



Tutorial Letter 201/1/2014

NOTARIAL PRACTICE

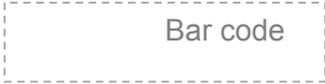
LPL4805

Semester 1

Department of Private Law

This tutorial letter contains important information about this module.

Bar code



Dear Student

In this tutorial letter, we provide you with the memoranda for the two compulsory assignments and the suggested answers to the self-assessment assignment.

IMPORTANT NOTICE

Check timeously that you are eligible to write examination, in other words, that the University has received and assessed your compulsory assignments and that your marks have been recorded.

MEMORANDUM FOR FIRST COMPULSORY ASSIGNMENT SEMESTER 1

UNIQUE NUMBER: 203705

QUESTION 1

X, a company with its head office in Cape Town, is the owner of a fleet of delivery vehicles which X uses for conducting his countrywide business as a general dealer. X has been granted overdraft facilities by Y, a bank with its head office in Pretoria. X offers its vehicles and trading stock to Y as security for payment of the outstanding amount on its overdraft. Y approaches you, a notary, for assistance with the registration of the notarial bond.

- (a) Briefly explain with reference to the objects of security what documents you would prepare in order to provide Y with the best possible form of security. (6)**

Suggested answer:

A special notarial bond (1) in terms of which X's delivery vehicles (1) are specifically hypothecated and are each individually described in such a manner that they are readily recognisable at the time of registration (1), may be registered in order to fall within the ambit of the Security by means of Moveable Property Act 57 of 1993 (1).

A general notarial bond (1) in terms of which X's stock in trade (and also all X's vehicles as a fleet) (1) are hypothecated in general may also be executed and registered.

Study unit 5

- (b) Indicate at what stage these documents will lead to real security in favour of Y. (4)**

Suggested answer:

In the case of a special notarial bond in terms of Act 57 of 1993, Y acquires a real security right on registration (1) of the bond without the vehicles having to be delivered to Y (1). In

the case of a general notarial bond, Y acquires a real security right only on attachment (1) of the goods in terms of a court order (1).

Study unit 5

MEMORANDUM FOR SECOND COMPULSORY ASSIGNMENT SEMESTER ONE

UNIQUE NUMBER : 203853

QUESTIONS

1. Antenuptial contract is entered into after solemnisation of marriage.
False, antenuptial contract is entered into before the solemnisation of marriage. Once the marriage has been solemnised, spouses may enter into postnuptial contract with the permission of the High court.
Study unit 6
2. Inter vivos trust and mortis causa trust must be registered in the deeds registry.
False, trusts are registered in the office of the Master of the High Court.
Study unit 9
3. Habitatio is type of praedial servitude.
False, it is a type of personal servitude.
Study unit 7
4. A usufruct may be leased.
True, the holder of a personal servitude can let his/her entitlements of use and enjoyment.
Study unit 7
5. A notarial bond over movable and immovable property is registered in the High Court.
False, a notarial bond over movable property is registered in the deeds registry.
Study unit 5
6. A registered lease of land may be encumbered with a notarial bond.
True, a registered short term lease may be encumbered with a notarial bond.
Study unit 8
7. A registered long term lease over immovable property is regarded as movable property.
False, a registered long term lease of land is regarded as immovable property.
Study unit 8
8. The Registrar of Deeds has no discretion to accept a document of which the authentication does not comply with the stipulated regulations in respect of authentication.

False, Rule 63(4) gives the court or the Registrar of Deeds discretion to accept documents that do not comply with authentication regulations.

Study unit 3

9 Unregistered servitude is enforceable against the whole world.

False, unregistered servitude is valid and enforceable only between the parties to such agreement.

Study unit 7

10 A co-owner of land may have a servitude over such land.

True, *Mocke v Beaufort west municipality* 1939 TPD 135

Study unit 7

SUGGESTED ANSWERS FOR SELF-EVALUATION ASSIGNMENT 03

QUESTION 1

Define the following terms:

1.1 Attest (2)

To bear witness (1), to affirm the validity of something (1).

1.2 Caveat (in conveyancing context) (6)

A notice of warning (1) entered by the Registrar of Deeds (1). It indicates a possible prohibition (1) to deal with a right to property (1) or a possible restriction on the capacity to act of a registered holder of a right (1), for example in terms of a provisional sequestration order or other provisional order (1).

1.3 Kustingbrief (9)

Is a mortgage bond by the purchaser of land (1), in favour of the seller of land (1) or a credit grantor (1), as security (1) for the payment of the purchase price (1) or the outstanding balance of the purchase price of the land (1), registered over the land sold (1), simultaneously with registration of transfer of such land (1) into the name of the purchaser (1).

1.4. Holder in due course (8)

Section 27 (1)(a) of the Bills of Exchange Act 34 of 1964 defines a holder in due course as a holder who has taken a bill, complete and regular on the face of it (1), under the following circumstances:

He/she must have become a holder before the bill was overdue (1) and, if it had previously been dishonoured (1), without notice thereof (1). Further, he/she must have taken the bill in good faith (1) and for value (1) and, at the time the bill was negotiated to him/her, he/she must have had no notice of any defect in the title (1) of the party who negotiated it (1).

(25)

Question 2

- 2.1 Explain whether an antenuptial contract may be entered into after the solemnisation of the marriage. If so, what are the requirements to be complied with? (7)**

Suggested answer:

An antenuptial contract may only be concluded or entered into before the solemnisation of the marriage (1). Once the marriage has been solemnised, spouses may enter into a postnuptial contract (1) with the permission of the court (1). Spouses must jointly bring an application to the high court to modify their matrimonial property dispensation (1) in terms of Section 21 of Matrimonial Property Act.

Spouses have to convince the court that:

- there is a good (1) and justifiable reason for the application (1).
- creditors of both spouses were notified of the proposed modification of the matrimonial property dispensation (1).
- no other person will be prejudiced by the modification (1).

Study unit 6

- 2.2 What is the significance of section 6(1) and 6 (2) of the Matrimonial Property Act 88 of 1984? (8)**

Suggested answer:

If a spouse neglected to place a value on his /her estate in the antenuptial contract, the spouse may, within six months after conclusion of the marriage (1), have a statement attested in the presence of the other spouse, before a notary (1). The notary must file the statement with the antenuptial contract of the parties in his protocol (1) and issue a certified copy of the statement to the parties (1), certifying that the original certificate and the antenuptial contract are in safe-keeping in his protocol (1). If the statement is drafted by another notary than the one who executed the antenuptial contract (1), the notary must send the original statement by registered post (1) to the notary in whose protocol the antenuptial contract is kept (1).

Study unit 6

- 2.3 Can a lease agreement be hypothecated? If so, how would it be done? (7)**

Suggested answer:

Yes, a lease can be hypothecated by mortgage (1). No mortgage of a lease or of a sublease may be registered in any deeds registry unless effected by:

- a mortgage bond (1), if the lease or sublease is over immovable property (1). That means the lease must have been registered in the deeds office (1) or
- a notarial bond (1), if the lease or sublease is over movable property (1). That means the lease is not registered in the deeds office (1).

Study unit 8

2.4 Explain the meaning of the expression *expressio unius est exclusio alterius*. (3)

Suggested answer:

If a special arrangement is being made in respect of specific matters (1) that are mentioned, then matters that are not mentioned (1) are excluded from the arrangement (1).

Study unit 2

(25)

Question 3

3.1 A bill is dishonoured by non-payment.

(i) To whom must notice of dishonour be given? (9)

Suggested answer:

- Notice must be given to the person whom notice is required to be given (1), or to someone authorised to receive the notice on his/her behalf (1).
- If the drawer or an endorser is deceased and the party giving notice is aware of this (1), notice must be given to the executor (1), if there is one and if he/she can be found by exercising reasonable care (1).
- If the drawer or an endorser is insolvent, notice may be given either to him/her or to his/her trustee (1).
- If there are two or more drawers or endorsers who are not partners, notice must be given to each of them (1), unless one of them has authority to receive such notice for one or more of the others (1), in which case notice to the one having authority shall be deemed to be notice to such other person or persons (1).

(ii) How and in what manner must notice be given? (4)

Suggested answer:

- The notice may be given either in writing (1) or by personal communication (1), and may be given in any terms which sufficiently identify the bill (1) and intimate that the bill has been dishonoured by non-payment (1).

Study unit 10

3.2 X, Y and Z are co-owners in equal shares of the farm *Elangeni*. Z instructs you to draw up his will in terms of which he *inter alia* wants to bequeath his one-third share in the farm in equal shares to X and Y. Advise Z on the legal position and the practical execution of such a bequest. (7)

Suggested answer:

Section 3(c) of Act 70 of 1970 prohibits further reduction of an undivided share in agricultural land (1). However, it is possible that a co-owner can transfer his/her share to the remaining co-owners without the permission of the Minister (1), provided that, simultaneously with the transfer (1), a certificate of registered title in terms of section 35 of the Deeds Act is taken out (1) in respect of each co-owner's total undivided share in the land (1). In this way the shares of the remaining owners are increased (1), and at the same time it prevents the newly acquired share from being dealt with separately (1).

Study unit 11

- 3.3 Which requirements does a notarial bond have to meet to ensure the security benefit that the Security by means of Movable Property Act 57 of 1993 provides? (5)**

Suggested answer:

The notarial bond must be registered (1) over specific movable (1), corporeal (1) things which are clearly described (1) in such a manner that they can be recognised at the time of registration (1).

Study unit 5

(25)

Question 4

- 4.1 The founder of a trust, together with the trustee, has just executed a deed of trust before you, a notary. Indicate what essential formal requirements still have to be complied with in respect of the deed of trust and the trustee before the trustee will be qualified to act as such. (6)**

Suggested answer:

- The trustee must accept his or her nomination as trustee (1).
- The original trust deed or a certified copy thereof, accompanied by the prescribed covering letter (1) and against payment of the prescribed fee (1) and the furnishing of security, if required (1), must be lodged for registration with the Master of the High Court who has jurisdiction (1). The Master must issue letters of authority (1).

Study unit 9

- 4.2 State the key requirements that a trust has to meet to function as a trust. (7)**

Suggested answer:

- A trust must function as an independent, autonomous entity (1).
- The founder must have the intention to create a trust (1).
- There must be a clear separation between the estate of the founder and the trust assets (1).

- The trust assets must be clearly circumscribed, be it movable or immovable, corporeal or incorporeal (1).
- A clear and binding duty to assign the assets to the trust, and to allow the trust to be managed by the trustee, has to be created (1).
- The trust must have a clear objective or aim (1).
- The purpose of the trust must be legal (1).

Study unit 9

4.3 Name two circumstances under which a personal servitude may be reserved by a condition in a deed of transfer of a land. (2)

Suggested answer:

Any two of the following:

- If the reservation is in favour of the transferor (1), or
- in favour of the transferor and his/her spouse or the survivor of them, if they are married in community of property (1), or
- in favour of the surviving spouse if transfer is passed by or given from the joint estate of spouses who were married in community of property (1).

Study unit 7 & section 67 of Deeds Act

4.4 A document destined for use abroad is executed in South Africa. Name the requirements prescribed for the certificate (apostille) in terms of the Hague Convention. (10)

Suggested answer:

The certificate (“apostille”) must comply with the following:

The certificate (“apostille”)

- must be affixed on the document (1)
- must contain the information , and be affixed in the form (1), as prescribed
- must be in the form of a rectangle of at least 9 cm long (1)
- may be drafted in the language of the issuing authority (1)
- must contain the following heading in French: *Apostille (Convention de la Haye du 5 octobre 1961)* (1)
- must be issued and signed under ratification of the seal of office (1) of any of the following:
 - * any South African diplomat or consular agent in the relevant state (1)
 - * any magistrate or assistant magistrate (1)
 - * any registrar or assistant registrar of the High Court of South Africa (1)
 - * any person appointed by the Director-General of Justice and Constitutional Development (1)

The above procedure has to be followed even if the document has been executed before a notary or authenticated by a notary (1).

Study unit 3

(25)

EXAMINATION INFORMATION

The examination paper will be in the same format as previous examination papers that have been made available to you via myUnisa. The self-evaluation Assignment 03, an extract from a previous examination paper, contained in this tutorial letter should serve as a good indication of the type of questions you may expect and the type of answers or answering style that is expected from you.

Certain topics that are discussed via the myUnisa discussion forum may be relevant for the examination. You are encouraged to take part in these discussions and not just be a spectator.

No further tutorial letter dealing with examination matters will be issued this semester.

We trust that you have enjoyed this course and wish you every success in the examination.

Do not hesitate to contact me if you have any queries or experience any problems with your studies.

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