

Model Answers to the Conveyancing Examination

September 2007

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[20]

1.1

Causa¹

“ AND the said Appearer declared that his principal, the developer of the scheme known as Toscana No. SS175/1996 ² being Robust Properties CC, has in terms of Section 34(3) of the Sectional Titles Act, 95 of 1986, sold the whole of its interest in and to the said scheme to the undermentioned transferee for the amount of R1 500 000,00 (one million five hundred thousand rand) on the 9th of March 2007”

Property description

All right title and interest in the land and building or buildings in the scheme known as Toscana situated at Estcourt Township, Local authority: City Council of Estcourt, which interest consist of:

- 1 Section no 1 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan no. SS175/1996 and an undivided share in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan ³

Held by Certificate of Registered Sectional Title ST 175/1996 (1)(UNIT)

-
- 1 The answer to this question is reflected in the notes of Self-Study Deed Course for Attorneys, Part 2, p. 1-61.
 - 2 If the scheme has recently been opened, the sectional plan number cannot be 175 of 1996, as the year number indicates in which year the sectional register has been opened. You must however, use the information provided to you in the question. This is a question from a previous exam paper (September 1997) and we infer that that is the reason why an old year was mentioned.
 - 3 This description can be found in paragraph 3 of Form H in the regulations to the Sectional Titles Act 95 of 1986.

- 2 Section no 2 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan no. SS175/1996 and an undivided share in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan

Held by Certificate of Registered Sectional Title ST 175/1996 (2)(UNIT)

- 3 (The property description of sections 3 - 10 have to be repeated here) [14]

1.2 **Documents to be lodged**⁴

- 1 draft **deed of transfer**⁵
- 2 **power of attorney** to pass transfer
- 3 all ten **existing title deeds** (certificates of registered sectional title⁶) for the 10 units
- 4 **transfer duty receipt / transfer duty exemption certificate**
- 5 **rates clearance certificate** from the local authority⁷ [6]

4 Every item counts 1 mark, except for the rates clearance certificate from the local authority which counts two marks.

5 Prepared in accordance with Form H in the regulations to the Sectional Titles Act 95 of 1986

6 These title deeds will not be deeds of transfer, as the developer is issued with a certificate of registered sectional title for each and every unit in the scheme simultaneously with the opening of the sectional title register.

7 This certificate must certify *inter alia* that all rates and moneys due to that local authority **in respect of the land concerned** have been paid up to and including the day of transfer - (section 34(4)(a)(i)).

2.1
Form O

Prepared by me

CONVEYANCER
Frantzen E

**Application under section 22(1)⁸
of the Sectional Title Act 95 of 1986**

We the undersigned

Jo Dube
Identity number: 550911 5203 08 0 and
Lucy Dube
Identity number: 680111 0062 08 7
married in community of property to each other⁹

do hereby apply to the Registrar of Deeds at Pretoria for:

- 1 The registration of the attached sectional plan of subdivision of a section in terms of the provisions of section 22(1) of the Sectional Titles Act, 1986, in respect of section No 21 and Section No. 22, formerly section No. 1 as shown and more fully described on sectional plan No. SS 11/2000 in the scheme known as Bella Bella in respect of the land and building or buildings situate at Bella Bella Township, Local Authority Bella Bella local municipality and held under Deed of Transfer ST 22/2002.
- 2 The issue of certificates of registered sectional title in terms of the provisions of section 22(5) of the aforesaid Act in respect of the sections shown on the said sectional plan of subdivision.

Signed at Bella Bella on 19 September 2007.

Jo Dube

Lucy Dube
[10]

8 In accordance with **Form O** of the regulations to the Sectional Titles Act 95 of 1986.

9 As Jo and Lucy, who are not partners in any other customary marriage, were married after the commencement of the Customary Marriage Act 120 of 1998 (which act commenced on 15 November 2000) and no reference is made to an antenuptial agreement that was concluded prior to such marriage, the legal consequences of the parties' marriage are one of in community of property.

Consent

I, the undersigned

Jacob Hendrik Pierneef
in my capacity as signing official of Hel Bank Limited, Registration Number
1980/000123/06, duly authorised thereto by virtue of a resolution of the board of
directors of the said bank, the legal holder of the undermentioned mortgage bond,
namely:

Mortgage bond Number	SB44/2002
passed by	Jo Dube Identity number: 550911 5203 08 0 Unmarried
in favour of	Hel Bank Limited, No: 1980/000123/06
for the sum of	R900 000,00 (nine hundred thousand rand)
and the additional amount of ¹⁰	R180 000,00 (one hundred and eighty thousand rand)

do hereby consent to:

- 1 the registration of the sectional plan of subdivision and subdivision of section 1 into sections to be known as sections 21 and 21 in the scheme Bella Bella, subject to the abovementioned bond in accordance with Sectional Plan SS No to be registered; and
- 2 the issue of certificates of registered sectional title in respect of section 21 and 22 and the undivided share in the common property attached to such sections according to the participation quotas reflected on the said sectional plan; and
- 3 the substitution of the new sections in lieu of section 1 as security under the bond and the endorsement of the abovementioned bond to the effect that it attaches to the sections and common property as shown on the said section plan.

Signed at Pretoria on 25 September 2007

As witnesses:

1 _____

2 _____

_____ [9]

¹⁰ Generally the additional amount is 20% of the capital amount.

2.3 Documents to be lodged¹¹

- 1 application for subdivision
- 2 two copies of the sectional plan of subdivision
- 3 existing deed of transfer ST22/2002
- 4 existing mortgage bond SB44/2002 in favour of Hel Bank Limited
- 5 consent by the mortgagee (Hel Bank Limited)
- 6 certificates of registered sectional title¹² in respect of sections 21 and 22

[5]

2.4 Requirements for a valid monogamous customary marriage

- 1 both spouses must be over 18 years of age
- 2 both must consent to be married to each other under customary law
- 3 the marriage must be negotiated and celebrated in accordance with customary law.

[4]

2.5 No. Section 21 provides that the consent of the trustees of the body corporate must be obtained before submitting the draft sectional plans to the Surveyor-General. At a Registrar's Conference¹³ it was therefor resolved that it is not necessary to lodge the consent of the trustees of the body corporate on the registration of the sectional plan of subdivision or consolidation.

[2]

Question 3 - Model answer

[20]

3.1.1 causa

And the appearer declared that

Whereas, in terms of the will dated 31 May 1990 of the late Sarel Retief, who died on 15 March 1995, he bequeathed the undermentioned property to his wife, Susan Retief, to whom he was married out of community of property, subject to a *fideicommissum* in favour of their son, Stefanus Retief as more fully set out hereunder¹⁴

vesting clause

Now therefore the said appearer, in his capacity as aforesaid did by these presents cede and transfer to and behalf of

Susan Retief

Identity Number: 401201 0073 08 2

Unmarried (or widow)

her heirs, executors, administrators or assigns

[7]

11 Section 22(2) prescribes the documents to be lodged. They are also listed in the notes of the Centre for Conveyancing Practice, part 2, p. 1-45.

12 Prepared in accordance with **Form P** in the regulations to the Sectional Titles Act.

13 Registrar's Conference Resolution 18 of 1997.

14 No reference to the exclusion of the community of property is made, as the community of property in respect of a fiduciary is already excluded by common law.

3.1.2 causa

And the appearer declared that

Whereas his principal, Susan Retief , has renounced her interest as fiduciary in the undermentioned property in favour of the *fideicommissary* and the property is transferred subject to the exclusion of the community of property contained in the will of the late Sarel Retief dated 31 May 1990, as more fully set out hereunder;

Vesting clause

Now therefor the said appearer, in his capacity as aforesaid did by these presents cede and transfer to and behalf of

Stefanus Retief

Identity Number: 600202 5012 08 7

married in community of property to Mary-Ann Retief, which community of property is excluded in respect of the undermentioned property as stipulated in the will of the late Sarel Retief dated 31 May 1990 and signed at Belville

his heirs, executors, administrators or assigns [4]

- 3.2.1** First transferred and still held by deed of transfer T1483/1975 with diagram S.G. No. A245/1974 annexed thereto. ¹⁵ [2]
- 3.2.2** First transferred by deed of transfer T1483/1975 with diagram S.G. No A245/1974 annexed thereto and held by deed of transfer T123/2007 ¹⁶ [1]
- 3.3** No transfer duty is payable ¹⁷ [1]
- 3.4** No, the power of attorney needs no endorsement or certificate [2]

15 Form UU adapted is used, as the extending clause in the existing title deed follows the form of Form T.

16 You had to make a number up. This number represents the title deed number whereby Susan Retief holds the property.

17 The transfer from the estate of late Sarel Retief to Susan Retief is exempt from the payment of transfer duty in terms of section 9(1)(i) of the Transfer Duty Act and the transfer from Susan Retief to Stefanus Retief is exempt in terms of section 9(1)(e).

3.5 Documents to be lodged¹⁸

- 1 **power of attorney** to pass transfer
- 2 **existing title deed** T1483/1975
- 3 **rates clearance certificate**
- 4 **copy of the will**, endorsed as certified and accepted by the Master
- 5 **conveyancer's certificate** in terms of **section 42(1)** of the Administration of Estates Act.

[3]

Question 4 - Model answer

[10]

Extract from the minutes of a general meeting of the shareholders¹⁹ of Asmara Investments (Proprietary) Limited, Registration Number: 1990/000332/07 (herein after referred to as "the company") held at Cape Town on 1 September 2007

All shareholders of the company being present, it was unanimously resolved that:-

- 1 The sale by the company to Linda Naidoo of

Lot 22 Winterskloof
situate in the Hilton Transitional Local Council Area, Administrative District of Natal,
Province of Kwazulu-Natal

In extent: 3 000 (three thousand) Square Metres

for the amount of R300 000,00 (three hundred thousand rand) is hereby ratified and confirmed.²⁰

- 2 the directors of the company are hereby authorised to take all necessary steps as may be necessary to transfer the aforesaid property into the name of the purchaser.

Certified a true extract

Chairman

18 Although the model answer supplied by LEAD does not mention an affidavit regarding marital status by Susan Retief, it might be required to also lodge same as proof that the deceased was married to the transferee at the time of his death, should the will only state that the estate is bequeathed to "my wife" as worded in this question.

Also note that you need not lodge a transfer duty exemption certificate. According to Chief Registrar's Circular 14 of 2000 you need not lodge a transfer duty exemption certificate in certain circumstances, for example if section 9(1)(e)(i) of the Transfer Duty Act is applicable.

19 Section 228 of the Companies Act requires a resolution by the shareholders of the company at a general meeting if all the assets or substantially all the assets of the company are being disposed of. However, this section was amended on 14 December 2007. A **special resolution** by the company's shareholders is now needed.

20 As the company already sold the property, this act must be ratified.

Extract from the minutes of a meeting of the board of directors of Asmara Investments (Proprietary) Limited, Registration Number: 1990/000332/07 (herein after referred to as “the company”)

All the directors being present, it was unanimously resolved that:

- 1 The company having sold to Linda Naidoo the company’s immovable property, namely

Lot 22 Winterskloof
situate in the Hilton Transitional Local Council Area, Administrative District of Natal,
Province of Kwazulu-Natal

In extent: 3 000 (three thousand) Square Metres

for R300 000,00 , that transfer now be given to the purchaser
- 2 That Asma Asmara in his capacity as director of the company is hereby authorised to sign the power of attorney to pass transfer on behalf of the company as well as any other documents necessary to enable transfer of the said property to be passed to the purchaser.

Certified a true extract

Chairman

Prepared by me

CONVEYANCER
Le Roux G J

**Application and Affidavit in terms of
Regulation 68(1) and 68(14) of the Deeds Registries Act ²¹**

I the undersigned,

Hennie Niemann. in my capacity as the sheriff of the Magistrate's Court of Germiston duly authorised by virtue of a writ issued by the clerk of the court at Germiston on 16 July 2007

hereby make oath and say that:

- 1 Jan Snyman
Identity number: 690408 5554 08 8
Unmarried, is the legal holder of mortgage bond B888/1995
- 2 Pursuant to a warrant in execution, issued by the Magistrate's Court of Germiston in the matter between Secure Investments (Proprietary) Limited as the plaintiff and Jan Snyman as the defendant, I attached the mortgagee's rights in and to the said bond, and sold the said rights by public auction on 21 August 2007, to Secure Investments (Proprietary) Limited.
- 3 The mortgagee has since disappeared and I was unable to trace the said mortgagee or obtain possession of the aforementioned bond. The said mortgage bond was either lost or destroyed and cannot be found despite diligent efforts to do so on my part.
- 4 To the best of my knowledge the said bond has not been pledged and is not being detained by anyone as security for a debt or otherwise.
- 5 As I am required to cede Jan Snyman's right, title and interest in the said bond to Secure Investments (Proprietary) Limited, I hereby apply to the Registrar of Deeds at Johannesburg in terms of the provisions of Regulation 68(1) & (14) of the Deeds Registries Act, 47 of 1937, for the issue to me of a certified copy of the said mortgage bond No. B888/1995.

Hennie Niemann

Signed and sworn to before me at Germiston on 1 September 2007 by the Deponent, who acknowledges that he knows and understands the contents of this affidavit.

Commissioner of Oaths

²¹ See **Example "12 E"** in Part 4 of the Self-Study Deeds Course. Previously asked in May 1997, Part 1 Question 4 for 15 marks.

Cession of a mortgage bond ²²

I the undersigned,

Hennie Niemann, in my capacity as the sheriff of the Magistrate’s Court of Germiston duly authorised by virtue of a writ issued by the clerk of the court at Germiston on 16 July 2007,

where Jan Snyman is the legal holder of the undermentioned bond, namely

number	B888/1995
passed by	Syringa Investments CC Registration number 1999/0077889/23
in favour of	Jan Snyman Identity number: 690408 5554 08 8 Unmarried
for the sum of	R25 000,00 (twenty five thousand rand)
and the additional sum of	R10 000,00 (ten thousand rand)

do hereby cede, assign and transfer all Jan Snyman’s right, title and interest in the above bond to and in favour of

Secure Investments (Proprietary) Limited
Registration number: 1985/009517/07

which right, title and interest was sold by me by public auction on 21 August 2007 in pursuance of a warrant of execution issued by the Magistrate’s Court at Delmas and following attachment, in the matter in which Secure Investments (Proprietary) Limited was the plaintiff and Jan Snyman, identity number 690408 5554 08 8 was the defendant, re Delmas Magistrate’s Court case number 2234/2007, the abovementioned right title and interest in the bond registered in the name of the said Jan Snyman, for value received

I declare that the full amount is owed under the bond.

Signed at Delmas on 9 September 2007

As witnesses:

1 _____

_____ H Niemann

2 _____

22 Although it was not part of the model answer provided by LEAD, if the mortgage bond is lost an application in terms of regulation 68 (14) must also be drafted. As there is not a new mortgage bond that will be registered but the existing mortgage bond is ceded, the sheriff cannot merely certify that he has been unable to obtain possession of the bond in terms of regulation 51(2).

6.1 Prepared by me

CONVEYANCER
Frantzen E

Power of Attorney to pass transfer²³

We, the undersigned

- 1 Henry Smith in my capacity as executor in the estate of late Ethel Cohen, duly authorised thereto by virtue of Letters of Executorship 123/2007 issued by the Master of the High Court of South Africa (Cape of Good Hope) at Cape Town on 12 August 2007
and
- 2 Amos Cohen
Identity number: 510819 5884 08 7
unmarried, in my personal capacity as surviving spouse of the deceased to whom I was married in community of property

hereby appoint Ilse Pretorius with power of substitution to be our lawful attorney and agent, to appear before the Registrar of Deeds at Cape Town and declare that:

WHEREAS I Amos Cohen sold the undermentioned property, with the consent of my wife Ethel Cohen on 15 April 1998 to the undermentioned transferee for the amount of R10 000 000,00 (ten million rand);

AND WHEREAS I, Amos Cohen was married in community of property to Ethel Cohen at that time and my said wife died on 1 January 2007;

NOW THEREFOR we authorise our said attorney and agent to pass transfer to

Sun Wild Life Safaries Limited
No. 2003/009875/06

the following undermentioned property

The Farm Lisbon 123
district of Stellenbosch, Province Western Cape
Measuring 5 000,0000²⁴ (five thousand comma nil nil nil nil) Hectares

Held by Deed of Transfer No T765/1980

²³ Also asked in Question 2.1 of September 2005, Part 1.

²⁴ If the extent is expressed as hectares, four digits should follow the comma.

Subject to the following condition contained in clause 7 of the said deed of sale signed at Cape Town on 15 April 1998, namely:-

Subject to a servitude of right of way, 5 metres wide in favour of the Farm London 369, district of Stellenbosch, Province of Western Cape, held under deed of transfer T 11122/1980, along a route to be agreed upon.²⁵

And generally for effecting the purpose aforesaid, to do or cause to be done whatsoever shall be required as fully and effectually as we could have done if personally present and acting herein.

Signed at Cape Town on 9 September 2007.

As Witnesses:

1	_____	_____	Henry Smith
2	_____	_____	Amos Cohen [25]

6.2 In order for VAT to be payable on the transaction Amos Cohen must be a registered VAT vendor for *purposes of the transaction*, in other words the property must be sold in the course and furtherance of his business as an attorney for which he is registered as a VAT vendor. As his farm does not form part of his business for which he is a registered VAT vendor, no VAT is payable. Transfer duty will be payable by the purchaser in the amount of R 800 000,00.²⁶ Penalty transfer duties will be payable if the transfer duty was not paid within six months after the date of sale. [6]

6.3 the joint estate of late Ethel Cohen, Estate Number 123/2007 and her surviving spouse Amos Cohen identity number 510819 5884 08 7 unmarried (previously married in community of property with the deceased) [4]

25 Or "the exact route of which servitude is to be agreed upon from time to time between the registered owners"

26 8% of R10 000 000,00.

Question 7 - Model answer

[15]

7.1 First registered and still held by certificate of consolidated title T4352/1996 with diagram S.G. No. 243/1996 annexed thereto. [4]

7.2 First registered by certificate of consolidated title T4352/1996 with diagram S.G. No. 243/1996 annexed thereto and held by deed of transfer T81258/1996. [2]

7.3 Portion 1 of the Farm Ross 77
Registration Division J.R., Province of Gauteng
Measuring: 400,0000 ²⁷ (four hundred comma nil nil nil nil) Hectares

As will appear from annexed diagram S.G. No. 42/1997 and held by deed of transfer T6712/1997. [9]

Question 8 - Model answer

[20]

8.1 I, the undersigned,

Isabel le Roux in my capacity as trustee in the insolvent estate of
Butch James
Identity number: 640308 5223 08 8
Unmarried

duly authorised thereto by Letters of Appointment T334/2007 issued by the Master of the High Court (Transvaal Provincial Division) at Pretoria on 20 August 2007 [5]

See the model answer for question 8.2 on the next page.

8.2 I, the undersigned,

Francois Pienaar
Identity number: 701201 5073 08 7
married to Angela Pienaar, which marriage is governed by the laws of France, duly assisted by his spouse as far as needs be [5]

²⁷ If the extent is expressed in hectares, there must be four digits after the comma.

8.2 We, the undersigned,²⁸

- 1 Maggie Laubsher in my capacity as executor
in the estate of late Percy Montgomery
Estate Number: 789/2007
duly authorised thereto by virtue of Letters of Executorship²⁹ issued by the
Master of the High Court of South Africa (Cape of Good Hope) at Cape Town
on 1 September 2007
and
- 2 Karen Montgomery
Identity number: 760319 0072 08 2
unmarried³⁰, in my personal capacity as surviving spouse of the deceased to
whom I was married in community of property [5]

8.3 I, the undersigned,

Wessel Marais in my capacity as trustee of and duly authorised thereto by virtue of a
resolution taken at Pretoria on 2 September 2007, by the trustees of
Amma Bokka Bokka Rugby Club [5]

Question 9 - Model answer [10]

9.1 (a) S2393/2001 will not result in a rejection. This sequestration note can be found
against a person's name who has been sequestrated or against a person with the
same or similar name who is not sequestrated. You have to ascertain whether your
client is sequestrated through diligent enquiries and if not, the conveyancer can certify
that the note is not applicable. [2]

9.1 (b) No rejection will result if the difference is attributable to only the change in the last
three digits. It might be that the transferor has been issued with a new identity
document. The conveyancer must make due enquiries and certify that the transferor
has been issued with a new identity document with the new number. [2]

9.1 (c) The mortgage bond will be rejected. If the computer print out and records of the
deeds office are incorrect, you will have to do an application in terms of section 4(1)(b)
of the Deeds Act to rectify its records. If your mortgage bond is incorrect, you will have
to redraft the relevant pages with the correct number and also amend the power of
attorney with initialling by the mortgagor and the two witnesses. [2]

28 The general rule provides that both the executor and the surviving spouse must pass transfer from a joint estate. Not one of the exceptions mentioned in section 21 (where only the executor passes transfer) is applicable here.

29 The estate number could also have been inserted here and omitted after the name of the deceased.

30 Or widow.

9.1 (d) This is an attachment interdict. If it is not a transfer in pursuance of a sale in execution, the deed would have been rejected. You have to do thorough searches before lodgement to overcome this oversight. ³¹ [2]

9.2 Yes, it would have been possible to anticipate these notes by doing thorough deed searches on each transaction on receipt of the instructions. [2]

Question 10 - Model answer [10]

10.1 Yes, in terms of section 57 of the Deeds Act one mortgagor can be substituted with another mortgagor if the whole the mortgage property is transferred from the one to the other and the transferor has not reserved a limited real right over the property. The application and consent must follow prescribed from W in the regulations tot he Deeds Act. [3]

10.2 The amount of a bond or the cover it provides can never be increased but it can be decreased by the noting of a part payment (with an ordinary bond) or the noting of a reduction in cover(with a covering bond). Prescribed Form MM is used for this consent by the mortgagee. [3]

10.3 As a general rule no, but on consolidation, a component can be substituted by the consolidated property under the bond (form WW is used for this application by the mortgagor and consent be the mortgagee) and on partition of property a share in the whole property (which is mortgage) can be substituted with a portion of the said property (form MM is used for this substitution). [2]

10.4 Yes, by means of an out and out cession. ³² [2]

Question 11 - Model answer [20]

Subject to the following conditions:

1 Subject to the reservation of the rights to all minerals in favour of Sammy Marks Minerals Limited as will appear from Notarial Deed 25/1918S which reservation was made in respect of the Farm Rome 123. [3]

2 The former Farm Rome 123, a portion of which is hereby transferred, is subject to a servitude to convey electricity in favour of Eskom, together with ancillary rights as will appear from Notarial Deed K384/1989S with diagram annexed thereto. [3]

3 The property may only be used fro residential and agricultural purposes. [2]

³¹ Although the model answers provided by LEAD does not stipulate so, you can obtain particulars of the interdict, prior to lodgement and contact the attorneys who acted on behalf of the creditor, in whose favour the attachment was executed. Should your client be able to satisfy this claim, arrangements can be made for the upliftment of the interdict before re-lodgement.

Should you be transferring a property in pursuance to a sale in execution, you must make sure that this interdict is reflected on the deeds search.

³² In other words a cession for value received.

In respect of condition 1:

Mineral rights are not qualified with an introductory clause. However, at the end of the mineral right condition, reference must be made to the property in respect of which the mineral rights were first reserved. [2]

In respect of condition 2:

Although this servitude is not indicated on the diagram (in other words the main servitude does not affect the property) there are ancillary rights and the servitude must therefor be contained in the deed, with the necessary introductory qualification. [3]

In respect of condition 3:

As this servitude is not indicated on the subdivisional diagram and there are no ancillary rights, this servitude does not affect the portion transferred and can be omitted from the deed. [3]

In respect of condition 4:

This is a general condition and will apply in the same manner to all the portions as to the farm to be subdivided. Thus no qualification is necessary and the condition is carried forward in the deed as it is. [2]

In respect of condition 5:

The bare dominium owner and the usufructuary together are passing transfer of their respective rights in the property, to its full extent. Therefor this condition is omitted. [2]

TOTAL: [200]

Compiled by

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SOURCES

Self-Study Deeds Course for Attorneys
Model answers of CLE Law Society of South Africa
Relevant acts, regulations, prescribed forms & conference resolutions
The Consolidated Practice Manuals of the Deeds Office of South Africa

Model Answers to the Conveyancing Examination

September 2007

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[21]

Purchaser:

Paid	Purchase Price	750 000,00	
Received	Deposit on purchase price		290 000,00
Received	Occupational rental for August & September 2006		7 600,00
Received	Interest on investment		1 500,00
Paid	Our fee for transfer & investment	8 400,00	
Paid	VAT thereon	1 176,00	
Paid	Postages & petties	25000	
Paid	VAT thereon	3500	
Paid	Administration fee for clearance certificate	7900	
Paid	Transfer Duty ³³	12 500,00	
Paid	Registrar of Deeds	40000	
Paid	Occupational rental for August & September	7 600,00	
Received	Payment of guarantee by Bank		500 000,00
	Balance due to you	18 660,00	
TOTAL		799 100,00	799 100,00

³³ In June 2006, transfer duty for a natural person was exempt up to R500 000,00 and was calculated at 5% over R500 000,00 up to R1 million. Thus 5% of R250 000,00 = R12 500,00.

Seller:

Received	Purchase Price		750 000,00
Paid	Estate Agent's commission	50 000,00	
Received	Occupational rental 1/08/2006 -30/09/2006		7 600,00
Paid	Levies for August & September 2006	3 600,00	
Paid	Cancellation costs	98100	
	Balance due to you	703 019,00	
TOTAL		757 600,00	757 600,00

Question 2 - Model answer [2]

A copy of the principal bond , duly certified by a conveyancer or the registrar must be lodged together with the collateral or surety bond.

Question 3 - Model answer [2]

A noting of a part payment in respect of that part of the obligation that has been paid ³⁴

Question 4 - Model answer [6]

- 4.1 Yes [1]
 4.2 Yes [1]
 4.3 No [2]
 4.4 No [2]

Question 5 - Model answer ³⁵ [4]

- 1 Where the owner of immovable property has died and his descendants has died a minor, intestate and no executor has been appointed in his estate, the executor in the estate of the deceased owner may pass the property direct to the heirs *ab intestatio* of the deceased minor.
- 2 Where the value of the immovable property which has vested in any heir or legatee would be equaled or exceeded by the costs involved in transferring or ceding it to the heir or legatee and the heir or legatee has furthermore sold the property, the executor may, with the consent in writing of the heir or legatee, pass transfer direct to the purchaser
- 3 Where the heirs and legatees of a deceased person have entered into a redistribution agreement the executor or trustee of such land may transfer or cede the reals rights therein direct to the persons entitled thereto in terms of such redistribution agreement.

³⁴ The noting of a part payment is drafted in accordance with Form MM in the regulations to the Deeds Registries Act.

³⁵ Any four could have been chosen.

- 4 The provision in paragraph 3 above shall mutatis mutandis apply with reference to a redistribution of assets of the joint estate of spouses who were married in community of property and have been divorced or judicially separated, and with reference to a redistribution of assets of a partnership on dissolution of the partnership.
- 5 If a fiduciary interest in land or in a real right terminates before transfer of the land or cession of the real right has been registered in favour of the fiduciary, it shall be competent to transfer the land or cede the real right direct to the fideicommissary.
- 6 If the right of any person to claim transfer of such land from any other person has been vested in any third person in terms of a judgement or order of any court or a sale in execution held pursuant to any such judgement or order transfer of such land may be passed direct to such third person by the person against whom such right was exercisable.

Question 6 - Model answer **[2]**

Transfer duty will be payable on the fair value of R520 000,00 in the amount of R1 000,00.³⁶

Question 7 - Model answer **[2]**

No, section 22³⁷ of the Deeds Act provides that two or more persons each owning a different piece of land may not transfer those pieces of land to one or more persons by the same deed of transfer, unless such transfer is authorised by law or a court order.

Question 8 - Model answer **[2]**

The property must be transferred to the estate of the deceased. Regulation 54(1)³⁸ of the regulations to the Deeds Act provides that where immovable property has been acquired by any person not married in community of property and transfer thereof has not been effected during the lifetime of such person, the transfer deed shall be made out in favour of the estate of such person.

Question 9 - Model answer **[4]**

- 1 Certificate of registered title for undivided share in terms of section 34
- 2 Certificate of registered title for aggregate share in terms of section 35
- 3 Certificate of registered title of one or more properties held by one title deed in terms of section 36

36 5% of R20 000,00.

37 It is not necessary to give the section number.

38 It is not necessary to stipulate the regulation number.

- 4 Certificate of registered title taking the place of a lost or destroyed deed in terms of section 38
- 5 Certificate of registered title to correct an error in registration in terms of section 39
- 6 Certificate of registered title for a portion of a piece of land in terms of section 43

Question 10 - Model answer

[2]

No. The Insolvency Act ³⁹ provides that after the publication of a notice of surrender in the Gazette it shall not be lawful to sell any property of the estate in question, which has been attached under writ of execution unless the person charged with the execution of the writ could not have known of the publication. The sheriff shall be obligated to revoke the sale in execution if the judgement debtor is declared insolvent.

Question 11 - Model answer

[2]

The certificate of registered title should be made out in the name of the deceased and not his estate as provided for in regulation 54(2) of the Deeds Registries Act.

Question 12 - Model answer

[6]

In respect of a deed of transfer:

- 1 that all copies of the deeds or documents intended for execution and/or registration are identical at the date of lodgement.
- 2 that all the applicable conditions of title contained in or endorsed upon the owner's copy of the title deed together with any applicable proclaimed township conditions have been correctly brought forward from that deed to the deed that you are preparing.
- 3 that the names, identity number or date of birth and marital status in the case of a natural person or the name and registered number in the case of any other person or a trust have been correctly brought forward from the power of attorney to pass transfer.

Question 13 - Model answer

[3]

The property must be transferred to John Smith by means of a deed of transfer. All the individual partners of the partnership (i.e. John Smith and Peter Brown must pass transfer together. ⁴⁰

Question 14 - Model answer

[3]

The whole of the property and not merely the share of John Smith must be transferred from the old partnership to the new partnership. The power of attorney must be signed by each of the partners of the original firm. ⁴¹

39 Section 5 thereof.

40 Section 24bis(1) of the Deeds Act is applicable. You cannot use an endorsement in terms of section 24bis(2), as all the partners do not acquire the property.

41 Regulation 34(3) issued under the Deeds Act.

Question 15 - Model answer

[4]

Documents to be lodged:

- 1 **Consent to cancellation of the cession** as security, signed by the representative of Global Enterprises (Pty) Ltd;
- 2 Existing **mortgage bond**
- 3 Existing **title deed**
- 4 **Consent to cancellation of the bond**, signed by the representative of ABC Company (Pty) Ltd

Question 16 - Model answer

[6]

Collateral mortgage bond

A collateral bond is given by the same mortgagor as in the principal bond to the same mortgagee as in the principal bond for the same debt or obligation (or a part thereof) as in the principal bond over another property as additional security.

Surety bond

A surety bond is passed by a surety (a third party who is not the principal debtor) over the property of the surety as security for the debt and liabilities of the principal debtor in favour of a creditor (mortgagee).⁴²

Question 17 - Model answer

[2]

No, If you read the relevant regulation, die prescribed form and the relevant section in the Sectional Titles Act, it is clear that the legislator intended that the real right of extension must be reserved for a specified period of time.⁴³

Question 18 - Model answer

[2]

No. According to a registrar's conference resolution⁴⁴ it is not the responsibility of the registrar to determine whether the exercise of the real right of extension in terms of section 25 of the Sectional Titles Act is in accordance with the plans referred to in section 25(2). It is however the duty of the registrar to determine that the extension is within the physical boundaries of the reserved right.

42 In other words where a debtor who passes a collateral bond is not the same debtor as the registered debtor under the principal bond, it is necessary to register a surety bond.

43 According to Registrar's Conference Resolution 4 of 2005, the wording of regulation 14 to the Sectional Titles Act, read together with Form F and section 25(1), is clear that a specified period is required.

44 Registrar's Conference Resolution 4 of 1994, confirmed by Registrar's Conference Resolution 10 of 2005

Question 19 - Model answer [2]

Yes, it is necessary to obtain the consent of the co-mortgagor, which mortgagor must renounce all the relevant legal exceptions. ⁴⁵

Question 20 - Model answer [2]

At a registrar's conference ⁴⁶ it was decided that it is only necessary for one of the spouses, married in community of property to apply for the issue of a certified copy of a lost deed. The registrar, however has a discretion to insist on the consent of the other spouse in terms of regulation 62(2).

Question 21 - Model answer [4]

The title firstly has to be rectified in terms of section 4(1)(b) of the Deeds Act, whereafter an application must be brought in terms of section 45bis(1A)(b). ⁴⁷

Question 22 - Model answer [2]

No, section 14(1)(b)(iii) only mentions that the heirs or the heirs and the surviving spouse enter into a redistribution agreement.

Question 23 - Model answer [2]

I will create the servitude in the power of attorney to pass transfer . Thereafter it must be carried forward to the deed of transfer. In terms of section 26(2) of the Deeds Act the power of attorney must contain amongst other things, the conditions, if any, affecting the land or share therein so awarded.

Question 24 - Model answer [2]

No, the Administration of Estates Act 66 of 1965 does not give such power to such a representative. ⁴⁸

Question 25 - Model answer [2]

No. A rates clearance certificate must be lodged on the transfer of a property. ⁴⁹
Section 40 of the Administration of Estates Act does not constitute the transfer of a property.

45 Registrar's Conference Resolution 19 of 2005.

46 Registrar's Conference Resolution 26 of 2005.

47 Registrar's Conference Resolution 32 of 2005.

48 Registrar's Conference Resolution 38 of 2005.

49 Section 118 of the Local Government Municipal Systems Act 32 of 2000.

Question 26 - Model answer

[4]

26.1.1 Authentication by a Notary Public

26.1.2 Authentication by a South African Consular Official at the South African Embassy

26.2 Yes, Rule 63 of the High Court Rules requires authentication of a document executed at any place outside the Republic for use in the Republic.

Question 27 - Model answer

[3]

Once a land development applicant has taken steps to establish a land development area, no person may conclude a contract (not even a contract that is subject to a suspensive condition or any other condition-

- a) for the sale exchange, alienation or disposal in any other manner of an erf in that development area
- b) for the erection of a dwelling on such erf
- c) granting an option to purchase or sell such erf or granting a right of first refusal in respect of such erf

UNLESS -

the land development application has been approved by the tribunal and one of the following three conditions applies, namely:-

- a) the land becomes registrable⁵⁰; or
- b) the applicant has furnished the guarantees to the designated officer in respect of the completion of the steps required for the land to become registrable; or
- c) the tribunal has approved the commencement of a registration arrangement and the conditions in respect of such approval have been complied with.

Question 28 - Model answer

[2]

A registration certificate issued by the Department of Home Affairs or a court order (where a contract has been approved by the court in polygamous marriages). This was decided at two Registrar's Conferences.⁵¹

TOTAL: [100]

⁵⁰ In other words the steps as contemplated in section 38(1) have been completed.

⁵¹ Registrar's Conference Resolutions 31 of 2005 and 8 of 2006.