

LPL4805

October/November 2012

NOTARIAL PRACTICE

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

MS TH TIVANA

SECOND

MS D RAMWELL

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

This paper consists of 3 pages

QUESTION 1

Define the following terms

- | | | |
|-----|----------------------|-------------|
| 1 1 | <i>Habitatio</i> | (4) |
| 1 2 | Antenuptial contract | (6) |
| 1 3 | Trust | (6) |
| 1 4 | Protocol register | (4) |
| | | [20] |

[TURN OVER]

QUESTION 2

- 2.1 Indicate whether the Registrar of Deeds may register a short-term lease over movable and immovable property (5)
- 2.2 X, the holder of a usufruct over a farm, concludes an agreement with Y in terms of which Y leases the usufruct from X. You are approached to draft the deed of lease and to have it registered. Advise the parties on the legal position with regard to the contract. (8)
- 2.3 Which requirements have to be met when modifying a registered antenuptial contract? (4)
- 2.4 With regard to negotiable instruments, distinguish between *drawer*, *drawee* and *payee*. (3)
- [20]**

QUESTION 3

- 3.1 Is a notary competent to sign the preparation certificate on a power of attorney intended for registration in the Deeds Registry and will the power of attorney as such be accepted for registration? (3)
- 3.2 For the correctness of which facts contained in the power of attorney, intended for registration in the Deeds Registry, does the person who signs the preparation certificate on the power of attorney take responsibility in terms of the Deeds Registries Act 47 of 1937? (6)
- 3.3 May a notary practice at any place in the Republic of South Africa? Substantiate your answer, also with reference to the Deeds Registries Act 47 of 1937. (7)
- 3.4 Name four documents that have to be drafted by a notary before they will be accepted for registration in the Deeds Registry. (4)
- [20]**

[TURN OVER]

QUESTION 4

- 4 1 X is the holder of a registered servitude of right of way over an adjacent farm, *Tonteldoos*. X buys the adjacent farm, but on registration of transfer in his name, he fails to cancel the servitude in the Deeds office. Sometime later, X gets a good offer for his original farm, and sells it to B. May B claim servitude of right of way over the adjacent farm, *Tonteldoos*, which still belongs to X? Substantiate your answer (4)
- 4 2 Y wishes to let a section of his farm on a long-term basis to X. Name the essential requirements that have to be met before the lease contract will be accepted for registration (4)
- 4 3 Which facts have to be noted in a protest? (7)
- 4 4 A notary informs the trustee of a trust that the notarial trust deed which was recently executed before him has just been accepted by the Master of the High Court and has been registered under a specific number in the Master's office. Briefly explain whether the trustee may start right away to deal with the trust property (5)
- [20]**

QUESTION 5

- 5 1 X, who owns a holiday home in Port Alfred, has been transferred abroad by his employer. X agrees with his neighbour, Y, to maintain the house and garden for a period of 10 years. X and Y execute, before you as notary, a notarial agreement and request you to register the agreement in the Deeds Registry. Will the Registrar of Deeds accept the conditions of the agreement for registration as servitude or any other registrable right? Briefly substantiate your answer by also applying the test used by the courts in this regard (12)
- 5 2 Name the facts which have to be stated in a notarial bond in terms of section 61 of Deeds Registries Act of 1937 in order to make such bond acceptable for registration (6)
- 5 3 When must transfer duty be paid? (2)
- [20]**

TOTAL: 100