

Model Answers to the Conveyancing Examination

May 2009

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[15]

Prepared by me

CONVEYANCER
Frantzen E

Application in terms of Section 4(1)(b)

of the Deeds Registries Act 47 of 1937

We, the undersigned ¹

Sin King-Ship

Identity Number 550911 5203 08 0

and

Forgiveness King-Ship

Identity Number 600101 0073 08 7

Married in community of property to each other

hereby declare under oath that -

1 We are the registered owners of -

A unit consisting of - ²

(a) **Section 1** as shown and more fully described on sectional plan no. **SS1234/2005** in the scheme known as **Titanic** in respect of the land and building or buildings situated at **Sea Township, Local Authority:**

¹ If only Sin King-Ship brought the application, a consent by Forgiveness King-Ship had to be lodged wherein Forgiveness acknowledges that she has read the application of Sin King-Ship and consents to the rectification.

² The wording of prescribed Form H in the regulations to the Sectional Titles Act 1986, should be followed.

City of Tshwane Metropolitan Municipality, of which section the floor area according to the said sectional plan is **95 (ninety five)** square metres in extent; and

- (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

Held by Deed of Transfer ST193/2008

2 The following errors appear in the aforesaid deed of transfer ST193/2008 namely - ³

- (a) The abovementioned property was incorrectly registered only in the name of Sin King-Ship, married out of community of property; ⁴
- (b) The identity number of Sin King-Ship is incorrectly reflected as 950911 0202 080, in stead of 550911 5203 080; and
- (c) In the property description, the following errors appear, namely -
 - (i) the name of the sectional title scheme is incorrectly described as SS Bismarck in stead of SS Titanic;
 - (ii) the description of the township, namely Sea Township has erroneously been omitted; and
 - (iii) the extent of the property is incorrectly reflected as 100 (one hundred) square metres in stead of 95 (ninety five) square metres.

3 We do not know how the errors came about.

4 There are no other deeds or documents in the deeds registry at Pretoria in which the said errors are reflected.

5 We hereby apply to the Registrar of Deeds at Pretoria, in terms of Section 4(1)(b) of the Deeds Registries Act 47 of 1937, for the amendment of Deed of Transfer ST193/2008 to reflect the following, namely -

³ The rectification of more than one error in the same title deed may be applied for in the same application.

⁴ The marital status forms part of the description of a person, which may be rectified in terms of Section 4(1)(b).

- (a) the correct identity number of Sin King-Ship, being 550911 5203 080;
- (b) our correct matrimonial property regime , being married in community to each other; and
- (c) the correct property description as stated in paragraph 2(c) above.

6 These amendments will not have the effect of transferring any right.

Sin King-Ship

Forgiveness King-Ship

Signed and sworn to before me at Pretoria on the 6th day of May 2009, the deponents having acknowledged that they fully understand the contents of this affidavit.

Commissioner of Oaths
Erinda Frantzen
Practicing Attorney
451 Flinderslane, Lynnwood

Question 2 - Model answer

[25]

2.1 Documents to be lodged in the deeds office - ⁵

- 1 **application** for registration of sectional plan of subdivision
- 2 two copies of the **sectional plan of subdivision**
- 3 **sectional title deed** of the section to be subdivided - ST405/2006
- 4 the **sectional mortgage bond** to which the section to be subdivided is subject
- 5 **consent by the mortgagee** to the cancellation of the mortgage bond or the release of a section from the operation of the bond, or the subdivision and substitution of the new sections in lieu of the sections so mortgaged
- 6 **certificates of registered sectional title** ⁶ in respect of each of the new sections, made out in favour of the persons entitled thereto in terms of the partition agreement
- 7 the **partition agreement** [5]

⁵ The consent of the trustees of the body corporate need not be lodged - CRC 18/1997, paragraph 9.

⁶ Drafted in accordance with prescribed form P in the regulations issued under the Sectional Titles Act.

Form O

CONVEYANCER
Frantzen E**Application under section 22(1)**⁷
of the Sectional Titles Act, 1986

We, the undersigned

- 1 Geld Wolf
Identity Number 750808 5432 08 7 and
Ben Swart
Identity Number 601215 5001 08 2
partners in a civil partnership in community of property registered in
terms of the Civil Union Act 17 of 2006

- 2 Roy Kappie
Identity Number 650909 5000 08 8
Married in community of property to Mary Kappie⁸ which community of
property is excluded in respect of the undermentioned property as a
result of the stipulations contained in the will of the late Oupa Kappie
dated 7 August 1990 and signed at Johannesburg

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

1. The registration of the attached sectional plan of subdivision of a section in
terms of section 22(1) of the Sectional Titles Act, 1986, in respect of section
numbers 50 and 51, formerly section no. 22 as shown and more fully
described on sectional plan no. SS 111/2000 in the scheme known as
Hoogvlieg in respect of the land and building or buildings situate at Bluebird
Township, Local Authority: City of Johannesburg and held under Deed of
Transfer ST 405/2006;

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 Johannesburg on 6 May 2009.

Ben Swart_____
Geld Wolf_____
Roy Kappie

[20]

⁷ Form O to the Sectional Titles Act is used.⁸ In the model answers issued by LEAD, Mary is described as Mary Kappie (formerly Blogg). In our opinion it is not necessary to refer to Mary's maiden name, as her maiden name is not reflected in the existing title deed.

Question 3 - Model answer

[25]

3.1

Prepared by me

CONVEYANCER

Le Roux GJ

Collateral Sectional Mortgage Bond

hypothecating a unit and an exclusive use area⁹

I, the undersigned

Isabel le Roux

in my capacity as trustee and duly authorised thereto by virtue of a resolution of the trustees of

XYZ Trust

Registration Number IT 9998/2000

which trustees are duly authorised by virtue of letters of authority issued by the Master of the KwaZulu-Natal High Court, Pietermaritzburg on 17 January 1999

(Hereinafter referred to as the mortgagor),

do hereby acknowledge that the mortgagor is lawfully indebted and bound to

ABC Bank Limited

Registration Number 1950/159753/06

its successors in title or assigns

(Hereinafter referred to as the mortgagee)

in the amount of R1 000 000,00 (one million rand) and R200 000,00 (two hundred thousand rand) being the additional amount referred to in the conditions annexed, arising from and being money lent and advanced as security for which indebtedness mortgage bond B199/2006 (hereinafter called the principal bond) was registered in the Deeds Registry at Cape Town on the 6th of October 2006 over the property thereby specially hypothecated;

And whereas the said mortgagee requires the indebtedness of the mortgagor under the principal bond to be further secured by the hypothecation of the undermentioned properties as collateral security therefor;

⁹ Although there is a prescribed form for a sectional mortgage bond (Form Z in the regulations to the Sectional Titles Act), there is no prescribed form for a collateral sectional mortgage bond. The content of the collateral bond in respect of a full title property (Form KK in the regulations to the Deeds Registries Act) had to be inserted into the prescribed form for the sectional mortgage bond, with the necessary adaptation.

Now therefore, the mortgagor, did by these presents declare and acknowledge itself to be held and firmly bound unto and on behalf of the said mortgagee, its order or assigns in the aforesaid sum of R1 000 000,00 (one million rand) together with the sum of R200 000,00 (two hundred thousand rand) as a preferent charge for costs and other matters as more fully set out in the principal bond, and as collateral security for the due and property repayment of the aforesaid sums with interest on the said capital sum and for the due and proper fulfilment of all the terms and conditions mentioned or referred to in the principal bond as well as all this said mortgagor's obligations thereunder, the mortgagor hereby declared to bind specially as a first mortgage, subject to the conditions set out in the annexure to this bond -

1 A unit consisting of -

(a) **Section 4** as shown and more fully described on sectional plan no. **SS111/2003** in the scheme known as **Mega Bucks** in respect of the land and building or buildings situated at **Montana Extension 17, in the Hibiscus Coast Municipality Area**, of which section the floor area according to the said sectional plan is **165 (one hundred and sixty five)** square metres in extent; and

(b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

Held by Deed of Transfer ST95321/2006

2 An exclusive use area described as **Garden no. G4** measuring **18 (eighteen)** square metres, being as such part of the common property, comprising the land and the scheme known as **Mega Bucks** in respect of the land and building or buildings situate at **Montana Extension 17, in the Hibiscus Coast Municipality Area**, as shown as more fully described on sectional plan no **SS111/2003** held under Notarial Deed of Cession no. SK3579/2006.

Signed at Pietermaritzburg on 6 May 2009

Mortgagor or his duly authorised agent

Before me, Conveyancer

Registered at Pietermaritzburg on
Seal of Office

Registrar of Deeds

Question 4 - Model answer

[15]

Prepared by me

Form MM

CONVEYANCER

Frantzen E

Consent¹⁰ to the opening of sectional title register

in terms of section 11(3)(d) of the Sectional Titles Act 95 of 1986

I, the undersigned

Big Shot

in my capacity as signing official and duly authorised thereto by virtue of a resolution of the board of directors of

Big Bank Limited

Registration Number 1940/002345/06

being the legal holder of the undermentioned bond, namely -

number B9874/2009

passed by

- 1 Brakenjan CC
Registration Number 1999/003456/23
- 2 Great Relief (Proprietary) Limited
Registration Number 1980/012345/07
- 3 The trustees of Mpho Trust
Registration Number IT 999/1999

in favour of Big Bank Limited
Registration Number 1940/002345/06

for the sum of R50 000 000,00 (fifty million rand) and an additional sum of R2 500 000,00 (two million five hundred thousand rand)

Do hereby consent to -

1 The opening of the sectional title register.

¹⁰ Form MM in the regulations to the Deeds Registries Act is used for this consent.

- 2 The registration of the sectional plan S.G. No D753/2009 in respect of the scheme known as Blouberg situate at -
Erf 456 Blouberg Township
Registration Division J.R., Province of Gauteng
Measuring 8124 (eight one two four) square metres
Held by Deed of Transfer T9997/2000
- 3 the issue of certificates of registered sectional title in terms of section 12(1)(d) of the aforesaid Act in respect of the sections shown on the said sectional plan;¹¹
- 4 the issue of a certificate of real right in terms of section 12(1)(e) of the aforesaid Act in respect of any provision in terms of Section 25(1);
- 5 the issue of a certificate of real right in terms of section 12(1)(f) of the aforesaid Act in respect of a right of exclusive use referred to in section 27(1);
- 6 The endorsement of the said mortgage bond to the effect that it attaches to-¹²
 - (i) the sections and common property shown on the sectional plan;
 - (ii) the certificate of real right in respect of a right reserved by the developer in terms of section 25(1); and
 - (iii) the certificate of real right in respect of rights of exclusive use as contemplated in section 27(1).

Signed at Pretoria on 6 May 2009.

As witnesses:

1. _____

2. _____

Big Shot obo Big Bank Limited

¹¹ The wording of paragraphs 3,4 and 5 can be copied from Form B, the application for the opening of the sectional title register.

¹² Section 11(3)(d) of the Sectional Titles Act stipulates those matter which the mortgagee must consent to.

CONVEYANCER

Le Roux G J

Power of Attorney and Agreement to Partition Land

We, the undersigned,

1. Ben Brackenjan
in my capacity as member and duly authorised thereto by virtue of a resolution by the members of Brakenjan CC
Registration Number 1999/003456/23
2. Roy Randolph
in my capacity as director and duly authorised thereto by virtue of a resolution by the board of directors of Great Relief (Proprietary) Limited
Registration Number 1980/012345/07
- 3 Windsor Mpho
in my capacity as trustee and duly authorised thereto by virtue of a resolution by the trustees of Mpho Trust
Registration Number IT 999/1999
acting under letters of authority issued by the Master of the North Gauteng High Court, Pretoria on 12 August 2003

being the joint owners of -

- 1 A unit consisting of -
 - (a) **Section 1** as shown and more fully described on sectional plan no. **SS789/2009** in the scheme known as **Blouberg** in respect of the land and building or buildings situated at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.
Held by Certificate of Registered Sectional Title T1234/2009 (1)(UNIT)
- 2 A unit consisting of -
 - (a) **Section 2** as shown and more fully described on sectional plan no. **SS789/2009** in the scheme known as **Blouberg** in respect of the land and building or buildings situated at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and

- (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.
Held by Certificate of Registered Sectional Title T1235/2009 (2)(UNIT)
- 3 A unit consisting of -
- (a) **Section 3** as shown and more fully described on sectional plan no. **SS789/2009** in the scheme known as **Blouberg** in respect of the land and building or buildings situated at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
- (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.
Held by Certificate of Registered Sectional Title T1236/2009 (3)(UNIT)
- 4 An exclusive use area described as **Parking Bay no. P1** measuring **12 (twelve)** square metres, being as such part of the common property, comprising the land and the scheme known as **Blouberg** in respect of the land and building or buildings situate at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, as shown as more fully described on sectional plan no **SS789/2009** held under Certificate of Real Right of Exclusive use Area SK1230/2009
- 5 An exclusive use area described as **Parking Bay no. P2** measuring **12 (twelve)** square metres, being as such part of the common property, comprising the land and the scheme known as **Blouberg** in respect of the land and building or buildings situate at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, as shown as more fully described on sectional plan no **SS789/2009** held under Certificate of Real Right of Exclusive use Area SK1230/2009
- 6 An exclusive use area described as **Parking Bay no. P3** measuring **12 (twelve)** square metres, being as such part of the common property, comprising the land and the scheme known as **Blouberg** in respect of the land and building or buildings situate at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, as shown as more fully described on sectional plan no **SS789/2009** held under Certificate of Real Right of Exclusive use Area SK1230/2009

do hereby declare that we have agreed to partition the said units and exclusive use areas by allocating to each of us a unit and exclusive use area as set out hereunder; AND that we hereby nominate constitute and appoint Gabriel Jacobus le Roux and/or Erinda Frantzen with power of substitution to be our lawful attorney and agent to appear before the Registrar of Deeds at Pretoria and there, to transfer the units and exclusive use areas so awarded to each of us in severalty as follows, namely:-

1. Allocated to Brakenjan CC
Registration Number 1999/003456/23

the following properties, namely -

- 1 A unit consisting of -
 - (a) **Section 1** as shown and more fully described on sectional plan no. **SS789/2009** in the scheme known as **Blouberg** in respect of the land and building or buildings situated at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan. Held by Certificate of Registered Sectional Title T1234/2009 (1)(UNIT)
- 2 An exclusive use area described as **Parking Bay no. P1** measuring **12 (twelve)** square metres, being as such part of the common property, comprising the land and the scheme known as **Blouberg** in respect of the land and building or buildings situate at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, as shown as more fully described on sectional plan no **SS789/2009** held under Certificate of Real Right of Exclusive use Area SK1230/2009

2. Allocated to Great Relief (Proprietary) Limited
Registration Number 1980/012345/07

the following properties, namely -

- 1 A unit consisting of -
 - (a) **Section 2** as shown and more fully described on sectional plan no. **SS789/2009** in the scheme known as **Blouberg** in respect of the land and building or buildings situated at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan. Held by Certificate of Registered Sectional Title T1235/2009 (2)(UNIT)

2 An exclusive use area described as **Parking Bay no. P2** measuring **12 (twelve)** square metres, being as such part of the common property, comprising the land and the scheme known as **Blouberg** in respect of the land and building or buildings situate at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, as shown as more fully described on sectional plan no **SS789/2009** held under Certificate of Real Right of Exclusive use Area SK1230/2009

3. Allocated to the trustees of Mpho Trust
Registration Number IT 999/1999

the following property, namely -

1 A unit consisting of -

(a) **Section 3** as shown and more fully described on sectional plan no. **SS789/2009** in the scheme known as **Blouberg** in respect of the land and building or buildings situated at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and

(b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan. Held by Certificate of Registered Sectional Title T1236/2009 (3)(UNIT)

2 An exclusive use area described as **Parking Bay no. P3** measuring **12 (twelve)** square metres, being as such part of the common property, comprising the land and the scheme known as **Blouberg** in respect of the land and building or buildings situate at **Blouberg Township, Local Authority: City of Tshwane Metropolitan Municipality**, as shown as more fully described on sectional plan no **SS789/2009** held under Certificate of Real Right of Exclusive use Area SK1230/2009

And we do hereby declare that neither we nor any other persons on our behalf received or paid any consideration or any other form of compensation in respect of the partition and simultaneous transfer and/or cession of the property.

Signed at Pretoria on 6 May 2009

As witnesses:

1. _____

Brackenjan CC

2. _____

Great Relief (Pty) Ltd

Mpho Trust

Question 6 - Model answer

[10]

Mandla Incorporated

6 May 2009

Per Fax: (011) 905 1234

Your reference: Quick59/00234

Our reference: E Frantzen/ eh/ 123456

Re: Your Bond: Margaret Tshabalala / Quick Bank Limited
Our Transfer: Piet Moya / Margaret Tshabalala
Erf 55 Middelburg

With reference to the abovementioned matter we confirm that we have been instructed to attend to the registration of transfer as well as the cancellation of all mortgage bonds over the property.

Kindly provide us with the following guarantees at your earliest convenience, namely:-

- 1 In favour of Best Bank Limited, for credit account Piet Moya, account number 123456789, ACB code 123456, for the amount of R500 000,00 (five hundred thousand rand) plus interest on the amount of 480 000,00 (four hundred and eighty thousand rand) at a rate of 15% per annum from 10 April 2009 until date of registration, both days included, payable free of commission at Johannesburg;
- 2 In favour of Standard Bank of South Africa Limited, for credit account Mc Carthy Limited, account number 4477521378, ACB Code 357159 for the amount of R20 000,00 (twenty thousand rand) payable free of commission at Johannesburg;
3. In favour of ABSA Bank Limited, for credit account Gawie le Roux Attorneys, account number 9998887774, ACB code 163345 for the amount of R380 000,00 (three hundred and eighty thousand rand) less interest on the amount of R480 000,00 (four hundred and eighty thousand rand) at a rate of 15% per annum from 10 April 2009 until date of registration, both days included, payable free of commission at Pretoria.

The abovementioned three guarantees should be made payable against the registration of the following transactions, namely:

- 1 The registration of transfer from P Moya to M Tshabalala of Erf 55 Middelburg Township;
- 2 The cancellation of all existing mortgage bonds over Erf 55 Middelburg Township;

- 3 The registration of a first mortgage bond over Erf 55 Middelburg by M Tshabalala in favour of Quick Bank Limited for the amount of R900 000,00.

We would like to hear from you

Your faithfully

E Frantzen

Question 7 - Model answer

[20]

7.1 Breach

- 1 In the event of the Purchaser failing to comply with any of the obligations hereunder on due date and persisting in such failure for a period of 10 (ten) days after dispatch of written notification calling upon the Purchaser to remedy the same, the Seller shall be entitled either:
- (a) to cancel this agreement, or
 - (b) claim specific performance of the Purchasers obligations in terms of this agreement.
- 2 In the event of the Seller cancelling this agreement, he Seller shall be entitled to -
- (a) obtain immediate repossession of the property; and
 - (b) the selection at the time of cancellation or at any time thereafter, either to claim damages or to claim forfeiture of and retain all monies paid by the Purchaser to the Seller or the Attorneys on account of the purchase price, costs or otherwise in terms of or pursuant to this agreement. Such forfeiture specifically includes the deposit paid in terms of this agreement together with accrued interest thereon.
- 3 Should the Seller claim specific performance, the Seller shall be entitled to claim such damages as the Seller may have suffered by reason of the Purchaser's default in addition to any other remedies that the Seller may have in terms of this agreement.
- 4 The Seller shall in any event be entitled to retain all monies paid by the Purchaser on account of the purchase price, costs or otherwise in terms of or pursuant to this agreement pending the Seller's election as aforesaid and in the event that the Seller elects to claim damages, the Seller may retain such monies pending determination of such damages and thereupon the Seller shall be entitled to set-off the amount so retained against the Seller's claim for damages.
- 5 Should the Seller take steps against the Purchaser pursuant to a breach by

the Purchaser of the agreement, the Seller shall in addition to the rights aforementioned, be entitled to receive from the Purchaser who shall be liable to the Seller for payment of all the Seller's legal costs incurred on the scale between Attorney and client, including tracing fees and collection commission paid by the Seller to the Seller's attorneys.

- 6 If the Purchaser disputes the Seller's right to cancel and/or remains in occupation of the property after cancellation of purported cancellation the Purchaser shall continue to pay interest and levies as herein provided in consideration for continuing to occupy the property.

7.2 Loan Approval

- 1 This agreement of sale is subject to the suspensive condition that the purchaser is able to raise a loan upon the security of a first Mortgage Bond to be passed over the property for the sum of R1 500 000,00 (one million five hundred thousand rand) at prevailing Bank rates and terms.
- 2 Should such loan not be procured within 21 (twenty one) days or such other date as the parties may agree in writing, this sale shall be null and void and of no force and effect.
- 3 The Purchaser undertakes and agrees to take all steps and sign all documents reasonably necessary to give effect to this clause.
- 4 Notwithstanding the afore going, the Purchaser shall be entitled by notice in writing to the Seller at any time before the said date or the agreed later date as the case may be to declare this sale unconditional and as having taken effect on the terms herein contained, it being recorded that the said condition is inserted solely for the benefit of the Purchaser.

Question 8 - Model answer

[15]

8.1 We, the undersigned
Sally Small and Mervin Small in our capacity as parents and natural guardians of
Steven Small
Identity Number 20040506 5002 08 7
a minor

[2]

8.2 Steven Small
Identity Number 20040506 5002 08 7
a minor

[2]

- 8.3** We, the undersigned
 Gregory Shaw
 duly appointed by virtue of Letters of Appointment issued by the Master of
 Free State High Court, Bloemfontein dated 6 May 2008, in my capacity as
 curator in the estate of the mental patient ¹³
 Manie Smal
 Identity Number 601219 5789 08 2 and
 Susan Smal
 Identity Number 700308 0047 08 8
 married in community of property to each other ¹⁴ [2]
- 8.4** Mpho Moya
 Identity Number 550904 5004 08 7
 unmarried
 and
 Johannes Mahlangu
 Identity Number 640513 5048 08 7
 married out of community of property
 and
 Yvonne Mbeki
 Identity Number 721201 0077 08 7
 married in community of property to Luke Mbeki
 together carrying on business in partnership as Great Shake Deals [3]
- 8.5** Jack Spratt
 Identity Number 690509 5555 08 4 and
 Mary Spratt
 Identity Number 701219 0045 08 8
 married in community of property to each other [3]

¹³ Or "... in the estate of Manie Smal (a mental incapacitated person)..."

¹⁴ Or, if Susan Smal gave a consent in terms of Section 15(2) of the
 Matrimonial Property Act, the description would read as follows,
 namely:-
 I, the undersigned
 Gregory Shaw
 duly appointed by virtue of Letters of Appointment issued by the
 Master of Free State High Court, Bloemfontein dated 6 May 2008, in
 my capacity as curator in the estate of the mental patient
 Manie Smal
 Identity Number 601219 5789 08 2
 married in community of property to Susan Smal

- 8.6 I, the undersigned
Jack Spratt
Identity Number 690509 5555 08 4
unmarried [3]

Question 9 - Model answer [15]

- 9.1 Erf 89 Happy Valley
situate in the City of Cape Town, Cape Division, Province Western Cape
Measuring 4 800 (four thousand eight hundred) square metres
As will appear from annexed consolidation diagram S.G. nr 123/2008. [5]
- 9.2 Gert Smal must apply for the issue of a certificate of registered title in terms
of section 43 for Portion 1 of Erf 89 Happy Valley before or simultaneously
with the transfer of the remainder of Erf 89 Happy Valley. [2]
- 9.3 First registered and still held by certificate of consolidated title T145/2008
with consolidation diagram S.G. no 123/2008 relating thereto. [4]
- 9.4 First registered by certificate of consolidated title T145/2008 with
consolidation diagram S.G. no 123/2008 relating thereto and held by deed of
transfer T86/2009. [4]

Question 10 - Model answer [25]

10.1 The answer to this question can be found on the next page

- 10.2 Documents to be lodged at the deeds registry -
- 1 power of attorney to pass transfer
 - 2 existing certificate of registered title T1236/1978 (6) (UNIT)
 - 3 transfer duty exemption certificate or a certificate issued by SARS
that the estate is not registered for VAT
 - 4 rates clearance certificate for the unit
 - 5 section 15B(3)(a) conveyancer certificate
 - 6 affidavit of next-of-kin
 - 7 section 42(1) of the Administration of Estates Act conveyancer
certificate [5]

CONVEYANCER
Le Roux G J

Power of Attorney to pass transfer

I the undersigned,

Athol Fourie, in my capacity as executor in the estate of late
John Fourie
Estate Number 1678/2008

duly authorised thereto by virtue of letters of executorship issued by the
Master of the North Gauteng High Court, Pretoria on 16 August 2008

do hereby appoint Gabriel Jacobus le Roux and/or Erinda Frantzen
with power of substitution to be my lawful attorney and agent to appear before the
Registrar of Deeds at Pretoria and there to declare that:

Whereas the late John Fourie, who died on 15 March 2008, is the registered owner
of the undermentioned property, subject to a fideicommissum in favour of his children,
and further subject to the exclusion from the community of property as more fully set
out hereunder as entrenched in the will of his late mother, Samantha Fourie dated 17
June 1970;

An whereas the undermentioned transferees, being the fideicommissary heirs, are
entitled to the undermentioned property as set out in the said will of the late Samantha
Fourie;

NOW THEREFORE I hereby authorise the appearer to transfer to

- 1 Simon Fourie
Identity Number 750508 5045 08 7
unmarried

- 2 Faith Powers
Identity Number 770915 0054 08 7
married in community of property to Arthur Power, which community of
property is excluded in respect of the undermentioned property as a
result of the stipulations contained in the will of the late Samantha
Fourie dated 17 June 1970

the following property, namely:

A unit consisting of -

- (a) **Section 6** as shown and more fully described on sectional plan no. SS482/1978 in the scheme known as **Balule** in respect of the land and building or buildings situated at **Lynnwood Township, Local Authority: City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
- (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

Held by Certificate of Registered Sectional Title T1236/1978 (6)(UNIT)

Subject to the following conditions set out in the will of the late Samantha Fourie signed at Pretoria on 17 June 1970, namely -

“It is a condition of inheritances bequeathed in terms hereof that they shall not form part of any community of profit or loss in respect of marriages subsisting between a beneficiary and his or her present or future spouse.”

Signed at Pretoria on this the 6 th day of May 2009

As Witnesses

- 1. _____
- 2. _____

Athol Fourie

[20]

Question 11 - Model answer

[5]

Seller: A and B

Received	Purchase Price		500 000,00
Paid	Cost of electrical work and painting (2/3 of R21 000,00)	14 000,00	
Paid	Pro rata rates & taxes	2 400,00	
Received	Pro rata rates & taxes from yourself		2 400,00
Receive	Pro rata rates & taxes from purchaser - 16/11/2007-30/06/2008		1 500,00
Total		16 400,00	
	balance owed to A	243 750,00	
	balance owed to B	243 750,00	
Balances		503 900,00	503 900,00

TOTAL: [200]

Model Answers to the Conveyancing Examination

May 2009

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[8]

Purchaser: B

Paid	Purchase Price	750 000,00	
Received	Deposit on purchase price		290 000,00
Paid	Occupational rental for Aug & Sept	7 600,00	
Received	Occupational rental for August ¹⁵		3 800,00
Received	Occupational rental for September		3 800,00
Paid	Our fee for registration of transfer	8 400,00	
Paid	Postage & Petties	250,00	
Paid	VAT on our fee and postage & petties	1 211,00	
Paid	Transfer Duty ¹⁶	12 500,00	
Paid	Deeds Office Fee	400,00	
Received	Interest on investment		1 500,00
Paid	Admin fee: Levy clearance certificate	79,00	
Received	Guarantee		500 000,00
Total		780 440,00	
	<i>balance owed to you</i>	<i>18 660,00</i>	
Balances		799 100,00	799 100,00

¹⁵ In the model answer of LEAD no account of the occupational rental which has been received from the purchaser has been made. This however has to be reflected in the reconciliation statement.

¹⁶ The transfer duty amount is arrived at by calculating 5% of R250 000,00 (R750 000,00 - R500 000,00).

Seller: A

Received	Purchase Price		750 000,00
Paid	Estate Agent's Commission	50 000,00	
Received	Occupational rental from 1/08/2006 - 30/09/2006		7 600,00
Paid	Bond cancellation costs	981,00	
Paid	Pro rata levies for August & September 2006	3 600,00	
Total		54 581,00	
	<i>balance owed to you</i>	<i>703 019,00</i>	
Balances		<i>757 600,00</i>	<i>757 600,00</i>

Question 2 - Model answer**[15]**

- 2.1**
- 1 The **founding statement** of the close corporation on which the fact that the entity has been converted from a company into a close corporation is reflected; and
 - 2 All the **title deeds** in which the entity is still indicated as a company [2]
- 2.2**
- 1 **Certificate of Incorporation** ¹⁷
 - 2 **Memorandum and Articles of Association**
 - 3 **Special resolution by the shareholders** authorising the sale and transfer of the property by the directors - s 228 of the Companies Act
 - 4 **Resolution by the directors** authorising the sale and transfer of the property and appointing one of the directors to sign all the necessary documentation
 - 5 **Certificate by auditors** indicating the names of the directors, confirming that the memorandum and articles of association have the most updated amendments (if any), confirming that the company is still in the register of the Registrar of Companies and that the Companies Act is not contravened in respect of the transfer [4]

¹⁷ A certificate to commence business has not been issued to companies incorporated prior to 1 January 1974.

- 2.3**
- 1 **Founding Statement** of the close corporation
 - 2 Amended founding statement (if applicable)
 - 3 **Resolution by the members** of the close corporation authorising the loan and registration of the mortgage bond and appointing a member to sign all necessary documentation in this regard
 - 4 **Certificate by accounting officer** indicating the names of the members, confirming that the founding statement (or amended founding statement) contains the latest updates, confirming that the close corporation is still in the register of the Registrar of Companies and confirming that the Close Corporation's Act is not contravened in respect of the transaction [3]
- 2.4** **Constitution** of the church
Such resolution(s) as are required in terms of that constitution [3]
- 2.5** Certified copy of the **will**, endorsed by the master as accepted by him
Letters of Authority for the trust
Resolution by the trustees of the trust authorising the entering into a loan agreement, the registration of the bond and the appointment of one of the trustees to sign all the bond documentation on behalf of the trustees
Valuation of the current trust assets of the trust [3]

Question 3 - Model answer [5]

Regulation 34 (3) stipulates that if any partner in a firm wishes to transfer his share in any property of the firm (partnership) to the remaining partners or to the remaining partners and some other person or persons, or to some other person or persons alone, in order that such remaining partners either alone or together with such other person or persons as the case may be, shall form a new partnership to hold such property , such transfer shall not be passed unless the **whole of the property** and not merely the share of the disposing partner be transferred to the new partnership.

The power of attorney must be signed by each of the partners of the original firm.

In like manner, if a new partner is admitted into a firm and if such new firm wishes to transfer property taken over from the old firm, such transfer shall not be passed unless the said new firm has itself received transfer of that property from the old firm.

Question 4 - Model answer

[4]

According to Registrar's Conference Resolution 10/2005 (which confirmed RCR4/1994) changed circumstances can affect the extension of a scheme. According to these two resolutions, it is not the duty of the Registrar of Deeds to enforce compliance with regard to deviations. However it is the duty of the Registrar to determine that the extension is within the physical boundaries of the reserved right.

In a recent unreported case (*Dolphin Whisper Trading 10 (Pty) Ltd v The Registrar of Deeds and the Body Corporate, Skilliepark 2*) however, it was decided that the Registrar does have to examine the plans and ensure compliance therewith. It can therefore be expected that the abovementioned Registrar's Conference Resolution will be withdrawn at the next conference.¹⁸

Question 5 - Model answer

[4]

An application in terms of section 4(1)(b) of the Deeds Registries Act, for the rectification of the title deed must first be made to reflect the registered owner's marital status as in community of property to his spouse. Thereafter an application in terms of Section 45bis (1A)(b) must be lodged, to be signed by both registered owners, married in community of property and in terms whereof the property is allocated to each in equal one half shares.¹⁹

Question 6 - Model answer

[10]

- 1 Firstly I will do a **search at the Registrar of Companies** to obtain all the necessary information in respect of the company and especially to make sure that the company has not be liquidated, placed under judicial management or deregistered.

¹⁸ Indeed, in Registrar's Conference Resolution 2 of 2009, RCR 10 of 2005 and RCR 4/1994 were withdrawn. In the first mentioned resolution it was decided that where the Registrar of Deeds determines that there is a deviation from the section 25(2) plans, such a deviation must be sanctioned by an order of court.

¹⁹ Registrar's Conference Resolution 32/2005.

- 2 I will also do a **deeds search** to make sure that a liquidation interdict has not be noted against the company's name.
- 3 I will inspect a certified copy of the **memorandum and articles of association** of the company in respect of its objects and powers and to make sure that there are not any restrictions placed on the common powers of all companies, in respect of the borrowing of money and the giving of immovable property as security for the repayment thereof. I will also check the borrowing power of the directors.
- 4 I will obtain certified copies of the **certificate of incorporation** as well as the **certificate to commence business**.
- 5 I will obtain a **resolution from the directors** (or shareholders, if applicable) authorising the borrowing of the money as well as the registration of the mortgage bond and appointing one of the directors to sign all the necessary bond documentation.
- 6 I will let the director who has been authorised to sign the bond documentation in terms of the resolution referred to in 4 above, sign a **company certificate**, stating the following, namely:-
 - 6.1 That he is a director of the company and duly authorised by the company to represent the company in respect of this transaction;
 - 6.2 the company is still registered as a private company at the Registrar of Companies;
 - 6.3 that a certificate to commence business has been issued for the company;
 - 6.4 that the memorandum and articles of association which has been provided to the bond attorney is the correct and latest version thereof
 - 6.5 who the currently directors of the company are;
 - 6.6 that there is no transgression of the Companies Act in respect of this transaction (sections 37,38,226 and 228);
 - 6.7 that the registration of the mortgage bond is not in contravention of the memorandum and articles of association;
 - 6.8 that no resolution for the winding up of the company has been made and that no application for the liquidation of the company has been made to court and that the company is not under judicial management.

- 7 The facts as set out in the company certificate in number 6 above must be confirmed by the **duly appointed auditor** of the company .

Question 7 - Model answer

[5]

Documents to be lodged at the deeds registry -

- 1 existing **title deed of the land** to be endorsed
- 2 **title deed of the servitude** (if any and if available)
- 3 written **application** by the registered owner of the land over which the servitude is registered in terms of section 68(1) of the Deeds Registries Act
- 4 **Proof of lapse** of the servitude ²⁰
- 5 **transfer duty receipt or exemption certificate** (if the servitude has not served its time) ²¹

Question 8 - Model answer

[4]

8.1 The seller must apply within 90 days from -

- (a) date of sale; or
- (b) from when the property becomes registrable; or
- (c) from when the property is registered in the name of the seller who was a purchaser in terms of a contract previously recorded or which should have been recorded. [1]

8.2 Should the seller not record the contract within the 90 day period as set out in 8.1 above -

- (a) the purchaser may cancel the contract within 14 days after the expiry of the 90 days period; or
- (b) the purchaser may at any time ²² after the expiry of the 90 days period as set out in 8.1 record the contract himself. [1]

²⁰ For example the death notice of the usufructuary, if the servitude were given for the lifetime of the usufructuary.

²¹ Registrar's Conference Resolution 5/2005.

²² The model answer issued by LEAD stipulates that the purchaser has 14 days after the expiry of the 90 day period in which to record the contract. This is not correct.

8.3 Section 26 of the Alienation of Land Act 68 of 1981 provides that no person shall receive any consideration until-

- (a) such erf or unit is registrable; and
- (b) in the case the deed of alienation where the contract is required to be recorded in terms of section 20, such recording has been effected. [1]

8.4 Yes. The rights of the purchaser in respect of the property shall however rank preferent to the rights of the mortgagee. The purchaser will be entitled to receive transfer when he has paid the purchase price even though the mortgagee has not been paid in full and in the event that the property is sold in execution or insolvency the purchaser shall have a preferent claim in respect of the proceeds of the sale. [1]

Question 9 - Model answer ²³ [7]

9.1 Yes. According to a Registrar's Conference Resolution, whenever a personal servitude is cancelled either in terms of the provisions of section 68(1) or 68(2) of the Deeds Registries Act, a transfer duty receipt or transfer duty exemption certificate must be lodged, except if the servitude has served its time. ²⁴ [2]

9.2 I will lodge an application, signed by the registered owner of the property, in terms of section 68(1) of the Deeds Registries Act for the noting of the lapsing of the usufruct. I will also lodge the death certificate or death notice as proof of death. An endorsement to that effect will then be attached to the title deed. [3]

9.3 No, it is not necessary, as the usufruct has lapsed through the passage of time in other words the usufruct has served its time. [2]

²³ This exact same question has been asked in May 2008 (Part 2), question 2.

²⁴ Registrar's Conference Resolution 5/2005.

It can be re-vested in the insolvent-

▶ *Automatic rehabilitation*

An insolvent is automatically rehabilitated ²⁶ after a period of 10 years since his sequestration, if he has not been rehabilitated by the court before such time. No registration act in the deeds registry is necessary, as the Registrar of Deeds will of his own accord remove from his records any sequestration order after elapse of ten years.

▶ *An offer of composition* (that must be accepted by his creditors) ²⁷

In this instance Section 58(2) of the Deeds Registries Act must be invoked. The insolvent may not deal (transfer mortgage or otherwise deal) with any property that has previously vested in the trustee unless the property has been restored to him in terms of section 58(2), by means of an endorsement. The following documents must be lodged in the deeds registry, namely:-

- (a) Application for endorsement by the trustee or insolvent
- (b) A copy of the offer of composition, accepted by the creditors and certified by the Master to the effect that it was accepted by the creditors - Some deeds offices require that the Master issue a certificate to the effect that the offer of composition has been accepted by the creditors
- (c) All the title deeds that have to be lodged for endorsement
- (d) Any bond over the property needs not to be lodged and the consent of the mortgagee is therefor not necessary.

▶ *Court Order*

If both the trustee and the creditors, with full knowledge that the property has vested in the trustee, do not lay any claim to such property, the court, on rehabilitating the insolvent or after rehabilitation may make an order declaring the rehabilitated insolvent entitled to the property. The rehabilitated insolvent may not deal (transfer, mortgage or otherwise deal) with such property unless it has transferred by the trustee to the rehabilitated insolvent by means of a deed of transfer in terms of section 58(1) of the Deeds Registries Act.

²⁵ This question has also been

²⁶ Section 127A of the Insolvency Act 24/1936.

²⁷ Section 119 of the Insolvency Act.

1 **Lodgement cover nr 1 - certificate of registered title**

- (a) **application**, signed by the executor, for the issue of a certificate of registered title in respect of Portion 1 of Erf 15 Lesane and Portion 1 of Erf 16 Lesane; ²⁸
- (b) **certificate of registered title** (wherein both Portion 1 of Erf 15 and Portion 1 of Erf 16 are listed);
- (c) **subdivisional diagrams** (in duplicate) for both portions;
- (d) parent diagrams for both erven (if it has not already been filed at the deeds registry for the deduction of the portions);
- (e) **consent to the subdivision** of the two erven by the relevant local authority;
- (f) existing **title deeds** T2500/1993 and T4800/1994.

2 **Lodgement cover nr 2 - consent by the mortgagee**

- (a) **consent by the mortgagee** of B876/1995 to the cancellation of the bond;
- (b) existing **mortgage bond** B876/1995.

3 **Lodgement cover nr 3 - certificate of consolidated title**

- (a) **application** made by the executor for the issue of a certificate of consolidated title in the personal name of the deceased (not his estate) in respect of the two properties, Portion 1 of Erf 15 Lesane and Portion 1 of Erf 16 Lesane;
- (b) **certificate of consolidated title** drafted in accordance with prescribed form O;
- (c) **consolidation diagram** in duplicate.

(The title deeds of the component properties can not be lodged here, as they will only be registered in number 1 of the batch).

²⁸ The certificate must be issued in the personal name of the deceased and not in his estate. The consent by the local authority confirming compliance with the conditions subject to which the subdivision has been approved will normally be endorsed at the back of this application or a separate certificate may be issued, depending on the relevant former provinces.

- 4 **Lodgement cover nr 4 - K: Notarial deed of cession usufruct by executor in favour of Rose-Marie Smith**
- (a) **notarial deed of cession** by the executor in favour of Rose-Marie Smith;
 - (b) **copy of the will, certified** as a true copy by the master and **endorsed as accepted** by him.
- 5 **Lodgement cover 5 - Transfer: from the executor to Elizabeth Smith**
- (a) **Power of attorney**, to be signed by the executor, of Erf 100, in favour of Elizabeth Smith;
 - (b) **concept (draft) deed of transfer**;
 - (c) **transfer duty exemption certificate** or **certificate by the Receiver that the estate is not registered for VAT**;
 - (d) **clearance certificate** issued by the local authority;
 - (e) **Section 42(1)** of the Administration of Estates Act conveyancer certificate.

(the current title deed is the certificate of consolidated title which is lodged with number 3 of the batch).

Question 12 - Model answer

[2]

No. There is no sanction for a representative to donate property in terms of the Administration of Estates Act 66 of 1965.

Question 13 - Model answer

[2]

No. Section 118 of the Local Government: Municipal Property Systems Act 32 of 2000 only requires the lodgement of a clearance certificate on the transfer of immovable property. Section 40 of the Administration of Estates Act does not constitute a transfer of property. It is a factual endorsement, Therefore the lodgement of clearance certificate is not a requirement.

Question 14 - Model answer ²⁹

[6]

- 1 A foreign company may not deal with or take transfer of immovable property unless the following have been complied with as set out in section 324(2) of the Companies Act, ³⁰ namely-
- (a) the external company has established a place of business in the Republic of South Africa (the acquisition of immovable property can be seen as the establishment of a business); and
 - (b) the memorandum and articles of association of the external company have been registered within 21 days from the establishment of a place of business; and
 - (c) a registration number has been allocated to the external company. [3]
- 2 Yes, it can be a mortgagee in a mortgage bond to be registered in South-Africa. The Companies Act only prohibits the **dealing** with immovable property and the taking of transfer of property by an external company, unless the conditions in 1 above have been complied with. There is no prohibition against and/or requirements for the registration of a mortgage bond **in favour of an external company**. The **mortgagor** is the owner of the property, who may not deal with the property but the **mortgagee** does not become the owner of the immovable property by virtue of the registration of the mortgage bond. ³¹ [3]

TOTAL: [100]

²⁹ A very similar question has been asked in May 2008 (Part 2) question 5.

³⁰ Read together with section 1 of the Companies Act and Registrar's Conference Resolution 13/1991.

³¹ See Registrar's Conference Resolution 13/1991 with the opinion attached thereto.

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and published by

Self-Study Deeds Course CC

Registration number 1994/016876/23

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SOURCES

Self-study Deeds Course for Attorneys
Model Answers of LEAD

The Consolidated Practice Manuals of the Deeds Office of South Africa
Relevant acts, regulations and prescribed forms
Registrar's Conference Resolutions

