

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN  
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK  
PART 3 / DEEL 3**

**31 AUGUST / 31 AUGUSTUS 2006**

**ANSWERS/ANTWOORDE**

**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**

**[40]**

**1.1 NOTICES AND DOMICILIUM**

**[12]**

1. For the purpose of the giving of notices and the serving of legal process in terms of this agreement the tenant chooses as its *domicilium citandi et executandi* (domicilium) the following:  
(physical address)  
(post box )  
(fax number)
2. The tenant may at any time, by notice in writing to the Landlord/Lessor change its domicilium to any other address in the Republic of South Africa which is not a post box or poste restante.
3. Any notice given in terms of this agreement shall, save where a particular form of notice is stipulated, be:
  - 3.1 delivered by hand;
  - 3.2 sent by prepaid registered post; or
  - 3.3 sent by courier; or
  - 3.4 sent by telegram; or
  - 3.5 sent by telefax;to the domicilium or address as selected by tenant

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4. A notice given as set out above shall be deemed to have been duly given:
    - 4.1 if delivered by hand, on the date of delivery; or
    - 4.2 if sent by prepaid registered post, on the 7<sup>th</sup> day after posting; or
    - 4.3 if sent by courier, on the date of delivery by the courier concerned; or
    - 4.4 if sent by telegram, on the day following the day on which the text of the notice is given to the post office for transmission; or
    - 4.5 if sent by telefax, on the expiration of 24 hours after the time of transmission.

## 1.2 OPTION TO PURCHASE

[12]

The Lessor grants to the Lessee for the duration of the lease period an option to purchase the premises on the following terms and conditions, viz:

1. The purchase price shall be the amount of R500 000 payable against registration of transfer which payment Lessee shall secure by delivery to Lessor or its nominee of a bank guarantee in customary form within 14 days of exercising the option.
2. Lessee may exercise the option by delivering to Lessor a written notice to that effect at Lessor's domicilium.
3. The sale arising from the exercise of the option shall further be subject to the terms and conditions set forth in Annexure A hereunto annexed, including the obligation of Lessee/purchaser to pay all costs of transfer.

## 1.3 CESSION AND SUBLETTING

[6]

The Lessee shall not, except with the prior written consent of the Lessor-

1. cede all or any of its rights under this lease;
2. sublet the premises or any part thereof;

3. give up possession of the premises or any part thereof to any third party; provided that if the Lessee is a juristic person the transfer of a controlling interest in Lessee shall be deemed to be a cession;  
and provided further that the Lessor shall not withhold its consent unreasonably.

1.4 Make use of the rules of your Law Society (note different rules in different provinces) which provide for the council or a committee (assessment panel) which will take into account:

[10]

1.4.1 As regards the practitioner the skill and knowledge applied, experience and seniority, possible over-caution, negligence and mistake.

1.4.2 As regards the mandate the complexity, importance, novelty, amount involved, value to client, documents, time and place.

In practice it is very much appropriate hourly tariff times necessary time spent.

2.1.1 It is not permissible to add any evidence to an application for summary judgment. (2)

In any event the letter being an offer of settlement may not be used at all. (2)

2.1.2 It may also not be used at trial. (2)

2.1.3 Adding or omitting the words 'w.o.p.'" does not determine its nature. The sole question is whether it is a genuine offer of settlement in which event it may not be used. (2)

[8]

2.2.1 Because Y is represented you should not talk to Y without the attorney's consent or presence. You should not accept the new mandate because there is a clear conflict of interest and an element of bribery. (7)

2.2.2 The fee and the amount are contingent upon success and you need to comply with the provisions of the Contingency Fees Act. (3)

[10]

- 2.3.1 I confirm our recent discussion in which I advised you as follows in relation to your claim against Z: [15]
- 2.3.2 prescription means that while the claim remains for certain purposes it becomes unenforceable. Any payment by the debtor may be retained by you. (3)
- 2.3.3 if the debtor raises the defence of prescription you cannot succeed. If he does not you may well succeed. (3)
- 2.3.4 Z may file a special plea of prescription (which does not deal with the merits). If he does not do so the magistrate in terms of the Prescription Act, may not do so on his own. (3)
- 2.3.5 You run a very real risk of an adverse order for costs. If prescription is pleaded you could withdraw to avoid further costs but you would have to tender costs to date. You accordingly become liable for two sets of costs. If you still proceed you may even get an order against you for attorney-and-client costs. (3)
- 2.3.6 You acknowledged that you are aware of the risks and that you understand the legal implications. I accordingly proceeded in terms of your instructions despite the risks. (which you may ethically do if client is aware of the implications) (3)
- 2.4 The letter should deal with the following:-
- 2.4.1 Section 31 permits the inclusion of an automatic rent interdict in the summons;
- 2.4.2 which prohibits the removal from the premises of any movables pending a final court order. (3)
- 2.4.3 Section 32 allows the attachment of property in security for rent on application. The affidavit must allege demand and a belief that the movables will be removed and security for costs must be given.
- 2.4.4 In both cases the effect is to prohibit the removal of movables subject to the landlord's hypothec.
- 2.4.5 Under 31 the sheriff makes an inventory; under 32 he attaches. [11]

2.5 Actions for ejectment from residential premises are subject to the PIE Act 1998. The owner must give written and effective notice of the proceedings to the occupier and municipality 14 days before the hearing. The SCA held inter alia that:

the Act arises from the constitution;

An unlawful occupier could have been lawful before e.g. a tenant;

The Act creates a delay in the owner's rights until a finding whether it is just and equitable to evict;

The Court has a discretion;

The owner is entitled to approach the court but only after the notice requirement has been met.

Note: Candidates are not expected to know or record all this. Give marks for awareness of the problems.

[4]

2.6 "Dear Colleague [10]

Please allow me to record my view of the basis on which I have to consider your request that I send you the above files.

1. I remain entitled to my fees and disbursements. The amount and payment must be agreed before we take the matter further. (3)

2. You must know that I have a lien over the documents which I drew and even those on which I bestowed skill and labour. (3)

3. Whatever the law, our professional ethics do not permit a practitioner to start acting in an existing matter until the costs have been paid or secured. (2)

Since Landlords remain my client in other matters I am happy to make practical arrangements."

4. You may not set off the costs against other matters unless this is/was agreed to. (2)

2.7 For taxation purposes the value of eviction is equal to two month's rental. [2]

**TOTAL: [100]**