



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF NATURAL RESOURCES AND SPATIAL SCIENCES**

**DEPARTMENT OF LAND AND PROPERTY SCIENCES**

<b>QUALIFICATION(S):</b> Diploma in Land Administration; Bachelor of Land Administration	<b>QUALIFICATION CODES:</b> 06DLAD 07BLAD 27BLAD
<b>COURSE NAME:</b> LAW FOR LAND ADMINISTRATION 2	<b>COURSE CODE:</b> LLA 610S
<b>SESSION/DATE:</b> JULY 2019	<b>NQF LEVEL:</b> 6
<b>DURATION:</b> 3 HOURS	<b>MARKS:</b> 100

<b>SECOND OPPORTUNITY EXAMINATION</b>	
<b>EXAMINER(S)</b>	STEPHNIE DE VILLIERS
<b>MODERATOR:</b>	MARGARETHA VAN ZYL

**THIS QUESTION PAPER CONSISTS OF 13 PAGES** (Including this front page)

<b>INSTRUCTIONS</b>	
1.	The paper has 3 questions and 2 annexures, namely a will and testament and an employment contract.
2.	All Questions are compulsory.
3.	Write clearly and neatly.
4.	Number the answers clearly and according to the numbering in the examination question paper.
5.	Candidates will be penalised for incorrect spelling and illegible handwriting.

**PERMISSABLE MATERIAL - None**

**Question 1**

State if the following statements are true or false. You do not have to motivate your answers. *T/F or Yes/No answers will not be accepted.*

- a) The descendants of a deceased person are people related to the deceased through at least one common ascendant. (2)
- b) For the purposes of intestate succession, an adopted child is not entitled to inherit from his or her biological parents. (2)
- c) An extramarital child may inherit *ab intestatio* from his/her biological mother, but not from his/her or her biological father. (2)
- d) Trust assets can be transferred by the founder to him/herself as sole trustee to be administered and disposed of for the benefit of nominated beneficiaries. (2)
- e) The power of subrogation in the context of trusts mean that a trustee can appoint other trustees to act as trustees with him. (2)
- f) A person who can draw up a valid will can always also be the founder of an *inter vivos* trust. (2)
- g) A trust can be created during a founder's lifetime with a deed of trust. (2)
- [14]**
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**Question 2**

Study the attached will and testament and answer the following questions:

- a) Briefly set out the requirements for any will to be valid. (10)
- b) Will either adiation or repudiation have to take place to give effect to some of the provisions in the attached will and testament? Motivate your answer. (2)

- c) Define 'direct substitution'. (2)
- d) How was direct substitution applied in the attached will and testament? (4)
- e) Discuss the doctrine of election and the consequences of such election upon the death of either of the testators of the attached will and testament. (7)
- f) Distinguish between the different kinds of executors. (6)
- g) Name the steps to be followed by Adriaan Smith in administering the solvent testate estate of a deceased person. (14)
- [45]
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### Question 3

**Study the attached contract between Dr Tony Sample and Rosie Simanga and answer the following questions:**

- a) Consider paragraph 6.2 of the contract. Will Rosie's rights, duties and the legal principles for termination of services differ from any other person in Dr Sample's employment? (6)
- b) What are the 4 legal ways in which the parties can terminate their contract? (4)
- c) Explain what is understood with the term 'remuneration', as provided for in clause 5 of the contract? (4)
- d) Suppose Rosie negligently injured a patient during the performance of her duties as a chair side assistant, and as a result Dr Sample dismissed Rosie without a disciplinary hearing. Briefly set out the possible remedies which would be available to Rosie. (5)
- e) Does the attached contract comply with the rules for overtime? Briefly discuss. (5)

- f) Should Rosie's employment be terminated, Dr Sample would have to provide Rosie with a certificate of employment. What information should be contained in a certificate of employment? (8)
- g) Will Rosie qualify as an 'employee' in terms of the Social Security Act 34 of 1994? Discuss briefly. (3)
- h) Briefly discuss the benefits to which Rosie will be entitled to in general as a member of the Social Security Maternity Leave, Sick Leave and Death Benefit Fund. (6)

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**Two Attachments Follow**

## Last Will and Testament

Of

John Smith (ID NUMBER: 70032900128)

And

Mary Smith (ID NUMBER: 65022700138)

### 1. DECLARATION

This is the last joint will of us John Smith (ID NUMBER: 70032900128) and Mary Smith (ID NUMBER: 65022700138) married in community of property and presently domiciled and residing at 21 Fictitious Street, Pionierspark Extension 1, Windhoek.

2. In this will, unless the general context hereof clearly requires otherwise, words of the masculine gender shall be deemed to include the feminine and the neuter and words of the singular shall be deemed to include the plural.

### 3. REVOCATION

We hereby, revoke, annul and make void any Wills, Testamentary dispositions or codicils hereto-before made by us either singly or jointly, desiring that they shall have no force and effect whatsoever.

### 3. MASSING

We declare that the estates of the first dying of us and of the survivor shall be massed and be administered as one estate.

#### AS WITNESSES

1. *A. Van Rooi*

JSmith

John Smith

2. PBA

*Mary Smith*

Mary Smith

4. NOMINATION OF EXECUTOR AND WAIVER OF SECURITY

- 4.1 As Executors of our estate, we appoint Adriaan Smith (ID 95061500568); as executor;
- 4.2 We grant to our Executor all powers and rights which may be allowed in law and additionally the power of assumption in that capacity. My executors, and all assumed Executors, are exempted from furnishing security for the due performance of their duties as Executor, and The Master of the High Court is hereby directed to dispense with such security;

5. BEQUEST

- 5.1 We direct that our entire massed estate be left to the survivor of us, which includes but is not limited to all immovable, movable and current assets which form the sum total of the estate; including but not limited to:
  - 5.1.1. Immovable property situated at 21 Fictitious Street, Pionierspark Extension 1, Windhoek and all it’s contents;
  - 5.1.2 All vehicles that form part of the massed estate;
  - 5.1.3 All money which form part of the joint estate

6. SIMULTANEOUS DEATH

Should we die simultaneously or within thirty days (30) of each, our estates should be divided in the following manner:-

- 6.1. To our son Adriaan Smith (ID 95061500568), the immovable property situated at 21 Fictitious Street, Pionierspark, Extension 1, Windhoek
- 6.2 To our daughter Susan Smith (ID 20040400198) all vehicles and money that form part of the massed and joint estate;
- 6.3 The remainder of our estates, including but not limited to the contents of Immovable property situated at 21 Fictitious Street, Pionierspark, Extension

AS WITNESSES

- |    |                    |                                 |
|----|--------------------|---------------------------------|
| 1. | <i>A. Van Rooi</i> | JSmith<br>John Smith            |
| 2. | PBA                | <i>Mary Smith</i><br>Mary Smith |

- 1, Windhoek should be equally divided between our son, Adriaan Smith (ID 95061500568), and our daughter, Susan Smith (ID 20040400198);
- 6.4 Should our son or daughter predecease us by more than thirty (30) days, the benefit that would have devolved upon such heir shall devolve upon such heir's descendants by representation or, failing descendants, upon our remaining named heirs, failing whom, their descendants by representation.

Thus done and signed at Windhoek on this 24<sup>th</sup> day of March 2018, in the presence of the undersigned witnesses who signed in our presence and in the presence of each other, all of us being present at the same time.

AS WITNESSES

- |    |                    |                   |
|----|--------------------|-------------------|
| 1. | <i>A. Van Rooi</i> | JSmith            |
|    | Annalie Van Rooi   | John Smith        |
| 2. | <i>PBA</i>         | <i>Mary Smith</i> |
|    | Pieter-Ben Arendse | Mary Smith        |

The attached contract was obtained from [http://www.namibiadent.com/files/Microsoft\\_Word\\_-\\_NDA\\_Employment\\_Contract.pdf](http://www.namibiadent.com/files/Microsoft_Word_-_NDA_Employment_Contract.pdf) and was adjusted for examination purposes.

## **EMPLOYMENT CONTRACT**

(PROBATIONARY APPOINTMENT)

by and between

1. **DR TONY SAMPLE**  
(hereinafter referred to as "the Employer".)

and

**Rosie Simanga**  
(hereinafter referred to as "the Employee".)  
(hereinafter jointly referred to as "the Parties")

2. **IDENTIFICATION NUMBER of the employee:** 8 5 0 8 2 2 0 1 3 7 2

3. **POSITION AND DUTIES**

- 3.1 The Employee is employed as: Receptionist and Chair side Assistant
- 3.2 A brief job description pertaining to the position is attached hereto as Annex A. It forms part of this Employment Contract and indicates the key performance areas for which the Employee assumes responsibility.
- 3.3 The Employer reserves the right to amend the job description from time to time as circumstances may require in consultation with the Employee.

4. **PLACE OF EMPLOYMENT**

The Employee will be employed in Oshakati (city/town) and must report to the manager at No 10 Independence Avenue, Oshakati (place/workstation).

5. **REMUNERATION**

- 5.1 The basic salary will amount to N\$ 8 000 (Eight thousand Namibian Dollars) which will be paid monthly in arrears. Other benefits include:
- 5.2 Rent allowance of N\$4 000 per month.
- 5.3 Cell phone allowance of N\$300 per month.
- 5.4 Remuneration, less required deductions will be paid by direct deposit into an account to be designated by the Employee for this purpose.



- 5.5 Salaries and benefits are normally reviewed annually based on work-performance, economic trends in the industry and the Employer's financial standing.

**6. DATE OF APPOINTMENT AND PROBATION**

- 6.1 The Employee's date of appointment will be the date of assumption of duty which shall occur after the Parties have duly signed this Employment Contract and initialed each page.
- 6.2 The initial three months employment will be deemed a probationary period during which the Employee's suitability for the position will be monitored and feedback be provided. The probationary employment may be terminated at any stage during that period in accordance with legal requirements, it may also be extended by mutual agreement if considered appropriate. After the successful completion of the probationary period the appointment will convert into permanent employment to be confirmed by the Employer in writing.
- 6.3 Employment will thereafter continue until the Employment Contract between the Employer and the Employee is lawfully terminated for any reason as provided for in Clause 17. Compulsory retirement will also terminate the Contract when the Employee reaches the age of 60.

**7. HOURS OF WORK**

- 7.1 Ordinary working hours will be maximum of 45 hours per week – from 07h30 to 16h30 Monday to Friday with one- hour lunch break, subject to clauses 7.2 and 7.3 herein.
- 7.2 The employer may, in his discretion, permit the employee to take some Wednesday afternoons off.
- 7.3 It is expressly recorded that when the employee has to work on a Wednesday afternoon, that this forms part of normal working hours and that no additional remuneration will be payable in respect thereof.

**8. OVERTIME AND WORK ON SUNDAYS AND PUBLIC HOLIDAYS**

- 8.1 The Employee agrees to work additional hours whenever requested by the Employer due to operational requirements during the week, over weekends and/or public holidays, subject to reasonable prior notice having been given.
- 8.2 Payment for additional time worked will be as provided for by the Labour Act, 2007. No such claims shall be considered unless the additional work was authorised in writing beforehand.
- 8.3 The Employee will not be expected to work more than three hours overtime on any day or more than a maximum of ten hours a week, except for urgent work or stocktaking.

**9. ATTENDANCE**

The Employee will be required to register his/her attendance at work by means of a register, clock card system or similar device in accordance with approved procedures.

**10. LEAVE/ABSENCE FROM WORK**

- 10.1 The Employee's entitlement to leave will be in accordance with the provisions of the Labour Act, 2007, where applicable.
- 10.2 Annual leave shall be 20 working days for every completed cycle of 12 months employment. The Employer normally closes for the Festive Season during which time employees take annual leave.
- 10.3 Sick leave shall be 30 working days per 3 year cycle of employment.
- 10.4 Should the Employee be unable to attend work for any reason without having obtained prior leave of absence, it is important that Management be notified before 07h30 in the morning the same day of the reason for the non-attendance and the envisaged length thereof.

**11. RULES, PROCEDURES AND POLICIES**

The Employee will be subject to all rules, procedures and policies formulated by the Employer and any amendments thereto affected by the Employer at his discretion from time to time. The Employee will be expected to familiarise him/herself with the content of these rules, procedures and policies and any amendments thereto.

**12. DISCIPLINARY CODE**

A copy of the Employer's Disciplinary Code is attached as Annex B. and constitutes part of the Employment Contract.

**13. TRAINING AND DEVELOPMENT**

The Employee agrees to diligently undergo any additional job-related training and development as may be decided upon by the Employer at its discretion.

**14. SECURITY**

Effective security is of the utmost importance to the Employer's practice. In this regard the Employee will, therefore, be required to:

- 14.1 Comply with any security measures and procedures instituted by the Employer and familiarise him/herself with such measures and procedures.
- 14.2 Report any contravention of security measures and procedures or suspected acts of dishonesty/theft to the Employer

**15. RESPONSIBILITIES AS EMPLOYEE**

The Employee:

- 15.1 Shall faithfully obey all lawful and reasonable instructions from supervisors placed in authority over him/her;
- 15.2 may be required to perform duties at other places and in such other capacity he/she is competent to perform;
- 15.3 must devote all his/her time during working hours to the business of the Employer and shall do all in his/her power to promote, develop and extend the business of the Employer;
- 15.4 may not be absent from work without having obtained prior written permission for leave, except in an emergency or in circumstances beyond his/her control;
- 15.5 may not during working hours, without authority leave his/her duties to attend to private activities, receive private visitors or otherwise allow his/her attention to be engaged with private matters;
- 15.6 may not without written authority take on any other remunerated activity outside his/her employment with the Employer, nor, during working hours or after hours, engage in any other business activities for private gain;
- 15.7 may not be under the influence of intoxicating liquor or a narcotic drug whilst on duty, nor smoke in any restricted area;
- 15.8 may not convert to own use any Employer property and/or goods and may also not remove any such property and/or goods from the Employer premises other than in performing his/her official duties unless he/she has first obtained written permission from Management;
- 15.9 may not publicly comment on the management or working of the Employer, or do anything likely to damage its business or standing in any manner;
- 15.10 may not disclose any information concerning the affairs or the business of the Employer or of its personnel or show any official document to persons not employed with the Employer, unless he/she is required to do so in the course of his/her duties;
- 15.11 may not use for any purpose other than for the discharge of his/her official duties, information gained by or conveyed to him/her through his/her connection with the Employer, nor divulge any trade secrets of the Employer;
- 15.12 shall not in any way pledge the credit of the Employer, or expose the Employer to any liability except in so far as he/she may be authorised by the Employer;
- 15.13 shall limit private telephone calls whilst on duty to urgent matters only; and
- 15.14 shall observe the Employer's health and safety rules and take all reasonable

care to look after his/her own personal health and safety at the workplace as well as the health and safety of colleagues and any other persons on the premises.

A breach of any of these rules constitutes serious misconduct and shall render the Employee liable to disciplinary action.

## **16. FAIR EMPLOYMENT RELATIONS**

Both Parties commit themselves to establish and maintain sound labour practices to ensure uninterrupted work performance of a standard, which will create and maintain a highly competitive image for the Employer and its services. The Employer undertakes to promote the highest possible degree of cooperative relations between employees at all levels.

## **17. TERMINATION OF EMPLOYMENT**

17.1 This Employment Contract may be terminated on the following grounds:

17.1.1 Upon reaching retirement age by the Employee.

17.1.2 By mutual agreement between the Parties

17.1.3 Death of the Employee.

17.1.4 Subject to the provisions of the Labour Act, 2007, by either party giving the other party not less than thirty (30) days notice.

17.1.5 By the Employer, on grounds of misconduct, incapability or incapacity on the part of the Employee, or for reasons of redundancy.

17.2 Where the Employer intends to terminate employment on grounds of misconduct, incapability, incapacity for medical reasons or redundancy, the Employer shall follow the prescribed procedures and principles as set out in its policies and the applicable law.

## **18. GENERAL**

18.1 The Employee confirms that all documentation, information and credentials presented to the Employer in support of his/her application for employment are authentic and it is agreed that in the event of any of the above subsequently proving to be false, this will be grounds for summary termination of the Employee's services.

18.2 This Employment Contract shall be the entire agreement between the Parties and no variations, alterations and/or additions will be of any force or effect unless placed in writing and signed by the Parties.

18.3 No indulgence, leniency, or extension of time which the parties may grant each other in the event of claims and/or disputes, shall in any way whatsoever

prejudice either of them or preclude either of them from exercising their rights or constitute a waiver or limitation of any of their respective rights.

18.4 The Parties acknowledge that by signing this Employment Contract, they have received a copy of the Contract and that they have read and understood the contents thereof. The Parties undertake to hold themselves bound by this Contract and agree to observe the provisions contained therein.

18.5 The Parties, furthermore, agree that:

18.5.1 All the terms and conditions of employment are as specified in this Employment Contract and other instruments referred to;

18.5.2 those conditions of employment not specified shall be as contained in the Employer's rules, policies and procedures; and

18.5.3 where the Employment Contract and also the Employer's rules, policies and procedures are silent on any specific point, then the relevant section(s) of the Labour Act, 2007, or any other applicable law shall apply.

**ON BEHALF OF THE EMPLOYER**

Signed at ..... this ..... day of ..... 200...

**AS WITNESSES**

1. .... 2. ....

**DECLARATION BY THE EMPLOYEE**

I ..... (full names of the Employee) hereby declare that I understand, accept and agree with the terms and conditions of employment set out in this Contract of Employment and have received a copy thereof for personal safekeeping.

**THE EMPLOYEE**

Signed at ..... this ..... day of ..... 200....

**AS WITNESSES**

1. .... 2. ....