (1)

1.3 - Certificate of Real Right SK 369/2018S  
- Notarial deed of Cession  
- Transfer duty exemption certificate (3)

**QUESTION 2** [20]

**2.1**

Protocol number:

**ANTENUPTIAL CONTRACT**

with the

**APPLICATION OF THE ACCRUAL SYSTEM**

in terms of the

**MATRIMONIAL PROPERTY ACT, 1984**

BE IT HEREBY MADE KNOWN

THAT on this 8 FEBRUARY 2021

before me LINDA GOODWORD, Notary Public, practising at CAPE TOWN in the Province of THE WESTERN CAPE

duly came and appeared

**RICHARD JOHN BURTON**  
**IDENTITY NUMBER: 760411 2077 084**  
**UNMARRIED**

**AND**

**HEIDI KLUMSY**  
**DATE OF BIRTH: 8 NOVEMBER 1993**  
**UNMARRIED**

AND the Appearers declared that whereas a marriage has been agreed upon, and is intended to be solemnised between them, they have agreed and now contract with each 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 the marriage shall be subject to the accrual system in terms of the provisions of Chapter 1 of the Matrimonial Property Act, 1984 (Act No 88 of 1984), save that:
  - 3.1 no accrual shall arise at the instance of either spouse, until the third anniversary of their marriage or until a child has been born of their marriage, whichever event shall occur first;
  - 3.2 no accrual claim shall lie at the instance of a spouse (or the estate of such spouse), who at the dissolution of the marriage is a de facto insolvent in that their liabilities exceed their assets or is at that time an unrehabilitated insolvent.
4. In consideration of the intended marriage, RICHARD JOHN BURTON, hereby:
  - 4.1 donates and undertakes to cede to HEIDI KLUMSY a life insurance policy No. 23456 on his life with Discovery Life and he undertakes to procure such cession is registered and noted against the policy with the insurance company. He furthermore undertakes to pay on due date all premiums that are payable against the policy.

4.2 donates and gives to HEIDI as her exclusive property, ERF 468 Barrydale, held by him under Deed of Transfer T2334/2015 and to cause the property to be transferred into HEIDI'S name at his own expense.

The above settlements are subject to the express condition that should HEIDI predecease RICHARD or should the intended marriage be dissolved by divorce for whatever reason, such settlements shall revert to and become the sole and absolute property of RICHARD.

5. The parties record that, simultaneously with the execution of this contract, they will execute a statement in terms of Section 6(1) of the Act, reflecting the nett values of their respective estates at the commencement of their intended marriage.

The following Assets are excluded under Section 4(1)(b)(ii) of Act 88 of 1984, as well as all liabilities attached thereto, or any asset acquired by such party by virtue of his/her possession or former possession thereof, together with income derived from such mentioned assets, (unless specified to the contrary) shall not be taken into account as part of such party's estate either on the date of conclusion of the marriage or upon dissolution of the marriage:

That of  
**RICHARD JOHN BURTON**

- NIL

That of  
**HEIDI KLUMSY**

- NIL

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. \_\_\_\_\_

2. \_\_\_\_\_

**QUOD ATTESTOR**

**NOTARY PUBLIC**

(15)

2.2 The trustee will succeed.

Section 27(1) of the Insolvency Act 24 of 1936 provides that an immediate benefit given in a registered antenuptial contract, given in good faith by one party to the other, shall not be set aside as a disposition without value, unless, the insolvent party is sequestrated within two years of the registration of the antenuptial contract.

'immediate benefit' is defined in the act as a benefit given by transfer, delivery, payment, cession, pledge, special mortgage of property completed before the expiration of three months as from the date of the marriage.

The donation to Heidi would have been protected if the transfer of the immovable property took place within 3 months of the marriage. (5)

**QUESTION 3**

**[15]**

**3.1**

**NOTARIAL DEED OF CESSION OF RIGHT OF USUFRUCT**

**KNOW ALL MEN TO WHOM IT MAY CONCERN** that on this            day of            2021, before me

**Juan Malan**

Notary Public, duly sworn and admitted, residing and practicing at CAPE TOWN, Province of the Western Cape, personally came and appeared:

**1. Matthew Black**

In his capacity as the Executor in the Estate of the late John Samuels duly authorized by Letters of Executorship issued by the Master of the High Court on the 21 January 2021 under Estate Number: 2579/2021.

**2. Pippa Samuels**

Identity Number: xxxxxxxxxxxxxxxx  
Widow

AND THE APPEARER DECLARED THAT WHEREAS in terms of the Last Will and Testament of the late John Samuels who died on 25<sup>th</sup> November 2020, he had bequeathed the undermentioned property to his son Peter Samuels, subject to the condition that his mother Ruth Samuels shall have the right to live in and occupy the said property for the rest of her life.

NOW THEREFORE the said Appearer declared that by these presents, he cedes to and in favour of:

**Pippa Samuels**

Identity Number: xxxxxxxxxxxxxxxx

Widow

**The personal servitude of usufruct over:**

Erf 7984 Sea Point

Situate in the City of Cape Town

In the Province of the Western Cape

In extent: 585 (five hundred and eighty five) square meters

The rights conferred herewith shall endure for the lifetime of the said Pippa Samuels.

AND THE APPEARER AFORESAID ON BEHALF OF THE SAID

**Pippa Samuels**

Identity Number: xxxxxxxxxxxxxxxx

Widow

Accepts the cession of the said lifelong personal servitude of usufruct.

THUS DONE AND EXECUTED before me, Notary public on the aforementioned date at CAPE TOWN, Province of the Western Cape, in the presence of the undersigned witnesses.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**QUOD ATTESTOR**

**NOTARY PUBLIC**

(8)

3.2.1 Peter Samuels would have to procure that his mother Ruth Samuels, furnishes her consent to the waiver of all her preferences in respect of the said usufruct to and in favour of the Bank, so that in the event of Peter Samuels defaulting under the loan and the bank attaching the property, the Bank would be able to sell the property to a third party free of the usufruct. (2)

3.2.2

**WAIVER OF USUFRUCT**

KNOW ALL MEN WHOM IT MAY CONCERN that on the \_\_\_\_\_ day of \_\_\_\_\_ 2021, before me \_\_\_\_\_ Notary Public by lawful authority duly sworn and admitted, residing and practicing at Cape Town, in the Province of the Western Cape, personally came and appeared

**Pippa Samuels**  
Identity Number: xxxxxxxxxxxxxxxx  
Widow

**AND THE APPEARER DECLARED THAT WHEREAS:**

1. The said Pippa Samuels is entitled to a usufruct registered over ERF 7984 Sea Point registered in the name of Peter Samuels by Deed of Transfer Number T 2785/2021, and which usufruct is registered under Notarial Deed No. K856/2021.
2. The said Pippa Samuels has consented to waive all her preference in respect of the said usufruct to and in favour of the Mortgagee.

NOW THEREFORE the said Appearer does hereby waive and renounce all his Principal's preference in respect of the usufruct which she has over and in respect of the said property to and in favour of the said Mortgagee, the said ABC Bank Ltd, so that should the said property be sold in execution at the instance of the Mortgagee, or other legal holder of the Mortgage Bond to be passed aforesaid, it may be sold free therefrom, renouncing all the benefits from the legal exception *ordinis seu excussionis*, with the full meaning and force of which the said Appearer declared his Principal to be acquainted.

THUS DONE AND SIGNED on the day, month and year first aforesaid in the presence of the undersigned witnesses.

**AS WITNESSES:**

1. \_\_\_\_\_
2. \_\_\_\_\_

**QUOD ATTESTOR**

**NOTARY PUBLIC**

(5)

- 4.1 The minor, assisted by his/her guardian. Sect 80 of Act 66 of 1965 does not apply. (RCR 65 of 1961) (1)
- 4.2 The marriage shall not be void, but may be dissolved by a competent court if application is made by a parent or guardian before the minor attains majority and within six weeks of the date on which the parent becomes aware of the existence of the marriage, or by the minor before he/she attains majority or within three months thereafter (sect 24A of Act 25 of 1961). (3)
- 4.3 Application in terms of section 68(1) of Act 47/1937 (RCR 17 of 1974). (1)
- 4.4 It is not possible to cancel a praedial servitude unilaterally, not even where the holder of the right abandons that right (RCR 10/1987). (1)
- 4.5 Yes (RCR 53 of 1960). (1)
- 4.6 It is important for the parties to act quickly, as prior to solemnisation of marriage the parties may exercise their common law right to amend their contract, provided that the amendment is registered in the Deeds Office prior to date of marriage. After date of marriage they will have to approach the Court for authorisation to amend a contract that does not reflect their true intention. (RCR 4 of 1969, RCR 52 of 2011). (2)
- 4.7 ABC  
Identity number xxxxxxxxxx  
And  
ZYX  
Identity number yyyyyyyyyy  
Partners in a civil partnership in community of property and registered in terms of the Civil Union Act 17 of 2006 (2)
- 4.8 The bondholder and cessionary (RCR 26 of 1988). (1)
- 4.9 It can be done, provided that there exists no underlying agreement between the owners to prohibit it (RCR 6 of 1987). (1)
- 4.10 Both rights to the exclusive use areas must be cancelled by virtue of notarial agreement, as provided for in section 27(5) of Act 95 of 1985, and receded by the body corporate to the rightful owner. (3)
- 4.11.1 A *fideicommissum* in regard to immovable property is a disposition of immovable property by the owner in terms of his Will to a beneficiary, the fiduciary, of ownership of that immovable property subject to the condition that ownership shall be passed in due course to another beneficiary, the *fideicommissary*. A usufruct is the right to enjoy the use and advantages of another's property. (2)

4.11.2 The essential difference between an option and a right of pre-emption is that the holder of an option can force the owner to sell, whereas the holder of a right of pre-emption may only exercise his right if the owner decides to sell during the pre-emptive period. (3)

4.11.3 Where the estates of two parties – they need not necessarily be married – have been massed, on the death of the first dying the survivor of the two parties is required to elect whether he or she wishes to accept or reject the terms of the Will. The legal consequences of such acceptance or rejection must be explained to him/her by an attorney and a Deed of Adiation or Repudiation is then prepared for signature by the survivor of the testators. Such Deed of Adiation or Repudiation must, in order to be accepted by the Master of the High Court, contain a certificate by an attorney confirming that the consequences of an acceptance or repudiation of the terms of the Will have been explained to the survivor and that after such explanation the survivor has deemed it expedient to accept or repudiate the terms of the Will. (5)

“We hereby mass and consolidate our joint community estate, and bequeath the whole of our massed joint estate to our children subject to the usufruct of the survivor of us until his or her death”.

Or

“We hereby mass and consolidate our joint community estate and nominate and appoint the survivor of us to be the sole and universal heir thereof subject to the condition that upon the death of the survivor our massed estate shall devolve upon the children of our marriage then alive, and the issue *per stirpes* of such children who may have predeceased the survivor leaving issue”.

4.11.4 Postnuptial registration of antenuptial contract (in terms of Section 88 of Act 47 of 1937) is a registration of an antenuptial contract, executed prior to the marriage of the Parties, after the lapse of the requisite time period for registration (3/6 months) with the requisite order of the High Court.

Registration of a Postnuptial Contract is the Registration of a Postnuptial Contract entered into by the Parties who have made application to the High Court in terms of Section 21 of the Matrimonial Property Act 1984 to change their matrimonial property regime and such order has been granted. (4)

**QUESTION 5**

**[20]**

**5.1**

**Protocol No: 28/2018**

**NOTARIAL DEED OF SERVITUDE**

**KNOW ALL MEN WHOM IT MAY CONCERN**



**NOW THEREFORE THE APPEARER DECLARED THAT HER PRINCIPALS HEREBY AGREE AS FOLLOWS:**

1. That Smith, for himself and his successors in title to the farm, hereby grants to Ringtone, its order or assigns the following rights over the farm:
  - 1.1. The right to erect, operate and maintain a cellphone transmitter within the area represented by the figure PQRS on the annexed Diagram SG No. 572/2012 in extent 300 (three hundred) square metres (hereinafter referred to as “the servitude area”);
  - 1.2. A right of way 3 (three) metres wide to provide vehicular and pedestrian access from the National Road N3 over the farm to the servitude area; and
  - 1.3. To construct, operate and maintain a power line along a servitude 18 metres wide from the Eskom sub-station on the farm (represented by the figure ABCDEF on the Diagram No. 416/2003 annexed to Notarial Deed no. K579/2004) to the servitude area;
2. Ringtone will exercise the aforesaid rights reasonably and will fence the servitude area
  1. Ringtone indemnifies Smith against any damage that arises in the construction/ erection operation or maintenance of the cellphone transmitter or power lines.
  2. Ringtone will pay Smith a consideration of SEVEN HUNDRED AND FIFTY THOUSAND RAND (R750 000.00) exclusive of VAT on registration of this deed.
  3. This Notarial Deed will be registered against Smith’s title deed.
  4. All costs of and incidental to the negotiation, preparation, execution and registration of this deed including any transfer duty and any value-added tax, shall be borne by Ringtone.

THUS DONE and EXECUTED at PIETERMARITZBURG on the date first aforewritten in the presence of the subscribing competent witnesses:

**AS WITNESSES:**

1. \_\_\_\_\_ Qq \_\_\_\_\_
2. \_\_\_\_\_

**QUOD ATTESTOR**

NOTARY PUBLIC

(12)

- 5.2.1 i) Smith's Title Deed  
ii) Any bond with bondholder's consent  
iii) The Notarial Deed  
iv) Transfer duty exemption certificate or receipt  
v) Consent in terms of Act 70 of 1970  
vi) the diagram (3)

- 5.2.2 i) The Notarial deed – Minute  
ii) Special Powers of Attorney  
iii) Certified copy of Resolution (2)

5.3.1 Will Smith would be required to account to the Receiver of Revenue for VAT and Ringtone could claim the VAT portion of the purchase price as an input credit. No transfer duty would be payable. (2)

5.3.2 Transfer duty would be payable and Ringtone could claim the amount thereof as an input credit. (1)

**TOTAL: [100]**