

THE REPUBLIC OF SOUTH AFRICA

NOTARIAL PRACTICE EXAMINATION

DATE: 8 APRIL 2021

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
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Should your 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**[15]**

Jack Blunt, a young developer, who is registered for VAT, has recently completed a small sectional title development called RIVER SONG, situated in Claremont, comprising four units. The sectional plan SS234/2018 was registered at the Deeds Office, Cape town. None of the units have been sold. There are no exclusive use areas delineated on the Sectional plan. Jack has however reserved to himself the right to extend the scheme by the erection of two further units. There is no existing bond.

He and his fiancé, Jasmine Shaw, consult you to draft their antenuptial contract in terms of which, Jack wishes to donate to Jasmine his interest in future extensions of RIVER SONG and Jasmine has agreed to include this provision in the antenuptial contract. They have asked you to register the ANC and to attend to the necessary procedures after their marriage, in order to implement the above clause.

- 1.1 Draft the necessary deed to vest the rights to extend in favour of Jasmine. (11)
- 1.2 Advise whether this donation would attract donations tax and motivate your answer briefly. (1)
- 1.3 List the documents that need to be lodged at the Deeds Office. (3)

QUESTION 2**[20]**

- 2.1 You are consulted by Richard Burton, a 45-year-old lecturer, who was born in Gauteng but recently moved to Cape Town, and Heidi Klumsky, a 28-year-old lecturer who recently arrived in South Africa from her native Sweden, to draft an antenuptial contract to govern their intended marriage which is scheduled to take place in Sweden in a month's time.

After explaining their various options to them, the parties have advised that:

- a) they would like the accrual system to apply to their marriage but only once they have been married for three (3) years or until they have a child, whichever event occurs first;
- b) Richard wishes to settle upon Heidi, a property which he owns in Barrydale, which he inherited from his uncle, together with a R500 000,00 life policy. The parties agree that should Heidi die before him, or should the marriage end in divorce, the settlements are to revert to Richard.
- c) the parties also wish that no accrual claim will arise in the event of the prospective beneficiary thereunder being insolvent at the time of their claim.
- d) they do not wish the public at large to become aware of the values of their respective estates.
- e) other than the above settlements, their assets are as follows:

Richard - immovable property worth R4 million, a motor vehicle worth R350 000,00, cash and investments of R600 000,00 and furniture and household effects.

Heidi has no assets in South Africa but an investment of €43 000 at a bank in Sweden.

You are required to consider the validity of their requirements and draft the documentation urgently as they wish to execute the contract before they depart for their wedding in Sweden. (15)

- 2.2 Six months after their return from their wedding in Sweden, Richard transfers the Barrydale property to his wife, thereby giving effect to the donation in the antenuptial contract. Eight months thereafter, due to financial difficulties and a loss of his job as a consequence of the Covid Pandemic, Richard's estate is sequestrated. His liquidating trustees seek to set aside the settlement of the immovable property in the antenuptial contract as a disposition without value.

Discuss if the trustees will succeed. Motivate your answer. (5)

QUESTION 3 [15]

John Samuels, married out of community of property to Pippa Samuels, is the registered owner of Erf 7984 Sea Point. John Samuels sadly passed away and in terms of his last will and testament, he bequeathed his property to his son Peter Samuels, who is married in community of property to Ruth Samuels, on condition that John's surviving spouse shall continue to have the right to live in, use and occupy the property for her lifetime.

John Samuels has appointed his attorney Matthew Black as the executor of his estate and the Master's Office has issued Letters of Executorship under Estate Number 2579/2021.

- 3.1 Draw the Notarial Deed to give effect to the terms of John Samuels's last will and testament. (8)
- 3.2 After finalisation of his father's estate, Peter Samuels wishes to register a bond over the property in order to effect improvements thereto. His bank, ABC Bank Ltd has agreed to grant him a loan of R500 000.00:
- 3.2.1 Explain what steps would need to be taken in order for Peter Samuels to register the bond. (2)
- 3.2.2 Draft the document required in order to ensure that the bank's rights are not prejudiced. (5)

QUESTION 4 [30]

- 4.1 Who will sign the consent to the cancellation of a notarial bond registered in favour of a minor? (1)
- 4.2 What are the legal consequences of a marriage where one party is a minor, and neither the parents or guardians of the minor, nor a Commissioner of Child Welfare have consented to the marriage? (3)
- 4.3 How would you go about recording the lapsing of a *fideicommissum*? (1)
- 4.4 In which instance can a praedial servitude be cancelled unilaterally? (1)
- 4.5 Is it possible for parties to execute an antenuptial contract in counterparts before two different notaries? (1)

- 4.6 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)
- 4.7 How would you describe parties to a civil partnership in terms of the Civil Union Act, Act 17 of 2006 where no antenuptial contract has been registered in a deed presented for registration? (2)
- 4.8 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)
- 4.9 Your client holds a third share in a holiday home on the coast. He instructs you to register a usufruct in favour of his wife over his undivided share. Is it possible? (1)
- 4.10 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)
- 4.11 Discuss and explain the difference between the following:
- 4.11.1 A *fideicommissum* and a usufruct; (2)
- 4.11.2 An option and a right of pre-emption. (3)
- 4.11.3 Adiation and Repudiation. (5)
- 4.11.4 Postnuptial registration of antenuptial contract (in terms of Section 88 of Act 47 of 1937) and registration of a postnuptial contract. (4)

QUESTION 5

[20]

Will Smith, who married Sandra whilst domiciled in France, agreed to permit Ringtone (Pty) Ltd, a cellphone network operator to erect a cellphone transmitter on his farm Drakensview. He has also granted the company:

- a) an access right of way servitude, 8 metres wide, to the site from the N3 which runs along the northern boundary of the farm; and
- b) the right to erect and maintain a power line 18 metres wide from an Eskom substation. Ringtone (Pty) Ltd is to pay Will Smith a once off consideration of R750 000.00. The parties wish to register a servitude to secure their agreement, and Diagram SG No. 572/2021 has been approved. The 300 square metres transmission site is represented by the figure PQRS thereon. When the land surveyor was instructed to prepare the diagram the parties were not sure of the routes of the access road and the power lines

and these are accordingly not reflected on the diagram. It has since been agreed that the right of way and power line would be registered in general terms.

- 5.1 Draw the appropriate deed(s) to give effect to these instructions. (12)
- 5.2 Detail the documents you will:
 - 5.2.1 lodge in the Deeds Office; (3)
 - 5.2.2 retain in your Protocol. (2)
- 5.3 What would the fiscal implications be for each party, bearing in mind that Ringtone (Pty) Ltd is registered as a vendor under the VAT Act?
 - 5.3.1 If Will Smith is also registered as a VAT vendor; (2)
 - 5.3.2 If Will Smith is not registered as a VAT vendor. (1)

- THE END -

LAW SOCIETY
OF SOUTH AFRICA