



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF NATURAL RESOURCES AND SPATIAL SCIENCES
DEPARTMENT OF LAND AND PROPERTY SCIENCES**

QUALIFICATION (S) : DIPLOMA IN LAND ADMINISTRATION ; BACHELOR IN LAND ADMINISTRATION	QUALIFICATION CODE: 06DLAD 07BLAD
COURSE NAME: DEEDS REGISTRATION LAW 2	COURSE CODE: DRL610S
SESSION/DATE: JULY 2019	NQF LEVEL: 6
DURATION: 2 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION	
EXAMINER(S)	STEPHIE NICOLENE DE VILLIERS
MODERATOR:	EMMY WABOMBA

THIS QUESTION PAPER CONSISTS OF 12 PAGES (Including this page and the annexures)

INSTRUCTIONS	
1.	The paper has 5 questions, 1 annexure, Bond Number B3542/2009.
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

Give a word or phrase for the following in the context of Deeds Registration Law:

- a) Obligation to be secured; property of another to which mortgage is to attach; creation of a real right. (2)
- b) A mortgage is an accessory to this and cannot exist without it. (2)
- c) Notary Public certifying that the signatures on the document are indeed the signatures of the persons who signed the document as parties to it. (2)
- d) The right which an heir obtains to claim transfer of bequeathed property from the executor. (2)
- e) Amendments to the names and date of births of principals, description of the property, amount of the bond and date of execution in a Power of Attorney to pass a mortgage bond. (2)
- f) Consent to be registered when part of the monies due on a fixed debt or obligation secured under a mortgage bond is paid. (2)
- g) The capacity in which a notary public certifies that the person making the affidavit knows and understands the content of the affidavit. (2)
- h) A bond registered for money lent and advanced for securing an existing obligation in which all the movable assets of the mortgagor are offered as security. (2)
- i) The certificate to be applied for when an erf is subdivided and the owner wishes to mortgage the new portion. (2)
- j) An authorisation by a principal to an agent to perform numerous acts of a particular sort. (2)

[20]

Question 2

Indicate if the following statements are true or false. You *do not* have to *motivate* your answers

- a) If a *bona fide* spouse, who is married in community of property, continues to mortgage a property without the consent of his/her spouse, and the joint estate suffers a loss as a result of this action, an adjustment will be effected in favour of the 'innocent' spouse upon the division of the joint estate. (2)
- b). A liquor license can be provided as real security under a general notarial bond. (2)
- c) A Servitude of right of way must in all instances be indicated on a diagram which must be attached to the Deed of Transfer. (2)
- d) Susan, a sane, solvent, major person may grant a power of attorney to 17 year old John to act on her behalf. (2)
- e) If a deed to be lodged in the Deeds Registry in Namibia is executed outside the borders of Namibia, only a notary public will be able to authenticate it. (2)
- f) A creditor will have no remedies if a bond is not registered over a property for securing an obligation, even though there was an agreement that such a bond will be passed. (2)
- g) A notarial lease entered into for a period of 15 years can be enforced for the full duration thereof, even if it is NOT registered in the deeds office, provided the successor-in-title was aware of the lease and the lessee was in occupation of the lease premises at the time that ownership of the leased property was transferred. (2)

- h) A close corporation grants a power of attorney to SN De Villiers to act as its agent in the registration of mortgage bond. The principal is correctly described in the power of attorney to pass the mortgage bond as:

ABC Close Corporation

Registration number cc/2006/2345 (2)

- i) A court order has been issued that Ben's hypothecated property should be ceded to Sue. No consent to cancellation of the bond is necessary. (2)

- j) All people in Namibia have to enter into an antenuptial contract should they wish to be married out of community of property. (2)

[20]

Question 3

Study the attached Mortgage Bond Number B3542/2009 and discuss the following critically:

- a) The type of bond (13)

- b) Benefits to be renounced (17)

[30]

Question 4

Mary and Gerald got married on 14 January 2019. Earlier the day, on 14 January 2019, before they got married, Mary and Gerald signed a Power of attorney with a copy of an antenuptial agreement attached to it, authorising their legal practitioner to sign an antenuptial agreement on their behalf in front of a notary public and to register it in the Deeds Office. On 20 May 2019, Mary and Gerald requested a copy of their antenuptial agreement from the legal practitioner whom they consulted about the agreement in the first place and who was authorised to act on their behalf in respect of the signing and

execution thereof. It transpired that the agreement was never notarially executed, nor registered in the Deeds Office.

- a) Will they still be able to remedy the situation? Discuss fully. (10)
 - b) What is the effect of registering an antenuptial contract? (5)
- [15]
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Question 5

Compare and contrast a general mortgage bond with a notarial bond. (15)

[15]

Annexures Follow

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AND the said Appearer q.q. acknowledged and declared his Principal, the MORTGAGOR, to be truly and lawfully held and firmly bound unto and on behalf of:

BANK WINDHOEK LIMITED
[Company Number 79/081]

its Order or Assigns

[hereinafter styled the Bank]

and the security conferred by this Bond, to be in the sum of

N\$680 000,00 [SIX HUNDRED AND EIGHTY THOUSAND NAMIBIA DOLLARS]

or any lesser amount that may from time to time be owing (hereinafter styled the Capital), arising from and being one or more of the hereinafter mentioned causes or causae; which Capital together with interest as hereinafter detailed, the MORTGAGOR, under renunciation of the benefits arising from the legal exceptions non numeratae pecuniae, non causa debiti, errore calculi, revision of accounts, no value received, ordinis seu excussionis et divisionis, de duobus vel pluribus reis debendi, and all other exceptions which might or could be raised against payment of the Capital and interest or any portion thereof, with the meaning and consequences of which exceptions the Appearer declared his Principal, the MORTGAGOR to be fully acquainted, promises and undertakes to pay or cause to be paid unto the Bank, its Order or Assigns, on demand;

AND the Appearer q.q. under renunciation of the benefits of the abovementioned legal exceptions, further declared the MORTGAGOR to be truly and lawfully held and firmly bound unto and in favour of the Bank in the further sum of

N\$136 000,00 [ONE HUNDRED AND THIRTY SIX THOUSAND NAMIBIA DOLLARS]

in respect of costs and similar causes as detailed hereafter under clause (k) hereof.

AND AS SECURITY for the due and prompt payment of the Capital or any portion thereof, interest due thereon, and all other sums of money which may be owing or payable at any time to the Bank or other holder of this Bond from any cause whatsoever, in terms of this Bond, and for the due observance by the MORTGAGOR behalf of the MORTGAGOR hereby declares to bind specially as a **FIRST MORTGAGE**, the following immovable property, namely:

CERTAIN	ERF NO. 8, OUTJO
SITUATE	in the Municipality of OUTJO Registration Division "A" KUNENE REGION
MEASURING	962 [Nine Hundred and Sixty Two] Square Metres
HELD	under Deed of Transfer No. T 3265 /2009
SUBJECT	to the conditions contained therein.

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AND provided further that the security conferred by this Bond shall remain in force as a continuing covering security for the Capital, the interest thereon and the further amount of

N\$136 000,00 [ONE HUNDRED AND THIRTY SIX THOUSAND NAMIBIA DOLLARS]

as hereinafter mentioned in clause (k), notwithstanding any intermediate settlement; and notwithstanding any intermediate settlement this Bond shall be and remain of full force, virtue and effect as a continuing security and covering bond for each and every sum in which the MORTGAGOR may now or hereafter become indebted to the Bank from any of the causes aforementioned to the amount of the Capital and interest and the further amount of

N\$136 000,00 [ONE HUNDRED AND THIRTY SIX THOUSAND NAMIBIA DOLLARS]

in respect of costs and similar causes as hereinafter mentioned in clause (k); and provided further that the sum or sums of money owing under this Bond from time to time shall bear interest at a rate to be determined by the Bank in its own discretion and such interest shall be calculated monthly on the daily debit balance of the account or accounts as hereinafter set out;

AND the Appearer q.q. declared that this Bond shall be subject to the following terms, conditions and stipulations, namely:

- (a) A certificate signed by the Manager or Accountant of branch of the Bank shall at all times constitute prima facie proof for purposes of provisional sentence of:
 - (i) any amount debited in respect of interest and also the rate of interest as determined by the Bank from time to time;
 - (ii) the amount owing under this Bond.
- (b) The extent, nature and duration of the facilities to be granted in terms of this Bond shall at all times be in the sole and absolute discretion of the Bank;
- (c) This Bond shall be additional to and without prejudice to any guarantee or security now held by the Bank and/or to any guarantee or security hereafter to be held from the MORTGAGOR or any other person.
- (d) The Bank may open one or more accounts in the name of the MORTGAGOR or any other name or names of persons for whom the MORTGAGOR has bound himself as guarantor, as aforementioned, or any other name or names agreed upon between the Bank and the MORTGAGOR against which the Bank shall be entitled to debit from time to time, as they arise, all debts and obligations of the MORTGAGOR to the Bank of every description whatsoever as mentioned above and also interest at a rate to be determined by the Bank from time to time, such interest to be calculated monthly on the daily debit balance of the account or accounts as from the dates on which the several debts and obligations arose and were debited.
- (e) All payments of Capital, interest and other monetary obligations under the said Bond shall be made in good and lawful currency of the Republic of Namibia at **OUTJO** or at such other place or places in the Republic of Namibia as the Bank may from time to time determine.
- (f) The MORTGAGOR is obliged to pay regularly and promptly on the due dates hereof all stand licences, Government and Municipal rates and taxes and other charges levied or to be levied in respect of the property mortgaged under this Bond and to furnish to the Bank proof of such payment whenever thereto required.

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- (g) The MORTGAGOR shall from time to time and at all times so long as this bond shall remain in force keep all buildings and erections, windmills, pumps and piping, fences and improvements already erected or hereafter erected on the mortgaged property in good, substantial and tenable repair both internally and externally to the satisfaction of the Bank, and keep the mortgaged property in conformity with the requirements of any Public Authority, and shall make no material alterations thereto, or to any part thereof or remove the same from or off the mortgaged property without the consent in writing of the Bank being first had and obtained; and the Bank or its duly appointed Agent shall be entitled at all reasonable times to enter upon and inspect the mortgaged property at the expense of the MORTGAGOR, and should the MORTGAGOR have failed to comply with the foregoing conditions then the Bank may at the charge and cost of the MORTGAGOR effect or expend any sum necessary for repairing, maintaining, upkeeping and preserving the mortgaged property and for the conforming with the requirements of any Public Authority.
- (h) The MORTGAGOR is obliged, at his own expense, to insure all buildings and improvements on the property mortgaged under the said Bond and keep the same insured with an insurance company duly approved by the Bank for the full value thereof, against the risk of damage, or loss by fire and lightning and any other risk of damage or loss and to cede such policy or policies of insurance to the Bank as additional security for all debts and obligations of the MORTGAGOR under the said Bond as long as the said Bond remains in force. Any amounts received under such insurance policy or policies shall in the discretion of the Bank be wholly or partly used either in wholly or partly paying the debts and obligations of the MORTGAGOR to the Bank, or in restoring upon such conditions as the Bank may impose, the property damaged or destroyed by fire or lightning or otherwise.
- (i) In the event of the MORTGAGOR failing or omitting to pay the said licences, rates and taxes or other charges and the premiums or any portion thereof, promptly on the due dates thereof, or to maintain the said buildings and improvements in good order and repair as aforesaid, the Bank shall be entitled to pay such amounts or to effect or cause such repairs to be effected at the cost of the MORTGAGOR, and to recover the same from him under the said Bond precisely, as if they formed portion of the bank facilities granted to the MORTGAGOR by the Bank and secured under the said Bond. The provisions of this clause shall in no way prejudice or derogate from the rights of the Bank under clause (l) hereunder.
- (j) Any notice or notices which the Bank may wish or be obliged to give to the MORTGAGOR under the said Bond shall be addressed to him at

THE PROPERTY HEREBY MORTGAGED

which place the MORTGAGOR chooses as his *domicilium citandi et executandi* for the service of all process arising out of this Bond.

- (k) All amounts over and above the Capital and interest thereon, recoverable from the MORTGAGOR under the said Bond in respect of service fees, discount, commission, costs of legal proceedings and stamps, in connection with the issue of any notices and demands and any legal process for the recovery of any amount owing under the said Bond; all moneys disbursed by the Bank on behalf of the MORTGAGOR in respect of stamp duty

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transfer duty and all other legal costs charged in respect of the registration hereof and/or the registration of the property hereby mortgaged in the name of the MORTGAGOR, stand licences, Government and Municipal rates and taxes and other charges in respect of the property mortgaged hereunder, insurance premiums and costs of repairs and maintenance, and in general all costs of maintaining and realising the security mortgaged hereunder shall be limited to a sum not exceeding and in so far as they are not preferent, shall be secured as preferent under the said Bond up to an amount of

N\$136 000,00 [ONE HUNDRED AND THIRTY SIX THOUSAND NAMIBIA DOLLARS]

over and above the Capital and interest.

- (l) In the event of the MORTGAGOR omitting or failing to pay any sum or sums of money due and owing thereunder promptly on the due dates thereof or in the event of his omitting or failing to observe and perform any of the other conditions, terms and stipulations of the said Bond, the Bank shall be entitled but not obliged forthwith to treat the full amount secured thereunder as due and recoverable and forthwith to institute legal proceedings for the recovery thereof without any notice, notwithstanding any provision to the contrary herein contained, and whether or not the Bank shall avail itself of its rights thereunder, the validity of the said Bond shall not in any way be affected and the rights of the Bank shall not in any way be prejudiced.
- (m) The Title Deeds of the property mortgaged under the said Bond shall be handed over to the Bank and shall remain in its possession during the subsistence of the said Bond and the said property shall not be further mortgaged or otherwise encumbered in any manner whatsoever, without the written consent of the Bank.
- (n) As long as this Bond remains in full force and effect, the MORTGAGOR shall not be entitled to let the property hereby mortgaged or any portion thereof without the prior written consent of the Bank in which event all rentals which may be owing from time to time by the present or any future tenant or tenants of the property mortgaged under the said Bond or any portion thereon, are ceded and transferred by the MORTGAGOR to the Bank as collateral security and the Bank is authorised irrevocably and in rem suam with power of substitution, to collect the said rentals and to take legal proceedings for the recovery thereof and to grant valid receipts in respect thereof.
- (o) The said Bond shall remain of full force and effect until it is cancelled in the Personal Register of the Deeds Office concerned with the consent of the Bank, and the MORTGAGOR shall be entitled to require the said Bond to be cancelled only when he shall have duly discharged all his obligations to the Bank.
- (p) The said Bond shall be cancelled only by a Conveyancer nominated by the Bank.
- (q) The Bond to be passed in terms hereof shall be and remain of full force and effect as a continuing covering security for the amount of the Capital, interest and all or any sums of money which shall at any time be owing or claimable by the Bank from whatever cause arising, notwithstanding the release from the operation of the said Bond of any of the properties binded hereunder or of any portions of such properties and the payment to the Bank of the proceeds or the purchase price or any portion of such proceeds or purchase price of the said properties or any portion thereof.

FOR INFORMATION

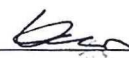
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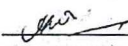
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SIGNED at WINDHOEK on 10 JUL 2009
together with the appearer, and confirmed with my seal of office.

In my presence



SIGNATURE OF APPEARER



REGISTRAR OF DEEDS

FOR INFORMATION ONLY

