

COUNCIL FOR VOCATIONAL LEGAL EDUCATION

NOTARIES' EXAMINATION – SEPTEMBER 2018

PAPER I – CIVIL PROCEDURE

(THREE HOURS)

Candidates have ten minutes to study the Examination Paper which consists of 7 pages before they start writing.

Marks will be granted, where appropriate, for correct reference to enactments and case law.

EACH QUESTION MUST BE ANSWERED ON SEPARATE SHEETS WITH CLEAR MARKING AS TO THE QUESTION ANSWERED AND THE NUMBER OF PAGES.

MAKE SURE THAT YOU PUT ALL YOUR ANSWERS IN THE ENVELOPE PROVIDED.

All questions carry equal marks and there are **SIX QUESTIONS** in all.

Candidates must answer only **FOUR QUESTIONS**.

Question 1

(a) Four health inspectors employed by the Municipal Council of Curepipe come to see you complaining that they have been unfairly and unjustly denied promotion to the post of senior health inspectors. According to them, there were 15 applicants who applied for the post of senior health inspectors but only two have been appointed. The four who have come to see you form part of the 13 unsuccessful candidates. They want to challenge the decision of the Local Government Service Commission on the ground that they are better qualified and more experienced than those who have been appointed.

Advise them as to how they should proceed, setting out in full the procedure to be followed in the exercise of all judicial remedies which may be available to them.

(b) A widow comes to see you and informs you that her husband has passed away leaving four children, one of whom is still a minor, and herself as his heirs. Her husband was the owner of an immoveable property during his lifetime. She and her children are now forced to sell the said immoveable property to pay the debts left by her late husband. However, the notary has informed her that they cannot do so because one of the heirs is still a minor.

Explain all the procedural steps pertaining to any action which you advise for the sale of the said Immoveable Property.

Question 2

(a) Orange Co. Ltd is the owner of a one-storeyed building situate in

The first floor, which is leased to Mr Apple by virtue of a lease agreement, is occupied by Mr Apple and his family as their residence. The lease started in July 2009 and is due to expire in June 2019. Orange Co. Ltd does not wish to renew the lease agreement at its expiry as it believes it can find another tenant who will pay more than the monthly rental of Rs.10,000 which Mr Apple is now paying. Mr Apple has always been paying the rent regularly and has informed Orange Co. Ltd of his intention to renew the lease.

The ground floor is leased to Mr Blackberry for Rs.20,000 per month. Mr Blackberry uses the rented premises as a shop. His lease is due to expire in 2019 and, Orange Co. Ltd, wants to evict Mr Blackberry as the latter has always been an irregular payer of rent. Mr Blackberry is as at now indebted to Orange Co. Ltd in the sum of Rs.120,000.

Explain in full the legal procedure that must be resorted to by Orange Co. Ltd for the exercise of any judicial action against each of the 2 lessees in order to obtain possession of the premises leased to them.

(b) Mrs Joelle comes to see you. Her son Jonathan who is now 18 years old, was born with the Down Syndrome and he is mentally retarded. Jonathan has inherited a lot of money from his late father. Mrs Joelle fears that now that Jonathan is of age, he can withdraw the money from the bank and squander it with his friends. She wants to know what can be done to protect Jonathan's interests.

Set out the procedural steps for the exercise of any judicial remedy to safeguard the interests of Jonathan.

Question 3

(a) Mr and Mrs Rose were married under the legal community of goods and property. Mr and Mrs Rose are now divorced and they need to divide the assets forming part of the community of goods having existed between them.

The parents of Mrs Rose had, during her marriage with Mr Rose, given her a portion of land situate at Curepipe. But in the title deed of the property it is stated that the land was allegedly sold to her and that the purchase price was paid '*hors la vue du notaire*'. Mrs Rose informs you that, in truth and in fact, it was a '*donation*' which her parents had made to her and she never paid any sale price to them. And now that she is divorced from Mr Rose, her parents do not want Mr Rose to have any share in the said property. Mr Rose is not agreeable and wants half of the property.

Advise Mrs Rose as to the exercise of any judicial remedy which may be available to her in order to establish her claim to the exclusive ownership of the property at Curepipe.

(b) Mrs Wong was the guardian of her father who was '*a majeure en tutelle*'. The father of Mrs Wong was a successful businessman and was the owner of several immovable properties. At the time Mrs Wong was appointed guardian to her father, the Judge ordered that an inscription of legal mortgage be inscribed over her properties in favour of the "*majeur en tutelle*". Mrs Wong's father has since passed away but she completely forgot about the said inscription of mortgage. Now Mrs Wong is herself old and she wants to divide her properties amongst her children. She is informed by the notary whom she has retained about the existence of the inscription of mortgage. Set out all the

procedural steps pertaining to any action for the erasure of the said inscription of mortgage.

Question 4

(a) Mr Jean Philippe is suing Mr Albert before the Supreme Court claiming 5 million rupees as damages.

Mr Albert is resisting the claim of Mr Jean Philippe and his attorney has applied for particulars of the claim.

However, before the plea is filed, Mr Albert dies. Mr Jean Philippe knows that Mr Albert was married and had children but he does not know their full names and whereabouts. Discuss in full the procedure that needs to be followed in order to join all the heirs and parties entitled to the estate and succession of Mr Albert as Defendants in the action which had been initially brought against Mr Albert.

(b) Suppose that amongst the children of Mr Albert, one of them is absent from Mauritius and he has not appointed any agent and proxy to represent him in Mauritius. Explain all the procedural steps for joining him as a party to the case.

(c) After Mr Jean Philippe has been able to ascertain the names and addresses of all the heirs of late Mr Albert, he has been allowed to amend his plaint to join them as Defendants. However, some of the parties who have been joined as Defendants in the amended plaint are, despite all the efforts made by the Ushers, evading service. Explain what should be done for the case to proceed against those defendants who are evading service.

Question 5

Société Brossard, which is a French Company operating in Reunion Island, has obtained a judgment from the Tribunal de Commerce de Saint Denis ordering Magma Ltd which is a company incorporated in Mauritius, to pay the sum of 200,000 Euros as damages.

Société Brossard is moving for an order for the Supreme Court to declare the judgment executory and enforceable in Mauritius against Magma Ltd. Magma Ltd comes to see you and tells you that:

- (1) The Tribunal de Commerce de Saint Denis has refused to grant its request for a postponement of 3 months which it had communicated to the Tribunal immediately after it had received its Summons in Mauritius.
- (2) The alleged breach of contract which constitutes the subject matter of the claim by Société Brossard occurred in Mauritius since Magma Ltd is said to have failed to ship a consignment of goods to Reunion Island as stipulated in the contract.

Discuss how, and whether, the judgment of the Tribunal de Commerce de Saint Denis may be declared executory against Magma Ltd in Mauritius.

Question 6

(a) Rada was married to Dev and they have a daughter Rita who is now 5 years old. The parties are now divorced. At the time of divorce, the Court granted the custody of Rita to Rada and ordered Dev to pay a monthly alimony of Rs4,000 to Rada. The Court also granted Dev a '*droit d'hébergement*' which is to be exercised on alternate week ends. Dev still lives with his parents.

Dev is working as a driver and earns Rs9,000 per month. Rada now comes to see you and tells you that Dev fails to pay the alimony regularly at the end of each month and rarely pays the full amount of Rs4,000 monthly. Furthermore, she has recently found out that Dev is a drug addict and his family is involved in the drug business. She is very much concerned for the welfare of Rita as the child spends every alternate weekend with Dev and his family.

Set out in full the legal procedure that should be adopted for Rada to be able to obtain a Court order which:

- (i) would compel Dev to pay to her the monthly alimony regularly;
- (ii) would put an end to the '*droit d'hébergement*' which the Court has granted to Dev in respect of Rita.

(b) Marlene, who is now aged 60, has never been married and she does not have any children. She is the owner of an immoveable property. Marlene has two sisters with whom she is not in good terms and she does not wish anyone of them to inherit from her succession. In fact, Marlene is very close to John, her neighbours' son, whom she has always treated like her own son. John, who is now 15 years old, lives with her although he has not severed all ties with his parents.

Marlene comes to see you with a view to adopt John. Please explain the procedure for the exercise of the different types of adoption which may be available to Marlene and more particularly in respect of the type of adoption which is best suited to her requirements in the present situation.

(c) After the death of Marlene, her sisters learn about the adoption. They want to know if they can claim a share in her succession. Discuss the procedure for the exercise of any judicial remedy to which they may have recourse in order to obtain a share in Marlene's succession.